



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; and agricultural credit corporation maximum loan rates [535.12].

PLEASE NOTE: Underscore indicates new material added to existing rules; ~~strike through~~ indicates deleted material.

STEPHANIE A. HOFF, Administrative Code Editor

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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

NOTE: In accordance with Iowa Code section 2B.5A, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

Schedule for Rule Making 2017

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 28 '16	Jan. 18 '17	Feb. 7 '17	Feb. 22 '17	Feb. 24 '17	Mar. 15 '17	Apr. 19 '17	July 17 '17
Jan. 13	Feb. 1	Feb. 21	Mar. 8	Mar. 10	Mar. 29	May 3	July 31
Jan. 27	Feb. 15	Mar. 7	Mar. 22	Mar. 24	Apr. 12	May 17	Aug. 14
Feb. 10	Mar. 1	Mar. 21	Apr. 5	Apr. 7	Apr. 26	May 31	Aug. 28
Feb. 24	Mar. 15	Apr. 4	Apr. 19	Apr. 21	May 10	June 14	Sep. 11
Mar. 10	Mar. 29	Apr. 18	May 3	May 5	May 24	June 28	Sep. 25
Mar. 24	Apr. 12	May 2	May 17	***May 17***	June 7	July 12	Oct. 9
Apr. 7	Apr. 26	May 16	May 31	June 2	June 21	July 26	Oct. 23
Apr. 21	May 10	May 30	June 14	June 16	July 5	Aug. 9	Nov. 6
May 5	May 24	June 13	June 28	***June 28***	July 19	Aug. 23	Nov. 20
May 17	June 7	June 27	July 12	July 14	Aug. 2	Sep. 6	Dec. 4
June 2	June 21	July 11	July 26	July 28	Aug. 16	Sep. 20	Dec. 18
June 16	July 5	July 25	Aug. 9	Aug. 11	Aug. 30	Oct. 4	Jan. 1 '18
June 28	July 19	Aug. 8	Aug. 23	***Aug. 23***	Sep. 13	Oct. 18	Jan. 15 '18
July 14	Aug. 2	Aug. 22	Sep. 6	Sep. 8	Sep. 27	Nov. 1	Jan. 29 '18
July 28	Aug. 16	Sep. 5	Sep. 20	Sep. 22	Oct. 11	Nov. 15	Feb. 12 '18
Aug. 11	Aug. 30	Sep. 19	Oct. 4	Oct. 6	Oct. 25	Nov. 29	Feb. 26 '18
Aug. 23	Sep. 13	Oct. 3	Oct. 18	***Oct. 18***	Nov. 8	Dec. 13	Mar. 12 '18
Sep. 8	Sep. 27	Oct. 17	Nov. 1	***Nov. 1***	Nov. 22	Dec. 27	Mar. 26 '18
Sep. 22	Oct. 11	Oct. 31	Nov. 15	***Nov. 15***	Dec. 6	Jan. 10 '18	Apr. 9 '18
Oct. 6	Oct. 25	Nov. 14	Nov. 29	***Nov. 29***	Dec. 20	Jan. 24 '18	Apr. 23 '18
Oct. 18	Nov. 8	Nov. 28	Dec. 13	***Dec. 13***	Jan. 3 '18	Feb. 7 '18	May 7 '18
Nov. 1	Nov. 22	Dec. 12	Dec. 27	***Dec. 27***	Jan. 17 '18	Feb. 21 '18	May 21 '18
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Nov. 29	Dec. 20	Jan. 9 '18	Jan. 24 '18	Jan. 26 '18	Feb. 14 '18	Mar. 21 '18	June 18 '18
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PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
3	Friday, July 14, 2017	August 2, 2017
4	Friday, July 28, 2017	August 16, 2017
5	Friday, August 11, 2017	August 30, 2017

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the filing deadline unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

*****Note change of filing deadline*****

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Capitol complex operations, amendments to 100.1, 100.2 IAB 7/5/17 ARC 3177C (See also ARC 3179C herein)	Conference Rooms 5 and 6, A Level Hoover State Office Bldg. Des Moines, Iowa	July 25, 2017 8:30 to 9:30 a.m.
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ARCHITECTURAL EXAMINING BOARD[193B]

Description of organization—update of terminology, 1.1, 1.4 IAB 7/5/17 ARC 3169C	Board Office, Suite 350 200 E. Grand Ave. Des Moines, Iowa	July 25, 2017 9 a.m.
Registration—update of terminology, amendments to ch 2 IAB 7/5/17 ARC 3170C	Board Office, Suite 350 200 E. Grand Ave. Des Moines, Iowa	July 25, 2017 9 a.m.
Continuing education—update of terminology, amendments to ch 3 IAB 7/5/17 ARC 3171C	Board Office, Suite 350 200 E. Grand Ave. Des Moines, Iowa	July 25, 2017 9 a.m.
Rules of conduct—update of terminology, 4.1 IAB 7/5/17 ARC 3174C	Board Office, Suite 350 200 E. Grand Ave. Des Moines, Iowa	July 25, 2017 9 a.m.
Exceptions—update of terminology, 5.2 IAB 7/5/17 ARC 3172C	Board Office, Suite 350 200 E. Grand Ave. Des Moines, Iowa	July 25, 2017 9 a.m.
Disciplinary action against registrants—update of terminology, amendments to ch 6 IAB 7/5/17 ARC 3173C	Board Office, Suite 350 200 E. Grand Ave. Des Moines, Iowa	July 25, 2017 9 a.m.
Disciplinary action for unlicensed practice—update of terminology, 7.3 IAB 7/5/17 ARC 3175C	Board Office, Suite 350 200 E. Grand Ave. Des Moines, Iowa	July 25, 2017 9 a.m.

DENTAL BOARD[650]

Licensure and registration—renewal, reinstatement, dental assisting, continuing education, amend chs 14, 20; adopt ch 25 IAB 7/5/17 ARC 3157C	Board Office, Suite D 400 S.W. Eighth St. Des Moines, Iowa	July 27, 2017 2 p.m.
Fees, amendments to ch 15 IAB 7/5/17 ARC 3156C	Board Office, Suite D 400 S.W. Eighth St. Des Moines, Iowa	July 27, 2017 2 p.m.

EDUCATION DEPARTMENT[281]

Intensive summer literacy program—voluntary implementation, 61.3 IAB 7/5/17 ARC 3148C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	July 25, 2017 11 a.m. to 12 noon
State standards for progression in reading, amendments to ch 62 IAB 7/5/17 ARC 3149C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	July 25, 2017 10 to 11 a.m.

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Nursing education programs,
amendments to ch 2
IAB 6/21/17 **ARC 3127C**

Board Office, Suite B
400 S.W. 8th St.
Des Moines, Iowa

July 11, 2017
8:30 to 10:30 a.m.

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communication methods
and interview proceedings;
juveniles serving life sentences;
hearings via videoconferencing;
parole, amendments to chs 2 to
8, 11, 14 to 16
IAB 6/21/17 **ARC 3117C**

Board Conference Room
510 E. 12th St.
Des Moines, Iowa

July 11, 2017
11 a.m. to 1 p.m.

PUBLIC HEALTH DEPARTMENT[641]

Medical cannabidiol Act
registration card program,
154.1 to 154.14
IAB 7/5/17 **ARC 3151C**
(See also **ARC 3150C** herein)

Rooms 517 and 518
Lucas State Office Bldg.
Des Moines, Iowa
To participate by conference call:
Dial 1-866-685-1580
Conference Code: 515-281-5606

August 9, 2017
1 to 3 p.m.

PUBLIC SAFETY DEPARTMENT[661]

Standards for electrical
work—2017 National Electrical
Code (NEC), 100.1
IAB 7/5/17 **ARC 3153C**

Public Conference Room 125
Oran Pape State Office Bldg.
Des Moines, Iowa

August 17, 2017
10 a.m.

Consumer fireworks sales
licensing and safety standards,
ch 265
IAB 6/21/17 **ARC 3123C**

Public Conference Room 125
Oran Pape State Office Bldg.
Des Moines, Iowa

September 8, 2017
10 a.m.

REAL ESTATE COMMISSION[193E]

Branch offices, licensure,
prelicense and continuing
education, courses and
attendance certificates,
amendments to chs 7,16,17
IAB 7/5/17 **ARC 3154C**

Commission Office, Suite 350
200 E. Grand Ave.
Des Moines, Iowa

July 25, 2017
12 noon

TRANSPORTATION DEPARTMENT[761]

Iowa scenic byway program,
amendments to ch 132
IAB 6/21/17 **ARC 3130C**

North Conference Room, First Floor
Administration Bldg.
800 Lincoln Way
Ames, Iowa

July 13, 2017
10 a.m.
(If requested)

RISE program, amendments to
ch 163
IAB 6/21/17 **ARC 3131C**

North Conference Room, First Floor
Administration Bldg.
800 Lincoln Way
Ames, Iowa

July 13, 2017
11 a.m.
(If requested)

TRANSPORTATION DEPARTMENT[761] (cont'd)

Recreational trails program,
amendments to ch 165
IAB 6/21/17 **ARC 3132C**

North Conference Room, First Floor
Administration Bldg.
800 Lincoln Way
Ames, Iowa

July 13, 2017
1 p.m.
(If requested)

Iowa airport registration; aircraft
registration, amendments to chs
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IAB 6/21/17 **ARC 3128C**

South Conference Room, First Floor
Administration Bldg.
800 Lincoln Way
Ames, Iowa

July 14, 2017
10 a.m.
(If requested)

UTILITIES DIVISION[199]

Renewable energy percentage
verification, ch 30
IAB 6/21/17 **ARC 3118C**

Board Hearing Room
1375 E. Court Ave.
Des Moines, Iowa

July 26, 2017
9 a.m.

Equipment distribution program,
37.1 to 37.6
IAB 6/21/17 **ARC 3119C**

Board Hearing Room
1375 E. Court Ave.
Des Moines, Iowa

August 16, 2017
10 a.m.

The following list will be updated as changes occur.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies are included alphabetically in SMALL CAPITALS at the left-hand margin.

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ARC 3177C**ADMINISTRATIVE SERVICES DEPARTMENT[11]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 8A.104(5), the Department of Administrative Services hereby gives Notice of Intended Action to amend Chapter 100, “Capitol Complex Operations,” Iowa Administrative Code.

The proposed amendments address the possession of pistols and revolvers and the use of fireworks on the Capitol Complex in relation to 2017 Iowa Acts, House File 517 and Senate File 489.

Interested persons may make written comments on the proposed amendments until 4:30 p.m. on July 25, 2017. Comments should be directed to Tami Wiencek, Department of Administrative Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-6140 or by e-mail to tami.wiencek@iowa.gov.

A public hearing will be held on July 25, 2017, from 8:30 to 9:30 a.m. in Conference Rooms 5 and 6, A Level, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling (515)725-2017.

After analysis and review, it has been determined the fiscal impact to the state is undeterminable. Rules involving 2017 Iowa Acts, House File 517, and the use of fireworks on the Capitol Complex do not have an impact on the state budget.

The Department of Administrative Services will not grant waivers under the provisions of these rules, other than as may be allowed under Chapter 9 of the Department’s rules concerning waivers.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 3179C**. The content of that submission is incorporated by reference.

After analysis and review of this rule making, the jobs impact as a result of these rules is undeterminable. It is undeterminable how rules that implement 2017 Iowa Acts, House File 517, section 33, would affect jobs in the private sector. It is undeterminable how rules that implement Iowa Code section 8A.322(3) in relationship to 2017 Iowa Acts, Senate File 489, would affect jobs in the private sector.

These amendments are intended to implement Iowa Code section 8A.322 as amended by 2017 Iowa Acts, House File 517, and the provisions resulting from 2017 Iowa Acts, Senate File 489.

ARC 3152C**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 199.11, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 40, “Agricultural Seeds,” Iowa Administrative Code.

The proposed amendment updates the federal code reference for agricultural seeds.

Any interested persons may make written suggestions or comments on the proposed amendment on or before July 25, 2017. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by e-mail to Margaret.Thomson@IowaAgriculture.gov.

This proposed amendment is subject to the Department’s general waiver provisions.

After analysis and review of this rule making, no adverse impact on jobs has been found.

This amendment is intended to implement Iowa Code chapter 199.

The following amendment is proposed.

Amend rule 21—40.15(199) as follows:

21—40.15(199) Federal regulations adopted. Title 7, C.F.R., Subchapter K—Federal Seed Act—Parts 201, 202 revised as of January 1, 1982, and the Federal Seed Act, 7 U.S.C., Section 1551 et seq., amended as of ~~December 22, 1984~~ April 1998, are hereby adopted by this reference in their entirety.

ARC 3169C**ARCHITECTURAL EXAMINING BOARD[193B]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board hereby gives Notice of Intended Action to amend Chapter 1, “Description of Organization,” Iowa Administrative Code.

The rules in Chapter 1 describe the organization of the Architectural Examining Board.

The proposed amendments are a result of 2017 Iowa Acts, Senate File 408, which requires licensure rather than registration of architects practicing in this state. This bill passed the Iowa Senate on March 28, 2017, 49-0 and passed the Iowa House on April 6, 2017, 96-0; it was signed by then Governor Branstad on May 11, 2017. The proposed amendments change terminology from registered/registration to licensed/licensure.

Consideration will be given to all written suggestions or comments received on or before July 25, 2017. Comments should be directed to Lori SchraderBachar, Iowa Architectural Examining

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

Board, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa 50309. E-mail may be sent to lori.schraderbachar@iowa.gov.

A public hearing will be held on July 25, 2017, at 9 a.m. in the Board Office, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa, at which time persons may present their views on the proposed amendments either orally or in writing. At the hearing, any person who wishes to speak will be asked to give the person's name and address for the record and to confine remarks to the subject of the proposed amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Board and advise of specific needs.

These proposed amendments were approved by the Board on May 19, 2017.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

After analysis and review of this rule making, the Professional Licensing and Regulation Bureau determined that there will be no impact on jobs and no fiscal impact to the state.

These amendments are intended to implement Iowa Code chapter 544A as amended by 2017 Iowa Acts, Senate File 408.

The following amendments are proposed.

ITEM 1. Amend rule 193B—1.1(544A,17A), introductory paragraph, as follows:

193B—1.1(544A,17A) Duties. The board shall enforce the provisions of Iowa Code chapter 544A and shall maintain a roster of all ~~registered~~ licensed architects authorized to practice architecture in the state.

ITEM 2. Amend rule 193B—1.4(544A,17A) as follows:

193B—1.4(544A,17A) Certificates. Certificates issued to successful applicants shall contain the ~~registrant's~~ licensee's name, state ~~registration~~ license number and the signatures of the board president, vice president and secretary. All ~~registrations~~ licenses are renewable biennially on July 1, with ~~registrants~~ licensees whose last names begin with the letters A-K renewing in even-numbered years and ~~registrants~~ licensees whose last names begin with the letters L-Z renewing in odd-numbered years as provided in rule 193B—2.5(17A,272C,544A).

The board shall maintain an electronic roster of those holders of certificates of ~~registration~~ licensure who have failed to renew. The certificate of ~~registration~~ licensure may be reinstated in accord with rule 193B—2.4(544A,17A).

ARC 3170C

ARCHITECTURAL EXAMINING BOARD[193B]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board hereby gives Notice of Intended Action to amend Chapter 2, “Registration,” Iowa Administrative Code.

The rules in Chapter 2 describe the process for licensure and renewal of certificates of licensure for licensees to be authorized to practice architecture in Iowa.

The proposed amendments are a result of 2017 Iowa Acts, Senate File 408, which requires licensure rather than registration of architects practicing in this state. This bill passed the Iowa Senate on March 28, 2017, 49-0 and passed the Iowa House on April 6, 2017, 96-0; it was signed by then Governor Branstad on May 11, 2017. The proposed amendments change terminology from registered/registration to licensed/licensure.

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

Consideration will be given to all written suggestions or comments received on or before July 25, 2017. Comments should be directed to Lori SchraderBachar, Iowa Architectural Examining Board, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa 50309. E-mail may be sent to lori.schraderbachar@iowa.gov.

A public hearing will be held on July 25, 2017, at 9 a.m. in the Board Office, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa, at which time persons may present their views on the proposed amendments either orally or in writing. At the hearing, any person who wishes to speak will be asked to give the person's name and address for the record and to confine remarks to the subject of the proposed amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Board and advise of specific needs.

These proposed amendments were approved by the Board on May 19, 2017.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

After analysis and review of this rule making, the Professional Licensing and Regulation Bureau determined that there will be no impact on jobs and no fiscal impact to the state.

These amendments are intended to implement Iowa Code section 544A as amended by 2017 Iowa Acts, Senate File 408.

The following amendments are proposed.

ITEM 1. Amend **193B—Chapter 2**, title, as follows:

REGISTRATION LICENSURE

ITEM 2. Amend the following definitions in rule **193B—2.1(544A,17A)**:

“*Applicant*” means an individual who has submitted an application for registration licensure to the board.

“*Architectural intern*” means an individual who holds a professional degree from a NAAB-accredited program, has completed or is currently enrolled in the NCARB Architectural Experience Program (AXP), formerly known as the Intern Development Program (IDP), and intends to actively pursue registration licensure by completing the Architect Registration Examination.

“*AXP applicant*” means an individual who has completed the AXP training requirements set forth in the NCARB Architectural Experience Program Guidelines, formerly known as the IDP Guidelines, and has submitted an application for registration licensure to the board.

“*Inactive*” means that an architect is not engaged in Iowa in any practice for which a certificate of registration licensure is required.

“*NCARB Certification Guidelines*” means the most current edition of a document by the same title published by the National Council of Architectural Registration Boards. The document outlines the requirements for registration licensure as an architect and is available through the National Council of Architectural Registration Boards, 1801 K Street NW, Suite 1100, Washington, D.C. 20006; NCARB's Web site www.ncarb.org; or the architectural examining board.

ITEM 3. Amend rule 193B—2.2(544A,17A) as follows:

193B—2.2(544A,17A) Application by reciprocity. Applicants for registration licensure are required to make application to the National Council of Architectural Registration Boards (NCARB) for a certificate. A completed state application form (available on the board's Web site) and a completed NCARB certificate, received within three months of application, shall be filed in the board office before an application will be considered by the board.

2.2(1) Registration Licensure requirements. The board or the board administrator may waive examination requirements for applicants who, at the time of application, are registered licensed as architects in a different jurisdiction, where the applicant's qualifications for registration licensure are substantially equivalent to those required of applicants for initial registration licensure in this state. All such applicants who hold an active NCARB certificate shall be deemed to possess qualifications that are substantially equivalent to those required of applicants for initial registration licensure in this state.

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

2.2(2) *Applicants seeking architectural commission in Iowa.* A person seeking an architectural commission in this state may be admitted to this state for the purpose of offering to provide architectural services, and for that purpose only, without first being ~~registered~~ licensed in this state if:

- a. No change.
- b. The person holds a current and valid ~~registration~~ license issued by a ~~registration~~ licensing authority recognized by this state; and
- c. The person notifies the board in writing on a form provided by the board that the person:
 - (1) Holds an NCARB certificate and a current and valid ~~registration~~ license issued by a ~~registration~~ licensing authority recognized by this state,
 - (2) Is not currently ~~registered~~ licensed in this state but will be present in this state for the purpose of offering to provide architectural services on a temporary basis, and
 - (3) Has no previous or pending disciplinary action by any ~~registration~~ licensing authority; and
- d. No change.
- e. The person provides the board with a sworn statement of intent to apply immediately to the board for ~~registration~~ licensure if selected as the architect for a project in this state.

The person is prohibited from actually providing architectural services until the person has been issued a valid ~~registration~~ license in this state.

2.2(3) *Board refusal to issue ~~registration~~ license.* The board may refuse to issue a certificate of ~~registration~~ licensure to any person otherwise qualified upon any of the grounds for which a certificate of ~~registration~~ licensure may be revoked or suspended or may otherwise discipline a ~~registrant~~ licensee based upon a suspension, revocation, or other disciplinary action taken by a licensing authority in this or another jurisdiction. For purposes of this subrule, “disciplinary action” includes the voluntary surrender of a ~~registration~~ license to resolve a pending disciplinary investigation or proceeding. A certified copy of the record or order of suspension, revocation, voluntary surrender, or other disciplinary action is prima facie evidence of such fact.

ITEM 4. Amend rule 193B—2.3(544A,17A) as follows:

193B—2.3(544A,17A) Application for ~~registration~~ licensure by examination.

2.3(1) Eligibility.

a. To be admitted to the examination, an applicant for ~~registration~~ licensure shall:

- (1) and (2) No change.
- b. No change.

2.3(2) Documentation of AXP training units shall be submitted on AXP report forms published by NCARB and shall be verified by signatures of the ~~registered~~ licensed architects serving as the intern architect’s supervisor in accordance with the requirements outlined in the NCARB Architectural Experience Program Guidelines. The completed AXP report form shall demonstrate attainment of an aggregate of the minimum number of value units in each training area and shall be submitted to NCARB for evaluation.

2.3(3) and **2.3(4)** No change.

2.3(5) To be eligible for ~~registration~~ licensure, all applicants shall have passed all divisions of the ARE prepared and provided by NCARB, have completed the NCARB Architectural Experience Program, and have attained an NCARB council record. A completed NCARB council record shall be transmitted to and filed in the board office within three months of application. Upon receipt of the council record, the board shall provide the applicant with an application for ~~registration~~ licensure form. The board shall issue a ~~registration~~ license number to the applicant upon receipt of the completed application form and appropriate fee.

2.3(6) The board may refuse to issue a certificate of ~~registration~~ licensure to any person otherwise qualified upon any of the grounds for which a ~~registration~~ license may be revoked or suspended or may otherwise discipline a ~~registrant~~ licensee based upon a suspension, revocation, or other disciplinary action taken by a licensing authority in this or another jurisdiction. For purposes of this subrule, “disciplinary action” includes the voluntary surrender of a ~~registration~~ license to resolve a pending

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

disciplinary investigation or proceeding. A certified copy of the record or order of suspension, revocation, voluntary surrender, or other disciplinary action is prima facie evidence of such fact.

ITEM 5. Amend rule 193B—2.4(544A,17A), introductory paragraph, as follows:

193B—2.4(544A,17A) Examination. Examinations for registration licensure as an architect shall be conducted by the board or its authorized representative.

ITEM 6. Amend rule 193B—2.5(17A,272C,544A) as follows:

193B—2.5(17A,272C,544A) Renewal of certificates of registration licensure.

2.5(1) Active status. Certificates of registration licensure expire biennially on June 30. In order to maintain authorization to practice in Iowa, a registrant licensee is required to renew the certificate of registration licensure prior to the expiration date. A registrant licensee who fails to renew by the expiration date is not authorized to practice architecture in Iowa until the certificate is reinstated as provided in rule 193B—2.6(544A,17A).

a. A registrant licensee whose last name begins with the letter A through K shall renew in even-numbered years, and a registrant licensee whose last name begins with the letter L through Z shall renew in odd-numbered years.

b. It is the policy of the board to send to each registrant licensee a notice of the pending expiration date at the registrant's licensee's last-known address approximately one month prior to the date the certificate of registration licensure is scheduled to expire. The notice, when provided, may be by e-mail communication or in the quarterly newsletter. Failure to receive this notice does not relieve the registrant licensee of the responsibility to timely renew the certificate and pay the renewal fee. A registrant licensee should contact the board office if the registrant licensee does not receive a renewal notice prior to the date of expiration.

c. Upon the board's receipt of a timely and sufficient renewal application as provided in 193—subrule 7.40(3), the board's administrator shall issue a new certificate of registration licensure reflecting the next expiration date, unless grounds exist for denial of the application. However, the board will accept an otherwise sufficient renewal application that is untimely if the board receives the application and late fee within 30 days of the date of expiration.

d. If grounds exist to deny a timely and sufficient application to renew, the board shall send written notification to the applicant by restricted certified mail, return receipt requested. Grounds may exist to deny an application to renew if, for instance, the registrant licensee failed to satisfy the continuing education as required as a condition for registration licensure. If the basis for denial is pending disciplinary action or disciplinary investigation which is reasonably expected to culminate in disciplinary action, the board shall proceed as provided in 193—Chapter 7. If the basis for denial is not related to a pending or imminent disciplinary action, the applicant may contest the board's decision as provided in 193—subrule 7.40(1).

e. When a registrant licensee appears to be in violation of mandatory continuing education requirements, the board may, in lieu of proceeding to a contested case hearing on the denial of a renewal application as provided in rule 193—7.40(546,272C), offer a registrant licensee the opportunity to sign a consent order. While the terms of the consent order will be tailored to the specific circumstances at issue, the consent order will typically impose a penalty between \$50 and \$250, depending on the severity of the violation; establish deadlines for compliance; and require that the registrant licensee complete hours equal to double the deficiency in addition to the required hours; and may impose additional educational requirements on the registrant licensee. Any additional hours completed in compliance with the consent order cannot again be claimed at the next renewal. The board will address subsequent offenses on a case-by-case basis. A registrant licensee is free to accept or reject the offer. If the offer of settlement is accepted, the registrant licensee will be issued a renewed certificate of registration licensure and will be subject to disciplinary action if the terms of the consent order are not complied with. If the offer of settlement is rejected, the matter will be set for hearing, if timely requested by the applicant pursuant to 193—subrule 7.40(1).

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

f. The board may notify a registrant licensee whose certificate of registration licensure has expired. The failure of the board to provide this courtesy notification or the failure of the registrant licensee to receive the notification shall not extend the date of expiration.

g. A registrant licensee who continues to practice architecture in Iowa after the registration license has expired shall be subject to disciplinary action. Such unauthorized activity may also be grounds to deny a registrant's licensee's application for reinstatement.

2.5(2) Inactive status. This subrule establishes a procedure under which a person issued a certificate of registration licensure as an architect may apply to the board to register be licensed as inactive. Registration Licensure under this subrule is available to a certificate holder residing within or outside the state of Iowa who is not engaged in Iowa in any practice for which a certificate of registration licensure as an architect is required. A person eligible to register be licensed as inactive may, as an alternative to such registration licensure, allow the certificate of registration licensure to lapse. During any period of inactive status, a person shall not use the title "architect" or any other title that might imply that the person is offering services as an architect by such an action in violation of Iowa Code section 544A.15. The board will continue to maintain a data base of persons registered licensed as inactive, including information which is not routinely maintained after a certificate has lapsed through the person's failure to renew. A person who registers is licensed as inactive will accordingly receive renewal applications, board newsletters and other mass communications from the board.

a. No change.

b. Renewal. A person registered licensed as inactive may renew the person's certificate of registration licensure on the biennial schedule described in 193B—2.5(17A,272C,544A). This person shall be exempt from the continuing education requirements and will be charged a reduced renewal fee as provided in 193B—2.9(544A,17A). An inactive certificate of registration licensure shall lapse if not timely renewed. However, the board will accept an otherwise sufficient renewal application that is untimely if the board receives the application and late fee within 30 days of the date of expiration.

c. Permitted practices. A person may, while registered licensed as inactive, perform for a client, business, employer, government body, or other entity those services which may lawfully be provided by a person to whom a certificate of registration licensure has never been issued. Such services may be performed as long as the person does not in connection with such services use the title "architect" or any other title restricted for use only by architects pursuant to Iowa Code section 544A.15 (with or without additional designations such as "inactive" or "retired"). Restricted titles may be used only by active architects who are subject to continuing education requirements to ensure that the use of such titles is consistently associated with the maintenance of competency through continuing education.

d. Prohibited practices. A person who, while registered licensed as inactive, engages in any of the practices described in Iowa Code sections 544A.15 and 544A.16 is subject to disciplinary action.

2.5(3) Retired status. A person who held a registration license as an architect and who does not reasonably expect to return to the workforce in any capacity for which a certificate of registration licensure is required due to bona fide retirement or disability may apply to the board for retired status and, if granted, may use the title "architect retired" in the context of non-income-producing personal activities. If the board determines an applicant is eligible, the retired status would become effective on the first scheduled registration license renewal date. Applicants do not need to reinstate an expired registration license to be eligible for retired status. Applicants may apply for retired status on forms provided by the board. The board will not provide a refund of biennial registration license fees if an application for retired status is granted in a biennium in which the applicant has previously paid the biennial fees for either active or inactive status. Persons registered licensed in retired status are exempt from the renewal requirement.

a. No change.

b. Permitted practices. Persons registered licensed in retired status may engage in the practices identified in paragraph 2.5(2)"c." Such persons may also provide services as technical experts before a court, including prelitigation preparation, discovery, and testimony, on matters directly related to architectural services provided by such persons prior to registering being licensed with the board in retired status.

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

c. Exemption. A person whose registration license as an architect has been placed on probation, suspended, revoked, or voluntarily surrendered in connection with a disciplinary investigation or proceeding shall not be eligible for retired status unless, upon appropriate application, the board first reinstates the registration license to good standing.

ITEM 7. Amend rule 193B—2.6(544A,17A) as follows:

193B—2.6(544A,17A) Reinstatement of lapsed certificate of registration licensure to active status.

An individual may reinstate a lapsed certificate of registration licensure to active registration licensure as follows:

2.6(1) No change.

2.6(2) Pay the reinstatement fee of \$100 plus \$25 per month or partial month of expired registration licensure up to a maximum of \$750. All applicants for reinstatement shall be assessed the \$100 reinstatement fee. The \$25 per month shall not be assessed if the applicant for reinstatement did not, during the period of lapse, engage in any acts or practices for which an active architect registration license is required in Iowa. Falsely claiming an exemption from the monthly fee is a ground for discipline; in addition, other grounds for discipline may arise from practicing on a lapsed certificate, license or permit to practice.

2.6(3) Provide a written statement outlining the applicant's professional activities performed in Iowa during the period of ~~nonregistration~~ in which the individual was unlicensed. The statement shall include a list of all projects with which the applicant had involvement and shall explain the service provided by the applicant.

2.6(4) Submit documented evidence of completion of 24 continuing education hours, which should have been reported on the June 30 renewal date on which the applicant failed to renew, and 12 continuing education hours for each year or portion of a year of expired registration license up to a maximum of 48 continuing education hours. All continuing education hours must be completed in health, safety, and welfare subjects acquired in structured educational activities and be in compliance with requirements in 193B—Chapter 3. The continuing education hours used for reinstatement may not be used again at the next renewal. Out-of-state residents may submit a statement from their resident state's licensing board as documented evidence of compliance with their resident state's mandatory continuing education requirements during the period of ~~nonregistration~~ in which the individual was unlicensed. The statement shall bear the seal of the licensing board. Out-of-state residents whose resident state has no mandatory continuing education shall comply with the documented evidence requirements outlined in this subrule.

ITEM 8. Amend rule 193B—2.7(544A) as follows:

193B—2.7(544A) Reinstatement from inactive status or retired status to active status.

2.7(1) An individual may reinstate an inactive registration license to an active registration license as follows:

a. Pay one-half of the current active registration license fee.

b. Submit documented evidence of completion of 24 continuing education hours in compliance with requirements in 193B—Chapter 3. All continuing education hours must be completed in health, safety, and welfare subjects acquired in structured educational activities. The hours used to reinstate to active status cannot again be used to renew.

(1) At the first biennial renewal date of July 1 that is less than 12 months from the date of the filing of the application to restore the certificate of registration licensure to active status, the person shall not be required to report continuing education hours.

(2) At the first biennial renewal date of July 1 that is more than 12 months, but less than 24 months, from the date of the filing of the application to restore the certificate of registration licensure to active status, the person shall report 12 hours of previously unreported continuing education hours.

c. Provide a written statement in which the applicant affirms that the applicant has not engaged in any of the practices in Iowa that are listed in Iowa Code section 544A.16 during the period of inactive registration licensure.

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

2.7(2) An individual may reinstate a retired registration license to an active registration license as follows:

a. Pay the current active registration license fee. If the individual is reinstating to active status at a date that is less than 12 months from the next biennial renewal date, one-half of the current active registration license fee shall be paid.

b. Submit documented evidence of completion of 24 continuing education hours in compliance with requirements in 193B—Chapter 3. All continuing education hours must be completed in health, safety, and welfare subjects acquired in structured educational activities. The hours used to reinstate to active status cannot again be used to renew.

(1) At the first biennial renewal date of July 1 that is less than 12 months from the date of the filing of the application to restore the certificate of registration licensure to active status, the person shall not be required to report continuing education hours.

(2) At the first biennial renewal date of July 1 that is more than 12 months, but less than 24 months, from the date of the filing of the application to restore the certificate of registration licensure to active status, the person shall report 12 hours of previously unreported continuing education hours.

c. Provide a written statement in which the applicant affirms that the applicant has not engaged in any of the practices in Iowa that are listed in Iowa Code section 544A.16 during the period of retired registration licensure.

2.7(3) No change.

ITEM 9. Amend rule 193B—2.8(544A,17A) as follows:

193B—2.8(544A,17A) Finding of probable cause for unlicensed practice. The board may find probable cause to file charges for unlicensed practice if the individual continues to offer services defined as the practice of architecture outlined in Iowa Code section 544A.16 while using the title “architect,” “architectural designer,” or similar designation during the period of lapsed registration licensure.

ITEM 10. Amend rule 193B—2.9(544A,17A) as follows:

193B—2.9(544A,17A) Fee schedule. Under the authority provided in Iowa Code chapter 544A, the following fees are hereby adopted:

Examination fees:

Fees for examination subjects shall be paid directly to the testing service selected by NCARB

Initial <u>registration license</u> fee	\$ 50
(plus \$5 per month until renewal)	
Reciprocal application and <u>registration license</u> fee	\$200
Biennial renewal fee	\$200
Biennial renewal fee (inactive)	\$100
Retired status	None
Reinstatement of lapsed individual <u>registration license</u>	\$100 + renewal fee + \$25 per month or partial month of expired <u>registration license</u>
Reinstatement of inactive individual <u>registration license</u>	\$100
Reinstatement of retired individual <u>registration license</u>	\$200
Duplicate wall certificate fee	\$ 50
Late renewal fee	\$ 25

(for renewals postmarked on or after July 1 and before July 30)

ARC 3171C

ARCHITECTURAL EXAMINING BOARD[193B]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board hereby gives Notice of Intended Action to amend Chapter 3, “Continuing Education,” Iowa Administrative Code.

The rules in Chapter 3 describe professional licensees’ continuing education requirements as a condition of registration renewal.

The proposed amendments are a result of 2017 Iowa Acts, Senate File 408, which requires licensure rather than registration of architects practicing in this state. This bill passed the Iowa Senate on March 28, 2017, 49-0 and passed the Iowa House on April 6, 2017, 96-0; it was signed by then Governor Branstad on May 11, 2017. The proposed amendments change terminology from registered/registration to licensed/licensure.

Consideration will be given to all written suggestions or comments received on or before July 25, 2017. Comments should be directed to Lori SchraderBachar, Iowa Architectural Examining Board, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa 50309. E-mail may be sent to lori.schraderbachar@iowa.gov.

A public hearing will be held on July 25, 2017, at 9 a.m. in the Board Office, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa, at which time persons may present their views on the proposed amendments either orally or in writing. At the hearing, any person who wishes to speak will be asked to give the person’s name and address for the record and to confine remarks to the subject of the proposed amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Board and advise of specific needs.

These proposed amendments were approved by the Board on May 19, 2017.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

After analysis and review of this rule making, the Professional Licensing and Regulation Bureau determined that there will be no impact on jobs and no fiscal impact to the state.

These amendments are intended to implement Iowa Code chapter 544A as amended by 2017 Iowa Acts, Senate File 408.

The following amendments are proposed.

ITEM 1. Amend rule 193B—3.1(544A,272C) as follows:

193B—3.1(544A,272C) Continuing education. The following rules adopted by the architectural examining board are in compliance with Iowa Code chapter 544A and section 272C.2 requiring professional and occupational licensees to participate in a continuing education program as a condition of ~~registration~~ license renewal.

ITEM 2. Amend rule **193B—3.2(544A,272C)**, definition of “Continuing education,” as follows:

“*Continuing education*” or “*CE*” means postlicensure learning that enables a ~~registered~~ licensed architect to increase or update knowledge of and competence in technical and professional subjects related to the practice of architecture to safeguard the public’s health, safety, and welfare.

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

ITEM 3. Amend rule 193B—3.3(544A,272C) as follows:

193B—3.3(544A,272C) Basic requirements.

3.3(1) To renew ~~registration~~ licensure, an architect must, in addition to meeting all other requirements, complete a minimum of 24 CEHs for each 24-month period since the architect's last renewal of initial ~~registration~~ licensure or be exempt from these continuing education requirements as provided in rule 193B—3.5(544A,272C). Failure to comply with these requirements may result in nonrenewal of the architect's ~~registration~~ license.

3.3(2) and **3.3(3)** No change.

3.3(4) An architect who holds ~~registration~~ licensure in Iowa for less than 12 months from the date of initial ~~registration~~ licensure or who is reinstating to active status shall not be required to report CEHs at the first ~~registration~~ license renewal. An architect who holds ~~registration~~ licensure in Iowa for more than 12 months, but less than 23 months from the date of initial ~~registration~~ licensure or who is reinstating to active status, shall be required to report 12 CEHs earned in the preceding 12 months at the first ~~registration~~ license renewal.

ITEM 4. Amend rule 193B—3.4(544A,272C) as follows:

193B—3.4(544A,272C) Authorized structured educational activities. The following list may be used by all ~~registrants~~ licensees in determining the types of activities which may fulfill CE requirements if the activities are conducted as structured educational activities on health, safety, and welfare subjects:

1. to 4. No change.

ITEM 5. Amend rule 193B—3.5(544A,272C) as follows:

193B—3.5(544A,272C) Exemptions.

3.5(1) As provided in Iowa Code section 272C.2(4), a ~~registered~~ licensed architect shall be deemed to have complied with the continuing education requirements set forth in this chapter if the architect attests in the required affidavit that for not less than 21 months of the preceding two-year period of ~~registration~~ licensure, the architect:

a. No change.

b. Is a resident of another state or district having a continuing education requirement for ~~registration~~ licensure as an architect and has complied with all requirements of that state or district for practice therein; or

c. No change.

3.5(2) Architects who so attest on their affidavits that they are retired from active practice or are not engaged in active practice may maintain their ~~registrations~~ licenses in retired or inactive status without satisfying CE requirements. Such architects may, however, reenter practice only after satisfying the board of their proficiency. Proficiency may be established by any one of the following:

a. to *c.* No change.

3.5(3) No change.

ARC 3174C**ARCHITECTURAL EXAMINING BOARD[193B]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board hereby gives Notice of Intended Action to amend Chapter 4, “Rules of Conduct,” Iowa Administrative Code.

The rules in Chapter 4 describe the rules of conduct for those who hold an Iowa architectural license.

The proposed amendments are a result of 2017 Iowa Acts, Senate File 408, which requires licensure rather than registration of architects practicing in this state. This bill passed the Iowa Senate on March 28, 2017, 49-0 and passed the Iowa House on April 6, 2017, 96-0; it was signed by then Governor Branstad on May 11, 2017. The proposed amendments change terminology from registered/registration to licensed/licensure.

Consideration will be given to all written suggestions or comments received on or before July 25, 2017. Comments should be directed to Lori SchraderBachar, Iowa Architectural Examining Board, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa 50309. E-mail may be sent to lori.schraderbachar@iowa.gov.

A public hearing will be held on July 25, 2017, at 9 a.m. in the Board Office, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa, at which time persons may present their views on the proposed amendments either orally or in writing. At the hearing, any person who wishes to speak will be asked to give the person’s name and address for the record and to confine remarks to the subject of the proposed amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Board and advise of specific needs.

These proposed amendments were approved by the Board on May 19, 2017.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

After analysis and review of this rule making, the Professional Licensing and Regulation Bureau determined that there will be no impact on jobs and no fiscal impact to the state.

These amendments are intended to implement Iowa Code chapter 544A as amended by 2017 Iowa Acts, Senate File 408.

The following amendments are proposed.

ITEM 1. Amend rule 193B—4.1(544A,17A), introductory paragraph, as follows:

193B—4.1(544A,17A) Rules of conduct. Failure by a ~~registrant~~ licensee to adhere to the provisions of Iowa Code sections 272C.10 and 544A.13 and the following rules of conduct shall be grounds for disciplinary action.

ITEM 2. Amend subrule 4.1(1) as follows:

4.1(1) Definitions. The following definition applies as used in Iowa Code chapter 544A and this chapter of the architectural examining board rules, unless the context otherwise requires.

“*Responsible charge*” means the amount of control over and detailed professional knowledge of the content of technical submissions during their preparation as is ordinarily exercised by a ~~registered~~ licensed architect applying the required professional standard of care, including but not limited to an architect’s integration of information from manufacturers, suppliers, installers; the architect’s consultants, owners, contractors; or other sources the architect reasonably trusts that is incidental to and intended to be incorporated into the architect’s technical submissions if the architect has coordinated and reviewed such information. Other review, or review and correction, of technical submissions

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

after they have been prepared by others does not constitute the exercise of responsible charge because the reviewer has neither control over nor detailed professional knowledge of the content of such submissions throughout their preparation.

ITEM 3. Amend subrule 4.1(4) as follows:

4.1(4) Full disclosure.

a. to c. No change.

d. An architect shall not deliberately make a materially false statement or deliberately fail to disclose a material fact requested in connection with application for ~~registration~~ licensure or renewal of ~~registration~~ license.

e. An architect shall not assist the application for ~~registration~~ licensure of a person known by the architect to be unqualified in respect to education, training, experience or character.

f. No change.

ITEM 4. Amend subrule 4.1(5) as follows:

4.1(5) Compliance with laws.

a. An architect shall not, in the conduct of architectural practice, knowingly violate any state or federal criminal law. A “conviction” for purposes of this paragraph and Iowa Code section 544A.13 means a conviction for an indictable offense and includes the court’s acceptance of a guilty plea, a deferred judgment from the time of entry of the deferred judgment until the time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent jurisdiction. A copy of the record of conviction, guilty plea, deferred judgment, or other finding of guilt is conclusive evidence. A ~~registered~~ licensed architect shall notify the board of a conviction within 30 days of the conviction.

b. No change.

c. An architect shall comply with the ~~registration~~ licensing laws and regulations governing the architect’s professional practice in any United States jurisdiction.

d. An ~~Iowa-registered~~ Iowa-licensed architect shall report to the board in writing any revocation, suspension, or other disciplinary action taken by a licensing authority in any other state or jurisdiction within 30 days of the final action.

ITEM 5. Amend subrule 4.1(6) as follows:

4.1(6) Professional conduct.

a. No change.

b. An architect shall not sign or seal drawings, specifications, reports or other professional work for which the architect does not have direct professional knowledge and direct supervisory control; provided, however, that in the case of the portions of professional work prepared by the architect’s consultants, ~~registered~~ licensed under this or another professional ~~registration~~ licensing law of this jurisdiction, the architect may sign or seal that portion of the professional work if the architect has reviewed that portion, has coordinated its preparation and intends to be responsible for its adequacy.

c. and d. No change.

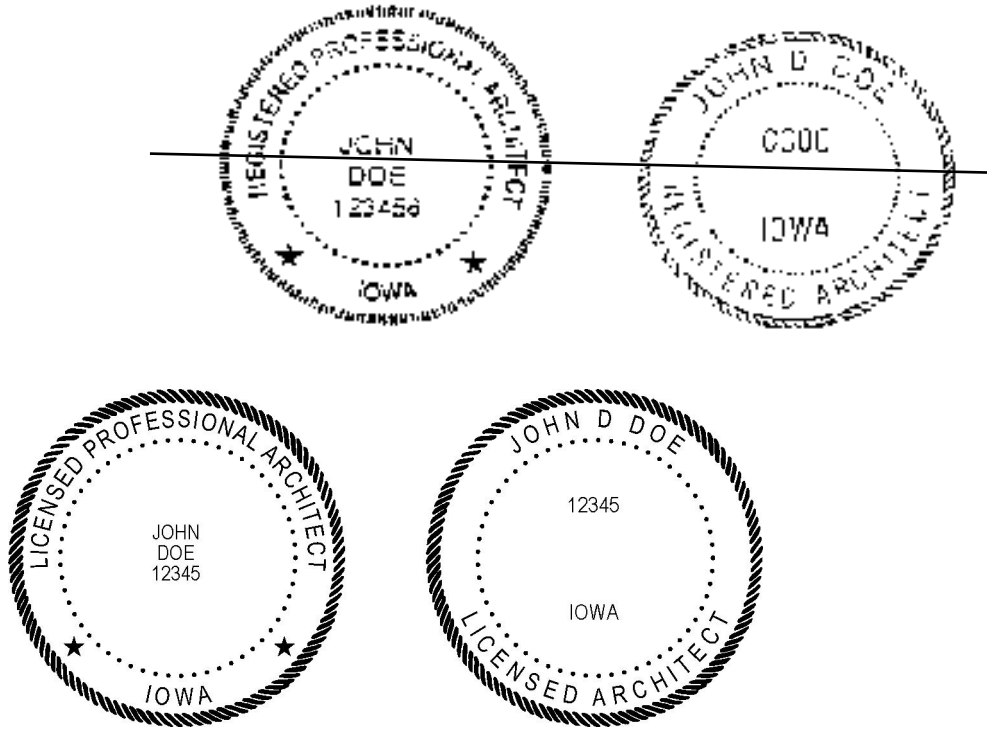
ITEM 6. Amend subrule 4.1(7) as follows:

4.1(7) Seal and certificate of responsibility.

a. No change.

b. Description of seal: The diameter of the outside circle shall be approximately 1¾ inches. The seal shall include the name of the ~~registered~~ licensed architect and the words “~~Registered~~ Licensed Architect”. The Iowa ~~registration~~ license number and the word “Iowa” shall be included. The seal shall substantially conform to the samples shown below:

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)



c. No change.

d. Each technical submission submitted to a client or any public agency, hereinafter referred to as the official copy, shall contain an information block on its first page or on an attached cover sheet with application of a seal by the architect in responsible charge and an information block with application of a seal by each professional consultant contributing to the technical submission. The seal and original signature shall be applied only to a final technical submission. Each official copy of a technical submission shall be stapled, bound or otherwise attached together so as to clearly establish the complete extent of the technical submission. Each information block shall display the seal of the individual responsible for that portion of the technical submission. The area of responsibility for each sealing professional shall be designated in the area provided in the information block, so that responsibility for the entire technical submission is clearly established by the combination of the stated seal responsibilities. The information block will substantially conform to the sample shown below:

S E A L	<p>I hereby certify that the portion of this technical submission described below was prepared by me or under my direct supervision and responsible charge. I am a duly registered <u>licensed</u> architect under the laws of the state of Iowa.</p> <p>_____</p> <p>_____</p> <p style="text-align: center;">Signature Date</p> <p>_____</p> <p>Printed or typed name _____</p> <p>License number _____</p> <p>My license renewal date is June 30, _____.</p> <p>Pages or sheets covered by this seal: _____</p> <p>_____</p>
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ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

e. to h. No change.

ARC 3172C

ARCHITECTURAL EXAMINING BOARD[193B]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board hereby gives Notice of Intended Action to amend Chapter 5, “Exceptions,” Iowa Administrative Code.

The rules in Chapter 5 provide definitions of structures and describe when professional architectural services are needed.

The proposed amendment is a result of 2017 Iowa Acts, Senate File 408, which requires licensure rather than registration of architects practicing in this state. This bill passed the Iowa Senate on March 28, 2017, 49-0 and passed the Iowa House on April 6, 2017, 96-0; it was signed by then Governor Branstad on May 11, 2017. The proposed amendment changes terminology from registered to licensed.

Consideration will be given to all written suggestions or comments received on or before July 25, 2017. Comments should be directed to Lori SchraderBachar, Iowa Architectural Examining Board, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa 50309. E-mail may be sent to lori.schraderbachar@iowa.gov.

A public hearing will be held on July 25, 2017, at 9 a.m. in the Board Office, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa, at which time persons may present their views on the proposed amendment either orally or in writing. At the hearing, any person who wishes to speak will be asked to give the person’s name and address for the record and to confine remarks to the subject of the proposed amendment.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Board and advise of specific needs.

This proposed amendment was approved by the Board on May 19, 2017.

This amendment is subject to waiver or variance pursuant to 193—Chapter 5.

After analysis and review of this rule making, the Professional Licensing and Regulation Bureau determined that there will be no impact on jobs and no fiscal impact to the state.

This amendment is intended to implement Iowa Code chapter 544A as amended by 2017 Iowa Acts, Senate File 408.

The following amendment is proposed.

Amend rule 193B—5.2(544A) as follows:

193B—5.2(544A) Exceptions. An architect ~~registered~~ licensed in this state is required to perform professional architectural services for all buildings except those listed below. Persons who are not ~~registered~~ licensed architects may perform planning and design services in connection with any of the following:

5.2(1) to **5.2(6)** No change.

ARC 3173C

ARCHITECTURAL EXAMINING BOARD[193B]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board hereby gives Notice of Intended Action to amend Chapter 6, “Disciplinary Action Against Registrants,” Iowa Administrative Code.

The rules in Chapter 6 describe the disciplinary actions the Board can impose on a licensee.

The proposed amendments are a result of 2017 Iowa Acts, Senate File 408, which requires licensure rather than registration of architects practicing in this state. This bill passed the Iowa Senate on March 28, 2017, 49-0 and passed the Iowa House on April 6, 2017, 96-0; it was signed by then Governor Branstad on May 11, 2017. The proposed amendments change terminology from registered/registration to licensed/licensure.

Consideration will be given to all written suggestions or comments received on or before July 25, 2017. Comments should be directed to Lori SchraderBachar, Iowa Architectural Examining Board, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa 50309. E-mail may be sent to lori.schraderbachar@iowa.gov.

A public hearing will be held on July 25, 2017, at 9 a.m. in the Board Office, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa, at which time persons may present their views on the proposed amendments either orally or in writing. At the hearing, any person who wishes to speak will be asked to give the person’s name and address for the record and to confine remarks to the subject of the proposed amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Board and advise of specific needs.

These proposed amendments were approved by the Board on May 19, 2017.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

After analysis and review of this rule making, the Professional Licensing and Regulation Bureau determined that there will be no impact on jobs and no fiscal impact to the state.

These amendments are intended to implement Iowa Code chapter 544A as amended by 2017 Iowa Acts, Senate File 408.

The following amendments are proposed.

ITEM 1. Amend **193B—Chapter 6**, title, as follows:

DISCIPLINARY ACTION AGAINST ~~REGISTRANTS~~ LICENSEES

ITEM 2. Amend rule 193B—6.3(544A,272C) as follows:

193B—6.3(544A,272C) Peer investigative committee. A peer investigative committee may be appointed by the president to investigate a complaint. The committee members will consist of one or more architects, serve at the discretion of the president, and shall have been ~~registered~~ licensed to practice in Iowa for at least five years. The committee will review and determine the facts of the complaint and make a report to the board in a timely manner.

ITEM 3. Amend rule 193B—6.4(544A,272C) as follows:

193B—6.4(544A,272C) Investigation report. Upon completion of the investigation, the investigator(s) shall prepare for the board’s consideration a report containing the position or defense of the ~~registrant~~ licensee to determine what further action is necessary. The board may:

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

1. No change.
2. Allow the ~~registrant~~ licensee who is the subject of the complaint an opportunity to appear before a committee of the board for an informal discussion regarding the circumstances of the alleged violation.
3. and 4. No change.

ITEM 4. Amend rule 193B—6.5(544A,272C) as follows:

193B—6.5(544A,272C) Informal discussion. If the board considers it advisable, or if requested by the affected ~~registrant~~ licensee, the board may grant the ~~registrant~~ licensee an opportunity to appear before the board or a committee of the board for a voluntary informal discussion of the facts and circumstances of an alleged violation. The ~~registrant~~ licensee may be represented by legal counsel at the informal discussion. The ~~registrant~~ licensee is not required to attend the informal discussion.

Unless disqualification is waived by the ~~registrant~~ licensee, board members who personally investigated a disciplinary complaint are disqualified from making decisions at a later formal hearing. Because board members generally rely upon staff, investigators, auditors, peer review committees, or expert consultants to conduct investigations, the issue rarely arises. An informal discussion, however, is a form of investigation because it is conducted in a question-and-answer format. In order to preserve the ability of all board members to participate in board decision making, ~~registrants~~ licensees who desire to attend an informal discussion must therefore waive their right to seek disqualification of a board member or staff based solely on the board member's or staff's participation in an informal discussion. ~~Registrants~~ Licensees would not be waiving their right to seek disqualification on any other ground. By electing to attend an informal discussion, a ~~registrant~~ licensee accordingly agrees that participating board members or staff are not disqualified from acting as a presiding officer in a later contested case proceeding or from advising the decision maker.

Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence. The board may seek a consent order at the time of the informal discussion. If the parties agree to a consent order, a statement of charges shall be filed simultaneously with the consent order.

ITEM 5. Amend rule 193B—6.6(544A,272C) as follows:

193B—6.6(544A,272C) Decisions. The board shall make findings of fact and conclusions of law and may take one or more of the following actions:

6.6(1) No change.

6.6(2) Revoke the architect's ~~registration~~ license. In the event of a revocation, the ~~registrant~~ licensee shall not be allowed to remain a partner or shareholder of a business entity if the law requires all partners or shareholders of such entity to be ~~registered~~ licensed architects.

6.6(3) Suspend the ~~registrant's~~ ~~registration~~ licensee's license as authorized by law.

6.6(4) Impose civil penalties, the amount which shall be set at the discretion of the board but which shall not exceed \$1000. Civil penalties may be imposed for any of the disciplinary violations specified in Iowa Code sections 544A.13 and 544A.15 and these rules. Factors the board may consider when determining whether to assess civil penalties and the amount to assess include:

a. to k. No change.

l. Whether the ~~registrant~~ licensee acted in bad faith.

m. The extent to which the ~~registrant~~ licensee cooperated with the board.

n. Whether the ~~registrant~~ licensee practiced architecture with a lapsed, inactive, suspended or revoked certificate of ~~registration~~ licensure.

6.6(5) No change.

6.6(6) Require reexamination, using one or more parts of the examination given to architectural ~~registrant~~ licensee candidates.

6.6(7) and 6.6(8) No change.

6.6(9) Issue a consent order.

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

Voluntary surrender of ~~registration~~ licensure is considered as disciplinary action.

ARC 3175C

ARCHITECTURAL EXAMINING BOARD[193B]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board hereby gives Notice of Intended Action to amend Chapter 7, “Disciplinary Action—Unlicensed Practice,” Iowa Administrative Code.

The rules in Chapter 7 describe the disciplinary actions the Board can impose on unlicensed persons.

The proposed amendment is a result of 2017 Iowa Acts, Senate File 408, which requires licensure rather than registration of architects practicing in this state. This bill passed the Iowa Senate on March 28, 2017, 49-0 and passed the Iowa House on April 6, 2017, 96-0; it was signed by then Governor Branstad on May 11, 2017. The proposed amendment changes terminology from registered/registration to licensed/licensure.

Consideration will be given to all written suggestions or comments received on or before July 25, 2017. Comments should be directed to Lori SchraderBachar, Iowa Architectural Examining Board, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa 50309. E-mail may be sent to lori.schraderbachar@iowa.gov.

A public hearing will be held on July 25, 2017, at 9 a.m. in the Board Office, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa, at which time persons may present their views on the proposed amendment either orally or in writing. At the hearing, any person who wishes to speak will be asked to give the person’s name and address for the record and to confine remarks to the subject of the proposed amendment.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Board and advise of specific needs.

This proposed amendment was approved by the Board on May 19, 2017.

This amendment is subject to waiver or variance pursuant to 193—Chapter 5.

After analysis and review of this rule making, the Professional Licensing and Regulation Bureau determined that there will be no impact on jobs and no fiscal impact to the state.

This amendment is intended to implement Iowa Code chapter 544A as amended by 2017 Iowa Acts, Senate File 408.

The following amendment is proposed.

Amend rule 193B—7.3(544A) as follows:

193B—7.3(544A) Civil penalties against ~~nonregistrant~~ unlicensed person. The board may impose civil penalties by order against a person who is not ~~registered~~ licensed as an architect pursuant to Iowa Code chapter 544A based on the unlawful practices specified in Iowa Code section 544A.15(3). In addition to the procedures set forth in Iowa Code section 544A.15(3), this rule shall apply.

7.3(1) The notice of the board’s intent to impose a civil penalty required by Iowa Code section 544A.15(3) shall be served upon the ~~nonregistrant~~ unlicensed person by restricted certified mail, return receipt requested, or personal service in accordance with Rule of Civil Procedure 1.305. Alternatively, the ~~nonregistrant~~ unlicensed person may accept service personally or through authorized counsel. The notice shall include the following:

a. to d. No change.

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

e. Notice of the ~~nonregistrant's~~ unlicensed person's right to a hearing and the time frame in which hearing must be requested.

f. No change.

7.3(2) ~~Nonregistrants~~ Unlicensed persons must request a hearing within 30 days of the date the notice is mailed, if served through restricted certified mail to the last-known address, or within 30 days of the date of service, if service is accepted or made in accordance with Rule of Civil Procedure 1.305. A request for hearing must be in writing and is deemed made on the date of the United States Postal Service postmark or the date of personal service.

7.3(3) No change.

7.3(4) If a request for hearing is timely made, the board shall issue a notice of hearing and conduct a hearing in the same manner as applicable to disciplinary cases against ~~registered~~ licensed architects.

7.3(5) In addition to the factors set forth in Iowa Code section 544A.15(3), the board may consider the following when determining the amount of civil penalty to impose, if any:

a. to *g.* No change.

h. Whether the ~~nonregistrant~~ unlicensed person acted in bad faith.

i. The extent to which the ~~nonregistrant~~ unlicensed person cooperated with the board.

7.3(6) ~~A nonregistrant~~ An unlicensed person may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty at any stage of the proceeding upon mutual consent of the board.

7.3(7) No change.

ARC 3157C

DENTAL BOARD[650]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 147.10, 147.11, 153.15A, 153.39 and 272C.2, the Dental Board hereby gives Notice of Intended Action to amend Chapter 14, “Renewal and Reinstatement,” and Chapter 20, “Dental Assistants,” and to rescind Chapter 25, “Continuing Education,” Iowa Administrative Code, and to adopt a new Chapter 25 with the same title.

These amendments rescind Chapter 25 and replace it with a new Chapter 25 pertaining to updated continuing education requirements and standards. The purpose of the proposed amendments is to clarify continuing education requirements for renewal of licenses and registrations and to simplify requirements for continuing education course and sponsor review.

These amendments will place all continuing education requirements for the purposes of renewal in a single chapter. Currently, continuing education requirements for dental assistants are found in Chapter 20. The continuing education requirements for dental assistants will be stricken from Chapter 20 and moved to Chapter 25.

These amendments update and add definitions to the chapter to clarify intent and to allow the approval of programs and activities when content clearly meets established requirements for approval.

The amendments will clarify when proof of continuing education shall be submitted, as the result of a registrant's or licensee's being selected for an audit.

These amendments will update and clarify the list of acceptable and unacceptable topics for continuing education credit and add a provision to allow credit for those who complete the Dental Assisting National Board (DANB) examination during the current reporting period.

DENTAL BOARD[650](cont'd)

These amendments will establish a new rule 650—25.9(153), “Designation of continuing education hours,” which sets forth the number of continuing education hours that will be awarded for certain specific activities.

These amendments will establish new requirements for continuing education in the areas of infection control and jurisprudence for all Iowa licensees and registrants.

These amendments will put a limit on the length of time for which continuing education courses would be eligible for credit following review and approval by the Board. This provision will ensure that courses for which credit is awarded are current and include relevant concepts and information.

These amendments will update the notification requirement following the Board’s decision regarding continuing education requests. Current requirements require notification by ordinary mail. The proposed new rule will require written notification by e-mail.

The purposes of the proposed amendments to Chapter 14 are to clarify the provisions for placing a license or registration on inactive status and to update provisions regarding the reactivation or reinstatement of an inactive or lapsed license or registration.

These amendments will move the rules relating to reinstatement of an inactive practitioner from Chapter 25 to Chapter 14 to allow renewal and reinstatement requirements to be addressed in a single chapter.

The amendments to Chapter 14 add a provision that a practitioner who has not actively practiced clinically for a period of five years or more may be required to complete an examination or assessment to prove competency.

The amendments to Chapter 14 lower from 50 hours to 30 hours the cap on the number of continuing education hours that a dental assistant is required to submit for reinstatement or reactivation.

The amendments eliminate the need for submission of a separate signed form in cases where a license or registrant renews on inactive status. The amendments to Chapter 20 add definitions to refine the roles of dental assistants in the dental office. The amendments will also clarify the procedures that may be completed under general supervision and the requirements of personal supervision.

The amendments to Chapter 20 clarify the timeline for dental assistant trainee status and application for dental assistant registration. These amendments would add a rule to Chapter 20 for applicant responsibilities regarding the submission of applications, the time period for applications, and the information being submitted, using language currently in Chapter 11, “Licensure to Practice Dentistry or Dental Hygiene.”

Any interested person may make written comments on the proposed amendments on or before July 27, 2017. Such written materials should be directed to Phil McCollum, Associate Director, Iowa Dental Board, 400 S.W. Eighth Street, Suite D, Des Moines, Iowa 50309; or sent by e-mail to phil.mccollum@iowa.gov.

There will be a public hearing on July 27, 2017, at 2 p.m. in the Board office, 400 S.W. Eighth Street, Suite D, Des Moines, Iowa, at which time persons may present their views orally or in writing.

The proposed amendments are subject to waiver or variance pursuant to 650—Chapter 7.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 153 and 272C.

The following amendments are proposed.

ITEM 1. Amend rule 650—14.1(147,153,272C), introductory paragraph, as follows:

650—14.1(147,153,272C) Renewal of license to practice dentistry or dental hygiene. A license to practice dentistry or a license to practice dental hygiene must be renewed prior to the expiration date of the license. Dental hygiene licenses expire on August 31 of every odd-numbered year. Dental licenses expire August 31 of every even-numbered year. A licensee who is not engaged in practice in the state of Iowa may place the license on inactive status by submitting a renewal form and paying the required renewal fee. No continuing education hours are required to renew a license on inactive status until application for reactivation is made. A request to place a license on inactive status shall also contain a statement that the applicant will not engage in the practice of the applicant’s profession in Iowa without first complying with all rules governing reactivation of inactive licenses.

DENTAL BOARD[650](cont'd)

ITEM 2. Amend subrule 14.1(1) as follows:

14.1(1) Application renewal procedures.

a. Renewal notice. The board office will send a renewal notice by ~~regular mail or~~ e-mail to each licensee at the licensee's last-known ~~mailing or~~ e-mail address.

b. Licensee and permit holder obligation. The licensee or permit holder is responsible for renewing the license or permit prior to its expiration. Failure of the licensee or permit holder to receive the notice does not relieve the licensee or permit holder of the responsibility for renewing that license or permit in order to continue practicing in the state of Iowa.

c. Renewal application form. Application for renewal must be made on forms provided by the board office. Licensees and permit holders may renew their licenses and permits online or via paper application.

d. Complete and timely filed application. No renewal application shall be considered timely and sufficient until received by the board office and accompanied by all material required for renewal and all applicable renewal and late fees. Incomplete applications will ~~be~~ not be accepted. For purposes of establishing timely filing, the postmark on a paper submittal will be used, and for renewals submitted online, the electronic timestamp will be deemed the date of filing.

ITEM 3. Amend rule 650—14.2(153), introductory paragraph, as follows:

650—14.2(153) Renewal of registration as a dental assistant. A certificate of registration as a registered dental assistant must be renewed biennially. Registration certificates shall expire on August 31 of every odd-numbered year. A registrant who is not engaged in practice in the state of Iowa may place the registration on inactive status by submitting a renewal form and paying the required renewal fee. No continuing education hours are required to renew a registration on inactive status until application for reactivation is made. A request to place a registration on inactive status shall also contain a statement that the applicant will not engage in the practice of the applicant's profession in Iowa without first complying with all rules governing reactivation of inactive registrations.

ITEM 4. Amend paragraph **14.2(1)“a”** as follows:

a. Renewal notice. The board office will send a renewal notice by ~~regular mail or~~ e-mail to each registrant at the registrant's last-known ~~mailing address or~~ e-mail address. ~~The board will notify each registrant by mail or e-mail of the expiration of the registration certificate.~~

ITEM 5. Amend subrule 14.2(3) as follows:

14.2(3) Continuing education requirements. Completion of continuing education as specified in ~~rule 650—20.11(153) and~~ 650—Chapter 25 is required for renewal of an active registration. Failure to meet the requirements of renewal in the time specified by rule will automatically result in a lapsed registration.

ITEM 6. Amend rule 650—14.6(147,153,272C) as follows:

650—14.6(147,153,272C) Reinstatement of a lapsed license or registration.

14.6(1) A licensee or a registrant who allows a license or registration to lapse by failing to renew may have the license or registration reinstated at the discretion of the board by submitting the following:

a. A completed application for reinstatement of a lapsed license or registration to practice dentistry, or dental hygiene or dental assisting, on forms provided by the board, in addition to the required fee or application for reinstatement of a lapsed registration on the form provided by the board.

b. Dates and places of practice.

c. A list of other states in which licensed or registered and the identifying number of each license or registration.

d. Reasons for seeking reinstatement and why the license or registration was not maintained.

e. Payment of all renewal fees past due, as specified in 650—Chapter 15, plus the reinstatement fee as specified in 650—Chapter 15.

f. Evidence of completion of a total of 15 hours of continuing education for each lapsed year or part thereof in accordance with 650—Chapter 25, up to a maximum of 75 hours. Dental assistants shall be required to submit evidence of completion of a total of 10 hours of continuing education for each

DENTAL BOARD[650](cont'd)

lapsed year or part thereof in accordance with ~~650—20.12(153)~~ 650—Chapter 25, up to a maximum of ~~50~~ 30 hours, or evidence of the full-time or part-time practice of the profession in another state of the United States or the District of Columbia, for a minimum of two years within the previous five-year period, and a statement verifying that continuing education requirements in that state of practice have been met.

g. If licensed or registered in another state, the licensee or registrant shall provide certification by the state board of dentistry or equivalent authority of such state that the licensee or registrant has not been the subject of final or pending disciplinary action.

h. A statement disclosing and explaining any disciplinary actions, investigations, claims, complaints, judgments, settlements, or criminal charges.

i. Evidence that the applicant possesses a current certificate in a nationally recognized course in cardiopulmonary resuscitation. The course must include a clinical component.

j. For reinstatement of a lapsed license, a completed fingerprint packet to facilitate a criminal history background check by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI), including the fee for the evaluation of the fingerprint packet and the criminal history background checks by the DCI and FBI, as specified in 650—Chapter 15.

14.6(2) The board may require a licensee or registrant who is applying for reinstatement, and has not actively practiced clinically within the previous five years, to successfully complete an examination designated by the board prior to reinstatement if necessary to ensure the licensee or registrant is able to practice the licensee's or registrant's respective profession with reasonable skill and safety a regional clinical examination, or other board-approved examination or assessment, for the purpose of ensuring that the applicant possesses sufficient knowledge and skill to practice safely.

14.6(3) When the board finds that a practitioner applying for reinstatement is or has been subject to disciplinary action taken against a license or registration held by the applicant in another state of the United States, District of Columbia, or territory, and the violations which resulted in such actions would also be grounds for discipline in Iowa in accordance with rule 650—30.4(153), the board may deny reinstatement of a license or registration to practice dentistry, dental hygiene, or dental assisting in Iowa or may impose any applicable disciplinary sanctions as specified in rule 650—30.2(153) as a condition of reinstatement.

14.6(4) The dental hygiene committee may, in its discretion, review any applications for reinstatement of a lapsed dental hygiene license and make recommendations to the board. The board's review of the dental hygiene committee recommendation is subject to 650—Chapter 1.

This rule is intended to implement Iowa Code sections 147.10, 147.11, and 272C.2.

ITEM 7. Adopt the following **new** rule 650—14.8(153):

650—14.8(153) Reactivation of an inactive license or registration.

14.8(1) Inactive practitioners shall, prior to engaging in the practice of dentistry, dental hygiene, or dental assisting in the state of Iowa, satisfy all of the following requirements for reactivation:

a. Submit application for reactivation to the board upon forms provided by the board, in addition to the required fee.

b. Provide evidence of one of the following:

(1) The full-time or part-time practice of the profession in another state of the United States or the District of Columbia for a minimum of two years within the previous five-year period; or

(2) Completion of a total number of hours of approved continuing education computed by multiplying 15 by the number of years the license has been on inactive status for a dentist or dental hygienist, up to a maximum of 75 hours for a dentist or dental hygienist, or by multiplying 10 by the number of years the registration has been on inactive status for a dental assistant, up to a maximum of 30 hours for a dental assistant.

c. Submit evidence that the applicant possesses a current certificate in a nationally recognized course in cardiopulmonary resuscitation (CPR). The course must include a clinical component.

14.8(2) The board may require a licensee or registrant who is applying for reactivation and has not actively practiced clinically in the previous five years to successfully complete a regional clinical

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examination, or other board-approved examination or assessment, to ensure the licensee or registrant is able to practice with reasonable skill and safety.

14.8(3) Applications must be filed with the board along with the following:

a. Certification by the state board of dentistry or equivalent authority of the state in which the applicant has been licensed or has engaged in the practice of the applicant's profession that the applicant has not been the subject of final or pending disciplinary action.

b. Statement as to any claims, complaints, judgments or settlements made with respect to the applicant arising out of the alleged negligence or malpractice in rendering professional services as a dentist, dental hygienist, or dental assistant.

ITEM 8. Amend rule 650—20.2(153) as follows:

650—20.2(153) Definitions. As used in this chapter:

"Dental assistant trainee" means any person who is engaging in on-the-job training to meet the requirements for registration and who is learning the necessary skills under the personal supervision of a licensed dentist. Trainees may also engage in on-the-job training in dental radiography pursuant to 650—22.3(136C,153).

"Dental assistant" means any person who, under the supervision of a dentist, performs any extraoral services including infection control or the use of hazardous materials or performs any intraoral services on patients. The term "dental assistant" does not include persons otherwise actively licensed in Iowa to practice dental hygiene or nursing who are engaged in the practice of said profession.

"Direct supervision" means that the dentist is present in the treatment facility, but it is not required that the dentist be physically present in the treatment room while the registered dental assistant is performing acts assigned by the dentist.

"General supervision" means that a dentist has examined the patient and has delegated the services to be provided by a registered dental assistant, which are limited to all extraoral duties, dental radiography, intraoral suctioning, and use of a curing light, intraoral digital imaging and intraoral camera. The dentist need not be present in the facility while these services are being provided.

"Personal supervision" for intraoral procedures means the dentist is physically present in the treatment room to oversee and direct all intraoral or chairside services of the dental assistant ~~and~~ trainee. "Personal supervision" for extraoral procedures means a licensee or registrant is physically present in the treatment room to oversee and direct all extraoral services of the dental assistant trainee.

"Public health supervision" means all of the following:

1. The dentist authorizes and delegates the services provided by a registered dental assistant to a patient in a public health setting, with the exception that services may be rendered without the patient's first being examined by a licensed dentist;

2. The dentist is not required to provide future dental treatment to patients served under public health supervision;

3. The dentist and the registered dental assistant have entered into a written supervision agreement that details the responsibilities of each licensee/registrant, as specified in subrule 20.16(2); and

4. The registered dental assistant has an active Iowa registration and a minimum of one year of clinical practice experience.

"Registered dental assistant" means any person who has met the requirements for registration and has been issued a certificate of registration.

"Trainee status expiration date" means the date established by the board office which is 12 months from a person's first date of employment as a dental assistant. The trainee status expiration date is the date by which a trainee must successfully complete requirements and become registered as a dental assistant, pursuant to Iowa Code section 153.39 12 months from the date of issuance.

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ITEM 9. Renumber rules **650—20.3(153)** to **650—20.5(153)** as **650—20.4(153)** to **650—20.6(153)**.

ITEM 10. Adopt the following new rule 650—20.3(153):

650—20.3(153) Applicant responsibilities. An applicant for dental assistant trainee status or dental assistant registration bears full responsibility for each of the following:

20.3(1) Providing accurate, up-to-date, and truthful information on the application including, but not limited to, prior professional experiences, education, training, examination scores, and disciplinary history.

20.3(2) Submitting complete application materials. An application for trainee status will be considered active for 90 days from the date the application is received. An application for dental assistant registration, reactivation, or reinstatement will be considered valid for 180 days from the date the application is received. If the applicant does not submit all materials within this time period, or if the applicant does not meet the requirements for trainee status, dental assistant registration, or reinstatement, the application shall be considered incomplete and the applicant must submit a new application and application fee.

ITEM 11. Amend renumbered subparagraph **20.4(4)“c”(3)** as follows:

(3) Notwithstanding 650—paragraph 10.3(1)“e” and paragraph ~~20.3(2)“e,”~~ 20.4(2)“e,” for the purposes of this chapter, the removal of adhesives by hand instrumentation does not constitute the removal of “hard natural or synthetic material.”

ITEM 12. Rescind existing rule **650—20.6(153)**.

ITEM 13. Amend renumbered rule 650—20.6(153) as follows:

650—20.6(153) Categories of dental assistants: dental assistant trainee, registered dental assistant. There are two categories of dental assistants. Both the supervising dentist and the registered dental assistant or dental assistant trainee are responsible for maintaining documentation of training. Such documentation must be maintained in the office of practice and shall be provided to the board upon request.

20.6(1) Registered dental assistant. Registered dental assistants are individuals who have met the requirements for registration and have been issued a certificate of registration. A registered dental assistant may, under general supervision, perform dental radiography, intraoral suctioning, use of a curing light and intraoral camera, and all extraoral duties that are assigned by the dentist and are consistent with these rules. During intraoral procedures, the registered dental assistant may, under direct supervision, assist the dentist in performing duties assigned by the dentist that are consistent with these rules. The registered dental assistant may take radiographs if qualified pursuant to 650—Chapter 22.

20.6(1) 20.6(2) Dental assistant trainee. Dental assistant trainees are all individuals who are engaging in on-the-job training to meet the requirements for registration and who are learning the necessary skills under the personal supervision of a licensed dentist. Trainees may also engage in on-the-job training in dental radiography pursuant to 650—22.3(136C,153).

a. *General requirements.* The dental assistant trainee shall meet the following requirements:

(1) ~~Prior to the trainee status expiration date, the dental assistant trainee shall successfully~~ Successfully complete a course of study and examination in the areas of infection control, hazardous materials, and jurisprudence. The course of study shall be prior approved by the board and sponsored by a board-approved postsecondary school.

(2) ~~Prior to the trainee status expiration date, the trainee must apply to the board office to be reclassified as a registered dental assistant.~~

~~(3)~~ (2) If a trainee fails to become registered by the trainee status expiration date, the trainee must stop work as a dental assistant trainee. If the trainee has not yet met the requirements for registration, the trainee may reapply for trainee status but may not work until a new dental assistant trainee status certificate has been issued by the board.

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b. New trainee application required if trainee not registered prior to trainee status expiration date
Trainee restart. Pursuant to Iowa Code section 153.39, a person employed as a dental assistant has a 12-month period following the person's first date of employment to become registered. If not registered by the trainee status expiration date, the trainee must stop work as a dental assistant and reapply for trainee status.

(1) Reapplying for trainee status. A trainee may "start over" as a dental assistant trainee provided the trainee submits an application in compliance with subrule 20.7(1).

(2) Examination scores valid for three years. A "repeat" trainee is not required to retake an examination (jurisprudence, infection control/hazardous materials, radiography) if the trainee has successfully passed the examination within three years of the date of application. If a trainee has failed two or more examinations, the trainee must satisfy the remedial education requirements in subrule 20.11(1). The trainee status application will not be approved until the trainee successfully completes any required remedial education.

(3) New trainee status expiration date issued. If the repeat trainee application is approved, the board office will establish a new trainee status expiration date by which registration must be completed.

(4) Maximum of two "start over" periods allowed. In addition to the initial 12-month trainee status period, a dental assistant is permitted up to two start over periods as a trainee. If a trainee seeks an additional start over period beyond two, the trainee shall submit a petition for rule waiver under 650—Chapter 7.

c. Trainees enrolled in cooperative education or work study programs. The requirements stated in this subrule apply to all dental assistant trainees, including a person enrolled in a cooperative education or work-study program through an Iowa high school. In addition, a trainee under 18 years of age shall not participate in dental radiography.

~~20.6(2) Registered dental assistant. A registered dental assistant may perform under general supervision dental radiography, intraoral suctioning, use of a curing light and intraoral camera, and all extraoral duties that are assigned by the dentist and are consistent with these rules. During intraoral procedures, the registered dental assistant may, under direct supervision, assist the dentist in performing duties assigned by the dentist that are consistent with these rules. The registered dental assistant may take radiographs if qualified pursuant to 650—Chapter 22.~~

ITEM 14. Amend subrule 20.7(1) as follows:

20.7(1) Dental assistant trainee.

a. On or after May 1, 2013, a dentist supervising a person performing dental assistant duties must ensure that the person has been issued a trainee status certificate from the board office prior to the person's first date of employment as a dental assistant. A dentist who has been granted a temporary permit to provide volunteer services for a qualifying event of limited duration pursuant to 650—subrule 13.3(3), or an Iowa-licensed dentist who is volunteering at such qualifying event, is exempt from this requirement for a dental assistant who is working under the dentist's supervision at the qualifying event.

b. Applications for registration as a dental assistant trainee must be filed on official board forms and include the following:

- (1) The fee as specified in 650—Chapter 15.
- (2) Evidence of high school graduation or equivalent.
- (3) Evidence the applicant is 17 years of age or older.
- (4) Any additional information required by the board relating to the character and experience of the applicant as may be necessary to evaluate the applicant's qualifications.
- (5) If the applicant does not meet the requirements of (2) and (3) above, evidence that the applicant is enrolled in a cooperative education or work-study program through an Iowa high school.

c. Prior to the trainee status expiration date, the dental assistant trainee is required to successfully complete a board-approved course of study and examination in the areas of infection control, hazardous materials, and jurisprudence. The course of study may be taken at a board-approved postsecondary school or on the job using curriculum approved by the board for such purpose. Evidence of meeting this requirement prior to the trainee status expiration date shall be submitted by the employer dentist.

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d. Prior to the trainee status expiration date, the dental assistant trainee's supervising dentist must ensure that the trainee has received a certificate of registration or has been issued start-over trainee status in accordance with rule 650—20.6(153) before performing any further dental assisting duties.

ITEM 15. Amend rule 650—20.12(153) as follows:

650—20.12(153) Continuing education. ~~Beginning July 1, 2001, each~~ Each person registered as a dental assistant shall complete ~~20 hours of~~ continuing education ~~approved by the board during the biennium period as a condition of registration renewal requirements as specified in 650—Chapter 25.~~

~~20.12(1) At least two continuing education hours must be in the subject area of infection control.~~

~~20.12(2) A maximum of three hours may be in cardiopulmonary resuscitation.~~

~~20.12(3) For dental assistants who have radiography qualification, at least two hours of continuing education must be obtained in the subject area of radiography.~~

~~20.12(4) For the renewal period July 1, 2001, to June 30, 2003, at least one hour of continuing education must be obtained in the subject area of jurisprudence.~~

ITEM 16. Rescind 650—Chapter 25 and adopt the following new chapter in lieu thereof:

CHAPTER 25
CONTINUING EDUCATION

650—25.1(153) Definitions. For the purpose of this chapter, these definitions shall apply:

“Advisory committee” means a committee on continuing education formed to review and advise the board with respect to applications for approval of sponsors or activities. The committee's members shall be appointed by the board and consist of at least one member of the board, two licensed dentists with expertise in the area of professional continuing education, two licensed dental hygienists with expertise in the area of professional continuing education, and two registered dental assistants with expertise in the area of professional continuing education. The advisory committee on continuing education may recommend approval or denial of applications or requests submitted to it pending final approval or disapproval of the board at its next meeting.

“Board” means the dental board.

“Continuing dental education” consists of education activities designed to review existing concepts and techniques and to update knowledge on advances in dental and medical sciences. The objective of continuing dental education is to improve the knowledge, skills, and ability of the individual to deliver the highest quality of service to the public and professions.

Continuing dental education should favorably enrich past dental education experiences. Programs should make it possible for practitioners to attune dental practice to new knowledge as it becomes available. All continuing dental education should strengthen the skills of critical inquiry, balanced judgment and professional technique.

“Dental public health” is the science and art of preventing and controlling dental diseases and promoting dental health through organized community efforts. It is that form of dental practice in which the community serves as the patient rather than the individual. It is concerned with the dental health education of the public, with applied dental research, with the administration of group dental care programs, and with the prevention and control of dental diseases on a community basis.

“Hour of continuing education” means one unit of credit which shall be granted for each hour of contact instruction and shall be designated as a “clock hour.” This credit shall apply to either academic or clinical instruction.

“Licensee” means any person who has been issued a certificate to practice dentistry or dental hygiene in the state of Iowa.

“Registrant” means any person registered to practice as a dental assistant in the state of Iowa.

“Self-study activities” means the study of something by oneself, without direct supervision or attendance in a class. “Self-study activities” may include Internet-based coursework, television viewing, video programs, correspondence work or research, or computer programs that are interactive

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and require branching, navigation, participation and decision making on the part of the viewer. Internet-based webinars which include the involvement of an instructor and participants in real time and which allow for communication with the instructor through messaging, telephone or other means shall not be construed to be self-study activities.

“*Sponsor*” means a person, educational institution, or organization sponsoring continuing education activities which has been approved by the board as a sponsor pursuant to these rules. During the time a person, educational institution, or organization is an approved sponsor, all continuing education activities of such person or organization may be deemed automatically approved provided the continuing education activities meet the continuing education guidelines of the board.

650—25.2(153) Continuing education administrative requirements.

25.2(1) Each person licensed to practice dentistry or dental hygiene in this state shall complete during the biennium renewal period a minimum of 30 hours of continuing education approved by the board.

25.2(2) Each person registered to practice dental assisting in this state shall complete during the biennium renewal period a minimum of 20 hours of continuing education approved by the board.

25.2(3) Each person who holds a qualification in dental radiography in this state shall complete during the biennium renewal period a minimum of two hours of continuing education in the area of dental radiography.

25.2(4) The continuing education compliance period shall be the 24-month period commencing September 1 and ending on August 31 of the renewal cycle.

25.2(5) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity either previously approved by the board or which otherwise meets the requirements herein and is approved by the board pursuant to rule 650—25.5(153).

25.2(6) It is the responsibility of each licensee or registrant to finance the costs of continuing education.

650—25.3(153) Documentation of continuing education hours.

25.3(1) Every licensee or registrant shall maintain a record of all courses attended by keeping the certificates of attendance for four years. The board reserves the right to require any licensee or registrant to submit the certificates of attendance for the continuing education courses attended. If selected for continuing education audit, the licensee or registrant shall file a signed continuing education form and submit certificates or other evidence of attendance.

25.3(2) Licensees and registrants are responsible for obtaining proof of attendance forms when attending courses. Clock hours must be verified by the sponsor with the issuance of proof of attendance forms to the licensee or registrant.

25.3(3) Each licensee or registrant shall report the number of continuing education credit hours completed during the current renewal cycle in compliance with this chapter. Such report shall be filed with the board at the time of application for renewal of a dental or dental hygiene license or renewal of dental assistant registration.

25.3(4) No carryover of credits from one biennial period to the next will be allowed.

650—25.4(153) Required continuing education courses.

25.4(1) The following courses are required for licensees and registrants:

- a. Mandatory reporter training for child abuse and dependent adult abuse.
- b. Cardiopulmonary resuscitation.
- c. Infection control.
- d. Jurisprudence.

25.4(2) Mandatory reporter training for child abuse and dependent adult abuse.

a. Licensees or registrants who regularly examine, attend, counsel or treat children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or conditions for exemptions as identified in paragraph “f” of this

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subrule, pursuant to Iowa Code chapter 232. Completion of training in this course shall result in two hours of continuing education credit.

b. Licensees or registrants who regularly examine, attend, counsel or treat adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or conditions for exemptions as identified in paragraph “*f*” of this subrule, pursuant to Iowa Code chapter 235B.

c. Licensees or registrants who regularly examine, attend, counsel or treat both children and adults in Iowa shall indicate on the renewal application completion of at least two hours of training on the identification and reporting of abuse in children and dependent adults in the previous five years or conditions for exemptions as identified in paragraph “*f*” of this subrule, pursuant to Iowa Code chapters 232 and 235B. Training may be completed through separate courses or in one combined course that includes curricula for identifying and reporting child abuse and dependent adult abuse. Completion of training in this combined course shall result in three hours of continuing education credit.

d. The licensee or registrant shall maintain written documentation for five years after completion of the mandatory training, including program date(s), content, duration, and proof of participation. The board may audit this information at any time within the five-year period.

e. Training programs in child and dependent adult abuse identification and reporting that are approved by the board are those that use a curriculum approved by the abuse education review panel of the department of public health or a training program offered by the department of human services, the department of education, an area education agency, a school district, the Iowa law enforcement academy, an Iowa college or university, or a similar state agency.

f. Exemptions. Licensees and registrants shall be exempt from the requirement for mandatory training for identifying and reporting child and dependent adult abuse if the board determines that it is in the public interest or that at the time of the renewal the licensee or registrant is issued an extension or exemption pursuant to rule 650—25.10(153).

25.4(3) Cardiopulmonary resuscitation (CPR). Licensees and registrants shall furnish evidence of valid certification for CPR, which shall be credited toward the continuing education requirement for renewal of the license, faculty permit or registration. Such evidence shall be filed at the time of renewal of the license, faculty permit or registration. Valid certification means certification by an organization on an annual basis or, if that certifying organization requires certification on a less frequent basis, evidence that the licensee or registrant has been properly certified for each year covered by the renewal period. In addition, the course must include a clinical component. Credit hours awarded for certification in CPR shall not exceed three hours of required continuing education hours per biennium.

25.4(4) Infection control. Beginning July 1, 2018, licensees and registrants shall complete continuing education in the area of infection control. Licensees and registrants shall furnish evidence of continuing education completed within the previous biennium in the area of infection control standards, as required by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services. Completion of continuing education in the area of infection control shall be credited toward the required continuing education requirement in the renewal period during which it was completed. A minimum of one hour shall be submitted.

25.4(5) Jurisprudence. Beginning July 1, 2018, licensees and registrants shall complete continuing education in the area of jurisprudence related to the practice of dentistry, dental hygiene and dental assisting. Licensees and registrants shall furnish evidence of continuing education completed within the previous biennium in the area of jurisprudence. Completion of continuing education in the area of jurisprudence shall be credited toward the required continuing education requirement in the renewal period during which it was completed. A minimum of one hour shall be submitted.

650—25.5(153) Acceptable programs and activities.

25.5(1) A continuing education activity shall be acceptable and not require board approval if it meets the following criteria:

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a. It constitutes an organized program of learning (including a workshop or symposium) which contributes directly to the professional competency of the licensee or registrant and is of value to dentistry and applicable to oral health care; and

b. It pertains to common subjects or other subject matters which relate to the practice of dentistry, dental hygiene, or dental assisting which are intended to refresh and review, or update knowledge of new or existing concepts and techniques, and enhance the dental health of the public; and

c. It is conducted by individuals who have sufficient special education, training and experience to be considered experts concerning the subject matter of the program. The program must include a written outline or manual that substantively pertains to the subject matter of the program.

25.5(2) Types of activities acceptable for continuing dental education credit may include:

a. A dental science course that includes topics which address the clinical practice of dentistry, dental hygiene, dental assisting and dental public health.

b. Courses in record keeping, medical conditions which may have an effect on oral health, ergonomics related to clinical practice, HIPAA, risk management, sexual boundaries, communication with patients, OSHA regulations, and the discontinuation of practice related to the transition of patient care and patient records.

c. Sessions attended at a multiday convention-type meeting. A multiday convention-type meeting is held at a national, state, or regional level and involves a variety of concurrent educational experiences directly related to the practice of dentistry.

d. Postgraduate study relating to health sciences.

e. Successful completion of a recognized specialty examination or the Dental Assisting National Board (DANB) examination.

f. Self-study activities.

g. Original presentation of continuing dental education courses.

h. Publication of scientific articles in professional journals related to dentistry, dental hygiene, or dental assisting.

25.5(3) Credit may be given for other continuing education activities upon request and approval by the board.

650—25.6(153) Unacceptable programs and activities.

25.6(1) Unacceptable subject matter and activity types include, but are not limited to, personal development, business aspects of practice, business strategy, financial management, marketing, sales, practice growth, personnel management, insurance, collective bargaining, and events where volunteer services are provided. While desirable, those subjects and activities are not applicable to dental skills, knowledge, and competence. Therefore, such courses will receive no credit toward renewal. The board may deny credit for any course.

25.6(2) Inquiries relating to acceptability of continuing dental education activities, approval of sponsors, or exemptions should be directed to Advisory Committee on Continuing Dental Education, Iowa Dental Board, 400 S.W. 8th Street, Suite D, Des Moines, Iowa 50309-4687.

650—25.7(153) Prior approval of activities. A person or organization, other than an approved sponsor, that desires prior approval for a course, program or other continuing education activity or that desires to establish approval of the activity prior to attendance may apply for approval to the board, using board-approved forms, at least 90 days in advance of the commencement of the activity. Within 90 days after receipt of such application, the board shall advise the licensee or registrant in writing whether the activity is approved and the number of hours allowed. All requests may be reviewed by the advisory committee on continuing education prior to final approval or denial by the board. An application fee as specified in 650—Chapter 15 is required. Continuing education course approval shall be valid for a period of five years following the date of board approval. Thereafter, courses may be resubmitted for approval. Courses which clearly meet the criteria listed under acceptable programs and activities are not required to be submitted for approval.

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650—25.8(153) Postapproval of activities. A licensee or registrant seeking credit for attendance and participation in an educational activity which was not conducted by an approved sponsor or otherwise approved and which does not clearly meet the acceptable programs and activities listed in rule 650—25.5(153) may apply for approval to the board using board-approved forms. Within 90 days after receipt of such application, the board shall advise the licensee or registrant in writing whether the activity is approved and the number of hours allowed. All requests may be reviewed by the advisory committee on continuing education prior to final approval or denial by the board. An application fee as specified in 650—Chapter 15 is required.

650—25.9(153) Designation of continuing education hours. Continuing education hours shall be determined by the length of a continuing education course in clock hours. For the purpose of calculating continuing education hours for renewal of a license or registration, the following rules shall apply:

25.9(1) Attendance at a multiday convention.

a. Attendees at a multiday convention may receive a maximum of 1.5 hours of credit per day with the maximum of six hours of credit allowed per biennium.

b. Sponsors of multiday conventions shall submit to the board for review and prior approval guidelines for awarding credit for convention attendance.

25.9(2) Presenters or attendees of table clinics at a meeting.

a. Four hours of credit shall be allowed for presentation of an original table clinic at a meeting as verified by the sponsor when the subject matter conforms with rule 650—25.5(153).

b. Attendees at the table clinic session of a dental, dental hygiene, or dental assisting meeting shall receive two hours of credit as verified by the sponsor when the subject matter conforms with rule 650—25.5(153).

25.9(3) Postgraduate study relating to health sciences shall receive 15 credits per semester.

25.9(4) Successful completion of a specialty examination or the Dental Assisting National Board (DANB) shall result in 15 hours of credit.

25.9(5) Self-study activities shall result in a maximum of 12 hours of continuing education credit per biennium.

25.9(6) An original presentation of continuing education dental education shall result in credit double that which the participants receive. Additional credit will not be granted for the repeating of presentations within the biennium. Credit is not given for teaching that represents part of the licensee's or registrant's normal academic duties as a full-time or part-time faculty member or consultant.

25.9(7) Publication of scientific articles in professional journals related to dentistry, dental hygiene, or dental assisting shall result in 5 hours of credit per article with the maximum of 20 hours allowed per biennium.

650—25.10(153) Extensions and exemptions.

25.10(1) *Illness or disability.* The board may, in individual cases involving physical disability or illness, grant an exemption of the continuing education requirements or an extension of time within which to fulfill the same or make the required reports. No exemption or extension of time shall be granted unless written application is made on forms provided by the board and signed by the licensee or registrant and a licensed health care professional. Extensions or exemptions of the continuing education requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the physical disability or illness upon which an exemption has been granted continues beyond the period granted, the licensee or registrant must apply for an extension of the exemption. The board may, as a condition of the exemption, require the applicant to make up a certain portion or all of the continuing education requirements.

25.10(2) *Other extensions or exemptions.* Extensions or exemptions of continuing education requirements will be considered by the board on an individual basis. Licensees or registrants will be exempt from the continuing education requirements for:

a. Periods that the person serves honorably on active duty in the military services;

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- b.* Periods that the person practices the person's profession in another state or district having a continuing education requirement and the licensee or registrant meets all requirements of that state or district for practice therein;
- c.* Periods that the person is a government employee working in the person's licensed or registered specialty and assigned to duty outside the United States;
- d.* Other periods of active practice and absence from the state approved by the board;
- e.* The current biennium renewal period, or portion thereof, following original issuance of the license;
- f.* For dental assistants registered pursuant to rule 650—20.7(153), the current biennium renewal period, or portion thereof, following original issuance of the registration.

650—25.11(153) Exemptions for inactive practitioners. No continuing education hours are required to renew a license or registration on inactive status until application for reactivation is made. A licensee or registrant with a license or registration on inactive status is prohibited from practicing unless and until the license or registration is restored to active status.

650—25.12(153) Approval of sponsors.

25.12(1) An organization or person which desires approval as a sponsor of courses, programs, or other continuing education activities shall apply for approval to the board stating its education history, including approximate dates, subjects offered, total hours of instruction presented, and names and qualifications of instructors. All applications shall be reviewed by the advisory committee on continuing education prior to final approval or denial by the board.

25.12(2) Prospective sponsors must apply to the board using approved forms in order to obtain approved sponsor status. An application fee as specified in 650—Chapter 15 is required. Sponsors must pay the biennial renewal fee as specified in 650—Chapter 15 and file a sponsor recertification record report biennially.

25.12(3) The person or organization sponsoring continuing education activities shall make a written record of the Iowa licensees or registrants in attendance, maintain the written record for a minimum of five years, and submit the record upon the request of the board. The sponsor of the continuing education activity shall also provide proof of attendance and the number of credit hours awarded to the licensee or registrant who participates in the continuing education activity.

25.12(4) Sponsors must be formally organized and adhere to board rules for planning and providing continuing dental education activities. Programs sponsored by individuals or institutions for commercial or proprietary purposes, especially programs in which the speaker advertises or urges the use of any particular dental product or appliance, may be recognized for credit on a prior-approval basis only. When courses are promoted as approved continuing education courses which do not meet the requirements as defined by the board, the sponsor will be required to refund the registration fee to the participants. Approved sponsors may offer noncredit courses provided the participants have been informed that no credit will be given. Failure to meet this requirement may result in loss of approved sponsor status.

650—25.13(153) Review of programs or sponsors. The board on its own motion or at the recommendation of the advisory committee on continuing education may monitor or review any continuing education program or sponsors already approved by the board. Upon evidence of a failure to meet the requirements of rule 650—25.12(153), the board may revoke the approval status of the sponsor. Upon evidence of significant variation in the program presented from the program approved, the board may deny all or any part of the approved hours granted to the program. A provider that wishes to appeal the board's decision regarding revocation of approval status or denial of continuing education credit shall file an appeal within 30 days of the board's decision. A timely appeal shall initiate a contested case proceeding. The contested case shall be conducted pursuant to Iowa Code chapter 17A and 650—Chapter 51. The written decision issued at the conclusion of a contested case hearing shall be considered final agency action.

DENTAL BOARD[650](cont'd)

650—25.14(153) Noncompliance with continuing dental education requirements. It is the licensee's or registrant's personal responsibility to comply with these rules. The license or registration of individuals not complying with the continuing dental education rules may be subject to disciplinary action by the board or nonrenewal of the license or registration.

650—25.15(153) Dental hygiene continuing education. The dental hygiene committee, in its discretion, shall make recommendations to the board for approval or denial of requests pertaining to dental hygiene education. The dental hygiene committee may utilize the continuing education advisory committee as needed. The board's review of the dental hygiene committee recommendation is subject to 650—Chapter 1. The following items pertaining to dental hygiene shall be forwarded to the dental hygiene committee for review.

1. Dental hygiene continuing education requirements and requests for approval of programs, activities and sponsors.
2. Requests by dental hygienists for waivers, extensions and exemptions of the continuing education requirements.
3. Requests for exemptions from inactive dental hygiene practitioners.
4. Requests for reinstatement from inactive dental hygiene practitioners.
5. Appeals of denial of dental hygiene continuing education and conduct of hearings as necessary.

These rules are intended to implement Iowa Code sections 147.10, 153.15A, and 153.39 and chapter 272C.

ARC 3156C

DENTAL BOARD[650]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 147.80 and 272C.6, the Dental Board hereby gives Notice of Intended Action to amend Chapter 15, “Fees,” Iowa Administrative Code.

The proposed amendments update the definition of “fee” to reflect the definition of “overpayment” provided in Chapter 1.

These amendments would reduce the total back renewal fees owed for the reinstatement of a lapsed dental assistant registration, and eliminate the fee for notification of public orders if provided via e-mail.

These amendments clarify the types of items available for purchase and the formats in which the items may be provided. These amendments update the types of data provided in the standard mailing and data lists. These amendments also seek to clarify the types of costs that may be recovered following a disciplinary hearing.

Any interested person may make written comments on the proposed amendments on or before July 27, 2017. Such written materials should be directed to Phil McCollum, Associate Director, Iowa Dental Board, 400 S.W. Eighth Street, Suite D, Des Moines, Iowa 50309; or sent by e-mail to phil.mccollum@iowa.gov.

There will be a public hearing on July 27, 2017, at 2 p.m. in the Board office, 400 S.W. Eighth Street, Suite D, Des Moines, Iowa, at which time persons may present their views orally or in writing.

The proposed amendments are not subject to waiver or variance pursuant to 650—Chapter 7.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 147.80 and 272C.6.

The following amendments are proposed.

DENTAL BOARD[650](cont'd)

ITEM 1. Amend rule 650—15.2(147,153) as follows:

650—15.2(147,153) Definitions. The following definitions apply to this chapter:

“*Fee*” means the amount charged for the services described in this chapter. All fees are nonrefundable. The board office will refund ~~any~~ overpayment of fees \$10 or more.

“*Service charge*” means the amount charged for making a service available online and is in addition to the actual fee for a service itself. For example, a licensee who renews a license online will pay the license renewal fee and a service charge.

ITEM 2. Amend subrule 15.3(8) as follows:

15.3(8) Reinstatement of ~~an inactive lapsed~~ license or registration. The fee for a reinstatement application for a lapsed license or registration is \$150.

ITEM 3. Amend rule 650—15.6(147,153) as follows:

650—15.6(147,153) Reinstatement fees. If a license, registration or permit lapses or is inactive, a licensee, registrant or permit holder may submit an application for reinstatement. Licensees, registrants or permit holders are subject to reinstatement fees as described in this rule.

15.6(1) Reinstatement of a dental license. In addition to the reinstatement application fee specified in 15.3(8), the applicant must pay all back renewal fees (not to exceed \$750) and the fee for evaluation of a fingerprint packet and criminal background check as specified in 15.7(4).

15.6(2) Reinstatement of a dental hygiene license. In addition to the reinstatement application fee specified in 15.3(8), the applicant must pay all back renewal fees (not to exceed \$750) and the fee for evaluation of a fingerprint packet and criminal background check as specified in 15.7(4).

15.6(3) Reinstatement of a dental assistant registration. In addition to the reinstatement application fee specified in 15.3(8), the applicant must pay all back renewal fees (not to exceed ~~\$750~~ \$115) to reinstatement a registration as a registered dental assistant.

15.6(4) Combined reinstatement application—dental assistant registration and qualification in radiography. ~~The fee~~ In addition to the reinstatement application fee specified in 15.3(8), the applicant must pay all back renewal fees (not to exceed \$175) for a combined application to reinstate both a registration as a registered dental assistant and a radiography qualification is specified in 15.3(8).

15.6(5) Reinstatement of qualification in radiography. In addition to the reinstatement application fee ~~specified in 15.3(8) of \$40~~, the applicant must pay all back renewal fees (not to exceed ~~\$750~~ \$60) to reinstatement a qualification in dental radiography without registration as a dental assistant.

ITEM 4. Amend subrule 15.7(2) as follows:

15.7(2) Certification or verification. The fee for a written certification or written verification of an Iowa license, permit or registration is \$25.

ITEM 5. Amend subrule 15.7(7) as follows:

15.7(7) Disciplinary hearings—fees and costs.

a. No change.

b. The board may charge a fee not to exceed \$75 for conducting a disciplinary hearing which results in disciplinary action taken against the licensee by the board. In addition to the fee, the board may recover from the licensee costs for the following procedures and personnel:

(1) ~~Transcript~~ Court reporter and transcript.

(2) Witness fees and expenses. The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing. In addition, the board may assess a licensee the witness fees and expenses incurred by witnesses called to testify on behalf of the state of Iowa.

(3) Depositions. Deposition costs for the purposes of allocating costs against a licensee include only those deposition costs incurred by the state of Iowa. The licensee is directly responsible for the payment of deposition costs incurred by the licensee.

(4) Medical examination fees incurred relating to a person licensed under Iowa Code chapter 147. All costs of physical or mental examinations or substance abuse evaluations or drug screening or clinical

DENTAL BOARD[650](cont'd)

competency evaluations ordered by the board pursuant to Iowa Code section 272C.9(1) as part of an investigation or pending complaint or as a sanction following a contested case shall be paid directly by the licensee.

ITEM 6. Adopt the following **new** subrules 15.7(8) to 15.7(11):

15.7(8) Certification of reimbursable costs. The executive director or designee shall certify any reimbursable costs incurred by the board. The executive director shall calculate the specific costs, certify the cost calculated, and file the certification as part of the record in the contested case. A copy of the certification shall be served on the party responsible for payment of the certified costs at the time of the filing.

15.7(9) Assessment of fees and costs. A final decision of the board imposing disciplinary action against a licensee shall include the amount of any disciplinary hearing fee assessed, which shall not exceed \$75. If the board also assesses reimbursable costs against the licensee, the board shall file a Certification of Reimbursable Costs which includes a statement of costs delineating each category of costs and the amount assessed. Fees and costs that cannot be calculated at the time of the issuance of the board's final disciplinary order may be invoiced to the licensee at a later time, provided the board's final disciplinary order states that the fees and costs will be invoiced at a later date. The board shall specify the time period in which the fees and costs must be paid by the licensee.

15.7(10) Board treatment of collected fees, costs. Fees and costs collected by the board shall be considered repayment receipts as defined in Iowa Code section 8.2.

15.7(11) Failure to pay assessed fees, costs. Failure of a licensee to pay the fees and costs assessed herein within the time period specified in the board's final disciplinary order shall constitute a violation of an order of the board and shall be grounds for disciplinary action.

ITEM 7. Amend subrule 15.10(3) as follows:

15.10(3) Electronic files of statements of charges, final orders and consent agreements from each board meeting delivered via e-mail may be available for an annual subscription fee of \$24 delivered via e-mail, upon written request, at no cost.

ITEM 8. Amend rule 650—15.11(22,147,153) as follows:

650—15.11(22,147,153) Purchase of a mailing list or data list. Payment made to the Iowa Dental Board, which shall be considered a repayment receipt as defined in Iowa Code section 8.2, shall be received in the board office prior to the release of a list.

15.11(1) Mailing list for dentists, hygienists or assistants. The standard mailing list for all active ~~dental and dental hygiene licensees and dental assistant licensees~~ and registrants includes the full name, address, city, state, ~~and ZIP code,~~ and Iowa county. ~~The standard mailing list of dentists or dental hygienists does not include~~ includes resident licensees ~~or~~ and faculty permit holders.

- a. Printed mailing list, \$65 per profession requested.
- b. Mailing list on disc or DVD, \$45 per profession requested.
- c. Mailing list in an electronic file, \$35 per profession requested.

15.11(2) Data list for dentists, hygienists, or assistants. The standard data list for active licensees or registrants includes full name, address, Iowa county (if applicable), original issue date, expiration date, license or registration number, ~~and license or registration status,~~ specialty (if applicable), and whether public disciplinary action has been taken. The standard data list includes resident licensees and faculty permit holders. Additional data elements, programming or sorting increases the following fees by \$25.

- a. Printed standard data list, \$75 per profession requested.
- b. Standard data list on disc or DVD, \$55 per profession requested.
- c. Standard data list in an electronic file, \$45 per profession requested.

ARC 3155C**ECONOMIC DEVELOPMENT AUTHORITY[261]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 15.106A, the Iowa Economic Development Authority hereby gives Notice of Intended Action to amend Chapter 110, “STEM Internship Program,” Iowa Administrative Code.

The proposed amendment changes the maximum amount that may be awarded to any one employer under the STEM internship program in any one fiscal year from \$100,000 to \$50,000. The maximum award per intern will remain the same at \$5,000 per student. Since the program has been fully subscribed in past years, this change will ensure that more employers are able to take advantage of the program.

The Economic Development Authority Board approved this amendment at its meeting held on May 19, 2017.

Interested persons may submit comments on or before July 25, 2017. Comments may be submitted to Jennifer Klein, Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone number (515)725-3124; e-mail Jennifer.Klein@iowaeda.com.

This rule making does not have any fiscal impact to the state of Iowa.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 15.411.

The following amendment is proposed.

Amend subrule 110.4(1) as follows:

110.4(1) The maximum amount awarded to an employer for any one internship shall not exceed \$5,000. The maximum amount that may be awarded to any one employer in any one fiscal year shall not exceed ~~\$100,000~~ \$50,000.

ARC 3148C**EDUCATION DEPARTMENT[281]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 61, “Iowa Reading Research Center,” Iowa Administrative Code.

The Iowa Reading Research Center had been charged with adopting program criteria and guidelines for an intensive summer literacy program required by Iowa Code section 279.68. 2017 Iowa Acts, House File 642, enacted during the 2017 session of the General Assembly and signed into law by the Governor, repealed Iowa Code sections 279.68(1)“c” and 279.68(2)“e,” thereby eliminating the requirement that school districts offer an intensive summer literacy program. This proposed amendment reflects the statutory change that school districts are no longer required to offer an intensive summer literacy program, but maintains certain program criteria and guidelines for voluntary intensive summer

EDUCATION DEPARTMENT[281](cont'd)

literacy programs that school districts may choose to offer in meeting the requirements of Iowa Code section 279.68(2)“a”(6).

An agencywide waiver provision is provided in 281—Chapter 4.

Interested persons may submit comments orally or in writing by July 25, 2017, at 4:30 p.m. Comments on the proposed amendment should be directed to Phil Wise, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-4835; e-mail phil.wise@iowa.gov; or fax (515)242-5988.

A public hearing will be held on July 25, 2017, from 11 a.m. to 12 noon in the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Education and advise of specific needs by calling (515)281-5295.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code sections 256.7(31) and 256.9(49)“c” and Iowa Code section 279.68 as amended by 2017 Iowa Acts, House File 642.

The following amendment is proposed.

Amend rule 281—61.3(256) as follows:

281—61.3(256) Intensive summer literacy program. The center ~~shall establish~~ hereby establishes program criteria and guidelines for voluntary implementation of the program by school districts, ~~under rules adopted by the state board of education.~~

61.3(1) Program criteria: *summer reading programs pursuant to Iowa Code section 279.68 as amended by 2017 Iowa Acts, House File 642.* Each district that chooses to implement a summer reading program as part of its implementation of Iowa Code section 279.68(2)“a”(6) shall comply with the requirements of that section and 281—Chapter 62, including a recommendation to use an evidence-based curriculum, the requirement to employ appropriately licensed and supervised teachers and paraprofessionals, and the requirement to monitor student progress.

61.3(1) 61.3(2) Program Additional voluntary program criteria: *intensive summer literacy program.* Each district’s voluntary intensive summer literacy program shall be implemented consistent with 281—Chapter 62 and shall be encouraged to meet, in addition to the requirements of subrule 61.3(1), the following program criteria.

a. Criterion 1. Each district shall be encouraged to adopt instructional practices or programs that have demonstrated some evidence of success and that include explicit and systematic instruction in foundational reading skills based on student need, consistent with Iowa Code section 279.68. ~~Those instructional practices or programs shall incorporate the requirements of Iowa Code section 279.68, subsection 2, paragraph “d,” subparagraph (3), subparagraph division (a). To meet this criterion, each district must:~~

~~(1) Adopt an instructional program from the department’s review of evidence-based early literacy interventions, or~~

~~(2) Adopt instructional practices or programs that have been empirically shown to increase student literacy achievement.~~

b. Criterion 2. Each district shall employ ensure that its program employs skilled, high-quality instructors or provide instructors with required training, or do both. To meet this criterion, a district must hire instructors whose qualifications and training meet the requirements of the evidence-based intervention chosen. In the absence of specifications from the intervention chosen, a district must hire instructors who, at a minimum, hold a current Iowa teaching license with an endorsement in elementary education or in reading (K-8) or as a reading specialist. For the purposes of this paragraph, 61.3(1)“b,” a district may “hire” or “employ” personnel directly, through an agreement with one or more other districts, through an agreement with one or more accredited nonpublic schools, through an agreement with one or more state agencies or governmental subdivisions, through an agreement with one or more private not-for-profit community agencies, or some combination thereof.

EDUCATION DEPARTMENT[281](cont'd)

c. Criterion 3. Each district ~~shall~~ is encouraged to allow sufficient time for intensive meaningful reading instruction and student learning. ~~To meet this criterion, a district must implement, at a minimum, the total number of hours of instructional time described by the evidenced-based intervention chosen. In the absence of specifications from the intervention chosen, a district must provide a minimum of 70 hours of intensive reading instruction.~~

d. Criterion 4. Each district ~~shall~~ is encouraged to provide intensive instruction in small classes and small groups. To meet this criterion, a district ~~must~~ is encouraged to employ the same instructional grouping formats described in the evidence-based intervention chosen. In the absence of specifications from the intervention chosen, a district ~~must~~ is encouraged to ensure that it delivers whole-class instruction in class sizes of 15 or fewer students and that it delivers targeted intervention based on student need in small groups of 5 or fewer students. ~~A district may elect to provide class and group sizes smaller than specified in this criterion.~~

e. Criterion 5. Each district ~~shall~~ is encouraged to monitor and promote student attendance. ~~To meet this criterion, each district must adhere to an attendance policy that requires 85 percent attendance by each student.~~

f. Criterion 6. Each district ~~shall~~ is encouraged to evaluate student outcomes and the quality of program implementation, including implementation of these voluntary criteria. ~~Evaluation of student outcomes includes attendance data and student achievement data. On a weekly basis, each district shall use the department approved literacy assessment used during the school year to evaluate student progress toward end-of-third-grade proficiency. Evaluation of program implementation shall align with the district's plan to address reading proficiency in its comprehensive school improvement plan, as required by rule 281—62.9(256,279). Program evaluation shall also include a measure of fidelity in implementing, at a minimum, the following requirements: instructor qualifications, amount of instructional time, group size, attendance data, and progress monitoring data.~~

~~*g. Criterion 7.* Each district shall identify whether each student successfully completes the program. Each student who successfully completes the program is eligible for promotion to grade four. Each district shall provide to the parents or legal guardians of each student written notice about whether the student successfully completed the program. The notice shall include information about attendance, academic performance, additional or continuing areas of need and whether the child is eligible for promotion. Successful completion shall be defined as meeting either of the following standards:~~

~~(1) Consistent attainment of an end-of-third-grade proficiency standard pursuant to paragraph 61.3(1)“f,” or~~

~~(2) Attendance at no less than 85 percent of the program's sessions.~~

~~*h. g. Criterion 8 7.* Each program shall be under the leadership and supervision of at least one appropriately licensed teacher, ~~as described in paragraph 61.3(1)“b,”~~ and at least one appropriately licensed administrator. The two roles may be filled by the same individual. Either Nonlicensed personnel shall be supervised by an appropriately licensed teacher. It is encouraged that either the teacher or the administrator shall hold a reading (K-8) endorsement or a reading specialist endorsement. Leadership and supervision under paragraph 61.3(1)“h” shall include monitoring the program for compliance with the program criteria in subrule 61.3(1).~~

~~*i. h. Option to use private providers.* A district may enter into an agreement with a private provider that uses evidence-based instructional strategies to provide intensive summer literacy instruction required by under this chapter and 281—Chapter 62, at the election of a parent and in lieu of programming provided by the district. Any election under this paragraph shall be at the parent's sole cost. ~~The private provider shall use evidence-based instructional strategies. If a child successfully completes a private program, as defined in paragraph 61.3(1)“g,” the child shall be eligible for promotion to fourth grade.~~~~

~~**61.3(2) 61.3(3)** *Guidelines for implementation by school districts.* The center shall periodically publish guidelines to assist school districts in applying the program criteria contained in subrule 61.3(1) and the voluntary criteria contained in subrule 61.3(2) and in improving the performance of intensive summer literacy programs. The center shall make such guidelines available on its Web site.~~

ARC 3149C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 62, “State Standards for Progression in Reading,” Iowa Administrative Code.

Iowa Code section 279.68, regarding the successful progression for early readers, was amended substantially by 2017 Iowa Acts, House File 642, during the 2017 session of the Iowa General Assembly.

Item 1 of the proposed amendments is a technical change not brought about by 2017 Iowa Acts, House File 642. This change to Chapter 62 is necessary because the alternate assessment currently available is not also suitable for universal screening or progress monitoring.

Iowa Code section 279.68(1)“a” is amended by 2017 Iowa Acts, House File 642, section 27, to ensure that school districts continue to provide intensive reading instruction beyond grade three until the student is reading at grade level. Item 2 of the proposed amendments reflects that statutory change.

Iowa Code sections 279.68(1)“c” and 279.68(2)“e,” which would have required school districts, beginning May 1, 2018, to offer an intensive summer reading program for students persistently at risk in reading by the end of grade three, are repealed by 2017 Iowa Acts, House File 642, sections 28 and 29. Item 3 of the proposed amendments reflects that statutory change.

Iowa Code sections 279.68(3) and 279.68(5), regarding the promotion to grade four of students persistently at risk in reading by the end of grade three, are repealed by 2017 Iowa Acts, House File 642, section 30. Item 4 of the proposed amendments reflects that statutory change.

Items 5 and 6 of the proposed amendments make clarifying changes based upon the amendments to Iowa Code section 279.68 made by 2017 Iowa Acts, House File 642.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested persons may submit comments orally or in writing by July 25, 2017, at 4:30 p.m. Comments on the proposed amendments should be directed to Phil Wise, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-4835; e-mail phil.wise@iowa.gov; or fax (515)242-5988.

A public hearing will be held on July 25, 2017, from 10 to 11 a.m. in the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Education and advise of specific needs by calling (515)281-5295.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 279.68 as amended by 2017 Iowa Acts, House File 642.

The following amendments are proposed.

ITEM 1. Amend subrule 62.3(6) as follows:

62.3(6) Alternate assessment. If an individual with a disability has been determined to require an alternate assessment aligned to alternate academic achievement standards in reading, pursuant to rule 281—41.320(256B,34CFR300), that individual shall receive such alternate assessment, as well as alternate universal screening and progress monitoring required by this chapter on instruments approved by the department. ~~The progress monitoring required by the alternate assessment in reading required~~

EDUCATION DEPARTMENT[281](cont'd)

~~for such an individual shall be deemed to satisfy the universal screening and progress monitoring requirements of rule 281—62.2(256,279).~~

ITEM 2. Amend subrule 62.4(3) as follows:

62.4(3) Services offered to all students who are persistently at risk in reading. A school district shall provide intensive reading instruction to any student who is persistently at risk in reading, as defined in subrule 62.4(1). A school district shall continue to provide the student with intensive reading instruction until the student is reading at grade level, at grade levels beyond grade three if necessary, as determined by the student's consistently proficient performance on valid and reliable measures of reading ability that meet the requirements of rule 281—62.2(256,279). All services provided under this subrule shall comply with rule 281—62.6(256,279).

ITEM 3. Rescind and reserve rule **281—62.5(256,279)**.

ITEM 4. Rescind and reserve rules **281—62.7(256,279)** and **281—62.8(256,279)**.

ITEM 5. Amend subrule 62.10(1) as follows:

62.10(1) Services beyond third grade. Students who are identified as persistently at risk in reading at the end of third grade remain entitled to intensive reading instruction. ~~Nothing in this chapter shall be construed to prevent a school district from offering scientific research-based instruction in reading to students above third grade.~~ Nothing in this chapter shall be construed to prohibit a school district from determining a student above third grade is persistently at risk in reading or from providing services to a student so identified.

ITEM 6. Amend **281—Chapter 62**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section ~~256.7(31) as amended by 2016 Iowa Acts, chapter 1123, and section 279.68 as amended by 2014 Iowa Acts, chapter 1077, and 2016 Iowa Acts, chapter 1123~~ 2017 Iowa Acts, House File 642, sections 27 through 30.

ARC 3164C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(5), the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 79, “Other Polices Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These proposed amendments will implement the cost-containment strategy to adjust the Iowa Medicaid anesthesia conversion factor to be equal to the calendar year 2017 Medicare anesthesia conversion factor as adjusted for the state, and converted to a per-minute amount. Each January 1, thereafter, the Department shall apply the applicable Medicare anesthesia conversion factor as adjusted for the state, and converted to a per-minute amount.

Any interested person may make written comments on the proposed amendments on or before July 25, 2017. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 5th Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 3158C**. The purpose of this Notice of Intended Action is to solicit public comment on that submission, the subject matter of which is incorporated by reference.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(5).

ARC 3166C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(4), the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

This amendment will implement the cost-containment strategy to adjust the inpatient diagnostic related group (DRG) cost outlier threshold formula to be the greater of two times the statewide average DRG payment for that case, or the hospital’s individual DRG payment for that case plus \$75,000. The current formula is the greater of two times the statewide average DRG payment for the case, or the hospital’s individual DRG payment for the case plus \$16,000.

Any interested person may make written comments on the proposed amendment on or before July 25, 2017. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 5th Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

This amendment does not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 3161C**. The purpose of this Notice of Intended Action is to solicit public comment on that submission, the subject matter of which is incorporated by reference.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(4).

ARC 3165C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(3), the Department of Human Services hereby gives Notice of Intended Action to amend

HUMAN SERVICES DEPARTMENT[441](cont'd)

Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

This amendment will reimplement the cost-containment strategy to adjust Medicaid reimbursement rates for physician services rendered in facility settings (e.g., hospitals), by applying a "site of service" differential to reflect the difference between the cost of physician services when provided in a health facility setting and the cost of physician services when provided in a physician's office. It should be noted that the strategy in this amendment was originally legislatively mandated in 2011 as a directed/mandated cost-containment strategy at that time. However, the Legislature "nullified" the original mandate in 2012, based on provider complaints about reduced payments in facility settings.

Any interested person may make written comments on the proposed amendment on or before July 25, 2017. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 5th Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

This amendment does not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 3162C**. The purpose of this Notice of Intended Action is to solicit public comment on that submission, the subject matter of which is incorporated by reference.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(3).

ARC 3167C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(1), the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

This amendment will implement a cost-containment strategy to adjust the reimbursement policy in order to eliminate the primary care physician rate increase originally authorized by the federal Health Care and Education Reconciliation Act of 2010, Section 1202, Pub. L. No. 111-152, 42 U.S.C. §1396a(a)(13)(C), that allows qualified primary care physicians to receive the greater of the Medicare rate or Medicaid rate for a specified set of "primary care" current procedural terminology (CPT) procedure codes.

Any interested person may make written comments on the proposed amendment on or before July 25, 2017. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 5th Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

This amendment does not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 3160C**. The purpose of this Notice of Intended Action is to solicit public comment on that submission, the subject matter of which is incorporated by reference.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(1).

ARC 3163C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(2), the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 80, “Procedure and Method of Payment,” Iowa Administrative Code.

These amendments will implement the cost-containment strategy to ensure that total reimbursement for Medicare Part A and Part B crossover claims is limited to the Medicaid reimbursement rate.

Any interested person may make written comments on the proposed amendments on or before July 25, 2017. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 5th Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 3159C**. The purpose of this Notice of Intended Action is to solicit public comment on that submission, the subject matter of which is incorporated by reference.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(2).

ARC 3191C**INSPECTIONS AND APPEALS DEPARTMENT[481]****Notice of Termination**

Pursuant to the authority of Iowa Code sections 99B.2 and 99B.52(7), the Department of Inspections and Appeals terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on May 10, 2017, as **ARC 3050C**, proposing to amend Chapter 104, “General Provisions for All Amusement Devices,” and Chapter 105, “Registered Amusement Devices,” Iowa Administrative Code.

The Notice proposed to amend Chapters 104 and 105 to implement changes to Iowa Code chapter 99B resulting from 2015 Iowa Acts, chapter 99 (Senate File 482). The legislation modernized Iowa Code chapter 99B, streamlined processes, and eliminated unnecessary licenses.

The Department is terminating the rule making commenced in **ARC 3050C** to allow additional time for interested parties and the Department to discuss the rule making.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

After analysis and review of this rule making, no impact on jobs has been found.

ARC 3151C**PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 136.3(9), the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 154, “Medical Cannabidiol Act Registration Card Program,” Iowa Administrative Code.

On May 12, 2017, then Governor Branstad signed 2017 Iowa Acts, House File 524, which repealed existing Iowa Code chapter 124D and enacted new Iowa Code chapter 124E, the Medical Cannabidiol Act. The legislation was effective upon enactment. House File 524 expanded the state’s existing Medical Cannabidiol Act in a number of ways, including expanding the list of conditions for which a patient is eligible to receive a medical cannabidiol patient or primary caregiver registration card, establishing a Medical Cannabidiol Board, providing for licensure of medical cannabidiol manufacturers and dispensaries, establishing a fee structure for registration cards and licensure applications, and adding a new requirement for a real-time, 24/7 statewide medical cannabidiol registry management sale tracking system.

With the repeal of Iowa Code chapter 124D, there is currently no process in place through which the Department can approve medical cannabidiol registration card applications. The purpose of these amendments is to update the Department’s existing administrative rules adopted under the prior Medical Cannabidiol Act to reflect the amendments made to the patient and primary caregiver registration card issuance process. Additional rules will be needed to fully implement House File 524, and those rules will be brought forward at a later date.

Any interested person may make written comments or suggestions on the proposed amendments on or before July 25, 2017. Such written comments should be directed to Randy Mayer, Bureau Chief, Bureau of HIV, STD and Hepatitis, Iowa Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075. Comments may be sent by e-mail to randall.mayer@idph.iowa.gov.

There will be a public hearing on August 9, 2017, from 1 to 3 p.m. in Room 517-518, Lucas State Office Building, Des Moines, Iowa. This hearing will also be accessible via conference call by dialing 1-866-685-1580 and using the pass code 515-281-5606.

Waiver provisions for these rules are located at 641—Chapter 178.

These amendments are also Adopted and Filed Emergency and are published herein as **ARC 3150C**. The content of that submission is incorporated by reference.

The Department anticipates implementation of 2017 Iowa Acts, House File 524, will cause the expenditure of state funds in excess of \$100,000 per year. Anticipated costs include personnel to oversee the startup and administration of the program, technology solutions that will be necessary to adequately track registration card applicants, and postage and supplies needed to communicate with card applicants.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement 2017 Iowa Acts, House File 524.

ARC 3153C**PUBLIC SAFETY DEPARTMENT[661]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 103.6, the Electrical Examining Board hereby gives Notice of Intended Action to amend Chapter 504, “Standards for Electrical Work,” Iowa Administrative Code.

The Electrical Examining Board is authorized to adopt administrative rules for the licensing of electricians and electrical contractors and for the state electrical inspection program. The proposed amendment will adopt the 2017 edition of the National Electrical Code (NEC), with specified exceptions. The 2017 edition of the NEC reflects current industry standards, and adoption of the current NEC helps to promote consistency in the regulations affecting electricians and electrical contractors.

Revisions in the 2017 edition of the NEC reflect changes in communication and energy demands in industrial, business and consumer contexts. Business and industry and consumers increasingly rely on Internet services and communications devices, which has increased energy demands and driven technological innovation. The revisions in the 2017 edition of the NEC reflect modifications in the industry related to energy efficiency, energy production, residential uses, and special needs for health care facilities, and offer better protection for people and their property as the demands on electrical service increase.

These types of changes are particularly relevant in Iowa. The economic recovery in Iowa has outpaced other states and remains strong. Iowa will benefit from having the most recent version of the NEC. Demands for electrical work are likely to continue to rise, and Iowa can maintain a competitive edge with other states by updating its standards to meet the current industry expectations and to provide better protection and safety for individuals and property. Most of the states which border Iowa have adopted or are in the process of adopting the 2017 edition of the NEC. Minnesota, Nebraska and South Dakota are adopting the 2017 edition of the NEC with an effective date of July 1, 2017, and Wisconsin is adopting the 2017 edition of the NEC with an effective date of September 1, 2017.

Prior to the filing of this Notice of Intended Action, the Electrical Examining Board sought input and comments from stakeholders. Comments were received from many stakeholders, including the Iowa Association of Building Officials, the National Electrical Contractors Association, the Associated Builders and Contractors of Iowa, the Home Builders Association, Joint Apprenticeship Training Centers, and the local union, as well as from members of the public and members of the Board. The comments received have been considered in drafting this amendment to the rule.

The Board anticipates that this amendment will become effective on or before January 1, 2018.

Any person may comment on the amendment by e-mail at admrule@dps.state.ia.us; or by mail to Rules Coordinator, Iowa Department of Public Safety, Oran Pape Building, 215 East 7th Street, Des Moines, Iowa 50319. Comments must be received by 4:30 p.m. on August 17, 2017.

A public hearing on the amendment will be held on August 17, 2017, at 10 a.m. in the First Floor Public Conference Room (Room 125), Oran Pape Building, 215 East 7th Street, Des Moines, Iowa. Persons may present their views orally or in writing at the public hearing.

The fiscal impact for the adoption of the 2017 edition of the NEC is expected to be minimal, and less than \$100,000.

Pursuant to the provisions of rule 661—10.222(17A), the Board does not have authority to waive requirements established by statute. Pursuant to the provisions of rule 661—501.5(103), the Board has the authority to grant waivers from the rules.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

It is expected that there will be a positive impact on jobs. The adoption of the 2017 edition of the NEC will lessen the burden for electricians entering into Iowa's job market, simplify the examination process and enable Iowa electricians to compete for business in other states.

This amendment is intended to implement Iowa Code section 103.6.

The following amendment is proposed.

Amend rule 661—504.1(103) as follows:

661—504.1(103) Installation requirements. The provisions of the National Electrical Code, 2014 2017 edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471, are adopted as the requirements for electrical installations performed by persons licensed pursuant to 661—Chapters 500 through 503 and to installations subject to inspection pursuant to Iowa Code chapter 103 with the following amendments:

504.1(1) Add the following exceptions to section 210.8, paragraph (A), subparagraph (2):

a.—Exception No. 1 to (2): Receptacles that are not readily accessible.

b.—Exception No. 2 to (2): A single receptacle or a duplex receptacle for two appliances located within dedicated space for each appliance that, in normal use, is not easily moved from one place to another and that is cord and plug connected in accordance with 400.7(A)(6), (A)(7), or (A)(8).

c.—Receptacles installed under the exceptions to 210.8(A)(2) shall not be considered as meeting the requirements of 210.52(G).

Delete section 210.12(D).

504.1(2) Add the following exceptions to section 210.8, paragraph (A), subparagraph (5):

a.—Exception No. 2 to (5): Receptacles that are not readily accessible.

b.—Exception No. 3 to (5): A single receptacle or a duplex receptacle for two appliances located within dedicated space for each appliance that, in normal use, is not easily moved from one place to another and that is cord and plug connected in accordance with 400.7(A)(6), (A)(7), or (A)(8).

c.—Receptacles installed under the exceptions to 210.8(A)(5) shall not be considered as meeting the requirements of 210.52(G).

Delete section 406.4(D)(4).

504.1(3) Delete section 210.12(B).

504.1(4) Delete the exception to section 220.12 and insert in lieu thereof the following exception:

EXCEPTION: Where the building is designed and constructed to comply with an energy code adopted by the local authority, the lighting load shall be permitted to be calculated at the values specified in the energy code.

504.1(5) Delete section 406.4(D)(4).

This rule is intended to implement Iowa Code chapter 103.

ARC 3154C

REAL ESTATE COMMISSION[193E]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 543B.9, the Real Estate Commission hereby gives Notice of Intended Action to amend Chapter 7, “Offices and Management,” Chapter 16, “Prelicense Education and Continuing Education,” and Chapter 17, “Approval of Schools, Courses and Instructors,” Iowa Administrative Code.

REAL ESTATE COMMISSION[193E](cont'd)

The proposed amendments implement 2017 Iowa Acts, House File 541, section 4, which amends Iowa Code section 543B.31 to allow for a real estate broker to be the designated broker of more than one branch office within the state. The proposed amendments are also a result of the five-year rolling review of administrative rules outlined in Iowa Code section 17A.7(2), along with input from and concerns expressed by leadership of the professional association of real estate licensees in regard to the prelicense education requirements for real estate brokers and in regard to establishing a passing score standard for distance learning courses and paper and pencil home-study courses.

Chapter 7 describes the general requirements for real estate offices and management. The proposed amendments to Chapter 7 will allow for a real estate broker to be the designated broker of more than one branch office within the state, will allow for licenses to be electronically submitted to the Commission, and will provide for a general cleanup of the chapter. Chapter 16 describes the general requirements for prelicense education and continuing education for real estate licensees. The proposed amendments to Chapter 16 will remove old education requirements that have since been updated, change the prelicense education courses for real estate brokers beginning January 1, 2020, and provide for a general cleanup of the chapter. Chapter 17 describes the general requirements for approval of schools, courses, and instructors that provide prelicense and continuing education to real estate licensees. The proposed amendments to Chapter 17 will give instructors discretion on whether or not to issue an attendance certificate to a student and will establish a passing score standard for distance learning courses and paper and pencil home-study courses.

Consideration will be given to all written suggestions or comments received on or before July 25, 2017. Comments should be directed to Jeffrey Evans, Iowa Real Estate Commission, 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309. E-mail may be sent to jeff.evans@iowa.gov.

A public hearing will be held on July 25, 2017, at 12 noon in the Commission Office, 200 East Grand Avenue, Suite 350, Des Moines, Iowa, at which time persons may present their views on the proposed amendments either orally or in writing. At the hearing, any person who wishes to speak will be asked to give the person's name and address for the record and to confine remarks to the subject of the proposed amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Real Estate Commission and advise of specific needs.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

These proposed amendments were approved by the Commission on October 6, 2016, and June 1, 2017.

After analysis and review of this rule making, the Professional Licensing and Regulation Bureau determined that there will be no impact on jobs and no fiscal impact to the state.

These amendments are intended to implement Iowa Code section 543B.9 and section 543B.31 as amended by 2017 Iowa Acts, House File 541.

The following amendments are proposed.

ITEM 1. Amend rule 193E—7.1(543B) as follows:

193E—7.1(543B) Real estate offices and licenses required.

7.1(1) and 7.1(2) No change.

7.1(3) Branch office. A resident licensed Iowa real estate firm or ~~proprietor~~ sole-proprietor broker maintaining a branch office shall display ~~two~~ a commission-issued branch office licenses license in that location. ~~One~~ The branch office license is issued in the name of the firm or proprietor sole-proprietor broker and one is issued in the name of the designated broker or broker associate assigned to supervise the branch office shall include the license number and the physical address of the branch office. (EXCEPTION: A sole-proprietor broker who is the designated broker for a branch office location and not the main office location is required to display only one branch office license in that location.) The main office and every branch office shall be directly supervised by a broker or broker associate assigned to that location as the designated broker. No broker or broker associate shall be the designated broker of more than one

REAL ESTATE COMMISSION[193E](cont'd)

~~location.~~ The branch office license shall be issued at a reduced fee and shall have the same expiration date of the primary license.

~~7.1(4)~~ No change.

~~7.1(5)~~ A licensed officer of a corporation or partnership may be licensed as an officer or partner of more than one corporation or partnership. The main or primary license for which the full license fee was paid must be maintained in active status to keep any additional licenses that were issued at a reduced fee active and in effect. A broker officer licensed to more than one corporation or partnership may be the designated broker of more than one corporation or partnership.

Continuing education is required only for renewal of the main or primary license.

~~7.1(6)~~ When the designated broker of a branch office transfers to a different office, terminates employment, or otherwise ceases to be in charge of the branch location, the branch office license must be returned to the commission. A new designated broker for the branch must be assigned before a new branch license can be issued. If the branch office is assigned to a corporation or partnership, the corporation or partnership license displayed in the branch office must also be returned to the commission a branch office closes, notice in writing, electronic or otherwise, shall be given to the commission.

~~7.1(7)~~ A broker associate employed or engaged to be in charge of the branch office shall have the same responsibilities of supervision of the licensees working from that location as are imposed on the employing, sponsoring, or affiliated broker.

~~7.1(8)~~ 7.1(7) Each actively licensed broker associate and salesperson shall be licensed under a broker.

~~7.1(9)~~ 7.1(8) A broker associate or salesperson shall not be licensed under more than one broker during the same period of time.

ITEM 2. Amend rule 193E—7.2(543B) as follows:

193E—7.2(543B) Notification required.

~~7.2(1)~~ 7.2(1) Partnerships, associations, and corporations are required to obtain a license before acting as a real estate broker. Failure of a broker to inform the commission in writing, electronic or otherwise, within five working days that the broker has formed a new partnership, association or corporation, or has changed the type of the business, is prima facie evidence of a violation of Iowa Code section 543B.1.

~~7.2(2)~~ 7.2(2) Failure of a broker to inform the commission in writing, electronic or otherwise, within five working days of a change in type of license as ~~proprietor~~ sole-proprietor broker, partner, officer or broker associate is prima facie evidence of a violation of Iowa Code sections 543B.1 and 543B.29(1).

~~7.2(3)~~ 7.2(3) Failure of a broker to inform the commission in writing, electronic or otherwise, within five working days of a change of address of a proprietorship, partnership, or corporation is prima facie evidence of a violation of Iowa Code section 543B.32.

~~7.2(4)~~ 7.2(4) Failure of a broker to return a license or make a reasonable effort to deliver, ~~or mail, preferably by certified mail,~~ a or electronically submit the license to the commission office to ensure that it is received within 72 hours after a salesperson or broker associate is discharged or terminates employment is prima facie evidence of a violation of Iowa Code section 543B.33.

~~7.2(5)~~ 7.2(5) Each real estate broker who returns a license to the commission office shall include the last known permanent mailing address of the licensee.

~~7.2(6)~~ 7.2(5) Failure of a licensee to inform the commission in writing, electronic or otherwise, within five working days of a change of residence address or mailing address is prima facie evidence of a violation of Iowa Code sections 543B.16 and 543B.18.

~~7.2(7)~~ 7.2(6) When a broker is notified that a license is inactive, suspended, revoked, or canceled, the broker shall ~~return the license or mail the license, preferably by certified mail, to the commission office and make every~~ make a reasonable effort to deliver, mail, or electronically submit the license to ensure that the license is received by the commission within 72 hours after notification.

REAL ESTATE COMMISSION[193E](cont'd)

ITEM 3. Amend rule 193E—7.3(543B) as follows:

193E—7.3(543B) Suspended and revoked licenses. A suspended or revoked license must be returned to the commission as provided in Iowa Code section 543B.33 and subrule ~~7.2(7)~~ 7.2(6).

7.3(1) No change.

7.3(2) When a sole-proprietor broker, corporation or partnership license is suspended or revoked, all licensees associated with or assigned to that sole-proprietor broker, corporation or partnership shall automatically be placed on inactive status for the duration of the suspension or revocation, unless transferred to another sole-proprietor broker, corporation or partnership.

a. The broker whose license is suspended or revoked shall return, before or immediately upon the effective date of the suspension or revocation, all licenses that are assigned to or associated with the broker or the firm as provided in Iowa Code section 543B.33 and subrule ~~7.2(7)~~ 7.2(6).

b. When a suspension or revocation is determined, the commission shall also determine if the corporation or partnership license shall be automatically ~~placed on inactive status~~ or canceled.

~~*c.* If the broker whose license is suspended or revoked is also the designated broker of a firm or branch office, that firm or branch office shall automatically be placed on inactive status until a new broker is designated.~~

~~*c.* If the broker whose license is suspended or revoked is the only licensed broker officer of a corporation, the corporation license will automatically be placed on inactive status~~ canceled.

7.3(3) to 7.3(6) No change.

ITEM 4. Amend rule **193E—16.1(543B)**, definitions of “Distance education” and “Live instruction,” as follows:

“~~Distance education~~ learning” means a planned teaching/learning experience with a geographic separation of student and instructor that utilizes a wide spectrum of technology-based systems, including computer-based instruction, to reach learners at a distance. Home-study courses that include written materials, exercises and tests mailed to the provider for review are included in this definition.

“Live instruction” means an educational program delivered in a traditional classroom setting or by electronic means whereby the instructor and student have real-time visual and audio contact to carry out their essential tasks ~~while together~~.

ITEM 5. Amend rule 193E—16.2(543B) as follows:

193E—16.2(543B) Salesperson prelicense and postlicense requirements.

16.2(1) Required course of study.

a. The required course of study for the salesperson licensing examination shall consist of 60 ~~classroom~~ live instruction or ~~computer-based~~ distance learning hours of real estate principles and practices to comply with the requirements of Iowa Code section 543B.15. The curriculum shall include, but not be limited to, the following subjects:

- Introduction to Real Estate and Iowa License Law 12 hours
- Ownership, Encumbrances, Legal Descriptions, Transfer of Title and Closing 12 hours
- Contracts, Agency and Antitrust 12 hours
- Valuation, Finance and Real Estate Math 12 hours
- Property Management/Leasing, Fair Housing, Environmental Risks
and Health Issues 12 hours

b. At the time of submission of an application, an applicant applying for an original salesperson license must also provide evidence of the following live instruction courses: 12 hours of Developing Professionalism and Ethical Practices, 12 hours of Buying Practices and 12 hours of Listing Practices. All the required education must be completed during the 12 months prior to the date the application is postmarked or received.

~~**16.2(2)** Maintaining active status. All first-time salespersons renewing licenses to maintain active status shall complete 36 commission-approved classroom hours by December 31 of the third year of licensure. The following courses satisfy the first license renewal continuing education requirement:~~

REAL ESTATE COMMISSION[193E](cont'd)

Developing Professionalism and Ethical Practices	12 hours
Buying Practices	12 hours
Listing Practices	12 hours

~~16.2(3)~~ Beginning January 1, 2009, and thereafter, an applicant applying for an original salesperson license must provide evidence of successful completion of the following courses: 12 hours of Developing Professionalism and Ethical Practices, 12 hours of Buying Practices and 12 hours of Listing Practices. This education is in addition to the 60-hour salesperson prelicense course. The applicant must complete all the required education during the 12 months prior to the date of application.

~~16.2(4)~~ All salespersons licensed on January 1, 2009, or thereafter, as a requirement of license renewal and to maintain active status, must complete a minimum of 36 hours of approved courses. The continuing education must be completed during the three calendar years of the license term and cannot be carried over to another license term. Approved courses in the following subjects shall be completed to renew to active status: 8 hours of Law Update, 4 hours of Ethics and 24 hours of electives.

~~16.2(5)~~ **16.2(2)** Completion of prelicense education. Successful completion of the salesperson prelicense education includes passage of an examination(s) designed by the approved provider that is sufficiently comprehensive to measure the student’s knowledge of all aspects of the course(s). Times allotted for examinations may be regarded as hours of instruction.

~~16.2(6)~~ **16.2(3)** Substitution of courses. Written requests for substitution of the salesperson prelicense and postlicense education courses specified in 16.2(1), ~~16.2(2)~~ and ~~16.2(3)~~ may be granted if the applicant submits evidence of successful completion of a course or courses which are substantially similar to the courses specified in 16.2(1), ~~16.2(2)~~ and ~~16.2(3)~~. ~~Any course~~ Courses completed more than 12 months prior to commission consideration for approval shall not qualify for substitution.

ITEM 6. Renumber subrules **16.3(2)** and **16.3(3)** as **16.3(3)** and **16.3(4)**.

ITEM 7. Adopt the following new subrule 16.3(2):

16.3(2) *Required course of study beginning January 1, 2020.* Beginning January 1, 2020, the required course of study to take the broker examination shall consist of at least 60 classroom hours. Approved courses shall be completed within 24 months prior to the applicant’s taking the broker examination and shall include the following subjects:

Contract Law and Contract Writing	6 hours
Iowa Real Estate Trust Accounts	6 hours
Principles of Appraising and Market Analysis	6 hours
Real Estate Law and Agency Law	6 hours
Real Estate Finance	6 hours
Federal and State Laws Affecting Iowa Practice	6 hours
Real Estate Office Organization, Administration and Human Resources	12 hours
Real Estate Technology and Data Security	6 hours
Ethics and Safety Issues for Brokers	6 hours

ITEM 8. Amend renumbered subrule 16.3(3) as follows:

16.3(3) *Completion of prelicense education.* Successful completion of the broker prelicense education includes passage of an examination(s) designed by the approved provider that is sufficiently comprehensive to measure the student’s knowledge of all aspects of the course(s). Times allotted for examinations may be regarded as hours of instruction. ~~Effective January 1, 2005, and thereafter, all persons applying for a broker license within their first renewal term must complete the 36-hour salesperson postlicense courses, including 12 hours of Developing Professionalism and Ethical Practices, 12 hours of Buying Practices and 12 hours of Listing Practices, before a broker license can be issued.~~

ITEM 9. Amend rule 193E—16.4(543B) as follows:

193E—16.4(543B) Continuing education requirements.

16.4(1) No change.

REAL ESTATE COMMISSION[193E](cont'd)

16.4(2) As a requirement of license renewal in an active status, each real estate licensee shall complete a minimum of 36 hours of approved programs, courses or activities. The continuing education must be completed during the three calendar years of the license term and cannot be carried over to another license. Approved courses in the following subjects shall be completed to renew a license to active status, except in accordance with 16.2(2):

- Law Update 8 hours
- Ethics 4 hours
- Electives 24 hours

16.4(3) No change.

16.4(4) A maximum of 24 hours of continuing education may be taken by distance ~~education~~ learning each three-year renewal period.

16.4(5) A licensee unable to attend educational offerings because of a disability may make a written request to the commission setting forth an explanation and verification of the disability. Licensees making requests must meet the definition of a person with a disability found in the Americans with Disabilities Act as amended by the ADA Amendments Act of 2008 (ADAAA).

16.4(6) No change.

ITEM 10. Amend rule 193E—16.5(543B) as follows:

193E—16.5(543B) Continuing education records. Applicants for license renewal pursuant to Iowa Code section 543B.15 shall certify that the number of hours of continuing education required to renew a license was completed as described in ~~16.2(2) and~~ 193E—16.4(543B).

16.5(1) The commission will verify by random audit or on a test basis the education claimed by the licensee. It shall be the responsibility of the licensee to maintain records that support the continuing education claimed and the validity of the credits. Documentation shall be retained by the licensee for a period of three years after the effective date of the license renewal.

16.5(2) It will not be acceptable for a licensee to ~~complete the required continuing education after the fact, pursuant to 16.2(5) and 16.3(3)~~ include on a renewal application continuing education which has not yet been completed, is outside the renewal period, or for which prior approval or postapproval has not been previously approved.

16.5(3) No change.

16.5(4) Filing a false affirmation is prima facie evidence of a violation of Iowa Code ~~sections section~~ 543B.29(1) ~~and (3).~~

ITEM 11. Amend rule 193E—16.7(543B) as follows:

193E—16.7(543B) Full-time attendance. Successful completion of continuing education requires full-time attendance throughout the program, course or activity. A student who arrives late, leaves during class or leaves early ~~shall~~ may not receive a certificate.

ITEM 12. Amend rule 193E—16.8(543B) as follows:

193E—16.8(543B) Education requirements for out-of-state licensees. ~~Subrules 16.2(2) and Subrule 16.4(2)~~ shall apply to every Iowa real estate licensee unless exempted by Iowa Code ~~subsection~~ section 272C.2(5).

ITEM 13. Amend rule 193E—16.9(543B) as follows:

193E—16.9(543B) Examination as a substitute for continuing education.

16.9(1) A salesperson may satisfy all continuing education deficiencies by taking and passing the real estate salesperson examination. An authorization letter must be obtained from the commission prior to scheduling the examination with the examination administrator.

a. and *b.* No change.

16.9(2) A broker may satisfy all continuing education deficiencies by taking and passing the real estate broker examination. An authorization letter must be obtained from the commission prior to

REAL ESTATE COMMISSION[193E](cont'd)

scheduling the examination with the examination administrator. If the broker takes and passes the broker examination within the six months immediately preceding the expiration of the license, the broker examination score report may be substituted for the required hours of continuing education credits for the current license term and will satisfy all previous deficiencies.

ITEM 14. Amend rule 193E—16.10(543B) as follows:

193E—16.10(543B) Use of prelicense and postlicense courses as continuing education.

16.10(1) Salespersons and brokers may take up to 24 hours of the salesperson prelicense ~~and postlicense~~ courses specified in 16.2(1) ~~and 16.2(2)~~ as continuing education. However, a newly licensed salesperson cannot use credits from the salesperson prelicense course(s) to meet the continuing education requirement of the first renewal term.

16.10(2) and **16.10(3)** No change.

ITEM 15. Amend rule 193E—16.11(543B) as follows:

193E—16.11(543B) Requests for prior approval or postapproval of a course(s). A licensee seeking credit for attendance and participation in a course, program, or other continuing education activity that is to be conducted by a school not otherwise approved by the commission may apply for approval to the commission at least 21 days in advance of the beginning of the activity. The commission shall approve or deny the application in writing within 14 days of receipt of the application.

16.11(1) The application for prior approval of a course or an activity shall include the following information:

1. School or organization or person conducting the activity.
2. Location of the activity.
3. Title and brief description of the activity or title and course outline.
4. Credit hours requested.
5. Date of the activity.
6. Principal instructor(s).

16.11(2) The application for postapproval of a course or an activity shall include the following information:

1. School, firm, organization or person conducting the activity.
2. Location of the activity.
3. Title, ~~and~~ description of activity, and course outline.
4. Credit hours requested for approval.
5. Date of the activity.
6. Principal instructor(s).
7. Verification of attendance.

ITEM 16. Amend subrule 17.1(3) as follows:

17.1(3) Evidence of compliance with or exemption from Iowa Code sections ~~714.14~~ 714.18 to 714.25 must be furnished to the commission.

ITEM 17. Amend rule 193E—17.2(543B) as follows:

193E—17.2(543B) Certificates of attendance.

17.2(1) Each approved school under rule 193E—17.1(543B) shall provide an individual certificate of attendance to each licensee upon completion of the program, course, or activity. The certificate shall contain the following information:

- a. School name and number;
- b. Program, course or activity name and number;
- c. Name and address of licensee;
- d. Date on which the program, course or activity was completed;
- e. Number of approved credit hours;
- f. Signature of coordinator or other person authorized by the commission; and

REAL ESTATE COMMISSION[193E](cont'd)

g. A notation as to whether credit hours are to be used as ~~prelicense~~ distance learning or as ~~continuing education~~ live instruction.

17.2(2) and **17.2(3)** No change.

17.2(4) An attendance certificate shall not be issued to a licensee who is absent from a continuing education program, course, or activity. The program, course, or activity must be completed in its entirety. A student who arrives late, leaves during class or leaves early ~~shall~~ may not receive an attendance certificate.

ITEM 18. Rescind subrule **17.6(3)**.

ITEM 19. Renumber subrules **17.6(4)** to **17.6(6)** as **17.6(3)** to **17.6(5)**.

ITEM 20. Amend rule 193E—17.10(543B) as follows:

193E—17.10(543B) Standards for approval of distance ~~education~~ learning courses. The commission may approve distance ~~education~~ learning courses, subject to the following requirements:

17.10(1) to **17.10(3)** No change.

17.10(4) The course must be designed to ensure that student progress is evaluated at appropriate intervals and mastery of the material is achieved before a student can progress through the course material.

a. Students completing distance learning continuing education must complete a final examination containing 10 questions for a one-hour course, 20 questions for a two-hour course, 30 questions for a three-hour course, 40 questions for a four-hour course, and 60 questions for a six- or eight-hour course.

b. A passing score of 80 percent is required for course credit to be granted. There is no limit to the number of times a final examination may be taken to achieve a passing score.

17.10(5) to **17.10(12)** No change.

ITEM 21. Amend rule 193E—17.11(543B) as follows:

193E—17.11(543B) Standards for approval of paper and pencil home-study courses. The commission may approve paper and pencil home-study courses, subject to the following requirements:

17.11(1) to **17.11(3)** No change.

~~**17.11(4)** Final examinations must contain a minimum of 30 questions for a three-hour course and 60 questions for a six-hour course.~~ Students completing paper and pencil home-study continuing education must complete a final examination containing 10 questions for a one-hour course, 20 questions for a two-hour course, 30 questions for a three-hour course, 40 questions for a four-hour course, and 60 questions for a six- or eight-hour course.

17.11(5) A passing score of ~~90~~ 80 percent is required for course credit to be granted. There is no limit to the number of times a final examination may be taken to achieve a passing score.

17.11(6) to **17.11(11)** No change.

USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph “a,” the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

July 1, 2016 — July 31, 2016	3.75%
August 1, 2016 — August 31, 2016	3.75%
September 1, 2016 — September 30, 2016	3.50%
October 1, 2016 — October 31, 2016	3.50%
November 1, 2016 — November 30, 2016	3.75%
December 1, 2016 — December 31, 2016	3.75%
January 1, 2017 — January 31, 2017	4.25%

USURY(cont'd)

February 1, 2017 — February 28, 2017	4.50%
March 1, 2017 — March 31, 2017	4.50%
April 1, 2017 — April 30, 2017	4.50%
May 1, 2017 — May 31, 2017	4.50%
June 1, 2017 — June 30, 2017	4.25%
July 1, 2017 — July 31, 2017	4.25%

ARC 3147C**VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 35A.13, the Iowa Department of Veterans Affairs hereby gives Notice of Intended Action to amend Chapter 2, “Petition for Rule Making,” Chapter 3, “Declaratory Rulings,” Chapter 4, “Agency Procedure for Rule Making,” Chapter 6, “Fair Information Practices,” Chapter 11, “Injured Veterans Grant Program,” Chapter 14, “Veterans Trust Fund,” Chapter 15, “Veterans Commemorative Property,” and Chapter 16, “Limited Residency Vietnam Conflict Veterans Bonus,” Iowa Administrative Code.

The purpose of these proposed amendments is to update, where applicable, the building number, address, telephone and fax numbers and Web address of the Department.

Any interested person may make written suggestions or comments on the proposed amendments on or before July 25, 2017. Such written materials should be directed to Executive Director, Iowa Department of Veterans Affairs, Camp Dodge, Bldg. #3465, 7105 NW 70th Avenue, Johnston, Iowa 50131; by telephone (515)252-4698; or by fax (515)727-3713.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 17A.

The following amendments are proposed.

ITEM 1. Amend rule 801—2.1(17A) as follows:

801—2.1(17A) Petition for rule making.

In lieu of the words “(designate office)”, insert “the office of the executive director. This office is located at Camp Dodge, Building A6A 3465, ~~7700 NW Beaver Drive~~ 7105 NW 70th Avenue, Johnston, Iowa 50131-~~4902~~ 1824”.

In lieu of the words “(agency name)”, insert “Iowa commission of veterans affairs”.

2.1(3) The executive director shall notify the chairperson of the commission that the petition has been filed.

ITEM 2. Amend rule 801—2.3(17A) as follows:

801—2.3(17A) Inquiries.

In lieu of the words “(designate official by full title and address)”, insert “the executive director at Camp Dodge, Building A6A 3465, ~~7700 NW Beaver Drive~~ 7105 NW 70th Avenue, Johnston, Iowa 50131-~~4902~~ 1824. The telephone number is (515)~~242-5334~~ 252-4698”.

ITEM 3. Amend rule 801—3.1(17A) as follows:

801—3.1(17A) Petition for declaratory ruling.

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

In lieu of the words “(designate office)”, insert “the office of the executive director. This office is located at Camp Dodge, Building ~~A6A 3465, 7700 NW Beaver Drive~~ 7105 NW 70th Avenue, Johnston, Iowa 50131-~~1902 1824~~”.

In lieu of the words “(agency name)”, insert “Iowa commission of veterans affairs”.

At the end of this rule, insert “The executive director shall notify the chairperson of the commission that the petition has been filed.”

ITEM 4. Amend rule 801—3.3(17A) as follows:

801—3.3(17A) Inquiries.

In lieu of the words “(designate official by full title and address)”, insert “the executive director at Camp Dodge, Building ~~A6A 3465, 7700 NW Beaver Drive~~ 7105 NW 70th Avenue, Johnston, Iowa 50131-~~1902 1824~~. The telephone number is (515)~~242-5331 252-4698~~”.

ITEM 5. Amend subrule 4.5(1) as follows:

4.5(1) In lieu of the words “(identify office and address)”, insert “the office of the executive director. This office is located in Building ~~A6A 3465~~ at Camp Dodge, ~~7700 NW Beaver Drive~~ 7105 NW 70th Avenue, Johnston, Iowa 50131-~~1902 1824~~”.

ITEM 6. Amend subrule 4.6(3) as follows:

4.6(3) In lieu of the words “(designate office)”, insert “the office of the executive director. This office is located in Building ~~A6A 3465~~ at Camp Dodge, ~~7700 NW Beaver Drive~~ 7105 NW 70th Avenue, Johnston, Iowa 50131-~~1902 1824~~”.

ITEM 7. Amend rule 801—4.11(17A) as follows:

801—4.11(17A) Concise statement of reasons.**4.11(1) General.**

In lieu of the words “(specify office and address)”, insert “the office of the executive director. This office is located in Building ~~A6A 3465~~ at Camp Dodge, ~~7700 NW Beaver Drive~~ 7105 NW 70th Avenue, Johnston, Iowa 50131-~~1902 1824~~”.

ITEM 8. Amend subrule 6.3(1) as follows:

6.3(1) Location of record. A request for access to a record pertaining to the Iowa Veterans Home should be addressed to the Commandant, Iowa Veterans Home, 1301 Summit, Marshalltown, Iowa 50158-5485. For all other commission records, or if the location of the record is unknown by the requester, the request for access to a record shall be directed to the Executive Director, Camp Dodge, ~~7700 NW Beaver Drive~~ 7105 NW 70th Avenue, Johnston, Iowa 50131-~~1902 1824~~. If the request for access to a record is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

ITEM 9. Amend paragraph **11.4(1)“b”** as follows:

b. A veteran filing for the grant under retroactive eligibility must submit an injured veteran grant application form along with supporting documents. Supporting documents needed to verify eligibility shall include copies of the following:

- (1) Military ID card;
- (2) DD214 (if the veteran has been discharged) or military orders to document service in a combat zone;
- (3) Medical records or military orders to document date of medical evacuation and periods of continued medical treatment or rehabilitation; and
- (4) Any document to establish Iowa residency at the time of injury, such as Iowa income tax forms, or to establish that the veteran is or was a member of a national guard unit located in this state prior to mobilization and was injured while serving in that national guard unit and is not eligible to receive a similar grant from another state for that injury.

A veteran may receive assistance in the application process by contacting the department office at (515)~~242-5331 252-4698~~ or (800)838-4692 or by fax (515)~~242-5659 727-3713~~.

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

ITEM 10. Amend rule 801—14.5(35A), introductory paragraph, as follows:

801—14.5(35A) Application procedure. Applications for benefits from the veterans trust fund may be obtained at any county veterans affairs office. The county director of veterans affairs shall date-stamp the application and submit it to the Iowa Department of Veterans Affairs, Camp Dodge, Bldg. ~~A6A~~ 3465, 7105 NW 70th Avenue, Johnston, Iowa 50131-1824.

ITEM 11. Amend subrule 15.3(2) as follows:

15.3(2) Notification forms. Notification forms may be obtained from the Iowa Department of Veterans Affairs, Camp Dodge, Bldg. ~~A6A~~ 3465, 7105 NW 70th Avenue, Johnston, Iowa 50131-1824, or from the department's Web site at ~~www.iowava.org~~ <https://va.iowa.gov>.

ITEM 12. Amend subrule 16.7(4) as follows:

16.7(4) Office address. Persons may contact the Iowa Department of Veterans Affairs, Camp Dodge, Bldg. ~~A6A~~ 3465, 7105 NW 70th Avenue, Johnston, Iowa 50131-1824; telephone (515)~~242-5331~~ 252-4698 or 1-800-838-4692; fax (515)~~242-5659~~ 727-3713. The department's Web address is ~~www.iowava.org~~ <https://va.iowa.gov>.

ARC 3178C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 96.11, the Director of the Department of Workforce Development hereby gives Notice of Intended Action to amend Chapter 22, “Employer Records and Reports,” Chapter 23, “Employer’s Contribution and Charges,” Chapter 24, “Claims and Benefits,” and Chapter 25, “Benefit Payment Control,” Iowa Administrative Code.

These proposed amendments update, clarify and simplify the procedures by which claimants and employers interact with Iowa Workforce Development. The amendments also bring the rules up to date by reflecting changes in technology and efficiencies developed within the agency since the affected rules were adopted. The agency needs to have administrative rules that address these changes.

Any interested person may make written or oral suggestions or comments on the proposed amendments on or before July 25, 2017, by sending them to David J. Steen, Attorney, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to david.steen@iwd.iowa.gov.

These amendments do not have any fiscal impact on the State of Iowa.

Waiver provisions do not apply to this rule making.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 96.

The following amendments are proposed.

ITEM 1. Amend subrule 22.8(2), introductory paragraph, as follows:

22.8(2) Notification of status. The department shall maintain a separate account for each employer and shall notify the employer by mailing a Form 65-5308, Notice of Employer Status and Liability, to the last known address of any status change. This notice will advise the employer of:

ITEM 2. Amend subrule 22.9(1) as follows:

22.9(1) Each employing unit engaged in doing business in the state of Iowa January 1, 1936, or after, shall file a report to determine liability complete a registration with the department ~~on a form~~

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

supplied by the department, Form 60-0126, Report to Determine Liability, setting forth the names and addresses of the owners of the business, or if a corporation, association, or joint stock company or limited liability company, the names and addresses of its officers or members. Each employing unit must show its principal place of business, the nature of its business, the number of individuals whom it customarily hires to perform services for it, the place or places where such services are performed, the time when such business was begun, the number of weeks in the year for which it is customary to operate such business and such other information as may be required by such form.

ITEM 3. Amend subrule 22.10(2) as follows:

22.10(2) Reporting requirement. If, after the change in partners, the partnership is required to obtain a new federal identification number by the Internal Revenue Service, or if there has been a change of ownership as described in Iowa Code section 96.19(18) "b" or a change of ownership as described in rule 871—23.28(96), then the old partnership shall notify the department by filing Form 60-0111, Employer's Notice of Change, within ten days from the date the change occurred. The new partnership shall ~~notify the department by filing Form 60-0126, Report to Determine Liability,~~ complete a registration within ten days from the date the change occurred.

ITEM 4. Amend subrule 871—22.12(96) as follows:

871—22.12(96) Reporting units. Any employer having two or more separate establishments will file those establishments as separate reporting units. Additionally at the employer's discretion, the employer may establish reporting units to report according to function within the business. When filing a ~~Form 65-5300, Employer's Contribution & Payroll Report, by paper,~~ employer's contribution and payroll, all reporting units will be ~~listed on a separate page and will all be submitted together.~~ The individual reporting units may be filed separately by the reporting units when authorized, but the complete account report is not submitted until all reporting units are completed. Maintaining current status for the reporting units will be the employer's responsibility. If any reporting units are deleted or added, the department shall be notified within ten working days from the date of change.

This rule is intended to implement Iowa Code sections 96.7(2) "a" and 96.19(6).

ITEM 5. Amend subrule 22.13(2) as follows:

22.13(2) It will be permissible to accept this information over the telephone by qualified personnel of the ~~field audit section providing tax bureau~~ provided that the employer makes known all of the above requested information and the person receiving this information notes the date it was received, the time it was received, who telephoned the information to the department, and the name and telephone number of a responsible party that can be contacted if further verification is needed with respect to the location coding procedure. ~~Field audit section Tax bureau~~ personnel receiving this classified information by telephone will accordingly note this and make it a matter of permanent record.

ITEM 6. Rescind and reserve rule **871—23.17(96)**.

ITEM 7. Amend subrule 23.29(1) as follows:

23.29(1) Notice of acquisition.

a. Whenever any employing unit in any manner succeeds to or acquires from an employer either the organization, trade or business or substantially all the assets thereof, and continues such organization, trade or business, such employing unit shall notify the department for the purpose of accomplishing the transfer of the reserve account of the predecessor employer to the successor employing unit. Such notification must be ~~in writing on Form 60-0126, Report to Determine Liability,~~ and include the name and address of the predecessor, the date of acquisition, and the name and address of the successor. When such notice has been received or in the absence of the notice when necessary information establishing that the acquisition occurred has been received by the department, the actual contribution and benefit experience and taxable payrolls of the predecessor shall be transferred to the successor employing unit for determining its rate of contribution. Thereafter, benefits chargeable because of employment for such transferred organization, trade, or business shall be charged to the account of the successor. The

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

predecessor must ~~submit in writing a completed Form 60-0111, Employer Notice of Change~~ notify the department of the status change.

b. Where one or more employing units have been reorganized, merged or consolidated into a single employing unit and the successor employing unit continues to operate such merged or consolidated enterprise, the employing units involved shall ~~file change of ownership Forms 60-0111, Employer Notice of Change, and 60-0126, Report to Determine Liability, with the workforce development~~ notify the department within 30 days from the date of the transaction. In addition to Forms 60-0111 and 60-0126, all ~~All~~ entities involved in the merger shall file with the workforce development department provide the articles of merger, or if there are no articles of merger, a statement advising that the merger has transpired.

(1) The predecessor business or businesses involved in the merger shall each file a final quarterly payroll report form as soon as possible after the merger has occurred but in no case later than 30 days after the close of the quarter in which the merger occurred.

(2) The successor entity shall indicate ~~on Form 60-0126, Report to Determine Liability,~~ whether or not the experience rates of all accounts are to be combined and the rate recomputed for the balance of the calendar year in which the merger took place.

ITEM 8. Amend subrule 23.37(1) as follows:

23.37(1) Whenever any employer discovers that the contribution report submitted is incorrect resulting in overpayment of contributions due and owing, such employer may file an application for credit allowance or refund. If the department discovers that the contribution ~~report~~ submitted by any employer is incorrect resulting in overpayment of contribution, it may on its own initiative refund or make a credit allowance. No refund or credit allowance will be made after three years from the date on which the overpayment was made. The ~~Form 68-0061, Employer's Wage Adjustment Report,~~ employer's wage adjustment report shall be filed ~~by paper or~~ electronically to show corrections to the individual wage amounts, corrections of grand totals (total wages, taxable wages and contributions), and a full explanation for the adjustment. Adjustment shall be made by the department in the form of credit allowance or refund as provided in subrule 23.37(3) equal to that portion of contributions erroneously paid which exceeds the benefits paid to claimants as a direct result of the employer's erroneous report.

ITEM 9. Amend subrule 23.52(4) as follows:

23.52(4) Unless otherwise required, all determinations by the tax bureau will be sent by regular mail ~~to the last known address of the employer~~ or e-mail, depending on how the employer elected to receive correspondence. The determination will be dated, and the employer or other interested party shall have 30 days from the mailing date printed on the notice to appeal the determination. The employer has 15 days to appeal a Notice of Reimbursable Benefit Charges, Form 65-5324.

ITEM 10. Amend subrule 23.70(3) as follows:

23.70(3) All requests by nonprofit organizations wishing to be considered for reimbursable status shall be filed on Form 68-0463 and that form, along with the organization's 501(c)(3) Internal Revenue Service letter of exemption, except as otherwise provided in subrule 23.70(2), shall be directed to the attention of the ~~field audit unit tax bureau.~~ The request for reimbursable status will be examined by a ~~field auditor or other~~ an authorized representative.

ITEM 11. Rescind paragraph **24.2(1)“c”** and adopt the following **new** paragraph in lieu thereof:

c. All claimants on an initial claim shall state that they are registered for work and shall list their principal occupation. A group code will be assigned to the claimant to control the type of registration that is made. Code assignments will be based on all facts obtained at the time of the claim filing. A group code change can be made at any time during the benefit year if additional information is obtained by the agency. The group codes are:

(1) Group “1” claimants are workers who are employed on a reduced workweek or temporarily unemployed for a period, verified by the department, of four consecutive weeks or less, due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular “employer.” This group pertains only to those individuals who worked full-time and will again work full-time if the individuals' employment, although temporarily suspended, has not been terminated. After a period of

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

temporary unemployment, claimants in this group are reviewed for placement in group “2,” “3,” “4,” or “5.”

(2) Group “2” claimants are those individuals who have left employment in lieu of exercising their right to bump or oust a fellow employee with less seniority or priority from the fellow employee’s job. Group “2” claimants shall have only the search for work provision of Iowa Code section 96.4(3) and the disqualification provision for failure to apply for or to accept suitable work of Iowa Code section 96.5(3) waived. The group “2” code shall not apply to weeks claimed under the extended benefit or federal supplemental compensation programs.

(3) Group “3” claimants are those individuals who are members of unions, trades, or professionals having their own placement facilities. Claimants assigned to this group will be registered for work. A paid-up membership must be maintained. Contact must be made weekly to check for available work. Loss of membership shall result in an assignment to group “3.”

(4) Group “4” claimants are those individuals who do not otherwise meet the qualification group code “1,” “2,” or “3.” This group must complete and document work searches made either in-person, online or by submitting a resumé.

(5) Group “5” claimants are workers who are employed on a reduced workweek with an employer who is under voluntary shared work contract approved by the department. This group pertains only to those individuals who worked full-time and will again work full-time if the individuals’ employment, although temporarily suspended, has not been terminated. Once the contract expires, claimants in this group are reviewed for placement in groups “1,” “2,” “3,” or “4.”

(6) Group “6” claimants are workers who are part of a federally declared emergency. Once the emergency period expires, claimants in this group are reviewed for placement in groups “1,” “2,” “3,” “4,” or “5.”

(7) Nothing in this rule shall be construed as prohibiting an authorized representative of the department from requiring claimants for unemployment insurance benefits to avail themselves of workforce development center referral and counseling services if deemed beneficial and necessary to obtain prompt reemployment, nor shall anything in this rule be construed to deny referral or counseling service to claimants for unemployment insurance benefits.

ITEM 12. Rescind rule 871—24.3(96) and adopt the following new rule in lieu thereof:

871—24.3(96) Social security number needed for filing. The correct social security number must be provided by the claimant. The correct social security number is essential in the processing of the claim. Therefore, if the claimant has a social security card, the number must be taken from that card or be provided by the claimant. If the claimant has two or more social security numbers, the claim shall be held until the claimant ascertains which number is correct.

ITEM 13. Adopt the following new paragraph **24.13(4)“o”**:

o. Payments conditional upon the release of any rights.

ITEM 14. Adopt the following new paragraph **24.13(4)“p”**:

p. Payments requiring the individual to work through a specific day to be eligible.

ITEM 15. Amend subrule 24.50(6) as follows:

24.50(6) Overpayments will be offset up to and including ~~50~~ 100 percent of the federal temporary extended unemployment compensation benefit payment.

ITEM 16. Amend subrule 25.8(3) as follows:

25.8(3) Purging uncollectible overpayments. On the last working day of each calendar month, the department reviews all outstanding overpayments; which are ten years or older from the date of the overpayment decision; and determines as uncollectible and purges from its records the unpaid balances of overpayments which are ten years or older ~~from the date of the most recent recovery of a part of the outstanding overpayment.~~

ARC 3179C

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 8A.104(5), the Department of Administrative Services hereby amends Chapter 100, "Capitol Complex Operations," Iowa Administrative Code.

These amendments address the possession of pistols and revolvers and the use of fireworks on the Capitol Complex in relation to 2017 Iowa Acts, House File 517 and Senate File 489.

Pursuant to Iowa Code section 17A.4(3), the Department of Administrative Services finds that notice and public participation are unnecessary because rules are being amended to implement changes to Iowa Code section 8A.322(3) as amended by 2017 Iowa Acts, House File 517, section 33, which was effective July 1, 2017. The Department is also implementing changes pursuant to the provisions of 2017 Iowa Acts, Senate File 489, which was effective upon enactment.

In compliance with Iowa Code section 17A.4(3)"a," the Administrative Rules Review Committee at its June 13, 2017, meeting reviewed the Department's determination and this rule making and approved the emergency adoption.

Pursuant to Iowa Code section 17A.5(2)"b"(1)(b), the Department of Administrative Services also finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective July 1, 2017, because the rules confer a benefit by providing guidance to the public through rule making pursuant to 2017 Iowa Acts, House File 517, and by providing clarity to the public regarding the use of fireworks on the Capitol Complex grounds to protect the public and public property in light of the effective date of 2017 Iowa Acts, Senate File 489, in relation to the Department's duties pursuant to Iowa Code section 8A.322(3).

These amendments are also published herein under Notice of Intended Action as **ARC 3177C** to allow for public comment.

After analysis and review, it has been determined the fiscal impact to the state is undeterminable. Rules involving 2017 Iowa Acts, House File 517, and the use of fireworks on the Capitol Complex do not have an impact on the state budget.

The Department of Administrative Services will not grant waivers under the provisions of these rules, other than as may be allowed under Chapter 9 of the Department's rules concerning waivers.

The Department of Administrative Services adopted these amendments on June 14, 2017.

After analysis and review of this rule making, the jobs impact as a result of these rules is undeterminable. It is undeterminable how rules that implement 2017 Iowa Acts, House File 517, section 33, would affect jobs in the private sector. It is undeterminable how rules that implement Iowa Code section 8A.322(3) in relationship to 2017 Iowa Acts, Senate File 489, would affect jobs in the private sector.

These amendments are intended to implement Iowa Code section 8A.322 as amended by 2017 Iowa Acts, House File 517, and the provisions resulting from 2017 Iowa Acts, Senate File 489.

These amendments became effective July 1, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 11—100.1(8A) as follows:

11—100.1(8A) Definitions. The definitions contained in ~~2003~~ Iowa Code Supplement sections 8A.101 and 8A.301 shall be applicable to such terms when used in this chapter. In addition, the following definitions apply:

"*Assignment of office space*" means space allocated by the department to a state agency for its use.

"*Capitol complex*" means an area within the city of Des Moines in which the Iowa state capitol building is located. This area includes the state capitol building and all real property and appurtenances thereto owned by the state of Iowa within an area bounded on the north by Interstate Highway 235, on the east by East 14th Street, on the south by the northernmost railroad tracks south of Court Avenue and on the west by East 6th Street.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

“*Control of assigned office space*” means the ability of an agency to modify its use of assigned space without consultation with the department as long as changes do not include relocating wiring, replacing, adding or deleting modular office components, or making other modifications that would affect the floor plan.

“*Dangerous weapon*” means any instrument or device designed primarily for use in inflicting death or injury upon a human being or animal, and which is capable of inflicting death upon a human being when used in the manner for which it was designed. Additionally, any instrument or device of any sort whatsoever which is actually used in such a manner as to indicate that the person possessing the instrument or device intends to inflict death or serious injury upon the other, and which, when so used, is capable of inflicting death upon a human being, is a dangerous weapon. Dangerous weapons include, but are not limited to, any offensive weapon as defined in Iowa Code section 724.1, pistol, revolver, or other firearm, dagger, razor, stiletto, switchblade knife, or knife having a blade exceeding five inches in length. Pistols and revolvers are exempted from the definition of “dangerous weapons” only as set forth in subrule 100.2(2).

“*Facilities*” means the capitol complex buildings, grounds, and all related property.

“*Memorandum of understanding*” or “*MOU*” means a written agreement that specifies terms, conditions and any related costs.

“*Modular office components*” means parts of a modular office system.

“*Modular office systems*” means standard cubicle furniture; generally, two-foot, three-foot and four-foot sections that have attached work surfaces and file storage space. Modular office systems are available in new, remanufactured and recycled condition.

“*Nonstandard modular office systems*” means office systems that do not meet standards set by the department of administrative services.

“*Office furniture*” means any furnishing that is free standing and does not require installation with component parts. Examples are desks, chairs, file cabinets, tables, lounge seating, and computer desks.

“*Public*” means a person on the capitol complex who is not employed by the state of Iowa.

“*Recycled modular office components*” means used components that have been cleaned and have had broken parts replaced, but have not been disassembled and rebuilt.

“*Remanufactured modular office components*” means used components that have been disassembled, repainted or reupholstered, rebuilt, and have had broken parts replaced. Remanufactured components are intended to be like new.

“*Seat of government*” means office space at the capitol, other state buildings and elsewhere in the city of Des Moines for executive branch agencies, except those areas exempted by law.

“*Waiver*” means a waiver or variance as defined in 11—Chapter 9, Iowa Administrative Code.

ITEM 2. Amend rule 11—100.2(8A) as follows:

11—100.2(8A) Security.

100.2(1) *Dangerous weapons.* No member of the public shall carry a dangerous weapon in state buildings on the capitol complex except as otherwise provided in subrule 100.2(2). This provision applies to any member of the public whether or not the individual possesses a valid Iowa permit to carry weapons. This provision does not apply to:

a. A peace officer as defined in Iowa Code section 801.4 or a member of the armed forces of the United States or of the national guard, when the person’s duties or lawful activities require or permit possession of a dangerous weapon.

b. A person possessing a valid Iowa professional permit to carry a weapon whose duties require that person to carry a dangerous weapon.

c. A person who possesses a dangerous weapon for any purpose authorized by a state agency to further the statutory or regulatory responsibilities of that agency. An authorization issued pursuant to this paragraph shall not become effective until it has been issued in writing to the person or persons to whom it applies and until copies of the authorization have been received by the director and by the commissioner of public safety.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

d. Members of recognized military veterans organizations performing honor guard service as provided in ~~2001 Iowa Acts, chapter 96, section 1~~ Iowa Code section 35A.12.

Violation of this subrule is a simple misdemeanor, pursuant to ~~2003 Iowa Code Supplement~~ section 8A.322, and may result in the denial of access to a state building, filing of criminal charges or expulsion from the grounds of the capitol complex, or any combination thereof, of any individual who knowingly violates the subrule. In addition, any weapon found in possession of a member of the public in violation of this subrule may be confiscated. Charges may be filed under any other criminal statute if appropriate. Officers employed by or under the supervision of the department of public safety shall have the authority to enforce this subrule. Peace officers employed by other agencies shall have the authority to enforce this subrule at the request of the commissioner of public safety or in response to a request for assistance from an officer employed by the department of public safety.

100.2(2) Pistols and revolvers. No person, other than a peace officer, may openly carry a pistol or revolver in the capitol building and on the grounds surrounding the capitol building including state parking lots and parking garages. This provision does not preclude the lawful carrying, transportation, or possession of a pistol or revolver in the capitol building and on the grounds surrounding the capitol building including the state parking lots and parking garages by a person who displays to capitol security personnel a valid permit to carry weapons upon request.

Violation of this subrule is a simple misdemeanor, pursuant to Iowa Code section 8A.322, and may result in the denial of access to a state building, filing of criminal charges or expulsion from the grounds of the capitol complex, or any combination thereof, of any individual who knowingly violates the subrule. In addition, any weapon found in possession of a member of the public in violation of this subrule may be confiscated. Charges may be filed under any other criminal statute if appropriate. Officers employed by or under the supervision of the department of public safety shall have the authority to enforce this subrule. Peace officers employed by other agencies shall have the authority to enforce this subrule at the request of the commissioner of public safety or in response to a request for assistance from an officer employed by the department of public safety.

100.2(2) 100.2(3) Building access and security. The department of administrative services and the department of public safety shall take reasonable and appropriate measures to ensure the safety of persons and property on the capitol complex. These measures may include, but are not limited to, the following:

a. Requiring any member of the public entering a state building on the capitol complex to (1) provide identification upon request; (2) allow the member of the public to be scanned with metal detecting equipment; and (3) allow any parcel, package, luggage, purse, or briefcase that the person is bringing into the building to be examined with X-ray equipment or to have the contents thereof examined, or both.

b. Requiring any member of the public who is inside a state building on the capitol complex outside normal business hours, other than when the building or portion of the building is open to the public during a scheduled event, to provide identification and to state the nature of the person's business in the building. A member of the public who is in a state building on the capitol complex outside normal business hours, other than during a scheduled event, and who does not have authorization to be on the premises may be required to exit the building and be escorted from the building.

c. Limiting public access to state buildings on the capitol complex to selected entrances. Access to each building through at least one entrance accessible to persons with disabilities shall be maintained.

d. Limiting hours during which public access is allowed to state buildings on the capitol complex. Hours during which public access is allowed shall be posted at each entrance to a building through which public access is allowed.

e. Confiscating any container including, but not limited to, packages, bags, briefcases, or boxes that are left in public areas when the state building is not open to the public. Any confiscated container may be searched or destroyed, or both, or may be returned to the owner. Any container that is left unattended in a public area during hours in which the state building is open to the public may be examined.

Violation of this subrule is a simple misdemeanor, pursuant to ~~2003 Iowa Code Supplement~~ section 8A.322, and may result in the denial of access to a state building, filing of criminal charges or expulsion from the grounds of the capitol complex, or any combination thereof, of the individual who knowingly

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

violates the subrule. Charges may be filed under any other criminal statute if appropriate. Officers employed by or under the supervision of the department of public safety shall have the authority to enforce this subrule. Peace officers employed by other agencies shall have the authority to enforce this subrule at the request of the commissioner of public safety or in response to a request for assistance from an officer employed by the department of public safety.

100.2(4) Fireworks. No person shall use or explode consumer fireworks, display fireworks, or novelties, as those terms are defined in Iowa Code section 727.2, on the capitol complex without the director's advanced written approval.

~~100.2(3)~~ 100.2(5) Access barriers. The director may cause the temporary or permanent placement of barricades, ropes, signs, or other barriers to access certain parts of state buildings or grounds. Unauthorized persons beyond the barriers may be removed with the assistance of officers of the department of public safety or charged with a criminal offense if appropriate, or both.

[Filed Emergency 6/16/17, effective 7/1/17]

[Published 7/5/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.

ARC 3183C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

These amendments update subrule 75.23(3) to increase the statewide average cost of nursing facility services to a private-pay person. The figure is being revised to reflect the increase in the cost of private-pay rates for nursing facility care in Iowa. The change is not related to rates paid by Medicaid for nursing facility care.

The figure is used to determine a period of ineligibility when an applicant or recipient transfers assets for less than fair market value. When assets are transferred to attain or maintain Medicaid eligibility, the individual is ineligible for Medicaid payment of long-term care services. The period of ineligibility is determined by dividing the amount transferred by the statewide average cost of nursing facility services to a private-pay person.

The Department conducted a survey of the freestanding nursing facilities, the hospital-based skilled facilities, and special population facilities in Iowa to update the statewide average cost for nursing facilities. The average private-pay cost of nursing facility services increased from \$5,809.13 to \$6,269.63.

These amendments also update paragraph 75.24(3)"b," which sets forth the average charges for nursing facilities, psychiatric medical institutions for children (PMICs), and mental health institutions (MHIs). These average charges are used to determine the disposition of the income of a medical assistance income trust (MAIT).

Nursing facility amounts are not related to the rates paid by Medicaid for nursing facility care. For this purpose, the Department's survey for statewide average private-pay charges at the nursing facility level of care included only the freestanding nursing facilities in Iowa. Hospital-based skilled facilities and special populations units were not included in the survey, since recipients are allowed to use the average cost of the specialized care.

- The average charge to a private-pay resident of a nursing facility increased from \$5,267 per month to \$5,829 per month.
- The average charges for PMICs and MHIs are based on Medicaid rates because Medicaid is the primary payer of these services.
- The average charge for care in a PMIC remained the same as last year at \$7,999 per month.
- The average charge for care in an MHI decreased from \$29,708 per month to \$29,312 per month.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The increase in the average charge to a private-pay resident of nursing facility care may result in more individuals who qualify for medical assistance by decreasing the period of ineligibility for a transfer of assets and allowing more individuals to qualify for medical assistance with MAITs because the income limit at which all income assigned to a MAIT is considered to be available for Medicaid eligibility purposes is increased. The decrease in the average charge for care in an MHI may allow fewer individuals to qualify for medical assistance with MAITs because the income limit at which all income assigned to a MAIT is considered to be available for Medicaid eligibility purposes is decreased.

The maximum Medicaid rate for intermediate care facilities for individuals with an intellectual disability (ICF/IDs) is addressed in a companion rule making (see **ARC 3182C** published herein).

Federal law (42 U.S.C. §1396p(c)(1)(E)(i)-(ii)) requires that the period of ineligibility for a transfer for less than fair market value must be based on “the average monthly cost to a private patient of nursing facility services in the State” or, at the option of the State, on the average “in the community in which the individual is institutionalized.” In addition and pursuant to long-standing state administrative rules, Iowa uses the statewide average. Also, Iowa Code sections 633C.1(4) and 633C.1(8) through 633C.1(10) direct the Department to publish the statewide average charges and maximum Medicaid rate used for determining disposition of MAITs.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3017C** on April 12, 2017. The Department received a comment from one respondent. The respondent’s comment and the Department’s response are as follows:

Comment: The respondent did not agree with the final figures for the average private-pay cost of nursing facilities and the methodology used to calculate those figures.

Department response: The respondent stated the methodology used to calculate the average private-pay costs of nursing facility services was incorrect. The respondent did not agree with the decrease in the average private-pay cost of nursing facilities services from \$5,809.13 to \$5,689.06. The Department considered this comment and reviewed its figures used to calculate this year’s nursing facility, skilled nursing facility, and special population facility average private-pay rates. After review, the Department determined that the average private-pay cost of nursing facilities increased from \$5,809.13 to \$6,269.63 per month and agreed to revise subrule 75.23(3) to reflect the higher amount as follows:

“75.23(3) Period of ineligibility. The number of months of ineligibility shall be equal to the total cumulative uncompensated value of all assets transferred by the individual (or the individual’s spouse) on or after the look-back date specified in subrule 75.23(2), divided by the statewide average private-pay rate for nursing facility services at the time of application. The department shall determine the average statewide cost to a private-pay resident for nursing facilities and update the cost annually. For the period from July 1, 2017, through June 30, 2018, this average statewide cost shall be \$6,269.63 per month or \$206.24 per day.”

The Council on Human Services adopted these amendments on June 14, 2017.

Pursuant to Iowa Code section 17A.5(2)“b”(1)(b), the Department finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective July 1, 2017, because the amendments confer a benefit on the public. The average private-pay cost of nursing facilities increased resulting in more income being eligible for inclusion in the client’s MAIT.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

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

These amendments became effective July 1, 2017.

The following amendments are adopted.

ITEM 1. Amend subrule 75.23(3) as follows:

75.23(3) Period of ineligibility. The number of months of ineligibility shall be equal to the total cumulative uncompensated value of all assets transferred by the individual (or the individual’s spouse) on or after the look-back date specified in subrule 75.23(2), divided by the statewide average private-pay

HUMAN SERVICES DEPARTMENT[441](cont'd)

rate for nursing facility services at the time of application. The department shall determine the average statewide cost to a private-pay resident for nursing facilities and update the cost annually. For the period from July 1, ~~2016~~ 2017, through June 30, ~~2017~~ 2018, this average statewide cost shall be ~~\$5,809.13~~ \$6,269.63 per month or ~~\$191.09~~ \$206.24 per day.

ITEM 2. Amend subparagraphs **75.24(3)“b”(1)** and **(3)** as follows:

(1) The average statewide charge to a private-pay resident of a nursing facility is ~~\$5,267~~ \$5,829 per month.

(3) The average statewide charge to a resident of a mental health institute is ~~\$29,708~~ \$29,312 per month.

[Filed Emergency After Notice 6/14/17, effective 7/1/17]

[Published 7/5/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.

ARC 3182C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

These amendments update the maximum Medicaid rate for intermediate care facilities for individuals with an intellectual disability (ICF/IDs) which is used to determine the disposition of the income of a medical assistance income trust (MAIT).

The Department of Human Services provided the maximum Medicaid rate for care in an ICF/ID. The maximum Medicaid rate for ICF/ID increased from \$28,915 per month to \$29,240 per month.

The increase in this maximum rate will allow a few additional individuals to qualify for medical assistance with MAITs because the income limit at which all income assigned to a MAIT is considered to be available for Medicaid eligibility purposes is increased.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3016C** on April 12, 2017. The Department received no comments during the public comment period. These amendments are identical to those published as Notice of Intended Action.

The Council on Human Services adopted these amendments on June 14, 2017.

Pursuant to Iowa Code section 17A.5(2)“b”(2), the Department finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective July 1, 2017, because these amendments confer a benefit on the public. The maximum Medicaid rates are increased, allowing more individuals to be eligible with a MAIT.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

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

These amendments became effective July 1, 2017.

The following amendments are adopted.

ITEM 1. Amend paragraph **75.24(3)“b,”** introductory paragraph, as follows:

b. A trust established for the benefit of an individual if the trust is composed only of pension, social security, and other income to the individual (and accumulated income of the trust), and the state will receive all amounts remaining in the trust upon the death of the individual up to the amount equal to the total medical assistance paid on behalf of the individual. For disposition of trust amounts pursuant to Iowa Code sections 633C.1 to 633C.5, the average statewide charges and Medicaid rates for the period from July 1, ~~2016~~ 2017, to June 30, ~~2017~~ 2018, shall be as follows:

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Amend subparagraph 75.24(3)“b”(2) as follows:

(2) The maximum statewide Medicaid rate for a resident of an intermediate care facility for persons with an intellectual disability is ~~\$28,915~~ \$29,240 per month.

[Filed Emergency After Notice 6/14/17, effective 7/1/17]
[Published 7/5/17]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.

ARC 3158C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(5), the Department of Human Services amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments implement the cost-containment strategy to adjust the Iowa Medicaid anesthesia conversion factor to be equal to the calendar year 2017 Medicare anesthesia conversion factor as adjusted for the state, and converted to a per-minute amount. Each January 1, thereafter, the Department shall apply the applicable Medicare anesthesia conversion factor as adjusted for the state, and converted to a per-minute amount.

The Council on Human Services adopted these amendments on June 14, 2017.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because emergency rule making is authorized by 2017 Iowa Acts, House File 653, section 12(15)(c).

Pursuant to Iowa Code section 17A.5(2)“b”(1)(a), the Department also finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective July 1, 2017, because 2017 Iowa Acts, House File 653, section 12(15)(c), authorizes the Department to adopt emergency rules to implement this cost-containment strategy.

These amendments are also published herein under Notice of Intended Action as **ARC 3164C** to allow for public comment.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(5).

The Administrative Rules Review Committee reviewed these amendments on June 13, 2017.

These amendments became effective July 1, 2017.

The following amendments are adopted.

ITEM 1. Amend subrule **79.1(2)**, provider category “Physicians (doctors of medicine or osteopathy),” as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Physicians (doctors of medicine or osteopathy)	Fee schedule. See 79.1(7) “a”	Fee schedule in effect 6/30/13 plus 1%.
Anesthesia services	Fee schedule. See 79.1(7) “d”	Fee schedule in effect 6/30/13 plus 1% <u>7/1/17.</u> See 79.1(7) “d.”
Physician-administered drugs	No change.	
Qualified primary care services	No change.	

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Adopt the following **new** paragraph **79.1(7)“d”**:

d. Payment for anesthesia services. Anesthesia services are paid pursuant to this paragraph and the Iowa Medicaid fee schedule published by the department pursuant to paragraph 79.1(1)“c.” Anesthesia procedures listed in the fee schedule with a factor code of “F” are paid at the dollar amount of the factor listed for the procedure in the fee schedule. Anesthesia procedures listed in the fee schedule with a factor code of “A” are paid a dollar amount equal to the Iowa Medicaid anesthesia conversion factor multiplied by the sum of the minutes of service provided and the factor listed for the procedure in the fee schedule. Beginning July 1, 2017, the Iowa Medicaid anesthesia conversion factor is the current Medicare anesthesia conversion factor for Iowa, converted to a per-minute amount. For 2017, that amount is \$1.40, which will be updated annually on January 1.

[Filed Emergency 6/14/17, effective 7/1/17]

[Published 7/5/17]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.

ARC 3161C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(4), the Department of Human Services amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

This amendment implements the cost-containment strategy to adjust the inpatient diagnostic related group (DRG) cost outlier threshold formula to be the greater of two times the statewide average DRG payment for that case, or the hospital’s individual DRG payment for that case plus \$75,000. The current formula is the greater of two times the statewide average DRG payment for the case, or the hospital’s individual DRG payment for the case plus \$16,000.

The Council on Human Services adopted this amendment on June 14, 2017.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because emergency rule making is authorized by 2017 Iowa Acts, House File 653, section 12(15)(c).

Pursuant to Iowa Code section 17A.5(2)“b”(1)(a), the Department also finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective July 1, 2017, because 2017 Iowa Acts, House File 653, section 12(15)(c), authorizes the Department to adopt emergency rules to implement this cost-containment strategy.

This amendment is also published herein under Notice of Intended Action as **ARC 3166C** to allow for public comment.

This amendment does not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(4).

The Administrative Rules Review Committee reviewed this amendment on June 13, 2017.

This amendment became effective July 1, 2017.

The following amendment is adopted.

Amend subparagraph **79.1(5)“f”(3)** as follows:

(3) Cost outliers. Cases qualify as cost outliers when costs of service in a given case, not including any add-on amounts for direct or indirect medical education or disproportionate share costs exceed the cost threshold. This cost threshold is determined to be the greater of two times the statewide average DRG payment for that case or the hospital’s individual DRG payment for that case plus ~~\$16,000~~ **\$75,000**. Costs are calculated using hospital-specific cost-to-charge ratios determined in the base-year cost reports.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Additional payment for cost outliers is 80 percent of the excess between the hospital's cost for the discharge and the cost threshold established to define cost outliers. Payment of cost outlier amounts shall be paid at 100 percent of the calculated amount and made at the time the claim is paid.

Those hospitals that are notified of any outlier review initiated by the QIO must submit all requested supporting data to the QIO within 60 days of the receipt of outlier review notification, or outlier payment will be forfeited and recouped. In addition, any hospital may request a review for outlier payment by submitting documentation to the QIO within 365 days of receipt of the outlier payment. If requests are not filed within 365 days, the provider loses the right to appeal or contest that payment.

[Filed Emergency 6/14/17, effective 7/1/17]

[Published 7/5/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.

ARC 3162C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(3), the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

This amendment reimplements the cost-containment strategy to adjust Medicaid reimbursement rates for physician services rendered in facility settings (e.g., hospitals), by applying a "site of service" differential to reflect the difference between the cost of physician services when provided in a health facility setting and the cost of physician services when provided in a physician's office. It should be noted that the strategy in this amendment was originally legislatively mandated in 2011 as a directed/mandated cost-containment strategy at that time. However, the Legislature "nullified" the original mandate in 2012, based on provider complaints about reduced payments in facility settings.

The Council on Human Services adopted this amendment on June 14, 2017.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because emergency rule making is authorized by 2017 Iowa Acts, House File 653, section 12(15)(c).

Pursuant to Iowa Code section 17A.5(2)"b"(1)(a), the Department also finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective July 1, 2017, because 2017 Iowa Acts, House File 653, section 12(15)(c), authorizes the Department to adopt emergency rules to implement this cost-containment strategy.

This amendment is also published herein under Notice of Intended Action as **ARC 3165C** to allow for public comment.

This amendment does not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(3).

The Administrative Rules Review Committee reviewed this amendment on June 13, 2017.

This amendment became effective July 1, 2017.

The following amendment is adopted.

Adopt the following **new** paragraph **79.1(7)"b"**:

b. Payment reduction for services rendered in facility settings. The fee schedule amount paid to physicians based on paragraph 79.1(7)"a" shall be reduced by an adjustment factor, as determined by the department and published with the Iowa Medicaid fee schedule, to reflect the lower cost of providing physician services in a facility setting, as opposed to the physician's office. For the purpose of this provision, a "facility" place of service (POS) is defined as any of the following (consistent with "POS"

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definitions under Medicare, per the Medicare Claims Processing Manual, Chapter 12, Section 20.4.2, revised as of May 2017):

- (1) Telehealth (POS 02).
- (2) Outpatient hospital-off campus (POS 19).
- (3) Inpatient hospital (POS 21).
- (4) Outpatient hospital-on campus (POS 22).
- (5) Emergency room-hospital (POS 23).
- (6) Ambulatory surgical center (POS 24).
- (7) Military treatment center (POS 26).
- (8) Skilled nursing facility (POS 31).
- (9) Hospice-for inpatient care (POS 34).
- (10) Ambulance-land (POS 41).
- (11) Ambulance-air or water (POS 42).
- (12) Inpatient psychiatric facility (POS 51).
- (13) Psychiatric facility-partial hospitalization (POS 52).
- (14) Community mental health center (POS 53).
- (15) Psychiatric residential treatment center (POS 56).
- (16) Comprehensive inpatient rehabilitation (POS 61).

[Filed Emergency 6/14/17, effective 7/1/17]

[Published 7/5/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.

ARC 3160C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(1), the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

This amendment implements a cost-containment strategy to adjust the reimbursement policy in order to eliminate the primary care physician rate increase originally authorized by the federal Health Care and Education Reconciliation Act of 2010, Section 1202, Pub. L. No. 111-152, 42 U.S.C. §1396a(a)(13)(C), that allows qualified primary care physicians to receive the greater of the Medicare rate or Medicaid rate for a specified set of "primary care" current procedural terminology (CPT) procedure codes.

The Council on Human Services adopted this amendment on June 14, 2017.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because emergency rule making is authorized by 2017 Iowa Acts, House File 653, section 12(15)(c).

Pursuant to Iowa Code section 17A.5(2)"b"(1)(a), the Department also finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective July 1, 2017, because 2017 Iowa Acts, House File 653, section 12(15)(c), authorizes the Department to adopt emergency rules to implement this cost-containment strategy.

This amendment is also published herein under Notice of Intended Action as **ARC 3167C** to allow for public comment.

This amendment does not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(1).

The Administrative Rules Review Committee reviewed this amendment on June 13, 2017.

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This amendment became effective July 1, 2017.

The following amendment is adopted.

Amend paragraph **79.1(7)“c,”** introductory paragraph, as follows:

c. Payment for primary care services. To the extent required by 42 U.S.C. § 1396a(a)(13)(C), primary care services furnished in calendar year 2013 or 2014 by a qualified primary care physician or under the supervision of a qualified primary care physician shall be paid as provided pursuant to subparagraphs (1) to (4) and (6) of this paragraph (79.1(7)“c”). Primary care services furnished ~~on~~ ~~or after~~ January 1, 2015, through June 30, 2017, by a qualified primary care physician or under the supervision of a qualified primary care physician shall be paid as provided pursuant to subparagraphs (1) to (3), (5), and (7) of this paragraph (79.1(7)“c”).

[Filed Emergency 6/14/17, effective 7/1/17]

[Published 7/5/17]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.

ARC 3159C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(2), the Department of Human Services amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 80, “Procedure and Method of Payment,” Iowa Administrative Code.

These amendments implement the cost-containment strategy to ensure that total reimbursement for Medicare Part A and Part B crossover claims is limited to the Medicaid reimbursement rate.

The Council on Human Services adopted these amendments on June 14, 2017.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because emergency rule making is authorized by 2017 Iowa Acts, House File 653, section 12(15)(c).

Pursuant to Iowa Code section 17A.5(2)“b”(1)(a), the Department also finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective July 1, 2017, because 2017 Iowa Acts, House File 653, section 12(15)(c), authorizes the Department to adopt emergency rules to implement this cost-containment strategy.

These amendments are also published herein under Notice of Intended Action as **ARC 3163C** to allow for public comment.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be requested under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(2).

The Administrative Rules Review Committee reviewed these amendments on June 13, 2017.

These amendments became effective July 1, 2017.

The following amendments are adopted.

ITEM 1. Amend subrule 79.1(22) as follows:

79.1(22) Medicare crossover claims ~~for inpatient and outpatient hospital services.~~ Subject to approval of a state plan amendment by the federal Centers for Medicare and Medicaid Services, payment for Medicare crossover claims shall be made as follows.

a. Definitions. For purposes of this subrule:

“~~Crossover~~ Medicare crossover claim” means a claim for Medicaid payment for ~~Medicare-covered inpatient or outpatient hospital services~~ covered by Medicare Part A or Part B rendered to a Medicare

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beneficiary who is also eligible for Medicaid. ~~Crossover Medicare crossover~~ claims include claims for services rendered to beneficiaries who are eligible for Medicaid in any category, including, but not limited to, qualified Medicare beneficiaries and beneficiaries who are eligible for full Medicaid coverage.

“Medicaid-allowed amount” means the Medicaid ~~prospective~~ reimbursement for the ~~services~~ service(s) rendered (including any portion to be paid by the Medicaid beneficiary as copayment or spenddown), as determined under state and federal law and policies.

“Medicaid reimbursement” means any amount to be paid by the Medicaid beneficiary as a Medicaid copayment or spenddown and any amount to be paid by the department after application of any applicable Medicaid copayment or spenddown.

“Medicare-allowed amount” means the total reimbursement allowed by Medicare for the service(s) rendered, for a participating Medicare provider who has accepted Medicare assignment of claims for services rendered, including any portion to be paid by the Medicare beneficiary as a deductible or coinsurance.

“Medicare deductible and coinsurance amounts” means the portion of the Medicare-allowed amount to be paid by the Medicare beneficiary as a deductible or coinsurance.

“Medicare payment amount” means the Medicare reimbursement rate for the services rendered in a crossover claim, excluding any Medicare coinsurance or deductible amounts to be paid by the Medicare beneficiary.

“Medicare provider reimbursement” means the Medicare-allowed amount less any portion thereof to be paid by the Medicare beneficiary as a deductible or coinsurance.

“Third-party payment” means payment from any source other than Medicaid, Medicare, or the Medicaid and Medicare beneficiary.

b. Reimbursement of Medicare crossover claims. ~~Crossover claims for inpatient or outpatient hospital services covered under Medicare and Medicaid shall be reimbursed as follows. Covered Medicare crossover claims shall be paid by Medicaid at the lesser of:~~

~~(1) If the Medicare payment amount for a crossover claim exceeds or equals the Medicaid-allowed amount for that claim, Medicaid reimbursement for the crossover claim shall be zero.~~

~~(2) If the Medicaid-allowed amount for a crossover claim exceeds the Medicare payment amount for that claim, Medicaid reimbursement for the crossover claim shall be the lesser of:~~

~~1. The Medicaid-allowed amount minus the Medicare payment amount; or~~

~~2. The Medicare coinsurance and deductible amounts applicable to the claim.~~

(1) Applicable Medicare deductible and coinsurance amounts, less any third-party payment available to the provider for the Medicare deductible and coinsurance amounts and any Medicaid copayment or spenddown; or

(2) Either:

1. For Medicaid-covered services: the Medicaid-allowed amount less the Medicare provider reimbursement, any third-party payment available to the provider in addition to the Medicare provider reimbursement, and any Medicaid copayment or spenddown; or

2. For non-Medicaid-covered services: 50 percent of the Medicare-allowed amount less the Medicare provider reimbursement, any third-party payment available to the provider in addition to the Medicare provider reimbursement, and any Medicaid copayment or spenddown.

ITEM 2. Amend paragraph **80.2(2)“h”** as follows:

h. Providers billing claims for Medicare beneficiaries that do not cross over electronically to the Iowa Medicaid enterprise shall must submit the following electronically:

(1) Form 470-4707 UB-04, Medicare Crossover Invoice (Institutional), along with the Explanation of Medicare Benefits (EOMB) for institutional services.; and

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(2) Form 470-4708 CMS-1500, ~~Medicare Crossover Invoice (Professional)~~, along with the Explanation of Medicare Benefits (EOMB) ~~for professional services~~.

[Filed Emergency 6/14/17, effective 7/1/17]

[Published 7/5/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.

ARC 3150C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 136.3(9), the Department of Public Health hereby amends Chapter 154, “Medical Cannabidiol Act Registration Card Program,” Iowa Administrative Code.

On May 12, 2017, then Governor Branstad signed 2017 Iowa Acts, House File 524, which repealed existing Iowa Code chapter 124D and enacted new Iowa Code chapter 124E, the Medical Cannabidiol Act. The legislation was effective upon enactment. House File 524 expanded the state’s existing Medical Cannabidiol Act in a number of ways, including expanding the list of conditions for which a patient is eligible to receive a medical cannabidiol patient or primary caregiver registration card, establishing a Medical Cannabidiol Board, providing for licensure of medical cannabidiol manufacturers and dispensaries, establishing a fee structure for registration cards and licensure applications, and adding a new requirement for a real-time, 24/7 statewide medical cannabidiol registry management sale tracking system.

With the repeal of Iowa Code chapter 124D, there is currently no process in place through which the Department can approve medical cannabidiol registration card applications. The purpose of these amendments is to update the Department’s existing administrative rules adopted under the prior Medical Cannabidiol Act to reflect the amendments made to the patient and primary caregiver registration card issuance process. Additional rules will be needed to fully implement House File 524, and those rules will be brought forward at a later date.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable and contrary to the public interest because 2017 Iowa Acts, House File 524, was effective upon enactment and repealed Iowa Code chapter 124D, which was the legal authority for the Department’s issuance of patient and primary caregiver registration cards. Following the repeal of Iowa Code chapter 124D on May 12, 2017, the Department has been unable to approve applications for patient and primary caregiver registration cards for any patient, including those with intractable epilepsy. These amendments are focused on the patient and primary caregiver card application and renewal processes only. Additional rules will be required for the manufacturing and dispensing components of 2017 Iowa Acts, House File 524; however, those additional rules require input from the newly created Medical Cannabidiol Board, which has yet to be appointed. Proposed rules for the manufacturing and dispensing components of House File 524 will come at a later date.

In compliance with Iowa Code section 17A.4(3)“a,” the Administrative Rules Review Committee at its June 13, 2017, meeting reviewed the Department’s determination and this rule making and approved emergency adoption.

Pursuant to Iowa Code section 17A.5(2)“b”(1)(b), the Department also finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective June 13, 2017, because the rules confer a benefit to members of the public seeking to obtain a patient or primary caregiver registration card as allowed by 2017 Iowa Acts, House File 524 [new Iowa Code chapter 124E]. The benefit is that the Department will again be in a position to process medical cannabidiol registration cards for patients and primary caregivers. The application approval process is currently suspended until the existing rules are amended.

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These amendments are also published herein under Notice of Intended Action as **ARC 3151C** to allow for public comment.

The Department anticipates implementation of 2017 Iowa Acts, House File 524, will cause the expenditure of state funds in excess of \$100,000 per year. Anticipated costs include personnel to oversee the startup and administration of the program, technology solutions that will be necessary to adequately track registration card applicants, and postage and supplies needed to communicate with card applicants.

Waiver provisions for these rules are located at 641—Chapter 178.

The State Board of Health adopted these amendments on June 8, 2017, subject to the approval of the Administrative Rules Review Committee on June 13, 2017.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement 2017 Iowa Acts, House File 524.

These amendments became effective June 13, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 641—154.1(85GA,SF2360) as follows:

641—154.1(85GA,SF2360 87GA,HF524) Definitions. For the purposes of these rules, the following definitions shall apply:

“Bordering state” means the same as defined in Iowa Code section 331.910.

“Cannabidiol” means a nonpsychoactive cannabinoid found in the plant *Cannabis sativa L.* or *Cannabis indica* or any other preparation thereof that is essentially free from plant material, and has a tetrahydrocannabinol level of no more than 3 percent.

“Date of expiration” means one year from the date of issuance of the medical cannabidiol registration card by the department of transportation.

“Date of issuance” means the date of issuance of the medical cannabidiol registration card by the department of transportation.

“Debilitating medical condition” means any of the following:

1. Cancer, if the underlying condition or treatment produces one or more of the following:

- Severe or chronic pain.
- Nausea or severe vomiting.
- Cachexia or severe wasting.

2. Multiple sclerosis with severe and persistent muscle spasms.

3. Seizures, including those characteristic of epilepsy.

4. AIDS or HIV as defined in Iowa Code section 141A.1.

5. Crohn’s disease.

6. Amyotrophic lateral sclerosis.

7. Any terminal illness, with a probable life expectancy of under one year, if the illness or its treatment produces one or more of the following:

- Severe or chronic pain.
- Nausea or severe vomiting.
- Cachexia or severe wasting.

8. Parkinson’s disease.

9. Untreatable pain.

“Department” means the Iowa department of public health.

“Department of transportation” means the Iowa department of transportation.

“Disqualifying felony offense” means a violation under federal or state law of a felony under federal or state law, which has as an element the possession, use, or distribution of a controlled substance, as defined in 21 U.S.C. §802(6).

“Health care practitioner” means an individual licensed under Iowa Code chapter 148 to practice medicine and surgery or osteopathic medicine and surgery who is a patient’s primary care provider. “Health care practitioner” shall not include a physician assistant licensed under Iowa Code chapter 148C or an advanced registered nurse practitioner licensed pursuant to Iowa Code chapter 152 or 152E.

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~~“*Intractable epilepsy*” means an epileptic seizure disorder for which standard medical treatment does not prevent or significantly ameliorate recurring, uncontrolled seizures or for which standard medical treatment results in harmful side effects.~~

~~“*Medical assistance program*” means IA Health Link, Medicaid Fee-for-Service, or HAWK-I, as administered by the Iowa Medicaid enterprise of the Iowa department of human services.~~

~~“*Medical cannabidiol*” means any pharmaceutical grade cannabinoid found in the plant *Cannabis sativa* L. or *Cannabis indica* or any other preparation thereof that has a tetrahydrocannabinol level of no more than 3 percent and that is delivered in a form recommended by the medical cannabidiol board, approved by the board of medicine, and designated in this chapter.~~

~~“*Neurologist*” means an allopathic or osteopathic physician board-certified in neurology in good standing and licensed under Iowa Code chapter 148.~~

~~“*Patient*” means a person who is a permanent resident of the state of Iowa who suffers from intractable epilepsy and has received a recommendation from a neurologist a debilitating medical condition that qualifies for the medical use of medical cannabidiol pursuant to 2014 Iowa Acts, Senate File 2360 2017 Iowa Acts, House File 524.~~

~~“*Permanent resident*” means a natural person who physically resides in Iowa as the person’s principal and primary residence and who establishes evidence of such residency by providing the department with one of the following:~~

- ~~1. A valid Iowa driver’s license,~~
- ~~2. A valid Iowa nonoperator’s identification card,~~
- ~~3. A valid Iowa voter registration card,~~
- ~~4. A current Iowa vehicle registration certificate,~~
- ~~5. A utility bill,~~
- ~~6. A statement from a financial institution,~~
- ~~7. A residential lease agreement,~~
- ~~8. A check or pay stub from an employer,~~
- ~~9. A child’s school or child care enrollment documents,~~
- ~~10. Valid documentation establishing a filing for homestead or military tax exemption on property located in Iowa, or~~
- ~~11. Other valid documentation as deemed acceptable by the department to establish residency.~~

~~“*Primary caregiver*” means a person who is a resident of this state or a bordering state, including but not limited to a parent or legal guardian, at least 18 years of age, who has been designated by a patient’s neurologist or a person having custody of a patient, health care practitioner as being necessary to take responsibility for managing the well-being of the patient with respect to the medical use of cannabidiol pursuant to the provisions of 2014 Iowa Acts, Senate File 2360 a necessary caretaker taking responsibility for managing the well-being of the patient with respect to the use of medical cannabidiol pursuant to the provisions of 2017 Iowa Acts, House File 524.~~

~~“*Primary care provider*” means any health care practitioner involved in the diagnosis and treatment of a patient’s debilitating medical condition.~~

~~“*State*” means a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.~~

~~“*Untreatable pain*” means any pain whose cause cannot be removed and, according to generally accepted medical practice, the full range of pain management modalities appropriate for the patient has been used without adequate result or with intolerable side effects.~~

~~“*Written certification*” means a document signed by a health care practitioner, with whom the patient has established a patient-provider relationship, which states that the patient has a debilitating medical condition and identifies that condition and provides any other relevant information.~~

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 2. Amend rule 641—154.2(85GA,SF2360) as follows:

~~641—154.2(85GA,SF2360 87GA,HF524) Neurologist recommendation—medical—use—of cannabidiol Health care practitioner certification—duties.~~

~~154.2(1) A neurologist who has examined and treated a patient suffering from intractable epilepsy may provide, but has no duty to provide, a written recommendation for the patient's medical use of cannabidiol to treat or alleviate symptoms of intractable epilepsy if no other satisfactory treatment options exist for the patient and all of the following conditions apply Prior to a patient's submission of an application for a medical cannabidiol registration card pursuant to this rule, a health care practitioner shall do all of the following:~~

~~a. The patient is a permanent resident of Iowa Determine, in the health care practitioner's medical judgment, whether the patient whom the health care practitioner has examined and treated suffers from a debilitating medical condition that qualifies for the use of medical cannabidiol as defined by this chapter, and if so determined, provide the patient with a written certification of that diagnosis by completing the health care practitioner section of the application form provided for this purpose on the department's Web site (www.idph.iowa.gov).~~

~~b. A neurologist has treated the patient for intractable epilepsy for at least six months. For purposes of this treatment period, and notwithstanding 2014 Iowa Acts, Senate File 2360, section 3, subsection 4, treatment provided by a neurologist may include treatment by a neurologist licensed in another state and in good standing Provide explanatory information to the patient as provided on the department's Web site (www.idph.iowa.gov) about the therapeutic use of medical cannabidiol and the possible risks, benefits, and side effects of the proposed treatment.~~

~~c. The neurologist has tried and documented alternative treatment options that have not alleviated the patient's symptoms.~~

~~d. The neurologist determines the risks of recommending the medical use of cannabidiol are reasonable in light of the potential benefit for the patient and has documented a discussion of the risks and benefits with the patient or the patient's parent or legal guardian.~~

~~e. The neurologist maintains a patient treatment plan. The neurologist shall have the sole, exclusive authority to recommend the use and amount of cannabidiol, if any, in the treatment plan, and shall recommend in the treatment plan only the oral or transdermal administration of cannabidiol.~~

~~f. The neurologist shall be available to provide follow-up care and treatment to the patient, including but not limited to patient examinations; however, this rule shall not restrict the authority of a neurologist to terminate the physician-patient relationship, provided that such termination is effectuated in accordance with rule 653—13.7(147,148,272C).~~

~~154.2(2) The neurologist is required to use the written recommendation section of the application form provided for this purpose on the department's Web site (www.idph.state.ia.us). Subsequently, the health care practitioner shall do the following:~~

~~a. Determine, on an annual basis, if the patient continues to suffer from a debilitating medical condition and, if so, issue the patient a new certification of that diagnosis.~~

~~b. Otherwise comply with all requirements in this chapter and requests from the department for more information.~~

~~154.2(3) The neurologist, or authorized persons in the neurologist's office or clinic, is required to complete the written recommendation section of the application form and send the application to the department's address as provided on the application form A health care practitioner may provide, but has no duty to provide, a written certification pursuant to this rule.~~

~~154.2(4) A neurologist who provides a written recommendation pursuant to this chapter shall maintain a record-keeping system for all patients for whom the neurologist has recommended the medical use of cannabidiol to treat or alleviate symptoms of intractable epilepsy.~~

~~154.2(5) A neurologist who provides a written recommendation pursuant to this chapter is required to participate in any survey that will be conducted by the department on the implementation of the medical cannabidiol Act. Any such survey will adhere to the federal Health Insurance Portability and Accountability Act of 1996.~~

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ITEM 3. Amend rule 641—154.3(85GA,SF2360) as follows:

~~641—154.3(85GA,SF2360~~ 87GA,HF524) Cannabidiol Medical cannabidiol registration card—application and issuance to patient.

154.3(1) ~~The Subject to subrule 154.3(7), the department may approve the issuance of a medical cannabidiol registration card by the department of transportation to a patient who:~~

- ~~a. Is at least 18 years of age.~~
- ~~b. Is a permanent resident of Iowa.~~
- ~~c. Requests the patient's neurologist to submit~~ Submits a written certification to the department, provided to the patient pursuant to rule 641—154.2(85GA,SF2360 87GA,HF524),—a written recommendation and signed by the neurologist patient's health care practitioner certifying that the patient may benefit from the medical use of cannabidiol is suffering from a debilitating medical condition.
- ~~d. Is listed as the patient on the~~ Submits an application form submitted to the department, on a form created by the department in consultation with the department of transportation and available at the department's Web site (~~www.idph.state-ia.us~~ www.idph.iowa.gov), that contains all of the following:
 - (1) The patient's full legal name, Iowa residence address, mailing address (if different from the patient's residence address), telephone number, date of birth, and sex designation. The patient shall not provide as a mailing address an address for which a forwarding order is in place.
 - (2) A copy of the patient's valid photo identification. Acceptable photo identification includes:
 1. A valid Iowa driver's license,
 2. A valid Iowa nonoperator's identification card, or
 3. An alternative form of valid photo identification. A patient who possesses or is eligible for an Iowa driver's license or an Iowa nonoperator's identification card shall present such document as valid photo identification. A patient who is ineligible to obtain an Iowa driver's license or an Iowa nonoperator's identification card may apply for an exemption and request submission of an alternative form of valid photo identification. A patient who applies for an exemption is subject to verification of the patient's identity through a process established by the department and the department of transportation to ensure the genuineness, regularity, and legality of the alternative form of valid photo identification.
 - (3) Full name, address, and telephone number of the patient's ~~neurologist~~ health care practitioner.
 - (4) Full legal name, residence address, date of birth, and telephone number of each primary caregiver of the patient, if any.
 - (5) An attestation as to the truthfulness and accuracy of the information provided by the patient on the application.
- ~~e. Has not been convicted of a disqualifying felony offense.~~
- ~~f. Submits the required fee, as described in subrule 154.12(1).~~

154.3(2) ~~Upon the completion, verification, and approval of the patient's application and the receipt of the required fee, the department shall notify the department of transportation that the patient may be issued a medical cannabidiol registration card.~~

154.3(3) A medical cannabidiol registration card issued to a patient by the department of transportation shall contain all of the following:

- ~~a. The patient's full legal name, Iowa residence address, date of birth, and sex designation, as shown on the patient's Iowa driver's license, nonoperator's identification card, or alternative form of valid photo identification provided pursuant to paragraph 154.3(1) "d"(2)"3."~~ If the patient's name, Iowa residence address, date of birth, or sex designation has changed since the issuance of the patient's Iowa driver's license, nonoperator's identification card, or alternative form of valid photo identification, the patient shall first update the patient's Iowa driver's license or nonoperator's identification card to reflect the current information, according to the procedures set forth in 761—subrule 605.11(2), 761—subrule 605.25(4), or rule 761—630.3(321), or shall update the alternative form of valid photo identification in accordance with the process of the issuing agency.
- ~~b. The date of issuance and the date of expiration, which shall be one year from the date of issuance.~~

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- c. A distinguishing registration number that is not the patient's social security number.
- d. The patient's signature. The signature shall be without qualification and shall contain only the patient's usual signature without any other titles, characters, or symbols. The patient's signature certifies, under penalty of perjury and pursuant to the laws of the state of Iowa, that the statements made and information provided in the patient's application for a medical cannabidiol registration card are true and correct. The patient's signature shall be captured electronically.
- e. A color photograph of the patient.
- f. A statement that the medical cannabidiol registration card is not valid for identification purposes.

154.3(4) ~~A patient in possession of a valid cannabidiol registration card issued pursuant to this rule shall not possess a quantity of cannabidiol oil in excess of 32 ounces~~ Every patient 18 years of age or older must obtain a valid medical cannabidiol registration card to use medical cannabidiol in Iowa.

154.3(5) ~~An authorization to use medical cannabidiol or marijuana for medicinal purposes issued by another state, territory, or jurisdiction does not satisfy the requirements of 2014 Iowa Acts, Senate File 2360~~ 2017 Iowa Acts, House File 524, or these rules for the issuance of a medical cannabidiol registration card.

154.3(6) A valid medical cannabidiol registration card, or its equivalent, issued under the laws of another state that allow an out-of-state patient to possess or use medical cannabidiol in the jurisdiction of issuance shall have the same force and effect as a valid medical cannabidiol registration card issued pursuant to 2017 Iowa Acts, House File 524, except that an out-of-state patient in Iowa shall not obtain medical cannabidiol from a medical cannabidiol dispensary in Iowa.

154.3(7) The department shall not approve the issuance of a medical cannabidiol registration card for a patient who is enrolled in a federally approved clinical trial for the treatment of a debilitating medical condition with medical cannabidiol.

ITEM 4. Amend rule 641—154.4(85GA,SF2360) as follows:

641—154.4(85GA,SF2360 87GA,HF524) Cannabidiol Medical cannabidiol registration card—application and issuance to primary caregiver.

154.4(1) For a patient in a primary caregiver's care, the department may approve the issuance of a medical cannabidiol registration card by the department of transportation to a primary caregiver who:

- a. Is at least 18 years of age.
- b. ~~Requests the patient's neurologist to submit~~ Submits a written certification to the department, provided to the patient pursuant to rule 641—154.2(85GA,SF2360 87GA,HF524),—a written recommendation and signed by the neurologist patient's health care practitioner certifying that the patient may benefit from the medical use of cannabidiol pursuant to 2014 Iowa Acts, Senate File 2360, section 4 is suffering from a debilitating medical condition.

c. ~~Is listed as a primary caregiver on the application form submitted to the department,~~ Submits an application as a primary caregiver for each patient for whom the person is the primary caregiver. The primary caregiver application must be on a form created by the department in consultation with the department of transportation and available at the department's Web site (www.idph.state.ia.us www.idph.iowa.gov) that contains all of the following:

- (1) The primary caregiver's full legal name, residence address, mailing address (if different from the primary caregiver's residence address), telephone number, date of birth, and sex designation. The primary caregiver shall not provide as a mailing address an address for which a forwarding order is in place.
- (2) The patient's full legal name, date of birth, and parent or legal guardian's name if the patient is under the age of 18.
- (3) A copy of the primary caregiver's valid photo identification. Acceptable photo identification includes:
 1. A valid Iowa driver's license,
 2. A valid Iowa nonoperator's identification card,

PUBLIC HEALTH DEPARTMENT[641](cont'd)

3. If the primary caregiver is not a resident of the state of Iowa, a valid state-issued driver's license or nonoperator's identification card issued by a state other than Iowa, or

4. An alternative form of valid photo identification. A primary caregiver who possesses or is eligible for a driver's license or a nonoperator's identification card shall present such document as valid photo identification. A primary caregiver who is ineligible to obtain a driver's license or a nonoperator's identification card may apply for an exemption and request submission of an alternative form of valid photo identification. A primary caregiver who applies for an exemption is subject to verification of the primary caregiver's identity through a process established by the department and the department of transportation to ensure the genuineness, regularity, and legality of the alternative form of valid photo identification.

(4) Full name, address, and telephone number of the patient's ~~neurologist~~ health care practitioner.

(5) An attestation as to the truthfulness and accuracy of the information provided by the primary caregiver on the application.

d. Has not been convicted of a disqualifying felony offense.

e. Submits the required fee, as described in subrule 154.12(2).

154.4(2) Upon the completion, verification, and approval of the primary caregiver's application, the department shall notify the department of transportation that the primary caregiver may be issued a medical cannabidiol registration card.

154.4(3) A medical cannabidiol registration card issued to a primary caregiver by the department of transportation shall contain all of the following:

a. The primary caregiver's full legal name, current residence address, date of birth, and sex designation, as shown on the primary caregiver's state-issued driver's license, nonoperator's identification card, or alternative form of valid photo identification provided pursuant to paragraph 154.4(1) "c"(3)"4." If the primary caregiver's name, current residence address, date of birth, or sex designation has changed since issuance of the primary caregiver's Iowa-issued driver's license, nonoperator's identification card, or other form of valid photo identification, the primary caregiver shall first update the primary caregiver's Iowa-issued driver's license or nonoperator's identification card according to the procedures set forth in 761—subrule 605.11(2), 761—subrule 605.25(4), or rule 761—630.3(321) or update the alternative form of valid photo identification in accordance with the process of the issuing agency.

b. The date of issuance and the date of expiration, which shall be one year from the date of issuance.

c. A distinguishing registration number that is not the primary caregiver's social security number.

d. The medical cannabidiol registration number for each patient in the primary caregiver's care. This number shall not be the primary caregiver's or patient's social security number. If the patient in the primary caregiver's care is under the age of 18, the full name of the patient's parent or legal guardian shall be printed on the primary caregiver's registration card in lieu of the patient's medical cannabidiol registration number.

~~e.~~ e. The primary caregiver's signature. The signature shall be without qualification and shall contain only the primary caregiver's usual signature without any other titles, characters, or symbols. The primary caregiver's signature certifies, under penalty of perjury and pursuant to the laws of the state of Iowa, that the statements made and information provided in the primary caregiver's application for a medical cannabidiol registration card are true and correct. The primary caregiver's signature shall be captured electronically.

e. f. A color photograph of the primary caregiver.

f. g. A statement that the medical cannabidiol registration card is not valid for identification purposes.

~~g.~~ h. A statement distinguishing the medical cannabidiol registration cardholder as a primary caregiver.

~~h.~~ The full name of each patient in the primary caregiver's care, as approved by the department in its notice to the department of transportation.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

~~154.4(4) A primary caregiver in possession of a valid cannabidiol registration card issued pursuant to this rule shall not possess a quantity of cannabidiol oil in excess of 32 ounces per patient. A patient who is 18 years of age or older must have an approved application and a distinguishing medical cannabidiol registration number that is not the patient's social security number prior to the issuance of a medical cannabidiol registration card to the patient's primary caregiver.~~

~~154.4(5) An authorization to use, or to act as a primary caregiver for a patient authorized to use, cannabidiol or marijuana for medicinal purposes issued by another state, territory, or jurisdiction does not satisfy the requirements of 2014 Iowa Acts, Senate File 2360 2017 Iowa Acts, House File 524, or these rules for the issuance of a medical cannabidiol registration card.~~

ITEM 5. Amend rule 641—154.5(85GA,SF2360) as follows:

~~641—154.5(85GA,SF2360 87GA,HF524) Tamperproofing.~~ The department of transportation shall issue a medical cannabidiol registration card by a method or process which prevents as nearly as possible the alteration, reproduction, or superimposition of a photograph on the cannabidiol registration card without ready detection.

ITEM 6. Amend rule 641—154.6(85GA,SF2360) as follows:

~~641—154.6(85GA,SF2360 87GA,HF524) Denial and cancellation.~~ The department may deny an application for a medical cannabidiol registration card, or may cancel or direct the department of transportation to cancel a medical cannabidiol registration card, for any of the following reasons:

1. Information contained in the application is illegible, incomplete, falsified, misleading, deceptive, or untrue.

2. The department or the department of transportation is unable to verify the identity of the applicant from the photo identification or other documentation presented pursuant to paragraph 154.3(1)“d”(2)“3” or 154.4(1)“c”(3)“4.”

3. The applicant violates or fails to satisfy any of the provisions of 2014 Iowa Acts, Senate File 2360 2017 Iowa Acts, House File 524, or these rules.

ITEM 7. Amend rule 641—154.7(85GA,SF2360) as follows:

~~641—154.7(85GA,SF2360 87GA,HF524) Appeal.~~ If the department denies an application for or cancels a medical cannabidiol registration card, the department shall inform the applicant or cardholder of the denial or cancellation and state the reasons for the denial or cancellation in writing. An applicant or cardholder may appeal the denial or cancellation of a medical cannabidiol registration card by submitting a request for appeal to the department by certified mail, return receipt requested, within 20 days of receipt of the notice of denial or cancellation. The department's address is Iowa Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075. Upon receipt of a request for appeal, the department shall forward the request within five working days to the department of inspections and appeals. A contested case hearing shall be conducted in accordance with 641—Chapter 173.

ITEM 8. Amend rule 641—154.8(85GA,SF2360) as follows:

~~641—154.8(85GA,SF2360 87GA,HF524) Duplicate card.~~

~~154.8(1) Lost, stolen, or destroyed card.~~ To replace a medical cannabidiol registration card that is lost, stolen, or destroyed, a cardholder shall present to the department of transportation the cardholder's valid state-issued driver's license, nonoperator's identification card, or alternative form of valid photo identification provided pursuant to paragraph 154.3(1)“d”(2)“3” or 154.4(1)“c”(3)“4.”

~~154.8(2) Change in card information and voluntary replacement.~~

~~a.~~ To replace a medical cannabidiol registration card that is damaged, the cardholder shall surrender to the department of transportation the card to be replaced and present the cardholder's valid state-issued driver's license, nonoperator's identification card, or alternative form of valid photo identification provided pursuant to paragraph 154.3(1)“d”(2)“3” or 154.4(1)“c”(3)“4.”

PUBLIC HEALTH DEPARTMENT[641](cont'd)

b. A patient or primary caregiver to whom a medical cannabidiol registration card is issued shall notify the department of a change in current residence address, name, or sex designation listed on the card, within ten calendar days of the change. To replace a medical cannabidiol registration card to change the current residence address, name, or sex designation listed on the card, the cardholder shall surrender to the department of transportation the card to be replaced and present a valid state-issued driver's license, nonoperator's identification card, or alternative form of valid photo identification provided pursuant to paragraph 154.3(1) "d"(2)"3" or 154.4(1) "c"(3)"4" that has been updated according to the procedures established by the state or agency of issuance to reflect the requested residence address, name, or sex designation.

c. To replace a medical cannabidiol registration card held by a primary caregiver to change ~~the patient or patients~~, add, or remove a patient's medical cannabidiol registration number or the name of a patient's parent or legal guardian listed on the primary caregiver's card, the primary caregiver shall submit a new application to the department pursuant to rule 641—154.4(85GA,SF2360 87GA,HF524). A medical cannabidiol registration card issued pursuant to this paragraph shall not be considered a duplicate card.

154.8(3) Expiration date. A duplicate medical cannabidiol registration card shall have the same expiration date as the medical cannabidiol registration card being replaced, changed, or amended.

ITEM 9. Amend rule 641—154.9(85GA,SF2360) as follows:

641—154.9(85GA,SF2360 87GA,HF524) Renewal. A medical cannabidiol registration card shall be valid for one year from the date of issuance unless canceled pursuant to rule 641—154.6(85GA,SF2360 87GA,HF524).

154.9(1) A cardholder seeking renewal of a medical cannabidiol registration card shall submit a renewal application and fee to the department at least 60 days prior to the date of expiration.

a. A patient applying for renewal of a medical cannabidiol registration card shall submit a renewal application and fee to the department on a form approved by the department.

b. A primary caregiver applying for a renewal of a medical cannabidiol registration card shall submit a renewal application and fee to the department on a form approved by the department.

154.9(2) A cardholder who fails to renew the medical cannabidiol registration card may not lawfully possess medical cannabidiol pursuant to this chapter.

ITEM 10. Amend rule 641—154.10(85GA,SF2360) as follows:

641—154.10(85GA,SF2360 87GA,HF524) Confidentiality. The department shall maintain a confidential file of the names of each patient to or for whom the department approves the issuance of a medical cannabidiol registration card and the name of each primary caregiver to whom the department issues a medical cannabidiol registration card under ~~2014 Iowa Acts, Senate File 2360, section 5~~ 2017 Iowa Acts, House File 524, section 7.

154.10(1) Personally identifiable information of patients and primary caregivers shall be maintained as confidential and is not accessible to the public. The department and the department of transportation shall release aggregate and statistical information regarding the medical cannabidiol act registration card program in a manner which prevents the identification of any patient or primary caregiver.

154.10(2) Personally identifiable information of patients and primary caregivers may be disclosed under the following limited circumstances:

a. To authorized employees or agents of the department and the department of transportation as necessary to perform the duties of the department and the department of transportation pursuant to ~~this chapter~~ 2017 Iowa Acts, House File 524.

b. To authorized employees of state or local law enforcement agencies located in Iowa, solely for the purpose of verifying that a person is lawfully in possession of a medical cannabidiol registration card issued pursuant to ~~this chapter~~ 2017 Iowa Acts, House File 524.

c. To a patient, primary caregiver, or ~~neurologist~~ health care practitioner, upon written authorization of the patient or primary caregiver.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 11. Amend rule 641—154.11(85GA,SF2360) as follows:

641—154.11(85GA,SF2360 87GA,HF524) Agreement with department of transportation. The department may enter into a chapter 28E agreement with the department of transportation to facilitate the issuance of medical cannabidiol registration cards. The agreement may include provisions which govern the issuance, denial, and cancellation of medical cannabidiol registration cards, ~~and~~ the sharing of information between the department and the department of transportation, and reimbursement for costs incurred by the department of transportation for issuing the card.

ITEM 12. Adopt the following new rule 641—154.12(87GA,HF524) as follows:

641—154.12(87GA,HF524) Fees. All fees are nonrefundable.

154.12(1) Patient medical cannabidiol registration card fee.

a. Each application fee is \$100 unless the patient qualifies for a reduced fee as described in paragraph 154.12(1) "b."

b. Each reduced application fee is \$25 if the patient attests to receiving social security disability benefits, supplemental security income payments, or is enrolled in the medical assistance program as defined in rule 641—154.1(87GA,HF524).

c. Each renewal fee is the same as the initial card application fee.

154.12(2) Primary caregiver medical cannabidiol registration card fee.

a. Each application fee is \$25.

b. Each renewal fee is \$25.

ITEM 13. Adopt the following new rule 641—154.13(87GA,HF524) as follows:

641—154.13(87GA,HF524) Use of medical cannabidiol—smoking prohibited. A patient shall not consume medical cannabidiol possessed or used pursuant to 2017 Iowa Acts, House File 524, by smoking medical cannabidiol.

ITEM 14. Adopt the following new rule 641—154.14(87GA,HF524) as follows:

641—154.14(87GA,HF524) Form and quantity of medical cannabidiol.

154.14(1) Patient. A patient in possession of a valid medical cannabidiol registration card issued pursuant to this chapter shall not possess a quantity of medical cannabidiol in excess of 32 ounces.

154.14(2) Primary caregiver. A primary caregiver in possession of a valid medical cannabidiol registration card issued pursuant to this chapter shall not possess a quantity of medical cannabidiol in excess of 32 ounces for each patient for whom the person is registered as a primary caregiver.

154.14(3) Form and quantity. The form and quantity of medical cannabidiol authorized in this rule may be modified pursuant to recommendations by the medical cannabidiol board established pursuant to 2017 Iowa Acts, House File 524, and subsequent approval of the recommendations by the board of medicine.

ITEM 15. Amend **641—Chapter 154**, implementation sentence, as follows:

These rules are intended to implement ~~2014 Iowa Acts, Senate File 2360~~ 2017 Iowa Acts, House File 524.

[Filed Emergency 6/13/17, effective 6/13/17]

[Published 7/5/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.

ARC 3195C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.106A and 15.411, the Economic Development Authority hereby amends Chapter 106, “Small Business Innovation Research and Technology Transfer Outreach Program,” Iowa Administrative Code.

This adopted rule making amends the rules governing the Small Business Innovation Research and Small Business Technology Transfer Programs (SBIR/STTR). The amendments are based on changes made to Iowa Code section 15.411 by 2016 Iowa Acts, House File 2443, division III. The amendments primarily do four things: first, as required by House File 2443, raise the maximum award amount from \$25,000 to \$100,000 and allow the same applicant to receive more than one award; second, define the term “award”; third, strike paragraph 106.4(2)“b” to remove the requirement that the Iowa innovation corporation must develop an online platform; and fourth, revise paragraph 106.4(2)“c” to remove the requirement that the corporation must work with the program administrator at the office of intellectual property and technology transfer at Iowa State University in providing technical assistance. The amendments also clarify language in the rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2938C** on February 15, 2017. The Authority did not receive any written or oral comments. These amendments are identical to those published under Notice.

The Economic Development Authority Board adopted these amendments on April 21, 2017.

This rule making does not have any fiscal impact to the state of Iowa.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 15.411.

These amendments will become effective August 9, 2017.

The following amendments are adopted.

ITEM 1. Amend subrule 106.2(2) as follows:

106.2(2) The goals of providing this assistance are to increase the number of successful ~~phase II small business innovation research grant and contract~~ proposals in the state, increase the amount of such ~~grant~~ funds awarded in the state, stimulate subsequent investment by industry, venture capital, and other sources, and encourage businesses to commercialize promising technologies.

ITEM 2. Amend rule 261—106.3(15) as follows:

261—106.3(15) Definitions. As used in this chapter, unless the context otherwise requires:

“*Applicant*” means a business applying to the authority for assistance under the program.

“*Assistance*” means technical and financial assistance available under the program.

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*Award*” means SBIR/STTR grant and contract funds awarded by federal agencies.

“*Board*” means the members of the economic development authority appointed by the governor and in whom the powers of the authority are vested pursuant to Iowa Code section 15.105.

“*Committee*” means the technology commercialization committee established by the board pursuant to 261—Chapter 1.

“*Corporation*” means the Iowa innovation corporation created pursuant to Iowa Code section 15.107.

“*Financial assistance*” means assistance provided only from the funds, rights, and assets legally available to the authority and includes but is not limited to assistance in the form of grants, loans, forgivable loans, and royalty agreements.

“*Innovative business*” means the same as defined in Iowa Code section 15E.52(1) “c.”

“*Program*” means the small business innovation research and technology transfer outreach program established pursuant to Iowa Code section 15.411.

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“SBIR/STTR” means the federal Small Business Innovation Research and Small Business Technology Transfer Programs.

ITEM 3. Amend rule 261—106.4(15) as follows:

261—106.4(15) Program description, application procedures, and delegation of functions.

106.4(1) General description. The program provides technical assistance and financial assistance to ~~businesses~~ applicants seeking SBIR/STTR funding. All awards of financial assistance must ultimately be approved by the board, after a recommendation by the committee, and ~~a contract~~ an agreement must be entered into with the authority before moneys will be disbursed.

106.4(2) Program components and activities. The program has two primary components, a technical assistance component and a financial assistance component, both of which are intended to ~~win more~~ increase the number of phase I, and phase II, and fast track SBIR/STTR awards and fast track grants for Iowa businesses. The corporation shall be the primary provider of technical assistance to ~~businesses~~ applicants and shall also work with the authority to provide financial assistance.

a. In providing technical assistance, the corporation shall develop a pre-proposal submission component that facilitates expert peer reviews from commercial reviewers with in-depth market knowledge. The resulting reviews should provide the business applicant with a set of recommendations and tips for troubleshooting SBIR/STTR proposals. The corporation shall ensure that ~~such businesses~~ the applicants develop and implement recommendations for their proposals based on industry best practices.

~~*b.* The corporation shall also develop a service component that includes an online platform to provide information to regional SBIR/STTR applicants, researchers, and entrepreneurs. In connection with this platform, the corporation shall identify, promote, and assist all highly qualified commercially relevant companies that are discovered through the platform and shall connect them to other investment programs and investors in the region.~~

~~*c. b.* In providing the technical assistance described in this subrule, the corporation shall work in conjunction with the program administrator of the office of intellectual property and technology transfer at Iowa State University. The following services shall be provided as a result of this collaboration The corporation shall provide services that include the following:~~

(1) Detailed outlines and other tools to make the drafting of a proposal and other accompanying documentation less daunting.

(2) Reviews and critiques of iterative drafts to improve the structure and narrative of both the research and the commercialization plans.

(3) Evaluation of budgets and budget justifications to produce stronger applications and avoid “leaving money on the table.”

(4) Assistance with the electronic registrations and the application submission process.

~~*c.*~~ *c.* In working with the authority to provide financial assistance, the corporation shall perform the functions delegated pursuant to subrule 106.4(4).

106.4(3) Application and award procedures. Eligible businesses applicants may submit applications to the authority for financial assistance. To be eligible, ~~a business~~ an applicant must meet the requirements in rule 261—106.6(15). The applications will receive an initial review to confirm program eligibility before being sent to the committee for a recommendation on funding. The committee will provide its recommendation to the board for a final determination on the provision of financial assistance. The board may approve, deny, or defer each application for financial assistance under the program. The board will consider applications for financial assistance on a first-come, first-served basis. If the board approves funding for ~~a business~~ an applicant, the authority will prepare a required ~~contract~~ agreement specifying the terms and conditions under which the financial assistance is to be provided to the business applicant.

106.4(4) Delegation of certain administrative functions to the corporation. The authority will delegate certain administrative functions of the program to the corporation. The functions that will be delegated are:

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a. The initial application review process, including an analysis of whether the business applicant meets all requirements of eligibility under the program and a recommendation on the amount of financial assistance to be provided and under what terms and conditions.

b. The tracking and monitoring of the business's applicant's SBIR/STTR application progress as well as the eventual outcome. The corporation shall report annually to the authority on the results of the program.

c. The tracking and monitoring of contract agreement terms and conditions for applicants receiving financial assistance under the program.

d. The provision of technical assistance as described in subrule 106.4(2).

106.4(5) *Administrative functions not delegated.* The authority will retain, and not delegate, the performance of the following functions: (1) the final determination as to whether to approve, deny, or defer an award of financial assistance; (2) the disbursement of moneys provided for in an award of financial assistance; (3) the final determination as to whether there is a default in the terms of a contract an agreement entered into under the program, including all decisions regarding appropriate remedies for such a default; and (4) any other function not clearly delegated to the corporation pursuant to subrule 106.4(4).

ITEM 4. Amend subrule 106.5(2) as follows:

106.5(2) *Individual applicant limitation.* The authority will not award more than ~~\$25,000~~ \$100,000 in financial assistance to any applicant for any individual federal SBIR/STTR award. ~~A business shall not receive more than one award of financial assistance under the program.~~

ITEM 5. Amend subrule 106.6(1) as follows:

106.6(1) The business applicant must be an innovative business.

ITEM 6. Amend subrule 106.6(2) as follows:

106.6(2) The business applicant must have a reasonable likelihood of receiving SBIR/STTR grant funds, must be likely to stimulate subsequent investment by industry, venture capital, and other sources, and must be likely to commercialize some promising technology.

ITEM 7. Amend rule 261—106.7(15) as follows:

261—106.7(15) Contract Agreement and report information required.

106.7(1) *Contract Agreement required.* An applicant awarded financial assistance under the program shall enter into a ~~contract~~ an agreement with the authority for the receipt of such funds. The authority will include in the ~~contract~~ agreement all terms and conditions for receipt of the funds, including any terms recommended by the corporation. The tracking and monitoring of the ~~contract~~ agreement terms will be delegated to the corporation. The corporation shall provide regular reports to the authority on the progress of the applicant and on the results of the tracking and monitoring. The authority will make the final determination as to compliance with the terms of the ~~contract~~ agreement and as to whether and when to disburse funds to the applicant.

106.7(2) *Reporting information required.* An applicant may be required to submit all information necessary for the authority to compile a report on the results of the program. The authority will include terms in the required ~~contract~~ agreement effectuating this requirement.

[Filed 6/5/17, effective 8/9/17]

[Published 7/5/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.

ARC 3196C**EDUCATIONAL EXAMINERS BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 1, “General,” Chapter 11, “Complaints, Investigation, Contested Case Hearings,” Chapter 12, “Fees,” Chapter 13, “Issuance of Teacher Licenses and Endorsements,” Chapter 18, “Issuance of Administrator Licenses and Endorsements,” Chapter 20, “Renewals,” and Chapter 22, “Authorizations,” Iowa Administrative Code.

These amendments concern inconsistencies and unnecessary language identified during a review of the Board’s rules. These amendments correct language regarding appointment of the Board’s Executive Director, prohibit withdrawal of ethics complaints that are reported pursuant to the mandatory reporting requirements under Iowa Code section 272.15, remove fees no longer collected, and make other minor corrections.

These amendments were published under Notice of Intended Action in the April 12, 2017, Iowa Administrative Bulletin as **ARC 3012C**. A public hearing was held on May 3, 2017. No one attended the public hearing, and no written comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments are subject to waiver pursuant to 282—Chapter 6.

The Board of Educational Examiners adopted these amendments on June 16, 2017.

After analysis and review of this rule making, there is no anticipated impact on jobs.

These amendments are intended to implement Iowa Code section 272.2(1)“a.”

These amendments will become effective August 9, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 282—1.2(272,17A) as follows:

282—1.2(272,17A) Organization and method of operation.

1.2(1) and **1.2(2)** No change.

1.2(3) *Executive director.* ~~The executive director is appointed by the board and acts as executive head of the agency.~~ The governor shall appoint an executive director of the board subject to confirmation by the senate. The executive director shall possess a background in education licensure and administrative experience and shall serve at the pleasure of the governor. The executive director acts as executive head of the agency and is responsible for the administration of the board.

1.2(4) and **1.2(5)** No change.

This rule is intended to implement Iowa Code chapter 272.

ITEM 2. Amend rule 282—11.4(17A,272) as follows:

282—11.4(17A,272) Complaint.

11.4(1) to **11.4(3)** No change.

11.4(4) *Amendment or withdrawal of complaint.* A complaint or any specification thereof may be amended or withdrawn by the complainant at any time, unless the complaint was filed in accordance with the mandatory reporting requirements set forth in Iowa Code section 272.15(1). The parties to a complaint may mutually agree to the resolution of the complaint at any time in the proceeding prior to issuance of a final order by the board. The resolution must be committed to a written agreement and filed with the board. The agreement is not subject to approval by the board, but shall be acknowledged by the board and may be incorporated into an order of the board.

11.4(5) to **11.4(9)** No change.

ITEM 3. Amend rule 282—12.3(272) as follows:

282—12.3(272) Evaluation fee. Each application from an out-of-state institution for initial licensure shall include, in addition to the basic fee for the issuance of a license, a one-time nonrefundable \$60

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

evaluation fee. ~~Each application or request for a statement of professional recognition shall include a one-time nonrefundable \$60 evaluation fee.~~

ITEM 4. Amend rule 282—12.6(272) as follows:

282—12.6(272) Late fees.

12.6(1) An additional fee of \$25 per calendar month, not to exceed \$150, shall be imposed if an application for renewal or conversion ~~of a Class A, B, or E license or a statement of professional recognition (SPR)~~ is submitted after the date of expiration of a practitioner's license. Waiver of the late fee will be granted only upon a showing of extraordinary circumstances rendering imposition of the fee unreasonable.

12.6(2) and **12.6(3)** No change.

ITEM 5. Amend rule 282—12.8(272) as follows:

282—12.8(272) Portfolio review and evaluation fees fee. ~~The fee for review and evaluation of an applicant portfolio is set as follows:~~

~~**12.8(1)** For the professional education core, the portfolio review and evaluation fee shall be \$500.~~

~~**12.8(2)** For content endorsement, the portfolio review and evaluation fee shall be \$250.~~

ITEM 6. Amend rule 282—13.17(272) as follows:

282—13.17(272) Specific requirements for exchange licenses.

13.17(1) *Teacher exchange license.*

a. For an applicant applying under 13.5(2), a ~~one-year~~ two-year nonrenewable exchange license may be issued to the applicant under any of the following conditions:

(1) to (3) No change.

b. No change.

13.17(2) and **13.17(3)** No change.

ITEM 7. Amend rule 282—18.4(272) as follows:

282—18.4(272) General requirements for an administrator license.

18.4(1) to **18.4(3)** No change.

18.4(4) *Specific requirements for an initial administrator license for applicants who have completed a professional service endorsement.* An initial administrator license valid for one year may be issued to an applicant who:

a. to e. No change.

f. Has completed the professional education core in 281—paragraphs ~~79.15(5)“b”~~ 79.15(5)“a” to “k”; and

g. No change.

ITEM 8. Amend rule 282—18.6(272) as follows:

282—18.6(272) Specific requirements for an administrator prepared out of state. An applicant seeking Iowa licensure who completes an administrator preparation program from a recognized non-Iowa institution shall verify the requirements of rules 282—18.1(272) and 282—18.4(272) through traditional course-based preparation program and transcript review. A recognized non-Iowa administrator preparation institution is one that is state-approved and is accredited by the regional accrediting agency for the territory in which the institution is located. Applicants must hold and submit a copy of a valid or expired regular administrator certificate or license in the state in which the preparation was completed, exclusive of a temporary, emergency or substitute license or certificate.

18.6(1) *Administrator exchange license.* A one-year nonrenewable administrator exchange license may be issued to an individual who has not met any of the following requirements:

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

a. Professional core requirements. The applicant has not completed all of the required courses in the professional core in 281—subrules 79.15(2) and 79.15(3) and 281—paragraphs ~~79.15(5) “b”~~ 79.15(5) “a” to “k.”

b. to d. No change.

18.6(2) No change.

ITEM 9. Amend rule 282—20.8(272) as follows:

282—20.8(272) Specific renewal requirements for the initial administrator license. In addition to the provisions set forth in this rule, an applicant must meet the general requirements set forth under rule 282—20.3(272).

20.8(1) Requirements. If an applicant meets all requirements for the professional administrator license except for the requirements in 282—subrule ~~18.4(1)~~ 18.5(3), the initial administrator license may be renewed upon written request. A second renewal may be granted if the holder of the initial administrator license has not met the requirements in 282—subrule ~~18.4(1)~~ 18.5(3) and if the license holder can provide evidence of employment as a PK-12 administrator, which meets the experience requirement.

20.8(2) No change.

ITEM 10. Amend rule 282—22.3(272) as follows:

282—22.3(272) School business official authorization.

22.3(1) to 22.3(5) No change.

22.3(6) Validity.

a. The initial school business official authorization shall be valid for two years ~~from the date of issuance.~~

b. The standard school business official authorization shall be valid for three years, ~~and it shall expire three years from the date of issuance on the last day of the practitioner’s birth month.~~

22.3(7) to 22.3(9) No change.

ITEM 11. Amend rule 282—22.5(272) as follows:

282—22.5(272) Preliminary native language teaching authorization.

22.5(1) to 22.5(3) No change.

22.5(4) Validity. This authorization is valid for three years. ~~No Class B licenses~~ conditional licenses may be issued to applicants holding the preliminary native language teaching authorization. ~~No additional endorsement areas may be added unless the requirements in 22.5(3) are met.~~

22.5(5) to 22.5(8) No change.

[Filed 6/20/17, effective 8/9/17]

[Published 7/5/17]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.

ARC 3197C

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 13, “Issuance of Teacher Licenses and Endorsements,” and Chapter 24, “Paraeducator Certificates,” Iowa Administrative Code.

As part of the Board’s annual review of endorsement requirements, endorsement review committees were formed whose members included current teachers, administrators, education stakeholder groups,

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

and the Iowa Department of Education. Changes recommended by the review committees are adopted by the Board in the following amendments:

1. Rescind the rules for the PK-3 endorsement that has since been updated and replaced.
2. Revise the elementary education endorsement to reflect recent legislation to address the need for increased teacher preparation regarding reading difficulties, including dyslexia.
3. Revise the multioccupations endorsement to make it more attainable for current teachers.
4. Create a new career and technical education (CTE) technology endorsement to reflect the Board's desire to recognize specified technology courses as part of a comprehensive CTE program and to have highly qualified instructors teaching the courses moving forward. The amendments also align with the CTE redesign outlined in 2016 Iowa Acts, House File 2392, specifically to align secondary CTE offerings to in-demand occupations to meet the needs of employers. The CTE technology endorsement will also support the Future Ready Iowa initiative outlined by then Governor Branstad and Lt. Governor Reynolds last fall.
5. Create a new autism spectrum paraeducator certificate.

These amendments were published under Notice of Intended Action in the May 10, 2017, Iowa Administrative Bulletin as **ARC 3047C**. A public hearing was held on May 31, 2017. No one attended the public hearing. The board received written comments from 32 individuals regarding the amendment pertaining to dyslexia. The majority of these comments were supportive. Some commenters asked the Board to include more specificity in requirements for teacher preparation programs or require a stand-alone course related to teaching students with dyslexia. These amendments are identical to those published under Notice of Intended Action.

These amendments are subject to waiver pursuant to 282—Chapter 6.

The Board of Educational Examiners adopted these amendments on June 16, 2017.

After analysis and review of this rule making, there is no anticipated impact on jobs.

These amendments are intended to implement Iowa Code section 272.2(1)“a.”

These amendments will become effective August 9, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 282—13.26(272) as follows:

282—13.26(272) Requirements for elementary endorsements.

13.26(1) and **13.26(2)** No change.

13.26(3) Teacher—prekindergarten through grade three, including special education.

a.—Authorization. ~~The holder of this endorsement is authorized to teach children from birth through grade three.~~

b.—Content.

~~(1) Child growth and development.~~

~~1.—Understand the nature of child growth and development for infants and toddlers (birth through age 2), preprimary (age 3 through age 5) and primary school children (age 6 through age 8), both typical and atypical, in areas of cognition, language development, physical motor, social-emotional, aesthetics, and adaptive behavior.~~

~~2.—Understand individual differences in development and learning including risk factors, developmental variations and developmental patterns of specific disabilities and special abilities.~~

~~3.—Recognize that children are best understood in the contexts of family, culture and society and that cultural and linguistic diversity influences development and learning.~~

~~(2) Developmentally appropriate learning environment and curriculum implementation.~~

~~1.—Establish learning environments with social support, from the teacher and from other students, for all children to meet their optimal potential, with a climate characterized by mutual respect, encouraging and valuing the efforts of all regardless of proficiency.~~

~~2.—Appropriately use informal and formal assessment to monitor development of children and to plan and evaluate curriculum and teaching practices to meet individual needs of children and families.~~

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

~~3. — Plan, implement, and continuously evaluate developmentally and individually appropriate curriculum goals, content, and teaching practices for infants, toddlers, preprimary and primary children based on the needs and interests of individual children, their families and community.~~

~~4. — Use both child-initiated and teacher-directed instructional methods, including strategies such as small and large group projects, unstructured and structured play, systematic instruction, group discussion and cooperative decision making.~~

~~5. — Develop and implement integrated learning experiences for home-, center- and school-based environments for infants, toddlers, preprimary and primary children.~~

~~6. — Develop and implement integrated learning experiences that facilitate cognition, communication, social and physical development of infants and toddlers within the context of parent-child and caregiver-child relationships.~~

~~7. — Develop and implement learning experiences for preprimary and primary children with focus on multicultural and nonsexist content that includes development of responsibility, aesthetic and artistic development, physical development and well-being, cognitive development, and emotional and social development.~~

~~8. — Develop and implement learning experiences for infants, toddlers, preprimary, and primary children with a focus on language, mathematics, science, social studies, visual and expressive arts, social skills, higher thinking skills, and developmentally appropriate methodology.~~

~~9. — Develop adaptations and accommodations for infants, toddlers, preprimary, and primary children to meet their individual needs.~~

~~10. — Adapt materials, equipment, the environment, programs and use of human resources to meet social, cognitive, physical motor, communication, and medical needs of children and diverse learning needs.~~

~~(3) — Health, safety and nutrition.~~

~~1. — Design and implement physically and psychologically safe and healthy indoor and outdoor environments to promote development and learning.~~

~~2. — Promote nutritional practices that support cognitive, social, cultural and physical development of young children.~~

~~3. — Implement appropriate appraisal and management of health concerns of young children including procedures for children with special health care needs.~~

~~4. — Recognize signs of emotional distress, physical and mental abuse and neglect in young children and understand mandatory reporting procedures.~~

~~5. — Demonstrate proficiency in infant-child cardiopulmonary resuscitation, emergency procedures and first aid.~~

~~(4) — Family and community collaboration.~~

~~1. — Apply theories and knowledge of dynamic roles and relationships within and between families, schools, and communities.~~

~~2. — Assist families in identifying resources, priorities, and concerns in relation to the child's development.~~

~~3. — Link families, based on identified needs, priorities and concerns, with a variety of resources.~~

~~4. — Use communication, problem-solving and help-giving skills in collaboration with families and other professionals to support the development, learning and well-being of young children.~~

~~5. — Participate as an effective member of a team with other professionals and families to develop and implement learning plans and environments for young children.~~

~~(5) — Professionalism.~~

~~1. — Understand legislation and public policy that affect all young children, with and without disabilities, and their families.~~

~~2. — Understand legal aspects, historical, philosophical, and social foundations of early childhood education and special education.~~

~~3. — Understand principles of administration, organization and operation of programs for children from birth to age 8 and their families, including staff and program development, supervision and evaluation of staff, and continuing improvement of programs and services.~~

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

4. ~~Identify current trends and issues of the profession to inform and improve practices and advocate for quality programs for young children and their families.~~

5. ~~Adhere to professional and ethical codes.~~

6. ~~Engage in reflective inquiry and demonstration of professional self knowledge.~~

~~(6) Pre-student teaching field experiences. Complete 100 clock hours of pre-student teaching field experience with three age levels in infant and toddler, preprimary, and primary programs and in different settings, such as rural and urban, encompassing differing socioeconomic status, ability levels, cultural and linguistic diversity and program types and sponsorship.~~

~~(7) Student teaching. Complete a supervised student teaching experience of a total of at least 12 weeks in at least two different classrooms which include children with and without disabilities in two of three age levels: infant and toddler, preprimary, and primary.~~

13.26(4) Teacher—elementary classroom. Effective September 1, 2015, the following requirements apply to persons who wish to teach in the elementary classroom:

a. *Authorization.* The holder of this endorsement is authorized to teach in kindergarten and grades one through six.

b. *Content.*

(1) No change.

(2) At least 9 semester hours in literacy development, which must include:

1. Content:

• ~~Children's literature;~~

• ~~Oral and written communication skills for the twenty-first century.~~

• Oral and written communication development; and linguistics, including phonology and phonological awareness, sound-symbol association, syllable types, morphology, syntax and semantics, and the relationship of these components to typical and atypical reading development and reading instruction;

• Phonemic awareness;

• Word identification, including phonics and orthography;

• Fluency;

• Vocabulary;

• Comprehension;

• Writing mechanics;

• Writing conventions;

• Writing process;

• Children's literature.

2. Methods:

• Assessment, diagnosis and evaluation of student learning in literacy, including the knowledge of the signs and symptoms of dyslexia and other reading difficulties;

• Integration of the language arts (to include reading, writing, speaking, viewing, and listening);

• Integration of technology in teaching and student learning in literacy;

• Current best-practice, research-based approaches of literacy instruction strategies and instructional technology for designing and delivering effective instruction, including appropriate interventions, groupings, remediation, assistive technology, and classroom accommodations for all students including students with dyslexia and other difficulties;

• Classroom management as it applies to literacy methods;

• Pre-student teaching clinical experience in teaching literacy.

(3) to (9) No change.

ITEM 2. Amend rule 282—13.28(272) as follows:

282—13.28(272) Minimum content requirements for teaching endorsements.

13.28(1) to 13.28(32) No change.

13.28(33) *Multioccupations.*

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

a. Completion of any 5-12 endorsement and, in addition thereto, coursework in foundations of career and technical education, and coordination of cooperative programs, and ~~competency-based curriculum development.~~ work experience which meets one of the following:

(1) Four thousand hours of career and technical experience in two or more ~~occupations.~~ careers; or

(2) One thousand hours of work experience or externships in two or more careers and two or more years of teaching experience at the PK-12 level.

b. The multioccupations endorsement also authorizes the holder to supervise students in cooperative programs, ~~school-to-work~~ work-based learning programs, and similar programs in which the student is placed in school-sponsored, on-the-job situations.

13.28(34) CTE information technology. 5-12.

a. Authorization. The holder of this endorsement is authorized to teach career and technical education (CTE) information technology, CTE computer science, and CTE computer programming courses.

b. Program requirements. Applicants must hold a valid Iowa teaching license with at least one other teaching endorsement.

c. Content. A minimum of 12 semester hours of computer science to include coursework in the following:

(1) Data representation and abstraction to include primitive data types, static and dynamic data structures, and data types and stores.

(2) Designing, developing, testing and refining algorithms to include proficiency in two or more programming paradigms.

(3) Systems and networks to include operating systems, networks, mobile devices, and machine-level data representation.

d. Methods course. A content area methods course is required pursuant to 13.29(1). The course should include the following effective teaching and learning strategies for information technology:

(1) Curriculum development including recognizing and defining real-world computational problems; computing concepts and constructs; developing and using abstractions; creating, testing, and refining computational artifacts; and problem-solving strategies in computer science.

(2) Project-based methodologies that support active and authentic learning, fostering an inclusive computing culture, collaborative groupings, and opportunities for creative and innovative thinking.

(3) Communication about computing including multiple forms of media.

(4) Digital citizenship including the social, legal, ethical, safe and effective use of computer hardware, software, peripherals, and networks.

e. CTE methods.

(1) A minimum of six semester hours of career and technical curriculum and methods to include:

1. Foundations of career and technical education.

2. Methods of career and technical education.

3. Evaluation and assessment of career and technical programs.

(2) The CTE methods coursework is not required if the educator holds another career and technical endorsement.

f. Waiver of coursework requirements. During the first year of implementation, the coursework requirements may be waived if the practitioner demonstrates relevant content knowledge mastery and successful teaching experience in this endorsement area through criteria established by the board of educational examiners.

ITEM 3. Amend rule 282—24.4(272) as follows:

282—24.4(272) Paraeducator area of concentration. An area of concentration is not required but optional. Applicants must currently hold or have previously held an Iowa paraeducator generalist certificate. Applicants may complete one or more areas of concentration but must complete at least 45 clock hours in each area of concentration.

24.4(1) to 24.4(7) No change.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

24.4(8) Autism spectrum disorders. Under the direction and supervision of a qualified classroom teacher, the paraeducator shall successfully complete the following list of competencies.

a. Foundations. Under the supervision of a licensed education professional, the paraeducator will:

(1) Demonstrate an understanding of the components of education plans (individualized education program (IEP), behavior intervention plan (BIP), functional behavioral analysis (FBA), and Section 504 Plan).

(2) Identify common characteristics of students with autism spectrum disorder (communication, social, restricted interest and behavior) and how these characteristics compare to those of typical children.

b. Learning environment. Under the supervision of a licensed education professional, the paraeducator will:

(1) Assist in structuring the environment to meet the needs of students with autism spectrum disorder.

(2) Implement with integrity schedules and educational programs prescribed by the licensed teacher.

c. Content and instruction. Under the supervision of a licensed education professional, the paraeducator will:

(1) Implement the educational, academic, and communication accommodations, adaptations, and supports assigned by a teacher.

(2) Provide opportunities for students with autism spectrum disorders to initiate and respond to large interactions and small interactions in academic settings.

(3) Provide opportunities for students with autism spectrum disorders to initiate, respond to, and participate in interactions in large groups and small groups in authentic situations.

(4) Gather and maintain data on student academic performance as directed by a licensed teacher.

(5) Assist educational staff in developing accommodations and adaptations and self-determination skills to increase student independence.

d. Emotional and behavioral. Under the supervision of a licensed education professional, the paraeducator will:

(1) Understand and identify the function of a behavior (e.g., antecedents, behaviors, consequences).

(2) Collect data on student behavior and related environmental stimuli, based on the concepts of antecedents, behaviors and consequences.

(3) Implement antecedent strategies on student behavior, as defined by the licensed educator.

(4) Reinforce and practice replacement behaviors, as defined by the licensed educator.

(5) Respond to problem behaviors in a consistent manner, as defined by the licensed educator.

(6) Gather and maintain data on student social and behavioral performance, as directed by a licensed teacher.

e. Professional relationships. Under the supervision of a licensed education professional, the paraeducator will:

(1) Demonstrate the ability to support the viewpoints and perspectives of students with autism and be empathetic to the students' learning styles.

(2) Respond to challenging behaviors in a respectful, empathetic manner.

f. Ethical and professional practice. Under the supervision of a licensed education professional, the paraeducator will:

(1) Know and understand the expectations of confidentiality in regard to student information and social media usage.

(2) Know and understand the legal constructs of the IEP and the Individuals with Disabilities Education Act (IDEA).

[Filed 6/20/17, effective 8/9/17]

[Published 7/5/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.

ARC 3181C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 17, "Open Enrollment," Iowa Administrative Code.

These amendments are necessary to align Chapter 17 with legislative changes made in 2016 Iowa Acts, chapter 1036 (House File 2336). Two internal cross references and outdated terminology for students requiring special education are also corrected.

Notice of Intended Action was published in the April 26, 2017, Iowa Administrative Bulletin as **ARC 3031C**. Public comments were allowed until 4:30 p.m. on May 16, 2017. A public hearing was held on that date. No one attended the public hearing, and no written comments were received. These amendments are identical to those published under Notice of Intended Action.

An agencywide waiver provision is provided in 281—Chapter 4.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 282.18(7).

These amendments will become effective August 9, 2017.

The following amendments are adopted.

ITEM 1. Amend subrule 17.10(1) as follows:

17.10(1) Full-time pupils. Unless otherwise agreed to in the mediation under paragraph 17.4(6) "b," for full-time pupils, the resident district shall pay each year to the receiving district an amount equal to the sum of the state cost per pupil for the previous year; plus any moneys received for the pupil as a result of non-English speaking weighting provided by Iowa Code section 280.4 and; plus either the teacher leadership supplemental supplement state cost per pupil for the previous year as provided in Iowa Code section 257.9 257.9(11) or the teacher leadership supplement foundation aid allocation for fiscal year 2017 as provided in Iowa Code section 284.13(1) "e," whichever the district received, if both the district of residence and the receiving district received either of the supplements. If the pupil participating in open enrollment is also an eligible pupil under Iowa Code section 261E.6 (postsecondary enrollment options program), the receiving district shall pay the tuition reimbursement amount to an eligible postsecondary institution as provided in Iowa Code section 261E.7.

ITEM 2. Amend subrule 17.10(5) as follows:

17.10(5) Method of payment. These moneys shall be paid to the receiving district ~~on a quarterly basis by the first resident district according to the timeline in Iowa Code section 282.20(3) (on or before February 15 and July 15 of each year).~~ Payments shall be made to the receiving district in a timely manner. The district cost per pupil for nonspecial education students shall be the cost calculated each year for the school year preceding the school year for which the open enrollment takes place. Costs for special education students shall be as outlined in rule 281—17.11(282).

ITEM 3. Amend rule 281—17.11(282) as follows:

281—17.11(282) Special education students. If a parent/guardian requests open enrollment for a pupil requiring special education, as provided by Iowa Code chapter 256B, this request shall receive consideration under the following conditions. The request shall be granted only if the receiving district is able to provide within that district the appropriate special education program for that student in accordance with Iowa rules of special education, ~~281—41.84(256B,273,34CFR300)~~ 281—Chapter 41. This determination shall be made by the receiving district in consultation with the resident district and the appropriate area education agency(ies) before approval of the application. In a situation where the appropriateness of the program is in question, the pupil shall remain enrolled in the program of the resident district until a final determination is made. If the appropriateness of the special education program in the resident district is questioned by the parent, then the parent ~~should~~ may request a due process hearing as provided by ~~281—41.113(1)~~ 281—41.507(256B,34CFR300) or a mediation

EDUCATION DEPARTMENT[281](cont'd)

conference as provided by 281—41.506(256B,34CFR300). If the appropriateness of the special education program in the receiving district is at issue, the final determination of the appropriateness of a special education instructional program shall be the responsibility of the director of special education of the area education agency in which the receiving district is located, based upon the decision of a ~~diagnostic education~~ the child's individualized education program team, from the receiving district which shall include a representative from the resident district that has the authority to commit district resources, and which decision is subject to the parent's procedural safeguards.

District transportation requirements, parent/guardian responsibilities and, where applicable, financial assistance for an open enrollment special education pupil shall be as provided by rule 281—17.9(282).

The district of residence shall pay to the receiving district on ~~a quarterly basis~~ the schedule set forth in subrule 17.10(5) the actual costs incurred by the receiving district in providing the appropriate special education program. These costs shall be based on the current year expenditures with needed adjustments made in the ~~fourth quarter~~ final payment. The responsibility for ensuring that an appropriate program is maintained for an open enrollment special education pupil shall rest with the resident district. The receiving district and the receiving area education agency director shall provide, at least on an annual basis, evaluation reports and information to the resident district on each special education open enrollment pupil. The receiving district shall provide notice to the resident district of all staffings scheduled for each open enrollment pupil. For an open enrolled special education pupil where the receiving district is located in an area education agency other than the area education agency within which the resident district is located, the resident district and the receiving district are required to forward a copy of any approved open enrollment request to the director of special education of their respective area education agencies. Any moneys received by the area education agency of the resident district for an approved open enrollment special education pupil shall be forwarded to the receiving district's area education agency.

[Filed 6/9/17, effective 8/9/17]

[Published 7/5/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.

ARC 3180C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby rescinds Chapter 94, "Administrative Advancement and Recruitment Program," Iowa Administrative Code.

The statutory authority for this chapter was repealed by 2013 Iowa Acts, chapter 88, section 37.

Notice of Intended Action was published in the April 26, 2017, Iowa Administrative Bulletin as **ARC 3030C**. Public comments were allowed until 4:30 p.m. on May 16, 2017. A public hearing was held on that date. No one attended the public hearing. No written comments were received regarding this amendment. This amendment is identical to that published under Notice.

This amendment is not subject to waiver.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement 2013 Iowa Acts, chapter 88, section 37.

This amendment will become effective August 9, 2017.

The following amendment is adopted.

EDUCATION DEPARTMENT[281](cont'd)

Rescind and reserve **281—Chapter 94.**

[Filed 6/9/17, effective 8/9/17]

[Published 7/5/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.

ARC 3184C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," and Chapter 83, "Medicaid Waiver Services," Iowa Administrative Code.

Iowa's Medicaid program is evolving to create a single system of care to address the health care needs of the whole person, including the physical health, behavioral health, and long-term care services and supports. The purposes of these amendments are to deliver quality, patient-centered care and to create efficiencies. On April 1, 2016, the majority of Medicaid members began having their services coordinated through managed care organizations (MCOs). Members in the following programs are not included in this transition: the Health Insurance Premium Payment (HIPP) Program, programs for the medically needy, and programs for all-inclusive care for the elderly (PACE) enrollees, as well as members who are American Indian or Alaskan natives, or those who participate in the Medicare Savings Program.

These amendments are intended to implement changes related to managed care and provide technical clarification. Changes include:

- Replacing references to "service worker" with references to "designated case manager" as members of the AIDS/HIV, health and disability (H&D) and physical disability (PD) waivers will have community-based case managers through their MCOs or through fee-for-service Medicaid.

- Replacing outdated references to "Case Management Comprehensive Assessment" under the brain injury (BI), elderly, and children's mental health (CMH) waivers with references to a Department-approved comprehensive functional assessment tool that meets the requirements of Section 10202 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148) to enable MCOs and the Iowa Medicaid Enterprise (IME) to utilize the interRAI assessment tool or another Department-approved standardized assessment tool for level of care determinations for the six home- and community-based services (HCBS) waiver programs and the needs-based eligibility determinations for the HCBS habilitation program.

- Replacing outdated references to "service worker assessment" under the AIDS/HIV, H&D and PD waivers with references to Form 470-4694 for children under the age of four and, for all others, a Department-approved comprehensive functional assessment tool that meets the requirements of Section 10202 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148) to enable MCOs and IME to utilize the interRAI assessment tool or another Department-approved standardized assessment tool.

- Adding completion of Form 470-4694 for children under the age of five for the intellectual disability waiver.

- Adding three diagnoses for brain injury: cerebral edema, cerebral palsy, and status epilepticus.

- Adding definitions for "integrated health home" and "care coordinator" to the CMH waiver.

The Department implemented the IA Health Link Program on April 1, 2016. The majority of HCBS waiver members receive comprehensive care coordination through an MCO.

For state fiscal year 2017, funds were appropriated to be used to support the development and implementation of standardized assessment tools for persons with mental illness, an intellectual disability, a developmental disability, or a brain injury.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments allow for use of Form 470-4694 for children under the age of four and, for all others, the interRAI assessment tool in the AIDS/HIV, BI, CMH, elderly, H&D and PD waiver programs and the HCBS habilitation program, bringing the Department's rules into compliance with the 2013 legislative mandate, the recommendations of the redesign stakeholder groups, current practice, and Iowa's Balancing Incentive Program application.

Authorized by Section 10202 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148), the Balancing Incentive Program provides enhanced Federal Medical Assistance Percentages (FMAP) to states that spend less than 50 percent of long-term care dollars on care provided in home- and community-based settings. To qualify for these funds, states must implement three structural changes in their systems of community-based long-term services and supports (LTSS): a no wrong door/single entry point (NWD/SEP) eligibility determination and enrollment system; core standardized assessment instruments; and conflict-free case management. The Balancing Incentive Program requires the following of participating states: "development of core standardized assessment instruments for determining eligibility for non-institutionally-based long-term services and supports described in subsection (f)(1)(B), which shall be used in a uniform manner throughout the State, to determine a beneficiary's needs for training, support services, medical care, transportation, and other services, and develop an individual service plan to address such needs."

The IME and MCOs will use Form 470-4694 for children under the age of four and, for all others, the interRAI assessment tool for initial and annual assessments. The interRAI is a nationally recognized assessment tool that was developed for use with adults in home- and community-based settings. The instrument is generally used with the frail elderly or persons with a disability who are seeking or receiving formal health care and supportive services. The interRAI was first developed in 1994. Initially, it was designed to be compatible with the long-term care facilities system and was implemented in nursing homes.

The decision to use the interRAI was highly vetted by the Department. The development, selection, and use of a core standardized assessment (CSA) were part of the Balancing Incentive Program in Iowa. The CSA selection process started in May 2015, with statewide webinars and in-person listening and learning sessions designed to seek input from members, advocates, providers, and case managers. These listening and learning sessions were used to educate and inform individuals about various CSAs. After reviewing feedback and comments from the sessions, the Department selected the interRAI assessment tool for use with HCBS waiver and habilitation program members. The interRAI best matched the core domains of the Balancing Incentive Program criteria and included superior inter-rater reliability.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2920C** on February 1, 2017.

The Department received comments from one respondent during the public comment period. The respondent's comments and the Department's responses are as follows:

Comment 1: "Based on a request for public comment by DHS in April 2016 and the results thereof, Iowa Legal Aid understands that DHS has designated the interRAI Home Care (HC) for waiver populations (except the Intellectual Disability Waiver, which will use a SIS assessment), and has recommended that the MCOs use the interRAI Community Mental Health (CMH) for the children's mental health waiver and Habilitation waivers. The proposed changes in **ARC 2920C** do not specify which tools will be used to evaluate level of care, however. Instead, the proposed changes identify the assessment tools as 'A department-approved comprehensive functional assessment tool that meets the requirements of Section 10202 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148).' The assessment tools currently being used by the Department, and any tools that may be used by the Department in the future, should be both identified by name and also made available to the public. We request that DHS add language to the regulations in question that does the following: 1) designates the name of the assessment tool being used for any particular waiver program; and 2) requires DHS to make a copy available to the public upon request and on the DHS website. In addition, Iowa Legal Aid requests a copy of both assessment tools (InterRAI CMH and HC) that will be or are being used by the State and MCOs."

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The rules were also revised to provide that copies of all assessment tools are available upon request from the Department of Human Services. The Department cannot post the interRAI tools or the Supports Intensity Scale (SIS) tools on the Department's Web site, nor can it provide blank assessments because of copyright restrictions on those proprietary tools.

Specifically, the revisions to the rules are as follows:

1. Paragraph 78.27(2)"d" in Item 3 has been revised to read as follows:

"d. Needs assessment. The interRAI - Child and Youth Mental Health (ChYMH) for youth aged 16 to 18 or the interRAI - Community Mental Health (CMH) for those aged 19 and older has been completed, and based on information submitted on the information submission tool and other supporting documentation as relevant, the IME medical services unit has determined that the member is in need of home- and community-based habilitation services. The interRAI - Child and Youth Mental Health (ChYMH) and the interRAI - Community Mental Health (CMH) information submission tools are available on request from the IME medical services unit. Copies of the information submission tool for an individual are available to that individual from the individual's case manager, integrated health home care coordinator, or managed care organization. The designated case manager or integrated health home care coordinator shall:

"(1) Arrange for the completion of the interRAI, before services begin and annually thereafter.

"(2) Use the information submission tool and other supporting documentation as relevant to develop a comprehensive service plan as specified in subrule 78.27(4), before services begin and annually thereafter."

2. The introductory paragraph of 83.2(1)"d" in Item 4 has been revised to read as follows:

"d. The person must be certified as being in need of nursing facility or skilled nursing facility level of care or as being in need of care in an intermediate care facility for persons with an intellectual disability, based on information submitted on a completed information submission tool Form 470-4694 for children aged 3 and under, the interRAI - Pediatric Home Care (PEDS-HC) for those aged 4 to 20, or the interRAI - Home Care (HC) for those aged 21 to 64 and other supporting documentation as relevant. Form 470-4694, the interRAI - PEDS-HC and the interRAI - Home Care (HC) are available upon request from the IME medical services unit. Copies of the completed information submission tool for an individual are available to that individual from the individual's case manager or managed care organization."

3. Subparagraph (1) of paragraph 83.2(2)"a" in Item 5 has been revised to read as follows:

"(1) This service plan shall be based, in part, on information in the completed information submission tool listed in paragraph 83.2(1)'d' and other supporting documentation as relevant. The designated case manager shall have a face-to-face visit with the member at least quarterly."

4. The introductory paragraph of paragraph 83.22(1)"d" in Item 9 has been revised to read as follows:

"d. Certified as being in need of the intermediate or skilled level of care based, in part, on information submitted on the interRAI - Home Care (HC). The interRAI - Home Care (HC) is available on request from the IME medical services unit and other supporting documentation as relevant. Copies of the completed interRAI - Home Care (HC) for an individual are available to that individual from the individual's case manager or managed care organization."

5. Paragraph 83.23(3)"c" in Item 12 has been revised to read as follows:

"c. An applicant must be given the choice between elderly waiver services and institutional care. The applicant, guardian, or attorney in fact under a durable power of attorney for health care shall sign the information submission tool specified in 83.22(1)'d,' indicating that the applicant has elected waiver services."

6. The introductory paragraph and subparagraph (1) of paragraph 83.42(1)"b" in Item 13 have been revised to read as follows:

"b. Be certified in need of the level of care that, but for the waiver, would otherwise be provided in a nursing facility or hospital based, in part, on information submitted on a completed Form 470-4694 for children aged 3 and under, the interRAI - Pediatric Home Care (PEDS-HC) for those aged 4 to 20, or the interRAI - Home Care (HC) for those aged 21 and over and other supporting documentation as relevant. Form 470-4694, the interRAI - Pediatric Home Care (PEDS-HC), and the interRAI - Home Care (HC) are available on request from the IME medical services unit. Copies of the completed information

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submission tool for an individual are available to that individual from the individual's case manager or managed care organization.

“(1) The assessment as listed in 83.42(1) ‘b’ shall be completed when the person applies for waiver services, upon request to report a significant change in the person's condition, and annually for reassessment of the person's level of care.”

7. Paragraph 83.42(2)“a” in Item 14 has been revised to read as follows:

“a. The designated case manager shall review the assessment of the person's need for waiver services and determine the availability and appropriateness of services. This review shall be based, in part, on information in the completed information submission tool designated in 83.42(1) ‘b’ and other supporting documentation as relevant.”

8. An amendment to paragraph 83.82(1)“f” was added in new Item 23. The paragraph now reads as follows:

“f. Be determined by the IME medical services unit as in need of intermediate care facility for persons with an intellectual disability (ICF/ID), skilled nursing, or ICF level of care based on information submitted on a completed Form 470-4694 for children aged 3 and under, the interRAI - Pediatric Home Care (PEDS-HC) for those aged 4 to 20, or the interRAI - Home Care (HC) for those aged 21 and over and other supporting documentation as relevant. Form 470-4694, the interRAI - Pediatric Home Care (PEDS-HC), and the interRAI - Home Care (HC) are available on request from the IME medical services unit. Copies of the completed information submission for an individual are available to that individual from the individual's case manager or managed care organization.”

9. Paragraph 83.83(2)“c” in Item 24 has been revised to read as follows:

“c. An applicant shall be given the choice between waiver services and institutional care. The applicant or legal representative shall sign the applicable information submission tool listed in paragraph 83.82(1) ‘f,’ indicating that the applicant has elected home- and community-based services. This shall be arranged by the medical facility discharge planner or case manager.”

10. The introductory paragraph of subrule 83.87(3) in Item 26 has been revised to read as follows:

“**83.87(3) Annual assessment.** The IME medical services unit shall assess the member annually and certify the member's need for long-term care services. The IME medical services unit shall be responsible for determining the level of care based on the completed information submission tool listed in paragraph 83.82(1) ‘f’ and other supporting documentation as relevant.”

11. The introductory paragraph of paragraph 83.102(1)“h” in Item 27 has been revised to read as follows:

“h. Be in need of skilled nursing or intermediate care facility level of care based on information submitted on a completed interRAI - Pediatric Home Care (PEDS-HC) for those aged 18 to 20 or the interRAI - Home Care (HC) for those aged 21 and over and other supporting documentation as relevant. The interRAI - Pediatric Home Care (PEDS-HC) and the interRAI - Home Care (HC) are available on request from the IME medical services unit. Copies of the completed information submission for an individual are available to that individual from the individual's case manager or managed care organization.”

12. Subparagraph 83.102(2)“a”(1) in Item 28 has been revised to read as follows:

“(1) The designated case manager shall identify the need for service based on the needs of the applicant, as documented in the information submission tool listed in 83.102(1) ‘h,’ as well as the availability and appropriateness of services.”

13. The following paragraphs in subrule 83.103(2) in Item 29 have been revised.

Subparagraph (1) of paragraph “a” now reads as follows:

“(1) The discharge planner shall contact the member's managed care organization or designated case manager to arrange for completion of the appropriate information submission tool as listed in paragraph 83.102(1) ‘h.’”

Subparagraph (1) of paragraph “b” now reads as follows:

“(1) The applicant's managed care organization or the designated case manager shall arrange for the completion of the appropriate information submission tool as listed in paragraph 83.102(1) ‘h’ and submit it to the IME medical services unit.”

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Paragraph “d” now reads as follows:

“d. An applicant shall be given the choice between waiver services and institutional care. The applicant or the applicant’s parent, legal guardian, or attorney in fact under a durable power of attorney for health care shall sign the information submission tool, indicating that the applicant has elected home- and community-based services.”

14. The introductory paragraph of subrule 83.107(2) in Item 31 has been revised to read as follows:

“**83.107(2) Annual assessment.** The IME medical services unit or a managed care organization shall review the member’s need for continued care annually and recertify the member’s need for long-term care services, pursuant to paragraph 83.102(1) ‘h’ and the appeal process at rule 441—83.109(249A), based on the appropriate information submission tool as listed in paragraph 83.102(1) ‘h’ and other supporting documentation as relevant.”

15. Subrule 83.122(3) in Item 33 has been revised to read as follows:

“**83.122(3) Level of care.** The applicant must be certified as being in need of a level of care that, but for the waiver, would be provided in a psychiatric hospital serving children under the age of 21. The IME medical services unit or a managed care organization shall certify the applicant’s level of care annually based on information submitted on Form 470-4694, Case Management Comprehensive Assessment, for children aged 3 and under or on the interRAI - Child and Youth Mental Health (ChYMH) for those aged 4 to 20 and other supporting documentation as relevant. For those aged 12 to 18, the interRAI Adolescent Supplement shall also be completed in addition to the interRAI – Child and Youth Mental Health (ChYMH). Form 470-4694, the interRAI - Child and Youth Mental Health (ChYMH), and the interRAI - Adolescent Supplement are available on request from the IME medical services unit. Copies of the completed information submission tool for an individual are available to that individual from the individual’s case manager, integrated health home care coordinator or managed care organization.”

16. An amendment to paragraph 83.125(1)“b” was added in new Item 37. The paragraph now reads as follows:

“b. The IME medical services unit or a managed care organization shall review the member’s need for continued care annually and recertify the member’s need for long-term care services, pursuant to rule 441—83.122(249A) and the appeal process at rule 441—83.129(249A), based on the completed information submission tool designated in 83.122(3) and other supporting documentation as relevant.”

17. Subrule 83.127(3) in Item 39 has been revised to read as follows:

“**83.127(3)** The service plan shall be based on information in the completed information submission tool designated in subrule 83.122(3) and other supporting documentation as relevant.”

As requested, copies of all assessments or information submission tools have been provided to the respondent.

Comment 2: “We request that DHS implement and/or require standardized training on these assessment tools for any State personnel, MCO personnel, or third party contractor personnel who will be using the assessment forms to determine Level of Care and monthly level of supports or services for waiver applicants and recipients. The reason for this request is that concerns have been raised in other states about these assessment tools being used in an inconsistent manner. The training should be ongoing and include periodic inter-rater reliability testing. The preamble to this proposed rulemaking indicated that the ‘interRAI best matched the core domains of the Balancing Incentive Program criteria and included superior inter-rater reliability.’ The reason that the underlying data indicated that it includes superior inter-rater reliability, presumably, is that the raters go through training (not just initial training, but also follow-up training) and their scores are cross-referenced to ensure that the raters are correctly asking the questions to the waiver applicants and recipients and correctly scoring the answers provided to them. The requirement for continual training and inter-rater testing should be included in the rules.”

Department response 2: The Department will not revise the rules based on the respondent’s comment. The qualifications and training required to perform the assessments are contractually required.

The inter-rater reliability of the Supports Intensity Scale (SIS) is .87, which is in the “excellent” range based on conventional standards for adaptive behavior scales. A recent study by Thompson et al. showed that being properly trained in administering SIS plays a major role in obtaining reliable results from a

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SIS assessment. The American Association on Intellectual and Developmental Disabilities (AAIDD) offers several types of SIS training to customers based on their specific stage of implementation. These training programs are SIS stakeholder session/respondent orientation, SIS train-the-interviewer training, SIS train-the-trainer training, and SIS quality assurance training. The order of these training programs also represents a general timeline from the initial steps of basic training to the more advanced, follow-up types of training.

The interRAI Training Community is a resource for trainers of the various interRAI instruments being used around the globe. The mission of the community is to help ensure consistent interpretation of the interRAI guidelines, as well as to provide trainers with resources to help them provide high-quality training. This online community site has been created by the interRAI Training Committee, a committee created by interRAI, whose members include the interRAI organization and Assessment & Intelligence Systems, Inc. (AIS). This site provides advice and helpful resources to those who have implemented or are planning an implementation of the integrated suite of interRAI instruments. The guidance on this site follows the interRAI standards. InterRAI also provides for a local consult to organizations that have purchased licenses.

Comment 3: “We request that DHS require that a complete picture of an individual’s functioning be obtained when completing the assessment tool. For example, if a section of the assessment tool asks about Physical Functioning, note should be taken both of the activity of daily living (ADL) independence/assistance level and Instrumental Activities of Daily Living (IADL) difficulty level.”

Department response 3: The Department will not revise the rules based on the respondent’s comment.

The interRAI - Home Care (HC) assessment form is a minimum data set screening tool that enables a trained assessor to assess multiple key domains of function, health, social support and service use. Particular interRAI - Home Care (HC) items also identify persons who could benefit from further evaluation of specific problems or risks for functional decline. These are triggers that link the interRAI - Home Care (HC) to a clinical assessment protocol (CAP). The CAPs contain general guidelines for further assessment.

The HC system supports a variety of research-informed decision support tools that assist the assessor in planning and monitoring care. These include:

- Scales for ADLs, cognition, communication, pain, depression, and medical instability.
- Clinical assessment protocols that contain strategies to address problem conditions as triggered by one or more HC item responses.
- Screening systems to identify appropriate outreach and care pathways for prospective clients (the MI Choice and MAPLe systems).
- A quality monitoring system (home care quality indicators (HCQIs)).
- A case-mix system that creates distinct service-use intensity categories (RUG-III/HC).

The SIS is a unique, scientific assessment tool specifically designed to measure the level of practical supports required by persons with an intellectual disability to lead normal, independent, and quality lives in society. The SIS must be completed for each participant once in a three-year time period. During the two “off” years, an off-year assessment tool will be utilized for annual level of care redeterminations for adults. For children, the Case Management Comprehensive Functional Assessment Tool, Form 470-4694, is used each year.

The IME Medical Services Unit may request additional information from the service worker, case manager, health home coordinator, or community-based case manager to clarify or supplement the information submitted with the assessment. The results of the assessment are used to develop the plan of care. Because the same criteria are used for both institutional care and waiver services, the outcome is reliable, valid, and fully comparable.

Comment 4: “Interviews with waiver applicants and recipients should be face-to-face in the individual’s place of residence. This will allow the interviewer to notice things that would not be apparent in a phone interview. These face-to-face interviews will also allow the interviewer to watch the individual perform functional tests and evaluate the home setting for any potential safety concerns

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or needed modifications. The rules should include language requiring a face to face meeting for the assessments.”

Department response 4: The Department will not amend the rules based on the respondent’s comment. While the Department agrees that the member’s home may be the optimal location to accurately assess a member, the member must be afforded the choice of where the assessment will occur. The interRAI and the SIS assessment tools require a face-to-face interview at a time and place chosen by the member as required by 42 CFR 441. The off-year assessment completed for the ID waiver is completed telephonically unless the member has experienced a significant change, in which case a complete SIS assessment is scheduled.

Comment 5: “There should be a caregiver assessment, which is complementary to, but independent from the evaluation of an individual’s assessed needs. The assessment tool should not coerce family members to stand in for professional caregivers to satisfy an individual’s needs or assume the continued short-term help of a family member. The rules should include language reflecting the voluntary nature of assistance from family members, friends, and neighbors when asking about possible caregivers in the assessment.”

Department response 5: The Department will not revise the rules based on the respondent’s comment. The assessment tool is not intended to assess the needs of the member’s caregiver or the immediate availability of natural supports. The intent and purpose of the assessment is to identify the applicant’s or member’s functional needs that would otherwise be met in a nursing facility or intermediate care facility for persons with an intellectual disability were it not for the member’s choosing to receive waiver services in the home and community.

Comment 6: “It appears that DHS will be requiring the entity or individual responsible for developing the comprehensive service plan to use the results of the completed assessment to develop the comprehensive service plan. If the State or MCO will be applying some sort of algorithm or formula to the data collected during the assessment process to determine whether an applicant or recipient meets the Level of Care requirement for a waiver program and/or to determine a monthly level of support/services, the algorithm or formula (and any changes thereto) should be included in the rules. If a waiver applicant or recipient disagrees with the decision made by the State or MCO regarding eligibility for a waiver program or monthly level of support/services, the ability to challenge the decision is hampered when the applicant or recipient does not have access to the underlying decision-making process. If only certain sections of the assessments will be used, those sections should be identified in the rules.”

Department response 6: The Department will not amend the rules based on the respondent’s comment. This rule making does not address applying any algorithm or formula to the information collected during the assessment process in determining level of care and the level of support/services provided. The interRAI assessment tools are information-gathering tools. They do not provide any “result” that determines level of care or the level of support/services. And the use of new tools does not change the standards applied to the information collected to determine level of care or the level of support/services. To clarify that the assessment tools are information collection tools, the rules have been revised to uniformly refer to Level of Care and level of support/service decisions based on “information submitted on” completed assessment tools, as opposed, for example, to decisions “based on” the assessment tools. That change is reflected in revised amendments listed above in response to Comment 1.

The completed assessment tools are used in their entirety in addition to other supporting documentation as relevant when determining whether a member meets the level of care criteria in rule and in determining the level of support/services provided.

Comment 7: “Given the likelihood that members will be terminated from waiver services due to the use of a new assessment tool, we ask that DHS implement a grandfather clause in the rules which would protect eligibility for current waiver recipients going forward. There is also concern that the number of services and/or hours that waiver recipients receive could be cut due to the usage of these new assessment forms. This is especially concerning since a large number of individuals who receive waiver services are currently enrolled with AmeriHealth Caritas (AHC), one of Iowa’s MCO’s, and AHC has announced that it will be moving individuals from their community case managers (who know them well and in many

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cases have worked with the individuals for years) to in-house AHC case managers. In order to protect individuals from losing their waiver services (which enable to them to remain in the community), there should also be a grandfather clause in the rules protecting current levels of service for recipients.”

Department response 7: The Department will not revise the rules based on the respondent’s comment. The HCBS waiver member is required to have a level of care completed on an annual basis. The level of care criteria remain unchanged. During the level of care review prior to denial of level of care based on the results of the assessment, additional information is sought that would substantiate the member’s functional status. As far as grandfathering in current waiver members, individual’s needs change over time and the State makes assurance to CMS that a waiver member’s needs will be reassessed annually at a minimum or when there is a significant change in the member’s needs or condition.

Comment 8: “If a waiver applicant is denied eligibility, or a recipient is terminated from waiver eligibility or receives a reduction in services, the rules should require that a completed copy of the assessment tool for that applicant or recipient be attached to the notice of decision to ensure due process to applicants and recipients. See *Mocznianski v. Ohio Department of Job and Family Services*, 195 Ohio App. 3d 422 (Ohio Ct. App. 2011), *Baker v. Department of Health and Social Services*, 191 P3d 1005 (Alaska 2008), and *K.W. v. Armstrong*, F.R.D. 479 (D. Idaho March 24, 2014), order clarified by Nos. 1:12-cv-22, 3:12-cv-58 (D. Idaho Feb. 13, 2015), affirmed, 789 F.3d 962 (9th Cir. 2015). We also request that the rules require the notice of decision contain clear language about why the application is denied, or the coverage is being terminated or services reduced. The rules should also state that recipients must be informed of their right to continue benefits pending a final administrative decision. A reference to 441 IAC 7.9 would suffice in these proposed rules, however, the notice of decision must contain language informing the recipient of their right to request continuing benefits within the applicable time period.”

Department response 8: The Department will not revise the rules based on the respondent’s comment. For all waiver programs, current appeal rights rules under 441—Chapter 7 already provide as follows:

“Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). The applicant or recipient is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, the applicant or recipient may file an appeal with the department.”

See Iowa Admin. Code 441-83.9, 83.29, 83.49, 83.69, 83.89, 83.109, 83.129. The rules in 441—Chapter 7 require that the Department provide notice of any denial, termination, or reduction of assistance that includes “[a] clear statement of the specific reasons supporting the intended action” and “[t]he circumstances under which assistance is continued when an appeal is filed,” as provided by Iowa Admin. Code 441 r. 441-7.9. See Iowa Admin. Code 441-7.6(1)(a), 7.7(1). Further, 441—Chapter 7 provides that within ten days of the receipt of an appeal, the Department worker or agent responsible for representing the Department at the hearing shall provide the appellant and the presiding officer with “a summary and supporting documentation of the worker’s or agent’s factual basis for the proposed action.” Iowa Admin. Code 441-7.8(9). Prior to and during the hearing, 441—Chapter 7 also provides that the Department shall provide the appellant the opportunity to examine all materials to be offered as evidence. Iowa Admin. Code 441-7.13(1). In addition, 441—Chapter 7 also addresses numerous other matters relevant to notices of decision and appeals, such as hearing procedures and notice thereof.

The Department of Human Services has generally included completed copies of assessment tools with Department appeal summaries in administrative appeals involving Department action based on information contained therein, and the Department will continue to do so. The Department has also revised the rules to provide, consistent with existing policy, that copies of an individual’s completed information submission tool is available from the individual’s case manager or managed care organization at any time. Those revisions are also reflected in the revised amendments listed above in response to Comment 1.

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In light of the Department's general appeal process, as shown in 441—Chapter 7, and the availability of completed assessment tools any time, the Department does not believe that due process requires the attachment of the assessment tools to notices of decision, or the other rule changes requested. Rather, the Department believes that the existing references to 441—Chapter 7's notice and appeal requirements are adequate to ensure due process to applicants and recipients. Providing further specificity in rules regarding particular benefits or eligibility groups is unnecessary and potentially confusing.

The Council on Human Services adopted these amendments on June 14, 2017.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

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

These amendments will become effective August 9, 2017.

The following amendments are adopted.

ITEM 1. Amend subrule 77.25(5) as follows:

77.25(5) Case management. ~~The department of human services, a county or consortium of counties, or a provider under subcontract to the department or to a county or consortium of counties is~~ A provider is eligible to participate in the home- and community-based habilitation services program as a provider of case management services provided that the agency meets the standards in if accredited as a case management provider pursuant to 441—Chapter 24.

ITEM 2. Amend subrule 77.29(1) as follows:

77.29(1) Standards in 441—Chapter 24. ~~Providers shall meet the standards in~~ be accredited as case management providers pursuant to 441—Chapter 24 when they are the department of human services, a county or consortium of counties, or an agency or provider under subcontract to the department or a county or consortium of counties as a condition of providing case management services to persons with mental retardation an intellectual disability, developmental disabilities or chronic mental illness.

ITEM 3. Amend paragraph 78.27(2)“d” as follows:

d. Needs assessment. ~~The member's case manager or integrated health home care coordinator has completed an assessment of the member's need for service, and based on that assessment, the IME medical services unit has determined that the member is in need of home- and community-based habilitation services.~~ The interRAI - Child and Youth Mental Health (ChYMH) for youth aged 16 to 18 or the interRAI - Community Mental Health (CMH) for those aged 19 and older has been completed, and based on information submitted on the information submission tool and other supporting documentation as relevant, the IME medical services unit has determined that the member is in need of home- and community-based habilitation services. The interRAI - Child and Youth Mental Health (ChYMH) and the interRAI - Community Mental Health (CMH) information submission tools are available on request from the IME medical services unit. Copies of the information submission tool for an individual are available to that individual from the individual's case manager, integrated health home care coordinator, or managed care organization. The designated case manager or integrated health home care coordinator shall:

(1) ~~Complete a needs-based evaluation that meets the standards for assessment established in 441—subrule 90.5(1) before services begin and annually thereafter.~~ Arrange for the completion of the interRAI, before services begin and annually thereafter.

(2) ~~Use the evaluation results to develop a comprehensive service plan as specified in subrule 78.27(4).~~ Use the information submission tool and other supporting documentation as relevant to develop a comprehensive service plan as specified in subrule 78.27(4), before services begin and annually thereafter.

ITEM 4. Amend paragraph 83.2(1)“d” as follows:

d. ~~The person must be certified as being in need of nursing facility or skilled nursing facility level of care or as being in need of care in an intermediate care facility for persons with an intellectual disability, based on information submitted on Form 470-4392, Level of Care Certification for HCBS~~

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~~Waiver Program~~ a completed information submission tool Form 470-4694 for children aged 3 and under, the interRAI - Pediatric Home Care (PEDS-HC) for those aged 4 to 20, or the interRAI - Home Care (HC) for those aged 21 to 64 and other supporting documentation as relevant. Form 470-4694, the interRAI - Pediatric Home Care (PEDS-HC) and the interRAI - Home Care (HC) are available upon request from the IME medical services unit. Copies of the completed information submission tool for an individual are available to that individual from the individual's case manager or managed care organization.

(1) ~~A physician, doctor of osteopathy, registered nurse practitioner, or physician assistant shall complete Form 470-4392 when the person applies for waiver services, upon request to report a change in the person's condition, and annually for reassessment of the person's level of care. The member's designated case manager shall use the completed assessment to develop the comprehensive service plan as specified in rule 441—90.5(249A).~~

(2) to (4) No change.

ITEM 5. Amend paragraph **83.2(2)“a”** as follows:

a. The member shall have a service plan approved by the department which is developed by the ~~service worker or targeted~~ designated case manager identified by the county of residence. This service plan must be completed prior to services provision and annually thereafter.

The ~~service worker or targeted~~ designated case manager shall establish the interdisciplinary team for the member and, with the team, identify the member's need for service based on the member's needs and desires as well as the availability and appropriateness of services, using the following criteria:

(1) This service plan shall be based, in part, on information in the completed ~~Service Worker Comprehensive Assessment, Form 470-5044~~ information submission tool listed in paragraph 83.2(1)“d” and other supporting documentation as relevant. ~~Form 470-5044 shall be completed annually.~~ The ~~service worker or targeted~~ designated case manager shall have a face-to-face visit with the member at least ~~annually~~ quarterly.

(2) Service plans for persons aged 20 or under shall be developed to reflect use of all appropriate nonwaiver Medicaid services and so as not to replace or duplicate those services. The ~~service worker or targeted~~ designated case manager shall list all nonwaiver Medicaid services in the service plan.

(3) No change.

ITEM 6. Amend paragraph **83.3(3)“a”** as follows:

a. Applications for the HCBS health and disability waiver program shall be processed in 30 days unless one or more of the following conditions exist:

(1) to (3) No change.

(4) The application is pending because a level of care determination has not been made although the ~~completed Form 470-4392, Level of Care Certification for HCBS Waiver Program,~~ required assessment has been submitted to the IME medical services unit.

(5) The application is pending because the required assessment, Form 470-4392, or the service plan has not been completed. When a determination is not completed 90 days from the date of application due to the lack of a completed assessment, ~~Form 470-4392, or service plan,~~ the application shall be denied.

ITEM 7. Amend paragraph **83.3(3)“c”** as follows:

c. An applicant must be given the choice between HCBS health and disability waiver services and institutional care. The applicant, parent, guardian, or attorney in fact under a durable power of attorney for health care shall sign ~~Form 470-5044, Service Worker Comprehensive Assessment,~~ the assessment and indicate that the applicant has elected home- and community-based services.

ITEM 8. Amend paragraph **83.8(2)“d”** as follows:

d. The member receives health and disability waiver services and the physical or mental condition of the member requires more care than can be provided in the member's own home as determined by the ~~service worker or targeted~~ designated case manager.

ITEM 9. Amend paragraph **83.22(1)“d,”** introductory paragraph, as follows:

d. Certified as being in need of the intermediate or skilled level of care based, in part, on information submitted on ~~Form 470-4392, Level of Care Certification for HCBS Waiver Program~~ the

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interRAI - Home Care (HC). The interRAI - Home Care (HC) is available on request from IME medical services unit and other supporting documentation as relevant. Copies of the completed interRAI - Home Care (HC) for an individual are available to that individual from the individual's case manager or managed care organization.

ITEM 10. Amend subparagraph **83.22(1)“d”(1)** as follows:

(1) ~~A physician, doctor of osteopathy, registered nurse practitioner, or physician assistant shall complete Form 470-4392~~ The assessment shall be completed when the person applies for waiver services, upon request to report a significant change in the person's condition, and annually for reassessment of the person's level of care. The IME medical services unit shall be responsible for determination of the initial level of care.

ITEM 11. Amend paragraph **83.22(2)“a”** as follows:

a. *Case management.* Consumers under the elderly waiver shall receive case management services from a provider qualified pursuant to 441—~~subrule 77.33(21)~~ rule 441—77.29(249A). Case management services shall be provided as set forth in rules 441—90.5(249A) and 441—90.8(249A).

ITEM 12. Amend paragraph **83.23(3)“c”** as follows:

c. An applicant must be given the choice between elderly waiver services and institutional care. The applicant, guardian, or attorney in fact under a durable power of attorney for health care shall sign ~~Form 470-4694, Case Management Comprehensive Assessment,~~ the information submission tool specified in 83.22(1)“d,” indicating that the applicant has elected waiver services.

ITEM 13. Amend paragraph **83.42(1)“b”** as follows:

b. Be certified in need of the level of care that, but for the waiver, would otherwise be provided in a nursing facility or hospital based, in part, on information submitted on Form 470-4392, Level of Care Certification for HCBS Waiver Program ~~a completed Form 470-4694 for children aged 3 and under, the interRAI - Pediatric Home Care (PEDS-HC) for those aged 4 to 20, or the interRAI - Home Care (HC) for those aged 21 and over and other supporting documentation as relevant. Form 470-4694, the interRAI - Pediatric Home Care (PEDS-HC), and the interRAI - Home Care (HC) are available on request from the IME medical services unit. Copies of the completed information submission tool for an individual are available to that individual from the individual's case manager or managed care organization.~~

(1) ~~A physician, doctor of osteopathy, registered nurse practitioner, or physician assistant shall complete Form 470-4392~~ The assessment as listed in 83.42(1)“b” shall be completed when the person applies for waiver services, upon request to report a significant change in the person's condition, and annually for reassessment of the person's level of care.

(2) and (3) No change.

ITEM 14. Amend paragraph **83.42(2)“a”** as follows:

a. ~~The department service worker designated case manager shall perform an review the assessment of the person's need for waiver services and determine the availability and appropriateness of services. This assessment review shall be based, in part, on information in the completed Service Worker Comprehensive Assessment, Form 470-5044~~ information submission tool designated in 83.42(1)“b” and other supporting documentation as relevant. Form 470-5044 shall be completed annually.

ITEM 15. Amend subparagraph **83.43(3)“a”(2)** as follows:

(2) The application is pending because a level of care determination has not been made although the completed ~~Form 470-4392, Level of Care Certification for HCBS Waiver Program,~~ assessment has been submitted to the IME medical services unit.

ITEM 16. Amend paragraph **83.43(3)“c”** as follows:

c. An applicant must be given the choice between HCBS AIDS/HIV waiver services and institutional care. The applicant, parent, guardian, or attorney in fact under a durable power of attorney for health care shall sign ~~Form 470-5044, Service Worker Comprehensive Assessment,~~ the assessment and indicate that the applicant has elected home- and community-based services.

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ITEM 17. Amend paragraph **83.61(2)“a”** as follows:

a. Applicants currently receiving Medicaid case management shall have the applicable staff coordinate with the department to arrange completion of Form 470-4694 for children under the age of five and, for all others, an SIS assessment.

ITEM 18. Amend subparagraph **83.61(2)“b”(1)** as follows:

(1) Arrange for completion of Form 470-4694 for children under the age of five and, for all others, an SIS assessment for the initial level of care determination;

ITEM 19. Amend paragraph **83.61(2)“f”** as follows:

f. The case manager shall coordinate with the department for completion of Form 470-4694 for children under the age of five and, for all others, to arrange an SIS assessment for the initial level of care determination within 30 days from the date of the HCBS application unless the ~~worker~~ case manager can document difficulty in locating information necessary to arrange the SIS assessment or other circumstances beyond the ~~worker's~~ case manager's control.

ITEM 20. Amend subparagraph **83.61(2)“g”(1)** as follows:

(1) The assessment shall be based on the results of the most recent Form 470-4694 for children under the age of five and, for all others, the SIS assessment or of the SIS contractor's off-year review.

ITEM 21. Amend rule 441—83.64(249A) as follows:

441—83.64(249A) Redetermination. A redetermination of nonfinancial eligibility for HCBS intellectual disability waiver services shall be completed at least once every 12 months. In years in which an SIS assessment is not completed for an individual five years of age or older, the SIS contractor shall conduct a review in collaboration with the case manager, documenting any changes in the member's functional status since the previous SIS or other full assessment. Form 470-4694 shall be completed annually for children under the age of five.

A redetermination of continuing eligibility factors shall be made when a change in circumstances occurs that affects eligibility in accordance with rule 441—83.61(249A).

83.64(1) and **83.64(2)** No change.

ITEM 22. Amend rule **441—83.81(249A)**, definition of “Brain injury,” as follows:

“*Brain injury*” means clinically evident damage to the brain resulting directly or indirectly from trauma, infection, anoxia, vascular lesions or tumor of the brain, not primarily related to degenerative or aging processes, which temporarily or permanently impairs a person's physical, cognitive, or behavioral functions. The person must have a diagnosis from the following list:

- Malignant neoplasms of brain, cerebrum.
- Malignant neoplasms of brain, frontal lobe.
- Malignant neoplasms of brain, temporal lobe.
- Malignant neoplasms of brain, parietal lobe.
- Malignant neoplasms of brain, occipital lobe.
- Malignant neoplasms of brain, ventricles.
- Malignant neoplasms of brain, cerebellum.
- Malignant neoplasms of brain, brain stem.
- Malignant neoplasms of brain, other part of brain, includes midbrain, peduncle, and medulla oblongata.
- Malignant neoplasms of brain, cerebral meninges.
- Malignant neoplasms of brain, cranial nerves.
- Secondary malignant neoplasm of brain.
- Secondary malignant neoplasm of other parts of the nervous system, includes cerebral meninges.
- Benign neoplasm of brain and other parts of the nervous system, brain.
- Benign neoplasm of brain and other parts of the nervous system, cranial nerves.
- Benign neoplasm of brain and other parts of the nervous system, cerebral meninges.
- Encephalitis, myelitis and encephalomyelitis.

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Intracranial and intraspinal abscess.
 Anoxic brain damage.
 Subarachnoid hemorrhage.
 Intracerebral hemorrhage.
 Other and unspecified intracranial hemorrhage.
 Occlusion and stenosis of precerebral arteries.
 Occlusion of cerebral arteries.
 Transient cerebral ischemia.
 Acute, but ill-defined, cerebrovascular disease.
 Other and ill-defined cerebrovascular diseases.
 Fracture of vault of skull.
 Fracture of base of skull.
 Other and unqualified skull fractures.
 Multiple fractures involving skull or face with other bones.
 Concussion.
 Cerebral laceration and contusion.
Cerebral edema.
Cerebral palsy.
 Subarachnoid, subdural, and extradural hemorrhage following injury.
 Other and unspecified intracranial hemorrhage following injury.
 Intracranial injury of other and unspecified nature.
 Poisoning by drugs, medicinal and biological substances.
 Toxic effects of substances.
 Effects of external causes.
 Drowning and nonfatal submersion.
 Asphyxiation and strangulation.
 Child maltreatment syndrome.
 Adult maltreatment syndrome.
Status epilepticus.

ITEM 23. Amend paragraph **83.82(1)“f”** as follows:

f. Be determined by the IME medical services unit as in need of intermediate care facility for persons with an intellectual disability (ICF/ID), skilled nursing, or ICF level of care based on information submitted on a completed Form 470-4694 for children aged 3 and under, the interRAI - Pediatric Home Care (PEDS-HC) for those aged 4 to 20, or the interRAI - Home Care (HC) for those aged 21 and over and other supporting documentation as relevant. Form 470-4694, the interRAI - Pediatric Home Care (PEDS-HC), and the interRAI - Home Care (HC) are available on request from the IME medical services unit. Copies of the completed information submission tool for an individual are available to that individual from the individual's case manager or managed care organization.

ITEM 24. Amend paragraph **83.83(2)“c”** as follows:

c. An applicant shall be given the choice between waiver services and institutional care. The applicant or legal representative shall ~~complete and sign Form 470-4694, Case Management Comprehensive Assessment, the applicable information submission tool listed in paragraph 83.82(1)“f,”~~ indicating that the applicant has elected home- and community-based services. This shall be arranged by the medical facility discharge planner or case manager.

ITEM 25. Amend paragraph **83.83(2)“d”** as follows:

d. The medical facility discharge planner, if there is one involved, shall contact the ~~appropriate case manager for the consumer's county of residence~~ managed care organization or the designated case manager to initiate development of the consumer's service plan and initiation of waiver services.

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ITEM 26. Amend subrule 83.87(3) as follows:

83.87(3) Annual assessment. The IME medical services unit shall assess the member annually and certify the member's need for long-term care services. The IME medical services unit shall be responsible for determining the level of care based on the completed ~~Form 470-4694, Case Management Comprehensive Assessment,~~ information submission tool listed in paragraph 83.82(1) "f" and other supporting documentation as needed relevant.

a. and b. No change.

ITEM 27. Amend paragraph **83.102(1)"h"** as follows:

h. Be in need of skilled nursing or intermediate care facility level of care based on information submitted on ~~Form 470-4392, Level of Care Certification for HCBS Waiver Program~~ a completed interRAI - Pediatric Home Care (PEDS-HC) for those aged 18 to 20 or the interRAI - Home Care (HC) for those aged 21 and over and other supporting documentation as relevant. The interRAI - Pediatric Home Care (PEDS-HC) and the interRAI - Home Care (HC) are available on request from the IME medical services unit. Copies of the completed information submission tool for an individual are available to that individual from the individual's case manager or managed care organization.

~~(1) A physician, doctor of osteopathy, registered nurse practitioner, or physician assistant shall complete Form 470-4392 when the person applies for waiver services, upon request to report a change in the person's condition, and annually for reassessment of the person's level of care.~~

~~(2) (1)~~ Initial decisions on level of care shall be made for the department by the IME medical services unit within two working days of receipt of medical information. The IME medical services unit determines whether the level of care requirement is met based on medical necessity and the appropriateness of the level of care under 441—subrules 79.9(1) and 79.9(2).

~~(3) (2)~~ Adverse decisions by the IME medical services unit may be appealed to the department pursuant to 441—Chapter 7.

ITEM 28. Amend subparagraph **83.102(2)"a"(1)** as follows:

(1) ~~The service worker designated case manager shall identify the need for service based on the needs of the applicant, as documented in Form 470-5044, Service Worker Comprehensive Assessment, the information submission tool listed in 83.102(1) "h," as well as the availability and appropriateness of services.~~

ITEM 29. Amend subrule 83.103(2) as follows:

83.103(2) Approval of application for eligibility.

a. Applications for this waiver shall be initiated on behalf of the applicant who is a resident of a medical institution with the applicant's consent or with the consent of the applicant's legal representative by the discharge planner of the medical facility where the applicant resides at the time of application.

(1) ~~The discharge planner shall have the applicant's primary care provider complete Form 470-4392, Level of Care Certification for HCBS Waiver Program, and submit it to the IME medical services unit.~~ contact the member's managed care organization or designated case manager to arrange for completion of the appropriate information submission tool as listed in paragraph 83.102(1) "h."

(2) No change.

b. Applications for this waiver shall be initiated by the applicant, the applicant's parent or legal guardian, or the applicant's attorney in fact under a durable power of attorney for health care on behalf of the applicant who is residing in the community.

(1) ~~The applicant's primary care provider shall complete Form 470-4392, Level of Care Certification for HCBS Waiver Program,~~ managed care organization or the designated case manager shall arrange for the completion of the appropriate information submission tool as listed in paragraph 83.102(1) "h" and submit it to the IME medical services unit.

(2) No change.

c. No change.

d. An applicant shall be given the choice between waiver services and institutional care. The applicant or the applicant's parent, legal guardian, or attorney in fact under a durable power of attorney

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for health care shall sign ~~Form 470-5044, Service Worker Comprehensive Assessment~~ the information submission tool, indicating that the applicant has elected home- and community-based services.

e. The applicant, the applicant's parent or guardian, or the applicant's attorney in fact under a durable power of attorney for health care shall cooperate with the ~~service worker~~ or designated case manager in the development of the service plan prior to the start of services.

f. and *g.* No change.

ITEM 30. Amend rule 441—83.107(249A), introductory paragraph, as follows:

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

ITEM 31. Amend subrule 83.107(2) as follows:

83.107(2) Annual assessment. The IME medical services unit or a managed care organization shall review the member's need for continued care annually and recertify the member's need for long-term care services, pursuant to paragraph 83.102(1) "h" and the appeal process at rule 441—83.109(249A), based on the ~~completed Form 470-4392, Level of Care Certification for HCBS Waiver Program,~~ appropriate information submission tool as listed in paragraph 83.102(1) "h" and other supporting documentation as needed relevant.

a. and *b.* No change.

ITEM 32. Adopt the following **new** definitions of "Care coordinator" and "Integrated health home" in rule **441—83.121(249A)**:

"*Care coordinator*" means the professional who assists members in care coordination as described in 441—paragraph 78.53(1) "b."

"*Integrated health home*" means the provision of services to enrolled members as described in 441—subrule 78.53(1).

ITEM 33. Amend subrule 83.122(3) as follows:

83.122(3) Level of care. The applicant must be certified as being in need of a level of care that, but for the waiver, would be provided in a psychiatric hospital serving children under the age of 21. The IME medical services unit or a managed care organization shall certify the applicant's level of care annually based on information submitted on Form 470-4694, Case Management Comprehensive Assessment, for children aged 3 and under or on the interRAI - Child and Youth Mental Health (ChYMH) for those aged 4 to 20 and other supporting documentation as relevant. For those aged 12 to 18, the interRAI - Adolescent Supplement shall also be completed in addition to the interRAI - Child and Youth Mental Health (ChYMH). Form 470-4694, the interRAI - Child and Youth Mental Health (ChYMH), and the interRAI - Adolescent Supplement are available on request from the IME medical services unit. Copies of the completed information submission tool for an individual are available to that individual from the individual's case manager, integrated health home care coordinator or managed care organization.

ITEM 34. Amend subrule 83.122(5) as follows:

83.122(5) Choice of program. The applicant must choose HCBS children's mental health waiver services over institutional care, as indicated by the signature of the applicant's parent or legal guardian on ~~Form 470-4694, Case Management Comprehensive Assessment~~ the assessment.

ITEM 35. Amend paragraph **83.122(6) "a"** as follows:

a. The consumer must be a recipient of ~~targeted case management~~ or integrated health home services or be identified to receive ~~targeted case management~~ or integrated health home services immediately following program enrollment.

ITEM 36. Amend paragraph **83.123(1) "a"** as follows:

a. The local office shall determine if a payment slot is available by the end of the fifth working day after receipt of:

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- (1) A completed Form 470-2297, Health Services Application, from a consumer who is not currently a Medicaid member; or
- ~~(2) Form 470-4694, Case Management Comprehensive Assessment, with HCBS waiver choice indicated by signature of a Medicaid member's parent or legal guardian; or~~
- ~~(3)~~ (2) A written request signed and dated by a Medicaid member's parent or legal guardian.

ITEM 37. Amend paragraph **83.125(1)“b”** as follows:

b. The IME medical services unit or a managed care organization shall review the member's need for continued care annually and recertify the member's need for long-term care services, pursuant to rule 441—83.122(249A) and the appeal process at rule 441—83.129(249A), based on the completed ~~department-approved assessment~~ information submission tool designated in 83.122(3) and other supporting documentation as needed relevant.

ITEM 38. Amend rule 441—83.127(249A), introductory paragraph, as follows:

441—83.127(249A) Service plan. The consumer's case manager or integrated health home care coordinator shall prepare an individualized service plan for each consumer that meets the requirements set for case plans in rule 441—130.7(234).

ITEM 39. Amend subrule 83.127(3) as follows:

83.127(3) The service plan shall be based on information in ~~Form 470-4694, Case Management Comprehensive Assessment~~ the completed information submission tool designated in subrule 83.122(3) and other supporting documentation as relevant.

ITEM 40. Amend paragraph **83.128(2)“d”** as follows:

d. The physical or mental condition of the consumer requires more care than can be provided in the consumer's own home, as determined by the consumer's case manager or integrated health home care coordinator.

[Filed 6/14/17, effective 8/9/17]

[Published 7/5/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.

ARC 3185C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services hereby amends Chapter 108, “Licensing and Regulation of Child-Placing Agencies,” Chapter 112, “Licensing and Regulation of Child Foster Care Facilities,” Chapter 113, “Licensing and Regulation of Foster Family Homes,” Chapter 114, “Licensing and Regulation of All Group Living Foster Care Facilities for Children,” Chapter 116, “Licensing and Regulation of Residential Facilities for Mentally Retarded Children,” Chapter 117, “Foster Parent Training,” Chapter 156, “Payments for Foster Care,” and Chapter 202, “Foster Care Placement and Services,” Iowa Administrative Code.

These amendments revise outdated terminology and regulations and align the rules with child care regulations and make needed revisions for contractor requirements for preservice training for the recruitment, retention, training and support contracts effective July 1, 2017.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3040C** on April 26, 2017.

The Department received comments from 18 respondents during the public comment period. The respondents' comments and the Department's responses are as follows:

Comment 1: One respondent requested that physician assistants (PAs) in addition to physicians be able to complete a physical examination to authorize an alternate sleeping position. The respondent noted

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that the proposed language was physician-centric and restricted other qualified health professionals from performing this task.

Department response 1: The Department has revised paragraph “6” of subparagraph 113.5(3)“a”(5) in Item 16 to provide that PAs and advanced registered nurse practitioners may provide a signed authorization for an alternate sleeping position. The paragraph now reads as follows:

“6. If an alternate sleeping position is needed for an infant, a signed authorization with a statement of a medical reason is required and shall be submitted by a physician, advanced registered nurse practitioner, or physician assistant.”

Comment 2: One respondent questioned the changes to staff qualifications for a child-placing agency employee or volunteer with qualifications for foster parents.

Department response 2: Staff qualifications for a child-placing agency employee or volunteer are not the same as qualifications for foster parents. The Department will not revise the relevant rule.

Comment 3: There were five comments from respondents about the maximum number of children in the home not exceeding eight unless a variance is needed for a sibling placement to keep siblings together or there is a variance to licensed capacity for placement of a specific child.

1. One respondent requested that both licensing variances and child-specific variances be allowed at the same time. The respondent stated that the maximum number of children needs to be determined on a case-by-case basis, as some families have more children.

2. One respondent asked that the maximum number of children in the foster home be reconsidered.

3. One respondent was familiar with one family who has nine adopted children. The respondent stated that in the past, that family had been issued a variance for two children. The respondent stated that the proposed language would eliminate a family, in this circumstance, from being a good foster family.

4. One respondent who already had eight of the respondent’s own children provided several reasons to allow for more than eight children: Reasons to extend the number of children beyond eight might be if there are grandparents or extended family or older children living in the home to care for the children and a supervision plan is developed.

5. One respondent stated that some large families are licensed and are able to provide care for additional children.

Department response 3: The Department has revised subparagraph 113.4(1)“c”(2) in Item 14 to provide clarity. The subparagraph now reads as follows:

“(2) A variance beyond the maximum capacity of the foster home license is needed for the placement of a specific child in foster family care. A child-specific variance shall end when that child leaves the placement or any other change brings the family into licensed capacity. Unless a variance is needed for the placement of a sibling(s) of a foster child already in the home, or to keep siblings together, the maximum number of children in the home shall not exceed eight. On a case-by-case basis, if it is determined the foster parents have shown the parenting skills and have the social support system to meet the children’s needs for parenting more than eight children, the social work administrator shall approve the foster parents to parent more than eight children. A foster family may have both a licensing and a child-specific variance concurrently.”

Comment 4: Two respondents provided comments regarding foster homes’ provision of environmental protections to protect foster children against hazards and provision of constant and active supervision while children use the pool. One respondent who has a pool by the deck of the respondent’s home stated that they lock their doors to the deck and have gates to the yard. This respondent questioned whether the proposed rule language was reasonable. A second respondent stated that the examples of environmental protections that need to be maintained could create a financial barrier to foster parents.

Department response 4: The Department will not amend the rule regarding environmental protections as the Department is responsible for the safety and well-being of foster children placed in a foster home.

Comment 5: One respondent was concerned about a definition of an aboveground swimming pool, stating that, by the definition in the rule language, a child’s plastic pool would need to have a fence or approved cover. The respondent requested that the Department provide a definition of a nonclimbable fence.

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Department response 5: The Department has revised the language in new paragraph 113.5(2)“c” in Item 15. The Department did not add a definition of an aboveground swimming pool or a nonclimbable fence. The Department did add language regarding a child’s plastic pool. Paragraph 113.5(2)“c” now reads as follows:

“c. When there is a swimming pool or child’s plastic pool on the premises:

“(1) A child’s plastic pool shall be drained daily and shall be inaccessible to children when it is not in use.

“(2) An aboveground or in-ground swimming pool that is not fenced shall be covered whenever the pool is not in use. The cover shall meet or exceed the ASTM International (formerly known as the American Society for Testing and Materials) specification intended to reduce the risk of drowning by inhibiting access to the water by children under five years of age.

“(3) An uncovered aboveground swimming pool shall be enclosed with an approved fence that is nonclimbable and is at least four feet high. The height of the side of the pool may be included.

“(4) An uncovered in-ground swimming pool flush with the ground shall be enclosed with an approved fence that is nonclimbable and is at least four feet high.”

Comment 6: Two respondents had questions about the swimming pool rule. One respondent expressed confusion about the rule and stated that a person would have to have either an approved swimming pool cover or have a fence for an aboveground or in-ground pool. The other respondent stated that in regard to paragraph 113.5(2)“c,” the subparagraph on pools with covers contradicts the subparagraphs on uncovered aboveground swimming pools and uncovered in-ground swimming pools.

Department response 6: The Department did not revise paragraph 113.5(2)“c” in response to these comments because there is no contradiction. Aboveground or in-ground pools with covers and not fenced are required to be covered whenever the pools are not in use, and the pool cover shall meet or exceed the ASTM specification to reduce the risk for children under 5 years of age having access to the water and drowning.

Aboveground or in-ground pools without covers need to be enclosed with a fence. There is no contradiction between the subparagraphs. One subparagraph speaks to both aboveground pools with covers and in-ground pools with covers, the next subparagraph speaks only to noncovered aboveground pools, and the last subparagraph speaks to noncovered in-ground pools.

Comment 7: One respondent commented on accompanying children and providing constant and active supervision while the children use the pool. This respondent thought the stated requirements included pools not at the foster parent home and required that the foster parents be in the pool with the children.

Department response 7: The Department will not revise the rule language to provide constant and active supervision for pools not on the foster parent property. The rule language in this rule making applies only to a pool located at the foster parent home and does not require the foster parent to be in the pool with the children. The Department has revised new subparagraph 113.5(2)“d”(2) in Item 15 to read as follows:

“(2) The foster parent or other adult shall provide reasonable supervision according to the ages and swimming abilities of the foster children when they are using the pool.”

Comment 8: One respondent stated that the requirement for a bedroom window large enough to allow for an unrestricted exit by a foster child is subjecting the family to subjective variation by the licensor. The respondent asked if a child who fits through the assigned bedroom window when the child is 7 years old but can no longer fit through the window when the same child is 12 years old must be moved to a different bedroom.

Department response 8: The Department will not revise this rule language in paragraph 113.5(3)“a.” A bedroom window large enough for a foster child must be large enough for any child matched to the foster home.

Comment 9: Two respondents supported the rule which states that crib-like furniture must meet the standards or recommendations from the U.S. Consumer Product Safety Commission or ASTM International.

Department response 9: The Department appreciates the support of the respondents.

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Comment 10: Several of the respondents provided comments regarding the requirement that infants not be allowed to sleep on a bed/sofa/air mattress with a soft surface. One respondent commented on not allowing a child to sleep in any item not designed for sleeping, such as an infant or car seat, swing or bouncy seat, and asked what to do if a baby falls asleep in one of these items. Another respondent stated infant napping would be prohibited in other areas around the house and limited to the infant's crib. Four respondents thought this rule applied to an infant in a car seat while traveling in a car. One respondent wanted it to be allowable for an infant to nap on a sofa and wanted the rule to be revised to only apply to night sleeping.

Department response 10: The Department is responsible for the safety and well-being of foster children placed in a foster home. The Department will not revise the rule regarding an infant/child sleeping in any item not designed for sleeping such as an infant or car seat, swing or bouncy seat. These safe sleeping standards apply to a foster child's bedroom and not to a foster child traveling in a car in a car seat. However, the Department has revised the rule referring to a child in a car seat in a car. Specifically, the Department has revised numbered paragraph "3" of subparagraph 113.5(3)"a"(5) to read as follows:

"3. Infants shall not be allowed to sleep on a bed, sofa, air mattress or other soft surface. No child shall be allowed to sleep in any item not designed for sleeping. This is not referring to a child in a car seat in a car."

Comment 11: One respondent commented that with regard to ensuring the bedroom and crib are free of hazards, it is appropriate to allow the foster parents to determine hazards in the bedroom and crib.

Department response 11: The Department is responsible for the safety and well-being of foster children placed in a foster home. The Department will not revise the rule regarding hazards, such as toys, soft objects, etc., being allowed in the sleeping area with an infant.

Comment 12: One respondent was opposed to not being able to have a blanket or bumper pad in the crib for a child with sensory issues who could get the child's arms or legs caught in the bars of the crib. The respondent stated that the bumper pad would help avoid having a child's arms or legs be caught in the crib.

Department response 12: A mesh cover that goes over the crib bars can be used to prevent an infant's arms or legs from being caught in the crib bars. The Department is responsible for the safety and well-being of foster children placed in a foster home. The Department will not revise the rule regarding the restriction of items in the sleeping area of an infant.

Comment 13: Several respondents were concerned about the proposed language which stated that "[s]leeping infants shall be actively observed by sight and sound." The respondents asked what the proposed language meant in regard to observation of sleeping infants. The respondents stated that it was unrealistic to watch a child at all times. The respondents were concerned that the proposed rule language would never allow the foster parents to be able to sleep.

Department response 13: The Department removed the proposed paragraph relating to these comments, specifically, paragraph 113.5(3)"a"(5)"6," and renumbered the remaining paragraphs.

Comment 14: Several respondents had concerns regarding the paragraph stating that no video or surveillance cameras are allowed in children's bedrooms or bathrooms in the foster home. Several respondents asked if baby monitor/videos would be allowed for an infant. Other respondents stated they understood not having a camera in a bathroom but thought a camera should be allowed in the child's bedroom, with one respondent stating that a camera in a bedroom is for safety reasons. Another respondent stated that the respondent's child would wake up if someone went into his bedroom to check on him. Finally, one respondent stated a camera would be used to monitor a sexually reactive child to ensure the child is following healthy behaviors.

Department response 14: The Department has revised the standard found in new paragraph 113.5(3)"e" to allow a baby video monitor for children from birth to two years of age. Paragraph 113.5(3)"e" now reads as follows:

"e. Except for baby video monitors for children birth to two years of age used in their bedrooms, video or surveillance cameras are not allowed in children's bedrooms or bathrooms."

Comment 15: One respondent stated that deletion of the rule requiring foster parents to have a designated bedroom would allow foster parents to sleep in the living room on a chair or couch.

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Department response 15: The deletion of the requirement for foster parents to have a designated bedroom does not create a safety condition. The Department will not amend the rule based on the respondent's comment.

Comment 16: One respondent asked that the word "annually" be taken out in regard to testing of a private water supply before the foster care license is renewed as some renewal licenses can be renewed for two-year periods of time. This respondent asked why the testing is required for three consecutive years.

Department response 16: The private water supply (a well) can be unsafe one year and not the next year depending upon fertilizer or weed killer or other poisonous material leaching into the water. The Department has revised paragraph 113.6(3)"a" to provide clarity concerning the requirement to test private water supplies. Paragraph 113.6(3)"a" now reads as follows:

"a. Each privately operated water supply shall be tested prior to initial licensure and tested before license renewal, and evaluated for obvious deficiencies such as open or loose well tops or platforms and poor drainage around the wells."

Comment 17: One respondent stated that the respondent understood the purpose of safety plans but wanted suggestions on how to do this with an infant.

Department response 17: The Department assumes that the respondent may be questioning how these plans are practiced with foster children. While an infant would not understand these safety plans, it is a good practice exercise for the foster parents to put into action these safety plans in the event there may be a fire or tornado. The Department will not revise the rule on this subject.

Comment 18: One respondent interpreted the rule on preservice training to mean that the inclusion of an agency-approved medication management, CPR, first-aid, mandatory reporter training, etc. must be approved by the Department.

Department response 18: The Department has revised new paragraph 113.8(1)"c" to read as follows:
"c. Preservice training, which shall include:

- "(1) An agency-approved medication management training,
- "(2) A face-to-face cardiopulmonary resuscitation (CPR) and first-aid training,
- "(3) Mandatory reporter training on child abuse identification, and
- "(4) The reasonable and prudent parent standard training; and"

Comment 19: Two respondents commented on the proposed rules regarding maintaining certification in first aid and cardiopulmonary resuscitation (CPR). Specifically, one respondent asked what if the first-aid certification expires in two years. Another respondent stated that first-aid/CPR certification is either two years or three years and asked whether there is consistency being applied to that.

Department response 19: If certification for first aid/CPR expires in two years, then foster parents are required to be recertified. There may not be consistency in the time period of certification as these trainings may have different certifications. The Department will not revise this rule.

Comment 20: One respondent stated that classes on first aid/CPR are hard to find and expensive. The respondent also asked how certifications are going to be tracked to ensure that the certifications for first aid/CPR are up to date.

Department response 20: Classes on first aid/CPR are provided across the state by the Red Cross and the American Heart Association. In addition, many local communities offer classes on first aid/CPR. The Iowa Foster and Adoptive Parents Association (IFAPA) has also provided trainings on first aid/CPR, and the new recruitment, retention, training and support (RRTS) services contractor will also be offering classes in these subject areas. The Department does provide an annual stipend of \$100 to be used toward training. The Red Cross will provide the trainings for free if the cost of the trainings is a financial hardship. In regard to the question on how the Department will track trainings and certifications, the Department provides a form for foster parents to use to track all of their trainings. The Department will not revise this rule.

Comment 21: One respondent asked why an adopted child would need an updated health report within three months of adoption finalization.

Department response 21: The Department has revised subrule 113.11(1) to remove the relevant sentence. The subrule now reads as follows:

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“113.11(1) Health report required. The foster parents shall furnish the licensing agency with a health report on the family completed no more than six months before the application for licensure. The report shall include information on all family members, including foster parents, their minor children who reside in the home, and adult household members. An updated report shall be provided upon request of the department licensing worker or the recruitment and retention contractor.”

Comment 22: One respondent expressed concern that costs associated with the requirement that foster parents obtain a physical health report could create a financial barrier.

Department response 22: The Department will not amend the rule regarding furnishing a physical health report on the family and for anyone residing in the home. Physical health reports should not be a financial barrier as most people have insurance and also the Affordable Care Act requires medical insurance unless a person opts out of it.

Comment 23: One respondent asked if there was a form for the written report of the foster parents’ methods of training and discipline.

Department response 23: The form used by the Department to report foster parents’ methods of training and discipline is the Resource Parent Home Study.

Comment 24: One respondent asked what the certified respite program was and if it was a formal program.

Department response 24: The certified respite program is a formal program offered in specific counties of the state.

Comment 25: One respondent thought the proposed rule on animal waste meant regularly picking up dog feces in the foster parent’s yard.

Department response 25: The proposed amendment on animal waste is speaking to animal waste in the foster home. There have been foster homes where animal waste was not disposed of routinely and the home smelled so bad from animal feces and urine that no one wanted to enter the home. The presence of improperly disposed animal waste presents a health hazard to foster children. The Department did not revise the amendment.

Comment 26: One respondent was concerned about the requirement for foster parents to provide evidence of marital stability.

Department response 26: The Department has revised paragraph 113.12(5)“a” to read as follows:
“a. Provide evidence of relationship stability.”

Paragraph 113.14(4)“c” has also been revised to strike the word “marital” and add the word “relationship.”

Comment 27: One respondent requested that the Department clarify the requirement found in paragraph 113.12(5)“i” to respect the gender identity and sexual orientation of the foster child.

Department Response 27: The Department has revised new paragraph 113.12(5)“i” to read as follows:

“i. Articulate their strengths and concerns and limitations which are essential to the department’s matching the foster children with foster parents appropriately.”

General comments. Several comments from respondents dealt with subject matter not found in the Notice of Intended Action for this rule making. Those comments may be found in the **ARC 3040C** Comments and Department Response document on the Department’s Web site.

Technical changes. In review of the proposed rule making, the Department made the following technical changes to provide clarity and consistency within the rules.

Technical change 1: Subparagraph 113.3(4)“b”(6) was modified to remove a specific form name and form number. The subparagraph now reads as follows:

“(6) An evaluation of the applicant’s willingness to accept a child who has medical problems (such as HIV), an intellectual disability, or emotional or behavioral problems. The applicant shall complete the department form to indicate choices about caring for children who have or are at risk for HIV infection and other medical problems.”

Technical change 2: The subrule renumbered as 117.8(2) was modified for consistency within the rule making. The subrule now reads as follows:

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“**117.8(2) First aid.** All foster parents shall be certified in first aid at least every three years and shall maintain their first-aid certification and a certificate or card indicating the date of training and expiration.”

The Council on Human Services adopted these amendments on June 14, 2017.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217). After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 217.6.

These amendments will become effective September 1, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 441—108.4(238) as follows:

441—108.4(238) Staff qualifications. ~~An agency employee or volunteer shall be a person of good character, emotional stability, and have necessary ability, experience, and education to perform the duties assigned. An employee or volunteer shall not have a criminal record or founded child abuse report, unless the department has evaluated the crime or founded report and concluded that the crime or report does not merit prohibition of employment or licensure.~~

108.4(1) Qualifications for all staff. A child-placing agency employee or volunteer shall be emotionally stable and have the experience and education to perform the duties assigned. The agency shall not employ any person or give any person direct volunteer responsibility for a child or access to a child when the child is alone if that person has been convicted of a crime involving the mistreatment or exploitation of a child. The agency shall not employ any person or give any person direct volunteer responsibility for a child or access to a child when the child is alone if that person has a record of a criminal conviction or founded child abuse report unless the department has evaluated the crime or abuse and determined that the crime or abuse does not merit prohibition of volunteering or employment. If the child-placing agency is out of state, the agency shall complete that state’s child abuse record check and a criminal record check.

a. If a record of criminal conviction or founded child abuse exists, the person shall be offered the opportunity to complete and submit Iowa’s Record Check Evaluation form.

b. In its evaluation, the department shall consider:

(1) The nature and seriousness of the crime or founded abuse in relation to the employment or volunteer position sought;

(2) The time elapsed since the commission of the crime or founded abuse;

(3) The circumstances under which the crime or founded abuse was committed;

(4) The degree of rehabilitation; and

(5) The number of crimes or founded abuses committed by the person involved.

c. The agency shall maintain the following information with respect to each staff person:

(1) Documentation that a criminal record check with the Iowa division of criminal investigation has been completed on the staff person prior to the staff person’s providing any care or service directly or indirectly to children under the care of the agency. A copy of the department’s evaluation of the criminal record check shall be kept in the staff record.

(2) A written, signed and dated statement furnished by the staff person which discloses any founded reports of child abuse on the person that may exist prior to the staff person’s providing any care or services to or on behalf of the facility.

(3) Documentation that a child abuse record check of the staff person has been completed with the Iowa central abuse registry for any founded reports of child abuse prior to the staff person’s providing any care or services directly or indirectly to children under the care of the agency. A copy of the department’s evaluation of this child abuse record check shall be kept in the staff record.

~~**108.4(1) 108.4(2) Contracted employees.** A child-placing agency which contracts for services shall ensure that contracted employees meet the same qualifications, training, and evaluation requirements as those of workers in employed positions. A child-placing agency is responsible for the services provided by contracted providers as well as volunteers and agency employees.~~

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~~108.4(2)~~ **108.4(3)** *Qualifications of administrator.* An agency administrator shall possess one of the following:

a. and b. No change.

~~108.4(3)~~ **108.4(4)** *Caseworker qualifications.* Therapy and counseling services, psychosocial evaluation and assessment and care plan development shall be provided by staff who meet one of the following minimum education and experience criteria:

a. to e. No change.

~~108.4(4)~~ **108.4(5)** *Person filling more than one position.* A person functioning in more than one position specified by these rules shall meet the requirements for each of the positions the person fills.

ITEM 2. Amend rule 441—112.1(237) as follows:

441—112.1(237) Applicability. This chapter relates to licensing procedures for all child foster care facilities authorized by Iowa Code chapter 237. Rules relating to specific types of facilities are located in 441—Chapter 113, “Licensing and Regulation of Foster Family Homes,” 441—Chapter 114, “Licensing and Regulation of All Group Living Foster Care Facilities for Children,” 441—Chapter 115, “Licensing and Regulation of Comprehensive Residential Facilities for Children,” and 441—Chapter 116, “Licensing and Regulation of Residential Facilities for ~~Mentally Retarded~~ Mentally Retarded Children with an Intellectual Disability.”

This rule is intended to implement Iowa Code chapter 237.

ITEM 3. Amend rule **441—112.2(237)**, definitions of “Applicant,” “Foster family home,” “Group facility” and “Residential facility for mentally retarded children,” as follows:

“Applicant:”

1. ~~The applicant for~~ For a foster family home license, the applicant is the foster parent or parents person or persons applying.

2. For a proprietary child caring facility, the applicant is the owner of the facility.

3. For facilities having a board of directors, the applicant may be the president of the board or the board’s designee.

“Foster family home” means a home in which an individual person or persons or a married couple who wishes to provide or is providing, for a period exceeding 24 consecutive hours, board, room, and care for a child in a single family living unit.

“Group facility” means a community residential facility, a comprehensive residential facility, or a residential facility for ~~mentally retarded~~ children with an intellectual disability.

“Residential facility for ~~mentally retarded~~ children with an intellectual disability” means any residential facility which serves children ~~who meet the definition of mentally retarded with an intellectual disability~~ as defined in Iowa Code chapter 222.

ITEM 4. Amend paragraph **112.3(1)“a”** as follows:

a. Foster family care. A person wishing to apply to be a foster parent shall contact the department’s recruitment and retention contractor at ~~1-800-243-0756~~ in the applicable service area to request an application packet. This procedure also applies to:

(1) and (2) No change.

ITEM 5. Amend paragraph **112.3(4)“a”** as follows:

a. Before it results in adverse action, a founded abuse report on a director, a sole proprietor involved in the facility’s operation, or any facility staff or foster parent applicant shall be evaluated by the department to determine if the abuse merits prohibition of employment or licensure.

ITEM 6. Amend rule 441—112.4(237) as follows:

441—112.4(237) License.

112.4(1) and **112.4(2)** No change.

112.4(3) When corrective action is completed on or before the date specified on a provisional or renewal license, a full license shall be issued for the remainder of the licensure term.

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112.4(4) When the corrective action is not completed by the date specified on a provisional or renewal license, a full license shall be denied.

112.4(5) No change.

112.4(6) A foster family home license shall be approved for a term of one year for the first and second years of licensure. Thereafter, the license shall be approved for a term of two years unless it is determined by the administrator that a one-year license ~~may~~ shall be issued. A group facility license shall be approved for a term of one to three years according to the following criteria:

a. to *c.* No change.

This rule is intended to implement Iowa Code sections 237.3 and 237.5.

ITEM 7. Amend rule 441—112.10(232) as follows:

441—112.10(232) Mandatory reporting of child abuse.

112.10(1) No change.

112.10(2) *Required training.* ~~Within one year of becoming a~~ After completing the initial mandatory reporter training, and every five years thereafter, any person required to make a report under subrule 112.10(1) shall complete two hours of training relating to the identification and reporting of child abuse.

112.10(3) No change.

112.10(4) *Training content.*

a. Training in child abuse identification shall include physical and behavioral signs of physical abuse, denial of critical care, ~~and~~ sexual abuse and other categories of child abuse pursuant to Iowa Code section 232.68.

b. No change.

112.10(5) No change.

This rule is intended to implement Iowa Code section 232.69.

ITEM 8. Amend rule 441—112.11(237) as follows:

441—112.11(237) Required training on the reasonable and prudent parent standard. Each group facility shall have an on-site official authorized to apply the reasonable and prudent parent standard as defined in rule 441—202.1(234). Within one year of being identified as an authorized on-site official, each authorized official shall complete the same department-approved training on the reasonable and prudent parent standard in the same manner as required for prospective foster parents and referenced in 441—subrule ~~117.8(6)~~ 117.1(4).

ITEM 9. Amend rule **441—113.2(237)**, definition of “Foster family home,” as follows:

“*Foster family home*” means a home in which an individual person or persons or a married couple who wishes to provide or is providing, for a period exceeding 24 consecutive hours, board, room, and care for a child in a single family living unit.

ITEM 10. Adopt the following new definitions of “Health care provider” and “Public water supply system (PWS)” in rule **441—113.2(237)**:

“*Health care provider*” means a licensed medical doctor, doctor of osteopathy, physician assistant or advanced registered nurse practitioner who completes a health report.

“*Public water supply system (PWS)*” means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

ITEM 11. Amend subrule 113.3(1) as follows:

113.3(1) *Application.* Applications for an initial license to operate a foster family home shall be submitted and processed as directed in rule 441—112.3(237). In addition to the application form, the applicant shall submit the following forms during the licensing process:

a. and *b.* No change.

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~~e.~~ Form 470-3226, HIV General Agreement, to indicate choices about caring for children who have or are at risk for HIV infection.

~~d. c.~~ Form 470-0693, Foster Care Private Water Supply Survey, if applicable.

~~e. d.~~ Form 470-4657, Floor Plan. A The applicant or the recruitment and retention provider shall complete a drawing of the floor plan of the family's home.

~~f. e.~~ If licensed to drive, a copy of the driver's license and motor vehicle insurance.

ITEM 12. Amend subrule 113.3(4) as follows:

113.3(4) Home study. The worker for the recruitment and retention contractor shall complete a family home study.

a. Process. Information for the home study is gathered primarily through the required preservice training as described in rule 441—117.1(237). In addition:

(1) The worker shall hold at least two face-to-face interviews with the applicant with one of the interviews taking place in the applicant's home.

(2) The worker shall hold at least one face-to-face interview with each member of the household in the applicant's home.

(3) ~~At least one of the interviews shall take place at the applicant's home.~~ A physical inspection of the home is required. The worker shall use the Foster Family Survey Report to complete the physical inspection of the home to verify compliance with the licensing and regulation standards in this chapter.

(4) No change.

b. Family assessment topics. The assessment of the prospective foster family shall evaluate the family's ability to parent a special needs child. The assessment shall include the following:

(1) to (5) No change.

(6) ~~The An evaluation of the applicant's willingness to accept a child who has medical problems (such as HIV), mental retardation an intellectual disability, or emotional or behavioral problems. The applicant shall complete the department form to indicate choices about caring for children who have or are at risk for HIV infection and other medical problems.~~

(7) to (16) No change.

c. Written report. The recruitment and retention contractor shall prepare a written report of the family assessment using ~~Form 470-4029, PS-MAPP Family Profile Summary, and RC-0025, Home Study Summary and Recommendation Outline Form 470-5436, Resource Parent Home Study.~~ The summary Resource Parent Home Study shall include a recommendation for the number, age, sex, characteristics, and special needs of a child or children the family can best parent, and any other pertinent information in making the licensing recommendation. The home study shall be maintained in the foster family record.

ITEM 13. Amend paragraph **113.3(5)“a”** as follows:

a. Upon approval, the department shall issue the applicant a foster family home license as described at rule 441—112.4(237) ~~to care for.~~ The license shall indicate the licensed capacity for the number of foster children allowed approved for placement in the foster family home under subrule 113.4(1).

ITEM 14. Amend paragraph **113.4(1)“c”** as follows:

c. Meet one of the following criteria:

(1) ~~A variance is necessary to keep a sibling group together. No variance shall be granted if the foster home is at licensed capacity and there are no members of the sibling group in the foster home.~~

(2) (1) The foster parents have three or more children in the home and have shown the ability to parent a large number of children. A licensing variance may be approved at initial or renewal licensure to allow the placement of up to three foster children as set forth in the chart below:

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No. of Children in the Home (birth/relative/adoptive placements)	Maximum License Capacity:	
	Without variance	With variance
0 children	5	Not applicable
1 child	4	Not applicable
2 children	3	Not applicable
3 children	2	3
4 children	1	3
5 or more children	Not applicable	3

(3) (2) A variance beyond the maximum capacity of the foster home license is needed for the placement of a specific child in foster family care. A child-specific variance shall end when that child leaves the placement or any other change brings the family into licensed capacity. Unless a variance is needed for the placement of a sibling(s) of a foster child already in the home, or to keep siblings together, the maximum number of children in the home shall not exceed eight. On a case-by-case basis, if it is determined the foster parents have shown the parenting skills and have the social support system to meet the children's needs for parenting more than eight children, the social work administrator shall approve the foster parents to parent more than eight children. A foster family may have both a licensing and a child-specific variance concurrently.

ITEM 15. Amend subrule 113.5(2) as follows:

113.5(2) Grounds.

a. No change.

b. The foster child shall be adequately supervised and protected against hazards including, but not limited to, traffic, ~~pools~~ bodies of water, railroads, waste material, and contaminated water. The foster parent shall provide environmental protections such as door alarms, baby monitors, fences, and foliage barriers.

c. When there is a swimming pool or child's plastic pool on the premises:

(1) A child's plastic pool shall be drained daily and shall be inaccessible to children when it is not in use.

(2) An aboveground or in-ground swimming pool that is not fenced shall be covered whenever the pool is not in use. The cover shall meet or exceed the ASTM International (formerly known as the American Society for Testing and Materials) specification intended to reduce the risk of drowning by inhibiting access to the water by children under five years of age.

(3) An uncovered aboveground swimming pool shall be enclosed with an approved fence that is nonclimbable and is at least four feet high. The height of the side of the pool may be included.

(4) An uncovered in-ground swimming pool flush with the ground shall be enclosed with an approved fence that is nonclimbable and is at least four feet high.

d. If children are allowed to use an aboveground or in-ground swimming pool, or other body of water:

(1) Equipment needed to rescue a child or adult shall be readily accessible.

(2) The foster parent or other adult shall provide reasonable supervision according to the ages and swimming abilities of the foster children when they are using the pool.

ITEM 16. Amend subrule 113.5(3) as follows:

113.5(3) Bedrooms for foster children.

a. Bedrooms shall either have been constructed for the purpose of providing sleeping accommodation or remodeled for sleeping to provide proper heat and ventilation. Bedroom additions to a home shall meet building code requirements. All bedrooms used by foster children ~~must~~ shall have:

(1) and (2) No change.

(3) An unobstructed, operable window that opens from the inside that is large enough to allow for an unrestricted exit by a foster child;

(4) A closet, wardrobe, armoire, or dresser for the child's clothes; and

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(5) A standard bed, or a crib for infants and toddlers who cannot safely use a standard bed, a crib or crib-like furniture which has a waterproof mattress covering and sufficient bedding to enable a child to rest comfortably and which meets the current standards or recommendations from the U.S. Consumer Product Safety Commission or ASTM International for juvenile products for each child under two years of age if developmentally appropriate. The provider shall follow safe sleep practices as recommended by the American Academy of Pediatrics for infants under the age of one. Safe infant sleep practices shall conform to the following standards:

1. Infants shall always be placed on their backs for sleep.
2. Infants shall be placed on a firm mattress with a tight fitting sheet that meets U.S. Consumer Product Safety Commission federal standards.
3. Infants shall not be allowed to sleep on a bed, sofa, air mattress or other soft surface. No child shall be allowed to sleep in any item not designed for sleeping. This is not referring to a child in a car seat in a car.
4. No toys, soft objects, stuffed animals, pillows, bumper pads, blankets, or loose bedding shall be allowed in the sleeping area with the infant.
5. No co-sleeping shall be allowed.
6. If an alternate sleeping position is needed for an infant, a signed authorization with a statement of a medical reason is required and shall be submitted by a physician, advanced registered nurse practitioner, or physician assistant.

b. to d. No change.

e. Except for baby video monitors for children birth to two years of age used in their bedrooms, video or surveillance cameras are not allowed in children's bedrooms or bathrooms.

e. f. Bedrooms belowground shall:

(1) to (4) No change.

(5) Have a finished ceiling such as drywall or a drop ceiling; and

(6) No change.

ITEM 17. Amend subrule 113.5(6) as follows:

113.5(6) *Physical care standards for foster children.*

a. Grouping children in bedrooms shall take into consideration the age and sex of children.

(1) No change.

~~(2) Foster children over the age of 2 shall not share a bedroom with any person over the age of 18 in the home unless approved by the social work administrator or designee.~~

(3) (2) Foster children shall not share a bed with any other child. The social work administrator may approve a waiver of this policy.

~~b. Foster parents shall have a designated bedroom. Children 2 years of age or older shall be provided bedroom space other than in the foster parents' bedroom. Foster children under the age of 2 may share a bedroom with the foster parent.~~

c. There shall be provisions a plan for isolating from other healthy children; from a child who is ill or suspected of having a contagious disease.

d. No change.

~~e. Linens shall be changed at least weekly and more frequently for children with bladder or bowel control problems. Bedding shall be clean, odor-free, and free of urine and feces.~~

~~f. Waterproof mattress covers shall be provided for children under three years of age and for any child who lacks bowel or bladder control.~~

~~g. Individual space shall be provided for the child's clothes and personal possessions.~~

~~h. f. Foster parents shall follow universal precautions to reduce exposure to bloodborne pathogens and other infectious materials when providing care to all children placed in their physical custody.~~

~~i. Children under the age of 1 year shall be placed on their backs when sleeping unless otherwise authorized in writing by a physician.~~

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~~j. g.~~ Smoking and vaping shall be prohibited in the foster home or any vehicle when the foster child is present.

ITEM 18. Amend paragraph **113.5(10)“a”** as follows:

a. The heating plant shall have a capacity to maintain a temperature of approximately 65 degrees Fahrenheit: in the bedrooms with the door closed.

(1) ~~At a point 24 inches from the floor during the day in severe weather, and~~

(2) ~~In the bedrooms with the door closed.~~

ITEM 19. Amend rule 441—113.6(237) as follows:

441—113.6(237) Sanitation, water, and waste disposal.

113.6(1) Food preparation and storage. Food preparation areas shall be clean, and there shall be facilities to store perishable food at cold temperatures and storage areas for other nonperishable food supplies.

~~**113.6(2) Milk supply.** Fluid or powdered milk sufficient to meet the needs of the foster child shall be provided.~~

~~**113.6(3)**~~ **113.6(2) Public water supply.** The water supply is approved when the water is obtained from a public water supply system.

~~**113.6(4)**~~ **113.6(3) Private water supply.**

a. Each privately operated water supply shall be ~~annually checked~~ tested prior to initial licensure and tested before license renewal, and evaluated for obvious deficiencies such as open or loose well tops or platforms and poor drainage around the wells.

b. to d. No change.

e. When the water sample is not approved, no foster family home license shall be issued until the foster parents provide a written statement that foster children will be provided potable water, including where it the water will be obtained, and how it will be transported and stored.

(1) No change.

(2) ~~Annual~~ When the family has made ongoing alternative arrangements for the use of safe, potable water, annual testing of the water may be waived after the private water supply has tested unpotable for three consecutive years when the family has made ongoing alternative arrangements for the use of safe, potable water.

~~**113.6(5)**~~ **113.6(4) Sewage treatment.**

a. and b. No change.

~~**113.6(6)**~~ **113.6(5) Garbage storage and disposal.**

a. and b. No change.

This rule is intended to implement Iowa Code section 237.3.

ITEM 20. Amend rule 441—113.7(237) as follows:

441—113.7(237) Safety.

113.7(1) Fire protection for bedrooms. Any floor of a house, including the basement, ~~used for the sleeping of foster children~~ shall be equipped with the following:

a. A working smoke detector. On floors that are used for sleeping, the smoke detector shall be in a location where sleeping areas can be alerted. For hearing-impaired children, the foster parent shall install a smoke detector in the child's bedroom that will use an alternative means of waking the child.

b. and c. No change.

113.7(2) No change.

113.7(3) Safety plan. The family shall have an emergency safety plan to be used ~~in case of~~ for fire, tornado, blizzard, flood, other natural or manmade disasters, accidents, medical issues, and other life-threatening situations for children in out-of-home placements. The safety plans shall state the action that the foster parents and children are to take in each situation that may occur.

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~~a. Safety~~ The safety plans for fire and tornadoes shall be ~~documented and~~ reviewed with foster children at the time of placement ~~and~~. Fire and tornado plans shall be practiced with the foster children throughout the year within one week of placement and no less than annually thereafter.

~~b. In the case of a disaster requiring evacuation of the foster home, the foster parents shall notify the department of the evacuation and the address and telephone number of the foster parents' temporary residence within 48~~ 24 hours after evacuation.

c. No change.

113.7(4) Medications and poisonous substances. All ~~prescription~~ medications and poisonous, toxic, or otherwise unsafe substances shall be kept ~~in a locked storage container out of the reach of~~ secured from access by children.

~~a. All prescription medication shall be administered as prescribed and documented in a prescription medication log that is given to the child's department caseworker when the child leaves the placement.~~

b. No change.

113.7(5) Weapons. All weapons, firearms, and ammunition shall be inaccessible to a child of any age.

a. and b. No change.

~~c. The weapons, firearms, and ammunition storage unit shall not share the same key or matching security code. If a key is used, the key shall be stored in a place inaccessible to the foster child.~~

~~e. d.~~ Any motor vehicles used to transport foster children shall not contain a loaded gun, and any ammunition in the vehicle shall be kept in a separate, locked container.

~~d. e.~~ Foster parents who have a permit to carry a firearm shall sign Form 470-4657, Firearms Safety Plan. Foster parents who have firearms but do not have a permit to carry shall complete the safety plan section of the Firearms Safety Plan form.

113.7(6) No change.

113.7(7) Supervision. The foster parents shall provide reasonable and prudent supervision of foster children to ensure their safety.

a. Foster parents shall ~~reasonably~~ adequately supervise foster children while the children are using any hazardous or dangerous objects or equipment. In order for foster children to participate in age- or developmentally appropriate activities, the foster parent would apply the reasonable and prudent parent standard.

b. Foster parents shall ~~monitor~~ use reasonable and prudent supervision of foster children ~~while they~~ when the foster children are using the Internet or other social media.

113.7(8) Household pets. Household pets and any outdoor animals or pets accessible to foster children shall have a current veterinary health certificate verifying that the ~~animal has had routine vaccinations that are required by local ordinance~~ animal's routine immunizations, e.g., rabies, are current.

~~a. At the time of the initial home study and any time thereafter, foster parents shall report an animal's history of aggression towards people and inform the department of the animal's aggression towards people within 24 hours of an occurrence.~~

~~b. Foster parents who have pets or animals with any history of aggression shall have a written plan that addresses strategies to reduce the risk of aggression by their pets or animals with which the child will have contact.~~

~~c. Animal waste will be contained and disposed of on a routine basis.~~

113.7(9) No change.

This rule is intended to implement Iowa Code section 237.3.

ITEM 21. Amend rule 441—113.8(237) as follows:

441—113.8(237) Foster parent training.

113.8(1) Preservice training. All foster parent applicants shall complete the following training before licensure and the placement of a child in foster care in their home:

a. Orientation pursuant to rule 441—117.2(237); ~~and~~

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b. Preservice training pursuant to rule 441—117.1(237);

c. Preservice training, which shall include:

(1) An agency-approved medication management training,

(2) A face-to-face cardiopulmonary resuscitation (CPR) and first-aid training,

(3) Mandatory reporter training on child abuse identification, and

(4) The reasonable and prudent parent standard training; and

d. Mandatory reporter training on child abuse identification and reporting before initial licensure and every five years thereafter as required by rule 441—112.10(232) and 441—subrule 117.8(3).

113.8(2) *In-service training.* All licensed foster parents shall complete six hours of in-service training annually as required by rule 441—117.7(237).

~~*a.* All Each foster parents parent shall complete training in medication management, cardiopulmonary resuscitation, first aid, and the reasonable and prudent parent standard in their first year of licensure as required by rule 441—117.8(237) maintain certification in CPR and first-aid training.~~

~~*b.* All licensed foster parents shall complete mandatory reporter training on child abuse identification and reporting in their first year of licensure and every five years thereafter as required by rule 441—112.10(232) and 441—subrule 117.8(4).~~

This rule is intended to implement Iowa Code section 237.5A.

ITEM 22. Amend rule 441—113.10(237) as follows:

441—113.10(237) Information on the foster child.

~~**113.10(1) *Initial information.***~~ Rescinded IAB 7/29/09, effective 10/1/09.

113.10(2) 113.10(1) *Foster child information.* Foster parents shall maintain a separate folder of information on each foster child placed in the foster family home. This folder shall be provided to the department or the child's parent or guardian when the child leaves the placement. The folder shall contain:

a. ~~Names~~ The names and addresses of all doctors, mental health professionals, and dentists who have treated the foster child; current medications prescribed, including over-the-counter medications; medication log; and the type of treatment medical, dental, vision, and mental health treatments and hearing examinations received while the foster child is in the foster home.

b. to d. No change.

~~**113.10(3) 113.10(2) *Confidentiality.***~~ Foster parents shall maintain confidentiality regarding a child in placement except as required to comply with rules on mandatory reporting of child abuse and with the child's case permanency plan. Foster parents shall not without parent or guardian and department consent post pictures or information concerning a foster child on any Internet Web site or on social media.

This rule is intended to implement Iowa Code section 237.7.

ITEM 23. Amend rule 441—113.11(237) as follows:

441—113.11(237) Health of foster family.

113.11(1) *Health report required.* The foster parents shall furnish the licensing agency with a health report on the family completed no more than six months before the application for licensure. The report shall include information on all family members, including foster parents, their minor children who reside in the home, and adult household members. An updated report shall be provided upon request of the department licensing worker or the recruitment and retention contractor.

113.11(2) No change.

113.11(3) *Capability for caring for the child.* If there is evidence that the foster parent is unable to provide necessary care for the child, the department licensing worker, the recruitment and retention contractor, or the physician may require additional medical and mental health reports, including a substance abuse evaluation.

This rule is intended to implement Iowa Code section 237.7.

ITEM 24. Amend subrule 113.12(5) as follows:

113.12(5) *Personal characteristics.* The foster parents shall:

HUMAN SERVICES DEPARTMENT[441](cont'd)

- a. Provide evidence of ~~marital adjustment and~~ relationship stability.
- b. to g. No change.
- h. Ensure that all family members are aware of ~~and in agreement with~~ having foster children in the home.
- i. Articulate their strengths and concerns and limitations which are essential to the department's matching the foster children with foster parents appropriately.

ITEM 25. Amend subrule 113.12(6) as follows:

113.12(6) Determination of characteristics. The areas discussed in subrules 113.12(4) and 113.12(5) shall be explored through observation of the family and interviews with family members and documented in a foster home study as described in subrule 113.3(4), or in the foster family record when explored after licensure and prior to renewal. Any additional areas that the family or worker identifies as a possibility for creating problems shall also be documented in the foster family record.

ITEM 26. Amend rule 441—113.13(237) as follows:

441—113.13(237) Record checks. Record checks are required for each foster parent applicant and for anyone who is 14 years of age or older living in the home of the applicant. The purpose of the record checks is to determine whether any of these persons has any founded child abuse reports or criminal convictions or has been placed on the sex offender registry.

113.13(1) Procedure. The department's contractor for the recruitment and retention of resource families shall assist applicants in completing required record checks, including fingerprinting.

a. *Iowa records.* Each foster parent applicant and anyone who is 14 years of age or older living in the home of the applicant shall be checked for records with:

- (1) The Iowa central abuse registry, using Form 470-0643, Request for Child and Dependent Adult Abuse Information;
- (2) The Iowa division of criminal investigation, using Form 595-1396, DHS Criminal History Record Check, Form B; ~~and~~
- (3) The Iowa sex offender registry; and
- (4) Iowa Courts Online.

b. *Other records.*

- (1) No change.
- (2) Each foster parent applicant shall also be fingerprinted for a national criminal history check. ~~Other adults living in the home may be fingerprinted if the department determines that a national criminal history check is warranted.~~ Fingerprinting, for the purpose of a national criminal history check, is required on all other adult household members at the time of initial application effective with applications dated on or after October 1, 2011. When warranted, the department may require fingerprinting for a national criminal history check on adult household members who move in after initial application.

113.13(2) Evaluation of record. If the applicant or anyone living in the home has a record of founded child or dependent adult abuse, a criminal conviction, or placement on the sex offender registry, the department shall not license the applicant as a foster family unless an evaluation determines that the abuse or criminal conviction does not warrant prohibition of license.

a. *Exclusion.* An evaluation shall not be performed if the person has been convicted of:

- (1) No change.
- (2) A crime in another state that would be a felony as set forth in Iowa Code section 237.8(2) "a"(4) ~~if the crime were committed in Iowa.~~

b. *Scope.* The evaluation shall consider the nature and seriousness of the founded child or dependent adult abuse or crime in relation to:

- (1) to (5) No change.

c. *Evaluation form.* The person with the founded child or dependent adult abuse or criminal conviction report shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date of receipt to be used to assist in the evaluation. Failure of the person to complete and return Form 470-2310 within the specified time frame shall result in denial of licensure.

HUMAN SERVICES DEPARTMENT[441](cont'd)

113.13(3) Evaluation decision. The service area manager or designee shall conduct the evaluation and make the decision. The department shall issue ~~Form 470-2386, Record Check Decision Form 470-2310, Record Check Evaluation,~~ to ~~explain~~ inform the subject of the decision and describe the basis of the decision reached regarding the evaluation of an abuse or a crime, using the criteria specified in paragraph 113.13(2) "b." The department shall mail the form to the person on whom the evaluation was completed:

a. and *b.* No change.

113.13(4) No change.

This rule is intended to implement Iowa Code section 237.8(2).

ITEM 27. Amend rule 441—113.14(237) as follows:

441—113.14(237) Reference checks.

113.14(1) to 113.14(3) No change.

113.14(4) Reference checks shall include only those areas related to the applicant's ability to care for children and should include discussion of the following areas:

a. and *b.* No change.

c. ~~Marital adjustment and~~ Relationship stability.

d. to *g.* No change.

113.14(5) When warranted, additional references may be sought after licensure.

This rule is intended to implement Iowa Code section 237.3.

ITEM 28. Amend rule 441—113.15(237) as follows:

441—113.15(237) Unannounced visits.

113.15(1) to 113.15(3) No change.

113.15(4) The findings from the unannounced visit shall be summarized on ~~Form 470-4512, Unannounced Visit Report~~ Form 470-5438, Progress Notes.

a. and *b.* No change.

113.15(5) Actions after the unannounced visit.

a. When deficiencies are cited that do not appear likely to cause immediate physical or mental harm to the child, an additional visit may be scheduled. The department licensing worker and the recruitment and retention contractor shall discuss the deficiencies with the foster parents and make ~~suggestions~~ plans for improving the deficiencies.

b. When the reported deficiencies raise questions of concern as to the quality of care provided, the recruitment and retention contractor shall:

(1) No change.

(2) Hold a meeting with the department licensing worker and the foster parents to discuss deficiencies and ~~suggestions~~ the plans for improving the deficiencies and then complete a written corrective action plan as to how the foster parents intend to address the deficiencies.

c. No change.

113.15(6) No change.

This rule is intended to implement Iowa Code section 237.7.

ITEM 29. Amend paragraph **113.16(2)"d"** as follows:

d. Clothing shall be becoming, of proper size, and ~~of the character usually worn by children in the community~~ culturally appropriate.

ITEM 30. Amend rule 441—113.17(237) as follows:

441—113.17(237) Medical examinations and health care of the child.

113.17(1) Physical examinations. ~~Rescinded IAB 3/11/09, effective 5/1/09.~~

113.17(2) 113.17(1) Medical and dental supervision care. ~~Each child shall be under regular medical and dental supervision.~~ Foster parents shall keep the ~~supervising worker~~ child's department case manager informed of any ~~health problems~~ medical and dental appointments and treatments prescribed for the

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~child. In case of sickness or accident, immediate medical care shall be secured for the child in accordance with the supervising worker's directions given at the time of placement.~~

a. Foster parents shall contact the child's parents to engage them in the process of accessing routine medical and dental care for their child unless parental rights have been terminated.

b. In case of an emergency or urgent situation requiring medical care and treatment of an acute illness, disease or condition of a child, when a delay or inability to access parental or department consent for medical care or treatment would endanger the health or physical well-being of the child, the foster parents can provide consent for medical care and treatment.

~~113.17(3)~~ 113.17(2) *Exemption from medical care.* Nothing in this rule shall be construed to require medical treatment or immunization for a minor child of any person who is a member of a church or religious organization which is against medical treatment for disease. In such instance, an official statement from the organization and a notarized statement from the parents shall be incorporated in the record. In potentially life-threatening situations, the child's care shall be referred to appropriate medical and legal authorities.

This rule is intended to implement Iowa Code section 237.3.

ITEM 31. Amend rule 441—113.18(237) as follows:

441—113.18(237) Training and discipline of foster children.

113.18(1) *Foster parents' methods of training and discipline.* The home study evaluation of ~~the~~ each foster parent applicant shall include a discussion and a written report of the foster parents' methods of training and discipline. Discipline shall be designed to help the child develop self-control, self-esteem, and respect for the rights of others.

113.18(2) *Restrictions on training and discipline.* Child training and discipline shall be handled with kindness and understanding.

a. to d. No change.

e. Restraints shall not be used as a form of discipline.

(1) No change.

(2) The Upon approval of the department, the foster parent shall receive training on the safe and appropriate use of restraints which has been approved as a part of the treatment plan by a licensed practitioner of the healing arts who is working with the child may use restraints only in accordance with the written plan of a licensed mental health professional who is working with the child and the foster parents.

113.18(3) *Reports of mistreatment.* Reports of mistreatment coming to the attention of the ~~supervising worker~~ department licensing worker and caseworker for the foster child shall be investigated promptly and referred to the proper authorities when necessary.

This rule is intended to implement Iowa Code sections 234.40 and 237.3.

ITEM 32. Amend rule 441—114.1(237) as follows:

441—114.1(237) Applicability. This chapter outlines the basic standards for all group living foster care facilities and contains the basic standards applicable to community residential facilities for children. Additional standards applicable to specific levels of group living are discussed in 441—Chapter 115, "Licensing and Regulation of Comprehensive Residential Facilities for Children," and 441—Chapter 116, "Licensing and Regulation of Residential Facilities for ~~Mentally Retarded~~ Children with an Intellectual Disability."

This rule is intended to implement Iowa Code chapter 237.

ITEM 33. Amend **441—Chapter 116**, title, as follows:

LICENSING AND REGULATION OF RESIDENTIAL FACILITIES
FOR ~~MENTALLY RETARDED~~ CHILDREN WITH AN INTELLECTUAL DISABILITY

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 34. Amend rule 441—116.1(237) as follows:

441—116.1(237) Applicability. This chapter relates specifically to the licensing and regulation of residential facilities serving ~~mentally-retarded~~ children with an intellectual disability. Refer to 441—Chapter 112 for basic licensing and regulation of all foster care facilities, 441—Chapter 114 for definitions and minimum standards for all group living foster care facilities, including community care facilities, and 441—Chapter 115 for definitions and standards for comprehensive residential facilities for children. Chapters 112 and 114 apply to community residential facilities for ~~mentally-retarded~~ children with an intellectual disability and Chapters 112, 114 and 115 apply to comprehensive residential facilities for ~~mentally-retarded~~ children with an intellectual disability with the exception of the areas discussed specifically in this chapter.

This rule is intended to implement Iowa Code chapter 237.

ITEM 35. Amend rule **441—116.2(237)**, definitions of “Community residential facility for mentally retarded children” and “Comprehensive residential facility for mentally retarded children,” as follows:

“*Community residential facility for ~~mentally-retarded~~ children with an intellectual disability*” means a community residential facility as defined in rule 441—114.2(237) which serves children ~~who meet the definition of mentally-retarded~~ with an intellectual disability as defined in Iowa Code chapter 222.

“*Comprehensive residential facility for ~~mentally-retarded~~ children with an intellectual disability*” means a comprehensive residential facility as defined in rule 441—115.2(237) which serves children ~~who meet the definition of mentally-retarded~~ with an intellectual disability as defined in Iowa Code chapter 222.

ITEM 36. Adopt the following **new** subrule 117.1(4):

117.1(4) Additional preservice training. Before licensure, each foster parent shall complete training in an agency-approved medication management course, cardiopulmonary resuscitation (CPR), first aid, the reasonable and prudent parent standard, and the mandatory reporter training on child abuse identification.

ITEM 37. Amend rule 441—117.7(237), introductory paragraph, as follows:

441—117.7(237) Required in-service training. ~~Training is~~ At least six hours of in-service training are required to assist foster parents in confidently and effectively addressing the needs of children placed in foster care. The Foster Parent Training Plan, Form 470-3341, shall be used to address in-service training needs. The training plan shall be developed with the department or retention and recruitment contractor and the foster parent ~~at annual licensing renewal~~ annually.

ITEM 38. Amend subrule 117.7(3) as follows:

117.7(3) Foster parent training requirements. Each individual foster parent shall complete six credit hours of department-approved in-service training annually ~~when the foster parent has an approved one-year license or an approved two-year license. Failure to meet the requirement for in-service training hours will result in denial of the license renewal.~~

~~a. Training cycle. “Annually” means within the annual training cycle as described in this paragraph.~~

~~(1) Initial license. For a newly licensed foster parent, the initial training cycle shall be the 10-month period ending 2 months before the license expires. EXAMPLE: The initial training cycle for a new license effective June 1 is June 1 through March 31.~~

~~(2) a. Renewal license. Renewal license. For a one-year license renewal, the each foster parent shall complete six hours of annual in-service training eycle shall be within the 12-month period beginning 2 months before the expiration of the previous license and ending 2 months before the expiration of the subsequent license on the effective date of the foster parent’s renewal license. EXAMPLE: The training cycle for a license effective June 1 would be April 1 through March 31 of the subsequent year. For a two-year license renewal, the each foster parent shall complete six hours of in-service training eycle for the first within the 12 months of the first license year shall be the 12-month period beginning 2 months~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~before the expiration of the previous license year and ending 10 months after beginning on the effective date of the two-year license renewal. The annual training cycle for~~ For the second year of a two-year license shall be the 12-month period beginning 11 months after the effective date of the first year of the license and ending 2 months before the expiration of the license renewal, each foster parent shall complete six hours of in-service training within the 12 months of the second year of the two-year license renewal.

b. Content. The choice of in-service training shall be based upon an assessment of the foster parent's training needs made by the foster parent and the recruitment and retention contractor in collaboration with the department licensing worker.

(1) No change.

(2) At least three credit hours of the annual six hours of in-service training shall be group training.

(3) ~~Except for the classes for the mandatory reporters reporter training on child abuse identification class, cardiopulmonary resuscitation, and first aid,~~ training credit will not be allowed for any in-service training class that is repeated unless the class has been updated with new information.

c. No change.

ITEM 39. Amend rule 441—117.8(237) as follows:

441—117.8(237) Specific in-service training required.

~~117.8(1) Medication management.~~ Within the initial training cycle, each individual foster parent shall complete one hour of training related to the use and practice of medication management.

~~a.~~ Training shall be completed through the approved individual self-study course, "Medication Management."

~~b.~~ One hour of in-service training credit shall be allowed for completion of this self-study course. This course cannot be repeated for in-service training credit.

~~c.~~ Foster parents who are already licensed on October 1, 2009, shall complete this training by October 1, 2010.

~~117.8(2) 117.8(1) Cardiopulmonary resuscitation (CPR).~~ All foster parents shall be certified in CPR every three years and shall maintain their CPR certification and a certificate or card indicating the date of training and expiration. The training shall be provided by:

~~a.~~ The training shall be provided by:

(1) ~~a.~~ A nationally recognized training organization, such as the American Red Cross, the American Heart Association, the National Safety Council, or Emergency Medical Planning (Medic First Aid), or

(2) ~~b.~~ An equivalent certified trainer and curriculum approved by the department.

~~b.~~ Newly licensed foster parents shall complete the training before the end of their initial training cycle. Foster parents who are already licensed on October 1, 2009, shall complete this training by October 1, 2010.

~~117.8(3) 117.8(2) First aid.~~ All foster parents shall be certified in first aid at least every three years and shall maintain their first-aid certification and a certificate or card indicating the date of training and expiration. Newly licensed foster parents shall complete the training before the end of their initial training cycle. Foster parents who are already licensed on October 1, 2009, shall complete this training by October 1, 2010.

~~117.8(4) 117.8(3) Child abuse reporting.~~ Each foster parent shall complete an approved mandatory child abuse reporter training every five years after the foster parent's initial preservice mandatory child abuse reporter training relating to the identification of child abuse and the requirements and procedures for the reporting of child abuse pursuant to Iowa Code section 232.68.

~~a.~~ *Training cycle.* Newly licensed foster parents shall complete mandatory reporter training before the end of their initial training cycle. The training shall be repeated every five years thereafter.

~~b.~~ *a. Training provider.* The foster parent shall be responsible for obtaining the required two-hour mandatory reporter training on child abuse identification and reporting as approved by the Iowa department of public health. A list of approved training opportunities is available on the Iowa department of public health Web site by searching "mandatory reporter training."

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e. b. Documentation. The foster parent shall secure documentation of the training content, amount, and provider and shall forward the documentation to the recruitment and retention contractor, who will provide the documentation to the department for inclusion in the foster parent's licensing file.

~~117.8(5)~~ **117.8(4)** *Caring for children with HIV.* Before placement of an HIV-infected child occurs, the foster parents shall complete the course "Caring for Children With HIV" or an approved alternative course that contains information on the unique aspects of pediatric HIV disease, transmission and infection control, the spectrum of HIV disease, confidentiality, death and bereavement, and self-care for the caregiver.

~~117.8(6)~~ *Reasonable and prudent parent standard.* Before the end of the foster parent's initial license year, each foster parent shall complete training on the reasonable and prudent parent standard as defined in rule 441—202.1(234). Foster parents licensed before October 1, 2015, shall complete this training no later than September 30, 2016.

ITEM 40. Amend subrule 156.8(7) as follows:

156.8(7) *Respite care.* ~~The service area manager or designee may authorize respite~~ Respite care for a child in family foster care shall be for up to 24 days per calendar year per placement. Respite Except for a certified respite provider, respite shall be provided by a licensed foster family. The payment rate to the respite foster family shall be the rate authorized under rule 441—156.6(234) to meet the needs of the child. Certified respite providers deliver foster child respite services in the foster family home for at least five hours a day at \$20 per day.

ITEM 41. Amend subrule 202.5(3) as follows:

202.5(3) The child shall have a physical examination by a physician, advanced registered nurse practitioner, or a physician assistant before the initial placement ~~in~~ into foster care, or the physical examination shall be scheduled within 14 calendar days of placement. The physician, advanced registered nurse practitioner, or a physician assistant shall complete a preliminary screening for dental and mental health and refer the child to a dentist or mental health professional if appropriate. To address any immediate medical needs, the child shall be seen immediately at an emergency room, an urgent care center, or other community health resource.

[Filed 6/14/17, effective 9/1/17]

[Published 7/5/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.

ARC 3186C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby amends Chapter 142, "Interstate Compact on the Placement of Children," Iowa Administrative Code.

These amendments allow the Department to implement and utilize the National Electronic Interstate Compact Enterprise (NEICE) system. The NEICE system is a secure, Web-based case management system that enables state-to-state transfer of data and documents for a child who needs placement across state lines. The implementation of the NEICE system will improve the efficiency of the Interstate Compact on the Placement of Children (ICPC) process and decrease delay in placement approval.

The implementation of the NEICE system will shorten permanency timelines; save costs due to postage, mailing and staff time; create a HIPAA-secure environment for the transfer of cases; and provide efficient tracking of cases.

These amendments also update out-of-date references in Chapter 142.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3020C** on April 12, 2017. The Department received no comments during the public comment period. These amendments are identical to those published under Notice of Intended Action.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The Council on Human Services adopted these amendments on June 14, 2017.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 232, division IX.

These amendments will become effective August 15, 2017.

The following amendments are adopted.

ITEM 1. Amend rules **441—142.1(238)** to **441—142.8(238)**, parenthetical implementation, as follows:

(~~238~~ 232)

ITEM 2. Strike the implementation sentence after rule **441—142.2(238)** as follows:

~~Rules 142.1(238) and 142.2(238) are intended to implement Iowa Code section 238.33.~~

ITEM 3. Adopt the following new rule 441—142.9(232):

441—142.9(232) NEICE database.

142.9(1) Definitions. For the purpose of this chapter, unless the context otherwise requires:

“*National Electronic Interstate Compact Enterprise system*” or “*NEICE system*” means the national electronic web-based system for administration of the interstate compact on the placement of children made available to states by the American Public Human Services Association through its affiliate, the Association of Administrators of the Interstate Compact on the Placement of Children.

“*Security requirements*” means all policies or system security guidance established by the department and the office of the chief information officer related to the use of external computer systems for the storage of personally identifiable data elements of applicants for and recipients of department services. Security requirements as defined herein include but are not necessarily limited to completion by the vendor of the then current cybersecurity framework made available by the National Institute of Standards and Technology, department confirmation that the system has passed the cybersecurity framework analysis, completion by the vendor of an information security risk assessment acceptable to the department, performance by the vendor of a system penetration test acceptable to the department, and an application scan for vulnerabilities, as well as remediation of any vulnerabilities identified.

142.9(2) Department obligation to provide data to the NEICE system.

a. At all times that the NEICE system meets security requirements, the department shall place in the system all data elements and information that the system is configured to accept concerning children subject to the interstate compact.

b. Prior to placing personally identifiable data elements in the NEICE system, the department shall confirm that the NEICE system complies with all security requirements. If at any time after placement of personally identifiable data in the NEICE system the department determines that the NEICE system fails to meet all security requirements or that personally identifiable data placed in the system by the department has been used or disclosed inappropriately, the department may cease using the NEICE system and may demand that all data provided by the department be removed from the system.

ITEM 4. Adopt the following new implementation sentence in **441—Chapter 142**:

These rules are intended to implement Iowa Code chapter 232, division IX.

[Filed 6/14/17, effective 8/15/17]

[Published 7/5/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.

ARC 3187C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104, 137C.6, 137D.2 and 137F.2, the Department of Inspections and Appeals hereby amends Chapter 30, “Food and Consumer Safety,” Iowa Administrative Code.

These amendments implement 2016 Iowa Acts, chapter 1086, an Act relating to the licensure of home food establishments. Pursuant to the legislation, home food establishments are now called home bakeries. These amendments reflect updates to the Food Code issued by the federal Food and Drug Administration (FDA) with changes through 2015. Amendments to Chapter 31, “Food Establishment and Food Processing Plant Inspections,” published as **ARC 3188C** herein, adopt the 2013 FDA Model Food Code with Supplement. These amendments also clarify provisions to reduce confusion for establishments under the jurisdiction of other food licensing agencies, such as the Iowa Department of Agriculture and Land Stewardship.

Prior to publication of this Notice of Intended Action, the Department distributed a draft of these amendments for comment to industry associations, local contracting health departments, and food safety educators. No comments were received.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 10, 2017, as **ARC 3052C**. No comments were received by the Department during the public comment period. These amendments are identical to those published under Notice of Intended Action.

The Department does not believe that these amendments impose any financial hardship on any regulated entity, body, or individual.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 10A.104 and 137F.2.

These amendments shall become effective August 9, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 481—30.1(10A,137C,137D,137F) as follows:

481—30.1(10A,137C,137D,137F) Food and consumer safety bureau. The food and consumer safety bureau inspects food establishments and food processing plants including food storage facilities (warehouses), home ~~food establishments~~ bakeries, food and beverage vending machines, and hotels and motels. The food and consumer safety bureau is also responsible for ~~targeted small business certification~~, social and charitable gambling, and amusement devices. Separate chapters have been established for the administration of targeted small business certification (481—Chapter 25), social and charitable gambling (481—Chapters 100 to 103, 106, and 107), and amusement devices (481—Chapters 104 and 105).

This rule is intended to implement Iowa Code sections 10A.104 and 22.11 and Iowa Code chapters 137C, 137D and 137F.

ITEM 2. Adopt the following **new** definitions of “Catering,” “Personal chef,” and “Unattended food establishment” in rule **481—30.2(10A,137C,137D,137F)**:

“*Catering*” means the preparation of food for distribution to an individual, business or organization for exclusive service to the individual’s, business’s or organization’s nonpaying guests, employees or members.

“*Personal chef*” or “*hired cook*” means a person who provides food preparation services in a private home or at a private party for a client and the client’s nonpaying guests. “Personal chef” or “hired cook” does not include a person who provides the ingredients intended to be used in food preparation.

“*Unattended food establishment*” means an operation that provides packaged foods or whole fruit using an automated payment system and has controlled entry not accessible by the general public. “Controlled entry,” for the purposes of the definition of “unattended food establishment,” means selective restriction or limitation of access to a place or location.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

ITEM 3. Amend rule **481—30.2(10A,137C,137D,137F)**, definitions of “Food establishment,” “Food processing plant,” and “Home food establishment,” as follows:

“*Food establishment*” means an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption and includes a food service operation in a salvage or distressed food operation, nutrition program operated pursuant to Title III-C of the Older Americans Act, school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, the state training school and the Iowa juvenile home. Assisted living programs and adult day services are included in the definition of food establishment to the extent required by 481—subrules 69.28(6) and 70.28(6). “Food establishment” does not include the following:

1. A food processing plant.
2. An establishment that offers only prepackaged foods that are not potentially hazardous.
3. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.
4. Premises which are a home ~~food establishment~~ bakery pursuant to Iowa Code chapter 137D.
5. Premises which operate as a farmers market.
6. Premises of a residence in which food that is not potentially hazardous is sold for consumption off the premises to a consumer customer, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food. This exception does not apply to resale goods. This exception applies only to sales made from the residence in person and does not include mail order or Internet sales.
7. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.
8. A private home or private party where a personal chef or hired cook is providing food preparation services to a client and the client’s nonpaying guests.
- ~~8.~~ 9. A private home that receives catered or home-delivered food.
- ~~9.~~ 10. Child day care facilities and other food establishments located in hospitals or health care facilities that serve only patients and staff and are subject to inspection by other state agencies or divisions of the department.
- ~~10.~~ 11. Supply vehicles or vending machine locations.
- ~~11.~~ 12. Establishments that are exclusively engaged in the processing of meat and poultry which and are licensed pursuant to Iowa Code section 189A.3.
- ~~12.~~ 13. The following premises, provided they are exclusively engaged in the sale of alcoholic beverages in a prepackaged form:
 - Premises covered by a current Class “A” beer permit, including a Class “A” native beer permit as provided in Iowa Code chapter 123;
 - Premises covered by a current Class “A” wine permit, including a Class “A” native wine permit as provided in Iowa Code chapter 123; and
 - Premises of a manufacturer of distilled spirits under Iowa Code chapter 123.
- ~~13.~~ 14. Premises ~~covered~~ or operations that are exclusively engaged in the processing of milk and milk products, are regulated by Iowa Code section 192.107 with, and have a milk or milk products permit issued by the department of agriculture and land stewardship.
- ~~14.~~ 15. Premises or operations ~~which~~ that are exclusively engaged in the production of shell eggs, are regulated by or subject to Iowa Code section 196.3, and which have an egg handler’s license.
- ~~15.~~ 16. The premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; or labeled or from which honey is distributed.
- ~~16.~~ 17. Premises regularly used by a nonprofit organization which engages in the serving of food on the premises as long as the nonprofit organization does not exceed the following restrictions:
 - The nonprofit organization serves food no more than one day per calendar week and not on two or more consecutive days;
 - Twice per year, the nonprofit organization may serve food to the public for up to three consecutive days; and

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• The nonprofit organization may use the premises of another nonprofit organization not more than twice per year for one day to serve food.

“*Food processing plant*” means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer. “Food processing plant” does not include any of the following:

1. The following premises, provided they are exclusively engaged in the sale of alcoholic beverages in a prepackaged form:

- Premises covered by a current Class “A” beer permit, including a Class “A” native beer permit as provided in Iowa Code chapter 123;
- Premises covered by a current Class “A” wine permit, including a Class “A” native wine permit as provided in Iowa Code chapter 123; and
- Premises of a manufacturer of distilled spirits under Iowa Code chapter 123.

2. The premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; or labeled or from which honey is distributed.

3. Premises or operations that are exclusively engaged in the processing of meat and poultry and are licensed pursuant to Iowa Code section 189A.3.

4. Premises or operations that are exclusively engaged in the processing of milk or milk products, are regulated by Iowa Code section 192.107, and have a milk or milk products permit issued by the department of agriculture and land stewardship.

5. Premises or operations that are exclusively engaged in the production of shell eggs, are regulated by Iowa Code section 196.3, and have an egg handler’s license.

“~~Home food establishment~~ *bakery*” means a business on the premises of a residence that is operating as a home-based bakery where ~~potentially hazardous bakery~~ baked goods are prepared for consumption elsewhere. Annual gross sales of these products cannot exceed ~~\$20,000~~ \$35,000. “~~Home food establishment~~ *bakery*” does not include: ~~a residence where food is prepared to be used or sold by churches, fraternal societies, or charitable, civic or nonprofit organizations. Residences which prepare or distribute honey, shell eggs or nonhazardous baked goods are not required to be licensed as home food establishments.~~

1. A food establishment;
2. A food processing plant;
3. A residence where food is prepared to be used or sold by churches, fraternal societies, or charitable, civic or nonprofit organizations;
4. A residence that prepares or distributes honey;
5. A residence that distributes shell eggs;
6. A residence that prepares nonhazardous foods for sale at a farmers market; or
7. A residence that prepares nonhazardous baked goods sold directly from the residence. This exception does not apply to resale goods. This exception applies only to sales made from the residence in person and does not include mail order or Internet sales.

ITEM 4. Amend subrule 30.4(4) as follows:

30.4(4) ~~Home food establishments~~ *bakery*. The license fee for a ~~home food establishments~~ *bakery* is \$33.75 (Iowa Code section 137D.2(1)).

ITEM 5. Amend subrule 30.8(5) as follows:

30.8(5) ~~Home food establishments~~ *bakeries and vending machines*. ~~Home food establishments~~ *bakeries* and vending machines shall be inspected at least once every 24 months.

ITEM 6. Amend subrule 30.10(1) as follows:

30.10(1) *Immediate suspension of license*. To the extent not inconsistent with Iowa Code chapters 17A, 137C, 137D, and 137F and rules adopted pursuant to those chapters, chapter 8 of the Food Code shall be adopted for food establishments and ~~home food establishments~~ *bakeries*. The department or contractor may immediately suspend a license in cases of an imminent health hazard. The procedures of Iowa Code section 17A.18A and Food Code chapter 8 shall be followed in cases of an imminent health hazard. The appeal process in rule 481—30.11(10A,137C,137D,137F) is available following an

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immediate suspension. The department may immediately suspend the license of a food processing plant or hotel if an imminent health hazard finding is made and the procedures of Iowa Code section 17A.18A are followed.

[Filed 6/14/17, effective 8/9/17]

[Published 7/5/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.

ARC 3188C**INSPECTIONS AND APPEALS DEPARTMENT[481]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 10A.104 and 137F.2, the Department of Inspections and Appeals hereby amends Chapter 31, "Food Establishment and Food Processing Plant Inspections," Iowa Administrative Code.

These amendments adopt the 2013 Food Code with Supplement of the Food and Drug Administration as the state's food code. The 2013 Food Code with Supplement reflects changes through 2015. These amendments include a change recommended for inclusion in 2017 by the federal Food and Drug Administration (FDA) related to unattended food establishments; the change will streamline the process for industry and eliminate the need to obtain a waiver from the Department for this activity. The intended effective date for the 2013 Food Code with Supplement is January 1, 2018. Finally, these amendments reflect updates to the Code of Federal Regulations (CFR) for 2017. The updates include the adoption of 21 CFR Part 117, which contains the modernized good manufacturing practices and the preventive control rules, both required by the FDA Food Safety Modernization Act.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 10, 2017, as **ARC 3053C**. Prior to publication of the Notice of Intended Action, the Department distributed a draft of these amendments for comment to industry associations, local contracting health departments and food safety educators. No comments were received, nor were comments received by the Department during the public comment period. These amendments are identical to those published under Notice of Intended Action.

The Department does not believe that the amendments impose any financial hardship on any regulated entity, body, or individual.

After analysis and review of this rule making, no impact on jobs has been found. These amendments are intended to implement Iowa Code sections 10A.104 and 137F.2.

These amendments shall become effective August 9, 2017, with the exception of the amendments in Items 1 and 5. The amendments in Item 1 will become effective January 1, 2018. The effective dates in Item 5 are specified in paragraph 31.2(9)"v."

The following amendments are adopted.

ITEM 1. Amend rule 481—31.1(137F) as follows:

481—31.1(137F) Inspection standards for food establishments. The department adopts, with the following exceptions, the ~~2009~~ 2013 Food Code with Supplement of the Food and Drug Administration as the state's "food code," which is the inspection standard for food establishments other than food processing plants.

31.1(1) Unattended food establishments—assignment of responsibility. For the purposes of section 2-101.11 of the 2013 Food Code with Supplement, unattended food establishments are not required to have a designated person in charge present during all hours of operation provided that the permit holder ensures the following requirements are met.

a. Unattended food establishment location. The unattended food establishment shall be located in the interior of a building that is not accessible by the general public. Access to the unattended food

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establishment shall be limited to a defined population (e.g., employees or occupants of the building where the establishment is located).

b. Nature and source of food and beverages offered for sale.

(1) Only commercially packaged foods properly labeled for individual retail sale, pursuant to Food Code section 3-201.11(C), shall be offered.

(2) No unpackaged food is permitted except as provided by section 3-302.11(B)(1) of the Food Code.

(3) Food preparation by consumers is limited to heating/reheating food in a microwave oven.

(4) No dispensing of bulk food is permitted.

c. Refrigerated display equipment. An unattended food establishment shall be equipped with refrigeration or freezer units that have the following features:

(1) Self-closing doors that allow food to be viewed without opening the door to the refrigerated cooler or freezer; and

(2) An automatic self-locking mechanism that prevents the consumer from accessing the food upon the occurrence of any condition that results in the failure of the refrigeration unit to maintain the internal product temperature specified under section 3-501.16(A)(2) or of the freezer unit to maintain the product as frozen.

d. Food service equipment limitations.

(1) Beverages are dispensed by individual serving only. Beverage dispensers connected to the building water supply must be properly equipped with backflow prevention pursuant to section 5-203.14 of the Food Code.

(2) Food-contact surfaces.

1. Multiuse food-contact surfaces shall be cleaned on a frequency consistent with the service pursuant to section 4-202.11 of the Food Code or can be and are easily removed and replaced with cleaned surfaces.

2. No multiuse food-contact surfaces intended for use with time/temperature control for safety foods are permitted.

e. Security.

(1) An unattended food establishment shall provide continuous video surveillance of areas where consumers view, select, handle and purchase products. The continuous video surveillance shall provide sufficient resolution to identify situations that may compromise food safety or food defense.

1. Video surveillance recordings shall be maintained and, upon request by a representative of a regulatory agency, made available for inspection within 24 hours of the request.

2. Video surveillance recordings shall be held by the establishment for a minimum of 14 days after the date of the surveillance.

(2) The permit holder shall take reasonable steps necessary to discourage individuals from returning food, beverages, or both that have not been selected for purchase.

f. Routine maintenance at an unattended food establishment.

(1) The permit holder shall service the unattended food establishment at least weekly. Service may include, but is not limited to, the following:

1. Checking food supplies and equipment for signs of product damage, tampering, or both.

2. Verifying that refrigeration equipment is operating properly, including the temperature display and self-locking mechanism.

3. Rotating foods to better ensure first in/first out of food items.

4. Cleaning food service equipment and food display areas.

5. Stocking food and disposable single-use and single-service supplies.

6. Checking inventory for recalled foods.

(2) The permit holder shall ensure that:

1. Food is from an approved source.

2. Packaged food is provided in tamper-evident packaging.

3. Food is protected from potential sources of cross contamination.

4. Food is maintained at safe temperatures during transport and display.

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g. Unattended food establishment oversight. Each unattended food establishment shall have a sign readily visible at the automated payment station stating:

(1) The name and mailing address of the business entity responsible for the establishment and to whom complaints and comments should be addressed.

(2) The telephone number, e-mail address or Web information for the responsible business entity, when applicable.

h. Designation of responsibilities. The permit holder bears all responsibilities for the operation of the food establishment. When the permit holder is not the owner or operator of the building where the food establishment is located, a mutual agreement that outlines the responsibilities for cleaning and maintenance of all surfaces and equipment and for provision of supportive facilities/services, such as janitorial services and restroom facilities, pest control and removal of solid waste, may be approved by the regulatory agency. This agreement should also outline actions that must be taken by both parties to maintain the establishment in compliance with all requirements including responding to imminent health hazards.

i. Inspections—on-site person in charge. When requested by the regulatory authority for the purposes of conducting an inspection, the permit holder shall provide an on-site person in charge within a reasonable time frame not to exceed four hours.

~~31.1(1)~~ **31.1(2)** Certified food protection manager required—exceptions and time frames for employment.

a. For purposes of section 2-102.12 of the ~~2009~~ 2013 Food Code with Supplement, establishments that sell only prepackaged foods are not required to employ an individual who is a certified food protection manager. Temporary food establishments are not required to employ an individual who is a certified food protection manager. Bars or taverns at which food is not prepared, where customers may purchase alcoholic beverages, and where the serving of food is limited to the service of ice, beverages, prepackaged snack foods, popcorn, or peanuts and the reheating of commercially prepared foods that do not require assembly, such as frozen pizza or prepackaged sandwiches, are not required to employ an individual who is a certified food protection manager. the following food establishments are not required to employ an individual who is a certified food protection manager:

(1) Food establishments that sell only prepackaged food.

(2) Temporary or farmers market food establishments.

(3) Food establishments at which food is not prepared, where customers may purchase beverages, and where the service of food is limited to the service of ice, beverages, prepackaged snack foods, popcorn, or peanuts and to the reheating of commercially prepared foods for immediate service that do not require assembly, such as frozen pizza or prepackaged sandwiches.

(4) Food establishments at which food is not prepared, where customers may purchase only commercially prepared nonpotentially hazardous foods that are dispensed either unpackaged or packaged and are intended for off-premises consumption.

b. For all other establishments, the following time frames apply for employment of an individual who is a certified food protection manager:

~~a-~~ (1) For establishments newly licensed after January 1, 2014, the requirement of section 2-102.12 must be met within six months of licensure.

~~b-~~ (2) Establishments in existence as of January 1, 2014, that do not receive a foodborne illness risk factor or public health intervention violation on or before July 1, 2017, shall meet the requirement of section 2-102.12 by January 1, 2018.

~~c-~~ (3) Establishments in existence as of January 1, 2014, that receive a foodborne illness risk factor or public health intervention violation on or before July 1, 2017, shall meet the requirement of section 2-102.12 within six months of the violation.

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~~4.~~ (4) If the individual meeting the requirement of section 2-102.12 leaves employment with an establishment required to meet section 2-102.12, the establishment shall meet the requirement of section 2-102.12 within six months.

~~31.1(2)~~ **31.1(3)** *Honey prepared in a residence.* Section 3-201.11 is amended to allow honey which is stored; prepared, including by placement in a container; or labeled at or distributed from the premises of a residence to be sold in a food establishment.

~~31.1(3)~~ **31.1(4)** *Morel mushrooms.* Section 3-201.16, paragraph (A), is amended by adding the following:

“A food establishment or farmers market potentially hazardous food licensee may serve or sell morel mushrooms if procured from an individual who has completed a morel mushroom identification expert course. Every morel mushroom shall be identified and found to be safe by a certified morel mushroom identification expert whose competence has been verified and approved by the department through the expert’s successful completion of a morel mushroom identification expert course provided by either an accredited college or university or a mycological society. The certified morel mushroom identification expert shall personally inspect each mushroom and determine it to be a morel mushroom. A morel mushroom identification expert course shall be at least three hours in length. To maintain status as a morel mushroom identification expert, the individual shall have successfully completed a morel mushroom identification expert course described above within the past three years. A person who wishes to offer a morel mushroom identification expert course must submit the course curriculum to the department for review and approval. Food establishments or farmers market potentially hazardous food licensees offering morel mushrooms shall maintain the following information for a period of 90 days from the date the morel mushrooms were obtained:

“1. The name, address, and telephone number of the morel mushroom identification expert;

“2. A copy of the morel mushroom identification expert’s certificate of successful completion of the course, containing the date of completion; and

“3. The quantity of morel mushrooms purchased and the date(s) purchased.

“Furthermore, a consumer advisory shall inform consumers by brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means that wild mushrooms should be thoroughly cooked and may cause allergic reactions or other effects.”

~~31.1(4)~~ **31.1(5)** *Field-dressed wild game prohibition.* Subparagraph 3-201.17(A)(4) is amended to state that field-dressed wild game shall not be permitted in food establishments unless:

a. The food establishment is also licensed and inspected by the Iowa department of agriculture and land stewardship, meat and poultry inspection bureau, pursuant to Iowa Code section 189A.3;

b. All field-dressed wild game is adequately separated from food, equipment, utensils, clean linens, and single-service and single-use articles; and

c. Any equipment used in the processing of field-dressed wild game is adequately cleaned and sanitized before use with other foods.

~~31.1(5)~~ *Preventing contamination from hands.* Section 3-301.11, paragraph (D), is amended to incorporate the changes to this section adopted in the 2013 Food Code, which provides as follows:

~~“(D) Paragraph (B) of this section does not apply to a food employee that contacts exposed, ready-to-eat food with bare hands at the time the ready-to-eat food is being added as an ingredient to a food that:~~

~~“(1) Contains a raw animal food and is to be cooked in the food establishment to heat all parts of the food to the minimum temperatures specified in ¶3-401.11(A) (B) or §3-401.12; or~~

~~“(2) Does not contain a raw animal food but is to be cooked in the food establishment to heat all parts of the food to a temperature of at least 63°C (145°F).”~~

~~31.1(6)~~ *Noncontinuous cooking of raw animal foods.* Section 3-401.14, paragraph (D), is amended as follows to incorporate the changes in this section adopted in the 2013 Food Code:

~~(D) Prior to sale or service, cooked using a process that heats all parts of the FOOD to a temperature and for a time as specified under ¶¶ 3-401.11(A)-(C);^P~~

~~31.1(7)~~ **31.1(6)** *Reduced oxygen packaging in meat and poultry processing plants.* Meat and poultry processing plants that are licensed and inspected by the Iowa department of agriculture and land

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stewardship (IDALS) meat and poultry inspection bureau pursuant to Iowa Code section 189A.3 and that are also licensed as a food establishment are exempt from section 3-502.11, paragraphs (A), (B), (D) and (F), and section 3-502.12 if all of the following criteria are met:

- a. Each food product formulation has been approved by the Iowa department of agriculture and land stewardship, meat and poultry inspection bureau;
- b. A copy of the approved formulation (T40/45) is maintained on file at the establishment and made available to the regulatory authority upon request;
- c. Cooked products that do not include a curing agent or an antimicrobial agent that will control *Clostridium botulinum* and *Listeria monocytogenes* that are in a reduced oxygen package are stored and sold frozen and are labeled "Keep Frozen"; and
- d. The food products are properly labeled.

~~31.1(8)~~ **31.1(7)** *Reduced oxygen packaging.* Section 3-502.12 is amended to incorporate the changes in this section adopted in the 2013 Food Code, which provides as follows include the following:

~~3-502.12~~ **Reduced Oxygen Packaging Without a Variance, Criteria.**

(A) Except for a FOOD ESTABLISHMENT that obtains a VARIANCE as specified under § 3-502.11, a FOOD ESTABLISHMENT that PACKAGES TIME/TEMPERATURE CONTROL FOR SAFETY FOOD using a REDUCED OXYGEN PACKAGING method shall control the growth and toxin formation of *Clostridium botulinum* and the growth of *Listeria monocytogenes*.^{Pf}

(B) Except as specified under ¶ (F) of this section, a FOOD ESTABLISHMENT that PACKAGES TIME/TEMPERATURE CONTROL FOR SAFETY FOOD using a REDUCED OXYGEN PACKAGING method shall implement a HACCP PLAN that contains the information specified under ¶¶ 8-201.14(B) and (D) and that:^{Pf}

- (1) Identifies the FOOD to be PACKAGED;^{Pf}
- (2) Except as specified under ¶¶ (C)–(E) of this section, requires that the PACKAGED FOOD shall be maintained at 5°C (41°F) or less and meet at least one of the following criteria:^{Pf}
 - (a) Has an A_w of 0.91 or less,^{Pf}
 - (b) Has a pH of 4.6 or less,^{Pf}
 - (c) Is a MEAT or POULTRY product cured at a FOOD PROCESSING PLANT regulated by the USDA using substances specified in 9 CFR 424.21, Use of food ingredients and sources of radiation, and is received in an intact PACKAGE,^{Pf} or
 - (d) Is a FOOD with a high level of competing organisms such as raw MEAT, raw POULTRY, or raw vegetables;^{Pf}
- (3) Describes how the PACKAGE shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:^{Pf}
 - (a) Maintain the FOOD at 5°C (41°F) or below,^{Pf} and
 - (b) Discard the FOOD if, within 30 calendar days of its PACKAGING, it is not served for on-PREMISES consumption, or consumed if served or sold for off-PREMISES consumption;^{Pf}
 - (4) Limits the refrigerated shelf life to no more than 30 calendar days from PACKAGING to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first;^P
 - (5) Includes operational procedures that:
 - (a) Prohibit contacting READY-TO-EAT FOOD with bare hands as specified under ¶ 3-301.11(B),^{Pf}
 - (b) Identify a designated work area and the method by which:^{Pf}
 - (i) Physical barriers or methods of separation of raw FOODS and READY-TO-EAT FOODS minimize cross contamination,^{Pf} and
 - (ii) Access to the processing EQUIPMENT is limited to responsible trained personnel familiar with the potential HAZARDS of the operation,^{Pf} and
 - (c) Delineate cleaning and SANITIZATION procedures for FOOD-CONTACT SURFACES;^{Pf} and
 - (6) Describes the training program that ensures that the individual responsible for the REDUCED OXYGEN PACKAGING operation understands the:^{Pf}
 - (a) Concepts required for a safe operation,^{Pf}
 - (b) EQUIPMENT and facilities,^{Pf} and

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~~(c) Procedures specified under Subparagraph (B)(5) of this section and §§ 8-201.14(B) and (D).^{Pf}
(7) Is provided to the REGULATORY AUTHORITY prior to implementation as specified under § 8-201.13(B).~~

~~(C) Except for FISH that is frozen before, during, and after PACKAGING, a FOOD ESTABLISHMENT may not PACKAGE FISH using a REDUCED OXYGEN PACKAGING method.^P~~

~~(D) Except as specified under § (C) and § (F) of this section, a FOOD ESTABLISHMENT that PACKAGES TIME/TEMPERATURE CONTROL FOR SAFETY FOOD using a cook-chill or sous vide process shall:~~

~~(1) Provide to the REGULATORY AUTHORITY prior to implementation, a HACCP PLAN that contains the information as specified under §§ 8-201.14(B) and (D);^{Pf}~~

~~(2) Ensure the FOOD is:~~

~~(a) Prepared and consumed on the PREMISES, or prepared and consumed off the PREMISES but within the same business entity with no distribution or sale of the PACKAGED product to another business entity or the CONSUMER;^{Pf}~~

~~(b) Cooked to heat all parts of the FOOD to a temperature and for a time as specified under §§ 3-401.11(A), (B), and (C);^P~~

~~(c) Protected from contamination before and after cooking as specified under Parts 3-3 and 3-4;^P~~

~~(d) Placed in a PACKAGE with an oxygen barrier and sealed before cooking, or placed in a PACKAGE and sealed immediately after cooking and before reaching a temperature below 57°C (135°F);^P~~

~~(e) Cooled to 5°C (41°F) in the sealed PACKAGE or bag as specified under § 3-501.14 and;^P~~

~~(i) Cooled to 1°C (34°F) within 48 hours of reaching 5°C (41°F) and held at that temperature until consumed or discarded within 30 days after the date of PACKAGING;^P~~

~~(ii) Held at 5°C (41°F) or less for no more than 7 days, at which time the FOOD must be consumed or discarded;^P or~~

~~(iii) Held frozen with no shelf life restriction while frozen until consumed or used.^P~~

~~(f) Held in a refrigeration unit that is equipped with an electronic system that continuously monitors time and temperature and is visually examined for proper operation twice daily;^{Pf}~~

~~(g) If transported off-site to a satellite location of the same business entity, equipped with verifiable electronic monitoring devices to ensure that times and temperatures are monitored during transportation;^{Pf} and~~

~~(h) Labeled with the product name and the date PACKAGED;^{Pf} and~~

~~(3) Maintain the records required to confirm that cooling and cold holding refrigeration time/temperature parameters are required as part of the HACCP PLAN and:~~

~~(a) Make such records available to the REGULATORY AUTHORITY upon request;^{Pf} and~~

~~(b) Hold such records for at least 6 months;^{Pf} and~~

~~(4) Implement written operational procedures as specified under subparagraph (B)(5) of this section and a training program as specified under subparagraph (B)(6) of this section.^{Pf}~~

~~(E) Except as specified under § (F) of this section, a FOOD ESTABLISHMENT that PACKAGES cheese using a REDUCED OXYGEN PACKAGING method shall:~~

~~(1) Limit the cheeses PACKAGED to those that are commercially manufactured in a FOOD PROCESSING PLANT with no ingredients added in the FOOD ESTABLISHMENT and that meet the Standards of Identity as specified in 21 CFR 133.150 Hard cheeses, 21 CFR 133.169 Pasteurized process cheese or 21 CFR 133.187 Semisoft cheeses;^P~~

~~(2) Have a HACCP PLAN that contains the information specified under §§ 8-201.14(B) and (D) and as specified under §§ (B)(1), (B)(3)(a), (B)(5) and (B)(6) of this section;^{Pf}~~

~~(3) Label the PACKAGE on the principal display panel with a "use by" date that does not exceed 30 days from its packaging or the original manufacturer's "sell by" or "use by" date, whichever occurs first;^{Pf} and~~

~~(4) Discard the REDUCED OXYGEN PACKAGED cheese if it is not sold for off-PREMISES consumption or consumed within 30 calendar days of its PACKAGING.^{Pf}~~

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~~(F) “A HACCP PLAN is not required when a FOOD ESTABLISHMENT packages raw meat and poultry using a REDUCED OXYGEN PACKAGING method and includes on the package a 30-day “sell by” date from the date the raw meat or poultry was packaged.” or uses a REDUCED OXYGEN PACKAGING method to PACKAGE TIME/TEMPERATURE CONTROL FOR SAFETY FOOD that is always:~~

- ~~(1) Labeled with the production time and date,~~
- ~~(2) Held at 5°C (41°F) or less during refrigerated storage, and~~
- ~~(3) Removed from its PACKAGE in the FOOD ESTABLISHMENT within 48 hours after PACKAGING.~~

~~31.1(9)~~ **31.1(8)** *Warewashing sinks in establishments serving alcoholic beverages.* Section 4-301.12 is amended by adding the following: “When alcoholic beverages are served in a food service establishment, a sink with not fewer than three compartments shall be used in the bar area for manual washing, rinsing and sanitizing of bar utensils and glasses. When food is served in a bar, a separate three-compartment sink for washing, rinsing and sanitizing food-related dishes shall be used in the kitchen area, unless a dishwasher is used to wash utensils.”

~~31.1(10)~~ **31.1(9)** *Allowance for two-compartment sinks in certain circumstances.* Paragraph 4-301.12(C) is amended by adding the following: “Establishments need not have a three-compartment sink when each of the following conditions is met:

- “1. Three or fewer utensils are used for food preparation;
- “2. Utensils are limited to tongs, spatulas, and scoops; and
- “3. The department has approved after verification that the establishment can adequately wash and sanitize these utensils.”

~~31.1(11)~~ **31.1(10)** *Chemical treated towelettes.* Paragraph 5-203.11(C) is deleted.

~~31.1(12)~~ **31.1(11)** *Service sink.* For existing establishments, if waste water is being appropriately disposed of, section 5-203.13 for existing establishments shall go into effect upon the establishment’s renovation or sale.

~~31.1(13)~~ **31.1(12)** *Toilets and lavatories.* Section 5-203.12 is amended by adding the following requirement: “Separate toilet facilities for men and women shall be provided in establishments which seat 50 or more people or in establishments which serve beer or alcoholic beverages.”

~~31.1(14)~~ **31.1(13)** *Backflow protection.* Section 5-203.14 is amended by adding the following: “Water outlets with hose attachments, except for water heater drains and clothes washer connections, shall be protected by a non-removable hose bibb backflow preventer or by a listed atmospheric vacuum breaker installed at least six inches above the highest point of usage and located on the discharge side of the last valve.”

~~31.1(15)~~ **31.1(14)** *Backflow prevention.* Paragraph 5-402.11(D) is amended by adding the following: “A culinary sink or sink used for food preparation shall not have a direct connection between the sewage system and a drain originating from that sink. Culinary sinks or sinks used in food preparation shall be separated by an air break.”

~~31.1(16)~~ **31.1(15)** *Inspection standards for elder group homes.* Elder group homes as defined by Iowa Code section 231B.1 shall be inspected by the department, but chapters 4 and 6 of the Food Code shall not apply. Elder group homes shall pay the lowest license fee set forth in 481—subrule 30.4(2).

~~31.1(17)~~ **31.1(16)** *Nonprofit exception for temporary events.* Nonprofit organizations that are licensed as temporary food establishments may serve nonpotentially hazardous food from an unapproved source for the duration of the event.

~~31.1(18)~~ **31.1(17)** *Variance approval by department and submission of HACCP plans.* Any variances or HACCP plans that require approval by the “regulatory authority” must be approved by the department. HACCP plans pursuant to paragraphs 3-502.12(B) and 8-201.13(B) shall be filed with the department prior to implementation, regardless of whether or not the plan requires approval.

~~31.1(19)~~ **31.1(18)** *Trichinae control for pork products prepared at retail.* Pork products prepared at retail shall comply with the Code of Federal Regulations found in 9 CFR, Section 318.10, January 1, 2015, publication, regarding the destruction of possible live trichinae in pork and pork products. Examples of pork products that require trichinae control include raw sausages containing pork and

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

other meat products, raw breaded pork products, bacon used to wrap around steaks and patties, and uncooked mixtures of pork and other meat products contained in meat loaves and similar types of products. The use of “certified pork” as authorized by the Iowa department of agriculture and land stewardship or the United States Department of Agriculture, Food Safety and Inspection Service, shall meet the requirements of this subrule.

This rule is intended to implement Iowa Code section 137F.2.

ITEM 2. Amend subrule 31.2(9), introductory paragraph, as follows:

31.2(9) *Adoption of Code of Federal Regulations.* The following parts of the Code of Federal Regulations (April 1, ~~2015~~ 2017) are adopted:

ITEM 3. Amend paragraph **31.2(9)“a”** as follows:

a. 21 CFR Part 1, Sections 1.20 to 1.24 and Subpart O, Sections 1.900 to 1.934 (labeling).

ITEM 4. Reletter paragraphs **31.2(9)“v”** to **“bi”** as **31.2(9)“x”** to **“bk.”**

ITEM 5. Adopt the following **new** paragraph **31.2(9)“v”**:

v. 21 CFR Part 117, current good manufacturing practice and hazard analysis and risk-based preventive controls for human food, as follows:

(1) As of October 1, 2017, subparts A, B and F of 21 CFR 117 shall be in effect for all food processing plants.

(2) As of October 1, 2017, all other subparts of 21 CFR 117 shall be effective upon the effective date established by the federal government.

(3) As of October 1, 2018, qualified facilities, as defined in 21 CFR 117, shall not include food processing plants manufacturing foods for interstate commerce or as an ingredient to other foods.

ITEM 6. Adopt the following **new** paragraph **31.2(9)“w”**:

w. 21 CFR Part 118, production, storage and transportation of shell eggs.

[Filed 6/14/17, effective 8/9/17]

[Published 7/5/17]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.

ARC 3189C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104, 137D.2 and 137F.2, the Department of Inspections and Appeals hereby amends Chapter 34, “Home Food Establishments,” Iowa Administrative Code.

These amendments implement 2016 Iowa Acts, chapter 1086, an Act relating to the licensure of home food establishments. Pursuant to the legislation, home food establishments are now called home bakeries.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 10, 2017, as **ARC 3051C**. No comments were received by the Department during the public comment period. These amendments are identical to those published under Notice of Intended Action.

The Department does not believe that these amendments impose any financial hardship on any regulated entity, body, or individual.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 10A.104 and 137F.2.

These amendment shall become effective August 9, 2017.

The following amendments are adopted.

ITEM 1. Amend **481—Chapter 34**, title, as follows:

HOME FOOD ESTABLISHMENTS BAKERIES

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

ITEM 2. Amend subrule 34.1(4) as follows:

34.1(4) All potentially hazardous food must be refrigerated at 41°F or less, ~~or held at 135°F or higher,~~ to control bacterial growth. ~~Potentially hazardous foods that have been cooked and then refrigerated shall be reheated rapidly to an internal temperature of 165°F or higher before being placed in hot food storage holding units. Food warmers and other hot food holding units shall not be used for the reheating of potentially hazardous foods.~~

ITEM 3. Amend rule 481—34.2(137D) as follows:

481—34.2(137D) Enforcement.

34.2(1) All ~~critical~~ violations shall be corrected within ~~10~~ 90 days of an inspection. ~~Within 15 days,~~ the ~~The~~ license holder shall make a written report to the regulatory authority, stating the action taken to correct the ~~critical~~ violation. ~~All noncritical violations shall be corrected within the time period required by the inspection, but in all cases the violation shall be corrected within 90 days of the routine inspection.~~

34.2(2) Violation of these rules or any provision of Iowa Code chapter 137D is a simple misdemeanor. The department may employ various remedies if violations are discovered.

- a. A license may be revoked.
- b. An injunction may be sought.
- c. A case may be referred to a county attorney for criminal prosecution.
- d. Foods may be embargoed or a stop-sale order may be issued.

ITEM 4. Amend rule 481—34.4(137D) as follows:

481—34.4(137D) Annual gross sales. Annual gross sales shall not exceed ~~\$20,000~~ \$35,000. The license holder shall maintain a record of sales of food licensed under Iowa Code section 137D.1(3). The record shall be available to the regulatory authority when requested.

ITEM 5. Amend paragraph **34.5(1)“a”** as follows:

a. Conducts an activity constituting a criminal offense in the licensed home ~~food establishment~~ bakery; and

ITEM 6. Amend paragraph **34.5(2)“a”** as follows:

a. Conducts an activity constituting a criminal offense in the licensed home ~~food establishment~~ bakery; and

[Filed 6/14/17, effective 8/9/17]

[Published 7/5/17]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.

ARC 3190C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code section 99B.2, the Department of Inspections and Appeals hereby rescinds Chapter 102, “Social Gambling,” Iowa Administrative Code.

This amendment implements changes to Iowa Code chapter 99B resulting from 2015 Iowa Acts, chapter 99 (Senate File 482), which made substantial updates and revisions to Iowa Code chapter 99B, including requirements for social gambling now found in Iowa Code sections 99B.41 to 99B.45. With these updated and new provisions in the Iowa Code, the Department has concluded that it is unnecessary at this time to supplement these Iowa Code provisions with administrative rules. Therefore, this amendment rescinds and reserves Chapter 102.

The Department does not believe that this amendment imposes any financial hardship on any regulated entity, body, or individual.

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Notice of Intended Action was published in the Iowa Administrative Bulletin on May 10, 2017, as **ARC 3048C**. No comments were received by the Department during the public comment period. This amendment is identical to that published under Notice of Intended Action.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 99B.2.

This amendment shall become effective August 9, 2017.

The following amendment is adopted.

Rescind and reserve **481—Chapter 102**.

[Filed 6/14/17, effective 8/9/17]

[Published 7/5/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.

ARC 3192C**INSPECTIONS AND APPEALS DEPARTMENT[481]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 99B.2, the Department of Inspections and Appeals hereby rescinds Chapter 107, "Game Nights," Iowa Administrative Code.

A substantial update and revision to Iowa Code chapter 99B, "Social and Charitable Gambling," resulted from 2015 Iowa Acts, chapter 99 (Senate File 482). The Act added to Iowa Code chapter 99B detailed requirements for game nights now found in Iowa Code sections 99B.26 and 99B.62. With these new provisions in the Iowa Code, the Department has concluded that it is unnecessary at this time to add the same requirements from these Iowa Code sections to the administrative rules in Chapter 107. Therefore, this amendment rescinds and reserves Chapter 107.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 10, 2017, as **ARC 3049C**. No comments were received by the Department during the public comment period. This amendment is identical to that published under Notice of Intended Action.

The Department does not believe that this amendment imposes any financial hardship on any regulated entity, body, or individual.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 99B.2.

This amendment shall become effective August 9, 2017.

The following amendment is adopted.

Rescind and reserve **481—Chapter 107**.

[Filed 6/14/17, effective 8/9/17]

[Published 7/5/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.

ARC 3193C**TRANSPORTATION DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.12, 307A.2 and 321.457(2)"n" and chapter 321E, the Iowa Department of Transportation, on June 14, 2017, adopted amendments to Chapter 511, "Special Permits for Operation and Movement of Vehicles and Loads of Excess Size and Weight," and rescinded Chapter 513, "Compacted Rubbish Vehicle Permits," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the May 10, 2017, Iowa Administrative Bulletin as **ARC 3045C**.

TRANSPORTATION DEPARTMENT[761](cont'd)

The Department is amending Chapter 511 and rescinding Chapter 513. The necessary rules concerning compacted rubbish vehicle permits were moved to Chapter 511. The amendments to Chapter 511 add and amend definitions; correct an office name, telephone numbers and Web site addresses; update Iowa Code and Iowa Administrative Code citations; eliminate rule language that is duplicative of the Iowa Code; and bring the rules up to date with current Iowa Code language and Department practices.

The amendments also:

- Add an exemption to subrule 511.3(2) for oversize snow removal equipment so that the equipment may be used when the roads are not clear of ice or snow and when visibility is poor.
- Update the methods used to issue and obtain permits to allow for an electronic format.
- Increase the height limit for continuous movement to 14 feet 6 inches to promote interstate commerce and implement internal consistency with the Department's revised escort rule.
- Update the height and length requirements for vehicles traveling under an annual or all-systems permit with divisible loads of hay, straw, stover, or bagged livestock bedding to comply with Iowa Code section 321E.29.
- Change the height limit for vehicles traveling under a multitrip permit with indivisible loads to 15 feet, 5 inches to be consistent with other annual permits.
- Remove the specific width and length requirements for vehicles traveling under a single-trip permit with indivisible loads and allow movement if the roadway and infrastructure support the vehicle.
- Increase the permit fees to coincide with changes made in Iowa Code section 321E.14.
- Allow for fees and costs to be paid by credit card. Eliminate inconsistent and outdated language concerning pertinent charge accounts.
- Allow for proof of liability insurance to be either written or electronic.
- Add language concerning the use of the vertical clearance map and road construction and travel restrictions map and detour and road embargo information within annual permit and all-systems permit rules.
- Change "construction machinery" to "special mobile equipment" to align with changes to Iowa Code chapter 321E.
- Clarify that a multitrip permit is for unlimited trips along a specific route between one point of origin and destination. Additional routes require a new permit.
- Update language concerning single-trip permits since the Department issues only one type of single-trip permit and the permit covers every type of indivisible load.
- Add a new rule concerning compacted rubbish vehicle permits and include the term "compacted rubbish" where applicable within the chapter.
- Make changes to the escort qualifications and responsibilities as follows: clarify that the escorting vehicle shall not be used to tow a trailer while performing escorting duties, remove the candlepower requirements, reduce the minimum visible distance to 500 feet due to new LED technology and Mid America Association of State Transportation Officials' requirements, and replace the table concerning minimum warning devices and escort requirements with a new table for clarity. The references to "sufficient shoulders" and the need for carriers to determine the roadway width have been omitted from the new table, and the new table provides simple two-lane and four-lane road requirements.
- Add a new rule to provide for economic export corridors for the transportation of goods or products manufactured in Iowa to or through South Dakota and for the return of unladen semitrailers or unladen full trailers used for the transportation of those goods or products to comply with Iowa Code section 321.457(2)"n."

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

These amendments are identical to those published under Notice of Intended Action.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 321.457(2) and 321.473 and chapter 321E.

TRANSPORTATION DEPARTMENT[761](cont'd)

These amendments will become effective August 9, 2017.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definitions of “Compacted rubbish vehicle,” “Indivisible load,” and “Rubbish” in rule **761—511.1(321E)**:

“*Compacted rubbish vehicle*” means any vehicle hauling rubbish that has been mechanically compacted with a hydraulic, electric, or air-operated ram.

“*Indivisible load*” means any load or vehicle exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

1. Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;
2. Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or
3. Require more than eight work hours to dismantle using appropriate equipment. The applicant for an indivisible load permit has the burden of proof as to the number of work hours required to dismantle the load.

“*Rubbish*” means any unwanted or useless material that has no commercial or practical value or use and that would normally be discarded.

ITEM 2. Rescind the definition of “Sufficient shoulder width” in rule **761—511.1(321E)**.

ITEM 3. Amend rule **761—511.1(321E)**, definition of “Permit-issuing authority,” as follows:

“*Permit-issuing authority*” means the:

1. Department’s office of vehicle and motor carrier services for permits for movement on the primary road system.
2. Authority responsible for the maintenance of a nonprimary system of highways or streets for permits for movement on that system. However, the office of vehicle and motor carrier services may issue single-trip permits on primary road extensions in cities in conjunction with movement on the rural primary road system.

ITEM 4. Amend rule **761—511.1(321E)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321E.9, 321E.15, ~~321E.27~~, 321E.29, 321E.30 and 321E.34.

ITEM 5. Amend rule 761—511.2(321E) as follows:

761—511.2(321E) Location and general information.

511.2(1) Applications, forms, instructions and restrictions are available on the department’s Web site at www.iowadot.gov and by mail from the Office of Vehicle and Motor Carrier Services, Iowa Department of Transportation, P.O. Box 10382, Des Moines, Iowa 50306-0382; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at (515)237-3264; or by facsimile at (515)237-3257. Permits may be obtained electronically upon making application to the office of vehicle and motor carrier services.

511.2(2) and **511.2(3)** No change.

511.2(4) Except as provided in subrule 511.7(6) and rule ~~511.13~~ 761—511.14(321,321E), permits may be issued only for the transporting of a single article which exceeds statutory size or weight limits or both, and which cannot reasonably be divided or reduced to statutory size and weight limits. However, permits may be issued for the transporting of property consisting of more than one article when:

a. to c. No change.

511.2(5) and **511.2(6)** No change.

This rule is intended to implement Iowa Code sections 17A.3 and ~~321E.1~~ 321E.2.

ITEM 6. Amend rule 761—511.3(321E) as follows:

761—511.3(321E) Movement under permit.

511.3(1) No change.

TRANSPORTATION DEPARTMENT[761](cont'd)

511.3(2) Movement shall be made only when roads are clear of ice and snow and visibility is at least one-quarter mile. Snow removal equipment operating under permit is exempt from this restriction while snow removal operations are conducted. EXCEPTION: Nothing in this subrule shall be construed to mean that the movement of a compacted rubbish vehicle permitted under rule 761—511.11(321E) shall be subject to this restriction.

511.3(3) and **511.3(4)** No change.

~~**511.3(5)** The permit shall be carried in the cab of the vehicle for which it has been issued and shall be available for inspection at all times.~~

~~**511.3(6)** Vehicles and loads under permit shall be open to inspection by any peace officer or any authorized agent of any permit-issuing authority.~~

~~**511.3(7)**~~ **511.3(5)** Continuous moves. Vehicles and loads may travel by permit between one-half hour after sunset and one-half hour before sunrise if, in addition to the general provisions and general requirements specified by the permit, the following conditions are met.

a. Dimensions shall not exceed:

(1) No change.

(2) Height. 14 feet, 4 6 inches.

(3) and (4) No change.

b. and c. No change.

This rule is intended to implement Iowa Code sections ~~321E.1~~ 321E.2 and 321E.11.

ITEM 7. Amend rule 761—511.4(321E) as follows:

761—511.4(321E) Permits. Permits issued shall be in writing or in electronic format and may be either single-trip, multitrip, annual, annual oversize/overweight, compacted rubbish or all-systems permits.

511.4(1) Methods of issuance.

a. Permits for movement on the primary road system may be obtained in person, by facsimile, ~~wire service, electronic communication,~~ online, or by mail at the address in subrule 511.2(1).

b. No change.

511.4(2) Forms.

a. Applications for permits for movement on the primary road system shall be made ~~and permits shall be issued on departmental Forms 442009, 442047, 442051, 442058 and 442059~~ online or on a form prescribed by the department.

b. Any applications to other permit-issuing authorities made upon ~~Forms 442009, 442047, 442051, 442058 and 442059~~ department forms shall be sufficient and accepted as properly made by these authorities.

c. No change.

511.4(3) Validity.

a. Annual, annual oversize/overweight, compacted rubbish, and all-systems permits shall expire ~~on the last day of the month~~ one year from the date of issuance.

b. and c. No change.

511.4(4) No change.

This rule is intended to implement Iowa Code sections ~~321E.1 and~~ 321E.2 and 321E.3.

ITEM 8. Amend rule 761—511.5(321,321E) as follows:

761—511.5(321,321E) Fees and charges.

511.5(1) Annual oversize permit. A fee of ~~\$25~~ \$50 shall be charged for each annual permit issued pursuant to Iowa Code section 321E.8, payable prior to the issuance of the permit. Carriers purchasing annual permits in advance of use cannot return unused permits for refunds.

511.5(2) Annual oversize permit for certain divisible loads. A fee of \$25 shall be charged for each annual permit issued pursuant to Iowa Code section 321E.29, payable prior to the issuance of the permit. Only divisible loads of hay, straw, stover, or bagged livestock bedding are permitted under this permit.

TRANSPORTATION DEPARTMENT[761](cont'd)

~~511.5(2)~~ **511.5(3)** *Annual oversize/overweight permit.* A fee of \$300 ~~\$400~~ shall be charged for each annual oversize/overweight permit, payable prior to the issuance of the permit. Transfer of current annual oversize/overweight permit to a replacement vehicle may be allowed when the original vehicle has been damaged in an accident, junked or sold.

~~511.5(3)~~ **511.5(4)** *All-systems permit.* A fee of \$120 ~~\$160~~ shall be charged for each annual all-systems permit, payable prior to the issuance of the permit.

511.5(5) *Bridge-exempt permit.* A fee of \$25 shall be charged for each bridge-exempt permit issued pursuant to Iowa Code section 321E.7, payable prior to the issuance of the permit.

~~511.5(4)~~ **511.5(6)** *Multitrip permit.* A fee of \$200 shall be charged for each multitrip permit, payable prior to the issuance of the permit. ~~Additional routes will require a new permit.~~

511.5(7) *Raw milk permit.* A fee of \$25 shall be charged for each raw milk permit issued pursuant to Iowa Code section 321E.29A, payable prior to the issuance of the permit.

~~511.5(5)~~ **511.5(8)** *Single-trip permit.* A fee of \$10 ~~\$35~~ shall be charged for each single-trip permit, payable prior to the issuance of the permit.

511.5(9) *Compacted rubbish permit.* A fee of \$100 shall be charged for each compacted rubbish permit, payable prior to the issuance of the permit.

~~511.5(6)~~ **511.5(10)** *Duplicate permit.* A fee of \$2 shall be charged for each duplicate permit, payable prior to the issuance of the permit.

~~511.5(7)~~ **511.5(11)** *Registration fee.* A registration fee shall be charged for vehicles transporting buildings, except mobile homes and factory-built structures, on a single-trip basis. The vehicle shall be registered for the combined gross weight of the vehicle and load. The fee shall be 5 cents per ton exceeding the weight registered under Iowa Code section 321.122 per mile of travel and shall be payable prior to the issuance of the permit. Fees shall not be prorated for fractions of miles.

~~511.5(8)~~ **511.5(12)** *Fair and reasonable costs.* Permit-issuing authorities may charge any permit applicant:

a. and b. No change.

~~511.5(9)~~ **511.5(13)** *Methods of payment.*

~~a.~~ Fees and costs required under this chapter of rules shall normally be paid by credit card, certified check, cashier's check, traveler's check, bank draft or cash. Personal checks may be accepted at the discretion of the permit-issuing authority.

~~b.~~ At the discretion of the permit-issuing authority, a payment procedure may be established to allow monthly billing for permits. The following procedures shall apply:

(1) Applicants shall deposit sufficient funds with the permit-issuing authority to guarantee payment of fees for the average number of permits ordered monthly. Deposits may be used to pay outstanding fees due when payment is not received upon billing.

(2) Monthly billings shall be sent to account holders.

(3) All future permit activity may be suspended after written notice of suspension to the account holder when the following requirements are not met:

Payment shall be received within 30 days from the date of the billing.

All information listed on the account holder's permit shall match the information listed on the permit-issuing authority's permit.

(4) Account privileges may be permanently canceled after written notice to the account holder when the requirements listed in paragraph 511.5(9) "b" are not met.

(5) Any account holder in good standing may close the account and request return of the deposit. Accounts closed under these circumstances may be reopened.

This rule is intended to implement Iowa Code sections 321.12, 321.122, 321E.14, 321E.29, and 321E.29A and 321E.30.

ITEM 9. Amend paragraph **511.6(1)"a"** as follows:

a. Public liability insurance in the amounts of \$100,000 bodily injury each person, \$200,000 bodily injury each occurrence, and \$50,000 property damage with an expiration date to cover the tenure of the annual, annual oversize/overweight, all-systems, multitrip or single-trip permit shall be required.

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In lieu of filing with the permit-issuing authority, a copy of the current certificate of public liability insurance in these amounts shall be carried in the vehicle for which the permit has been issued. Proof of liability insurance may be either in writing or in electronic format.

ITEM 10. Amend rule 761—511.7(321,321E) as follows:

761—511.7(321,321E) Annual permits. Annual permits are issued for indivisible vehicles or indivisible loads for travel when the dimensions of the vehicle or load exceed statutory limits but the weight is within statutory limits. Routing is subject to embargoed bridges and roads and posted speed limits. The owner or operator shall select a route using the vertical clearance map and road construction and travel restrictions map provided by the department. Detour and road embargo information may also be found online at: www.511ia.org. Prior to making the move, the owner or operator shall contact the department by telephone at (515)237-3264 between 8 a.m. and 4:30 p.m., Monday through Friday, except for legal holidays, to verify that the owner or operator is using the most recent information. Annual permits are issued for the following:

511.7(1) Vehicles with indivisible loads, including ~~construction machinery~~ special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

a. to c. No change.

d. *Weight.* See rule ~~511.12~~ 761—511.13(321,321E).

e. *Distance.* Movement is allowed for unlimited distance; routing through the office of vehicle and motor carrier services is not required.

511.7(2) Vehicles with indivisible loads, including ~~construction machinery~~ special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

a. to c. No change.

d. *Weight.* See rule ~~511.12~~ 761—511.13(321,321E).

e. *Distance.* Movement is restricted to 50 miles unless trip routes are obtained from the office of vehicle and motor carrier services or the route continues on at least four-lane roads. Trip routes are valid for five days.

511.7(3) Vehicles with indivisible loads, including ~~construction machinery~~ special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

a. to c. No change.

d. *Weight.* See rule ~~511.12~~ 761—511.13(321,321E).

e. *Distance.* Trip routes must be obtained from the office of vehicle and motor carrier services.

511.7(4) No change.

511.7(5) Truck trailers manufactured or assembled in the state of Iowa provided the following are met:

a. to c. No change.

d. *Weight.* See rule ~~511.12~~ 761—511.13(321,321E).

e. to g. No change.

511.7(6) Vehicles with divisible loads of hay, straw or, stover, or bagged livestock bedding provided the following are not exceeded:

a. No change.

b. *Length.* ~~Must comply with Iowa Code section 321.457~~ Statutory: 75 feet.

c. *Height.* Statutory: ~~13~~ 14 feet 6 inches.

d. *Weight.* See rule ~~511.12~~ 761—511.13(321,321E).

e. No change.

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, 321E.1, 321E.2, 321E.3, 321E.8, 321E.10, ~~321E.28, 321E.29 and 321E.29A~~ and Iowa Code Supplement section 321E.8 as amended by 2002 Iowa Acts, Senate File 2192, section 36.

ITEM 11. Amend subrule 511.8(1) as follows:

511.8(1) Vehicles with indivisible loads, including ~~construction machinery~~ special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

TRANSPORTATION DEPARTMENT[761](cont'd)

a. to c. No change.

d. *Weight.* See rule ~~511.12~~ 761—511.13(321,321E).

e. *Routing.* The owner or operator shall select a route using a vertical clearance map, kip map, bridge embargo map and detour and road embargo map provided by the department. Detour and road embargo information may also be found ~~on the Internet~~ online at ~~www.511ia.com~~ www.511ia.org. The owner or operator shall contact the department by telephone at ~~1-800-925-6469 (515)237-3264~~ between 8 a.m. and 4 4:30 p.m., Monday through ~~Thursday~~ Friday, except for legal holidays, ~~or at any other time at (515)237-3206~~ prior to making the move to verify that the owner or operator is using the most recent information.

ITEM 12. Amend rule ~~761—511.8~~**(321,321E)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, ~~321E.1, 321E.2, 321E.3, 321E.28~~ and Iowa Code Supplement section 321E.8 as amended by 2002 Iowa Acts, Senate File 2192, section 36.

ITEM 13. Amend rule ~~761—511.9~~(321,321E) as follows:

761—511.9(321,321E) All-systems permits. All-systems permits are issued by the office of vehicle and motor carrier services for indivisible vehicles or indivisible loads for travel on the primary road system and specified city streets and county roads when the dimensions of the vehicle or load exceed statutory limits but the weight is within statutory limits. Routing is subject to embargoed bridges and roads and posted speed limits. The office of vehicle and motor carrier services will provide a list of the authorized city streets and county roads. Permit holders shall consult with local officials when traveling on county roads or city streets for bridge embargo, vertical clearance, detour, and road construction information. These permits are issued for the following:

511.9(1) Vehicles with indivisible loads, including ~~construction machinery~~ special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

a. to c. No change.

d. *Weight.* See rule ~~511.12~~ 761—511.13(321,321E).

e. *Distance.* Movement is allowed for unlimited distance; routing through the office of vehicle and motor carrier services and city and county jurisdictions is not required.

511.9(2) Vehicles with indivisible loads, including ~~construction machinery~~ special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

a. to c. No change.

d. *Weight.* See rule ~~511.12~~ 761—511.13(321,321E).

e. *Distance.* Movement is restricted to 50 miles unless trip routes are obtained from the office of vehicle and motor carrier services and city and county jurisdictions or the route continues on at least four-lane roads. Trip routes are valid for five days.

511.9(3) Vehicles with indivisible loads, including ~~construction machinery~~ special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

a. to c. No change.

d. *Weight.* See rule ~~511.12~~ 761—511.13(321,321E).

e. *Distance.* Trip routes must be obtained from the office of vehicle and motor carrier services and city and county jurisdictions.

511.9(4) No change.

511.9(5) Truck trailers manufactured or assembled in the state of Iowa provided the following are met:

a. to c. No change.

d. *Weight.* See rule ~~511.12~~ 761—511.13(321,321E).

e. to g. No change.

511.9(6) Vehicles with divisible loads of hay, straw ~~or~~ stover, or bagged livestock bedding provided the following are not exceeded:

a. No change.

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- b. *Length.* ~~Must comply with Iowa Code section 321.457~~ Statutory: 75 feet.
- c. *Height.* ~~Statutory: 13 14 feet 6 inches.~~
- d. *Weight.* See rule ~~511.12~~ 761—511.13(321,321E).
- e. *Distance.* Movement is allowed for unlimited distance; routing through the office of vehicle and motor carrier services and city and county jurisdictions is not required.

511.9(7) No change.

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, ~~321E.1, 321E.2, 321E.3, 321E.8, 321E.10, 321E.28 and 321E.29~~ and Iowa Code Supplement section ~~321E.8~~ as amended by 2002 Iowa Acts, Senate File 2192, section 36.

ITEM 14. Amend rule 761—511.10(321,321E) as follows:

761—511.10(321,321E) Multitrip permits. Multitrip permits are issued for indivisible vehicles or indivisible loads for travel when either the dimensions or the weight or both the dimensions and the weight exceed statutory limits. The permit shall be for unlimited trips along a specific routes route between points one point of origin and one point of destination. Additional routes will require a new permit. Multitrip permits are issued for the following:

511.10(1) Multitrip permits may be issued for vehicles with indivisible loads, including ~~construction machinery~~ special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

- a. and b. No change.
- c. *Height.* ~~Limited only to the height of underpasses, bridges, power lines, and other established height restrictions. The carrier shall be required to contact affected public utilities when the height of the vehicle with load exceeds 16 feet 0 inches. At the discretion of the permit-issuing authority, a written verification may be required from the affected utility~~ 15 feet 5 inches.
- d. and e. No change.

511.10(2) Multitrip permits may be issued for all movements allowed under the single-trip permit provisions of rule ~~511.11~~ 761—511.12(321,321E) provided the movement is within the size and weight limitations of subrule 511.10(1).

511.10(3) No change.

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, ~~321E.1, 321E.2, 321E.3 and 321E.9A~~ and ~~321E.28.~~

ITEM 15. Renumber rules ~~761—511.11(321,321E)~~ to ~~761—511.16(321,321E)~~ as ~~761—511.12(321,321E)~~ to ~~761—511.17(321,321E)~~.

ITEM 16. Adopt the following new rule 761—511.11(321E):

761—511.11(321E) Compacted rubbish vehicle permits. All compacted rubbish vehicle permits issued by the department shall be subject to the following:

511.11(1) Permits issued shall be in writing or in an electronic format, shall be carried in the vehicle for which the permit has been issued and shall be available for inspection by any peace officer or authorized agent of any permit-granting authority.

511.11(2) Movements by permit shall be allowed day and night, seven days a week including holidays.

511.11(3) Vehicles traveling under permit shall be registered for the gross weight or combined gross weight of the vehicle and load.

511.11(4) Vehicles under permit must be in compliance with posted bridge and road embargoes and speed limits.

511.11(5) Maximum axle weight allowed on the interstate system shall be 20,000 pounds on a single axle and 34,000 pounds on a tandem axle.

This rule is intended to implement Iowa Code section 321E.30.

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ITEM 17. Amend renumbered rule 761—511.12(321,321E) as follows:

761—511.12(321,321E) Single-trip permits. Single-trip permits are issued for indivisible vehicles or indivisible loads for travel when either the dimensions or the weight or both the dimensions and the weight exceed statutory limits. The permit shall be for a specific route between an origin and destination. Single-trip permits are issued for the following:

~~511.12(1) Vehicles with indivisible loads, including construction machinery, mobile homes and factory-built structures, provided the following are not exceeded:~~

~~a. *Width.* 14 feet 0 inches.~~

~~b. *Length.* 80 feet 0 inches overall.~~

~~c. *Height.* Limited only to the height of underpasses, bridges, power lines, and other established height restrictions. The carrier shall be required to contact affected public utilities when the height of the vehicle with load exceeds 16 feet 0 inches. At the discretion of the permit-issuing authority, a written verification may be required from the affected utility.~~

~~d. *Weight.* See rule 511.12(321,321E).~~

~~e. *Distance.* Unlimited distance over specified routes.~~

~~511.12(2) Rescinded IAB 4/28/93, effective 6/2/93.~~

~~511.12(3) 511.12(1) Vehicles with indivisible loads, including construction machinery special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:~~

~~a. *Width.* 40 feet 0 inches overall Limited to the maximum physical limitations and clearances of the roadway and infrastructure along the intended route of travel.~~

~~b. *Length.* 120 feet 0 inches overall Limited to the maximum physical limitations and clearances of the roadway along the intended route of travel.~~

~~c. No change.~~

~~d. *Weight.* See rule 511.12 761—511.13(321,321E).~~

~~e. No change.~~

~~511.12(2) Reserved.~~

~~511.12(4) Vehicles especially designed for the movement of grain bins and vehicles with indivisible loads, including construction machinery, mobile homes and factory-built structures, provided the following are not exceeded:~~

~~a. *Width.* Must comply with Iowa Code section 321.454.~~

~~b. *Length.* 120 feet 0 inches overall.~~

~~c. *Height.* Statutory: 13 feet 6 inches.~~

~~d. *Weight.* See rule 511.12(321,321E).~~

~~e. *Distance.* Unlimited distance over specified routes.~~

~~511.12(5) Vehicles with divisible loads of hay, straw or stover provided the following are not exceeded:~~

~~a. *Width.* 12 feet 5 inches.~~

~~b. *Length.* Must comply with Iowa Code section 321.457.~~

~~c. *Height.* Statutory: 13 feet 6 inches.~~

~~d. *Weight.* See rule 511.12(321,321E).~~

~~e. *Distance.* Unlimited.~~

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, ~~321E.1, 321E.2, 321E.3, 321E.9, 321E.28 and 321E.29.~~

ITEM 18. Amend renumbered rule 761—511.13(321,321E) as follows:

761—511.13(321,321E) Maximum axle weights and maximum gross weights for vehicles and loads moved under permit.

511.13(1) Annual and all-systems permits.

a. For movement under an annual or all-systems permit, the axle weight and combined gross weight shall not exceed the limits found in Iowa Code section ~~321.463~~ 321.463(3).

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b. See subrule ~~511.12(5)~~ 511.13(5) for exceptions for ~~construction machinery~~ special mobile equipment.

511.13(2) Annual oversize/overweight permits.

a. No change.

b. See subrule ~~511.12(5)~~ 511.13(5) for exceptions for ~~construction machinery~~ special mobile equipment.

511.13(3) Multitrip permits.

a. No change.

b. See subrule ~~511.12(5)~~ 511.13(5) for exceptions for ~~construction machinery~~ special mobile equipment.

511.13(4) Single-trip permits.

a. to c. No change.

d. See subrule ~~511.12(5)~~ 511.13(5) for exceptions for ~~construction machinery~~ special mobile equipment.

511.13(5) ~~Construction machinery Special mobile equipment.~~ Construction machinery Special mobile equipment may have a gross weight of 36,000 pounds on any single axle equipped with minimum size 26.5-inch by 25-inch flotation pneumatic tires and a maximum gross weight of 20,000 pounds on any single axle equipped with minimum size 18-inch by 25-inch flotation pneumatic tires, provided that the total gross weight of the vehicle or a combination of vehicles does not exceed a maximum of 80,000 pounds for movement under an annual or all-systems permit and 126,000 pounds for movement under a single-trip, multitrip or annual oversize/overweight permit.

For tire sizes and weights allowed between the maximum and minimum indicated, the following formula shall apply: Axle weight = 20,000 pounds + (tire width - 18) × 1,882 pounds.

This rule is intended to implement Iowa Code sections 321.463, 321E.7, 321E.8, 321E.9, 321E.9A and 321E.32 ~~and Iowa Code Supplement section 321E.8 as amended by 2002 Iowa Acts, Senate File 2492, section 36.~~

ITEM 19. Amend renumbered rule 761—511.14(321,321E) as follows:

761—511.14(321,321E) Movement of vehicles with divisible loads exceeding statutory size or weight limits.

511.14(1) No change.

511.14(2) At the discretion of the permit-issuing authority, the combined gross weight may exceed the statutory weight, but the axle weights shall be subject to rule ~~511.12~~ 761—511.13(321,321E).

511.14(3) No change.

511.14(4) This rule does not apply to divisible loads of hay, straw, ~~or~~ stover or bagged livestock bedding.

This rule is intended to implement Iowa Code sections 321.463 and 321E.29.

ITEM 20. Amend renumbered subrule 511.16(1) as follows:

511.16(1) Escort qualification. An escort shall be a person aged 18 or over who possesses a ~~Class A, B, C or D~~ valid driver's license which allows driving unaccompanied, ~~has a properly equipped vehicle,~~ and who carries proof of public liability insurance in the amounts of \$100,000/\$200,000/\$50,000.

ITEM 21. Amend renumbered subrule 511.16(2) as follows:

511.16(2) Escorting responsibilities.

a. The escorting vehicle shall be a mid-size automobile or motor truck with sufficient mobility to be able to assist in an emergency and designed to afford clear and unobstructed vision both front and rear. The escorting vehicle shall not be used to tow a trailer while performing escorting duties. In questionable cases the permit-issuing authority shall determine if a vehicle meets these conditions.

b. The escorting vehicle shall have ~~an amber revolving light at least 7 inches high and 7 inches in diameter with at least a 100 candlepower lamp providing~~ a flashing or strobe amber light that is visible for at least 500 feet and provides 360° warning. ~~A light of smaller dimensions shall not be permitted unless a strobe light is used.~~ While escorting a permit load, the revolving light shall be mounted on top of

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the escort vehicle and shall be burning. Additional escort vehicle markings may be approved or required by the permit-issuing authority.

c. to i. No change.

j. A pole used for measuring vertical clearances shall be mounted on the front escort vehicle. The escort shall be required to measure all vertical clearances whenever the height of the permitted vehicle exceeds 14 feet 4 6 inches up to and including 20 feet.

ITEM 22. Rescind renumbered subrule **511.16(3)**.

ITEM 23. Adopt the following **new** subrule 511.16(3):

511.16(3) Requirements for escorts, flags, signs and lights. The following chart explains the minimum escort and warning devices required for vehicles operating under permit.

Minimum Warning Devices and Escort Requirements
For Vehicles Operating Under Permit

	Flags/Signs	Lights	Escorts	
			4-Lane	2-Lane
Length				
75'1" up to and including 85'	yes	not required	not required	not required
Over 85' up to and including 120'	yes	yes	not required	not required
Over 120'	yes	not required	rear	rear
Projections				
Front: over 25'	not required	yes	not required	not required
Rear: over 4' up to and including 10'	flags only	not required	not required	not required
Rear: over 10'	flags only	yes	not required	not required
Height				
Over 14'6" up to and including 20'	yes	not required	front with a height pole	front with a height pole
Weight				
Over 80,000 lbs.	not required	yes	not required	not required
Width				
Over 8'6" up to 12'0"	yes	not required	not required	not required
Over 12'0" up to and including 14'6"	yes	not required	rear *	front *
Over 14'6" up to and including 16'6"	yes	not required	rear *	front
Over 16'6" up to and including 18'	yes	not required	rear	front

*In lieu of an escort, a carrier can display an amber light or strobe light on the power unit and on the rear extremity of the vehicle or load.

yes = required

Definitions:

Flags - Red or orange fluorescent flags at least 18" square must be mounted as follows: one flag at each front corner of the towing unit and one flag at each rear corner of the load. In addition, there must be a flag at any additional protrusion in the width of the load.

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Signs - A sign reading "Oversize Load" must be used. The sign must be at least 18" high by 7' long with a minimum of 10" black letters, with a 1½" stroke, on a yellow background, and mounted on the front bumper and on the rear of the load. The rear sign for mobile homes and factory-built structures must be mounted at least 7' above the highway surface, measuring from the bottom of the sign.

Lights - A flashing or strobe amber light that is visible for at least 500 feet and provides 360° warning must be mounted on the towing unit and be visible from front and rear. More than one light may be necessary.

The permit-issuing authority may require additional escorts when deemed necessary. The signs or warning devices must be removed or covered when the vehicle is within legal dimensions.

This rule is intended to implement Iowa Code sections 321E.14, 321E.24 and 321E.34.

ITEM 24. Amend renumbered rule 761—511.17(321,321E) as follows:

761—511.17(321,321E) Permit violations.

511.17(1) Permit violations are to be reported to the permit-issuing authority by the arresting officer and the permit holder. If a permit holder is found to have willfully violated permit provisions, the office of vehicle and motor carrier services may, after notice and hearing, suspend, modify or revoke the permit privileges of the permit holder consistent with Iowa Code section 321E.20.

~~511.17(2) Rescinded IAB 1/15/97, effective 4/30/97.~~

~~511.17(3) Rescinded IAB 1/15/97, effective 4/30/97.~~

~~511.17(4) Rescinded IAB 10/12/05, effective 11/16/05.~~

This rule is intended to implement Iowa Code sections 321.492, 321E.16 and 321E.20.

ITEM 25. Adopt the following new rule 761—511.18(321):

761—511.18(321) Movement of combination vehicles on economic export corridors.

511.18(1) *Designation of economic export corridors.*

a. The department may in its discretion establish economic export corridors for the transportation of goods or products manufactured in Iowa to or through the state of South Dakota and for the return of unladen semitrailers or unladen full trailers used for the transportation of those goods or products. An economic export corridor shall not include any segment of the interstate system or any part of the national network of highways identified pursuant to 23 CFR Part 658. However, if appropriate, the department may petition the Federal Highway Administration to remove a road or road segment from the national network of highways for the purpose of including it in an economic export corridor.

b. The department may initiate designation of economic export corridors, or a request for economic export corridor designation may be submitted to the department by an interested party. If a proposed economic export corridor includes any roads or road segments that are under the jurisdiction of a city or a county, a resolution from all relevant local jurisdictions must be submitted to the department indicating their support for economic export corridor designation. The resolution must include a description of the proposed economic export corridor under local jurisdiction.

c. The department shall exercise due regard for the safety of the traveling public and the protection of the highway surfaces and structures when establishing an economic export corridor. Factors to be considered include ability of the proposed economic export corridor to safely accommodate combinations of vehicles described in subrule 511.18(2), taking into account physical configurations and restrictions and traffic demands and capacity, as well as connection to markets that will benefit from the established economic export corridor.

d. The department will post established economic export corridors on the department's Web site.

511.18(2) *Combination vehicles that may be operated on an economic export corridor.*

a. In addition to combinations of vehicles lawful for operation on roads or road segments not designated as an economic export corridor, the following combinations of vehicles may be operated on an economic export corridor designated under subrule 511.18(1) if the combinations of vehicles meet the requirements in paragraph 511.18(2) "b":

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- (1) A truck tractor-semitrailer-semitrailer converted to a full trailer by use of a dolly equipped with a fifth wheel which is considered a part of the trailer for all purposes, and not a separate unit; or
- (2) A truck tractor-semitrailer-full trailer; or
- (3) A truck tractor-semitrailer-semitrailer combination, where the semitrailers are connected by a rigid frame extension including a fifth wheel connection point attached to the rear frame of the first semitrailer.
 - b.* The combination of vehicles shall meet all of the following requirements:
 - (1) The length of the combination of vehicles, excluding the length of the truck tractor, shall not exceed 81½ feet.
 - (2) The length of either semitrailer or full trailer shall not exceed 45 feet.
 - (3) The weight of the second semitrailer or full trailer shall not exceed the weight of the first semitrailer by more than 3,000 pounds.
 - (4) The gross weight of the combination of vehicles shall not exceed 80,000 pounds and the combination of vehicles shall not exceed the gross axle weight limits of Iowa Code section 321.463(2).
 - (5) The load on each semitrailer or full trailer in the combination shall be an indivisible load. For the purpose of issuing permits for height or width under Iowa Code chapter 321E, the combination of vehicles shall be considered an indivisible load so long as the load on each semitrailer or full trailer in the combination remains an indivisible load.
 - c.* The length of the frame extension shall not be included when determining the overall length of the first semitrailer in a truck tractor-semitrailer-semitrailer combination in which the semitrailers are connected by a rigid frame extension including a fifth wheel connection point attached to the rear frame of the first semitrailer.
 - d.* For purposes of this subrule, “full trailer” means as defined in 49 CFR Section 390.5. This rule is intended to implement Iowa Code section 321.457(2)“n.”

ITEM 26. Rescind and reserve **761—Chapter 513.**

[Filed 6/14/17, effective 8/9/17]

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ARC 3194C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Iowa Department of Transportation, on June 14, 2017, adopted amendments to Chapter 920, “State Transit Assistance,” Chapter 921, “Advanced Allocations of State Transit Assistance Funding,” and Chapter 924, “Public Transit Infrastructure Grant Program,” Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the April 26, 2017, Iowa Administrative Bulletin as **ARC 3034C**.

The amendments to Chapter 920 update the general information and definitions, align special project purposes with current goals for passenger transportation outreach and coordination, and remove restrictive project guidelines to allow more flexibility in expenditure of funds. Other amendments to Chapter 920 make changes to the items not eligible for assistance by removing from the list expenses related to heavy rail transit service, including planning, capital, or operations, to allow public transit agencies to think more broadly in terms of their public transit offerings, if appropriate; remove the qualifier of reserving \$300,000 of state transit assistance for special projects only when the year’s receipts are expected to equal or be greater than \$500,000 because annual appropriations now top \$14 million; and add a new subrule concerning allowing advance payment of monthly advance allocations of formula project funding to Iowa’s public transit systems. In the appendix, the formula is unchanged, but the definition of “programmed eligibility (PE)” is stricken and the definition of “formula percentage

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(FP)” is added to clarify that the transit systems receive this funding based on past performance statistics entered into a formula and not based on individual projects programmed for consideration by the Department.

The amendments to Chapter 921 update the scope of the chapter and the office contact information and change the distribution of state transit assistance from quarterly to monthly. The calculation of available state transit assistance funding is based on the previous month’s sales of motor vehicles and vehicle-related equipment; the amount varies month to month based on actual sales. The funds are distributed to the Department on a monthly basis; therefore, a quarterly advance to a public transit system would be based on sales projections rather than on actual sales. Also, on occasion, the Office of Public Transit must withhold state transit assistance funds from a transit agency until a late report is submitted. The funds are released once the reporting is current. Chapter 921 allows the advancement of quarterly state transit assistance funds to transit agencies upon request. If that request were granted, the ability to withhold the funds to encourage timely reporting would diminish.

The amendments to Chapter 924 amend the definition of “vertical infrastructure,” update the office contact information, require project justification within the application, remove the requirement that the Department review the applications with an industry advisory committee since many of the potential committee members would themselves be representing public transit system applicants, and add a new subrule which states that the transit system must retain ownership of the new, renovated or repaired structure or facility for its useful life and requires that a prorated repayment be made to the Department if the structure or facility is sold or transferred prior to useful life expiration.

These rules do not provide for waivers. Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

These amendments are identical to those published under Notice of Intended Action.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 324A.

These amendments will become effective August 9, 2017.

The following amendments are adopted.

ITEM 1. Amend subrule 920.1(1) as follows:

920.1(1) Development, maintenance and improvement of transit services for the general public and for transportation disadvantaged persons, as defined in Iowa Code section 324A.1.

ITEM 2. Amend rule 761—920.2(324A) as follows:

761—920.2(324A) General information. The department shall send post annually to each public transit system in Iowa the required forms and instructions for applying for state transit assistance to the department’s Web site at www.iowadot.gov and notify each public transit system in Iowa of the availability. Requests for assistance and questions about application preparation should be directed to: Office of Public Transportation Transit, Air and Transit Division, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)233-7870.

ITEM 3. Rescind rule 761—920.3(324A) and adopt the following **new** rule in lieu thereof:

761—920.3(324A) Definitions. The definitions in Iowa Code section 324A.1 apply to this chapter. In addition:

“*Formula assistance*” means state transit assistance appropriations minus funds reserved for special projects.

“*Joint participation agreement*” means a contract between the department and a public transit system for either operations or capital assistance needed for implementation of a transit service project or projects. Each agreement shall include, but not be limited to, a project budget, method of payment, and period of performance.

“*Project*” means a concerted set of actions that will develop, maintain, or improve one or more elements of the public transit system’s service.

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ITEM 4. Amend rule 761—920.4(324A) as follows:

761—920.4(324A) Types of projects.

920.4(1) *Programmed Formula projects.* A ~~programmed~~ programmed formula project may involve operations assistance, capital assistance, ~~or both planning,~~ or any combination of the three. These projects are developed, analyzed and ranked through the transit planning process which involves the following steps:

a. No change.

b. Each public transit system shall submit its ranked list of proposed projects to the ~~air and transit division~~ department.

920.4(2) *Special projects.*

a. Special projects are extraordinary, emergency or innovative in nature, and may include, but are not limited to, the following purposes:

(1) No change.

(2) ~~Improving the performance or fiscal viability of the transit system~~ Increasing the public's awareness and understanding of transit.

(3) and (4) No change.

(5) Increasing the cooperation and coordination between private and public sectors.

~~(6) Providing incentives for increased commitment of private or public support.~~

~~(7) (6)~~ Developing, demonstrating, or refining ~~some a~~ some a technical, procedural, or mechanical innovation so that it may be ~~successfully employed~~ utilized by other public transit systems in Iowa.

~~(8) (7)~~ Responding to an emergency situation that places an extraordinary and unforeseen strain on the resources of a public transit system.

b. Proposals for special projects may be submitted to the ~~air and transit division~~ department at any time. However, because of ~~limited funding,~~ special projects should be submitted with the programmed projects, if possible.

c. ~~A special project may either involve assistance to an individual public transit system or to several systems as a group.~~

ITEM 5. Amend rule 761—920.5(324A) as follows:

761—920.5(324A) Standards for projects.

920.5(1) *Requirements for transit system.* A public transit system is eligible for project assistance if the system is in compliance with all of the following criteria:

a. ~~It uses a centralized accounting system that maintains primary documentation for all revenues and expenses~~ The transit system abides by all applicable state and federal laws and regulations.

b. ~~One person is responsible for managing the assets, operations and funding of the system~~ The transit system maintains primary documentation for all revenues and expenses for a period of at least three years.

c. ~~It maintains its~~ The transit system maintains the system's policies, routes, schedules, fare structure, and budget in a manner that encourages public review, responsiveness to user concerns, energy conservation, and fiscal solvency.

d. ~~It has received~~ The transit system received departmental approval of its the system's plan or schedule for repayment of any loan administered by the department.

e. The transit system accurately reports all services to be supported with project formula assistance and ensures that all services are open to the general public.

920.5(2) *Project conditions.* The department shall obligate state transit assistance for joint projects that meet the following criteria:

a. ~~Each special project shall have a preestablished basis for determining success using a specified means of performance measurement, and a detailed budget of the resources available and the assistance necessary for implementation~~ must be included in the current year of the locally adopted transportation improvement program.

b. Each project shall contain payment criteria, through the joint participation agreement, which are mutually agreed upon by the department and the contracting officer of the transit system.

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~~c. A project may involve either capital assistance or operations assistance but a separate joint participation agreement is required for each type of assistance funded~~ Each special project shall have a preestablished basis for determining success using a specified means of performance management and shall have a detailed budget of the resources available and the assistance necessary for implementation.

~~d. State assistance for a special project involving capital expense shall not exceed 43.3~~ 85 percent of the project's total capital expense. State assistance for a special project involving operating support shall not exceed ~~50~~ 80 percent of the project's total operating expense in the first year and 50 percent of the project's total operating expense in the second year. ~~In special or emergency situations, these requirements may be waived by the director of the air and transit division to permit a fiscal year maximum of \$5000 for any one system.~~

920.5(3) Items not eligible for assistance.

~~a. Any expense related to heavy rail transit service, including planning, capital, or operations.~~

~~b. a.~~ Administrative, operations, or capital expense expenses which is are determined by the department to be inconsistent with department policies, public law, officially approved planning and programming documents, or inconsistent with the purpose of improving the effectiveness and quality of transit services.

~~e. b.~~ Development of managerial, administrative, or operational systems which duplicate programs made available at no charge to the transit system by the department.

920.5(4) Determination of system eligibility for ~~programmed project formula~~ assistance.

~~a. Prior to the beginning of each fiscal year, each state-designated public transit system's programmed eligibility formula percentage shall be determined through the process shown in the appendix located at the end of this chapter of rules and included as part of this chapter.~~

(1) Transit system data used in determining ~~programmed eligibility formula percentage~~ is based only on services which are open to the general public and is derived from the last fiscal year for which complete information is available.

(2) No change.

~~b. If a known dollar amount of state transit assistance has been appropriated for the fiscal year, the~~ The amount of each system's eligibility for ~~programmed project formula~~ assistance from this appropriation shall be determined by multiplying the system's ~~programmed eligibility formula percentage~~ by the amount of the appropriation not reserved for special projects.

~~c. If the dollar amount of state transit assistance is not known until the funds are actually deposited in the state transit assistance fund account, the amount of each system's eligibility for programmed project formula assistance from these funds shall be determined as follows: At the beginning of each fiscal quarter month, the system's programmed eligibility formula percentage shall be multiplied by the amount of new funds not reserved for special projects that were deposited in the state transit assistance fund account during the previous quarter month.~~

~~d. No change.~~

920.5(5) Determination of amount reserved for special projects. Each fiscal year, ~~up to~~ at least \$300,000 ~~may will~~ be reserved from state transit assistance appropriations for special projects ~~if the appropriations for the year are expected to equal or exceed \$500,000.~~ Any special project funds not obligated in the previous fiscal year and any funds made available through closeout of previously approved projects may also be reserved for special projects. Special project funds are distributed by the department on a discretionary basis in accordance with subrule 920.4(2) of this chapter.

ITEM 6. Amend rule 761—920.6(324A) as follows:

761—920.6(324A) Processing.

920.6(1) Review. The department, ~~through its air and transit division and planning and research division,~~ shall review the proposed projects.

920.6(2) Program. Based on available funds and the project priorities established by the transit systems, the ~~air and transit division~~ department shall prepare a list of both ~~programmed and special projects recommended for funding approval~~ set of funding recommendations.

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~~920.6(3) Approval. The air and transit division shall submit the list to the transportation commission for approval.~~

~~920.6(4) 920.6(3) Agreement Approval and agreement. Upon approval of the projects by the transportation commission, the air and transit division department shall prepare a joint participation agreement and send it to the each public transit system for signing execution. The agreement shall be returned to the air and transit division for signing by the department.~~

~~920.6(4) Advance payment allowed. Each transit system with a signed joint participation agreement may be paid formula assistance monthly, in advance of project expenditures, if all of the following conditions are met:~~

~~a. The transit system included in its application a request for advance allocations as set forth in Iowa Code section 324A.6.~~

~~b. The transit system is current on all reporting required by the department.~~

~~c. The transit system is current on all scheduled repayments under loan contracts from the department.~~

ITEM 7. Amend **761—Chapter 920**, implementation sentence, as follows:

~~Rules 920.1(324A) to 920.6(324A)~~ These rules are intended to implement Iowa Code chapter 324A.

ITEM 8. Amend **761—Chapter 920**, appendix, as follows:

APPENDIX TO
761—920.5(324A)

FP	<u>Formula percentage. The percentage of any state transit assistance appropriation that a public transit system is eligible to receive from the nondiscretionary portion of the appropriation. Determination of a public transit system's formula percentage shall be made using the method diagrammed in this appendix.</u>
FY	Fiscal year. The 12-month period beginning July 1 of one year and ending June 30 of the following year.
LDI	Locally determined income. All transit system revenue dedicated for operations expense during a fiscal year, minus federal operating assistance from the U.S. Department of Transportation and minus all special project operating support and programmed-eligibility <u>formula assistance funds received from the Iowa Department of Transportation.</u>
OpExp	Operations expense. All eligible transit system expenses related to operating, maintaining, and administering transit operations.
Pass	Passenger. A person boarding a transit vehicle for the purpose of making a trip. A passenger is counted each time <u>a that person boards a vehicle, even though the person may be on the same journey from origin to for travel to a destination.</u>

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PE ~~Programmed eligibility.—The percentage of any state transit assistance appropriation that a public transit system is eligible to receive from the nondiscretionary portion of the appropriation. Determination of a public transit system's "programmed eligibility" shall be made using the method diagrammed in this appendix.~~

~~System programmed eligibility is reduced by 25 percent for each quarter of any fiscal year in which no joint participation agreement with the department has been executed. The director of the air and transit division may waive this reduction.~~

RevMi ~~Revenue Miles~~ miles. Total vehicle miles traveled by revenue vehicles of public transit systems while in revenue service. Excludes miles traveled to and from storage facilities and other deadhead travel.

ITEM 9. Amend **761—Chapter 920**, second appendix, title, as follows:

~~FORMULA FOR DETERMINATION OF PROGRAMMED ELIGIBILITY FORMULA~~
PERCENTAGE

ITEM 10. Amend **761—Chapter 920**, second appendix, to change the acronym "PE" to "FP."

ITEM 11. Amend rule 761—921.1(324A) as follows:

761—921.1(324A) Scope of chapter. This chapter shall apply only to those transit systems eligible for and having or proposing to have a ~~"Joint Participation Agreement"~~ joint participation agreement in force with the Iowa department of ~~transportation~~ for state transit assistance funding as set forth in ~~rules~~ 761—Chapter 920. This chapter implements provisions for advance allocations of state transit assistance funding as set forth in Iowa Code ~~subsection 324A.6(5)~~ section 324A.6(4). The definitions in Iowa Code section 324A.1 apply to this chapter. The requirements for the award of state funds for state transit assistance and subsequent procedures are found in ~~rules~~ 761—Chapter 920.

ITEM 12. Amend rule 761—921.2(324A) as follows:

761—921.2(324A) Basic types of advance Advance allocations. Advance allocations of state transit assistance are paid prior to the time actual expenditures are incurred. ~~Three basic types of advance allocations shall be available:~~

~~**921.2(1)** Payment of one-fourth one-twelfth (or 25 8.33 percent) of the total "Joint Participation Agreement" joint participation agreement amount is made prior to or during each fiscal quarter month, starting on the execution date of the "Joint Participation Agreement."~~ joint participation agreement.

~~**921.2(2)** Payment of an amount to be denoted in the "Joint Participation Agreement" prior to or during each fiscal quarter, starting on the execution date of the "Joint Participation Agreement."~~

~~**921.2(3)** Payment of the total "Joint Participation Agreement" amount prior to or during the project period, starting on the execution date of the "Joint Participation Agreement."~~

ITEM 13. Amend rule 761—921.3(324A) as follows:

761—921.3(324A) Application for advance allocations.

921.3(1) Transit systems having or proposing to have a ~~"Joint Participation Agreement"~~ joint participation agreement with the department for state transit assistance funding may make written application for advance allocations of the ~~"Joint Participation Agreement"~~ joint participation agreement amount. The application shall be directed to: Office of Public ~~Transportation, Air and Transit Division~~ Transit, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; ~~telephone (515)233-7870.~~ Applications are available on the department's Web site at www.iowadot.gov or by telephone at (515)233-7870.

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921.3(2) Transit systems applying for state transit assistance funding, pursuant to 761—Chapter 920, may make written application for advance allocations of a proposed or existing “Joint Participation Agreement” joint participation agreement amount as part of the application for state transit assistance.

921.3(3) No application for advance allocation shall be complete without:

a. and *b.* No change.

c. A statement from the transit system which indicates the specific existing or proposed “Joint Participation Agreement” joint participation agreement from which advance allocations are to be derived.

d. and *e.* No change.

f. ~~If varied advance allocations per quarter are requested pursuant to subrule 921.2(2), the following shall also be included in the application:~~

~~(1) A statement denoting the proposed advance allocations for each quarter, including the dollar amounts and the percentage of each quarter’s proposed advance allocation to the total “Joint Participation Agreement” amount.~~

~~(2) A statement of justification for the varied allocation amounts requested.~~

~~(3) A detailed transit system cash flow analysis projected for the performance period of the “Joint Participation Agreement”.~~

921.3(4) Rescinded, effective April 16, 1986.

ITEM 14. Amend rule 761—921.4(324A) as follows:

761—921.4(324A) Application approval. ~~The air and transit division of the Iowa department of transportation shall review all applications for advance allocations of state transit assistance. It~~ The department shall also approve, disapprove or defer all such applications. Provisions of applications which are approved shall be written into and made a part of the transit system’s state transit assistance “Joint Participation Agreement,” joint participation agreement, if it is in effect, or written into such “Joint Participation Agreement” joint participation agreement when awarded by the department pursuant to rules 761—Chapter 920. The transit system shall be so notified of such action. Transit systems whose applications for advance allocations are disapproved or deferred shall be so notified by the department, including the reason(s) for such actions.

ITEM 15. Amend rule 761—921.5(324A) as follows:

761—921.5(324A) Consideration in determining the approval of advance allocation application. ~~The air and transit division department~~ shall give consideration to the following items in determining the approval, disapproval or deferment of advance allocation applications:

921.5(1) No change.

921.5(2) Previous experience of the ~~air and transit division~~ department in dealing with the transit system making application including but not limited to the following:

a. Timeliness of contract and application materials, as assessed by the ~~air and transit division~~ department.

b. Fiscal management capability of the transit system, as assessed by the ~~air and transit division~~ department.

ITEM 16. Amend rule 761—921.7(324A) as follows:

761—921.7(324A) Reports, and suspension and termination of allocations.

921.7(1) Transit systems receiving advance allocations shall provide quarterly and end-of-the-year financial and statistical reports to the ~~air and transit division~~ department in the manner and within the time limits described in the state transit assistance “Joint Participation Agreements.” joint participation agreements. These reports shall be made ~~on forms prescribed for that purpose and through an online portal furnished to the transit systems by the air and transit division~~ department.

921.7(2) Failure to file quarterly and end-of-the-year financial and statistical reports by any transit system with the ~~air and transit division~~ department in the manner and within the time limits described in the state transit assistance “Joint Participation Agreement” joint participation agreement shall be

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cause for suspension or termination of those provisions of the ~~“Joint Participation Agreement,” joint participation agreement,~~ and therefore, suspension or termination of advance allocation payments made by the ~~Iowa department of transportation.~~ The ~~air and transit division~~ department shall notify any transit system of such actions.

921.7(3) Payment of eligible ~~“Joint Participation Agreement” joint participation agreement~~ expenses to a transit system that has had advance allocation contract provisions suspended or terminated by the ~~air and transit division~~ department shall be by the method of reimbursement payments as described in the state transit assistance “Joint Participation Agreements.” joint participation agreements.

ITEM 17. Amend rule 761—921.9(324A) as follows:

761—921.9(324A) ~~“Joint Participation Agreement”~~ Joint participation agreement close and audits.

921.9(1) Each transit system receiving advance allocations shall, as part of the end-of-the-year financial and statistical report, calculate the total ~~“Joint Participation Agreement” joint participation agreement~~ amount eligible for payment by the ~~Iowa department of transportation~~ within the limits stated in the ~~“Joint Participation Agreement.” joint participation agreement.~~ This eligible ~~“Joint Participation Agreement” joint participation agreement~~ amount shall be compared to the total amount of the advance allocations for that ~~“Joint Participation Agreement.” joint participation agreement.~~ If the advance allocations’ total is greater than the eligible ~~“Joint Participation Agreement” joint participation agreement~~ amount, the transit system must repay the ~~Iowa department of transportation~~ the difference. After verification of these calculations, the department shall issue to the public transit system an invoice for the amount of the required repayment. Failure to make this repayment shall be grounds for:

- a. Termination of other transit assistance ~~“Joint Participation Agreements” joint participation agreements~~ with that transit system,
- b. Suspension or termination of further advance allocations made on future ~~“Joint Participation Agreements,” joint participation agreements,~~
- c. Reduction of ~~Iowa department of transportation~~ participation in existing or future ~~“Joint Participation Agreements,” joint participation agreements,~~ or
- d. Reducing future ~~“Joint Participation Agreement” joint participation agreement~~ reimbursement requests of the transit system by an amount not to exceed the unpaid debt owed the ~~Iowa department of transportation~~ and crediting the outstanding debt of the project being closed out.

921.9(2) The ~~air and transit division~~ department may institute any such action(s) as stated in subrule 921.9(1) above and shall notify any transit system of such action taken against ~~them~~ the transit system.

921.9(3) After the repayment and end-of-the-year financial and statistical reports are submitted, or after the ~~air and transit division~~ department has instituted any action(s) for failure to do so, the ~~Iowa department of transportation~~ shall audit the transit system’s books, accounts, records and other material and information necessary to determine ~~“Joint Participation Agreement” joint participation agreement~~ compliance. The advance allocations paid to the transit system shall be taken into consideration and made part of the amount to be audited.

ITEM 18. Amend **761—Chapter 921**, implementation sentence, as follows:

~~Rules 921.1 to 921.9~~ These rules are intended to implement Iowa Code chapter 324A.

ITEM 19. Amend rule **761—924.2(324A)**, definition of “Vertical infrastructure,” as follows:

~~“Vertical infrastructure” is~~ means the same as defined in Iowa Code section ~~8.57, subsection 6~~ 8.57(5).

ITEM 20. Amend rule 761—924.3(324A) as follows:

761—924.3(324A) Information and forms. Information, instructions, and application forms ~~may be obtained~~ are available from the Office of Public Transit, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone ~~(515)239-1875~~ (515)233-7870; or the department’s Web site at www.iowadot.gov. ~~Information and forms are also available through the Internet at~~ http://www.iatransit.com.

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ITEM 21. Rescind and reserve rule **761—924.5(324A)**.

ITEM 22. Amend subrule 924.11(1) as follows:

924.11(1) Project applications shall be submitted to the ~~office of public transit~~ department.

ITEM 23. Amend paragraph **924.11(2)“c”** as follows:

c. Documentation of project ~~feasibility and costs~~ justification.

ITEM 24. Amend rule 761—924.15(324A) as follows:

761—924.15(324A) Review and approval. Department staff shall review project applications ~~with an industry advisory committee~~ and shall submit recommendations to the transportation commission. The transportation commission is responsible for approving the projects to be funded.

ITEM 25. Amend rule 761—924.16(324A) as follows:

761—924.16(324A) Project agreement, ~~and administration~~ and ownership.

924.16(1) and **924.16(2)** No change.

924.16(3) Ownership. The transit system must retain ownership of the new, renovated or repaired structure or facility for its useful life. If the structure or facility is transferred to a subcontracted entity or is sold before the useful life has expired, the transit system must repay the prorated state interest to the department.

ITEM 26. Amend **761—Chapter 924**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 8.57₂ and 324A.1 and ~~2006 Iowa Acts, chapter 1179, section 55~~ 324A.6A.

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