IOWA ADMINISTRATIVE BULLETIN

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January 6, 2016 Pages 1157 to 1390

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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.

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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
2016

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. 30 '15	Jan. 20 '16	Feb. 9 '16	Feb. 24 '16	Feb. 26 '16	Mar. 16 '16	Apr. 20 '16	July 18 '16
Jan. 15	Feb. 3	Feb. 23	Mar. 9	Mar. 11	Mar. 30	May 4	Aug. 1
Jan. 29	Feb. 17	Mar. 8	Mar. 23	Mar. 25	Apr. 13	May 18	Aug. 15
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Mar. 11	Mar. 30	Apr. 19	May 4	May 6	May 25	June 29	Sep. 26
Mar. 25	Apr. 13	May 3	May 18	***May 18***	June 8	July 13	Oct. 10
Apr. 8	Apr. 27	May 17	June 1	June 3	June 22	July 27	Oct. 24
Apr. 22	May 11	May 31	June 15	June 17	July 6	Aug. 10	Nov. 7
May 6	May 25	June 14	June 29	***June 29***	July 20	Aug. 24	Nov. 21
May 18	June 8	June 28	July 13	July 15	Aug. 3	Sep. 7	Dec. 5
June 3	June 22	July 12	July 27	July 29	Aug. 17	Sep. 21	Dec. 19
June 17	July 6	July 26	Aug. 10	Aug. 12	Aug. 31	Oct. 5	Jan. 2 '17
June 29	July 20	Aug. 9	Aug. 24	***Aug. 24***	Sep. 14	Oct. 19	Jan. 16 '17
July 15	Aug. 3	Aug. 23	Sep. 7	Sep. 9	Sep. 28	Nov. 2	Jan. 30 '17
July 29	Aug. 17	Sep. 6	Sep. 21	Sep. 23	Oct. 12	Nov. 16	Feb. 13 '17
Aug. 12	Aug. 31	Sep. 20	Oct. 5	Oct. 7	Oct. 26	Nov. 30	Feb. 27 '17
Aug. 24	Sep. 14	Oct. 4	Oct. 19	***Oct. 19***	Nov. 9	Dec. 14	Mar. 13 '17
Sep. 9	Sep. 28	Oct. 18	Nov. 2	***Nov. 2***	Nov. 23	Dec. 28	Mar. 27 '17
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Nov. 30	Dec. 21	Jan. 10 '17	Jan. 25 '17	Jan. 27 '17	Feb. 15 '17	Mar. 22 '17	June 19 '17
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PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
16	**Friday, January 15, 2016**	**February 3, 2016**
17	**Friday, January 29, 2016**	**February 17, 2016**
18	**Friday, February 12, 2016**	**March 2, 2016**

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

ENVIRONMENTAL PROTECTION COMMISSION[567]

NPDES and Iowa operation permits for wastewater, amendments to chs 60, 62 to 64, 67 IAB 1/6/16 **ARC 2353C**	DNR Field Office 4 1401 Sunnyside Lane Atlantic, Iowa	February 15, 2016 2 to 4 p.m.
	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	February 16, 2016 10 a.m. to 12 noon
	Meeting Room A, Public Library 123 S. Linn St. Iowa City, Iowa	February 16, 2016 6:30 to 8:30 p.m.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Contribution rates; death and disability benefits; Section 125 plans; termination of employment; qualified domestic relations orders; alternate payees, amendments to chs 4 to 6, 8, 9, 11, 13, 14, 16, 17, 26 IAB 12/23/15 **ARC 2331C**	IPERS 7401 Register Dr. Des Moines, Iowa	January 12, 2016 9 a.m.

LABOR SERVICES DIVISION[875]

Standards for amusement rides and devices, concession booths, and bungee jump operations, rescind chs 61, 62; adopt chs 61 to 63 IAB 1/6/16 **ARC 2354C**	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	January 27, 2016 10 a.m. (If requested)
Material lift elevators, 71.1, 71.16, 72.22 IAB 1/6/16 **ARC 2355C**	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	January 27, 2016 1:30 p.m. (If requested)
Elevators—child safety measures, 72.26, 73.27 IAB 1/6/16 **ARC 2356C**	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	January 27, 2016 2:30 p.m. (If requested)

MEDICINE BOARD[653]

Permanent physician licensure, amendments to ch 9 IAB 1/6/16 **ARC 2360C**	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	January 26, 2016 1:30 p.m.
Administrative medicine licensure, 9.20, 11.4 IAB 1/6/16 **ARC 2359C**	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	January 26, 2016 1 p.m.

PUBLIC HEALTH DEPARTMENT[641]

State plumbing code—adoption by reference of 2015 edition of Uniform Plumbing Code, amendments to ch 25 IAB 12/23/15 **ARC 2317C**	Conference Room 517 Lucas State Office Bldg. Des Moines, Iowa	January 12, 2016 10 a.m.

PUBLIC SAFETY DEPARTMENT[661]

Fire code provisions—adoption by reference, amendments to chs 200 to 202, 210 IAB 11/25/15 **ARC 2266C**	Iowa State Patrol Post #12 22365 20th Ave. Stockton, Iowa	January 7, 2016 11:30 a.m.
	Iowa State Patrol Post #3 2025 Hunt Ave. Council Bluffs, Iowa	January 8, 2016 11:30 a.m.
State building code—adoption by reference of certain provisions of 2015 International Building Code (IBC), amendments to chs 300 to 302, 315 IAB 11/25/15 **ARC 2250C**	Iowa State Patrol Post #12 22365 20th Ave. Stockton, Iowa	January 7, 2016 11:30 a.m.
	Iowa State Patrol Post #3 2025 Hunt Ave. Council Bluffs, Iowa	January 8, 2016 11:30 a.m.
State historic building code—adoption of International Existing Building Code by reference, 350.1 IAB 11/25/15 **ARC 2265C**	Iowa State Patrol Post #12 22365 20th Ave. Stockton, Iowa	January 7, 2016 11:30 a.m.
	Iowa State Patrol Post #3 2025 Hunt Ave. Council Bluffs, Iowa	January 8, 2016 11:30 a.m.

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Qualifying agreements; occupational licenses; licensing of jockeys; thoroughbred and quarter horse racing, 5.4, 6.8, 6.29, 10.1, 10.2(9), 10.4 to 10.7 IAB 12/23/15 **ARC 2320C**	Commission Office, Suite 100 1300 Des Moines St. Des Moines, Iowa	January 12, 2016 9 a.m.

TRANSPORTATION DEPARTMENT[761]

Counties and cities—programs and funds for bridge and road construction and repair; instructional memorandums; budgets, reports, highway-related services and supplies, amendments to chs 160, 161, 170, 172 to 174, 178 IAB 12/23/15 **ARC 2319C**	First Floor South Conference Room DOT Administration Bldg. 800 Lincoln Way Ames, Iowa	January 14, 2016 10 a.m. (If requested)
Investigation of convictions based on fraud, 615.41 IAB 1/6/16 **ARC 2344C**	Motor Vehicle Division Offices 6310 S.E. Convenience Blvd. Ankeny, Iowa	January 28, 2016 10 a.m. (If requested)

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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COLLEGE STUDENT AID COMMISSION[283]

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 261.62, the Iowa College Student Aid Commission hereby gives Notice of Intended Action to amend Chapter 36, "Governor Terry E. Branstad Iowa State Fair Scholarship Program," Iowa Administrative Code.

The proposed amendment to Chapter 36 eliminates two items that students must provide to the Commission, thereby making it easier for students to apply.

Interested persons may submit comments orally or in writing by 4:30 p.m. on January 26, 2016, to the Executive Director, Iowa College Student Aid Commission, 430 East Grand Avenue, Third Floor, Des Moines, Iowa 50309-1920. Written comments also may be sent by fax (515)725-3401, by e-mail to julie.leeper@iowa.gov, or via the Iowa Administrative Rules Web site at https://rules.iowa.gov.

The Commission does not intend to grant waivers under the provisions of these rules.

After analysis and review of this rule making, the Commission finds that there is no impact on jobs.

This amendment is intended to implement Iowa Code chapter 261.

The following amendment is proposed.

Amend subrule 36.1(2) as follows:

36.1(2) *Eligibility for scholarship.*

a. An applicant must be an Iowa resident who has graduated from an accredited secondary school in Iowa.

b. An applicant for assistance under this program must enroll at an eligible institution.

c. An applicant must release ~~test scores, rank in class,~~ grade point average~~,~~ and need analysis information to the commission on forms specified by the commission, by the deadline date determined by the commission. In addition, each applicant must provide the following information, as stated in the application instructions: essay, description of state fair participation, description of school and community activities, and description of community services.

ARC 2353C

ENVIRONMENTAL PROTECTION COMMISSION[567]

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 455B.173, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 60, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 62, "Effluent and Pretreatment Standards: Other Effluent Limitations or Prohibitions," Chapter 63, "Monitoring, Analytical, and Reporting Requirements," Chapter 64, "Wastewater Construction and Operation Permits," and Chapter 67, "Standards for the Land Application of Sewage Sludge," Iowa Administrative Code.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

The primary purpose of the proposed amendments is to update and clean up several portions of the wastewater rules for National Pollutant Discharge Elimination System (NPDES) and Iowa operation permits. The proposed amendments will accomplish this by updating the federal code references; changing rule language to accord with the Clean Water Act and federal regulations; removing obsolete language and citations; extending and clarifying bypass reporting time lines; removing specific operational monitoring requirements; removing extraneous public notice requirements for permittees; clarifying language on permit requirements and reissuance; and adding a new subrule to allow the Department of Natural Resources (Department) to issue fee refunds without variances.

Any person may submit written suggestions or comments on the proposed amendments through February 19, 2016. Such written material should be submitted to Courtney Cswercko, NPDES Section, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319-0034; fax (515)725-8202; or by e-mail to courtney.cswercko@dnr.iowa.gov. Persons who have questions may contact Courtney Cswercko by e-mail or at (515)725-8411.

Three public hearings at which persons may present their views orally or in writing will be held as follows:

February 15, 2016	2 to 4 p.m.	Iowa Department of Natural Resources Field Office 4 1401 Sunnyside Lane Atlantic
February 16, 2016	10 a.m. to 12 noon	Iowa Department of Natural Resources Wallace State Office Building Fourth Floor Conference Room 502 East 9th Street Des Moines
February 16, 2016	6:30 to 8:30 p.m.	Iowa City Public Library Meeting Room A 123 South Linn Street Iowa City

At the hearings, persons will be asked to give their names and addresses for the record and to confine their remarks to the subjects of the amendments.

Any person who intends to attend a public hearing and has special requirements, such as those related to mobility or hearing impairments, should contact the Department to advise of any specific needs.

Summary

The following summary describes the changes that are proposed for Chapters 60, 62, 63, 64 and 67.

Code of Federal Regulations reference updates for Chapters 60, 62, 63, 64 and 67:

The proposed amendments update the references to the Code of Federal Regulations (CFR) and associated analytical methods in Chapters 60, 62, 63, 64, and 67 of the wastewater rules by citing a new effective CFR date of January 1, 2015. Obsolete CFR references will also be deleted.

Chapter 60 amendments:

The proposed amendments will add the definition of "New discharger" to rule 567—60.2(455B) for clarification purposes and to comply with federal regulations and will amend the definition of "point source" to be equivalent to the definition in the Clean Water Act. The proposed amendments will remove the definition of "EPA methods" from rule 567—60.2(455B), as Chapter 63 discusses guidelines for test procedures for pollutant analysis specifically, and this definition is not needed.

An operation permit form is proposed to be added. The General Permit No. 6, Iowa Water Well Construction and Services Field Office Notification Form, is proposed to be added, and old monthly operation report forms are proposed to be removed in subrule 60.3(3). The language concerning monthly operation report forms will also be modified to reference discharge monitoring report forms, which is the current title of the effluent reporting forms that permittees submit to the Department. These changes

are for clarification purposes and will ensure that all of the NPDES, operation, and general permit forms are referenced correctly in Chapter 60.

Chapter 62 amendments:

Several of the references to the Federal Effluent and Pretreatment Standards in rule 567—62.4(455B) are proposed to be updated to accord with the updated CFR reference. The proposed amendments will correct several of the names of the pretreatment standards listed in rule 567—62.4(455B) and will ensure that the federal pretreatment standards are referenced correctly. All of the pretreatment standards referenced in the proposed amendments are currently in effect and are being implemented in Iowa's NPDES permits; U.S. EPA has not recently implemented any new pretreatment standards that would create new requirements for Iowa's permittees.

Chapter 63 amendments:

The proposed update to the CFR effective date in the CFR definition in Chapter 60 will result in an update to the CFR reference in subrule 63.1(1) for the identification of wastewater testing procedures. The proposed update of this reference in Chapter 63 will result in the inclusion of the U.S. EPA rule, "Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; Analysis and Sampling Procedures," known as the method update rule, effective on June 18, 2012. In this rule, U.S. EPA added to 40 CFR Part 136 several new and revised analytical methods for measuring regulated pollutants in wastewater. Permittees and laboratories are required by federal law to use these analytical methods for determining compliance with NPDES permits. The method update rule provides increased flexibility to permittees and laboratories in their selection of analytical methods for use in wastewater testing.

The bypass notification time line in subrule 63.6(3) is proposed to be changed from 12 to 24 hours and the bypass report submittal time line is proposed to be changed from monthly to five days, both of which will accord with 40 CFR 122.41. The increase in the bypass notification time line will reduce the regulatory burden on permittees by allowing them more time to notify the Department of bypasses. The change to the bypass report submittal time line will not increase the regulatory burden on permittees, as they are already required to submit these reports. The change will ensure that facilities that bypass are not cited by U.S. EPA for submitting late reports.

A new rule on noncompliance is proposed to be added to Chapter 63 to ensure that the portions of 40 CFR 122.41 referencing noncompliance are correctly cited. The federal language on noncompliance is not new and is currently implemented in NPDES permits.

Table III, Operational Monitoring Requirements in Permits, in Chapter 63 is proposed to be rescinded. Two of the operational monitoring parameters currently in Table III, cell depth and total residual chlorine (TRC), and the footnotes associated with these parameters, are proposed to be moved to Tables I and II in Chapter 63 (the minimum self-monitoring in permits for organic waste dischargers). The monitoring requirements for cell depth and TRC are proposed to be moved as they are used for routine lagoon maintenance and to determine compliance with TRC permit limits, respectively. The other operational monitoring requirements in Table III, including monitoring of aeration basin contents, aerobic and anaerobic digester contents, and effluent from clarifiers, will be eliminated from Chapter 63 with the proposed rescission of Table III. This amendment will result in the removal of specific operational monitoring requirements from the majority of NPDES and operation permits.

The requirements for operational monitoring are proposed to be eliminated for several reasons, including:

- The majority of rule variances granted by the NPDES section are for operational monitoring;
- Operational monitoring data are rarely used by the Department to determine compliance;
- When appropriate, operational monitoring can be required in permits on a case-by-case basis;
- Operators know what operational monitoring is needed for their facility, and they will do the needed monitoring to ensure their plants run efficiently;
- There would be a cost savings in "required" monitoring; and
- Other states, including Illinois, Kansas, Nebraska, Minnesota, and Wisconsin, do not have operational monitoring in their NPDES permits.

The proposed amendments will also change the language in Chapter 63 regarding operational monitoring requirements and will change the associated operational monitoring language in Chapter 64. The proposed language for Chapter 63 eliminates the reference to Table III, requires permittees to perform operational monitoring to ensure proper facility operation in accordance with the facility design, and requires permittees to maintain records of any operational monitoring for three years. The proposed rescission of Table III and the addition of the requirement to perform operational monitoring in accordance with facility design will result in the performance of necessary operational monitoring at the discretion of each facility. Operational monitoring would no longer be regularly specified in NPDES or operation permits as a result of the proposed amendments, but operational monitoring would still need to be conducted to ensure proper facility operation. Thus, the proposed rescission of Table III will not result in the complete elimination of operational monitoring for permittees. The proposed amendments will not change the current rule language allowing operational monitoring requirements to be placed in permits on a case-by-case basis. The proposed amendment to the operational monitoring language in Chapter 64 is in accordance with the proposed amendments to Chapter 63.

Chapter 64 amendments:

To reduce the regulatory burden on smaller permitted facilities, the proposed amendments will remove the requirement from subrule 64.5(2) for minor NPDES permittees to publish a public notice in a local newspaper when a permit is drafted or amended and will also remove the requirement for all facilities to post a public notice in the post office. The requirements for the publication of a public notice are proposed to be changed because 40 CFR 124.10 only requires the publication of public notices for major permittees. The requirement to post a notice in the post office is proposed to be changed because local post offices do not always have a place to post public notices. Major NPDES permittees will still be required to publish public notices in a local newspaper, and all NPDES permittees will still be required to post public notices in public places and near the facility entrance.

The language in subrules 64.8(1) and 64.8(3) concerning the reissuance of permits to noncompliant facilities and the continuation of permits is proposed to be changed in order to prevent confusion about the circumstances under which a permit can be reissued and to ensure that permittees do not have to submit extra information with their permit applications. The Department has already received the information that the current rule requires to be submitted with a permit application in the effluent discharge monitoring reports and during inspections; the rule change clarifies that permittees do not need to submit the information a second time. The proposed amendments also add agricultural storm water discharges to the list of activities that do not require a wastewater operation permit. This change clarifies a long-standing DNR determination that such discharges do not require an operation permit.

A new subrule on fee refunds is proposed to be added to rule 567—64.16(455B) that will allow the Department to issue fee refunds to permit holders without having to first approve a rule variance. The proposed subrule will clarify the circumstances for fee refunds and will reduce the time it takes the Department to process a refund request. In addition, language concerning the return of fees that will be clarified by the new subrule is proposed to be removed from subrule 64.16(1).

The proposed amendments to Chapter 64 will also correct six rule citations, correct an obsolete address reference, and delete a duplicate paragraph.

Jobs Impact:

After analysis and review of this rule making, it has been determined that there will be no impact on private sector jobs and employment opportunities in Iowa. The private sector employment sectors which are subject to the proposed amendments include jobs in the wastewater, engineering consulting, analytical laboratory, and newspaper industries.

The proposed amendments are not anticipated to have an impact on private sector jobs and employment opportunities in Iowa, as the changes are for clarification purposes, will reduce the regulatory burden on permitted entities, or will cite existing federal regulations. In addition, the costs to the private sector as a result of the proposed amendments have already been realized or are negligible. The fiscal impact statement for this rule making is available upon request.

Chapter 60:

The proposed amendments to add and delete definitions, include current forms, and remove old forms will not impact jobs or employment opportunities in Iowa as they are minor changes that will not impact the construction, operation, or maintenance of wastewater facilities in Iowa.

Chapter 62:

The proposed amendments that will reference the Federal Effluent and Pretreatment Standards will not impact jobs or employment opportunities as they are citing existing regulations that are already being implemented.

Chapter 63:

The proposed update to the CFR reference in Chapter 63 that will result in the inclusion of the new U.S. EPA method update rule will not impact jobs or employment opportunities at analytical laboratories in Iowa. The method update rule has not yet been implemented by all of the laboratories in Iowa. However, the laboratories are all aware of the method update, and they have been working for several months to update their standard operating procedures (SOPs) to comply with the new methods and to purchase any necessary laboratory equipment. As Iowa laboratories have already begun the effort to update their SOPs, train staff on new SOPs, and purchase equipment, and as these efforts are all a normal part of laboratory operations, this proposed update will not impact private sector jobs and employment opportunities in Iowa.

The proposed reduction in the time line for submitting bypass reports will not impact jobs or employment opportunities as it is a minor change that will not impact the construction, operation, or maintenance of Iowa wastewater facilities. The extension of the bypass reporting time will not impact jobs or employment opportunities, as the reporting time is only being extended by 12 hours. The proposed addition of a new rule on noncompliance will not impact jobs or employment opportunities, as it cites existing federal regulations that are already being implemented.

The removal of the operational monitoring requirements table from Chapter 63 and the proposed changes to the associated operational monitoring requirements language will not impact private sector jobs or employment opportunities in Iowa. These changes will affect the wastewater, engineering consulting and analytical laboratory industries, but there will be no impact on jobs in these industries. Proposed rule 567—63.15(455B) will decrease the regulatory burden as operational monitoring will no longer be specified in permits. Operational monitoring will still need to be conducted to ensure proper facility operation, but the magnitude of monitoring will be less.

Chapter 64:

The proposed amendment to the public notice requirements will not impact jobs or employment opportunities in Iowa. The removal of the requirement for minor facilities to publish a public notice in a newspaper will affect the newspaper industry in Iowa. However, this revenue loss will be minimal. Moreover, eliminating the public notice requirement removes a regulatory burden on permittees such as small businesses and towns.

The proposed amendments to the language concerning the reissuance of permits to noncompliant facilities and concerning the continuation of permits, and the proposed addition of a new subrule on fee refunds will not impact jobs or employment opportunities as they are minor changes that will not impact the construction, operation, or maintenance of Iowa wastewater facilities. The addition of agricultural storm water discharges to the list of activities that do not require a wastewater operation permit will not impact private sector jobs or employment opportunities in Iowa, as this change clarifies a long-standing DNR determination that such discharges do not require an operation permit.

These amendments are intended to implement Iowa Code sections 455B.173, 455B.174, 455B.175, 455B.199A, and 455B.199B.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition of "New discharger" in rule **567—60.2(455B)**:

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a "discharge of pollutants";
2. That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;

3. Which is not a "new source"; and
4. Which has never received a finally effective NPDES permit for discharges at that "site."

This definition includes an "indirect discharger" which commences discharging into "waters of the United States" after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant that begins discharging at a "site" for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a "site" under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Regional Administrator in the issuance of a final permit to be an area of biological concern. In determining whether an area is an area of biological concern, the Regional Administrator shall consider the factors specified in 40 CFR 125.122(a)(1) through (10).

An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a "new discharger" only for the duration of its discharge in an area of biological concern.

ITEM 2. Amend the following definitions in rule **567—60.2(455B)**:

"CFR" or *"Code of Federal Regulations"* means the federal administrative rules adopted by the United States in effect as of ~~July 1, 2008~~ January 1, 2015. The amendment of the date contained in this definition shall constitute the amendment of all CFR references contained in 567—Chapters 60 to 69, Title IV, unless a date of adoption is set forth in a specific rule.

"Point source" means any discernible, confined~~,~~ and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, ~~landfill leachate collection system,~~ or vessel or other floating craft, from which pollutants are or may be discharged. ~~"Point source"~~ This term does not include ~~return flows from irrigated agriculture or~~ agricultural storm water ~~runoff~~ discharges and return flows from irrigated agriculture.

"Storm water" means storm water runoff, snow melt runoff and surface runoff and drainage. (NOTE: Agricultural storm water runoff is excluded by federal regulation 40 CFR 122.3(e) ~~as amended through June 15, 1992~~.)

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR Part 122 ~~as amended through June 15, 1992~~. For the categories of industries identified in paragraphs "1" to "10" of this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters (as defined at 40 CFR Part 401 ~~amended through June 15, 1992~~); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.

For the categories of industries identified in paragraphs "1" to "9" and "11," the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. To qualify for this exclusion, a storm-resistant shelter is not required for: drums, barrels, tanks and similar containers that are tightly sealed with bands or otherwise secured and have no

taps or valves, are not deteriorated and do not leak; adequately maintained vehicles used in material handling; and final products other than products that would be mobilized in storm water discharge. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, state, or municipally owned or operated) that meet the description of the facilities listed in paragraphs "1" to "11" of this definition include those facilities designated under 40 CFR 122.26(a)(1)(v) ~~as amended through December 8, 1999~~. The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this definition:

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N ~~as amended through June 15, 1992~~ (except facilities with toxic pollutant effluent standards which are exempted under paragraph "11" of this definition);

2. Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, 373;

3. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations meeting the definition of a reclamation area under 40 CFR 434.11(1) ~~as amended through June 15, 1992~~) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990, and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with, or that has come into contact with, any overburden, raw material, intermediate products, finished products, by-products or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. to 8. No change.

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR Part 403 ~~(as amended through June 15, 1992)~~. Not included are farmlands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR Part 503 ~~(as amended through June 15, 1992)~~;

10. and 11. No change.

"Storm water point sources" means point sources that serve to collect, channel, direct, and convey storm water and which are subject to Section 402(p) of the federal Clean Water Act and 40 CFR Parts 122, 123, and 124 ~~of Title 40 of the Code of Federal Regulations (as amended through June 15, 1992)~~.

ITEM 3. Rescind the definition of "EPA methods" in rule **567—60.2(455B)**.

ITEM 4. Amend paragraph **60.3(2)"i"** as follows:

i. Form 5 — Certification for Industrial Facilities and Operation Permits 542-1382.

ITEM 5. Reletter paragraphs **60.3(2)"j"** to **"x"** as **60.3(2)"k"** to **"y."**

ITEM 6. Adopt the following **new** paragraph **60.3(2)"j"**:

j. Form 6 — Operation Permit Application 542-1390.

ITEM 7. Amend subrule 60.3(3) as follows:

60.3(3) *Wastewater ~~monitoring~~ records of operation and other report forms.*

a. ~~Form 35-1 — general/monthly 542-3226~~ Individual operation and NPDES permit, discharge monitoring report forms as given to the permittee by the department.

~~*b.* Form 35-2 — general/quarterly 542-3227~~

~~*c.* Form 35-3 — commercial/industrial contributor/monthly 542-3228~~

~~*d.* Form 35-4 — general/monthly 542-3229~~

~~*e.* Form 35-5 — waste stabilization lagoons 542-3230~~

~~*f.* Form 35-6 — trickling filter 542-3231~~

~~*g.* Form 35-7 — activated sludge/contact stabilization 542-3232~~

~~*h.* Form 35-8 — commercial/industrial contributor/quarterly 542-3233~~

~~*i.*~~ *b.* General Permit No. 5, "Discharge from Mining and Processing Facilities," Annual Monitoring Report 542-8035.

c. General Permit No. 6, "Iowa DNR Water Well Construction and Services Wastewater Discharge Field Office Notification Form," 542-0018.

~~*j.*~~ *d.* General Permit No. 7, "Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States From the Application of Pesticides," Annual Monitoring Report.

e. "Acute Whole Effluent Toxicity Testing Report Form," 542-1381.

~~*k.*~~ *f.* Other forms as provided by the department, including electronic forms.

ITEM 8. Amend rule 567—62.4(455B), introductory paragraph, as follows:

567—62.4(455B) Federal effluent and pretreatment standards. The federal standards, 40 Code of Federal Regulations (CFR), revised as of ~~July 1, 2007~~ January 1, 2015, are applicable to the following categories:

ITEM 9. Amend subrules 62.4(3), 62.4(5), 62.4(10), 62.4(12), 62.4(25), 62.4(31), 62.4(35), 62.4(49), 62.4(50), 62.4(51), 62.4(55), 62.4(59) and 62.4(71) as follows:

62.4(3) *General pretreatment regulations for existing and new sources of pollution.* The following is adopted by reference: 40 CFR Part 403.

62.4(5) *Dairy products processing ~~industry~~ point source category.* The following is adopted by reference: 40 CFR Part 405.

62.4(10) *Textile ~~industry~~ mills point source category.* The following is adopted by reference: 40 CFR Part 410.

62.4(12) *Concentrated animal feeding operations (CAFO~~s~~) point source category.* The following is adopted by reference: 40 CFR Part 412.

62.4(25) *Leather tanning and finishing ~~industry~~ point source category.* The following is adopted by reference: 40 CFR Part 425.

62.4(31) *Builders paper and roofing felt segment of the builders paper and board mills point source category.* ~~The following is adopted by reference: 40 CFR Part 431.~~ Reserved.

62.4(35) *Oil and gas extraction ~~industry~~ point source category.* The following is adopted by reference: 40 CFR Part 435.

62.4(49) ~~*Steam supply and noncontact cooling water*~~ *Airport de-icing point source category.* ~~Reserved.~~ The following is adopted by reference: 40 CFR Part 449.

62.4(50) ~~*Concentrated aquatic animal production*~~ *Construction and development point source category.* The following is adopted by reference: 40 CFR Part ~~451~~ 450.

62.4(51) ~~*Clay, gypsum, refractory and ceramic products*~~ *Concentrated aquatic animal production point source category.* ~~Reserved.~~ The following is adopted by reference: 40 CFR Part 451.

62.4(55) *Pesticide chemicals ~~manufacturing point source category~~.* The following is adopted by reference: 40 CFR Part 455.

62.4(59) *Photographic ~~processing~~ point source category.* The following is adopted by reference: 40 CFR Part 459.

62.4(71) *Nonferrous metals forming and metal powders point source category.* The following is adopted by reference: 40 CFR Part 471.

ITEM 10. Amend rule 567—62.5(455B) as follows:

567—62.5(455B) Federal toxic effluent standards. The following is adopted by reference: 40 CFR Part 129~~, revised as of July 1, 2007~~.

ITEM 11. Amend paragraph **63.1(1)"a"** as follows:

a. The following is adopted by reference: 40 Code of Federal Regulations (CFR) Part 136~~, revised as of July 1, 2007~~.

ITEM 12. Amend subrule 63.1(3) as follows:

63.1(3) Required containers, preservation techniques and holding times. All samples collected in accordance with self-monitoring requirements as defined in an operation permit shall comply with the container, preservation techniques, and holding time requirements as specified in Table ~~VI~~ IV. Sample preservation should be performed immediately upon collection, if feasible.

ITEM 13. Amend subrule 63.2(1) as follows:

63.2(1) The permittee shall maintain records of all information resulting from any monitoring activities required in its operation permit and from any operational performance monitoring.

ITEM 14. Amend subrule 63.3(1) as follows:

63.3(1) *Monitoring by organic waste dischargers.* The minimum self-monitoring requirements to be incorporated in operation permits for facilities discharging organic wastes shall be the appropriate requirements in Tables I, II, and ~~IV~~ III. Additional monitoring may be specified in the operation permit based on a case-by-case evaluation of the impact of the discharge on the receiving stream, toxic or deleterious effects of wastewaters, industrial contribution to the system, complexity of the treatment process, history of noncompliance or any other factor which requires strict operational control to meet the effluent limitations of the permit, as described in the Supporting Document for Permit Monitoring Frequency Determination, August 2008, located on the NPDES Web site.

ITEM 15. Amend subrule 63.3(4) as follows:

63.3(4) *Operational performance monitoring.* ~~The minimum operational monitoring to be incorporated in permits shall be the appropriate requirements in Table III. These requirements reflect minimum indicators that any adequately run system must monitor. The department recognizes that most well-run facilities will be monitored more closely by the operator as appropriate to the particular system. However, the results of any monitoring beyond the requirements in Table III need not be reported to the department, but shall be maintained in accordance with 63.2(3). Additional operational~~ Operational performance monitoring for treatment unit process control shall be conducted to ensure that the facility is properly operated in accordance with its design. The results of any operational performance monitoring need not be reported to the department, but shall be maintained in accordance with rule 567—63.2(455B). Additional operational performance monitoring may be specified in the operation permit based on a case-by-case evaluation of the impact of the discharge on the receiving stream, toxic or deleterious effects of wastewaters, complexity of the treatment process, history of noncompliance or any other factor that requires strict control to meet the effluent limitations of the permit. The results of operational performance monitoring specified in the operation permit shall be submitted to the department in accordance with the reporting requirements in the operation permit.

ITEM 16. Amend subrule 63.6(3) as follows:

63.6(3) *Notification of unanticipated bypass or upset and public notices.* In the event that a bypass or upset occurs without prior notice having been provided pursuant to 63.6(2) or as a result of mechanical failure or acts beyond the control of the owner or operator, the owner or operator of the treatment facility or collection system shall notify the department by telephone as soon as possible but not later than ~~12~~ 24 hours after the onset or discovery.

a. Notification shall be made by contacting the appropriate field office ~~during normal business hours (8 a.m. to 4:30 p.m.) or by calling the department at (515)281-8694 after normal business hours~~.

b. and *c.* No change.

d. ~~Bypasses shall be reported with the monthly operation report, as a separate attachment, that includes:~~ A written submission describing the bypass shall also be provided within five days of the time the permittee becomes aware of the bypass. The written submission shall contain the following:

(1) to (6) No change.

ITEM 17. Adopt the following **new** rule 567—63.15(455B):

567—63.15(455B) Other noncompliance. The permittee shall provide a written description of all instances of noncompliance not reported under rule 567—63.12(455B) or 567—paragraph 64.7(4)*"c"* at the time discharge monitoring reports (DMRs) are submitted. The written description shall contain the information listed in rule 567—63.12(455B).

ITEM 18. Amend **567—Chapter 63**, Tables I and II, as follows:

Table I Minimum Self-Monitoring in Permits for Organic Waste Dischargers

Controlled Discharge Wastewater Treatment Plants

Wastewater Parameter	Sampling[5] Location	Sample Type[4]	Frequency by P.E.[1,5,6]			
			< 100	101-500	501-1,000	>1,001
Flow[2]	Raw	24-Hr Total	1/Week	Daily	Daily	Daily
	Final	Instantaneous	2/Week during drawdown	Daily during drawdown		
BOD_5	Raw	24-Hr Composite	–	–	–	1/3 Months
$CBOD_5$[3]	Final	Grab	1/Drawdown[7]	Twice during drawdown		
Total Suspended Solids (TSS)[3]	Raw	24-Hr Composite	–	–	–	1/3 Months
	Final	Grab	1/Drawdown[7]	Twice during drawdown		
Ammonia Nitrogen	Final	Grab	1/Drawdown	Twice during drawdown		
E. coli	Final	Grab	1/Drawdown	1/Drawdown	Twice during drawdown	
pH[8]	Raw	Grab	–	–	–	1/3 Months
	Final	Grab	1/Drawdown	1/Drawdown	Twice during drawdown	1/Week during drawdown
Cell Depth[9]	Each Cell	Measurement	1/Week	1/Week	1/Week	2/Week
Total Residual Chlorine (TRC)[10]	Final	Grab	1/Drawdown	1/Drawdown	Twice during drawdown	

Explanation of Superscripts

1 to 7 No change.

8 - pH can be monitored using a colorimetric comparator or a meter.

9 - Cell Depth monitoring is required to be conducted year-round (not exclusively during drawdown periods). It may be applied to lagoon cells at continuous discharge wastewater treatment facilities on a case-by-case basis.

10 - TRC can be monitored using a colorimetric comparator or a meter. TRC monitoring is only required for facilities with TRC effluent limitations.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Table II Minimum Self-Monitoring in Permits for Organic Waste Dischargers
Continuous Discharge Wastewater Treatment Plants

Wastewater Parameter	Sampling Location	Sample Type[3,11]	Frequency by P.E.[1,6]						
			≤ 100	101-500	501-1,000	1,001-3,000	3,001-15,000	15,001-105,000	> 105,000
Flow[2]	Raw or Final	24-Hr Total	1/week	Daily	Daily	Daily	Daily	Daily	Daily
BOD_5	Raw	24-Hr Comp.	1/6 Months	1/3 Months	1/Week	1/Week	2/Week	2-5/Week[5]	Daily
$CBOD_5$	Final	24-Hr Comp.	1/3 Months	1/Month	1/Week	1/Week	2/Week	2-5/Week[5]	Daily
Total Suspended Solids (TSS)	Raw	24-Hr Comp.	1/6 Months	1/3 Months	1/Month	1/2 Weeks	1/Week	2-5/Week[5]	Daily
	Final	24-Hr Comp.	1/3 Months	1/3 Months	1/Month	1/2 Weeks	1/Week	2-5/Week[5]	Daily
Ammonia Nitrogen[10]	Final	24-Hr Comp.	1/Month	1/Month	1/Week	1/Week	2/Week	2-5/Week[5]	Daily
TKN[8]	Raw	24-Hr Comp.	—	—	—	—	1/Month	1/Month	1/2 Weeks
Total Nitrogen[9]	Final	24-Hr Comp.	—	—	—	—	1/3 Months	1/2 Months	1/2 Months
Total Phosphorus[9]	Final	24-Hr Comp.	—	—	—	—	1/3 Months	1/2 Months	1/2 Months
pH[12]	Raw	Grab	—	—	1/Week	1/Week	2/Week	2-5/Week[5]	Daily
	Final	Grab	1/3 Months	1/Month	1/Week	1/Week	2/Week	5/Week	Daily
E. coli[4,7]	Final	Grab	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months
Temperature	Raw	Grab	—	—	1/Week	1/Week	2/Week	2-5/Week[5]	Daily
	Final	Grab	1/3 Months	1/Month	1/Week	1/Week	2/Week	2-5/Week[5]	Daily
Total Residual Chlorine (TRC)[13]	Final	Grab	1/Week	1/Week	2/Week	2/Week	3/Week	5/Week	Daily

Explanation of Superscripts

1 to 11 No change.

12 - See Superscript #8, Table I.

13 - See Superscript #10, Table I.

ITEM 19. Rescind Table III in **567—Chapter 63**.

ITEM 20. Renumber Tables IV and V as Tables III and IV in **567—Chapter 63**.

ITEM 21. Amend renumbered Table III, Explanation of Superscripts, in **567—Chapter 63** as follows:

Explanation of Superscripts

1 - The flow to be used for determining sample frequency shall be the original engineering design, average wet weather flow, or any modifications thereof. The design flow shall be the raw wastewater flow prior to any treatment units.

2 - See Superscript #4, Table I.

3 - Monitoring wells shall be sampled according to the procedures described in Table ~~V~~ IV.

4 - Final shall be the final effluent from the storage facility prior to land application.

ITEM 22. Adopt the following **new** paragraph **64.3(1)"g"**:

g. Agricultural storm water discharges. This exclusion applies only to the operation permit requirement set forth in this rule and does not alter other requirements of law, including but not limited to any applicable requirements of Iowa Code chapters 459 and 459A.

ITEM 23. Amend subparagraph **64.4(2)"a"(1)** as follows:

(1) Storm water point sources requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26 ~~(as amended through June 15, 1992)~~.

ITEM 24. Amend subparagraphs **64.5(1)"a"(1)** and **(3)** as follows:

(1) Effluent limitations identified pursuant to ~~64.6(2)~~ 64.7(2) and ~~64.6(3)~~ 64.7(3), for those pollutants proposed to be limited.

(3) Any other special conditions (other than those required in ~~64.6(5)~~ 64.7(7)) which will have a significant impact upon the discharge described in the permit application.

ITEM 25. Amend paragraph **64.5(2)"a"** as follows:

a. Prior to the issuance of an NPDES permit, a major NPDES permit amendment, or the denial of a permit application for an NPDES permit, public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the tentative determination to issue or deny an NPDES permit for the proposed discharge. Procedures for the circulation of public notice shall include at least the procedures of subparagraphs (1) to ~~(3)~~(4).

(1) The public notice for a draft NPDES permit or major permit amendment shall be circulated by the applicant within the geographical areas of the proposed discharge by posting the public notice in ~~the post office and~~ public places of the city nearest the premises of the applicant in which the effluent source is located~~;~~ and by posting the public notice near the entrance to the applicant's premises and in nearby places~~; and by publishing the public notice in local newspapers and periodicals, or, if appropriate, in a newspaper of general circulation~~.

(2) The public notice for the denial of a permit application shall be sent to the applicant and circulated by the department within the geographical areas of the proposed discharge by publishing the public notice in local newspapers and periodicals~~,~~ or, if appropriate, in a newspaper of general circulation.

~~(2)~~ (3) The public notice shall be sent by the department to any person upon request.

~~(3)~~ (4) Upon request, the department shall add the name of any person or group to the distribution list to receive copies of all public notices concerning the tentative determinations with respect to the permit applications within the state or within a certain geographical area and shall send a copy of all public notices to such persons.

ITEM 26. Reletter paragraphs **64.5(2)"b"** to **"e"** as **64.5(2)"c"** to **"f."**

ITEM 27. Adopt the following **new** paragraph **64.5(2)"b"**:

b. In addition to the requirements in paragraph 64.5(2)*"a,"* prior to the issuance of a major NPDES permit or a major permit amendment to a major NPDES permit, the public notice shall be published by the applicant in local newspapers and periodicals or, if appropriate, in a newspaper of general circulation. Publication of a public notice is not required prior to the issuance of the following:

(1) A minor NPDES permit,

(2) A minor permit amendment, or

(3) A major permit amendment to a minor NPDES permit.

Major and minor NPDES permits and major and minor permit amendments are defined in 567—60.2(455B).

ITEM 28. Amend subparagraph **64.6(1)"c"(1)** as follows:

(1) General Permits No. 1, No. 2 and No. 3. A demonstration that a public notice was published in at least one newspaper with the largest circulation in the area in which the facility is located or the activity will occur. The newspaper notice shall, at the minimum, contain the following information:

PUBLIC NOTICE OF STORM WATER DISCHARGE

The (applicant name) plans to submit a Notice of Intent to the Iowa Department of Natural Resources to be covered under NPDES General Permit (select the appropriate general permit—No. 1 "Storm Water Discharge Associated with Industrial Activity" or General Permit No. 2 "Storm Water Discharge Associated with Industrial Activity for Construction Activities"). The storm water discharge will be from (description of industrial activity) located in (¼ section, township, range, county). Storm water will be discharged from (number) point source(s) and will be discharged to the following streams: (stream name(s)).

Comments may be submitted to the Storm Water Discharge Coordinator, ~~IOWA DEPARTMENT OF NATURAL RESOURCES, Environmental Protection Division, 900 E. Grand Avenue,~~ Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, ~~IA~~ Iowa 50319-0034. The public may review the Notice of Intent from 8 a.m. to 4:30 p.m., Monday through Friday, at the above address after it has been received by the department.

ITEM 29. Amend paragraph **64.7(4)"d,"** introductory paragraph, as follows:

d. On the last day of the months of February, May, August, and November the director shall transmit to the regional administrator a list of all instances, as of 30 days prior to the date of such report, of failure or refusal of a permittee to comply with an interim or final requirement or to notify the department of compliance or noncompliance with each interim or final requirement (as required pursuant to paragraph ~~*"b"*~~ *"c"* of this subrule). Such list shall be available to the public for inspection and copying and shall contain at least the following information with respect to each instance of noncompliance:

ITEM 30. Amend paragraph **64.8(1)"a"** as follows:

a. Any operation or NPDES permittee who wishes to continue to discharge after the expiration date of the permit shall file an application for reissuance of the permit at least 180 days prior to the expiration of the permit pursuant to 567—60.4(455B). For a POTW, permission to submit an application at a later date may be granted by the director. In addition, the applicant must submit ~~or have submitted information to show:~~

~~(1) That the permittee is in compliance or has substantially complied with all the terms, conditions, requirements and schedules of compliance of the expiring operation or NPDES permit.~~

~~(2)~~ ~~Up~~ up-to-date information on the permittee's production levels, the permittee's waste treatment practices, or the nature, contents, and frequency of the permittee's discharge, as required by the permit application.

~~(3) That the discharge is consistent with applicable effluent standards and limitations, water quality standards and other legally applicable requirements listed in 64.7(2), including any additions to, or revision or modifications of, such effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.~~

ITEM 31. Amend subrule 64.8(3) as follows:

64.8(3) *Continuation of expiring operation and NPDES permits.*

a. The conditions of an expired operation or NPDES permit will continue in force until the effective date of a new permit if:

(1) The permittee has submitted a timely and complete application under 567—subrule 60.4(2); and

(2) The department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit.

b. Operation and NPDES permits continued under this subrule remain fully effective and enforceable.

c. If a permittee is not in compliance with the conditions of the expiring or ~~expired~~ continued permit, the department may choose to do any of the following:

(1) Initiate enforcement action on ~~the~~ a permit which has been continued or reissued;

(2) to (4) No change.

ITEM 32. Amend rule 567—64.9(455B) as follows:

567—64.9(455B) Monitoring, record keeping and reporting by operation permit holders. Operation permit holders are subject to any applicable requirements and provisions specified in the operation permit issued by the department and to the applicable requirements and provisions specified in 567—Chapter 63.

ITEM 33. Amend rule 567—64.14(455B) as follows:

567—64.14(455B) Transfer of title and owner or operator address change. ~~If title to any disposal system or part thereof for which a permit has been issued under 567—64.2(455B), 567—64.3(455B) or 567—64.6(455B) is transferred, the new owners shall be subject to all terms and conditions of said permit. Whenever title to a disposal system or part thereof is changed, the department shall be notified in writing of such change within 30 days of the occurrence. No transfer of the authorization to discharge from the facility represented by the permit shall take place prior to notifying the department of the transfer of title. Whenever the address of the owner is changed, the department shall be notified in writing within 30 days of the address change. Electronic notification is not sufficient; all title transfers or address changes must be reported to the department by mail.~~

64.14(1) *Permits issued under rule 567—64.2(455B), 567—64.3(455B), or 567—64.6(455B), except 64.6(1)"a"(5) and (6).* If title to any disposal system or part thereof for which a permit has been issued under these rules is transferred, the new owners shall be subject to all terms and conditions of the permit. Whenever title to a disposal system or part thereof is changed, the department shall be notified in writing of such change within 30 days of the occurrence. No transfer of the authorization to discharge from the facility represented by the permit shall take place prior to notification of the department of the transfer of title. Whenever the address of the owner is changed, the department shall be notified in writing within 30 days of the address change. Electronic notification is not sufficient; all title transfers and address changes must be reported to the department by mail.

64.14(2) *Permits issued under 64.6(1)"a"(5) and (6).* When the operator of a facility permitted under subparagraphs 64.6(1)*"a"*(5) and (6) changes, the department must be notified of the transfer within 30 days. When a discharge is covered by the general permit, the operator of record shall be subject to all terms and conditions of the permit. No transfer of the authorization to discharge from the facility represented by the permit shall take place prior to notification of the department of the transfer. Whenever the address of the operator is changed, the department shall be notified in writing within 30 days of the address change. Electronic notification is not sufficient; all transfers and address changes must be reported to the department by mail.

ITEM 34. Amend subrule **64.16(1)**, second unnumbered paragraph, as follows:

Fees are nontransferable. ~~If the application is returned to the applicant by the department, the permit fee will be returned. No fees will be returned if the permit or permit coverage is suspended, revoked, or modified, or if the activity is discontinued.~~ Failure to submit the appropriate fee at the time of application renders the application incomplete, and the department shall suspend processing of the application until the fee is received. Failure to submit the appropriate annual fee may result in revocation or suspension of the permit as noted in 64.3(11)*"f."*

ITEM 35. Adopt the following **new** subrule 64.16(7):

64.16(7) *Fee refunds.*

a. Individual and general permit application, permit, and annual fees may be refunded, completely or in part, at the discretion of the director. Permittees who wish to receive fee refunds should notify the department in writing. Fees may be refunded under various circumstances, including, but not limited to:

(1) A duplicate fee was submitted (for example, two annual fees for the same permit are paid in the same fiscal year).

(2) A fee was overpaid.

(3) A fee was submitted but is not required as part of the permit application or renewal (for example, an individual annual permit fee was submitted for a discontinued permit, a general permit NOI fee was submitted for an individual permit, or an amendment fee was submitted for a permit that cannot be amended).

(4) An application is returned to the applicant by the department without decision.

b. Fees shall not be refunded under any of the following conditions:

(1) If the permit or permit coverage is suspended, revoked, or modified, or if the activity is discontinued or ceased.

(2) If a permit is amended.

(3) If a permit application is withdrawn by the applicant or denied by the department pursuant to 64.5(1).

ITEM 36. Amend subrule 67.1(1) as follows:

67.1(1) General. This chapter establishes standards for the land application of sewage sludge generated during the treatment of domestic sewage in a treatment works. This chapter applies to any person who prepares sewage sludge (generator), to any person who applies sewage sludge to the land (applicator), and to sewage sludge applied to the land. No person shall land apply sewage sludge through any practice for which requirements are established in this chapter except in accordance with such requirements.

In areas that are not specifically addressed in this chapter, but which are addressed in federal regulations at 40 CFR Part 503 ~~as amended through August 4, 1999~~, the federal regulations shall apply under this rule and are hereby adopted by reference under this chapter.

On a case-by-case basis, this department may impose requirements for the land application of sewage sludge in addition to or more stringent than the requirements in this chapter when necessary to protect public health and the environment from any adverse effect of a pollutant in the sewage sludge.

ARC 2350C

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 225C.6, the Department of Human Services proposes to amend Chapter 25, "Disability Services Management," Iowa Administrative Code.

These proposed amendments establish standards for mental health advocates who provide services under Iowa Code chapter 229, "Hospitalization of Persons with Mental Illness." New Division X in Chapter 25 includes standards for definitions, appointment and qualifications, assignment, advocate and county responsibilities, data collection requirements, and quality assurance for mental health advocate services.

Prior to July 1, 2015, mental health advocates were appointed by the judicial branch and paid by the counties. 2015 Iowa Acts, House File 468, amended Iowa Code chapter 229 to make mental health advocates county employees, effective July 1, 2015. Prior to July 1, 2015, procedures varied from judicial region to judicial region and from county to county. These amendments will provide consistency in requirements for hiring the advocate and for performance standards.

Any interested person may make written comments on the proposed amendments on or before January 26, 2016. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth 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).

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

These amendments are intended to implement Iowa Code chapter 229 as amended by 2015 Iowa Acts, House File 468.

The following amendments are proposed.

ITEM 1. Reserve rules **441—25.97** to **441—25.100**.

ITEM 2. Adopt the following **new** 441—Chapter 25, division and title, as follows:

DIVISION X
MENTAL HEALTH ADVOCATES

ITEM 3. Adopt the following **new 441—Chapter 25, Division X,** Preamble, as follows:

PREAMBLE

This division establishes definitions, appointment and qualifications, assignment, responsibilities of the advocate and the county, data collection requirements, and quality assurance for mental health advocate services under Iowa Code chapter 229 as amended by 2015 Iowa Acts, House File 468.

ITEM 4. Adopt the following **new** rules 441—25.101(229) to 441—25.107(229):

441—25.101(229) Definitions.

"Advocate" means mental health advocate as defined in Iowa Code section 229.1 as amended by 2015 Iowa Acts, House File 468.

"Conflict of interest" means any activity that interferes or gives the appearance of interference with the exercise of professional discretion and impartial judgment, including dual relationships with the individual being served or with members of the individual's immediate family or serving two or more individuals who have a personal relationship.

"County of residence" means the same as defined in Iowa Code section 331.394.

"County of venue" means the county in which the Iowa Code chapter 229 commitment was filed pursuant to Iowa Code section 229.44.

"County where the individual is located" means the individual's county of residence as defined in Iowa Code section 331.394, or if the individual has been ordered to receive treatment services under an Iowa Code chapter 229 commitment, is placed in a residential or other treatment facility, and has received treatment in such facility for more than six months, the "county where the individual is located" means the county where the individual is placed for treatment purposes.

"Individual" means the respondent who is receiving mental health advocate services under Iowa Code chapter 229 as amended by 2015 Iowa Acts, House File 468.

"Judicial district" means the same as defined in Iowa Code section 602.6107.

"Mental health and disability services region" means the same as defined in Iowa Code section 331.389.

441—25.102(229) Advocate appointment and qualifications. The board of supervisors of each county shall appoint a person to act as an advocate representing the interests of individuals involuntarily

hospitalized by the court under Iowa Code chapter 229. The advocate is hired by the board of supervisors and employed by the county.

25.102(1) A person may be appointed and employed or contracted with as the advocate by one county or by multiple counties. Advocates may be appointed for counties in more than one judicial district or more than one mental health and disability services region.

25.102(2) Qualifications.

a. The advocate shall meet the following qualifications:

(1) Possess a bachelor's degree with 30 semester hours or equivalent quarter hours in a human services field (including, but not limited to, psychology, social work, mental health counseling, marriage and family therapy, nursing, education, occupational therapy, and recreational therapy) and at least one year of experience in the delivery of services to persons with mental illness; or

(2) Hold an Iowa license to practice as a registered nurse and have at least three years of experience in delivery of services to persons with mental illness.

b. A person employed as an advocate on or before July 1, 2015, who does not meet the requirements of subparagraph 25.102(2)*"a"*(1) or (2) shall be considered to meet those requirements so long as the person is continuously appointed as an advocate in the employing county.

c. A person employed as an advocate must pass criminal background, sex offender registry, and child and dependent adult abuse registry checks before hire.

441—25.103(229) Advocate assignment. The committing court shall assign the advocate from the county where the individual is located.

25.103(1) If the advocate assigned cannot serve the individual in an effective and efficient manner, the advocate may request another advocate to perform advocate duties on the individual's behalf. In the event that another advocate can better represent the individual on a longer term basis, the advocate shall request that the court transfer the individual to another advocate.

25.103(2) When a conflict of interest is identified between an advocate and an individual, the court and the advocate's county of employment shall be notified and an alternative advocate shall be assigned. The advocate's direct supervisor is responsible to monitor and ensure that the advocate does not have a conflict of interest. In instances when dual or multiple relationships are unavoidable, advocates should take steps to protect individuals and are responsible for setting clear, appropriate, and culturally sensitive boundaries. Advocates who anticipate a conflict of interest among the individuals receiving services should clarify the advocate's role with the parties involved and take appropriate action to minimize any conflict of interest.

25.103(3) When the advocate assigned is not the advocate from the individual's county of residence, the advocate's county of employment may seek reimbursement from the region in which the individual's county of residence is located as outlined in Iowa Code section 229.19(1)*"b"* as amended by 2015 Iowa Acts, House File 468.

25.103(4) An advocate shall only be assigned to a child 17 years of age or under when the child is not represented by an attorney due to an existing child in need of assistance (CINA) or other juvenile court action pursuant to the Iowa Code.

441—25.104(229) Advocate responsibilities. The minimum duties of the advocate are outlined in Iowa Code section 229.19 as amended by 2015 Iowa Acts, House File 468. The role of the advocate is to ensure that the rights of the individual are upheld.

25.104(1) The advocate shall be readily accessible to communication from the individual and shall initiate contact within 5 days of the individual's commitment. The advocate shall inform the individual regarding the role of the advocate.

25.104(2) The advocate shall meet the individual in person within 15 days of the individual's commitment. The advocate shall present the county grievance procedure process, in writing, to the individual. The presentation shall include the county grievance procedure and contact information and the contact information for the citizens' aide/ombudsman. The advocate shall inform the individual about the mental health crisis services that are available.

25.104(3) The advocate shall review each report submitted to the court and communicate with the individual's medical and treatment team. Advocates shall abide by all federal, state, and local confidentiality laws.

25.104(4) The advocate shall file with the court Iowa Ct. R. 12.36—Form 30, quarterly reports for each individual assigned to the advocate. The report shall state the actions taken with the individual and amount of time spent on behalf of the individual.

25.104(5) The advocate shall maintain an organized confidential and secure file for each individual served. The file shall contain but not be limited to:

a. Copies of quarterly reports submitted to the court.

b. Correspondence received from the individual, family members, providers and others.

c. Copies of correspondence sent to and received from the individual, family members, providers and others.

d. Releases of information.

e. Case notes describing the date, time and type of contact with the individuals or others and a brief narrative summary of the content or outcome of the contact.

f. Documents filed with the court electronically shall be considered as part of the individual's file.

25.104(6) The advocate shall register as provided in Iowa Ct. R. 16.305(1) to participate in the court's electronic document management system and shall submit all documents to be filed with the court electronically. The documents will be stored as electronic records that are retrievable and readable through the electronic document management system.

25.104(7) The advocate, as an employee of the county, shall comply with all county policies and procedures, including but not limited to hiring, supervision, grievance procedures, and training.

25.104(8) All advocate records are the property of the county, which is responsible for the provision of confidential storage, transfer, and destruction of client files, including those maintained on electronic and digital devices, with access limited according to the county's policy on confidentiality as described in subrule 25.105(6).

25.104(9) The advocate may attend the hospitalization hearing of an individual represented by an attorney; however, payment for the advocate's attendance is at the discretion of the county of employment.

441—25.105(229) County responsibilities. As the employer of the advocate, the county shall provide qualified staff to support and facilitate the provision of quality advocate services. The county shall:

25.105(1) Assign a single supervisor, a single contract manager, or the county board of supervisors as the supervising entity to carry out responsibilities in this chapter.

25.105(2) Have a job description in the personnel file of the advocate that clearly defines the advocate's responsibilities and qualifications as defined in Iowa Code section 229.19 as amended by 2015 Iowa Acts, House File 468, and in rule 441—25.104(229).

25.105(3) Have a process to verify, within 90 days of the advocate's hire, qualification of the advocate, including degrees and certifications obtained from a primary source.

25.105(4) Provide to the advocate training and education relevant to the position, including but not limited to overview of mental health diagnosis and treatment, the mental health and disability services delivery system, confidentiality, individual rights, professional conduct, the role of advocacy and service coordination within an interdisciplinary team, Iowa Code and administrative rules, and court procedures.

25.105(5) Provide approved training on child and dependent adult abuse reporter requirements.

25.105(6) Provide to any employee with access to individuals' files training on state and federal laws regarding nondisclosure and confidentiality of client protected health information during and after employment and maintain in the personnel files a signed document indicating the employee's awareness of the county's policy on confidentiality.

25.105(7) Complete criminal background, sex offender registry and child and dependent adult abuse registry checks before employment of the advocate. Any person who does not pass these checks is prohibited from being hired, or continuing to serve, as an advocate.

HUMAN SERVICES DEPARTMENT[441](cont'd)

25.105(8) Provide adequate advocate staff to cover the county's caseload, according to, but not limited to, each county's unique number of individuals assigned to the advocate, travel required, types of settings where the individuals reside, services available and extended staff absences.

441—25.106(229) Data collection requirements.

25.106(1) Beginning in 2016 and by December 1 each year, each county shall submit to the department of human services data regarding each individual who received advocate services during the previous state fiscal year

25.106(2) As defined in rule 441—25.41(331), the data to be submitted are as follows:

a. Basic information about the individual, including a unique identifier and county of residence.

b. Demographic information, including the individual's date of birth, sex, ethnicity, education, and diagnosis made in accordance with the criteria provided in the current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association (APA).

c. Commitment information, including the date of the individual's initial commitment, type of commitment order, whether a juvenile or adult case, date of commitment and name of treatment facility individual is committed to, any subsequent changes in treatment facility, and date commitment is terminated.

441—25.107(229) Quality assurance system. As the employer of the advocate, the county shall implement a quality assurance system which:

1. Annually measures and assesses advocates' activities and services.
2. Gathers feedback from stakeholders including individuals using advocate services, family members, court staff, service provider staff, and regional staff regarding advocate services.
3. Implements an internal review of individual records.
4. Identifies areas in need of improvement.
5. Develops a plan to address the areas in need of improvement.
6. Implements the plan and documents the results.

ITEM 5. Adopt the following **new** implementation sentence for **441—Chapter 25**, **Division X**:

These rules are intended to implement Iowa Code chapter 229 as amended by 2015 Iowa Acts, House File 468.

ARC 2362C

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 217.3(6) and 2015 Iowa Acts, Senate File 505, section 14, the Department of Human Services proposes to amend Chapter 52, "Payment," Iowa Administrative Code.

These amendments implement the January 1, 2016, increased personal needs allowance for two State Supplementary Assistance categories: residential care facility and family life home assistance. These amendments will allow the state to adjust the personal needs allowance for residential care facility and family-life home assistance recipients to reflect the increase in the average monthly Medicaid copayment expense for that population.

Any interested person may make written comments on the proposed amendments on or before January 26, 2016. Comments should be directed to Harry Rossander, Bureau of Policy Coordination,

Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may also 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 since the increases are required by federal and state law.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 2363C**. The purpose of this Notice 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 217.3(6) and 2015 Iowa Acts, Senate File 505, section 14.

ARC 2357C

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 217.6, the Department of Human Services proposes to amend Chapter 151, "Juvenile Court Services Directed Programs," Iowa Administrative Code.

These amendments improve the understanding of current juvenile justice services. The amendments also describe the expansion of those services to juveniles aged 18 to 21.

These amendments are necessary because juvenile justice services have evolved over time. Additionally, 2015 Iowa Acts, Senate File 412, has extended juvenile court services to juveniles aged 18 to 21. Finally, these amendments will provide better transition services for 18- to 21-year-old youths who are juvenile court services clients when they reach the age of 18.

Any interested person may make written comments on the proposed amendments on or before January 26, 2016. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth 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).

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.

The following amendments are proposed.

ITEM 1. Amend **441—Chapter 151**, preamble, as follows:

These rules prescribe services for ~~children~~ eligible children for reimbursement from funds appropriated specifically for juvenile court services directed programs. The state court administrator and chief juvenile court officers have primary responsibility for the administration of court-ordered services (COS) and graduated sanction services for eligible children. The graduated sanction services are also known as "early intervention and follow-up services" or "community-based delinquency programs." The COS and graduated sanction funds shall also be used to enhance the education and performance of those employees who are directly involved with the clients and their programs.

The juvenile court services directed programs addressed in this chapter include court-ordered services and ~~four~~ three graduated sanction programs: ~~life skills~~ community-based interventions; school-based supervision; ~~supervised community treatment; and tracking, monitoring, and outreach~~ and

supportive enhancements. The rules establish the criteria for the allocation of funds and the procedures for administration, application, eligibility, appeals, service delivery, and billing and payment.

ITEM 2. Amend rule **441—151.1(232)**, definitions of "Case file," "Child" and "Graduated sanction services," as follows:

"Case file" means a paper or electronic file that includes referral information, information generated during assessment, documentation of court proceedings, other eligibility determinations, case plans, and case reports, including quarterly progress reports. Case files of providers also include records of provider-child contact that document provision of services.

"Child" means a person under 18 years of age. "Child" also includes a person up to 19½ years of age when (1) the person is adjudicated delinquent and the dispositional order is entered while the person is 17 years of age (in which case, the order terminates 18 months after the date of disposition), or (2) the person, as an adult, has been transferred to the jurisdiction of the juvenile court and is adjudicated as having committed a delinquent act before becoming an adult (in which case, the dispositional order automatically terminates 18 months after the last date upon which jurisdiction could attach). Also included is a juvenile who has been adjudicated by the court to have committed a delinquent act upon the child reaching 18 years of age until the child is 21 years of age, if the child and juvenile court services determine the child should remain under the guidance of juvenile court services.

"Graduated sanction services" means ~~life skills~~ community-based interventions; school-based supervision; ~~supervised community treatment; and tracking, monitoring, and outreach~~ and supportive enhancements. Graduated sanction services are provided in community-based settings to ~~children~~ an eligible child who ~~are~~ is adjudicated delinquent or who ~~are~~ is at risk of adjudication. Services are directed to help ~~children~~ the child transition into productive adulthood and to prevent or reduce criminal charges, out-of-home placement, and recidivism. Graduated sanction services are also known as "early intervention and follow-up services" or "community-based delinquency programs~~.~~" and are intended to enhance life skills of eligible children by providing quality services and purchasing goods to achieve individual and programmatic outcomes. Purchase of goods and services shall be monitored to ensure compliance with state and federal limitations on use of funds.

ITEM 3. Amend subrule 151.2(2) as follows:

151.2(2) *Allocations for graduated sanction services.* Graduated sanction services are funded by an appropriation to the department. The department allocates the funds to the state court administrator and to the chief juvenile court officers for administration. The funds are allocated and administered as follows:

a. The department shall allocate a set-aside amount up to, but not to exceed, ~~10~~ 20 percent of the total allocation for graduated sanction services for the state court administrator to pay the administrative costs of the graduated sanction services, including the costs of a ~~court accountant auditor~~ contract administrator accountant position established in each judicial district. The contract administrator accountant is responsible to assist in producing data, promoting fiscal efficiencies related to criminogenic risk factors, and monitoring outcome measurements for eligible children served. The contract administrator accountant will also support ongoing development, implementation, and monitoring of evidence-based practices.

b. The state court administrator shall:

(1) Establish and implement a written job classification and pay schedule for the ~~court accountant auditor~~ contract administrator accountant positions; and

(2) Administer the set-aside for the eight judicial districts.

c. The department shall allocate the ~~funds for each of the four~~ graduated sanction ~~programs~~ services funds, minus the administrative set-aside, among the eight judicial districts based on each district's respective portion of the statewide population of children as reported in current census data. The source of the census data shall be determined and agreed upon by the department and the chief juvenile court officers.

ITEM 4. Amend subrule 151.2(4) as follows:

151.2(4) *Availability of funds.* The chief juvenile court officers, the state court administrator, and the department shall monitor the availability of the court-ordered services funds to ensure that funds are available within each district throughout the state fiscal year. The chief juvenile court officers and the department shall monitor the availability of the graduated sanction services funds to ensure that the funds are available within each district throughout the state fiscal year.

a. The department shall provide to each ~~court accountant auditor~~ contract administrator accountant at the start of each state fiscal year a blank electronic report, known as the "Y" form, as well as a spreadsheet showing the amount of the district's allocations for graduated sanction services. The state court administrator shall determine and provide to each district at the start of each state fiscal year the amount of the district's allocation for court-ordered services.

~~*b.* The state court administrator shall determine and provide to each district at the start of each state fiscal year the amount of the district's allocation for court-ordered services.~~

~~*c.*~~ *b.* Each ~~court accountant auditor~~ contract administrator accountant shall~~:~~ enter on the "Y" form the annual allocation and expenditures of funds of each service.

~~(1) Enter the beginning annual allocation on the "Y" form for court-ordered services and for each graduated sanction service;~~

~~(2) Enter on the "Y" form each month the monthly expenditures and transfers of funds to and from each service; and~~

~~(3) Submit each month to the department's division of fiscal management the "Y" form showing the monthly balance of service funds, as well as the cumulative expenditures and fund transfers for each service for the district.~~

~~*d.*~~ *c.* The department shall:

(1) Use the information provided by each ~~court accountant auditor~~ contract administrator accountant to prepare ~~each month~~ an annual electronic report, known as the Form Y Summary, showing the statewide balance of service funds, as well as the cumulative expenditures and fund transfers for each service for each district; and

(2) Distribute the Form Y Summary ~~monthly~~ annually to the state court administrator and to department and juvenile court services management.

~~*e.*~~ *d.* The chief juvenile court officers, in consultation with the department or the state court administrator, shall reallocate funds as needed to ensure the availability of graduated sanction services and court-ordered services on a statewide basis throughout the state fiscal year.

~~*f.*~~ *e.* If funding for either graduated sanction services or court-ordered services is exhausted in any district, the respective services within that district shall be discontinued.

ITEM 5. Amend rule 441—151.4(232) as follows:

441—151.4(232) Billing and payment. The chief juvenile court officer shall ensure that billing and payment are in compliance with department requirements and the requirements of the accounting policies and procedures manual of the department of administrative services, state accounting enterprise. A claim that meets the requirements of this chapter becomes a state liability on the date of a claim's accrual. The date of a claim's accrual is the date the service was provided, the end of the agreed-upon billing interval specified in the contract, or the date of a determination of liability for the claim.

151.4(1) *Claim forms and instructions.* The instructions and forms used for billing shall be available to the provider from each ~~chief's juvenile court services~~ judicial district office. Electronic versions of all forms are available.

a. Court-ordered services.

(1) The provider shall prepare a claim for court-ordered services on Form GAX, General Accounting Expenditure~~, and Form 470-1691, Claim for Juvenile Court Services Programs, or a facsimile thereof~~. An original, itemized invoice may ~~be substituted for Form 470-1691~~ accompany a Form GAX in lieu of a claimant's original signature.

(2) ~~The provider shall attach a copy of the applicable court order with each initial claim for court-ordered services. Each subsequent claim shall include the first page of the applicable court order,~~

~~or the case number of the applicable court order shall be entered on Form GAX or Form 470-1691.~~ Juvenile court services shall maintain an approved application with court order to validate payment for services.

b. ~~*Life skills, supervised community treatment, and tracking, monitoring, and outreach*~~ *Community-based intervention and supportive enhancements.*

(1) The provider shall prepare a claim for ~~life skills, supervised community treatment, and tracking, monitoring, and outreach~~ community-based intervention and supportive enhancements on Form GAX, General Accounting Expenditure.

(2) The provider shall also submit ~~Form 470-1691, Claim for Juvenile Court Services Programs, a facsimile thereof, an original, itemized~~ an approved invoice, or a copy of the provider's list of the eligible children for whom the claim is made. The document submitted shall include the name of each child and the number of units of service provided to that child each month.

c. No change.

151.4(2) *Preparation of claim.* Form GAX, General Accounting Expenditure, shall be submitted with all claims. The Form GAX submitted shall not include claims for more than one fiscal year. The provider, as vendor, must enter on Form GAX:

a. and *b.* No change.

c. The vendor's ~~invoice date and number~~ service month,

d. A short description of the item or service that was purchased, and

~~*e.* Either the provider's social security number, federal identification number, or tax identification number, and~~

~~*f.*~~ *e.* ~~An~~ A claimant original signature of the provider unless an original invoice is submitted.

151.4(3) *Support of claim.* The provider bears ultimate responsibility for the completeness and accuracy of each claim submitted. The provider must maintain a record of the days and times during which each service was provided for each eligible child. The provider's record must correspond to the units billed.

151.4(4) *Submittal of claims to juvenile court services.* Providers shall submit claims to the ~~chief juvenile court officer~~ contract administrator accountant in the judicial district in which the service was provided. The provider shall submit the original Form GAX and any required ~~supporting documents to the chief juvenile court officer for each claim~~ support of claim pursuant to subrule 151.4(3).

a. No change.

b. To ensure payment from funds appropriated for the fiscal year, claims shall be submitted timely to allow the ~~chief juvenile court officer~~ contract administrator accountant to submit the claim to the department within 45 calendar days of fiscal year end, June 30.

151.4(5) *Review and approval of claims.* The chief juvenile court officer is responsible for accuracy and disposition of claims. The ~~chief juvenile court officer~~ contract administrator accountant shall verify the accuracy of the provider's billings and approve the claims.

a. and *b.* No change.

151.4(6) *Juvenile court services submittal of claims to department.* The ~~chief juvenile court officer~~ contract administrator accountant shall prepare and submit claims to the department. Juvenile court services shall make the required number of copies for submittal and shall submit the required documents to the Department of Human Services, Division of Fiscal Management, Bureau of Purchasing, Payments and Receipts, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. The documents required to be submitted are as follows:

a. New contract and any contract amendments. For the first claim submitted for a new contract or a contract amendment, juvenile court services must submit:

(1) Two copies of the signed contract or signed contract amendment.

(2) ~~Three~~ Two copies of ~~Form 470-0022,~~ the Pre-Contract Questionnaire.

(3) The original and ~~two copies~~ one copy of Form GAX, showing the contract number, if applicable.

b. Ongoing contract. For subsequent claims for contract payment, juvenile court services shall submit the original and ~~two copies~~ one copy of Form GAX, which shall include the ~~following information:~~ contract number, if applicable.

~~(1) The contract number.~~

~~(2) The warrant number.~~

~~(3) The paid date, which is the date the first claim was processed through the I-3 system and is stamped on the first warrant the provider receives through the contract.~~

~~(4) The reference document number of the initial voucher of the series to which the contract is attached (the reference document number is the 11-digit number listed under "Departmental Reference Numbers" on the warrant, starting with "413-").~~

~~(5) The payment number of the total contracted sequence, if known, such as "payment 7 of 12 payments."~~

~~*c. Contract amendment.* For each contract amendment, juvenile court services must submit:~~

~~(1) The original and two copies of Form GAX;~~

~~(2) Two copies of the signed amendment; and~~

~~(3) Three copies of Form 470-0022, Pre-Contract Questionnaire.~~

151.4(7) *Claim records.* The chief juvenile court officer or approved administrator shall have responsibility for retention of records, maintenance of records, and authorized access to records.

a. and *b.* No change.

151.4(8) No change.

ITEM 6. Amend rule 441—151.6(232), introductory paragraph, as follows:

441—151.6(232) District program reviews and audits. Each chief juvenile court officer shall establish procedures to review and audit the provision of the graduated sanction services to ensure that the requirements of this chapter and the contracts are met. The ~~court accountant auditor~~ contract administrator accountant as established according to subrule 151.2(2) shall conduct the reviews and audits.

ITEM 7. Amend subrule 151.6(3) as follows:

151.6(3) *Scope.* The ~~court accountant auditor~~ contract administrator accountant shall review and audit the provider's service and financial records, including the client case records and case files, to ensure that the records contain the required documentation of the provision of the contracted service for each individual child for whom a claim is made. The reviews and audits shall include:

a. to *c.* No change.

ITEM 8. Amend paragraph **151.6(4)"e"** as follows:

e. If the provider does not make payment within ~~45~~ 60 days, the chief juvenile court officer shall submit to the department a copy of the notice to the provider for the department's review and further action if necessary.

ITEM 9. Amend subrule 151.6(5) as follows:

151.6(5) *Report.* Each ~~chief juvenile court officer~~ contract administrator accountant shall submit to the department an annual report of the district's review and audit activities for each state fiscal year.

a. and *b.* No change.

ITEM 10. Amend subrule 151.20(2) as follows:

151.20(2) Any services that are provided without the signed approval of the chief juvenile court officer or ~~the chief juvenile court officer's designee~~ approved administrator may be denied payment, unless there is an emergency or after-hours situation and no other provision exists for handling emergency or after-hours situations or transports.

ITEM 11. Amend rule 441—151.21(232), introductory paragraph, as follows:

441—151.21(232) Certification process. The chief juvenile court officer or approved administrator shall determine the certification of the court for each ordered service.

ITEM 12. Amend subrule 151.21(1) as follows:

151.21(1) *Application for court-ordered services.* Any party intending to request court-ordered services funds shall complete an application and receive approval for the funding request from the chief juvenile court officer ~~before making the request to the court~~ or approved administrator.

a. and *b.* No change.

c. The chief juvenile court officer or approved administrator may establish procedures for handling emergency or after-hours situations and for the handling of transports.

ITEM 13. Amend subrule 151.21(2) as follows:

151.21(2) *Determination.* The chief juvenile court officer or approved administrator shall determine whether the requested service is eligible for reimbursement and shall certify that there are sufficient funds available to pay for the service. The chief juvenile court officer or approved administrator shall determine whether:

a. and *b.* No change.

ITEM 14. Amend subrule 151.21(4) as follows:

151.21(4) *Certification.* The chief juvenile court officer or ~~designee~~ approved administrator shall approve or disapprove the request for funds and shall sign and return the application to the applicant.

a. and *b.* No change.

ITEM 15. Amend subrule 151.21(5) as follows:

151.21(5) *Allowable rates not available.* When the department has been unable to establish an allowable rate of reimbursement for a service or a provider, the chief juvenile court officer or approved administrator shall negotiate a reimbursement rate with the provider to obtain the service at a reasonable cost based on available community or statewide rates.

ITEM 16. Amend subparagraph **151.22(1)"b"(8)** as follows:

(8) Evaluation of parents pursuant to a ~~CINA~~ delinquent adjudication unless the diagnosis and evaluation is provided by a person or agency with a contract with the department for that service for which the child is eligible.

ITEM 17. Amend subrule 151.22(3) as follows:

151.22(3) *Services not listed.* If a court orders a service not currently listed in subrule 151.22(1), the chief juvenile court officer or approved administrator shall review the order and shall consult with the department. If reimbursement for the service expense is not in conflict with current law or administrative rules and meets the criteria for certification of the court, the chief juvenile court officer or approved administrator shall authorize reimbursement to the provider.

ITEM 18. Amend **441—Chapter 151**, Division III, preamble, as follows:

The graduated sanction services are early intervention and follow-up services to be provided to children adjudicated delinquent and to children who have been referred to juvenile court services for a delinquency violation or who have exhibited behaviors likely to result in a juvenile delinquency referral. The services are directed to enhance personal adjustment to help the children transition into productive adulthood and to prevent or reduce criminal charges, out-of-home placement, and recidivism. The services are provided in the child's home community.

The graduated sanction services are ~~life skills~~ community-based intervention, school-based supervision, ~~supervised community treatment, and tracking, monitoring, and outreach~~ and supportive enhancement services. Together this mix of services and the flexibility allowed in tailoring the services to meet specific needs offer a choice of treatment to meet the specific needs of the child.

ITEM 19. Amend rule 441—151.30(232) as follows:

441—151.30(232) ~~Life skills~~ Community-based interventions. ~~"Life skills"~~"Community-based interventions" means individual or group instruction which includes, but is not limited to, ~~specific training to develop and enhance personal skills, problem solving, accountability, acceptance of responsibility, victim empathy, activities of daily living, and job skills.~~ supervised educational support, treatment and outreach services to an eligible child who is experiencing social, behavioral, or emotional

problems that placed the child at risk of group care or state institutional placement. A program for a child may be funded from multiple sources, but the funding sources may not duplicate or overlap. The components and activities shall be described in the contract. Services offered may provide individualized and intensive interventions to assist a child in establishing positive behavior patterns and to help the child maintain accountability in a community-based setting.

151.30(1) *Service eligibility.* Children shall be eligible for ~~life skills~~ community-based intervention services without regard to individual or family income when they are adjudicated delinquent or are determined by a juvenile court officer to be at risk and to be in need of the service provided by a ~~life skills~~ community-based intervention program. Juvenile court services shall maintain in the child's case record or case file documentation of the child's adjudication or at-risk status as well as the child's need for services.

a. The chief juvenile court officer shall establish written procedures for screening and approving referrals for ~~life skills~~ community-based intervention services and make the procedures available to the district's juvenile court officers.

b. The juvenile court officer shall determine the ~~child's~~ child to be in need ~~for individual or group instruction in any of the life skills service components and shall refer the child for the service.~~ of services as evidenced by one or more of the following situations:

(1) Schools, parents or community organizations, due to complaints of delinquent activities, indicate the need for monitoring and guidance of the child.

(2) A petition has been filed alleging delinquent behavior.

(3) Juvenile court services action has been initiated including, but not limited to, diversion, informal adjustment agreements, adjudication and disposition proceedings.

c. The chief juvenile court officer may approve ~~life skills~~ community-based intervention services for up to six consecutive months at a time, except that service approval shall not extend beyond the current fiscal year unless a contract is in effect to assume the cost for the services provided in the next fiscal year. The officer shall reevaluate the child's eligibility and need for these services in accordance with procedures established by the respective juvenile court services district.

d. Referrals shall not be made or accepted when funds for the program are not available.

e. The child shall not require more extensive treatment than is provided in the community-based intervention program.

151.30(2) *Service components.*

a. ~~Life skills components include specific training to develop and enhance:~~ Community-based interventions provide treatment to an eligible child as well as an opportunity for the eligible child to participate in state-funded educational programming. Therapy or counseling and skill development services may be provided through this program to the child's family; components include specific training to develop and enhance:

(1) Personal skills, including anger management, stress reduction, and self-esteem.

(2) ~~Rescinded IAB 11/9/05, effective 1/1/06~~ Child and parent relationships.

(3) Problem solving.

(4) Accountability and acceptance of responsibility.

(5) Victim empathy and self-advocacy.

(6) Activities of daily living and time management.

(7) Job skills including job-seeking skills as well as training for specific jobs and on-the-job training experiences.

(8) Parenting skills.

b. The contract must specify what is required of the provider.

c. Services may be co-located with school programs. Although the costs of the state-funded educational programming shall not be funded through the graduated sanctions appropriation, programs shall be developed so that there is close coordination between the treatment and the state-funded educational components.

d. Services shall include one or more of the following components:

(1) Skill-building services focusing on social skills, recreation activities, employment readiness, independent living, and other areas related to a child's treatment needs.

(2) Individual, group and family therapy and counseling as determined appropriate by the program director and referral source. Staff that provide individual, group and family therapy shall meet applicable state licensing standards.

(3) Snacks and meals as necessary during the non-state-funded educational portion of the program day.

(4) Supervision and support services, such as transportation to the non-state-funded educational program, family outreach, telephone contact, and electronic monitoring of the eligible child.

(5) Transition service planning upon admission so that timely transition services are available upon discharge, if needed.

(6) Supervision and support services when necessary to help the eligible child transition out of the program.

e. Community support services are directed toward the child's maintaining accountability and may include multiple daily contacts with the child through direct face-to-face contact, telephone or technology.

f. Outreach activities provide guidance and advocacy for the child and may include individualized interventions with the child's family as well as assistance in accessing the following types of resources:

(1) Referral to community organizations.

(2) Health services (physical and mental).

(3) Education.

(4) Employment.

(5) Legal.

(6) Case conferences and services planning.

(7) Diagnostic assessment services.

(8) Family competency-building services.

g. Outreach activities may also include recreation and transportation when guidance and advocacy are a part of the service component.

h. Providers of community-based interventions shall submit progress reports on each child receiving services to the assigned juvenile court officer at intervals specified in the contract. The contractor shall complete progress reports not more than one month after services are initiated and within 30 days of the termination of service. Progress reports shall describe the child's school attendance and progress toward desired goals identified by the provider and referral source. Progress reports shall also describe the specific instruction provided to the child and the child's response to the instruction.

i. The juvenile court officer shall file the provider progress report in the child's case file. Providers of community-based intervention services shall prepare an initial treatment plan in consultation with the referral source within 30 days of the child's admission and shall prepare a minimum of quarterly progress reports on each child receiving services.

(1) Additional reports may be prepared when requested by the juvenile judge or the child's juvenile court officer.

(2) All reports shall be submitted to the juvenile court officer responsible for monitoring the child's progress. All reports shall, at a minimum, describe the child's attendance, adjustment, and progress in achieving the desired goals and objectives established in the treatment plan.

151.30(3) No change.

151.30(4) *Monitoring of service delivery.* The juvenile court officer shall monitor the delivery of ~~life skills~~ community-based intervention services to children for whom the officer is responsible.

a. to *c.* No change.

151.30(5) *Billable unit and rate setting.* Rates for ~~life skills~~ community-based intervention services shall be established through an agreement between the provider and the chief juvenile court officer based on the provider's proposed budget. Rates may vary among providers for various types of ~~life skills~~ community-based intervention services. The billable unit and unit costs shall be specified in the contract.

a. ~~Life skills~~ Community-based intervention service shall be billed on the basis of units of instruction provided to eligible children during specified time frames.

b. The ~~life skills~~ community-based intervention instruction may be provided on an individual or group basis. See paragraph 151.35(2)*"c"* for rate-setting requirements when more than one child is served at a time.

c. and *d.* No change.

151.30(6) *Provider standards.* Providers shall have a contract with juvenile court services and the department for ~~life skills~~ community-based intervention services and agree to abide by all required instructional, reporting, rate-setting, and billing and payment procedures for ~~life skills~~ community-based intervention services. The chief juvenile court officer shall review provider staff qualifications and training activities. Providers of ~~life skills~~ community-based intervention services shall meet all of the following conditions. Providers shall:

a. Be selected and approved by the chief juvenile court officer or designee within each judicial district to provide ~~life skills~~ community-based intervention services.

b. Use staff who, in the opinion of the chief juvenile court officer, have the necessary training and ~~experience~~ qualifications to provide quality services on the topic about which they will be delivering instruction.

c. Use a curriculum approved by the chief juvenile court officer for ~~life skills~~ community-based interventions.

d. Have the educational and instructional ability, as determined by the chief juvenile court officer, to deliver ~~life skills~~ community-based intervention services to eligible children in the settings most suited to each child's needs.

~~**151.30(7)** *Provider progress reports.*~~

~~*a.* Providers of life skills shall submit progress reports on each child receiving services to the assigned juvenile court officer at intervals specified in the contract. The contract shall specify progress reports not more than one month after services are initiated and at the termination of service. Progress reports shall describe the specific instruction provided, the child's attendance, response to instruction, and progress toward achieving desired goals and objectives identified by the provider and referral source.~~

~~*b.* The juvenile court officer shall file the provider progress report in the child's case file.~~

~~*c.* Rescinded IAB 11/9/05, effective 1/1/06.~~

~~**151.30(8)**~~ **151.30(7)** *Outcome measures.* Each contract for purchase of ~~life skills~~ community-based intervention services shall contain a section to inform the provider that juvenile court services and the department shall track the outcome of the service provision following each child's discharge from the service received through the contract.

a. and *b.* No change.

c. Juvenile court services shall determine whether the child has reoffended within the ~~12~~ six-month period following the date of discharge from ~~life skills~~ community-based interventions. Service to a child shall be considered successful if the child has not been referred to juvenile court services for a law violation during the ~~12~~ six-month period following discharge from ~~life skills~~ community-based interventions.

d. ~~Data collected on the children served and discharged shall be used to establish or modify a baseline for the provider and for the service.~~ The data shall be used to develop information to make decisions regarding service provision and contracting.

ITEM 20. Amend rule 441—151.32(232) as follows:

441—151.32(232) ~~**Supervised community treatment**~~ **Supportive enhancements.** ~~"Supervised community treatment" means a program that provides supervised educational support and treatment during the day to children who are experiencing social, behavioral, or emotional problems that place them at risk of group care or state institutional placement. A supervised community treatment program for a child may be funded from multiple sources, but the funding sources for components of the service may not duplicate or overlap payment or service activities so as to pay for the same or parts of the same service twice or pay for overlapping services. A program whose components and activities are~~

~~funded from multiple sources must be capable of tracking the receipt and expenditure of funds for the components and activities, and these funding streams must be described in the contract.~~"Supportive enhancements" means a category of services, real goods or incentives matched to the risk needs of a child and which supports a child in a way to reduce or eliminate antisocial behavior. All services in this category are predicated on a planning and individualized goal development process which elicits input from the juvenile court officer, service providers, and the child and the family. Services are to build constructive relationships and support networks around the eligible child, within the child's community or during transition, and with the child's family. Supportive enhancements are community-based, culturally relevant, individualized, strength-based, and family-centered. Supportive enhancements may also be called supportive enhancement services. Supportive enhancements are individualized to address the child's comprehensive and multiple life domains across home, school, and community, including:

- Living environment.
- Accountability.
- Basic needs.
- Safety.
- Social needs.
- Educational needs.
- Cultural needs.

151.32(1) *Service eligibility.* ~~Children shall be eligible~~ The eligible child shall be qualified for ~~supervised community treatment~~ supportive enhancement services without regard to individual or family income when ~~they are~~ the child is adjudicated delinquent or ~~are~~ is determined by a ~~chief~~ juvenile court officer to be at risk and to be in need of service provided by ~~a supervised community treatment program~~ supportive enhancements. Juvenile court services shall maintain documentation in the child's case file of the adjudication or at-risk status as well as of the need for services.

a. The chief juvenile court officer shall establish written procedures for screening and approving referrals for ~~supervised community treatment~~ supportive enhancement services and ~~shall~~ make the procedures available to the district's juvenile court officers.

b. The juvenile court officer shall determine the ~~child's need for supervised community treatment and shall refer the child for service.~~ child is in need of services as evidenced by one of the following situations which is tied into the individualized case plan:

(1) Schools, parents or community organizations, due to complaints of delinquent activities, indicate a need for monitoring and guidance of the child.

(2) A petition has been filed alleging delinquent behavior.

(3) Juvenile court services action has been initiated including, but not limited to, informal adjustment agreements, adjudication and dispositional proceedings.

c. ~~The child shall not require more extensive treatment than is provided in the supervised community treatment program.~~ Juvenile court services shall maintain in the child's case record or case file documentation of the child's adjudication or at-risk status as well as the child's need for services.

~~*d.*~~ *c.* The chief juvenile court officer may approve ~~supervised community treatment~~ supportive enhancement services for up to six consecutive months at a time, except that service approval shall not extend beyond the current fiscal year unless a contract is in effect to assume the cost for the services provided in the next fiscal year. The officer shall ~~reevaluate~~ reauthorize the child's eligibility and need for these services in accordance with the procedures established by the ~~chief~~ respective juvenile court ~~officer~~ services district.

~~*e.*~~ *d.* Referrals shall not be made or accepted when funds for the program are not available.

151.32(2) *Service components.* ~~Supervised community treatment programs provide treatment to children as well as an opportunity for children to participate in state-funded educational programming. Supportive therapy or counseling and skill development services may be provided through this program to the child's family.~~ Supportive enhancement services are to complement other services or interventions for a child served by the juvenile court services or other provider. These supports allow the juvenile court services to intervene immediately with a support or incentive that is expected to reduce misbehavior or truancy and will lead to improved outcomes. Alternative funds or services shall

be utilized prior to supportive enhancements when available. Supportive enhancements may include, but are not limited to:

a. Education-related services.

b. Restitution.

c. Crisis intervention.

d. Transportation.

e. Clothing and grooming supplies.

f. Enrollment for prosocial activities.

g. Other expenses as approved by the chief juvenile court officer.

~~*a. Supervised community treatment programs may be co-located with school programs. Although the costs of the state-funded educational programming shall not be funded through the supervised community treatment appropriation, programs shall be developed so that there is close coordination between the treatment and the state-funded educational components.*~~

~~*b. Supervised community treatment programs shall include one or more of the following components:*~~

~~(1) Skill-building services focusing on social skills, recreational activities, employment readiness, independent living, and other areas related to a child's treatment needs.~~

~~(2) Individual, group, and family therapy and counseling as determined appropriate by the program director and referral source. Staff that provide individual, group, or family therapy shall meet applicable state licensing standards.~~

~~(3) Snacks and meals as necessary during the non-state-funded educational portion of the program day.~~

~~(4) Supervision and support services, such as transportation to the non-state-funded educational program, family outreach, telephone contact, and electronic monitoring of children.~~

~~(5) Aftercare service planning upon admission, so that timely aftercare services are available upon discharge, if needed.~~

~~(6) Supervision and support services when necessary to help children transition out of the program.~~

~~*c. The contract must specify the responsibilities of the provider.*~~

151.32(3) *Service referral and follow-up.* The juvenile court officer shall:

a. Determine which service and service provider can best meet the child's needs.

~~*b. Refer the child to the provider.*~~

~~*c.*~~ *b.* Assist in the child's transition to receive the service.

~~*d.*~~ *c.* Follow up after the service has been provided with the eligible child, the family, and the provider.

151.32(4) *Monitoring of service delivery.* The juvenile court officer shall monitor the delivery of ~~supervised community treatment services~~ supportive enhancements to ~~children~~ the eligible child for whom the officer is responsible.

~~*a. The juvenile court officer shall review provider progress reports and maintain contact with the child, the child's family, the provider, and other community agencies to adequately assess the child's progress and need for service.*~~

~~*b.*~~ *a.* The juvenile court officer shall report problems in service delivery to the chief juvenile court officer.

~~*c.*~~ *b.* The provider, the child, or the child's representatives may report problems in service delivery to the chief juvenile court officer.

151.32(5) *Billable unit and rate setting.* Rates for ~~supervised community treatment~~ supportive enhancements shall be established through an agreement between the provider and the chief juvenile court officer, based on ~~the provider's proposed budget. The billable unit and costs shall be specified in the contract.~~ actual expenses and allowed administration costs. Rates may vary.

~~*a. Supervised community treatment shall be billed on the basis of units of service provided to eligible children during specified time frames.*~~

~~*b. The supervised community treatment service may be provided on an individual or group basis. See paragraph 151.35(2)"c" for rate-setting requirements when more than one child is served at a time.*~~

~~*c.* Rates shall be established and reimbursed based on delivery of one-half hour, one hour, or per diem of specified supervised community treatment service.~~

~~*d.* The rate for any supervised community treatment service delivered in the same room by staff with the same qualifications as any other comparable treatment or supportive service program shall be the applicable rate established for the other comparable treatment or supportive services program.~~

~~*e.* Different rates may be established for the different components of the supervised community treatment program, and different sources of payment may be used for the different components.~~

~~(1) Provision may be made in the contract for the billing and payment of telephone or transportation costs to be included in the unit cost, or the provider may, in an attachment to the contract, identify the expenses to be billed separately from the unit cost.~~

~~(2) Telephone calls may be reimbursed according to receipts or at a set rate per call.~~

151.32(6) *Provider standards.* ~~Providers of supervised community treatment shall meet all of the following conditions. Agencies or organizations shall:~~ Providers shall have a contract with juvenile court services and the department for supportive enhancements and agree to abide by all required instructional reporting, rate-setting, and billing and payment procedures.

~~*a.* Have a current purchase of services or rehabilitative treatment and supportive services contract with the department.~~

~~*b.* Be selected by the chief juvenile court officer of the judicial district within the geographic area where the program is located to provide supervised community treatment services within all or a portion of the judicial district.~~

~~*c.* Agree to provide services in compliance with the programmatic standards established by the rules of this division.~~

~~*d.* Enter into a contract with juvenile court services and the department that establishes expectations, rates, and billing and payment procedures for the supervised community treatment program.~~

~~*e.* Agree to report supervised community treatment program costs separately on all cost reports.~~

~~*f.* Agree to comply with higher staff qualifications for specific components of these programs when the chief juvenile court officer outlines the expected qualifications in the request for proposal and program contract. In addition:~~

~~(1) The minimum standard for staff qualifications for staff employed to deliver services in a supervised community treatment program shall be graduation from high school or possession of a GED certificate and the equivalent of one year of full-time experience in the delivery of human services in a public or private agency.~~

~~(2) Providers shall ensure that staff has experience in working with the target population of children and shall provide planned opportunities for ongoing staff development and in-service training.~~

~~(3) Staff qualifications shall be monitored by juvenile court services as part of monitoring the contract.~~

~~**151.32(7)** *Provider progress reports.* Providers of supervised community treatment services shall prepare an initial treatment plan in consultation with the referral source within 30 days of the child's admission and shall prepare a minimum of quarterly progress reports on each child receiving services.~~

~~*a.* Additional reports may be prepared when requested by the juvenile judge or the child's juvenile court officer.~~

~~*b.* All reports shall be submitted to the juvenile court officer responsible for monitoring the child's progress. All reports shall, at a minimum, describe the child's attendance, adjustment, and progress in achieving the desired goals and objectives established in the treatment plan.~~

~~*c.* Rescinded IAB 11/9/05, effective 1/1/06.~~

~~**151.32(8)**~~ **151.32(7)** *Outcome measures.* Each contract for purchase of supportive enhancements shall contain a section to inform the provider that juvenile court services and the department shall track the outcome of the service provision following each child's discharge from the service received through the contract. The contract will detail expected outcomes of the service.

a. Juvenile court services, ~~and~~ the department, and the provider shall collaborate to determine the criteria and data needed to track and record the outcomes.

b. The provider shall report data as requested by juvenile court services.

c. ~~The department shall make a determination six months following each child's discharge as to whether the child is in foster family care, group care, or institutional placement. Service to a child shall be considered successful if:~~ Juvenile court services shall determine whether the child has reoffended within the six-month period following the date of discharge from supportive enhancements.

~~(1) The child is living at home even when less intensive services are provided; or~~

~~(2) The child is in supervised apartment living.~~

d. ~~Data collected on the children served and discharged shall be used to establish or modify a baseline for the provider and for the service. The data shall be used to develop information to make decisions regarding service provision and contracting.~~ Service to a child shall be considered successful if the child has not been referred to juvenile court services for a law violation or removed from the child's home during the six-month period following discharge.

e. The data shall be used to develop information to make decisions regarding service provision and contracting.

ITEM 21. Rescind and reserve rule **441—151.33(232)**.

ITEM 22. Amend subrule 151.34(1) as follows:

151.34(1) *Requirements.* Each chief juvenile court officer shall:

a. Establish minimum qualifications for providers of graduated sanction services;

b. Establish criteria and procedures for determining when and where to develop contracts with providers to best meet the service needs of the children in the judicial district; ~~and~~

c. Require providers to comply with applicable professional standards~~.~~; and

d. Ensure that use of graduated sanction funds for education and performance for juvenile court staff can be shown to benefit the eligible child.

ITEM 23. Amend rule 441—151.35(232), introductory paragraph, as follows:

441—151.35(232) Contract development for graduated sanction services. The chief juvenile court officer shall have the responsibility to purchase graduated sanction services (~~life skills~~ community-based interventions; school-based supervision; ~~supervised community treatment; or tracking, monitoring, and outreach~~ or supportive enhancement services).

ITEM 24. Amend paragraph **151.35(1)"b"** as follows:

b. The chief juvenile court officer or designee shall develop selection criteria for choosing providers to ensure that resources are targeted effectively within the district. Multiple providers may be selected to address the needs within the district.

ITEM 25. Amend subparagraph **151.35(1)"c"(3)** as follows:

(3) The chief juvenile court officer or designee is responsible for distributing a copy of the signed contract or amendment to the provider.

ITEM 26. Amend subrule 151.35(2) as follows:

151.35(2) *Contract content.* Contracts for purchasing graduated sanction services shall be developed using contract forms approved as to legal form by the assistant attorney general assigned to work with juvenile court services contracts. Contracts with providers shall incorporate all applicable requirements in Iowa Code section 8.47 as well as the administrative and program requirements of this chapter.

a. No change.

b. Contracts with providers of ~~life skills, supervised community treatment, or tracking, monitoring, and outreach services~~ community-based interventions or supportive enhancements shall establish and define the unit of service and the cost of the unit of service to be provided and billed per child. The contract shall specify the payment amount for the unit of service and may specify a maximum number of units but shall not ensure a provider reimbursement for a specific rate of utilization. Payment shall be made only for units of service provided to and billed for specific children.

c. Contracts with providers of ~~life skills, supervised community treatment, or tracking, monitoring, and outreach services~~ community-based interventions or supportive enhancements may

establish individual or group rates. The contract shall establish a group rate when the service is provided to more than one child at a time. A minimum and a maximum number of participants shall be established when a group rate is set.

(1) and (2) No change.

d. Contracts with providers of ~~supervised community treatment, or tracking, monitoring, and outreach~~ community-based interventions or supportive enhancements may establish per diem rates when the intensity of service provision per child is variable but the total cost of the provision of the service is known. The range of coverage of the intensity of service provision shall be described in the contract.

ARC 2351C

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 235B.5(1), the Department of Human Services proposes to amend Chapter 176, "Dependent Adult Abuse," Iowa Administrative Code.

These proposed amendments improve the quality of service, streamline processes, and update expectations. These amendments remove form numbers and alter form names in rule 441—176.10(235B) pertaining to the dissemination of adult abuse information. In addition, these amendments combine information pertaining to child abuse and dependent adult abuse to simplify the process for the requestors of information.

Any interested person may make written comments on the proposed amendments on or before January 26, 2016. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth 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).

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

These amendments are intended to implement Iowa Code section 235B.5(1).

The following amendments are proposed.

ITEM 1. Amend subrule 176.10(1) as follows:

176.10(1) *Requests for information.* Written requests for adult abuse information by the subject of a report as defined in subrule 176.10(3), paragraph *"a,"* may be submitted to the county office of the department on ~~Form 470-0612,~~ the department-prescribed form entitled Request for Child and Dependent Adult Abuse ~~Registry~~ Information.

Oral requests for dependent adult abuse information may be made to the county office or the central registry when the person making the request believes that the information is needed immediately and the person is authorized to access the information, pursuant to the requirements of Iowa Code section 235B.7, subsection 2. If a request is made orally by telephone, a written request shall be filed within 72 hours of the oral request ~~using Form 470-0612,~~ on the department-prescribed form entitled Request for Child and Dependent Adult Abuse ~~Registry~~ Information. When an oral request to the county office to obtain dependent adult abuse information is granted by the central registry, the county shall document the approval to the central registry ~~through use of Form 470-0612~~ on the department-prescribed form entitled Request for Child and Dependent Adult Abuse Information.

All other requests for information shall be made to the central registry by mail or fax pursuant to the requirements of Iowa Code section 235B.7.

ITEM 2. Amend subrule 176.10(2) as follows:

176.10(2) *Verification of identity.* The county office shall verify the identity of the person making the request on ~~Form 470-0612,~~ the department-prescribed form entitled Request for Child and Dependent Adult Abuse ~~Registry~~ Information. Upon verification of the identity of the person making the request, the county office shall transmit the request to the central registry. The central registry shall verify the identity of persons making requests for information directly to the central registry by telephone, mail, fax, or in person, on ~~Form 470-0612,~~ the department-prescribed form entitled Request for Child and Dependent Adult Abuse ~~Registry~~ Information.

ITEM 3. Amend subrule 176.10(4) as follows:

176.10(4) *Requests concerning applicants for employment and employees of health care programs.* A health care program making a request for dependent adult abuse information for the purpose of determining employability, as authorized by Iowa Code section 235B.6, subsection 2, paragraph *"e,"* subparagraphs (6) and (7), and section 135C.33, subsection 6, shall request the information directly from the central registry or obtain the information from the Internet electronic information system maintained by the health facilities division of the department of inspections and appeals.

Requests made directly to the central registry shall be made on ~~Form 470-0612,~~ the department-prescribed form entitled Request for Child and Dependent Adult Abuse ~~Registry~~ Information.

Health care programs requesting dependent adult abuse background checks on employee applicants and employees by use of the Internet electronic information system shall complete ~~Form 470-3767, Non-Redissemination Agreement~~ the department-prescribed form entitled Access to Confidential Abuse Information and Non-Redissemination Agreement. The form shall be signed by the administrator of the health care program and be sent to the central registry before receipt of the information from the department. The administrator shall agree not to redisseminate dependent adult abuse information obtained through the Internet electronic information system, except as authorized in Iowa Code sections 235B.6 and 235B.8.

ARC 2334C

LABOR SERVICES DIVISION[875]

Notice of Termination

Pursuant to the authority of Iowa Code section 88A.3, the Labor Commissioner terminates the rule making initiated by the Notice of Intended Action published in the Iowa Administrative Bulletin on May 13, 2015, as **ARC 1987C**. The Notice of Intended Action proposed to rescind Chapter 61, "Administration of Iowa Code Chapter 88A," and Chapter 62, "Safety Rules for Amusement Rides, Amusement Devices, and Concession Booths," Iowa Administrative Code, and to adopt three new chapters on amusement rides and other equipment covered by Iowa Code chapter 88A.

A new Notice of Intended Action concerning these same three chapters is published herein as **ARC 2354C**.

After analysis and review of this rule making, no impact on jobs is anticipated.

ARC 2354C

LABOR SERVICES DIVISION[875]

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 88A.3, the Labor Commissioner hereby gives Notice of Intended Action to rescind Chapter 61, "Administration of Iowa Code Chapter 88A," and adopt a new Chapter 61 with the same title; to rescind Chapter 62, "Safety Rules for Amusement Rides, Amusement Devices, and Concession Booths," and adopt a new Chapter 62 with the same title; and to adopt new Chapter 63, "Safety Rules for Bungee Jumps," Iowa Administrative Code.

The rules concerning amusement rides and devices have seen only minor modifications in the past 40 years and are obsolete. As a result, the Labor Commissioner proposes to replace the existing two chapters with three new ones. These proposals reflect new technologies and national industry trends.

Adoption by reference of ASTM Standards on Amusement Rides and Devices is a key component of the proposed rules. These ASTM safety standards are national consensus standards developed with significant input from the amusement ride and device industry, and they are flexible to cover new equipment. Separate standards specific to tramways and a new chapter for bungee jumping are also proposed.

The proposed new rules also clarify the scope of jurisdiction over amusement devices and concession booths; set forth procedures for owners to perform the required annual inspections in limited circumstances; set minimum standards for employees of amusement operations; codify existing practices for many administrative functions; set forth procedures for denial, termination, suspension, or revocation of an operating permit or sticker; set forth procedures for leasing covered equipment; and conform to various statutory provisions.

The purposes of these amendments are to implement legislative intent and protect the public health and safety.

In the May 13, 2015, Iowa Administrative Bulletin, the Labor Commissioner published Notice of Intended Action **ARC 1987C**, which addressed many of the same topics as this Notice. This Notice incorporates recommendations made before and after the publication of **ARC 1987C**, and it differs from **ARC 1987C** in other ways as well.

If requested by the close of business on January 26, 2016, a public hearing will be held on January 27, 2016, at 10 a.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than January 27, 2016, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

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

These amendments are intended to implement Iowa Code chapter 88A.

The following amendments are proposed.

ITEM 1. Rescind 875—Chapter 61 and adopt the following **new** chapter in lieu thereof:

CHAPTER 61
ADMINISTRATION OF IOWA CODE CHAPTER 88A

875—61.1(88A) Scope. 875—Chapters 61 through 63 do not apply to the following:

61.1(1) A water park or water park attraction including, but not limited to, a water slide, wave action pool, and lazy river. This subrule does not apply to an amusement ride that propels patrons using a power source other than gravity even though water is present.

61.1(2) A live-animal ride.

61.1(3) A vessel inspected pursuant to Iowa Code chapter 462A.

61.1(4) An amusement structure in which the patrons navigate on their own power and the patrons do not ride, climb, or walk on a mechanical component.

61.1(5) A device that meets all of the following criteria:

a. Was designed and built to be operated by a coin, card, or token;

b. Was designed and built to be operated by the patron rather than an attendant;

c. Operates on self-contained wiring that was installed by the manufacturer;

d. Operates on less than 120 volts of electrical power; and

e. Is within or is part of a structure subject to a state or local building code.

61.1(6) Playground equipment owned, maintained, and operated by any political subdivision of this state.

61.1(7) A concession booth, amusement device, or amusement ride that meets all of the following:

a. Is owned and operated by a nonprofit organization; and

b. Is located in a building subject to inspection by the state fire marshal or a local government.

61.1(8) Nonmechanized physical fitness and playground equipment unless a fee is charged to use the equipment.

61.1(9) Physical fitness equipment that does not meet the definition of "amusement device."

61.1(10) A tramway used as a ski lift.

61.1(11) A scenic railway operating on standard-gauge rails.

61.1(12) A zipline or climbing wall located at a camp or retreat owned or operated by a nonprofit religious, educational or charitable institution or association.

875—61.2(88A) Definitions. The definitions in this rule apply to 875—Chapters 61 through 63.

"Air-supported structure" means an amusement device that employs a high-strength fabric or film that achieves its strength, shape and stability from internal air pressure provided by a mechanical device such as an air blower or fan.

"Amusement device" means a climbing wall utilizing an auto-belay system; a bungee jump as defined in 875—Chapter 63; a device allowing a patron to jump on a trampoline while attached to one or more bungee cords; a dry slide; a mechanical bull; a zip line that does not allow the rider to touch the ground at all times; and an air-supported structure.

"ANSI" means the American National Standards Institute.

"Assistant" means a paid or volunteer person working under the direct supervision of an attendant or operator.

"ASTM" means the ASTM Standards on Amusement Rides and Devices published by ASTM International.

"Attendant" means a paid or volunteer person who controls patron restraints or the operation, starting, stopping, or speed of covered equipment.

"Carnival" means an enterprise offering amusement or entertainment to the public in, upon, or by means of amusement devices or rides or concession booths.

"Certificate of noncompliance" means:

1. A certificate of noncompliance issued by the child support recovery unit, department of human services, pursuant to Iowa Code chapter 252J;

2. A certificate of noncompliance issued by the college student aid commission pursuant to Iowa Code chapter 261; or

3. A certificate of noncompliance issued by the centralized collection unit, department of revenue, pursuant to Iowa Code chapter 272D.

"Commissioner" means the labor commissioner or the labor commissioner's authorized designee.

"Concession booth" means a structure that is powered by electricity and offers amusements to the public at more than one fair or carnival, or at one fair or carnival for more than seven consecutive days. A structure or enclosure offering only goods, food or beverages, rather than amusements, is not a "concession booth."

"Covered equipment" means an amusement ride, amusement device, concession booth or related electrical equipment that is covered by Iowa Code chapter 88A.

"Fair" means an enterprise principally devoted to the exhibition of products of agriculture or industry in connection with the operation of covered equipment.

"Major breakdown" means stoppage of operation from any cause that results in damage, failure, or breakage in a stress-bearing part of covered equipment.

"Major modification" means any change to the structure of or to an operational characteristic, capacity, classification, or mechanism of covered equipment. "Major modification" includes, but is not limited to, changing the mode of transportation from non-wheeled to a truck or flat-bed mount or changing the mode of assembly or other operational functions from manual to mechanical or hydraulic.

"NFPA" means the National Fire Protection Association.

"Operator " means a person, or the agent of a person, who owns or controls or has the duty to control the operation of covered equipment at a carnival or fair. "Operator" includes an agency of the state or any of its political subdivisions. "Operator" shall include a person who leases covered equipment and controls or has the duty to control its operation at a carnival or fair.

"Related electrical equipment" means a portable generator, blower, or other equipment necessary to the operation of an amusement ride, amusement device, or concession booth.

"Reportable incident" means an event described by one or more of the following:

1. Damage, failure or breakage of a stress-bearing part of an amusement ride or amusement device;
2. Cessation of covered equipment for more than 20 minutes with at least one rider aboard;
3. An occurrence that nearly resulted in personal injury; or
4. An occurrence that caused the operator to cease operations unexpectedly to avoid an injury or illness.

"Rope lay" means the length along the rope in which one strand makes a complete revolution around the rope.

"Walkway" means a public passage through a carnival, fair, or park.

875—61.3(88A) Owner and operator requirements. No person shall operate covered equipment at a carnival or fair unless the person holds a current operating permit and the covered equipment has passed an Iowa inspection.

61.3(1) *Operating permit.* No later than May 1 and at least 14 days before operation begins each calendar year, the operator of covered equipment shall apply to the commissioner for an operating permit. Application shall be made on a form provided by the commissioner. Each of the following shall be submitted with the completed operating permit application:

a. The applicable fee;

b. A certificate of insurance issued by an insurance company authorized to do business in Iowa. The certificate of insurance shall:

(1) Certify a policy in the minimum amount of $1 million for bodily injury, death, or property damage in any one occurrence;

(2) List the specific pieces of equipment that are covered and, if applicable, those that are not covered; and

(3) Include "Division of Labor Services—Amusements" as a certificate holder;

c. The operator's itinerary identifying the covered equipment to be operated and the dates and locations where each will be operated;

d. General design criteria, safety factors, materials utilized, and stress analysis unless the amusement ride or amusement device was granted an Iowa amusement inspection sticker during the previous calendar year;

e. Certification of compliance with applicable training and maintenance requirements;

f. With an application submitted after May 1, the applicant shall submit proof that the applicant could not have reasonably complied with the May 1 deadline and proof that the application was filed immediately after need for the permit was known;

g. Separately for each bungee jump:

(1) A site operating manual;

(2) A report which is prepared and sealed by a professional engineer who is licensed in Iowa and which certifies that the design and construction of the equipment and structure are suitable for the intended use and conform to Iowa law, recognized engineering practices, procedures, standards and specifications;

(3) Site plan drawings depicting the preparation area, the jump space, the landing area, the recovery area and other features to be included in the approved operating site;

(4) Specifications of equipment and structures; and

(5) Depictions of the location, specifications, dimensions, and type of air bag, pool or body of water where the jumper will land.

61.3(2) *Changes to information submitted with application.* The operator shall immediately notify the commissioner of any changes to the operator's itinerary. The operator shall promptly notify the commissioner of other changes to information provided with the operating permit application.

61.3(3) *Leases.* The requirements of this subrule apply when covered equipment is leased for use at a fair or carnival.

a. The owner shall notify the commissioner within 48 hours of leasing the covered equipment. The notification shall include the name, address, and contact information for the lessee and lessor, a description of the covered equipment, and the dates and location of its intended operation.

b. The lessor shall give the lessee a copy of the manual for the leased covered equipment and shall train the lessee or the lessee's designated representatives on the use of the equipment.

c. The lessee shall obtain an operating permit.

61.3(4) *Personal injuries and deaths.*

a. The operator shall immediately report by telephone any accident that results in medical care beyond first aid.

b. Within 48 hours after an operator is notified of a claim or report to the operator's insurance provider, the operator shall submit a duplicate copy of the report or claim to the commissioner.

c. The commissioner may require that the scene of an accident be secured and not disturbed to any greater extent than necessary for removal of the deceased or injured person. If covered equipment is removed from service by the commissioner, the covered equipment shall be returned to service only upon the commissioner's authorization.

61.3(5) *Major breakdown report.* The operator shall report a major breakdown of covered equipment to the commissioner immediately and provide a detailed report in writing within 48 hours. The commissioner may order the covered equipment to be withheld from operation, and in such case, the commissioner shall conduct an immediate investigation. The covered equipment shall be released for repair and operation only after the commissioner's investigation is complete.

61.3(6) *Advance notice of major modification.* The operator shall notify the commissioner in writing at least ten days prior to a major modification. If requested by the commissioner, the operator shall provide plans, diagrams, and ride analysis documentation consistent with ASTM F2291-15.

61.3(7) *Technical data.* If requested by the commissioner, the operator shall provide an English language version of the following:

a. Data concerning constant, reversible, or eccentric forces generated by acceleration, deceleration, wind, centrifugal action, or inertia.

b. Stress analysis and other data pertinent to the structural materials, design, structure, factors of safety or performance characteristics.

875—61.4(88A) Inspections. Pursuant to Iowa Code chapter 88A, covered equipment must pass an inspection at least annually. Inspections will be performed according to the rules set forth and standards adopted in 875—Chapters 61 to 63.

61.4(1) *Inspection types.* In addition to the inspections listed below, an inspection may be conducted by the commissioner at any time. The fee schedule for annual inspections set forth in Iowa Code section 88A.4 shall apply to all inspections performed by division of labor services inspectors. No person shall operate covered equipment at a fair or carnival unless the covered equipment has passed an inspection in the current calendar year.

a. Annual inspection by owner. At the discretion of the commissioner, the owner of an air-supported structure may be designated by the commissioner to perform the annual inspection of the owner's air-supported structure and blower. An owner designated pursuant to this paragraph shall perform the inspection according to applicable standards. The owner shall submit in the format required by the commissioner an affidavit attesting to the performance of the inspection, correction of code violations, and other required information.

b. Annual inspection by a division of labor services inspector. Unless an inspection is waived pursuant to Iowa Code section 88A.13, or the inspection is performed by the owner pursuant to paragraph 61.4(1)*"a,"* a division of labor services inspector shall inspect covered equipment prior to operation.

c. Major modification inspection. After covered equipment has undergone a major modification, the covered equipment must pass an inspection by a division of labor inspector before it is put back into use.

61.4(2) *Safety order.* If the division of labor services inspector finds a code violation, the inspector will issue a safety order requiring that the condition be corrected. The deadline for correction of the code violation shall be set forth in the safety order. If the inspector finds one or more code violations pertaining to more than one-half of the seating capacity of an amusement ride, the amusement ride shall not be operated until the violations are corrected. If code violations pertain to one-half or less of the seating capacity of an amusement ride, the amusement ride may be shut down at the discretion of the inspector.

61.4(3) *Cessation order.* If the inspector identifies covered equipment that is hazardous or unsafe, the inspector shall issue a cessation order. The commissioner shall establish that the code violation is corrected before operation of the covered equipment is resumed.

875—61.5(88A) Amusement inspection sticker. Covered equipment shall not be operated without a current sticker.

61.5(1) After covered equipment has passed an annual inspection by the division of labor services inspector, the division of labor services inspector shall affix an amusement inspection sticker to a basic part of the covered equipment in such a manner as to be readily accessible by the inspector.

61.5(2) After the commissioner receives satisfactory proof of inspection from an owner designated by the labor commissioner pursuant to paragraph 61.4(1)*"a,"* the commissioner shall mail the sticker to the owner. The owner shall properly affix the sticker to a basic part of the air-supported structure or blower before operation.

61.5(3) After covered equipment passes a major-modification inspection, a new amusement inspection sticker will be issued.

61.5(4) Before covered equipment is sold, the seller shall remove the amusement inspection sticker. If a current amusement inspection sticker is no longer legible, the operator may request a replacement sticker.

875—61.6(88A,252J,261,272D) Termination, denial, suspension, or revocation of an operating permit.

61.6(1) All active operating permits shall terminate automatically on December 31 of the year of issuance.

61.6(2) The commissioner may suspend or revoke an operating permit for any of the following reasons:

a. Negligence in the operation of covered equipment;

b. Repeated failure to perform or document proper daily inspections;

c. Misrepresentation of material information required as a part of the operating permit application package;

d. Failure to comply with a safety order or cessation order issued by the commissioner;

e. Operation of covered equipment in disregard of public health, safety and welfare;

f. Termination of the required insurance coverage;

g. Failure to pay a liquidated debt owed to the commissioner;

h. Receipt by the commissioner of a certificate of noncompliance;

i. Failure of an operator to comply with the proper procedures;

j. Failure of an operator to provide an adequate number of properly trained and qualified assistants and attendants; or

k. Submission of a false affidavit of annual inspection by the owner of an air-supported structure.

61.6(3) The commissioner may deny an application for an operating permit if the application packet is inadequate or for any reason set forth as grounds for suspension or revocation of an operating permit.

875—61.7(17A,88A,252J,261,272D) Procedures for revocation, suspension, or denial of an operating permit or amusement inspection sticker. The procedures set forth in this rule govern the revocation, suspension or denial of an operating permit or amusement inspection sticker.

61.7(1) If the commissioner initiates revocation, suspension or denial due to the receipt of a certificate of noncompliance, the applicable procedures of Iowa Code chapter 252J, 261, or 272D shall apply.

61.7(2) In the event that immediate action is required due to imminent danger to the public health, safety or welfare, the following procedures shall apply:

a. The commissioner shall prepare a safety order describing the hazardous condition and shall give the operator, or the operator's representative on site, a copy of the safety order.

b. The commissioner shall remove the amusement inspection sticker or stickers from covered equipment as necessary to protect the public health, safety or welfare.

c. The commissioner shall proceed as quickly as feasible to give the operator an opportunity for a hearing as set forth in subrule 61.7(3).

61.7(3) In all other cases, the following procedures shall apply:

a. The commissioner shall serve a notice by restricted certified mail to the address listed on the operating permit application or by other service as permitted by Iowa Code chapter 17A.

b. The operator shall have 20 days to file a written notice of contest with the commissioner. If the operator does not file a written notice of contest within 20 days of receipt of the notice, the action stated in the notice shall automatically be effective.

c. The hearing procedures in 875—Chapter 1 shall govern.

d. Within five business days of final agency action revoking or suspending an operating permit, the operator shall forfeit the operating permit to the commissioner.

875—61.8(88A) Payments. Fees due for inspections and operating permits shall be paid by money order or certified check unless the commissioner has given prior approval for a check written on a business account.

These rules are intended to implement Iowa Code chapters 17A, 88A, 252J, 261, and 272D.

ITEM 2. Rescind 875—Chapter 62 and adopt the following **new** chapter in lieu thereof:

CHAPTER 62
SAFETY RULES FOR AMUSEMENT RIDES, AMUSEMENT DEVICES, AND CONCESSION BOOTHS

875—62.1(88A) Scope. Rule 875—62.2(88A) applies to all covered equipment. The remaining rules of this chapter apply to all covered equipment, except a bungee jump covered by 875—Chapter 63.

875—62.2(88A) Other codes.

62.2(1) Carnivals, fairs, operators, and covered equipment may be regulated by city or county ordinances. Iowa Code chapter 92 and 875—Chapter 32 concerning child labor apply when an operator has employees who are under the age of 18. Iowa Code chapters 91A and 91D and 875—Chapters 35 and 215 to 218 govern payment of wages to an operator's employees. Nothing in 875—Chapters 61 through 63 shall be viewed as providing an exemption, waiver, or variance from any otherwise applicable regulation or statute.

62.2(2) State fire marshal rules set forth at 661—Chapter 201, General Fire Safety Requirements, are adopted by reference.

62.2(3) The following occupational safety and health standards are adopted by reference:

a. 29 CFR 1910, Subpart D, Walking-working surfaces;

b. 29 CFR 1910, Subpart H, Hazardous material;

c. 29 CFR 1910, Subpart I, Personal protective equipment;

d. 29 CFR 1910.147, Control of hazardous energy (lockout/tagout);

e. 29 CFR 1910.151, Medical services and first aid;

f. 29 CFR 1910, Subpart N, Materials handling and storage;

g. 29 CFR 1910, Subpart O, Machinery and machine guarding;

h. 29 CFR 1910, Subpart Q, Welding, cutting and brazing; and

i. 29 CFR 1910, Subpart S, Electrical.

875—62.3(88A) Site requirements.

62.3(1) *Design.* The grounds of a fair or carnival shall be designed according to the following criteria:

a. Clearance around covered equipment shall meet or exceed the manufacturer's recommendations.

b. Clearance around covered equipment shall be at least 6 feet unless a fence that is designed by the manufacturer as an integral part of the equipment is properly installed.

c. Clearance between covered equipment and a facility for cooking shall be at least 10 feet.

d. Walkways shall be wide, unobstructed, and open at each end.

e. Walkways through concession booth backyards and over water lines and electrical lines shall be avoided.

f. Intermingling of water lines and electrical lines shall be avoided.

g. Guy wires, braces and ropes used for support:

(1) Shall not be placed in walkways or in the entrances or exits for covered equipment; and

(2) Shall be clearly marked with streamers or other devices when located adjacent to walkways.

h. Stakes shall be covered.

62.3(2) *Housekeeping.* Adequate containers for refuse shall be provided. Accumulations of trash shall be removed promptly.

62.3(3) *Lighting.* Entrances and exits for covered equipment shall be provided with at least 5 foot-candles of light measured at grade level. No less than 10 foot-candles of lighting shall be provided at all work levels for assembly and disassembly of covered equipment.

62.3(4) *Internal combustion engines.* Internal combustion engines shall be a minimum of 5 feet from an air-supported structure and shall be guarded or fenced to prevent patron exposure or access. An internal combustion engine operated in an enclosed area shall be provided with fresh-air intake and an exhaust discharge flue.

62.3(5) *Tents.* A tent enclosed with walls or sides and erected over covered equipment during operation or assembly of the covered equipment shall resist flame propagation after weathering. The operator shall have a certificate or a test report indicating the material meets the flame propagation performance criteria for tents set forth in Standard Methods of Fire Tests for Flame Propagation of Textiles and Films, NFPA 701-2010.

62.3(6) *Flammable waste and materials.* An operator shall provide identified covered and labeled metal containers for flammable waste. The containers shall be available to staff and attendants but shall not be accessible to patrons.

62.3(7) *Storage of hazardous or flammable materials.* Storage of more than 50 gallons of fuel, other flammable material, or hazardous gas is not permitted in any area accessible to the public.

62.3(8) *Walking surfaces.* Entrances and exits for covered equipment shall be adequate, unobstructed, and in accordance with the manufacturer's instructions. Hazards such as protruding nails, splinters, holes, loose boards, debris, obstructions, and projections are prohibited. Stairways, ramps and railings that meet the requirements of 29 CFR 1910.23 shall be provided where patrons enter or exit covered equipment above or below grade.

62.3(9) *Fences.* Fences or other barriers shall be staked or sandbagged securely to prevent movement. Placement of fences shall be consistent with the recommendations of the manufacturer. If the manufacturer's recommendation regarding fences is not available, fences shall be located to keep patrons at least 6 feet away from moving parts.

62.3(10) *Crowd control.* Chains, bars, gates or similar devices shall be used to direct and control patrons in a queue line.

62.3(11) *Setup.* Operators shall follow the manufacturer's instructions to ensure that covered equipment is level and stable. If the manufacturer's instructions are not available, the following shall apply:

a. Permanent rides shall be placed on poured, reinforced concrete.

b. Blocking for temporary rides shall meet the following criteria:

(1) Blocking shall be wider than it is high.

(2) The top level of the blocking shall be wider than the mud sill or landing gear.

(3) Blocks shall not be soft, damaged, deteriorated, hollow, porous, or brick.

(4) Blocking shall be placed on ground that was leveled by digging rather than by filling.

(5) Voids larger than ¼ inch between blocks are prohibited.

(6) Two or more layers of blocks shall be crossed.

875—62.4(88A) Design and manufacture of covered equipment. This rule sets forth requirements for the design and manufacture of all covered equipment, except a bungee jump covered by 875—Chapter 63.

62.4(1) *Codes adopted by reference.* ASTM F2374-10 shall apply to all air-supported structures notwithstanding the definition and use of the phrase "inflatable amusement device" in ASTM F2374-10.

a. All covered equipment. Effective July 1, 2016, all covered equipment shall comply with National Electric Code, NFPA 70-2014.

b. Tramways. All tramways subject to the rules of this chapter and in use prior to July 1, 2016, shall be designed and tested in accordance with the ANSI B77.1 standard in effect at the time of installation.

c. New covered equipment. Effective July 1, 2016, new covered equipment and covered equipment undergoing a major modification shall be designed and tested in accordance with ANSI B77.1-2011 and ANSI B77.1A-2012 and ASTM F1159-15a, F1193-14, F1957-99(2011), F2007-12, F2137-15, F2291-15, F2374-10, F2375-09, F2376-13, F2460-11, F2959-14, and F2960-15, as applicable.

d. Existing covered equipment. Covered equipment manufactured before July 1, 2016, must comply with the applicable design criteria of subrule 62.4(2) through July 1, 2021. After July 1, 2021, covered equipment, except tramways, shall meet the criteria for service-proven equipment set forth in ASTM F2291-15.

62.4(2) *Design criteria.* Structural materials and construction of covered equipment shall conform to recognized engineering practices, procedures, standards and specifications. The design, materials and construction features shall incorporate a safety factor of 5 or alternative safety factors recommended by the original manufacturer or by a professional engineer with credentials and experience acceptable to the commissioner.

62.4(3) *Data plate.* A manufacturer's data plate in compliance with ASTM F1193-14, section 10, shall be affixed to covered equipment.

62.4(4) *Speed-limiting device.* Covered equipment capable of exceeding its maximum safe operating speed shall be provided with a speed-limiting device. Steam engines that require an overspeed throttle setting to initiate the operation are exempt from the requirement of this subrule.

62.4(5) *Patron restraint and containment.* Covered equipment shall be designed to safely contain and restrain patrons during the intended action. Any surface within reach of a patron shall be smooth, rounded, and free from projections such as bolts, screws, or splinters. Padding shall be installed to prevent or minimize the possibility of injury.

62.4(6) *Safety stop devices.* Electrical safety stop devices shall cause covered equipment to fail safe in the event of power failure or any malfunction.

62.4(7) *Chains.* If a chain is used as a safety device or in a stress-bearing application, the chain shall be certified with adequate load-carrying capacity. Twisted wire or stamped chain shall not be used for safety devices or in stress-bearing applications.

62.4(8) *Front openings and awnings.* Front openings and awnings shall be stabilized with safety latches, safety pins, or other devices.

62.4(9) *Shooting galleries.* A shooting gallery shall use only equipment, shells, pellets, and bullets designed for shooting galleries. Means shall be provided to prevent turning the weapon away from the intended target.

62.4(10) *Flying objects.* Where flying objects such as darts, balls, pellets, shot, and bullets are a potential hazard:

a. Ricocheting shall be prevented by absorbent wings or panels; and

b. Absorbing walls, sandbags, or other mechanisms shall be installed along the bottom, back, and sides of the booth to protect passersby.

875—62.5(88A) Maintenance of covered equipment. An operator shall conduct periodic inspections, repairs, tests, and maintenance as set forth in this rule, the manufacturer's recommendations, ANSI B77.1-2011 and ANSI B77.1A-2012 and ASTM F770-15, F1159-15a, F1193-14, F2007-12, F2137-15, F2374-10, F2375-09, F2376-13, F2460-11, F2959-14, and F2960-15, as applicable. ASTM F2374-10 shall apply to all air-supported structures notwithstanding the definition and use of the phrase "inflatable amusement device" in ASTM F2374-10. An operator shall make a written record of all inspections, maintenance, tests, and repairs of covered equipment, and the records shall be available to the commissioner.

62.5(1) *Pressure equipment.* The operator shall inspect and maintain all air and gas compressors, tanks, piping and equipment pursuant to the manufacturer's recommendations.

62.5(2) *Wire rope rollers, drums and sheaves.* The operator shall periodically inspect and maintain for cleanliness and safety the mechanical devices, such as rollers, drums and sheaves, that brake, control, or come into contact with wire rope. The operator shall immediately replace mechanical devices that have broken or damaged parts, missing pieces, undue roughness or uneven wear.

62.5(3) *Mechanical members.* The operator shall periodically inspect pinions, frames, sweeps, eccentrics and other mechanical members for wear, cracks and other signs of deterioration. The operator shall make necessary repairs.

62.5(4) *Bearings.* The operator shall periodically inspect, lubricate, clean and repair bearing surfaces, ball joints and other single or multiple direction mechanical surfaces.

62.5(5) *Gears.* The operator shall keep gears properly aligned and in good repair.

62.5(6) *Nondestructive testing.* The operator shall ensure that appropriate nondestructive testing (NDT) is conducted and that documentation is available for review. NDT shall be performed at the following times:

a. At intervals recommended by the manufacturer;

b. When required by the commissioner due to a welded repair;

c. When required by the commissioner due to a visual indication of a potentially hazardous condition; and

d. When recommended by a bulletin prepared according to ASTM F1193-14.

62.5(7) *Electrical wiring.* Electrical wiring shall meet the requirements of National Electrical Code, NFPA 70-2014. The operator shall regularly inspect wiring for wear, cracks, or other signs of deterioration and shall replace worn wiring.

62.5(8) *Patron restraint.* The operator shall inspect retaining, restraining and containing devices daily before use and shall immediately repair or replace worn or damaged areas.

62.5(9) *Hydraulic systems.* The operator shall inspect each hydraulic system for leaks, damaged pipes, and worn or deteriorated hoses. Material that hinders visible inspection is prohibited. The operator shall make appropriate repairs.

62.5(10) *Relief devices.* The operator shall periodically exercise pressure relief valves or devices to ensure that they operate properly. The operator shall periodically inspect pressure relief devices to ensure that they are set at appropriate limits.

62.5(11) *Wire rope inspection.* The operator shall regularly inspect the entire length of each wire rope according to the manufacturer's recommendations. At a minimum, wire rope shall be inspected each time covered equipment is set up.

62.5(12) *Wire rope replacement.* The operator shall replace a wire rope if:

a. There are six or more distributed broken wires in one rope lay or three broken wires in one strand in one rope lay;

b. There is more than one broken wire in one rope lay and one of the following conditions exists:

(1) The wire rope is subject to constant pressure during operation, assembly, or disassembly of covered equipment;

(2) The wire rope is subject to surge shocks; or

(3) The wire rope could cause serious injuries by its failure; or

c. At least one of the following conditions exists on at least one location on the wire rope:

(1) Abrasion, nicking, scrubbing or peening causing loss of more than one-third of the original diameter of the outside wires;

(2) Severe corrosion or rust;

(3) Severe kinking, crushing, bird-caging or other damage resulting in distortion of the rope structure;

(4) Heat damage;

(5) For a rope with an original diameter of 3/4 inch or less, a loss in diameter of more than 3/64 inch;

(6) For a rope with an original diameter of 7/8 inch to 1 1/8 inch, a loss in diameter of more than 1/16 inch; or

(7) For a rope with an original diameter of 1 1/4 inches to 1 1/2 inches, a loss in diameter of more than 3/32 inch.

62.5(13) *Wire rope repair.* Without lengthening or splicing, the operator shall replace the entire length of a wire rope that is damaged in one location with new rope of equivalent design and capacity. However, if feasible, wire rope that is worn near an attachment point may be repaired by shortening the length of the wire rope, rather than by replacing the entire rope; and wire ropes on tramways may be lengthened or repaired by splicing in accordance with the applicable ANSI code.

62.5(14) *Rope-fastening devices.* The operator shall inspect couplings, sockets and fittings to ensure that they are in accordance with the instructions and specifications of the designer, engineer or manufacturer.

62.5(15) *Wood components.* The operator shall inspect footings, splices, uprights, track timbers, ledgers, sills, laps, bracing, flooring and all other wood components of covered equipment for deterioration, cracks, or fractures. The operator shall replace defective wood members with material of equal or greater strength and capacity.

The operator shall remove a sufficient amount of soil around piling or wood members embedded in dirt to check for deterioration. When a wood piling requires replacement, the operator shall install a concrete pier. The top of the pier shall be installed so that the attached wood member is not exposed to dirt or water accumulation.

62.5(16) *Welding, cutting, or brazing.* Welding, cutting, or brazing shall not be performed where the point of operation is more than 4 feet above grade if patrons are on site. Where the point of operation is less than 4 feet above grade, welding, cutting or brazing may be performed if at least one of the following applies:

a. Patrons are not on site.

b. Patrons are separated from the point of operation by a solid barrier.

c. A fence or similar barrier is erected to keep the public at least 150 feet from an arc welding operation that uses an electrode with a diameter of 3/16 inch or less.

d. A fence or similar barrier is erected to keep the public at least 35 feet from gas welding, soldering, cutting or brazing of materials 1/2 inch thick or less.

e. A fence or similar barrier is erected to keep the public at least 50 feet from gas welding, soldering, cutting or brazing of materials more than 1/2 inch thick.

62.5(17) *Fasteners.* The operator shall inspect nails, bolts, lag bolts and other fasteners for tightness, torque, and deterioration. The operator shall follow the manufacturer's recommendations for torque, replacement intervals, and fastener types.

62.5(18) *Brakes and rollback devices.* Brakes and rollback devices shall be inspected and maintained according to the manufacturer's recommendations.

875—62.6(88A) Operations. Operations shall conform to ANSI B77.1 and ANSI B77.1A-2012 and ASTM F770-15, F1957-99(2011), F2007-12, F2137-15, F2374-10, F2375-09, F2376-13, F2460-11, and F2959-14, as applicable. ASTM F2374-10 shall apply to all air-supported structures notwithstanding the definition and use of the phrase "inflatable amusement device" in ASTM F2374-10.

62.6(1) *Attendants and assistants.* The operator shall provide a sufficient number of competent, trained workers, who shall be recognizable by their uniforms. Covered equipment shall have continuous, direct supervision while in use by a patron.

a. Each attendant of a concession booth, except a shooting gallery or dart game, shall be at least 14 years of age. All other attendants shall be at least 18 years of age.

b. Each assistant shall be at least 16 years of age.

c. Each attendant and assistant shall be trained according to ANSI B77.1 and ANSI B77.1A-2012 and ASTM F770-15, F2007-12, F2460-11, and F2959-14, as applicable. Training documentation shall be available to the commissioner.

d. An attendant shall have control of the covered equipment when it is in operation. When the covered equipment is shut down, provision shall be made to prevent unauthorized operation.

e. Under normal operations, the duties of an assistant shall be limited to securing or removing seat restraints; checking height compliance; and loading and unloading patrons. In case of emergency, an assistant who has received appropriate training may terminate operations.

62.6(2) *Signal systems.* When an attendant does not have a clear view of the point where passengers are loaded or unloaded, signal systems shall be provided and utilized for controlling, starting and stopping covered equipment. Where coded signals are required, the code of signals shall be printed and kept posted at both the attendant's station and the location from which the signals are given. Attendants who use the signals shall be trained in their use. Signal systems shall be tested each day prior to operation of the covered equipment. Covered equipment that requires a signal system shall not be operated if the system is not performing correctly.

62.6(3) *Overspeeding and overloading.* An attendant shall not load covered equipment beyond its rated capacity nor operate the covered equipment at a speed other than that prescribed by the design engineer or manufacturer.

62.6(4) *Refueling.* Fuel tanks for internal combustion engines should be large enough to run without interruption during normal operating hours. Where it is impossible to provide tanks of proper capacity for a complete day's operation, the covered equipment shall be shut down and evacuated during refueling.

62.6(5) *Safety stop device.* After actuation of a safety stop device, the cause of the actuation shall be determined and corrected before operation of covered equipment is resumed. No person shall operate covered equipment if a safety stop device has been bypassed.

875—62.7(88A) Patrons.

62.7(1) *Notice to patrons.* The operator shall post signs as set forth in Iowa Code section 88A.16.

62.7(2) *Patron injury report.* Where covered equipment is operated, the operator shall make available an injury report form for use by patrons. The form shall comply with Iowa Code section 88A.15.

62.7(3) *Emergency procedure.* When lightning, high wind, tornado warning, severe storm warning, fire, violence, riot or civil disturbance creates a direct threat to patrons, the operators, assistants, and attendants shall cease operation of covered equipment and evacuate all patrons. Operation shall not resume until conditions have returned to a normal, safe operating environment.

62.7(4) *Medical and first aid.* The operator shall make available to patrons the same medical and first-aid provisions that are available to employees pursuant to 29 CFR 1910.151.

62.7(5) *Evacuation plan.* The operator shall plan for prompt retrieval of patrons from covered equipment that will not operate.

These rules are intended to implement Iowa Code chapter 88A.

ITEM 3. Adopt the following **new** 875—Chapter 63:

CHAPTER 63
SAFETY RULES FOR BUNGEE JUMPS

875—63.1(88A) Definitions.

"Air bag" means a device that cradles the body by using an air release breather system to dissipate the energy due to a fall, thereby allowing the jumper to land without an abrupt stop or bounce.

"Approved operating site" means the area, including the preparation area, the jump space, the landing area and the recovery area, reflected on the site plan drawings submitted to the commissioner by the operator.

"Bungee catapulting" means the action by which a jumper is held on the ground while the bungee cord is stretched causing the jumper to fly up when the jumper is released.

"Bungee cord" means the elastic rope to which the jumper is attached.

"Bungee jump" means the covered amusement device. "Bungee jump" does not mean a device allowing a patron to jump on a trampoline while attached to one or more bungee cords.

"Bungee jumping" means the action by which a jumper free falls from a height and the jumper's descent is limited by attachment to the bungee cord.

"Bungee jump operation" means a site at which bungee jumping is conducted.

"Carabiner" means a shaped metal or alloy device used to connect sections of the jump rigging, equipment or safety gear.

"Cord" means a bungee cord.

"Dynamic load" means the load placed on the rigging and attachments by the initial free fall of the jumper and the bouncing movements of the jumper.

"Equipment" means each component that is utilized in a bungee jump operation, including devices used to raise, lower, and hold loads.

"Fence" means a structure designed and constructed to restrict people, animals and objects from entering the jump area.

"G-force" means acceleration felt as weight.

"Jump area" means the ground level area of the jump space.

"Jump direction" means the direction a jumper jumps when leaving the platform from the jump point. Jump direction is not affected by whether the jumper faces forward, backward or sideways.

"Jumper" means the person who, while attached to a bungee cord, falls or jumps from a platform or structure.

"Jump harness" means an assembly worn by a jumper and attached to a bungee cord.

"Jump height" means the distance from the jump point to the position on the ground where an object dropped from the jump point would impact in the absence of an air bag or other impediment.

"Jump master" means the person who is responsible for the bungee jump operation and who takes a jumper through the final stages to the actual jump or release.

"Jump point" means the location on the platform from which the jumper leaves the platform.

"Jump space" means the cylinder-shaped space with a center line extending downward from the jump point along the line of the jump height. The top of the jump space cylinder is at least 10 feet above the jump point. For jumps over land, the bottom of the jump space cylinder is the air bag. For jumps over water, the bottom of the jump space cylinder is the water surface. The distance from the jump point to the bottom of the jump space must be the maximum system length plus at least 30 feet. The radius of the cylinder must be at least 70 percent of the jump height.

"Landing area" means the surface where the jumper lands. If a lifting device moves the jumper so that landing occurs away from the jump area, the area covered by the movement of the lifting device shall be considered part of the landing area.

"Loaded length" means the length of the bungee cord when the cord is extended to its fullest designed length.

"Lowering system" means manual or mechanical equipment capable of lowering a jumper to the designated landing area.

"Maximum system length" means the maximum extended length of a bungee cord system including all attachments.

"Mechanically powered lowering system" means a system that utilizes a machine, rather than a human or other power source, to lower the jumper to the landing area.

"Platform" means the apparatus that is attached to a structure and from which a jumper falls or jumps.

"Preparation area" means the area where the jumper is registered, weighed, notified of potential risks, and otherwise prepared for the jump.

"Recovery area" means the area next to the landing area where the jumper may recover from the jump before exiting the bungee jump operation site.

"Rigging system" means the bungee cord plus any combination of components that connect the jumper through the bungee cord to an attachment point on the structure, lifting device or platform.

"Rigging system attachment point" means a device on the structure, lifting device or platform to which the rigging system is connected.

"Safety line" means a line used to connect a safety harness or belt to an anchor point.

"Sandbagging" means the practice of loading excess weight to a jumper in order to gain extra momentum on the rebound.

"Site operating manual" means the document containing the procedures and forms for the operation of bungee jumping activities and equipment.

"Structure" means a tower or similar structure used for bungee jumping.

"Tandem jumping" means the practice of having two or more people harnessed together while they jump or fall simultaneously from the same jump platform.

875—63.2(88A) Prohibited activities. The following activities are prohibited:

1. Bungee catapulting where an overhead obstruction exists;
2. Sandbagging;
3. Tandem jumping; and
4. Jumping from a bridge, television tower, crane, grain bin, hot air balloon or any height not designed for the purpose of bungee jumping

875—63.3(88A) Site requirements.

63.3(1) *Storage.* Adequate storage shall be provided to protect equipment from physical, chemical and ultraviolet-ray damage. The storage area shall be secured against unauthorized entry.

63.3(2) *Communications.*

a. There shall be a public address system in operation during the hours of business.

b. A radio communication link shall be established between the platform and the staff responsible for jumper registration, landing, and recovery.

c. There shall be a means on site to communicate with local emergency responders.

d. A clearly visible sign shall be placed at the entrance to the operating site setting forth medical restrictions for jumpers, the minimum-age requirement of 18 years of age, and instructions for jumpers.

63.3(3) *Wind meter.* An anemometer shall be installed in accordance with the manufacturer's recommendations and in a location easily visible to the staff.

63.3(4) *Lighting.* Adequate lighting shall be provided at a site that operates at any time during the period of one-half hour prior to sunset until one-half hour after sunrise. At a minimum, the lighting system shall be capable of lighting the jump platform, the jump space and the landing area.

63.3(5) *Fences.* The operator shall use fences in compliance with ASTM 2291-14, Part 14, to limit access to the site.

875—63.4(88A) Design.

63.4(1) *Platform.* A platform shall:

a. Be capable of supporting at least five times the rated capacity or maximum intended load of the platform. If the jump equipment is attached to the platform as distinct from the structure, the dynamic load factor shall be added to the rated capacity or maximum intended load;

b. Be attached with devices and to a part of the structure which is able to support at least five times the weight of the platform plus the rated capacity or maximum intended load;

c. Have a slip-resistant floor surface;

d. Have safety harness anchor points that are designed and located to facilitate ease of movement on the platform;

e. Have a permanent enclosure, separate from the jump point, to contain the jumper during preparations such as fitting the jumper with a jump harness;

f. Be equipped with a gate across the jump point. The gate shall open to the inside of the platform and shall have a safety lock or restraining device to prevent accidental opening;

g. Be permanently marked with the maximum capacity of the platform and the rated capacity or maximum intended load; and

h. Be configured to ensure that a jumper shall not come into contact with the supporting structure or tower during the jump.

63.4(2) *Lowering system.*

a. The system for lowering the jumper to the landing area shall be capable of supporting at least five times the rated capacity or maximum intended load of the system. The lowering system shall be mechanically powered and shall not be capable of free fall.

b. There shall be under the control of site personnel and described in the site emergency plan an alternative method for jumper recovery.

63.4(3) *Bungee cord specifications.*

a. The bungee cords shall be designed and tested to perform within the prescribed limits of stretch and load as stated in this subrule. The cord shall be made from natural or synthetic rubber or rubber blend. The extended length of the cord shall be consistent each time the same load is applied.

b. The G-force on a jumper using a waist and chest harness shall not exceed 4.5. The G-force on a jumper using an ankle harness shall not exceed 3.5.

c. The operator shall ensure that the minimum factor of safety for any cord configuration attached to a jumper is at least 5. The cord configuration's minimum breaking strength divided by the maximum dynamic load possible for a jumper must be equal to or greater than 5.

d. The design, manufacturing and testing of the bungee cords shall meet the following specifications:

(1) In a single-cord system, the binding shall hold the cord threads in the designed positions. The binding shall have the same characteristics as the cord itself. In a multiple-cord system, the cords shall be bound together in a manner that prevents potential entanglement of the jumper. The binding shall not damage or affect the performance of the cords.

(2) A bungee cord shall be designed and tested to perform in accordance with this rule.

(3) A load-versus-elongation curve shall be used to calculate the maximum G-force and factor of safety of the lot of bungee cords tested. These test results shall be readily available to the commissioner upon request.

(4) The end connections shall have a minimum safety factor of five times the maximum dynamic load for the bungee cord configuration. End connections shall be of a size and shape to allow easy attachment to the jumper harnesses and to the rigging. On multiple-cord systems, each cord shall meet its own independent end connection. On multiple-cord systems, end attachment points shall be bound together in a protective sheath that allows the individual ends to move with respect to each other.

(5) The operator shall ensure that the manufacturer of a bungee cord performs conclusive minimum break strength testing on a representative sample of all manufactured bungee cords. Construction of bungee cord samples shall be consistent with the manufacturer's standard methods, including bungee cord loop end connections that meet the specifications in this rule. The tests shall be performed or supervised by an independent certified testing authority or an independent licensed professional engineer. The testing authority shall determine the ultimate tensile strength of each test specimen and use the lowest failure value recorded as the ultimate tensile strength value for the corresponding lot of bungee cords. The ultimate tensile strength is reached when the applied load reaches a maximum before failure. Test results shall be readily available to the commissioner upon request.

63.4(4) *Jump harness and hardware.*

a. The harnesses, webbing, bindings, ropes and hardware shall be capable of supporting at least five times the rated capacity or maximum intended load.

b. A jumper shall be secured to the bungee cord at two separate points on the jumper's body. The jump harness system shall be one of the following:

(1) A full body harness with two different and separate attachment points.

(2) A waist harness used with a shoulder harness.

(3) An ankle harness system with a safety line to a waist harness or a full body harness.

c. Harnesses shall be available to fit the range of patron sizes accepted for jumping.

d. Harnesses shall be specifically designed and manufactured for mountaineering or bungee jumping.

e. The load-supporting slings or webbing shall be flat or tubular mountaineering webbing or its equivalent. Minimum breaking strength shall be 6,000 pounds. Slings or webbings shall be formed by sewing or shall be tied properly with a water knot with taped ends.

f. Carabiners shall be the steel screw, gate type with a minimum breaking strength of 6,000 pounds. The carabiners shall be designed and constructed using the standards for mountaineering gear.

g. The ropes, pulleys and shackles used to raise, lower or hold the jumper shall have a minimum breaking strength of 6,000 pounds. The pulleys shall be compatible with the rope.

h. The rigging system shall be attached to at least two rigging system attachment points. Each rigging system attachment point shall meet or exceed the following:

(1) Each rigging system attachment point shall have a safety factor of 5 and shall be capable of bearing a weight of at least 8,000 pounds.

(2) If a rigging system attachment point is made of wire rope, it shall have swaged ends with the thimble eyes.

(3) If a rigging system attachment point is made of webbing, it shall be manufactured by a company that manufactures the devices for crane and rigging companies.

63.4(5) *Landing area, recovery area and jump area.*

a. A jump over land requires the use of an air bag certified by the manufacturer to be capable of protecting a body falling from the height of the jump point.

(1) The minimum impact surface area of the air bag shall be as follows:

Jump Height	**Minimum Impact Surface Area**
0 - 99 feet	20 feet by 25 feet
100 - 149 feet	23 feet by 35 feet
150 - 200 feet	25 feet by 40 feet

(2) The air bag shall be in position before jumper preparation begins on the platform.

(3) Upon completion of a jump, the jumper shall be lowered into the landing area.

(4) The landing area shall be free of spectators at all times.

(5) The jump space shall be free of equipment and people when a jumper is being prepared on the jump platform and until the jumper lands in the landing area.

(6) A place for the jumper to sit and recover shall be provided close to, but outside, the landing area.

b. The following requirements apply where a body of water is used instead of an air bag:

(1) The size of the body of water shall meet the requirements for the minimum impact surface area set forth in this subrule for air bags.

(2) The minimum water depth of the minimum impact surface area shall be 10 feet.

(3) A vessel with at least two staff members shall be positioned nearby to recover jumpers. The recovery vessel's crew shall wear U.S. Coast Guard-approved life jackets. The recovery vessel shall be equipped with U.S. Coast Guard-approved life jackets for jumpers and with rescue equipment.

(4) The jump area shall be free of other vessels, floating or submerged objects, the public, and spectators. When the landing area is in open waters, it shall be defined by the deployment of buoys. Signs of appropriate size stating "BUNGEE JUMPING—KEEP CLEAR" shall be displayed.

c. The following requirements apply where a pool of water is used instead of an air bag:

(1) The pool size shall meet the requirements for the minimum impact surface area set forth in this subrule for air bags.

(2) The minimum water depth shall be 10 feet.

(3) Rescue equipment shall be available.

(4) Only the operators and participants of the bungee jump shall be within the landing area.

(5) The landing area shall be enclosed by a fence of adequate height and design to prevent persons other than operators and jumpers from entering.

(6) The pool shall conform to any applicable requirements enforced by the Iowa department of public health.

875—63.5(88A) Maintenance. The operator shall follow the inspection and testing recommendations of the equipment manufacturers. When those recommendations conflict with the testing and inspection provisions of this rule, the provisions affording the higher degree of safety shall be followed. Inspections, findings and corrective action shall be recorded in the site log.

63.5(1) *Tests and inspections by the operator.*

a. The jump rigging, harness, lowering system and safety gear shall be regularly inspected and tested as set forth in the site operating manual.

b. In accordance with the site operating manual, the ropes, webbing and bindings shall be inspected visually and by feel for signs of wear, fraying or damage.

c. The cord ends shall be inspected as often as the manufacturer specifies or no less than daily for wear, slippage or other abnormalities.

63.5(2) *Replacement of rigging and equipment.*

a. Hardware that displays surface damage shall be replaced immediately.

b. Hardware that has been subjected to an abnormal loading or impact against hard surfaces shall be replaced immediately.

c. Substandard equipment, rigging or personal protective equipment shall be replaced immediately.

d. Bungee cords shall be replaced when they have been subjected to the maximum number of jumps recommended by the manufacturer, when they exhibit deterioration or damage, or when they do not react according to specifications. Retired bungee cords shall be cut into lengths of not more than 75 inches. The attachment points shall be retired when the cord is retired.

63.5(3) *Replacement equipment.* Replacement equipment shall be stored in a secure area to prevent tampering or vandalism. Replacement equipment for the following shall always be available on the approved operating site:

a. Bungee cords;

b. Rigging ropes;

c. Binding and ankle straps for jumpers;

d. Jump harnesses; and

e. Lifelines and clips.

63.5(4) *Identification of equipment.*

a. Each bungee cord shall have its own permanent identification number.

b. The form of identification may not damage or detract from the integrity of the material.

c. The identification shall be clearly visible to the operators during daily operations.

d. The identification of each piece of equipment shall be recorded in the site operating manual.

875—63.6(88A) Operations.

63.6(1) *Site operating manual.* The operator shall ensure that the site has an operating manual that includes the following elements:

a. A site plan showing the fencing, the site furniture, the preparation area, the jump space, the jump area, the jump direction, the landing area and the recovery area.

b. A site plan showing a profile of the site and defining the jump platform and its supporting structure, the maximum system length of the bungee cord, the jump space and the jump area.

c. A complete description of each of the following:

(1) The system of operation;

(2) The components in the rigging system, including the manufacturer's specification or a laboratory test certificate of each component;

(3) All safety and rescue equipment;

(4) A job description for the personnel employed on the site and the minimum qualifications for each person;

(5) Emergency procedures for all foreseeable scenarios;

(6) Standard operating procedures for every person employed in processing the jumper;

(7) The procedure for reporting accidents and reportable incidents to the commissioner;

(8) Equipment inspection procedures, including inspection record keeping;

(9) Maintenance procedures; and

(10) The method of verifying and recording each jump master's qualifications.

63.6(2) *Emergency provisions and procedures.*

a. Each approved operating site shall have a written emergency plan. The plan shall be made available to any local emergency service responsible for providing emergency rescue service.

b. At least one member of a bungee jump operation staff shall have current first-aid and cardiopulmonary resuscitation certification and shall complete an annual refresher course that includes evaluation of hands-on skills from the American Red Cross or equivalent.

c. For a jump over water, the jump master and at least one landing assistant shall have current lifeguarding certification from the American Red Cross or equivalent.

d. Emergency lighting shall be available in case of power failure at a site that operates at any time during the period of one-half hour prior to sunset until one-half hour after sunrise. The emergency lighting system shall be capable of lighting the jump platform, the jump space and the landing area. The emergency lighting system shall have its own power source.

e. A backup means of communication shall be available in case of a power failure.

f. The jump master or operator shall cease jumping operations if wind speed exceeds 25 miles per hour or thunder is audible.

63.6(3) *Minimum staff requirements.*

a. Prior to the opening of a bungee jump operation, the operator shall train site personnel to be familiar with the boundaries of the jump space, the jump area, the site operating manual and the emergency plan.

b. A bungee jump operation shall have at least one jump master, one jump assistant, one landing assistant, and one registration assistant present at all times during which jumping is being conducted.

c. The staff shall be easily identifiable by their clothing.

d. Staff shall be briefed for each day's operations. This briefing shall include assignment of the designated jump master.

e. Each jump shall be directly controlled by a jump master.

63.6(4) *Jump master.*

a. A jump master shall be at least 18 years of age, shall have assisted at least 25 jumpers, and shall have received a minimum of 30 hours of jump training.

b. A jump master shall have a thorough knowledge of the bungee jump site, its equipment, operating manual, procedures, emergency plan and staff duties.

c. A jump master shall:

(1) With the jump assistant, escort the jumper from the preparation area to the jump point;

(2) Select the appropriate bungee cord and adjust the rigging for each jump;

(3) Brief each jumper on the procedures for jumping, landing, lowering and recovery;

(4) Take the jumper through the final stages before the jump;

(5) Securely attach to the platform rigging bar or to the rigging the top end of the bungee cords before preparing the jumper;

(6) Be present at the jump point during each jump;

(7) Close the platform gate while no jumper is present;

(8) Direct the operation of the lowering system;

(9) Train other bungee jump operation staff; and

(10) Ensure that the procedures set out in the site operating manual are followed.

63.6(5) *Jump assistant.* The operator or jump master shall designate at least one individual to act as a jump assistant. The jump assistant shall:

a. With the jump master, escort the jumper from the preparation area to the jump point;

b. Assist the jump master in preparing the jumper;

c. Assist in attaching the jumper to the harness and rigging;

d. Perform check procedures;

e. Operate the lowering system; and

f. Assist in controlling the public.

63.6(6) *Landing assistant.* The operator or jump master shall designate at least one individual to act as a landing assistant. The landing assistant's duties include the following:

a. Assisting the jumper to the landing pad;

b. Assisting the jumper to the recovery area;

c. Overseeing the recovery of the jumper; and

d. Assisting in controlling the public.

63.6(7) *Registration assistant.* The operator or jump master shall designate at least one individual to act as a registration assistant at each bungee jump operation site. The registration assistant shall:

a. Register the jumper;

b. Inform each jumper that there are medical conditions that could be adversely affected by bungee jumping and that prior to jumping, the jumper should consult with a physician for more specific information regarding the medical risks;

c. Weigh the jumper and mark the jumper's weight on the jumper;

d. Control the movement of the jumper to the jump platform; and

e. Assist in controlling the public.

63.6(8) *Jumper restrictions.*

a. The minimum age for jumping is 18 years of age.

b. A person who is visibly intoxicated or who is otherwise impaired shall not be allowed to jump.

63.6(9) *Jumper registration.* The operator shall ensure that a jumper provides the following information on the operator's registration form:

a. The jumper's contact information, including name, address, and telephone number.

b. The jumper's age and weight.

63.6(10) *Equipment replacement.*

a. Jumping shall cease immediately when substandard equipment is identified.

b. The operator shall obtain from the bungee cord manufacturer a written verification of the maximum number of jumps for which a particular cord may be used. The written verification shall be kept on site and shall be available to the commissioner.

c. The operator shall keep a current, written record of each bungee cord used at the site. The bungee cord records shall be organized by permanent, unique identification number and shall include the number of jumps for each cord by date. The bungee cord records shall be available to the commissioner.

63.6(11) *Jump space and jump area.*

a. Persons other than a jumper and objects other than the jumper's equipment shall not be in the jump space at any time during jump operations.

b. Persons other than site personnel and objects other than air bags and similar safety devices shall not be in the jump area at any time during jump operations.

c. The jump space and jump area shall be identical to the jump space and jump area that the commissioner approved.

d. The preparation area shall be separate from the jump area.

These rules are intended to implement Iowa Code chapter 88A.

ARC 2355C

LABOR SERVICES DIVISION[875]

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 89A.3, the Elevator Safety Board (Board) hereby gives Notice of Intended Action to amend Chapter 71, "Administration of the Conveyance Safety Program," and Chapter 72, "Conveyances Installed On or After January 1, 1975," Iowa Administrative Code.

In 2008, the Board promulgated a rule concerning material lift elevators; however, the rule was not published until February 2015 due to a computer error. Rather than enforce the 2008 regulation retroactively, the Board proposes different requirements for material lift elevators.

In order to understand these proposals, an understanding of relevant definitions is necessary. Pursuant to Iowa Code section 89A.3, safety standards of the American Society of Mechanical Engineers (ASME) are commonly adopted by reference and applied to conveyances. The Iowa statutory definition of "material lift elevators" is comparable to the ASME definition of "Type A" material lift. The Iowa statutory definition of "freight elevators" is comparable to the ASME definition of "Type B" material lift. The Iowa statutory definition of "material lift elevator" also includes a vertical reciprocating conveyor if it penetrates a floor.

These amendments set forth standards for material lift elevators and establish fees for material lift elevator installation permits. The Board proposes to adopt by reference the relevant ASME standards for new installations.

LABOR SERVICES DIVISION[875](cont'd)

The purposes of these amendments are to protect the health and safety of the public, align the rules with statutory authority, and implement legislative intent.

If requested in accordance with Iowa Code section 17A.4(1)"b" by the close of business on January 26, 2016, a public hearing will be held on January 27, 2016, at 1:30 p.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted no later than January 27, 2016, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

No variance procedures are included in this rule. Applicable variance procedures are set forth in 875—Chapter 66.

After analysis and review of this rule making, no adverse impact on jobs is expected.

These amendments are intended to implement Iowa Code chapter 89A.

The following amendments are proposed.

ITEM 1. Amend rule **875—71.1(89A)**, definition of "Conveyance," as follows:

"Conveyance" means any elevator, escalator, material lift elevator, dumbwaiter, wind tower lift, CPH, or other equipment governed by Iowa Code chapter 89A. "Conveyance" includes a vertical reciprocating conveyor that penetrates a floor.

ITEM 2. Rescind paragraphs **71.16(3)"b"** and **"c."**

ITEM 3. Reletter paragraphs **71.16(3)"d"** to **"h"** as **71.16(3)"e"** to **"i."**

ITEM 4. Adopt the following **new** paragraphs **71.16(3)"b"** to **"d"**:

b. Material lift elevators: $500.

c. Other hydraulic elevators: $750.

d. Other traction elevators: $1000.

ITEM 5. Rescind rule 875—72.22(89A) and adopt the following **new** rule in lieu thereof:

875—72.22(89A) Material lift elevators. This rule applies to a vertical reciprocating conveyor or material lift elevator that serves two or more floors of a building or structure. The provisions contained in ASME A17.1, Sections 7.4 through 7.7 and 7.9 through 7.11, are adopted by reference for material lift elevators installed on or after March 1, 2016.

ARC 2356C

LABOR SERVICES DIVISION[875]

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 89A.3, the Elevator Safety Board hereby gives Notice of Intended Action to amend Chapter 72, "Conveyances Installed On or After January 1, 1975," and Chapter 73, "Conveyances Installed Prior to January 1, 1975," Iowa Administrative Code.

In March 2014, an elevator industry trade publication published a detailed study about children being trapped and seriously injured due to a weakness in applicable codes. The entrapment risk occurs primarily in elevators built to the residential elevator code, and today, elevators built to the residential code are not allowed in buildings under the Board's jurisdiction. However, for a number of years Iowa

law allowed residential elevators to be installed in public buildings. It is estimated that there are about 200 residential elevators operating in public buildings in Iowa.

The Elevator Safety Board (Board) studied this issue and effective June 3, 2015, implemented new rules requiring the installation of light curtains. Installation of light curtains proved to be more costly and difficult than was anticipated; and the Board again studied a method to minimize this hazard.

This proposed rule making would rescind the rules requiring light curtains and adopt instead a performance code. This proposal would require that if a door or gate deflects too much with the application of pressure, the door or gate must be repaired or replaced. It would also require that if the distance between the hoistway door or gate and the car door or gate exceeds 5 inches, an unspecified mechanism must be utilized to prevent operation of the elevator if a person is between the doors or gates.

The Board anticipates that many of the residential elevators that were impacted by the rules effective June 3, 2015, will not be impacted by these rules. The rules adopted earlier this year require a light curtain unless the car doors are a solid panel, regardless of the distance between the doors or gates. In some cases, two light curtains are required. Establishing a 5-inch space within which no action is required should reduce the number of affected elevators.

These proposed amendments do not specify the mechanism that must be used to prevent operation of the elevator when a person is between the doors or gates. This discretion should minimize the costs of compliance, as the least-costly, effective mechanism can be chosen.

Keeping door or gate deflection to a minimum is viewed as routine maintenance. Limits on door or gate deflection are contained in many of the elevator codes; however, there are gaps in applicability. These proposed amendments would cover those gaps.

The purposes of these amendments are to protect the health and safety of the public and implement legislative intent.

If requested in accordance with Iowa Code section 17A.4(1)"b" by the close of business on January 26, 2016, a public hearing will be held on January 27, 2016, at 2:30 p.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than January 27, 2016, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

No variance procedures are included in this rule. Applicable variance procedures are set forth in 875—Chapter 66.

After analysis and review of this rule making, an impact on jobs may occur. However, these rules are written to prevent a specific hazard to children with a minimum of expense.

These amendments are intended to implement Iowa Code chapter 89A.

The following amendments are proposed.

ITEM 1. Rescind rule 875—72.26(89A) and adopt the following **new** rule in lieu thereof:

875—72.26(89A) Child entrapment safeguards. This rule applies to a passenger elevator unless it has a car door consisting of a solid panel.

72.26(1) For purposes of this rule, "distance with deflection between the doors or gates" means the distance between the closed car door or gate and the closed hoistway door or gate measured at the greatest perpendicular distance with deflection.

72.26(2) For purposes of this rule, measurements of door or gate deflection shall be made in the manner described by ASME A17.1, section 2.14.4.6.

72.26(3) Door or gate deflection shall not exceed .75 inch.

72.26(4) If the distance with deflection between the doors or gates exceeds 5 inches, a means shall be provided to disable the elevator if a person is in the space between the closed doors or gates.

ITEM 2. Rescind rule 875—73.27(89A) and adopt the following **new** rule in lieu thereof:

875—73.27(89A) Child entrapment safeguards. This rule applies to a passenger elevator unless it has a car door consisting of a solid panel.

73.27(1) For purposes of this rule, "distance with deflection between the doors or gates" means the distance between the closed car door or gate and the closed hoistway door or gate measured at the greatest perpendicular distance with deflection.

73.27(2) For purposes of this rule, measurements of door or gate deflection shall be made in the manner described by ASME A17.1, section 2.14.4.6.

73.27(3) Door or gate deflection shall not exceed .75 inch.

73.27(4) If the distance with deflection between the doors or gates exceeds 5 inches, a means shall be provided to disable the elevator if a person is in the space between the closed doors or gates.

ARC 2360C

MEDICINE BOARD[653]

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 147.76, the Board of Medicine hereby proposes to amend Chapter 9, "Permanent Physician Licensure," Iowa Administrative Code.

The purpose of Chapter 9 is to establish requirements for licensure for administrative medicine physicians, medical physicians and surgeons, and osteopathic physicians and surgeons. The proposed amendments update language throughout the chapter. The need for these amendments was determined during the Board's continuing review of its administrative rules.

The Board approved this Notice of Intended Action during a regularly scheduled meeting on December 10, 2015.

Any interested person may present written comments on the proposed amendments not later than 4:30 p.m. on January 26, 2016. Such written materials should be sent to Mark Bowden, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or sent by e-mail to mark.bowden@iowa.gov.

There will be a public hearing on January 26, 2016, at 1:30 p.m. at the Board's office, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

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

These amendments are intended to implement Iowa Code chapters 147, 148 and 272C.

The following amendments are proposed.

ITEM 1. Amend the following definitions in rule **653—9.1(147,148)**:

"Current, active status" means a license that is in effect and grants the privilege of practicing administrative medicine, medicine and surgery or osteopathic medicine and surgery, as applicable.

"Inactive license" means any license that is not in current, active status. ~~Inactive license may include licenses formerly known as delinquent, lapsed, or retired.~~ A physician whose license is inactive continues to hold the privilege of licensure in Iowa but may not practice ~~medicine~~ under an inactive Iowa license until the inactive license is reinstated to ~~current,~~ active status.

ITEM 2. Adopt the following **new** paragraph **9.3(1)"e"**:

e. A military service applicant or a veteran may apply for credit for verified military education, training, or service toward any experience or educational requirement for permanent licensure under this subrule or may be eligible for permanent licensure through reciprocity as specified in 653—Chapter 18.

ITEM 3. Amend paragraph **9.4(2)"a"** as follows:

a. Pay a nonrefundable initial application fee ~~of $450 plus the $45 fee identified in 653—subrule 8.4(6)~~ and fee for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI) as specified in 653—paragraph 8.4(1)*"a"*; and

ITEM 4. Amend paragraph **9.4(3)"a"** as follows:

a. Full legal name, date and place of birth, home address, mailing address, ~~and~~ principal business address, and personal e-mail address regularly used by the applicant or licensee for correspondence with the board.

ITEM 5. Amend paragraph **9.5(2)"a"** as follows:

a. Pay a nonrefundable initial application fee ~~of $450 plus the $45 fee identified in 653—subrule 8.4(6)~~ and fee for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI) as specified in 653—paragraph 8.4(1)*"a"*; and

ITEM 6. Amend paragraph **9.5(3)"a"** as follows:

a. Full legal name, date and place of birth, home address, mailing address, ~~and~~ principal business address, and personal e-mail address regularly used by the applicant or licensee for correspondence with the board.

ITEM 7. Amend paragraph **9.6(2)"a"** as follows:

a. Pay a nonrefundable initial application fee ~~of $450 plus the $45 fee identified in 653—subrule 8.4(6)~~ and fee for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI) as specified in 653—paragraph 8.4(1)*"a"*; and

ITEM 8. Amend paragraph **9.6(3)"a"** as follows:

a. Full legal name, date and place of birth, home address, mailing address, ~~and~~ principal business address, and personal e-mail address regularly used by the applicant or licensee for correspondence with the board.

ITEM 9. Amend paragraph **9.7(1)"d"** as follows:

d. Candidates who meet the following requirements are eligible to take USMLE Step 3:

(1) Submit a completed application form and pay the required examination fee as specified in rule 653—~~subrule 8.3(1)~~ 8.3(147,148,272C).

(2) No change.

(3) Document holding a medical degree from a board-approved educational institution. If a candidate holds a medical degree from an educational institution not approved by the board at the time the applicant graduated and was awarded the degree, the candidate shall meet the requirements specified in ~~9.3(1)*"c"*(3)~~ subparagraph 9.3(1)*"b"*(3).

(4) No change.

ITEM 10. Amend subrule 9.8(4) as follows:

9.8(4) If the final review indicates questions or concerns that cannot be remedied by continued communication with the physician, the executive director, director of licensure ~~and administration~~ and director of legal affairs shall determine if the questions or concerns indicate any uncertainty about the applicant's current qualifications for licensure.

a. and *b.* No change.

ITEM 11. Amend paragraph **9.8(7)"c"** as follows:

c. If the physician has not engaged in active clinical practice in the past three years in any jurisdiction of the United States or Canada, require an applicant to:

(1) to (4) No change.

ITEM 12. Amend paragraph **9.8(8)"c"** as follows:

c. If the physician has not engaged in active clinical practice in the past three years in any jurisdiction of the United States or Canada, require an applicant to:

(1) to (4) No change.

ITEM 13. Amend subrule 9.9(2) as follows:

9.9(2) *Reactivation of the application.* To reactivate the application, an applicant shall submit a nonrefundable fee for reactivation of the application ~~fee of $150~~ as specified in 653—paragraph 8.4(1)*"b"* and shall update credentials.

a. and *b.* No change.

c. Once the reactivation period expires, ~~an~~ the application for licensure is withdrawn and the applicant must reapply and submit a new nonrefundable application fee and a new application, documents and credentials.

ITEM 14. Adopt the following **new** paragraph **9.11(1)"e"**:

e. When a physician with a permanent Iowa license receives an Iowa administrative medicine license, the permanent Iowa license shall immediately become inactive.

ITEM 15. Amend rule 653—9.12(147,148) as follows:

653—9.12(147,148) Notification required to change the board's data system.

9.12(1) *Change of ~~address~~ contact information.* A licensee shall notify the board of any change in the home address, ~~or~~ the address of the place of practice, home or practice telephone number, or personal e-mail address regularly used by the applicant or licensee for correspondence with the board within one month of ~~making an address~~ the change.

9.12(2) No change.

9.12(3) *Deceased.* A licensee file shall be closed and labeled "deceased" when the board receives a copy of the physician's death certificate or other reliable information of the licensee's death.

ITEM 16. Amend subrule 9.13(1) as follows:

9.13(1) *Renewal notice.* Staff shall send a renewal notice ~~by regular mail~~ to each licensee ~~at the licensee's last-known address~~ at least 60 days prior to the expiration of the license. The renewal notice may be sent by e-mail or by regular mail at the discretion of staff. If e-mail is used for notification of licensure renewal, the notice shall be sent to the personal e-mail address specified in subrule 9.12(1).

ITEM 17. Amend paragraph **9.13(3)"a"** as follows:

a. Renewal fee.

(1) The ~~renewal fee is $550 if~~ fees for renewal ~~is~~ made via paper application or ~~$450 if renewal is made~~ via on-line application~~,~~ are specified in 653—subparagraph 8.4(1)*"c"*(1) and are assessed per biennial period or a prorated portion thereof if the current license was issued for a period of less than 24 months.

(2) There is no renewal fee due for a physician who was on active duty in the U.S. armed forces, reserves or national guard during the renewal period. "Active duty" means full-time training or active service in the U.S. armed forces, reserves or national guard.

(3) A physician who fails to renew before the expiration of the license shall be charged a penalty fee as set forth in 653—paragraph 8.4(1)*"d."*

ITEM 18. Amend subrule 9.13(6) as follows:

9.13(6) *Failure to renew.* Failure of the licensee to renew a license within two months following its expiration date shall cause the license to become inactive and invalid. A licensee whose license is invalid or inactive is prohibited from practice until the license is reinstated in accordance with rule 653—9.15(147,148).

a. and *b.* No change.

ITEM 19. Amend subrule 9.15(1) as follows:

9.15(1) *Reinstatement within one year of the license's becoming inactive.* An individual whose license is in inactive status for up to one year and who wishes to reinstate the license shall submit a completed renewal application; the reinstatement fee; documentation of continuing education; and, if applicable, documentation on training on chronic pain management, ~~training on~~ end-of-life care, and ~~training on~~ identifying and reporting abuse~~; and the reinstatement fee~~. All of the information shall be received in the board office within one year of the license's becoming inactive for the applicant to reinstate under this subrule. For example, a physician whose license became inactive on March 1 has until the last day of the following February to renew under this subrule.

a. ~~*Fees*~~ *Fee for reinstatement of an unrestricted Iowa license within one year of the license's becoming inactive.* The reinstatement fee is ~~$550 except~~ specified in 653–paragraph 8.4(1)*"g"* when the license in the most recent license period had been granted for less than 24 months; in that case, the reinstatement fee is prorated according to the date of issuance and the physician's month and year of birth.

b. to *d.* No change.

ITEM 20. Amend subrule 9.15(2) as follows:

9.15(2) *Reinstatement of an unrestricted Iowa license that has been inactive for one year or longer.* An individual whose license is in inactive status and who has not submitted a reinstatement application that was received by the board within one year of the license's becoming inactive shall follow the application cycle specified in this rule and shall satisfy the following requirements for reinstatement:

a. Submit an application for reinstatement to the board upon forms provided by the board. The application shall require the following information:

(1) Full legal name, date and place of birth, license number, home address, mailing address, ~~and~~ principal business address, and personal e-mail address regularly used by the applicant or licensee for correspondence with the board;

(2) to (8) No change.

(9) A completed fingerprint packet to facilitate a national criminal history background check. The ~~$45~~ fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

b. Pay the reinstatement fee ~~of $500~~ plus the ~~$45~~ fee ~~identified in 653—subrule 8.4(6)~~ for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks~~.~~ specified in 653—paragraph 8.4(1)*"f."* ~~No fee is required for reinstatement for those whose licenses became inactive between December 8, 1999, and July 4, 2001; however, the $45 fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed.~~

c. Provide documentation of completion of ~~80~~ 40 hours of category 1 credit within the previous two years and documentation of training on chronic pain management, end-of-life care, and identifying and reporting abuse as specified in 653—Chapter 11.

d. If the physician has not engaged in active clinical practice in the past three years in any jurisdiction of the United States or Canada, require an applicant to:

(1) to (4) No change.

e. No change.

ARC 2359C

MEDICINE BOARD[653]

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 147.76, the Board of Medicine hereby proposes to amend Chapter 9, "Permanent Physician Licensure," and Chapter 11, "Continuing Education and Training Requirements," Iowa Administrative Code.

The purpose of Chapter 9 is to establish requirements for licensure of medical physicians and surgeons and osteopathic physicians and surgeons. The purpose of Chapter 11 is to establish requirements for continuing education and training to maintain a permanent license issued by the Board. The proposed amendments would implement 2015 Iowa Acts, Senate File 276, which establishes a nonclinical administrative medicine license. These proposed amendments define administrative medicine, requirements for licensure, and continuing education requirements.

The Board approved this Notice of Intended Action during a regularly scheduled meeting on December 10, 2015.

Any interested person may present written comments on the proposed amendments not later than 4:30 p.m. on January 26, 2016. Such written materials should be sent to Mark Bowden, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or sent by e-mail to mark.bowden@iowa.gov.

There will be a public hearing on January 26, 2016, at 1 p.m. at the Board's office, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

After analysis and review of this rule making, it has been determined that these amendments may help create jobs in Iowa. The administrative medicine license is for physicians who are being hired for nonclinical administrative jobs within the health care system.

These amendments are intended to implement 2015 Iowa Acts, Senate File 276, and Iowa Code chapters 147, 148 and 272C.

The following amendments are proposed.

ITEM 1. Adopt the following **new** rule 653—9.20(147,148):

653—9.20(147,148) Administrative medicine licensure.

9.20(1) *Definitions.*

"Administrative medicine" means administration or management utilizing the medical and clinical knowledge, skill, and judgment of a licensed physician and capable of affecting the health and safety of the public or any person. A physician with an administrative medicine license may advise organizations, both public and private, on health care matters; authorize and deny financial payments for care; organize and direct research programs; review care provided for quality; and other similar duties that do not require direct patient care. Administrative medicine does not include the authority to practice clinical medicine, examine, care for or treat patients, prescribe medications including controlled substances, or delegate medical acts or prescriptive authority to others.

"Administrative medicine license" means a license issued by the board pursuant to this rule.

9.20(2) *Application.* An application for an administrative medicine license shall be made to the board of medicine pursuant to the requirements established in Iowa Code section 148.3 and this chapter. An applicant for an administrative medicine license shall be subject to all of the permanent licensure requirements established in Iowa Code section 148.3 and this chapter, except that the applicant shall not

be required to demonstrate that the applicant has engaged in active clinical practice in the past three years as outlined in paragraphs 9.8(7)*"c"* and 9.15(2)*"d."*

The board may, in its discretion, issue an administrative medicine license authorizing the licensee to practice administrative medicine only, as defined by this rule. The license shall be designated "administrative medicine license."

9.20(3) *Fees.* All license and renewal fees shall be paid to the board in accordance with 653—Chapters 8 and 9.

9.20(4) *Demonstration of competence.*

a. If an applicant for initial licensure or reinstatement of an administrative medicine license has not actively practiced administrative or clinical medicine in a jurisdiction of the United States or Canada in the past three years, the board may require the applicant to demonstrate competence in a method prescribed by the board in accordance with paragraphs 9.8(7)*"c"* and 9.15(2)*"d."*

b. A physician who holds an administrative medicine license and has not engaged in active clinical practice in a jurisdiction of the United States or Canada for more than three years may be required to demonstrate competence to practice clinical medicine in a method prescribed by the board in accordance with paragraphs 9.8(7)*"c"* and 9.15(2)*"d"* prior to obtaining a permanent Iowa medical license.

9.20(5) *No exemptions to laws and rules.* A physician with an administrative medicine license shall be subject to the same laws and rules governing the practice of medicine as a person holding a permanent Iowa medical license.

9.20(6) *Only one active license at a time.* When applicable, a person's active Iowa permanent or Iowa resident license shall immediately become inactive upon issuance of an administrative license.

9.20(7) *Interstate medical licensure compact.* A physician who holds only an administrative medicine license may not be eligible for licensure under the interstate medical licensure compact.

ITEM 2. Amend rule 653—11.4(272C) as follows:

653—11.4(272C) Continuing education and training requirements for renewal or reinstatement. A licensee shall meet the requirements in this rule to qualify for renewal of a permanent license, an administrative medicine license, or special license or to qualify for reinstatement of a permanent license or an administrative medicine license.

11.4(1) *Continuing education and training requirements.*

a. Continuing education for permanent license or administrative medicine license renewal. Except as provided in these rules, a total of 40 hours of category 1 credit or board-approved equivalent shall be required for biennial renewal of a permanent license or an administrative medicine license. This may include up to 20 hours of credit carried over from the previous license period and category 1 credit acquired within the current license period.

(1) and (2) No change.

b. to *e.* No change.

11.4(2) *Exemptions from renewal requirements.*

a. A licensee shall be exempt from the continuing education requirements in subrule 11.4(1) when, upon license renewal, the licensee provides evidence for:

(1) Periods that the licensee served honorably on active duty in the U.S. armed forces, reserves or national guard;

(2) Periods that the licensee ~~resided~~ practiced in another state or district ~~having~~ and did not provide medical care, including telemedicine services, to patients located in Iowa, if the other state or district had continuing education requirements for the profession and the licensee met all requirements of that state or district for practice therein;

(3) and (4) No change.

b. No change.

11.4(3) No change.

11.4(4) *Reinstatement requirement.* An applicant for license reinstatement whose license has been inactive for one year or more shall provide proof of successful completion of ~~80~~ 40 hours of category 1 credit completed within 24 months prior to submission of the application for reinstatement or proof of

successful completion of SPEX or COMVEX-USA within one year immediately prior to the submission of the application for reinstatement.

11.4(5) to **11.4(8)** No change.

ARC 2347C

MEDICINE BOARD[653]

Notice of Termination

Pursuant to the authority of Iowa Code section 147.76, the Board of Medicine hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin as **ARC 2298C** on December 9, 2015, proposing to amend Chapter 17, "Licensure of Acupuncturists," Iowa Administrative Code.

The proposed amendments would have updated Chapter 17 and provided more definitions related to the practice of acupuncture. At a public meeting held on December 10, 2015, the Board determined to terminate the rule making at this time to allow the Board more time for the review of these amendments and the language of Iowa Code chapter 148E concerning the practice of acupuncture.

It is not anticipated that this Notice of Termination will have any impact on jobs.

ARC 2345C

NURSING BOARD[655]

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 and 147.76 and 2015 Iowa Acts, Senate File 462, section 1, the Board of Nursing hereby gives Notice of Intended Action to amend Chapter 7, "Advanced Registered Nurse Practitioners," Iowa Administrative Code.

The proposed amendments are intended to implement 2015 Iowa Acts, Senate File 462, which authorizes the prescribing of epinephrine auto-injectors in the name of a facility as defined in 2015 Iowa Acts, Senate File 462, section 1 [Iowa Code section 135.185(1)], a school district, or an accredited nonpublic school.

Any interested person may make written comments or suggestions on or before January 26, 2016. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685, or via e-mail to rules.comments@iowa.gov. Persons who wish to convey their views orally should contact the Executive Director at (515)281-3256 or in the Board office at 400 S.W. 8th Street, by appointment.

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

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

These amendments are intended to implement Iowa Code chapters 135 and 280 and 2015 Iowa Acts, Senate File 462.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition in rule **655—7.1(152)**:

"Epinephrine auto-injector" means a device for immediate self-administration or administration by another trained person of a measured dose of epinephrine to a person at risk of anaphylaxis.

NURSING BOARD[655](cont'd)

ITEM 2. Adopt the following **new** rule 655—7.3(152):

655—7.3(152) Prescribing epinephrine auto-injectors in the name of a facility.

7.3(1) An ARNP may issue a prescription for one or more epinephrine auto-injectors in the name of a facility as defined in 2015 Iowa Acts, Senate File 462, section 1 [Iowa Code subsection 135.185(1)], a school district, or an accredited nonpublic school.

7.3(2) An ARNP who prescribes epinephrine auto-injectors in the name of an authorized facility, as defined in 2015 Iowa Acts, Senate File 462, section 1 [Iowa Code subsection 135.185(1)], a school district, or an accredited nonpublic school, to be maintained for use pursuant to 2015 Iowa Acts, Senate File 462 [Iowa Code sections 135.185, 260.16 and 260.16A], provided the ARNP has acted reasonably and in good faith, shall not be liable for any injury arising from the provision, administration, or assistance in the administration of an epinephrine auto-injector.

ARC 2344C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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 307.12 and 321.200A and section 307A.2 as amended by 2015 Iowa Acts, House File 635, section 20, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 615, "Sanctions," Iowa Administrative Code.

The proposed amendment is required by Iowa Code section 321.200A and concerns identity theft complaints. The amendment provides instruction for a person to request that the Department investigate fraudulent use of a person's name or other fraudulent identification that resulted in a record of conviction for a scheduled violation under Iowa Code chapter 321 and listed in Iowa Code section 805.8A. The Department will review the request for investigation to determine if an investigation is warranted based on the facts of the complaint.

This amendment does 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.

Any person or agency may submit written comments concerning this proposed amendment or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; e-mail: tracy.george@dot.iowa.gov.
5. Be received by the Office of Policy and Legislative Services no later than January 26, 2016.

A meeting to hear requested oral presentations is scheduled for Thursday, January 28, 2016, at 10 a.m. at the Iowa Department of Transportation's Motor Vehicle Division offices located at 6310 SE Convenience Boulevard, Ankeny, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

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

This amendment is intended to implement Iowa Code section 321.200A.

The following amendment is proposed.

TRANSPORTATION DEPARTMENT[761](cont'd)

Adopt the following **new** rule 761—615.41(321):

761—615.41(321) Investigation of convictions based on fraud. A person requesting investigation of fraudulent use of a person's name or other fraudulent identification that resulted in a record of conviction for a scheduled violation under Iowa Code chapter 321 and listed in Iowa Code section 805.8A may submit a written application to the department using Form 420049, Identity Theft Complaint. The department shall review the application and may investigate, if appropriate, as required by Iowa Code section 321.200A. Form 420049 may be obtained by contacting the bureau of investigation and identity protection by mail at Bureau of Investigation and Identity Protection, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; or on the department's Web site.

This rule is intended to implement Iowa Code section 321.200A.

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:

January 1, 2015 — January 31, 2015	4.25%
February 1, 2015 — February 28, 2015	4.25%
March 1, 2015 — March 31, 2015	4.00%
April 1, 2015 — April 30, 2015	4.00%
May 1, 2015 — May 31, 2015	4.00%
June 1, 2015 — June 30, 2015	4.00%
July 1, 2015 — July 31, 2015	4.25%
August 1, 2015 — August 31, 2015	4.25%
September 1, 2015 — September 30, 2015	4.25%
October 1, 2015 — October 31, 2015	4.25%
November 1, 2015 — November 30, 2015	4.25%
December 1, 2015 — December 31, 2015	4.00%
January 1, 2016 — January 31, 2016	4.25%

ARC 2352C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 455B.133 and 455B.133B as amended by 2015 Iowa Acts, Senate File 488, and 2015 Iowa Acts, Senate File 488, section 3 [Iowa Code section 455B.133C], the Environmental Protection Commission (Commission) hereby amends Chapter 20, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 22, "Controlling Pollution," and Chapter 23, "Emission Standards for Contaminants"; adopts a new Chapter 30, "Fees"; and amends Chapter 31, "Nonattainment Areas," and Chapter 33, "Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality," Iowa Administrative Code.

The amendments adopt new rules to implement 2015 Iowa Acts, Senate File 488, signed by Governor Branstad on May 15, 2015, and amend existing rules to establish application fees for construction and operation of air pollution emitting equipment and fees for asbestos notifications. It is anticipated that the improvements made parallel to these amendments will result in the following:

- A 25 percent quicker response time to process air quality construction permit applications at large and small industries. The fees for construction permit application processing will help ensure that critical services, such as providing flexible and simple permitting solutions to meet applicants' needs and finding unique approaches that reduce regulatory burdens, will continue to allow industries to add jobs and grow the economy while at the same time protecting air quality.
- A 15 percent quicker average issuance rate for Title V operating permits. The fees will help ensure that industries can successfully navigate the complexities of the Title V operating permit program, including a guidebook permit that summarizes all of the information that a company needs in order to meet air quality requirements at its facility.

These improvements in the Department of Natural Resources' (Department's) services will allow industries to add jobs and grow the economy while at the same time protecting air quality.

Industries that are already permitted and make no changes triggering the requirement for a modification to an existing construction permit will not have to pay a construction permit application fee. The rules and associated fees will apply to industries only when they add new equipment or modify existing equipment that emits regulated air pollutants and to industries required to obtain a Title V operating permit.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 28, 2015, as **ARC 2222C**. The Department received one public comment on the Notice of Intended Action at the public hearings held on November 18, 19, and 24, 2015, and received nine written comments, including a written comment from the oral commenter, prior to the November 30, 2015, deadline for public comments. The responsiveness summary is available from the Department upon request.

As a result of the public comments, the Department made one minor change to the rules that were published under Notice of Intended Action. In Item 12, the word "emissions" in the introductory paragraph of subrule 22.105(2) was deleted and the proposed reference to Chapter 30 was changed to rule 567—30.4(455B). In addition, the references to 2015 Iowa Acts, Senate File 488, in Chapter 30 have been updated to Iowa Code references.

The amendments add a new Chapter 30, which sets forth:

1. The types of application and notification fees and the requirements to pay them;
2. The dollar cap for each fee and the process for establishing fees in the fee schedule;
3. Limitations on how fee revenues may be expended; and
4. Requirements for the Department to meet annually with each fee advisory group.

The existing Title V emissions fee is moved from rule 567—22.106(455B) to new Chapter 30 to consolidate all fee details in one chapter. The Title V emission dollar-per-ton rate currently located in rule 567—22.106(455B) is moved to rule 567—30.4(455B). The Title V emission dollar-per-ton cap is increased to $70 per ton to reflect the estimated program expenses associated with projected

actual emissions for FY 2017. The amendments clarify the Department's current practice of excluding greenhouse gases from annual Title V air emissions fees by adding "greenhouse gases" to the list of regulated pollutants that are excluded from Title V air emissions fees.

The amendments set a flat fee for new source review applications from minor sources, including registration permits, permit by rule, and permit templates; and for asbestos notifications. In addition, the amendments set billable, hourly review fees during the application review process for new source review applications for major sources and dispersion modeling and for applications for initial and renewal Title V operating permits.

Fees established by the Commission shall become effective on January 15, 2016. The Title V emissions fee will apply to Title V emissions fees due on or after July 1, 2016.

The Department will conduct a study to measure the time and cost of application review and permit issuance for new source review and operating permits. The Department will provide periodic reports regarding the progress of the study and will provide the results of this study to the fee advisory groups (created pursuant to rule 567—30.5(455B)).

Item 1 amends rule 567—20.1(455B,17A) to add a description of new Chapter 30.

Item 2 amends paragraph 22.1(3)"a" to revise the catchwords and to specify that regulatory determinations, including concept reviews, are subject to fees as defined in Chapter 30.

Item 3 amends paragraph 22.1(3)"b" by adding a new subparagraph (10) to establish the requirement to pay application fees for a construction permit.

Item 4 amends rule 567—22.4(455B) to establish the requirement to pay application fees for a prevention of significant deterioration (PSD) permit.

Item 5 amends rule 567—22.5(455B) to establish the requirement to pay application fees for a nonattainment major new source review (NSR) permit.

Item 6 amends subrule 22.8(1) to establish the requirement to pay application fees for a permit by rule for spray booths.

Item 7 amends rule 567—22.10(455B) to establish the requirement to pay application fees for country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment.

Item 8 amends the definition of "Regulated air pollutant or contaminant (for fee calculation)" in rule 567—22.100(455B) to clarify that greenhouse gases are not subject to annual emissions fees under the Title V operating permit program.

Item 9 amends subrule 22.101(1) to establish the requirement to pay application fees for an operating permit.

Item 10 amends rule 567—22.103(455B) to update a cross reference due to the relocation of the existing Title V emissions fee provisions from rule 567—22.106(455B) to new Chapter 30.

Item 11 amends subrule 22.105(1) to add the requirement that the owner or operator of a source required to obtain a Title V permit pursuant to subrule 22.101(1) shall submit fees as required in Chapter 30.

Item 12 amends subrule 22.105(2) to provide a reference indicating that the fee information for the Title V operating permit program is located in rule 567—30.4(455B).

Item 13 amends rule 567—22.106(455B) to move the existing Title V operating permit emissions fee to new Chapter 30 and to add a reference to Chapter 30.

Item 14 amends subrule 22.108(10) to update the Title V operating permit's general condition language to refer to Chapter 30 for the fees.

Item 15 amends paragraph 23.1(3)"a" to add a notification fee for the asbestos demolition and renovation program.

Item 16 adopts new Chapter 30 pertaining to fees. Rule 567—30.1(455B) defines the purpose of the chapter and describes each rule, provides definitions for terms used in Chapter 30, and adds provisions regarding the duty to correct errors, exemptions to fee requirements for administrative amendments, and refunds of application fees. Rule 567—30.2(455B) details which new source review activities are required to submit an application fee. Rule 567—30.3(455B) explains when asbestos notification fees are required. Rule 567—30.4(455B) contains the Title V application fee requirement and the Title V emissions fee that was formerly in rule 567—22.106(455B). Rule 567—30.5(455B) explains the

fee advisory groups for new source review for major sources, new source review for minor sources, asbestos, and Title V. Rule 567—30.6(455B) explains the process to establish or adjust fees and contains the fee types and the dollar caps on the fee types for which the Commission may set a fee amount. Rule 567—30.7(455B) explains how fee revenues may be used and specifies the calculated estimate of maximum fee revenues.

Item 17 amends rule 567—31.1(455B) to establish the requirement to pay application fees for a nonattainment major new source review (NSR) permit or fees for a request of a plantwide applicability limit.

Item 18 amends rule 567—33.1(455B) to establish the requirement to pay application fees for a prevention of significant deterioration (PSD) permit or fees for a request of a plantwide applicability limit.

Pursuant to Iowa Code section 17A.5(2)"b"(1) and (2) as amended by 2015 Iowa Acts, House File 536, section 27, these amendments became effective on December 16, 2015. The normal effective date shall be waived and the amendments made effective upon filing, as the amendments confer a benefit on economic development for regulated entities by providing the Department the financial means to provide quality environmental services to Iowa businesses, while protecting the citizens of Iowa.

Jobs Impact Statement

After analysis and review, the Commission has determined that the amendments will likely have a positive impact on jobs at Iowa's large facilities but could have a negative impact on jobs at medium- to small-size facilities (i.e., they are now subject to payment of fees if they make changes triggering a new or modified air quality construction permit). However, it is the Commission's expectation that the fees authorized by this rule making in conjunction with efficiency activities are expected to result in reductions in the time it takes for industries to receive air quality permits, allowing them to respond quickly to changing economic conditions and facilitate job growth.

The Department is pursuing several efficiencies objectives including, but not limited to, electronic filing, removing redundant provisions in application forms and permits through LEAN events, and exploring best practices in air quality programs in other states, all while ensuring compliance with environmental regulations.

These amendments are intended to implement Iowa Code sections 455B.133 and 455B.133B as amended by 2015 Iowa Acts, Senate File 488, and 2015 Iowa Acts, Senate File 488, section 3 [Iowa Code section 455B.133C].

These amendments became effective on December 16, 2015.

The following amendments are adopted.

ITEM 1. Amend rule **567—20.1(455B,17A)**, second unnumbered paragraph, as follows:

Chapter 21 contains the provisions requiring compliance schedules, allowing for variances, and setting forth the emission reduction program. Chapter 22 contains the standards and procedures for the permitting of emission sources. Chapter 23 contains the air emission standards for contaminants. Chapter 24 provides for the reporting of excess emissions and the equipment maintenance and repair requirements. Chapter 25 contains the testing and sampling requirements for new and existing sources. Chapter 26 identifies air pollution emergency episodes and the preplanned abatement strategies. Chapter 27 sets forth the conditions political subdivisions must meet in order to secure acceptance of a local air pollution control program. Chapter 28 identifies the state ambient air quality standards. Chapter 29 sets forth the qualifications for an observer for reading visible emissions. Chapter 30 sets forth requirements to pay fees for specified activities. Chapter 31 contains the conformity of general federal actions to the Iowa state implementation plan or federal implementation plan and requirements for areas designated nonattainment. Chapter 32 specifies requirements for conducting the animal feeding operations field study. Chapter 33 contains special regulations and construction permit requirements for major stationary sources and includes the requirements for prevention of significant deterioration (PSD). Chapter 34 contains provisions for air quality emissions trading programs.

ITEM 2. Amend paragraph **22.1(3)"a"** as follows:

a. ~~New equipment design in concept review~~ Regulatory applicability determinations. If requested in writing, the director will review the design concepts of ~~proposed new~~ equipment and associated control equipment prior to application for a construction permit. The purpose of the review would be to determine the acceptability of the location of the ~~proposed~~ equipment. If the review is requested, the requester shall supply the following information and submit a fee as required in 567—Chapter 30:

(1) Preliminary plans and specifications of ~~proposed~~ equipment and related control equipment.

(2) The exact site location and a plot plan of the immediate area, including the distance to and height of nearby buildings and the estimated location and elevation of the emission points.

(3) The estimated emission rates of any air contaminants which are to be considered.

(4) The estimated exhaust gas temperature, velocity at the point of discharge, and stack diameter at the point of discharge.

(5) An estimate of when construction would begin and when construction would be completed.

ITEM 3. Amend paragraph **22.1(3)"b"** as follows:

b. Construction permit applications. Each application for a construction permit shall be submitted to the department on the form "Air Construction Permit Application." Final plans and specifications for the proposed equipment or related control equipment shall be submitted with the application for a permit and shall be prepared by or under the direct supervision of a professional engineer licensed in the state of Iowa in conformance with Iowa Code section 542B.1, or consistent with the provisions of Iowa Code section 542B.26 for any full-time employee of any corporation while doing work for that corporation. The application for a permit to construct shall include the following information:

(1) to (6) No change.

(7) Any additional information deemed necessary by the department to determine compliance with or applicability of rules 567—22.4(455B), 567—22.5(455B), 567—31.3(455B) and 567—33.3(455B); ~~and~~

(8) Application for a case-by-case MACT determination. If the source meets the definition of construction or reconstruction of a major source of hazardous air pollutants, as defined in paragraph 22.1(1)*"b,"* then the owner or operator shall submit an application for a case-by-case MACT determination, as required in 567—subparagraph 23.1(4)*"b"*(1), with the construction permit application. In addition to this paragraph, an application for a case-by-case MACT determination shall include the following information:

1. to 7. No change.

8. An identification of any listed source category or categories in which the major source is included~~.~~;

(9) A signed statement that ensures the applicant's legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application. A signed statement shall not be required for rock crushers, portable concrete or asphalt equipment used in conjunction with specific identified construction projects which are intended to be located at a site only for the duration of the specific, identified construction project~~.~~; and

(10) Application fee.

1. The owner or operator shall submit a fee as required in 567—Chapter 30 to obtain a permit under subrule 22.1(1), rule 567—22.4(455B), rule 567—22.5(455B), rule 567—22.8(455B), rule 567—22.10(455B), 567—Chapter 31 or 567—Chapter 33.

2. For application submittals from a minor source as defined in 567—Chapter 30, the department shall not initiate review and processing of a permit application submittal until all required application fees have been paid to the department.

ITEM 4. Amend rule 567—22.4(455B) as follows:

567—22.4(455B) Special requirements for major stationary sources located in areas designated attainment or unclassified (PSD). As applicable, the owner or operator of a stationary source shall comply with the rules for prevention of significant deterioration (PSD) as set forth in 567—Chapter 33.

An owner or operator required to apply for a construction permit under this rule shall submit all required fees as required in 567—Chapter 30.

ITEM 5. Amend rule 567—22.5(455B) as follows:

567—22.5(455B) Special requirements for nonattainment areas. As applicable, the owner or operator of a stationary source shall comply with the requirements for the nonattainment major NSR program as set forth in rule 567—31.20(455B). An owner or operator required to apply for a construction permit under this rule shall submit all required fees as required in 567—Chapter 30.

ITEM 6. Amend subrule 22.8(1), introductory paragraph, as follows:

22.8(1) *Permit by rule for spray booths.* Spray booths which comply with the requirements contained in this rule will be deemed to be in compliance with the requirements to obtain an air construction permit and an air operating permit. Spray booths which comply with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source limits for regulated air pollutants and hazardous air pollutants as defined in rule 567—22.100(455B). An owner or operator required to apply for a permit by rule under this subrule shall submit fees as required in 567—Chapter 30.

ITEM 7. Amend rule 567—22.10(455B), introductory paragraph, as follows:

567—22.10(455B) Permitting requirements for country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment. The requirements of this rule apply only to country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment, as these terms are defined in subrule 22.10(1). The requirements of this rule do not apply to equipment located at grain processing plants or grain storage elevators, as "grain processing" and "grain storage elevator" are defined in rule 567—20.2(455B). Compliance with the requirements of this rule does not alleviate any affected person's duty to comply with any applicable state or federal regulations. In particular, the emission standards set forth in 567—Chapter 23, including the regulations for grain elevators contained in 40 CFR Part 60, Subpart DD (as adopted by reference in 567—paragraph 23.1(2)*"ooo"*), may apply. An owner or operator subject to this rule shall submit fees as required in 567—Chapter 30.

ITEM 8. Amend rule **567—22.100(455B)**, definition of "Regulated air pollutant or contaminant (for fee calculation)," as follows:

"Regulated air pollutant or contaminant (for fee calculation)," which is used only for purposes of ~~rule~~ 567—~~22.106(455B)~~ Chapter 30, means any "regulated air pollutant or contaminant" except the following:

1. Carbon monoxide;
2. Particulate matter, excluding PM10;
3. Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by Title VI of the Act;
4. Any pollutant that is a regulated pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act~~.~~;
5. Greenhouse gas, as defined in rule 567—20.2(455B).

ITEM 9. Amend subrule 22.101(1), introductory paragraph, as follows:

22.101(1) Except as provided in rule 567—22.102(455B), any person who owns or operates any of the following sources shall obtain a Title V operating permit and shall submit fees as required in 567—Chapter 30:

ITEM 10. Amend rule 567—22.103(455B), introductory paragraph, as follows:

567—22.103(455B) Insignificant activities. The following are insignificant activities for purposes of the Title V application if not needed to determine the applicability of or to impose any applicable

requirement. Title V permit emissions fees are not required from insignificant activities pursuant to ~~subrule 22.106(7).~~ 567—paragraph 30.4(2)*"f."*

ITEM 11. Amend subrule 22.105(1), introductory paragraph, as follows:

22.105(1) *Duty to apply.* For each source required to obtain a Title V permit, the owner or operator or designated representative, where applicable, shall present or mail a complete and timely permit application in accordance with this rule to the following locations: Iowa Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324 (two copies); and U.S. EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66101 (one copy); and, if applicable, the local permitting authority, which is either Linn County Public Health Department, Air Quality Division, 501 13th Street NW, Cedar Rapids, Iowa 52405 (one copy); or Polk County Public Works, Air Quality Division, 5885 NE 14th Street, Des Moines, Iowa 50313 (one copy). Alternatively, an owner or operator may submit a complete and timely application through the electronic submittal format specified by the department. An owner or operator of a source required to obtain a Title V permit pursuant to subrule 22.101(1) shall submit all required fees as required in 567—Chapter 30.

ITEM 12. Amend subrule 22.105(2), introductory paragraph, as follows:

22.105(2) *Standard application form and required information.* To apply for a Title V permit, applicants shall complete the standard permit application form available only from the department ~~of natural resources~~ and supply all information required by the filing instructions found on that form. The information submitted must be sufficient to evaluate the source and its application and to determine all applicable requirements and to evaluate the fee amount required by rule 567—~~22.106(455B)~~ 30.4(455B). If a source is not a major source and is applying for a Title V operating permit solely because of a requirement imposed by paragraphs 22.101(1)*"c"* and *"d,"* then the information provided in the operating permit application may cover only the emissions units that trigger Title V applicability. The applicant shall submit the information called for by the application form for each emissions unit to be permitted, except for activities which are insignificant according to the provisions of rule 567—22.103(455B). The applicant shall provide a list of all insignificant activities and specify the basis for the determination of insignificance for each activity. Nationally standardized forms shall be used for the acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act. The standard application form and any attachments shall require that the following information be provided:

ITEM 13. Amend rule 567—22.106(455B) as follows:

567—22.106(455B) ~~Title V permit fees~~ Annual Title V emissions inventory.

22.106(1) ~~*Fee established*~~ *Emissions fee.* Fees shall be paid as set forth in 567—Chapter 30. ~~Any person required to obtain a Title V permit shall pay an annual fee based on the total tons of actual emissions of each regulated air pollutant, beginning November 15, 1994. Beginning July 1, 1996, Title V operating permit fees will be paid on or before July 1 of each year. The fee shall be based on actual emissions required to be included in the Title V operating permit application and the annual emissions statement for the previous calendar year. The department and the commission will review the fee structure on an annual basis and adjust the fee as necessary to cover all reasonable costs required to develop and administer the programs required by the Act. The department shall submit the proposed budget for the following fiscal year to the commission no later than the March meeting. The commission shall set the fee based on the reasonable cost to run the program and the proposed budget no later than the May commission meeting of each year. The commission shall provide an opportunity for public comment prior to setting the fee. The commission shall not set the fee higher than $56 per ton without adopting the change pursuant to formal rule making.~~

~~**22.106(2)** *Fee calculation.* The fee amount shall be calculated based on the first 4,000 tons of each regulated air pollutant or contaminant emitted each year from each major source.~~

~~**22.106(3)**~~ **22.106(2)** ~~*Fee*~~ *Emissions inventory and documentation due dates.*

~~*a.* The fee shall be submitted annually by July 1. For emissions located in Polk County or Linn County, the fee shall be submitted with three copies of the following forms. For emissions in all remaining counties, the fee shall be submitted with two copies of the following forms:~~

~~1. Form 1.0 "Facility identification";~~

~~2. Form 5.0 "Title V annual emissions summary/fee"; and~~

~~3. Part 3 "Application certification."~~

~~*b.*~~ For emissions located in Polk County or Linn County, three copies of the following forms shall be submitted annually by March 31 documenting actual emissions for the previous calendar year. For emissions in all other counties, two copies of the following forms shall be submitted annually by March 31, documenting actual emissions for the previous calendar year:

~~1.~~ *a.* Form 1.0, "Facility Identification";

~~2.~~ *b.* Form 4.0, "Emission Unit—Actual Operations and Emissions" for each emission unit;

~~3.~~ *c.* Form 5.0, "Title V Annual Emissions Summary/Fee"; and

~~4.~~ *d.* Part 3, "Application Certification."

Alternatively, an owner or operator may submit the required emissions inventory information through the electronic submittal format specified by the department.

If there are any changes to the emission calculation form, the department shall make revised forms available to the public by January 1. If revised forms are not available by January 1, forms from the previous year may be used and the year of emissions documented changed. The department shall calculate the total statewide Title V emissions for the prior calendar year and make this information available to the public no later than April 30 of each year.

~~**22.106(4)** *Phase I acid rain sources.* No fee shall be required to be paid for emissions which occur during the years 1993 through 1999 inclusive, with respect to any Phase I acid rain affected unit under Section 404 of the Act.~~

~~**22.106(5)** *Operation in Iowa.* The fee for a portable emissions unit or stationary source which operates both in Iowa and out of state shall be calculated only for emissions from the source while operating in Iowa.~~

~~**22.106(6)** *Title V exempted stationary sources.* No fee shall be required to be paid for emissions until the year in which sources exempted under subrules 22.102(1) and 22.102(2) are required to apply for a Title V permit. Fees shall be paid for the emission year preceding the year in which the application is due and thereafter.~~

~~**22.106(7)** *Insignificant activities.* No fee shall be required to be paid for insignificant activities, as defined in rule 567—22.103(455B).~~

~~**22.106(8)**~~ **22.106(3)** *Correction of errors.* If an owner or operator, or the department, finds an error in a Title V emissions inventory ~~or Title V fee payment~~, the owner or operator shall submit to the department revised forms making the necessary corrections to the Title V emissions inventory ~~or Title V fee payment~~. ~~Forms~~ Corrected forms shall be submitted as soon as possible after the errors are discovered or upon notification by the department.

ITEM 14. Amend subrule 22.108(10) as follows:

22.108(10) Fees. The permit shall include a provision to ensure that the Title V permittee pays fees to the director pursuant to rule ~~567—22.106(455B)~~ 567—30.4(455B).

ITEM 15. Amend paragraph **23.1(3)"a"** as follows:

a. Asbestos. Any of the following involves asbestos emissions: asbestos mills, surfacing of roadways, manufacturing operations, fabricating, insulating, waste disposal, spraying applications and demolition and renovation operations. (Subpart M). Any person subject to notification requirements under this rule shall submit fees as required in 567—Chapter 30.

ITEM 16. Adopt the following **new** 567—Chapter 30:

CHAPTER 30
FEES

567—30.1(455B) Purpose. This chapter sets forth requirements to pay fees for specified activities. Rule 567—30.1(455B) adds definitions for this chapter, a duty to correct errors, and an exemption to fee requirements for administrative amendments. Rule 567—30.2(455B) sets forth the requirements for applicants to submit fees for specified activities associated with new source review in 567—Chapter 22, 567—Chapter 31 and 567—Chapter 33. Rule 567—30.3(455B) contains requirements for the submission of demolition and renovation notification fees for the asbestos emission standard for hazardous air pollutants listed in 567—paragraph 23.1(3)*"a."* Rule 567—30.4(455B) sets forth the requirements for applicants to submit fees for specified activities associated with the Title V program found in 567—Chapter 22. Rule 567—30.5(455B) sets forth the requirement to convene fee advisory groups. Rule 567—30.6(455B) details the process by which fee levels shall be established, lists the types of fees and the dollar caps on the fee types that the commission may set, and establishes the mechanism for notification of the fee schedule. Rule 567—30.7(455B) details how fee revenues may be expended and specifies the calculated estimate of maximum fee revenues.

The department shall not initiate review and processing of an application submittal from a minor source until all required fees have been paid to the department. Fees are nonrefundable, except as provided in subrule 30.1(4).

30.1(1) *Definitions.* For purposes of this chapter, the following definitions shall apply:

"Application submittal" means one or more applications required under rule 567—22.1(455B) and submitted at the same time or required to be submitted under rule 567—22.4(455B), rule 567—22.5(455B), 567—Chapter 31 or 567—Chapter 33.

"Major source" means a "major source" as defined in rule 567—22.100(455B).

"Minor source" means any stationary source not included in the definition of "major source" as defined in rule 567—22.100(455B).

"Regulated air pollutant" means "regulated air pollutant or contaminant (for fee calculation)" as defined in rule 567—22.100(455B).

30.1(2) *Duty to correct errors.* If an owner or operator, or the department, finds an error in a fee assessed or collected under this chapter, the owner or operator shall submit to the department revised forms making the necessary corrections to the fee and shall submit the correct fee. Corrected forms shall be submitted as soon as possible after the error is discovered or upon notification by the department. If the error correction results in a determination by the department that a fee was overpaid or that a duplicate fee was submitted, the department will return the overpaid balance of the fee to the applicant.

30.1(3) *Exemption to fee requirements for administrative amendments.* A fee shall not be required for any of the following:

a. Corrections of typographical errors;

b. Corrections of word processing errors;

c. Changes in the name, address, or telephone number of any person identified in a permit, or similar minor administrative changes at the source;

d. Changes in ownership or operational control of a source where the department determines that no other change in the permit is necessary, provided that a written agreement that contains a specific date for transfer of permit responsibility, coverage, and liability between the current permittee and the new permittee has been submitted to the department.

30.1(4) *Refund of application fee minus administrative cost for permit applications at minor sources.* The department may refund the application fee minus administrative costs if the owner or operator requests to withdraw the application prior to commencement of the technical review of the application.

567—30.2(455B) Fees associated with new source review applications. Beginning on January 15, 2016, each owner or operator required to provide an application submittal, including air quality modeling as applicable; registration; permit by rule; and template under 567—subrule 22.1(1), rule 567—22.4(455B), rule 567—22.5(455B), rule 567—22.8(455B), rule 567—22.10(455B), 567—Chapter 31 or 567—Chapter 33, shall pay fees as specified in the fee schedule approved by the

commission and posted on the department's Web site. Fees shall be submitted with forms supplied by the department.

30.2(1) *Payment of regulatory applicability determination fee.* Beginning on January 15, 2016, each owner or operator requesting a regulatory applicability determination, as specified in 567—paragraph 22.1(3)*"a,"* shall pay fees as specified in the fee schedule approved by the commission and posted on the department's Web site. Fees shall be submitted with forms provided by the department.

30.2(2) Reserved.

567—30.3(455B) Fees associated with asbestos demolition or renovation notification.

30.3(1) *Payment of fees established.* Beginning on January 15, 2016, the owner or operator of a site subject to the national emission standard for hazardous air pollutants (NESHAP) for asbestos notifications, adopted by reference in 567—paragraph 23.1(3)*"a,"* shall submit a fee with each required original or each annual notification for each demolition or renovation, including abatement. Fees shall be paid as specified in the fee schedule approved by the commission and posted on the department's Web site. Fees shall be submitted with the notification forms provided by the department.

30.3(2) *Fee not required.* A fee shall not be required for the following:

a. Notifications when the total amount of asbestos to be removed or disturbed is less than 260 linear feet, less than 160 square feet, and less than 35 cubic feet of facility components and is below the reporting thresholds as defined in 40 CFR 61.145 as amended on January 16, 1991;

b. Notifications of training fires as required in 567—paragraph 23.2(3)*"g"*;

c. Controlled burning of demolished buildings as required in 567—paragraph 23.2(3)*"j"*;

d. Revised, canceled, and courtesy notifications. A revision to a previously submitted courtesy notification due to applicability of the notification requirements in 567—paragraph 23.1(3)*"a"* is considered an original notification and is subject to the fee requirements of subrule 30.3(1).

567—30.4(455B) Fees associated with Title V operating permits.

30.4(1) *Payment of Title V application fee.* Beginning on January 15, 2016, each owner or operator required to apply for a Title V permit, or a renewal of a Title V permit, shall pay fees as specified in the fee schedule approved by the commission and posted on the department's Web site. Fees shall be submitted with forms supplied by the department.

30.4(2) *Payment of Title V annual emissions fee.*

a. Fee required. Any person required to obtain a Title V permit shall pay an annual fee based on the first 4,000 tons of each regulated air pollutant, beginning on November 15, 1994. Beginning on July 1, 1996, Title V operating permit fees shall be paid on or before July 1 of each year. The Title V emissions fee shall be based on actual emissions required to be included in the Title V operating permit application and the annual emissions statement for the previous calendar year. The commission shall not set the fee higher than $70 per ton without adopting the change pursuant to formal rule making.

b. Fee and documentation due dates. The fee shall be submitted annually by July 1. The fee shall be submitted with a copy of the following forms:

(1) Form 1.0, "Facility Identification";

(2) Form 5.0, "Title V Annual Emissions Summary/Fee"; and

(3) Part 3, "Application Certification."

c. Phase I acid rain sources. No fee shall be required to be paid for emissions which occurred during the years 1993 through 1999, inclusive, with respect to any Phase I acid rain affected unit under 42 U.S.C. 7651c.

d. Operation in Iowa. The fee for a portable emissions unit or stationary source which operates both in Iowa and out of state shall be calculated only for emissions from the source while it is operating in Iowa.

e. Title V exempted stationary sources. No fee shall be required for emissions until the year in which sources exempted under 567—subrules 22.102(1) and 22.102(2) are required to apply for a Title V permit. Fees shall be paid for the emission year preceding the year in which the application is due and thereafter.

f. Insignificant activities. No fee shall be required for insignificant activities as defined in rule 567—22.103(455B).

567—30.5(455B) Fee advisory groups. Prior to each March commission meeting, the director shall convene fee advisory groups for the purposes of reviewing a draft budget and providing recommendations to the department regarding establishing or adjusting fees. Any stakeholder may attend meetings of the advisory groups. The meetings will be open to the public. The date of each meeting shall be posted on the department's Web site 14 days prior to the meeting date.

30.5(1) *New source review for major sources fee advisory group.* The director shall convene annually a fee advisory group to review the draft budget and major source fees required by rule 567—30.2(455B) and listed in rule 567—30.6(455B). Participants in the advisory group may provide recommendations to the department regarding fees necessary to cover all direct and indirect costs to administer the major source permit program.

30.5(2) *New source review for minor sources fee advisory group.* The director shall convene annually a fee advisory group which shall not include major sources as defined in subrule 30.1(1). The fee advisory group will review the draft budget and minor source application fees required in rule 567—30.2(455B) and listed in rule 567—30.6(455B). Participants in the fee advisory group shall include, but may not be limited to, any minor sources and their representatives. The advisory group may provide recommendations to the department regarding fees necessary to cover all direct and indirect costs to administer the minor source permit program.

30.5(3) *Asbestos fee advisory group.* The director shall convene annually an asbestos NESHAP fee advisory group to review the draft budget and asbestos notification fee required by rule 567—30.3(455B) and listed in rule 567—30.6(455B). Participants in the advisory group may provide recommendations to the department regarding fees necessary to cover all direct and indirect costs to administer the asbestos NESHAP program.

30.5(4) *Title V fee advisory group.* The director shall convene annually a fee advisory group to review the draft budget and Title V emissions and application fees required by rule 567—30.4(455B) and listed in rule 567—30.6(455B). Participants in the advisory group may provide recommendations to the department regarding fees necessary to cover all direct and indirect costs to administer the Title V operating permit program.

567—30.6(455B) Process to establish or adjust fees and notification of fee rates.

30.6(1) *Setting the fees.* Beginning on January 15, 2016, fees shall be paid as specified in the fee schedule approved by the commission and posted on the department's Web site. Following the setting of the fee schedule effective January 15, 2016, the department shall submit the proposed budget and fees for major and minor source construction permit programs, the Title V operating permit program, and the asbestos NESHAP program for the following fiscal year to the commission no later than the March commission meeting of each year, at which time the proposal will be available for public comment until such time as the commission acts on the proposal or until the May commission meeting, whichever occurs first. The department's calculated estimate for each fee shall not produce total revenues in excess of limits specified in Iowa Code sections 455B.133B and 455B.133C during any fiscal year. If an established fee amount must be adjusted, the commission shall set the fees no later than the May commission meeting of each year.

Fees established prior to January 15, 2016, shall become effective on January 15, 2016. In subsequent years, adjusted or established fees shall become effective on July 1. A fee not adjusted by the commission shall remain in effect as previously established until the fee is adjusted by the commission.

30.6(2) *Fee types and dollar caps on fee types.* The commission may set fees for the fee types and activities specified in this subrule and shall not set a fee in the fee schedule higher than the levels specified in this subrule without adopting the change pursuant to formal rule making:

a. New source review applications from major sources, which may include:

(1) Review of each application for a construction permit: $115 per hour;

(2) Review of each application for a prevention of significant deterioration permit: $115 per hour;

(3) Review of each plantwide applicability limit request, renewal, or reopening: $115 per hour;

(4) Review of each regulatory applicability determination: $115 per hour; and

(5) Air quality modeling review: $90 per hour, which may include:

1. Reviewing air quality modeling for construction permit application submittal; prevention of significant deterioration application submittal; and nonattainment new source review project application submittal; and

2. Conducting air quality modeling for construction permit application submittal.

b. New source review applications from minor sources, which may include:

(1) Each application for a construction permit: $385;

(2) Each application for a registration permit: $100;

(3) Each application for a permit by rule: $100; and

(4) Each application for a permit template: $100.

c. Asbestos notifications: $100.

d. Review of each initial or renewal Title V operating permit application: $100 per hour.

e. Title V annual emissions: $70 per ton.

30.6(3) *Notification of fee schedule.* Following the initial setting of any fee by the commission, the department shall make available to the public a fee schedule at least 30 days prior to its effective date. If any established fee amount is adjusted, the department shall make available to the public a revised fee schedule at least 30 days prior to its effective date. The fee schedule shall be posted on the department's Web site.

567—30.7(455B) Fee revenue. Each fee program is established to provide revenue for and is limited in use to specific activities.

30.7(1) *New source review application fees from major sources.* In accordance with Iowa Code section 455B.133C(5), new source review fee revenues may be used to fund the direct and indirect costs related to reviewing and acting on applications for new source review permits, including permit revisions submitted by major sources as defined under new source review programs pursuant to the federal Act, and as provided under 567—Chapter 22, 567—Chapter 31, and 567—Chapter 33, as follows:

a. Reviewing and acting on any application for a new source review permit, including the determination of all applicable requirements and dispersion modeling as part of the processing of a permit or permit revision or an applicability determination;

b. General administrative costs of administering new source review programs, including supporting and tracking of any application for a new source review permit and related data entry; and

c. Developing and implementing an expedited new source review permit application process, and additional fees associated with this process.

The calculated estimate of total revenues from new source review application fees from major sources shall not exceed $1,500,000 during any state fiscal year.

30.7(2) *New source review application fees from minor sources.* In accordance with Iowa Code section 455B.133C(6), minor new source review fee revenues may be used to fund the direct and indirect costs for reviewing and acting on applications submitted by minor air contaminant sources for construction permits and providing for registrations, permits by rule, or template permits in lieu of obtaining construction permits, under minor source new source review programs pursuant to the federal Clean Air Act Amendments of 1990, including as provided under 567—Chapter 22. The calculated estimate of total revenues from new source review application fees from minor sources shall not exceed $250,000 during any state fiscal year.

30.7(3) *Title V emissions.* In accordance with Iowa Code section 455B.133B(5), Title V emissions fee revenues may be used to fund the direct and indirect costs related to:

a. General administrative costs of administering the operating permit program, including the supporting and tracking of operating permit applications, compliance certification, and related data entry.

b. Costs of implementing and enforcing the terms of an operating permit, not including any court costs or other costs associated with an enforcement action, including adequate resources to determine which sources are subject to the program.

c. Costs of emissions and ambient site-specific monitors.

d. Costs of Title V source-specific modeling, analyses or demonstrations.

e. Costs of preparing inventories and tracking emissions.

f. Costs of providing direct support to sources under the small business stationary source technical and environmental compliance assistance program as provided in Iowa Code section 455B.133A.

g. Costs associated with implementing and administering regulatory activities, including programs, as provided for in division II of Iowa Code chapter 455B, other than costs covered by any of the following: operating permit application fees, new source review application fees, or notification fees, pursuant to Iowa Code section 455B.133B(5)*"d"*(2).

The calculated estimate of total revenues from emissions fees shall not exceed $8,250,000 during any state fiscal year.

30.7(4) *Title V applications.* In accordance with Iowa Code section 455B.133B(6), Title V application fee revenues may be used to fund the direct and indirect costs related to reviewing and acting on applications for operating permits submitted by major sources as defined in rule 567—22.100(455B) and sources subject to rule 567—22.101(455B), as follows:

a. Costs of reviewing and acting on any application for an operating permit or operating permit revision.

b. General administrative costs of administering the operating permit program, including the supporting and tracking of operating permit applications and related data entry.

The calculated estimate of total revenues from Title V application fees shall not exceed $1,250,000 during any state fiscal year.

30.7(5) *Asbestos notification.* Pursuant to Iowa Code section 455B.133C(7), asbestos notification fee revenues may be used to fund the direct and indirect costs related to implementing and administering the asbestos national emission standard for hazardous air pollutants program pursuant to 567—Chapter 23. The calculated estimate of total revenues from asbestos notification fees shall not exceed $450,000 during any state fiscal year.

These rules are intended to implement Iowa Code sections 455B.133, 455B.133B and 455B.133C.

ITEM 17. Amend rule **567—31.1(455B)**, third unnumbered paragraph, as follows:

Requirements for nonattainment areas designated on or after May 18, 1998, are in rules 567—31.3(455B) through 567—31.10(455B). Requirements for nonattainment areas designated before May 18, 1998, are in rule 567—31.20(455B). A list of Iowa's nonattainment area designations is found at 40 CFR 81.316 as amended through August 5, 2013. An owner or operator required to apply for a construction permit under this chapter or requesting a plantwide applicability limit shall submit fees as required in 567—Chapter 30.

ITEM 18. Amend rule 567—33.1(455B) as follows:

567—33.1(455B) Purpose. This chapter implements the major New Source Review (NSR) program contained in Part C of Title I of the federal Clean Air Act as amended on November 15, 1990, and as promulgated under 40 CFR 51.166 and 52.21 as amended through July 20, 2011. This is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under Part C of the Clean Air Act as amended on November 15, 1990. In areas that do not meet the national ambient air quality standards (NAAQS), the nonattainment major program applies. The requirements for the nonattainment major NSR program are set forth in 567—22.5(455B), 567—22.6(455B), 567—31.20(455), and 567—31.3(455B). In areas that meet the NAAQS, the PSD program applies. Collectively, the nonattainment major and PSD programs are referred to as the major NSR program. An owner or operator required to apply for a construction permit under 567—Chapter 33 shall submit fees as required in 567—Chapter 30.

Rule 567—33.2(455B) is reserved.

Rule 567—33.3(455B) sets forth the definitions, standards and permitting requirements that are specific to the PSD program.

Rules 567—33.4(455B) through 567—33.8(455B) are reserved.

Rule 567—33.9(455B) includes the conditions under which a source subject to PSD may obtain a plantwide applicability limitation (PAL) on emissions. An owner or operator requesting a PAL under 567—33.9(455B) shall submit fees as required in 567—Chapter 30.

In addition to the requirements in this chapter, stationary sources may also be subject to the permitting requirements in 567—Chapter 22, including requirements for Title V operating permits.

[Filed Emergency After Notice 12/16/15, effective 12/16/15]
[Published 1/6/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/6/16.

ARC 2361C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4 and 2015 Iowa Acts, Senate File 505, section 12(24), the Department of Human Services amends Chapter 36, "Facility Assessments," Chapter 74, "Iowa Health and Wellness Plan," Chapter 75, "Conditions of Eligibility," Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Chapter 81, "Nursing Facilities," Chapter 82, "Intermediate Care Facilities for Persons with an Intellectual Disability," Chapter 83, "Medicaid Waiver Services," Chapter 85, "Services in Psychiatric Institutions," and Chapter 90, "Targeted Case Management," and rescinds Chapter 92, "IowaCare," 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 physical health, behavioral health, and long-term care services and supports. This initiative will deliver quality, patient-centered care to improve the overall health of the Medicaid population and will lead to a more predictable and sustainable budget.

Beginning January 1, 2016, HAWK-I members, Iowa Health and Wellness members, as well as the majority of Medicaid members will have their services coordinated through a managed care organization. Medicaid members who will not be served by a managed care organization include members of the Health Insurance Premium Payment (HIPP) Program, Medically Needy Program, or Programs for All-Inclusive Care for the Elderly (PACE); persons who are determined to be presumptively eligible for Medicaid services; members who participate in the Medicare Savings Program; and members who are American Indian or Alaska Natives who do not volunteer to be served through a managed care organization in this program.

This rule making is one of two rule makings that the Department is adopting to implement the Governor's Medicaid Modernization Initiative as referenced in 2015 Iowa Acts, Senate File 505, section 12(24). The other Adopted and Filed Emergency After Notice rule making is published herein as **ARC 2358C**.

The amendments in this rule making:

- Clarify coverage under the Marketplace Choice Plan, as this coverage will be absorbed under the Iowa Health and Wellness Plan (IHAWP) and will be referred to as "Wellness Plan" moving forward.
- Clarify the process by which an IHAWP member claims a "hardship exemption," indicating that payment of the monthly contribution for the Wellness Plan will be a financial hardship.
- Remove references to the Iowa Plan for Behavioral Health.
- Rescind outdated subrules regarding provider qualifications, prior to December 31, 2006, for home- and community-based services (HCBS) provided in residential care facilities.

- Remove outdated references to "mental retardation" and replace them with "intellectual disability."
- Replace outdated references to "comprehensive functional assessment tool" for the intellectual disability waiver with "Supports Intensity Scale (SIS) assessment."
- Remove outdated references to the Iowa Foundation for Medical Care (IFMC) and replace them with references to the IME medical services unit.
- Add the managed care organizations' role or responsibility in delivery and payment of Medicaid-covered services.
- Clarify the process for provider notification of incident reports for members enrolled with a managed care organization (MCO).
- Add a new service definition of and reimbursement methodology and record requirements for child care medical services.
- Remove references to accountable care organizations.
- Remove outdated references to average wholesale price (AWP) for drug reimbursement and state maximum allowable cost (SMAC) reimbursement for generic drugs.
- Clarify that requests for prior authorization go through the managed care organization.
- Clarify the process for drug authorization and remove outdated language related to the process.
- Remove references to the MediPASS Program.
- Add definitions of level of care criteria for facilities and the HCBS waivers.
- Remove the service plan as a requirement for the HCBS waiver and state plan HCBS eligibility determinations.
- Rescind rules relating to IowaCare.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2242C** on November 11, 2015.

The Department received multiple comments from 28 respondents during the public comment period and at the five public hearings held across the state from December 2, 2015, to December 4, 2015. The comments were lengthy and in many instances duplicative. The public comments shown below are the nine comments that resulted in changes to the proposed amendments, and the Department's response follows each comment. A full electronic copy of the public comments and the Department's responses may be found on the Department's Web site, www.dhs.iowa.gov, under the rules section.

These rules are not intended to reiterate all provisions of the managed care contracts or all applicable federal requirements. The Department's contracts with the MCOs require compliance with all applicable legal requirements.

Comment 1: A respondent suggested the reference to "dental provider" be changed to "dentist" in paragraph 74.11(4)"a."

Department response 1: The Department accepted this recommendation and replaced the words "dental provider" with the word "dentist" in the last sentence of paragraph 74.11(4)"a." The amended paragraph now reads as follows:

"*a.* Under healthy behaviors, a wellness examination may be related to either physical health or oral health. Physical examinations must be performed by a medical provider and must assess a member's overall physical health consistent with standard clinical guidelines for preventive physical examinations and as defined by the department. Oral examinations must be performed by a dentist consistent with standard oral health guidelines for preventive dental examinations and as defined by the department."

Comment 2: A respondent requested that the Department not change rule 441—77.10(249A), which pertains to medical equipment and appliances, prosthetic devices and medical supplies. The respondent stated that requiring all dealers in medical equipment and appliances, prosthetic devices and medical supplies in Iowa or other states to be certified to participate in Medicare would be a problem in areas where Medicare uses competitive bidding, as limited numbers of providers will be certified. The respondent also stated that it will make specialty items that Medicaid covers but Medicare does not cover even harder to acquire for Medicaid recipients in Iowa.

Department response 2: To ensure the success of this program, the Department accepted this recommendation and did not adopt the proposed amendments to rule 441—77.10(249A) in Item 19 of the Notice. The Department will continue to look at how Medicare is implementing competitive bidding

to see if this should be added in the future. Because Item 19 in the Notice has been omitted, subsequent item numbers within the body of this rule-making document have been renumbered accordingly.

Comment 3: A respondent stated that the proposed amendment to rule 441—77.12(249A) requires previously unaccredited behavioral health intervention providers to become accredited to continue to provide services and that requiring accreditation from the named accreditation bodies without a reasonable time frame for transition will decrease access to services for Iowans. The respondent asked that a 12-month transition time line be set to allow providers who are not accredited the time necessary to complete the accreditation process.

Department response 3: The Department changed the amendments to rule 441—77.12(249A) to add a sixth accreditation item to the list being appended to the rule. Specifically, paragraph "6" referencing 441—Chapter 24, Accreditation of providers of services to persons with mental illness, intellectual disabilities or developmental disabilities, has been added as shown below as Chapter 24 is considered an acceptable accreditation body for behavioral health interventions. New paragraph "6" of rule 441—77.12(249A) reads as follows:

"6. Iowa Administrative Code 441—Chapter 24, "Accreditation of Providers of Services to Persons with Mental Illness, Intellectual Disabilities, or Developmental Disabilities."

Comment 4: A respondent proposed the use of consistent descriptions of services in all rules by using the description "nursing, psychosocial, developmental therapies and personal care" in new rule 441—77.51(249A) to more accurately reflect the program.

Department response 4: The Department accepted this recommendation and made the following change to new rule 441—77.51(249A):

441—77.51(249A) Child care medical services. Child care centers are eligible to participate in the medical assistance program when they comply with the standards of 441—Chapter 109. A child care center in another state is eligible to participate when duly licensed in that state. The provider of child care medical services implements a comprehensive protocol of care that is developed in conjunction with the parent or guardian and specifies the medical, nursing, psychosocial, ~~and~~ developmental therapies and personal care required by the medically dependent or technologically dependent child served. Nursing services must be provided.

Comment 5: A respondent proposed that new subrule 78.28(8) be changed to use a consistent description of services in all rules, namely, "nursing, psychosocial, developmental therapies and personal care." The respondent also proposed removal of the words "per discipline" as providers currently indicate expected number of hours per day/days per week based on the plan of care using a combined hourly rate.

Department response 5: The Department accepted this recommendation and made the following changes to new subrule 78.28(8):

78.28(8) Nursing, ~~personal care, or~~ psychosocial, developmental therapies and personal care services provided by a licensed child care center for members aged 20 or under require prior approval and shall be approved if the services are determined to be medically necessary. The request for prior authorization shall include a nursing assessment, the plan of care, and supporting documentation and shall identify the types and service delivery levels of all other services provided to the member whether or not the services are reimbursable by Medicaid. Providers shall indicate the expected number of nursing, home health aide or behavior intervention hours per day, the number of days per week, and the number of weeks or months of service ~~per discipline~~ based on the plan of care using a combined hourly rate.

Comment 6: A respondent recommended that language be added to new subrule 78.57(2), specifically, that "teaching pro-social skills and reinforcing positive interactions" be added to the end of the last sentence after "self-help skills." The respondent stated that these are current program activities and that the additional language clarifies that these activities could be provided by a trained caregiver without licensed mental health oversight.

Department response 6: The Department accepted this recommendation and made the following change to new subrule 78.57(2):

78.57(2) Personal care services are those services which are provided by an aide but are delegated and supervised by a registered nurse under the direction of the member's physician. Payment for personal

care services may be approved if the services are determined to be medically necessary as defined in subrule 78.57(5). Personal care services shall be in accordance with the member's plan of care and authorized by a physician. Personal care services include the activities of daily living, oral hygiene, grooming, toileting, feeding, range of motion and positioning, and training the member in necessary self-help skills, including teaching prosocial skills and reinforcing positive interactions.

Comment 7: A respondent recommended changing new subrule 78.57(3) by removing the language "teach pro-social skills and reinforcing positive interactions" and replacing it with "focus at decreasing or eliminating maladaptive behaviors" to clarify the type of care plan interventions that are truly "psychosocial services" and need the review of licensed mental health providers.

Department response 7: The Department accepted this recommendation and made the following change to new subrule 78.57(3):

78.57(3) Psychosocial services are those services that ~~teach pro-social skills and reinforce positive interactions~~ focus at decreasing or eliminating maladaptive behaviors. Payment for psychosocial services may be approved if the services are determined to be medically necessary as defined in subrule 78.57(5). Psychosocial services shall be in accordance with the member's plan of care and authorized by a physician. Psychosocial services include implementing a plan using clinically accepted techniques for decreasing or eliminating maladaptive behaviors. Psychosocial intervention plans must be developed and reviewed by licensed mental health providers.

Comment 8: A respondent proposed that an additional subrule be added to rule 441—78.57(249A). Specifically, the respondent stated that there should be a definitional subrule for developmental therapies and recommended a new subrule to assist in clarifying developmental therapies and that the content of the new subrule might read as follows:

"Developmental therapies are those services which are provided by an aide but are delegated and supervised by a licensed therapist under the direction of the member's physician. Payment for developmental therapies may be approved if the services are determined to be medically necessary as defined in subrule 78.57(4). Developmental therapies shall be in accordance with the member's plan of care and authorized by a physician. Developmental therapies include activities based on the individual's needs such as fine motor, gross motor and receptive expressive language."

Department response 8: The Department accepted this recommendation and added a new subrule 78.57(4) to rule 441—78.57(249A) and renumbered proposed subrules 78.57(4) to 78.57(6) as 78.57(5) to 78.57(7). New subrule 78.57(4) reads as follows:

"**78.57(4)** Developmental therapies are those services which are provided by an aide but are delegated and supervised by a licensed therapist under the direction of the member's physician. Payment for developmental therapies may be approved if the services are determined to be medically necessary as defined in subrule 78.57(5). Developmental therapies shall be in accordance with the member's plan of care and authorized by a physician. Developmental therapies include activities based on the individual's needs such as fine motor, gross motor, and receptive expressive language."

Comment 9: A respondent proposed adding the term "developmental therapies" throughout new rule 441—78.57(249A) and proposed that treatment plan language be deleted and "plan of care" be inserted in lieu thereof for consistency. The respondent also proposed changes to proposed subparagraph 78.57(5)"c"(8) to clarify information requirements.

Department response 9: The Department accepted this recommendation and made the following changes to new subrule 78.57(6) (proposed subrule 78.57(5)):

78.57(6) Requirements.

a. Nursing, ~~personal care, or~~ psychosocial, developmental therapies and personal care services shall be ordered in writing.

b. Nursing, ~~personal care, or~~ psychosocial, developmental therapies and personal care services shall be authorized by the department or the department's designated review agent prior to payment.

c. Prior authorization shall be requested at the time of initial submission of the plan of care or at any time the plan of care is substantially amended and shall be renewed with the department or the department's designated review agent. Initial request for and request for renewal of prior authorization shall be submitted to the department's designated review agent. The provider of the service is responsible

for requesting prior authorization and for obtaining renewal of prior authorization. The request for prior authorization shall include a nursing assessment, the plan of care, and supporting documentation. A treatment plan shall be completed prior to the start of care and at a minimum reviewed every 180 days thereafter. The ~~treatment~~ plan of care shall support the medical necessity and intensity of services to be provided by reflecting the following information:

(1) to (7) No change.

(8) Member's medical condition as reflected by the following information, if applicable:

1. Dates of prior hospitalization.
2. Dates of prior surgery.
3. Date last seen by a primary care provider.
4. Diagnoses and dates of onset of diagnoses for which treatment is being rendered.
5. Prognosis.
6. Functional limitations.
7. Vital signs reading.
8. ~~Date of last episode of instability.~~
9. ~~9.~~ 8. Date of last episode of acute recurrence of illness or symptoms.
10. ~~10.~~ 9. Medications.

(9) to (12) No change.

Pursuant to Iowa Code section 17A.5(2)"b"(1) as amended by 2015 Iowa Acts, House File 536, section 27, the Department finds that the normal effective date of these amendments, 35 days after publication, can be waived and the amendments made effective January 1, 2016, in accordance with legislative authority as found in 2015 Iowa Acts, Senate File 505, section 12(24).

The Council on Human Services adopted these amendments on December 16, 2015.

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, there will be a reduction in the staff of the current vendors providing administrative support to the current Medicaid program; however, the managed care organizations will be hiring new staff to accommodate their new line of business in Iowa.

These amendments are intended to implement Iowa Code section 249A.4 and 2015 Iowa Acts, Senate File 505, section 12(24).

These amendments became effective January 1, 2016.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 36**, division I title, as follows:

DIVISION I
ASSESSMENT FEE FOR INTERMEDIATE CARE FACILITIES FOR ~~THE MENTALLY RETARDED~~ PERSONS WITH AN INTELLECTUAL DISABILITY

ITEM 2. Amend rule 441—36.1(249A) as follows:

441—36.1(249A) Assessment of fee. Intermediate care facilities for ~~the mentally retarded~~ persons with an intellectual disability (ICFs/~~MR~~ ID) licensed in Iowa under 481—Chapter 64 shall pay a monthly fee to the department. Effective January 1, 2008, the fee shall equal 5.5 percent of the total revenue of the facility for the facility's preceding fiscal year divided by the number of months of facility operation during the preceding fiscal year.

ITEM 3. Amend subrule 36.2(3) as follows:

36.2(3) ~~The department shall deduct the monthly amount due from medical assistance payments to the facility. The department shall also deduct from medical assistance payments any additional amount due for past months as a result of an adjustment to the assessment.~~ ICFs/ID shall pay the monthly amount due to the department.

ITEM 4. Amend subrule 36.3(1) as follows:

36.3(1) Any licensed ICF/~~MR~~ ID in Iowa that is not certified to participate in the Medicaid program shall submit Form 470-0030, Financial and Statistical Report, as required for participating facilities by rule 441—82.5(249A), for purposes of determining the amount of the assessment. The department may audit and adjust the reports submitted, as provided for participating facilities in 441—subrules 82.5(10) and 82.17(1).

ITEM 5. Rescind the definition of "Accountable care organization" in rule **441—74.1(249A,85GA,SF446)**.

ITEM 6. Adopt the following **new** definition of "Managed care organization" in rule **441—74.1(249A,85GA,SF446)**:

"Managed care organization" means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of "health maintenance organization" as defined in Iowa Code section 514B.1.

ITEM 7. Amend subparagraph **74.11(2)"c"(5)** as follows:

(5) The member claims a hardship exemption indicating that payment of the monthly contribution will be a financial hardship. The member may claim a hardship exemption by telephoning the call center designated by the department, by checking the hardship box on the billing statement (for the month of the billing statement), or by submitting a written statement to the address designated by the department. The member's hardship exemption must be received or postmarked within five working days after the monthly contribution due date. If the hardship exemption request is not made in a timely manner, the exemption shall not be granted.

ITEM 8. Amend paragraph **74.11(4)"a"** as follows:

a. ~~A~~ Under healthy behaviors, a wellness examination may be related to either physical health or oral health. Physical examinations must be performed by a medical provider and must assess a member's overall physical health consistent with standard clinical guidelines for preventive physical examinations and as defined by the department. Oral examinations must be performed by a dentist consistent with standard oral health guidelines for preventive dental examinations and as defined by the department.

ITEM 9. Amend subrule 74.12(1) as follows:

74.12(1) *Iowa wellness plan services.* Iowa Health and Wellness Plan members with countable income that does not exceed 100 percent of the federal poverty level shall be enrolled in the Iowa wellness plan unless the member is determined by the department to be a medically exempt individual. The department shall provide the member with a medical assistance eligibility card identifying the member as eligible for Iowa wellness plan services.

a. No change.

~~*b.* The Iowa wellness plan provider network shall include all providers enrolled in the medical assistance program, including all participating accountable care organizations.~~

~~*c.*~~ *b.* Members enrolled in the Iowa wellness plan shall be subject to enrollment in managed care, other than PACE programs, pursuant to 441—Chapter 88. ~~In addition to reimbursement for managed care pursuant to 441—Chapter 88, the department may provide care coordination fees, performance incentive payments, or shared savings arrangements for medical homes and accountable care organizations serving members enrolled in the Iowa wellness plan.~~

~~*d.* When the member does not choose a primary medical provider, the department shall assign the member to a primary medical provider in accordance with the Medicaid managed health care mandatory enrollment provisions specified in 441—subrule 88.3(7) for mandatory enrollment counties and in accordance with quality data available to the department.~~

~~*e.*~~ *c.* Dental services shall be provided through a contract with one or more commercial dental plans. The department may restrict member access to those entities with which the department contracts. The dental plan or plans shall provide the member with a dental card identifying the member as eligible for dental services.

ITEM 10. Amend subrule 74.12(2) as follows:

74.12(2) *Marketplace choice plan services.* At the department's discretion, Iowa Health and Wellness Plan members with countable income between 101 percent and 133 percent of the federal poverty level ~~shall~~ may be enrolled in a marketplace choice plan unless the member is determined by the department to be a medically exempt individual. ~~Marketplace~~ At the department's discretion, marketplace choice coverage ~~shall~~ may be provided through designated qualified health plans available on the health insurance marketplace. Covered services not provided by the marketplace choice plan will be provided by the medical assistance program. ~~Individuals who have been determined eligible for the marketplace choice plan, but who have not yet been enrolled in a marketplace choice plan, shall receive fee-for-service coverage under the Iowa wellness plan until they choose or are assigned to a marketplace choice plan.~~

a. to *e.* No change.

ITEM 11. Amend subrule 74.13(1) as follows:

74.13(1) *Claims for services not provided by a qualified health plan.* Claims for services provided under the Iowa wellness plan or for covered marketplace choice services not provided by the member's qualified health plan shall be submitted to the Iowa Medicaid enterprise as required by 441—Chapter 80 or to the member's Medicaid managed care organization.

ITEM 12. Amend subrule 74.13(2) as follows:

74.13(2) *Payment for services not provided by a qualified health plan.* Payment for services provided under the Iowa wellness plan or for covered marketplace choice services not provided by the member's qualified health plan shall be provided in accordance with 441—Chapter 79 or as provided in a contract between the department or the member's Medicaid managed care organization and the provider.

ITEM 13. Rescind and reserve rule **441—74.15(249A,85GA,ch138)**.

ITEM 14. Amend paragraph **75.21(10)"b"** as follows:

b. For individual health plans, the client shall complete HIPP ~~Individual~~ Private Policy Review, Form 470-3017, for the review.

ITEM 15. Amend subparagraph **75.21(12)"a"(3)** as follows:

(3) The health plan is no longer available to the family (e.g., the employer ~~drops~~ no longer provides health insurance coverage or the policy is terminated by the insurance company).

ITEM 16. Amend rule **441—75.25(249A)**, definition of "Noncovered Medicaid services," as follows:

"Noncovered Medicaid services" for medically needy shall mean medical services that are not covered under Medicaid because the provider was not enrolled in Medicaid, the services are ones which are otherwise not covered under Medicaid, the bill is for a responsible relative who is not in the Medicaid-eligible group or the bill is for services delivered before the start of a certification period.

ITEM 17. Amend subrule 75.28(7) as follows:

75.28(7) *Estate recovery.* Medical assistance, including the amount the state paid to a managed care organization (MCO) for provision of medical services, also called capitation fees, is subject to recovery from the estate of a Medicaid member, the estate of the member's surviving spouse, or the estate of the member's surviving child as provided in this subrule. Effective January 1, 2010, medical assistance that has been paid for Medicare cost sharing or for benefits described in Section 1902(a)(10)(E) of the Social Security Act is not subject to recovery. All assets included in the estate of the member, the surviving spouse, or the surviving child are subject to probate for the purposes of medical assistance estate recovery pursuant to Iowa Code section ~~249A.5(2)*"d."*~~ 249A.53(2)*"d."* The classification of the debt is defined at Iowa Code section 633.425(7).

a. ~~*Definition of estate*~~ *Definitions.*

"Capitated payment/rate" means a monthly payment to the contractor on behalf of each member for the provision of health services under the contract. Payment is made regardless of whether the member receives services during the month.

"Estate." For the purpose of this subrule, the "estate" of a Medicaid member, a surviving spouse, or a surviving child shall include all real property, personal property, or any other asset in which the member, spouse, or surviving child had any legal title or interest at the time of death, or at the time a child reaches the age of 21, to the extent of that interest. An estate includes, but is not limited to, interest in jointly held property, retained life estates, and interests in trusts.

"Managed care organization" means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of "health maintenance organization" as defined in Iowa Code section 514B.1.

b. to *f.* No change.

g. Waiving the collection of the debt.

(1) The department shall waive the collection of the debt created under this subrule from the estate of the member to the extent that collection of the debt would result in either of the following:

1. No change.

2. Creation of an undue hardship for the person seeking a waiver of estate recovery. Undue hardship exists when total household income is less than 200 percent of the poverty level for a household of the same size, total household resources do not exceed $10,000, and application of estate recovery would result in deprivation of food, clothing, shelter, or medical care such that life or health would be endangered. For this purpose, "income" and "resources" shall be defined as being under the family ~~medical assistance~~ investment program.

(2) To apply for a waiver of estate recovery due to undue hardship, the person shall provide a written statement and supporting verification to the department within 30 days of the notice of estate recovery pursuant to Iowa Code section ~~633.425~~ 249A.53(2).

(3) No change.

h. to *k.* No change.

ITEM 18. Rescind and reserve rule **441—75.30(249A)**.

ITEM 19. Amend rule 441—77.12(249A) as follows:

441—77.12(249A) Behavioral health intervention. A provider of behavioral health intervention is eligible to participate in the medical assistance program when the provider is ~~enrolled in the Iowa Plan for Behavioral Health pursuant to 441—Chapter 88, Division IV. Providers must complete child abuse, dependent adult abuse, and criminal background screenings pursuant to Iowa Code section 135C.33(5)"a"(1) before employment of a staff member who will provide direct care.~~ accredited by one of the following bodies:

1. The Joint Commission accreditation (TJC), or
2. The Healthcare Facilities Accreditation Program (HFAP), or
3. The Commission on Accreditation of Rehabilitation Facilities (CARF), or
4. The Council on Accreditation (COA), or
5. The Accreditation Association for Ambulatory Health Care (AAAHC), or
6. Iowa Administrative Code 441—Chapter 24, "Accreditation of Providers of Services to Persons with Mental Illness, Intellectual Disabilities, or Developmental Disabilities."

This rule is intended to implement Iowa Code section 249A.4 and 2010 Iowa Acts, chapter 1192, section 31.

ITEM 20. Amend rule 441—77.25(249A), introductory paragraph, as follows:

441—77.25(249A) Home- and community-based habilitation services. To be eligible to participate in the Medicaid program as an approved provider of home- and community-based habilitation services, a provider shall ~~be an enrolled provider of habilitation with the Iowa Plan for Behavioral Health and~~ meet

the general requirements in subrules 77.25(2), 77.25(3), and 77.25(4) and shall meet the requirements in the subrules applicable to the individual services being provided.

ITEM 21. Adopt the following **new** definition of "Managed care organization" in subrule **77.25(1)**:

"Managed care organization" means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of "health maintenance organization" as defined in Iowa Code section 514B.1.

ITEM 22. Amend subparagraph **77.25(3)"b"(2)** as follows:

(2) By the end of the next calendar day after the incident, the staff member who observed or first became aware of the incident shall also report as much information as is known about the incident to the member's managed care organization in the format defined by the managed care organization. If the member is not enrolled with a managed care organization, the staff member shall report the information to the department's bureau of long-term care either:

1. By direct data entry into the Iowa Medicaid Provider Access System, or
2. By faxing or mailing Form 470-4698, Critical Incident Report, according to the directions on the form.

ITEM 23. Rescind paragraph **77.25(6)"j."**

ITEM 24. Rescind paragraph **77.25(7)"g."**

ITEM 25. Rescind and reserve subrule **77.25(10)**.

ITEM 26. Amend subparagraph **77.30(18)"c"(2)** as follows:

(2) By the end of the next calendar day after the incident, the staff member who observed or first became aware of the incident shall also report as much information as is known about the incident to the member's managed care organization in the format defined by the managed care organization. If the member is not enrolled with a managed care organization, the staff member shall report the information to the department's bureau of long-term care either:

1. By direct data entry into the Iowa Medicaid Provider Access System, or
2. By faxing or mailing Form 470-4698, Critical Incident Report, according to the directions on the form.

ITEM 27. Amend subparagraph **77.33(22)"c"(2)** as follows:

(2) By the end of the next calendar day after the incident, the staff member who observed or first became aware of the incident shall also report as much information as is known about the incident to the member's managed care organization in the format defined by the managed care organization. If the member is not enrolled with a managed care organization, the staff member shall report the information to the department's bureau of long-term care either:

1. By direct data entry into the Iowa Medicaid Provider Access System, or
2. By faxing or mailing Form 470-4698, Critical Incident Report, according to the directions on the form.

ITEM 28. Amend subparagraph **77.34(14)"c"(2)** as follows:

(2) By the end of the next calendar day after the incident, the staff member who observed or first became aware of the incident shall also report as much information as is known about the incident to the member's managed care organization in the format defined by the managed care organization. If the member is not enrolled with a managed care organization, the staff member shall report the information to the department's bureau of long-term care either:

1. By direct data entry into the Iowa Medicaid Provider Access System, or
2. By faxing or mailing Form 470-4698, Critical Incident Report, according to the directions on the form.

ITEM 29. Amend subparagraph **77.37(8)"c"(2)** as follows:

(2) By the end of the next calendar day after the incident, the staff member who observed or first became aware of the incident shall also report as much information as is known about the incident to the member's managed care organization in the format defined by the managed care organization. If the

member is not enrolled with a managed care organization, the staff member shall report the information to the department's bureau of long-term care either:

1. By direct data entry into the Iowa Medicaid Provider Access System, or
2. By faxing or mailing Form 470-4698, Critical Incident Report, according to the directions on the form.

ITEM 30. Amend subparagraph **77.37(23)"d"(4)** as follows:

(4) Individuals qualified to provide all services identified in the service plan shall review the services identified in the service plan to ensure that the services are necessary, appropriate, and consistent with the identified needs of the child, as listed on ~~Form 470-3273, Mental Retardation Functional Assessment Tool~~ the Supports Intensity Scale® (SIS) assessment.

ITEM 31. Amend subparagraph **77.37(23)"d"(6)** as follows:

(6) The individual service plan shall be revised when any of the following occur:

1. and 2. No change.

3. Changes have occurred in the identified service needs of the child, as listed on ~~Form 470-3273, Mental Retardation Functional Assessment Tool~~ the Supports Intensity Scale® (SIS) assessment.

4. No change.

ITEM 32. Amend subparagraph **77.39(6)"c"(2)** as follows:

(2) By the end of the next calendar day after the incident, the staff member who observed or first became aware of the incident shall also report as much information as is known about the incident to the member's managed care organization in the format defined by the managed care organization. If the member is not enrolled with a managed care organization, the staff member shall report the information to the department's bureau of long-term care either:

1. By direct data entry into the Iowa Medicaid Provider Access System, or
2. By faxing or mailing Form 470-4698, Critical Incident Report, according to the directions on the form.

ITEM 33. Amend subparagraph **77.41(12)"c"(2)** as follows:

(2) By the end of the next calendar day after the incident, the staff member who observed or first became aware of the incident shall also report as much information as is known about the incident to the member's managed care organization in the format defined by the managed care organization. If the member is not enrolled with a managed care organization, the staff member shall report the information to the department's bureau of long-term care either:

1. By direct data entry into the Iowa Medicaid Provider Access System, or
2. By faxing or mailing Form 470-4698, Critical Incident Report, according to the directions on the form.

ITEM 34. Amend subparagraph **77.46(1)"d"(4)** as follows:

(4) Reporting procedure for major incidents. By the end of the next calendar day after a major incident, the staff member who observed or first became aware of the incident shall also report as much information as is known about the incident to the member's managed care organization in the format defined by the managed care organization. If the member is not enrolled with a managed care organization, the staff member shall report the information to the department's bureau of long-term care either:

1. By direct data entry into the Iowa Medicaid Provider Access System, or
2. By faxing or mailing Form 470-4698, Critical Incident Report, according to the directions on the form.

ITEM 35. Amend subparagraph **77.47(1)"d"(2)** as follows:

(2) Have a direct agreement with ~~the~~ an Iowa Medicaid managed ~~behavioral health~~ care organization to provide health home services for members with SMI or SED;

ITEM 36. Rescind rule 441—77.51(249A) and adopt the following **new** rule in lieu thereof:

441—77.51(249A) Child care medical services. Child care centers are eligible to participate in the medical assistance program when they comply with the standards of 441—Chapter 109. A child care center in another state is eligible to participate when duly licensed in that state. The provider of child care medical services implements a comprehensive protocol of care that is developed in conjunction with the parent or guardian and specifies the medical, nursing, psychosocial, developmental therapies and personal care required by the medically dependent or technologically dependent child served. Nursing services must be provided.

ITEM 37. Amend paragraph **78.1(1)"g"** as follows:

g. Charges for surgical procedures on the "Outpatient/Same Day Surgery List" produced by the ~~Iowa Foundation for Medical Care~~ IME medical services unit or associated inpatient care charges when the procedure is performed in a hospital on an inpatient basis unless the physician has secured approval from the hospital's utilization review department prior to the patient's admittance to the hospital. Approval shall be granted only when inpatient care is deemed to be medically necessary based on the condition of the patient or when the surgical procedure is not performed as a routine, primary, independent procedure. The "Outpatient/Same Day Surgery List" shall be published by the department in the provider manuals for hospitals and physicians. The "Outpatient/Same Day Surgery List" shall be developed by the ~~Iowa Foundation for Medical Care,~~ IME medical services unit and shall include procedures which can safely and effectively be performed in a doctor's office or on an outpatient basis in a hospital. The ~~Iowa Foundation for Medical Care~~ IME medical services unit may add, delete, or modify entries on the "Outpatient/Same Day Surgery List."

ITEM 38. Amend subrule 78.1(19) as follows:

78.1(19) Preprocedure review by the ~~Iowa Foundation for Medical Care (IFMC)~~ IME medical services unit will be required if payment under Medicaid is to be made for certain frequently performed surgical procedures which have a wide variation in the relative frequency the procedures are performed. Preprocedure surgical review applies to surgeries performed in hospitals (outpatient and inpatient) and ambulatory surgical centers. Approval by the ~~IFMC~~ IME medical services unit will be granted only if the procedures are determined to be medically necessary based on the condition of the patient and the ~~published~~ criteria established by the ~~IFMC~~ IME medical services unit and the department. If not so approved by the ~~IFMC~~ IME medical services unit, payment will not be made under the program to the physician or to the facility in which the surgery is performed. The criteria are available from ~~IFMC, 6000 Westown Parkway, Suite 350E, West Des Moines, Iowa 50265-7771, or in local hospital utilization review offices~~ the IME medical services unit.

~~The "Preprocedure Surgical Review List" shall be published by the department in the provider manuals for physicians, hospitals, and ambulatory surgical centers. The "Preprocedure Surgical Review List" shall be developed by the department with advice and consultation from the IFMC and appropriate professional organizations and will list the procedures for which prior review is required and the steps that must be followed in requesting such review. The department shall update the "Preprocedure Surgical Review List" annually. (Cross-reference 78.28(1)*"e."*)~~

ITEM 39. Amend paragraph **78.1(20)"a"** as follows:

a. Payment will be made only for the following organ and tissue transplant services:

(1) to (3) No change.

(4) Liver transplants for persons with extrahepatic biliary ~~artesia~~ atresia or any other form of end-stage liver disease, except that coverage is not provided for persons with a malignancy extending beyond the margins of the liver.

Liver transplants require preprocedure review by the ~~Iowa Foundation for Medical Care~~ IME medical services unit. (Cross-reference 78.1(19) and 78.28(1)*"f."*)

Covered liver transplants are payable only when performed in a facility that meets the requirements of 78.3(10).

(5) Heart transplants for persons with inoperable congenital heart defects, heart failure, or related conditions. Artificial hearts and ventricular assist devices as a temporary life-support system until a human heart becomes available for transplants are covered. Artificial hearts and ventricular assist devices as a permanent replacement for a human heart are not covered. Heart-lung transplants are covered where bilateral or unilateral lung transplantation with repair of a congenital cardiac defect is contraindicated.

Heart transplants, heart-lung transplants, artificial hearts, and ventricular assist devices described above require preprocedure review by the ~~Iowa Medicaid enterprise~~ IME medical services ~~prior authorization~~ unit. (Cross-reference 78.1(19) and 78.28(1)*"f."*) Covered heart transplants are payable only when performed in a facility that meets the requirements of 78.3(10).

(6) Lung transplants. Lung transplants for persons having end-stage pulmonary disease. Lung transplants require preprocedure review by the ~~Iowa Foundation for Medical Care~~ IME medical services unit. (Cross-reference 78.1(19) and 78.28(1)*"f."*) Covered transplants are payable only when performed in a facility that meets the requirements of 78.3(10). Heart-lung transplants are covered consistent with criteria in subparagraph (5) above.

(7) Pancreas transplants for persons with type I diabetes mellitus, as follows:

1. Simultaneous pancreas-kidney transplants and pancreas after kidney transplants are covered.
2. Pancreas transplants alone are covered for persons exhibiting any of the following:

- A history of frequent, acute, and severe metabolic complications (e.g., hypoglycemia, hyperglycemia, or ketoacidosis) requiring medical attention.
- Clinical problems with exogenous insulin therapy that are so severe as to be incapacitating.
- Consistent failure of insulin-based management to prevent acute complications.

The pancreas transplants listed under this subparagraph require preprocedure review by the ~~Iowa Foundation for Medical Care~~ IME medical services unit. (Cross-reference 78.1(19) and 78.28(1)*"f."*)

Covered transplants are payable only when performed in a facility that meets the requirements of 78.3(10).

Transplantation of islet cells or partial pancreatic tissue is not covered.

ITEM 40. Amend subrule 78.2(5) as follows:

78.2(5) *Nonprescription drugs.*

a. The following drugs that may otherwise be dispensed without a prescription are covered subject to the prior authorization requirements stated below and as specified in the preferred drug list published by the department pursuant to Iowa Code section 249A.20A:

Acetaminophen tablets 325 mg, 500 mg
Acetaminophen elixir 160 mg/5 ml
Acetaminophen solution 100 mg/ml
Acetaminophen suppositories 120 mg
Artificial tears ophthalmic solution
Artificial tears ophthalmic ointment
Aspirin tablets 325 mg, 650 mg, 81 mg (chewable)
Aspirin tablets, enteric coated 325 mg, 650 mg, 81 mg
Aspirin tablets, buffered 325 mg
Bacitracin ointment 500 units/gm
Benzoyl peroxide 5%, gel, lotion
Benzoyl peroxide 10%, gel, lotion
Calcium carbonate chewable tablets 500 mg, 750 mg, 1000 mg, 1250 mg
Calcium carbonate suspension 1250 mg/5 ml
Calcium carbonate tablets 600 mg
Calcium carbonate-vitamin D tablets 500 mg-200 units
Calcium carbonate-vitamin D tablets 600 mg-200 units
Calcium citrate tablets 950 mg (200 mg elemental calcium)
Calcium gluconate tablets 650 mg
Calcium lactate tablets 650 mg

Cetirizine hydrochloride liquid 1 mg/ml
Cetirizine hydrochloride tablets 5 mg
Cetirizine hydrochloride tablets 10 mg
Chlorpheniramine maleate tablets 4 mg
Clotrimazole vaginal cream 1%
Diphenhydramine hydrochloride capsules 25 mg
Diphenhydramine hydrochloride elixir, liquid, and syrup 12.5 mg/5 ml
Epinephrine racemic solution 2.25%
Ferrous sulfate tablets 325 mg
Ferrous sulfate elixir 220 mg/5 ml
Ferrous sulfate drops 75 mg/0.6 ml
Ferrous gluconate tablets 325 mg
Ferrous fumarate tablets 325 mg
Guaifenesin 100 mg/5 ml with dextromethorphan 10 mg/5 ml liquid
Ibuprofen suspension 100 mg/5 ml
Ibuprofen tablets 200 mg
Insulin
Lactic acid (ammonium lactate) lotion 12%
Loperamide hydrochloride liquid 1 mg/5 ml
Loperamide hydrochloride tablets 2 mg
Loratadine syrup 5 mg/5 ml
Loratadine tablets 10 mg
Magnesium hydroxide suspension 400 mg/5 ml
Magnesium oxide capsule 140 mg (85 mg elemental magnesium)
Magnesium oxide tablets 400 mg
Meclizine hydrochloride tablets 12.5 mg, 25 mg oral and chewable
Miconazole nitrate cream 2% topical and vaginal
Miconazole nitrate vaginal suppositories, 100 mg
Multiple vitamin and mineral products with prior authorization
Neomycin-bacitracin-polymyxin ointment
Niacin (nicotinic acid) tablets 50 mg, 100 mg, 250 mg, 500 mg
Nicotine gum 2 mg, 4 mg
Nicotine lozenge 2 mg, 4 mg
Nicotine patch 7 mg/day, 14 mg/day and 21 mg/day
Pediatric oral electrolyte solutions
Permethrin lotion 1%
Polyethylene glycol 3350 powder
Pseudoephedrine hydrochloride tablets 30 mg, 60 mg
Pseudoephedrine hydrochloride liquid 30 mg/5 ml
Pyrethrins-piperonyl butoxide liquid 0.33-4%
Pyrethrins-piperonyl butoxide shampoo 0.3-3%
Pyrethrins-piperonyl butoxide shampoo 0.33-4%
Salicylic acid liquid 17%
Senna tablets 187 mg
Sennosides-docusate sodium tablets 8.6 mg-50 mg
Sennosides syrup 8.8 mg/5 ml
Sennosides tablets 8.6 mg
Sodium bicarbonate tablets 325 mg
Sodium bicarbonate tablets 650 mg
Sodium chloride hypertonic ophthalmic ointment 5%
Sodium chloride hypertonic ophthalmic solution 5%
Tolnaftate 1% cream, solution, powder

Other nonprescription drugs listed as preferred in the preferred drug list published by the department pursuant to Iowa Code section 249A.20A.

b. Nonprescription drugs for use in a nursing facility, PMIC, or ICF/ID shall be included in the per diem rate paid to the nursing facility, PMIC, or ICF/ID.

ITEM 41. Amend subrule 78.3(13) as follows:

78.3(13) Payment for patients in acute hospital beds who are determined by ~~IFMC~~ the IME medical services unit to require the skilled nursing care level of care shall be made at an amount equal to the sum of the direct care rate component limit for Medicare-certified hospital-based nursing facilities pursuant to 441—subparagraph 81.6(16)*"f"*(3) plus the non-direct care rate component limit for Medicare-certified hospital-based nursing facilities pursuant to 441—subparagraph 81.6(16)*"f"*(3), with the rate component limits being revised July 1, 2001, and every second year thereafter. This rate is effective (a) as of the date of notice by ~~IFMC~~ the IME medical services unit that the lower level of care is required or (b) for the days ~~IFMC~~ the IME medical services unit determines in an outlier review that the lower level of care was required.

ITEM 42. Amend subrule 78.3(14) as follows:

78.3(14) Payment for patients in acute hospital beds who are determined by ~~IFMC~~ the IME medical services unit to require nursing facility level of care shall be made at an amount equal to the sum of the direct care rate component limit for Medicaid nursing facilities pursuant to 441—subparagraph 81.6(16)*"f"*(1) plus the non-direct care rate component limit for Medicaid nursing facilities pursuant to 441—subparagraph 81.6(16)*"f"*(1), with the rate component limits being revised July 1, 2001, and every second year thereafter. This rate is effective (a) as of the date of notice by ~~IFMC~~ the IME medical services unit that the lower level of care is required or (b) for the days ~~IFMC~~ the IME medical services unit determines in an outlier review that the lower level of care was required.

ITEM 43. Amend subrule 78.3(15) as follows:

78.3(15) Payment for inpatient hospital charges associated with surgical procedures ~~on the "Outpatient/Same Day Surgery List" produced by the Iowa Foundation for Medical Care shall be made only when attending physician has secured approval from the hospital's utilization review department prior to admittance to the hospital. Approval shall be granted when inpatient care is deemed to be medically necessary based on the condition of the patient or when the surgical procedure is not performed as a routine, primary, independent procedure. The "Outpatient/Same Day Surgery List" shall be published by the department in the provider manuals for hospitals and physicians. The "Outpatient/Same Day Surgery List" shall be developed by the Iowa Foundation for Medical Care, and shall include procedures which can safely and effectively be performed in a doctor's office or on an outpatient basis in a hospital. The Iowa Foundation for Medical Care may add, delete or modify entries on the "Outpatient/Same Day Surgery List."~~ normally done and billed on an outpatient hospital basis is subject to review by the IME medical services acute retrospective review team. Such reviews are based on random claim samples that are pulled on a monthly basis. If the information on a given inpatient claim included in that sample does not appear to support the appropriateness of inpatient level of care, that claim is sent to the IME medical director for further review. If the medical director approves the inpatient level of care, the claim is paid. However, if the medical director determines that the care provided could have been rendered at a lower level of care, the hospital and attending physician are notified accordingly. If the hospital agrees with the finding that a lower level of care was appropriate, the hospital submits a new claim for the lower level of care. If the hospital disagrees with the lower level of care finding, the hospital can submit additional documentation for further review. The hospital or attending physician or both may appeal any final determination by the IME.

ITEM 44. Amend subrule 78.3(18) as follows:

78.3(18) Preprocedure review by the ~~IFMC~~ IME medical services unit is required if hospitals are to be reimbursed for certain frequently performed surgical procedures as set forth under subrule 78.1(19). Preprocedure review is also required for other types of major surgical procedures, such as organ transplants. Criteria are available from ~~IFMC, 6000 Westown Parkway, Suite 350E, West Des~~

~~Moines, Iowa 50265-7771, or in local hospital utilization review offices~~ the IME medical services unit. (Cross-reference 78.28(5))

ITEM 45. Amend subrule **78.12(1)**, definition of "Licensed practitioner of the healing arts," as follows:

"Licensed practitioner of the healing arts" or *"LPHA,"* as used in this rule, means a practitioner such as a physician (M.D. or D.O.), a physician assistant (PA), an advanced registered nurse practitioner (ARNP), a psychologist, a social worker (LMSW or LISW), a marital and family therapist (LMFT), or a mental health counselor (LMHC) who~~:~~

~~1. Is~~ is licensed by the applicable state authority for that profession~~;~~.

~~2. Is enrolled in the Iowa Plan for Behavioral Health (Iowa Plan) pursuant to 441—Chapter 88, Division IV; and~~

~~3. Is qualified to provide clinical assessment services (Current Procedural Terminology code 90801) under the Iowa Plan pursuant to 441—Chapter 88, Division IV.~~

ITEM 46. Adopt the following **new** definition of "Managed care organization" in subrule **78.12(1)**:

"Managed care organization" means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of "health maintenance organization" as defined in Iowa Code section 514B.1.

ITEM 47. Amend subparagraph **78.12(4)"b"(2)** as follows:

(2) Diagnosis and treatment plan development ~~provided in connection with this rule for members enrolled in the Iowa Plan~~ are covered services ~~under the Iowa Plan pursuant to 441—Chapter 88, Division IV~~.

ITEM 48. Amend paragraph **78.26(4)"c"** as follows:

c. Preprocedure review by the ~~Iowa Foundation for Medical Care (IFMC)~~ IME medical services unit is required if ambulatory surgical centers are to be reimbursed for certain frequently performed surgical procedures as set forth under subrule 78.1(19). Criteria are available from ~~IFMC, 1776 West Lakes Parkway, West Des Moines, Iowa 50266-8239, or in local hospital utilization review offices~~ the IME medical services unit. (Cross-reference 78.28(6))

ITEM 49. Amend rule 441—78.27(249A), introductory paragraph, as follows:

441—78.27(249A) Home- and community-based habilitation services. Payment for habilitation services will only be made to providers enrolled to provide habilitation through the Iowa ~~Plan for Behavioral Health~~ Medicaid enterprise.

ITEM 50. Adopt the following **new** definition of "Managed care organization" in subrule **78.27(1)**:

"Managed care organization" means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of "health maintenance organization" as defined in Iowa Code section 514B.1.

ITEM 51. 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 ~~Iowa Medicaid enterprise~~ IME medical services unit ~~or the Iowa Plan for Behavioral Health contractor~~ has determined that the member is in need of home- and community-based habilitation services. ~~A member who is not eligible for integrated health home services shall receive Medicaid case management under 441—Chapter 90 as a home- and community-based habilitation service.~~ The designated case manager or integrated health home care coordinator shall:

(1) and (2) No change.

ITEM 52. Amend paragraph **78.27(2)"e"** as follows:

e. Plan for service. The department ~~or the Iowa Plan for Behavioral Health contractor~~ has approved the member's comprehensive service plan for home- and community-based habilitation services. Home- and community-based habilitation services included in a comprehensive service plan

or treatment plan that has been validated through ISIS ~~or in a treatment plan that has been authorized by the Iowa Plan for Behavioral Health contractor~~ shall be considered approved by the department. Home- and community-based habilitation services provided before approval of a member's eligibility for the program cannot be reimbursed.

(1) to (3) No change.

ITEM 53. Rescind paragraph **78.27(2)"f."**

ITEM 54. Amend subrule 78.27(3) as follows:

78.27(3) *Application for services.* The member, case manager or integrated health home care coordinator shall apply for habilitation services on behalf of a member by contacting the ~~Iowa Plan for Behavioral Health contractor or by entering a program request for habilitation services in ISIS for members who are not eligible to enroll in the Iowa Plan for Behavioral Health for any reason~~ IME medical services unit. The department ~~or the Iowa Plan for Behavioral Health contractor~~ shall issue a notice of decision to the applicant when financial eligibility~~, determination of~~ and needs-based eligibility~~, and approval of the comprehensive service plan or treatment plan~~ determinations have been completed.

ITEM 55. Amend subparagraph **78.27(4)"a"(9)** as follows:

(9) The initial comprehensive service plan or treatment plan and annual updates to the comprehensive service plan or treatment plan must be approved by the ~~Iowa Plan for Behavioral Health contractor, or by the Iowa Medicaid enterprise for members who are not eligible to enroll in the Iowa Plan for Behavioral Health,~~ IME medical services unit in ~~the individualized services information system~~ ISIS before services are implemented. Services provided before the approval date are not payable. The written comprehensive service plan or treatment plan must be completed, signed and dated by the case manager, integrated health home care coordinator, or service worker within 30 calendar days after plan approval.

ITEM 56. Amend subparagraph **78.27(4)"a"(10)** as follows:

(10) Any changes to the comprehensive service plan or treatment plan must be approved by the ~~Iowa Plan for Behavioral Health contractor, or by the Iowa Medicaid enterprise~~ IME medical services unit for members not eligible to enroll in ~~the Iowa Plan for Behavioral Health,~~ a managed care organization in ~~the individualized services information system~~ ISIS before the implementation of services. Services provided before the approval date are not payable.

ITEM 57. Amend paragraph **78.27(4)"e"** as follows:

e. Plan approval.

~~(1) A treatment plan that has been validated and authorized by the Iowa Plan for Behavioral Health contractor shall be considered approved.~~

~~(2)~~ ~~For members who are not Iowa Plan-eligible, services~~ Services shall be entered into ISIS based on the comprehensive service plan. A comprehensive service plan or treatment plan that has been validated and authorized through ISIS shall be considered approved by the department. Services must be authorized in ISIS as specified in paragraph 78.27(2)*"e."*

ITEM 58. Amend subrule 78.27(11) as follows:

78.27(11) *Adverse service actions.*

a. Denial. Services shall be denied when the department ~~or the Iowa Plan for Behavioral Health contractor~~ determines that:

(1) to (5) No change.

b. Reduction. A particular home- and community-based habilitation service may be reduced when the department ~~or the Iowa Plan for Behavioral Health contractor~~ determines that continued provision of service at its current level is not necessary.

c. Termination. A particular home- and community-based habilitation service may be terminated when the department ~~or the Iowa Plan for Behavioral Health contractor~~ determines that:

(1) to (4) No change.

(5) The member has received care in a medical institution for 30 consecutive days in any one stay. When a member has been an inpatient in a medical institution for 30 consecutive days, the department ~~or the Iowa Plan for Behavioral Health contractor~~ will issue a notice of decision to inform the member of the service termination. If the member returns home before the effective date of the notice of decision and the member's condition has not substantially changed, the decision shall be rescinded, and eligibility for home- and community-based habilitation services shall continue.

(6) to (9) No change.

d. Appeal rights.

~~(1) The Iowa Plan for Behavioral Health contractor shall give notice of any adverse action and the right to appeal in accordance with 441—Chapter 7.~~

~~(2)~~ The department shall give notice of any adverse action and the right to appeal in accordance with 441—Chapter 7. The member is entitled to have a review of the determination of needs-based eligibility by the Iowa Medicaid enterprise medical services unit by sending a letter requesting a review to the medical services unit. If dissatisfied with that decision, the member may file an appeal with the department.

ITEM 59. Amend paragraph **78.28(1)"f"** as follows:

f. Preprocedure review by the ~~Iowa Foundation for Medical Care (IFMC)~~ IME medical services unit will be required if payment under Medicaid is to be made for certain frequently performed surgical procedures which have a wide variation in the relative frequency the procedures are performed. Preprocedure surgical review applies to surgeries performed in hospitals (outpatient and inpatient) and ambulatory surgical centers. Approval by ~~IFMC~~ the IME medical services unit will be granted only if the procedures are determined to be medically necessary based on the condition of the patient and on the ~~published~~ criteria established by the department and the ~~IFMC~~ IME medical services unit. If not so approved by the ~~IFMC~~ IME medical services unit, payment will not be made under the program to the physician or to the facility in which the surgery is performed. The criteria are available from ~~IFMC, 3737 Woodland Avenue, Suite 500, West Des Moines, Iowa 50265, or in local hospital utilization review offices~~ the IME medical services unit.

~~The "Preprocedure Surgical Review List" shall be published by the department in the provider manuals for physicians, hospitals, and ambulatory surgical centers. (Cross-reference 78.1(19))~~

ITEM 60. Amend paragraph **78.28(5)"b"** as follows:

b. All inpatient hospital admissions are subject to ~~preadmission~~ retrospective review. Payment for inpatient hospital admissions which are retrospectively reviewed is approved when ~~it~~ the claim meets the criteria for inpatient hospital care as determined by the ~~IFMC or its delegated hospitals~~ IME medical services unit. Criteria are available from ~~IFMC, 6000 Westown Parkway, Suite 350E, West Des Moines, Iowa 50265-7771, or in local hospital utilization review offices~~ the IME medical services unit. (Cross-reference 441—78.3(249A))

ITEM 61. Amend paragraph **78.28(5)"c"** as follows:

c. Preprocedure review by the ~~IFMC~~ IME medical services unit is required if hospitals are to be reimbursed for the inpatient and outpatient surgical procedures set forth in subrule 78.1(19). Approval by the ~~IFMC~~ IME medical services unit will be granted only if the procedures are determined to be medically necessary based on the condition of the patient and the criteria established by the department ~~and IFMC~~. The criteria are available from ~~IFMC, 6000 Westown Parkway, Suite 350E, West Des Moines, Iowa 50265-7771, or in local hospital utilization review offices~~ the IME medical services unit.

ITEM 62. Adopt the following **new** subrule 78.28(8):

78.28(8) Nursing, psychosocial, developmental therapies and personal care services provided by a licensed child care center for members aged 20 or under require prior approval and shall be approved if the services are determined to be medically necessary. The request for prior authorization shall include a nursing assessment, the plan of care, and supporting documentation and shall identify the types and service delivery levels of all other services provided to the member whether or not the services are reimbursable by Medicaid. Providers shall indicate the expected number of nursing, home health aide or

behavior intervention hours per day, the number of days per week, and the number of weeks or months of service based on the plan of care using a combined hourly rate.

ITEM 63. Amend subrule 78.31(1) as follows:

78.31(1) *Covered hospital outpatient services.* Payment will be approved only for the following outpatient hospital services and medical services when provided on the licensed premises of the hospital or pursuant to subrule 78.31(5). Hospitals with alternate sites approved by the department of inspections and appeals are acceptable sites. All outpatient services listed in paragraphs *"g"* to *"m"* are subject to a random sample retrospective review for medical necessity by the ~~Iowa Foundation for Medical Care~~ IME medical services unit. All services may also be subject to a more intensive retrospective review if abuse is suspected. Services in paragraphs *"a"* to *"f"* shall be provided in hospitals on an outpatient basis and are subject to no further limitations except medical necessity of the service.

Services listed in paragraphs *"g"* to *"m"* shall be provided by hospitals on an outpatient basis and must be certified by the department before payment may be made. Other limitations apply to these services.

a. to *n.* No change.

ITEM 64. Amend rule 441—78.33(249A) as follows:

441—78.33(249A) Case management services.

~~**78.33(1)**~~ Payment will be approved for targeted case management services that are provided pursuant to 441—Chapter 90 to:

~~*a.*~~ 1. Members who are 18 years of age or over and have a primary diagnosis of ~~mental retardation~~ intellectual disability, developmental disabilities, or chronic mental illness as defined in rule 441—90.1(249A.

~~*b.*~~ 2. Members who are under 18 years of age and are receiving services under the HCBS intellectual disability waiver or children's mental health waiver.

~~**78.33(2)** Notwithstanding subrule 78.33(1), payment shall not be made for targeted case management services for members who are enrolled in the Iowa Plan for Behavioral Health to receive habilitation pursuant to rule 441—78.27(249A) and are enrolled in an integrated health home as described in rule 441—78.53(249A). Members enrolled in the Iowa Plan for Behavioral Health for habilitation and an integrated health home shall receive care coordination in lieu of case management.~~

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

ITEM 65. Adopt the following **new** rule 441—78.57(249A):

441—78.57(249A) Child care medical services. Payments will be made to licensed child care centers that provide medical services in addition to child care. Medically necessary services are provided under a plan of care that is developed by licensed professionals within their scope of practice and authorized by the member's physician. The services include and implement a comprehensive protocol of care that is developed in conjunction with the parent or guardian and specifies the medical, nursing, personal care, psychosocial and developmental therapies required by the medically dependent or technologically dependent child served.

78.57(1) Nursing services are services which are provided by a registered nurse or a licensed practical nurse under the direction of the member's physician to a member in a licensed child care center. Nursing services shall be provided according to a written plan of care authorized by a physician. Payment for nursing services may be approved if the services are determined to be medically necessary as defined in subrule 78.57(5). Nursing services include activities that require the expertise of a nurse, such as physical assessment, tracheostomy care, medication administration, and tube feedings.

78.57(2) Personal care services are those services which are provided by an aide but are delegated and supervised by a registered nurse under the direction of the member's physician. Payment for personal care services may be approved if the services are determined to be medically necessary as defined in subrule 78.57(5). Personal care services shall be in accordance with the member's plan of care and authorized by a physician. Personal care services include the activities of daily living, oral hygiene,

grooming, toileting, feeding, range of motion and positioning, and training the member in necessary self-help skills, including teaching pro-social skills and reinforcing positive interactions.

78.57(3) Psychosocial services are those services that focus at decreasing or eliminating maladaptive behaviors. Payment for psychosocial services may be approved if the services are determined to be medically necessary as defined in subrule 78.57(5). Psychosocial services shall be in accordance with the member's plan of care and authorized by a physician. Psychosocial services include implementing a plan using clinically accepted techniques for decreasing or eliminating maladaptive behaviors. Psychosocial intervention plans must be developed and reviewed by licensed mental health providers.

78.57(4) Developmental therapies are those services which are provided by an aide but are delegated and supervised by a licensed therapist under the direction of the member's physician. Payment for developmental therapies may be approved if the services are determined to be medically necessary as defined in subrule 78.57(5). Developmental therapies shall be in accordance with the member's plan of care and authorized by a physician. Developmental therapies include activities based on the individual's needs such as fine motor, gross motor, and receptive expressive language.

78.57(5) "Medically necessary" means the service is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent the worsening of conditions that endanger life, cause pain, result in illness or infirmity, or threaten to cause or aggravate a disability or chronic illness and is an effective course of treatment for the member requesting a service.

78.57(6) Requirements.

a. Nursing, psychosocial, developmental therapies and personal care services shall be ordered in writing.

b. Nursing, psychosocial, developmental therapies and personal care services shall be authorized by the department or the department's designated review agent prior to payment.

c. Prior authorization shall be requested at the time of initial submission of the plan of care or at any time the plan of care is substantially amended and shall be renewed with the department or the department's designated review agent. Initial request for and request for renewal of prior authorization shall be submitted to the department's designated review agent. The provider of the service is responsible for requesting prior authorization and for obtaining renewal of prior authorization. The request for prior authorization shall include a nursing assessment, the plan of care, and supporting documentation. A treatment plan shall be completed prior to the start of care and at a minimum reviewed every 180 days thereafter. The plan of care shall support the medical necessity and intensity of services to be provided by reflecting the following information:

(1) Place of service.
(2) Type of service to be rendered and the treatment modalities being used.
(3) Frequency of the services.
(4) Assistance devices to be used.
(5) Date on which services were initiated.
(6) Progress of member in response to treatment.
(7) Medical supplies to be furnished.
(8) Member's medical condition as reflected by the following information, if applicable:
1. Dates of prior hospitalization.
2. Dates of prior surgery.
3. Date last seen by a primary care provider.
4. Diagnoses and dates of onset of diagnoses for which treatment is being rendered.
5. Prognosis.
6. Functional limitations.
7. Vital signs reading.
8. Date of last episode of acute recurrence of illness or symptoms.
9. Medications.
(9) Discipline of the person providing the service.
(10) Certification period.

(11) Physician's signature and date. The treatment plan must be signed and dated by the physician before the claim for service is submitted for reimbursement.

(12) Forms 470-4815 and 470-4816 are utilized during the prior authorization review.

78.57(7) Nursing, personal care, and psychosocial services do not include:

a. Services provided to members aged 21 and older.

b. Services that require prior authorizations that are provided without regard to the prior authorization process.

c. Nursing services provided simultaneously with other Medicaid services (e.g., home health aide, physical, occupational, or speech therapy services, etc.).

d. Services that exceed the services that are approvable under the private duty nursing and personal care program pursuant to subrule 78.9(10).

e. Transportation services.

f. Services provided to a member while the member is in institutional care.

This rule is intended to implement Iowa Code chapter 249A.

ITEM 66. Amend rule 441—79.1(249A), introductory paragraph, as follows:

441—79.1(249A) Principles governing reimbursement of providers of medical and health services. The basis of payment for services rendered by providers of services participating in the medical assistance program is either a system based on the provider's allowable costs of operation or a fee schedule. Generally, institutional types of providers such as hospitals and nursing facilities are reimbursed on a cost-related basis, and practitioners such as physicians, dentists, optometrists, and similar providers are reimbursed on the basis of a fee schedule. Providers of service must accept reimbursement based upon the department's methodology without making any additional charge to the member.

For purposes of this chapter, "managed care organization" means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of "health maintenance organization" as defined in Iowa Code section 514B.1.

ITEM 67. Amend subrule **79.1(2)**, provider categories of "Behavioral health intervention," "Federally qualified health centers," "Psychiatric medical institutions for children" and "Rural health clinics," as follows:

Provider category	Basis of reimbursement	Upper limit
Behavioral health intervention	Fee schedule ~~as determined by the Iowa Plan for Behavioral Health~~	Fee schedule in effect 7/1/13.
Federally qualified health centers	Retrospective cost-related. See 441—~~88.14(249A)~~ Chapter 73	1. Prospective payment rate as required by the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA 2000) or an alternative methodology allowed thereunder, as specified in "2" below. 2. 100% of reasonable cost as determined by Medicare cost reimbursement principles. 3. In the case of services provided pursuant to a contract between an FQHC and a managed care organization (MCO), reimbursement from the MCO shall be supplemented to achieve "1" or "2" above.
Psychiatric medical institutions for children:		

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Provider category	Basis of reimbursement	Upper limit
1. Inpatient in non-state-owned facilities	~~Provider-specific fee~~ Fee schedule ~~as determined by the Iowa Plan for Behavioral Health contractor~~	Effective 7/1/14: non-state-owned facilities provider-specific fee schedule in effect.
2. Inpatient in state-owned facilities	Retrospective cost-related	Effective 8/1/11: 100% of actual and allowable cost.
3. Outpatient day treatment	Fee schedule	Fee schedule in effect 6/30/13 plus 1%.
Rural health clinics	Retrospective cost-related. See 441—~~88.14(249A)~~ Chapter 73	1. Prospective payment rate as required by the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA 2000) or an alternative methodology allowed thereunder, as specified in "2" below. 2. 100% of reasonable cost as determined by Medicare cost reimbursement principles. 3. In the case of services provided pursuant to a contract between an RHC and a managed care organization (MCO), reimbursement from the MCO shall be supplemented to achieve "1" or "2" above.

ITEM 68. Adopt the following **new** provider categories in alphabetical order in subrule **79.1(2)**:

Provider category	Basis of reimbursement	Upper limit
Child care medical services	Fee schedule	Fee schedule in effect 1/1/16.
Drug and alcohol services	Fee schedule	Fee schedule in effect 1/1/16.
Emergency psychiatric services	Fee schedule	Fee schedule in effect 1/1/16.
Psychiatric services	Fee schedule	Fee schedule in effect 1/1/16.

ITEM 69. Amend subrule 79.1(8) as follows:

79.1(8) *Drugs.* The amount of payment shall be based on several factors, subject to the upper limits in 42 CFR 447.500 to 447.520 as amended to May 16, 2012. The Medicaid program relies on information published by Medi-Span to classify drugs as brand-name or generic. ~~Specialty drugs include biological drugs, blood-derived products, complex molecules, and select oral, injectable, and infused medications identified by the department and published on the specialty drug list.~~

~~*a.* Until February 1, 2013, or federal approval of the reimbursement methodology provided in paragraph 79.1(8)*"c,"* whichever is later, reimbursement for covered generic prescription drugs shall be the lowest of the following, as of the date of dispensing:~~

~~(1) The estimated acquisition cost, defined:~~

~~1. For covered nonspecialty generic prescription drugs, as the average wholesale price as published by Medi-Span less 12 percent, plus the professional dispensing fee specified in paragraph 79.1(8)*"i"*; or~~

~~2. For covered specialty generic prescription drugs, as the average wholesale price as published by Medi-Span less 17 percent, plus the professional dispensing fee specified in paragraph 79.1(8)*"i."*~~

~~(2) The maximum allowable cost (MAC), defined as the upper limit for multiple source drugs established in accordance with the methodology of the Centers for Medicare and Medicaid Services as described in 42 CFR 447.514, plus the professional dispensing fee specified in paragraph 79.1(8)*"i."*~~

~~(3) The state maximum allowable cost (SMAC), defined as the average wholesale acquisition cost for a generic drug (the average price pharmacies pay to obtain the generic drug as evidenced by purchase records) adjusted by a multiplier of 1.2, plus the professional dispensing fee specified in paragraph 79.1(8)*"i."*~~

~~(4) The submitted charge, representing the provider's usual and customary charge for the drug.~~

~~*b.* Until February 1, 2013, or federal approval of the reimbursement methodology provided in paragraph 79.1(8)*"d,"* whichever is later, reimbursement for covered brand-name prescription drugs shall be the lower of the following, as of the date of dispensing:~~

~~(1) The estimated acquisition cost, defined:~~

~~1. For covered nonspecialty brand-name prescription drugs, as the average wholesale price as published by Medi-Span less 12 percent, plus the professional dispensing fee specified in paragraph 79.1(8)*"i"*; or~~

~~2. For covered specialty brand-name prescription drugs, as the average wholesale price as published by Medi-Span less 17 percent, plus the professional dispensing fee specified in paragraph 79.1(8)*"i."*~~

~~(2) The submitted charge, representing the provider's usual and customary charge for the drug.~~

~~*c.*~~ *a.* ~~Effective February 1, 2013, or upon federal approval, whichever is later, reimbursement~~ Reimbursement for covered generic prescription drugs and for covered nonprescription drugs shall be the lowest of the following, as of the date of dispensing:

(1) The average actual acquisition cost (AAC), determined pursuant to paragraph 79.1(8)*"k g,"* plus the professional dispensing fee determined pursuant to paragraph 79.1(8)*"j f."*

(2) The maximum allowable cost (MAC), defined as the specific upper limit for multiple source drugs established in accordance with the methodology of the Centers for Medicare and Medicaid Services as described in 42 CFR 447.514, plus the professional dispensing fee determined pursuant to paragraph 79.1(8)*"j f."*

(3) The submitted charge, representing the provider's usual and customary charge for the drug.

~~*d.*~~ *b.* ~~Effective February 1, 2013, or upon federal approval, whichever is later, reimbursement~~ Reimbursement for covered brand-name prescription drugs shall be the lower of the following, as of the date of dispensing:

(1) The average actual acquisition cost (AAC), determined pursuant to paragraph 79.1(8)*"k g,"* plus the professional dispensing fee determined pursuant to paragraph 79.1(8)*"j f."*

(2) The submitted charge, representing the provider's usual and customary charge for the drug.

~~*e.*~~ *c.* No payment shall be made for sales tax.

~~*f.*~~ *d.* All hospitals that wish to administer vaccines which are available through the Vaccines for Children Program to Medicaid members shall enroll in the Vaccines for Children Program. In lieu of payment, vaccines available through the Vaccines for Children Program shall be accessed from the department of public health for Medicaid members. Hospitals receive reimbursement for the administration of vaccines to Medicaid members through the DRG reimbursement for inpatients and APC reimbursement for outpatients.

~~*g.* Until February 1, 2013, or federal approval of the reimbursement methodology provided in paragraph 79.1(8)*"c,"* whichever is later, the basis of payment for nonprescription drugs shall be the same as specified in paragraph 79.1(8)*"a"* except that the department shall establish a maximum allowable reimbursable cost for these drugs using the average wholesale prices of the chemically equivalent products available. The department shall set the maximum allowable reimbursable cost at the median of those average wholesale prices. No exceptions for higher reimbursement will be approved.~~

~~*h.*~~ *e.* An additional reimbursement amount of one cent per dose shall be added to the allowable cost of a prescription pursuant to paragraphs 79.1(8)*"a"* and *"b"* for an oral solid if the drug is dispensed to a patient in a nursing home in unit dose packaging prepared by the pharmacist.

~~*i.* Rescinded IAB 6/11/14, effective 8/1/14.~~

~~*j.*~~ *f.* The professional dispensing fee shall be a fee schedule amount determined by the department based on a survey of Iowa Medicaid participating pharmacy providers' costs of dispensing drugs to Medicaid beneficiaries conducted every two years beginning in SFY 2014-2015.

~~*k.*~~ *g.* For purposes of this rule, average actual acquisition cost (AAC) is defined as retail pharmacies' average prices paid to acquire drug products. Average AAC shall be determined by the department based on a survey of invoice prices paid by Iowa Medicaid retail pharmacies. Surveys shall be conducted at least once every six months, or more often at the department's discretion. The average AAC shall be calculated as a statistical mean based on one reported cost per drug per pharmacy. The average AAC determined by the department shall be published on the Iowa Medicaid enterprise Web site. If no current average AAC has been determined for a drug, the wholesale acquisition cost (WAC) published by Medi-Span shall be used as the average AAC.

~~*l.* For purposes of this subrule, "equivalent products" shall be those that meet therapeutic equivalent standards as published in the federal Food and Drug Administration document, "Approved Prescription Drug Products With Therapeutic Equivalence Evaluations."~~

~~*m.* Savings in Medicaid reimbursements attributable to the SMAC shall be used to pay costs associated with determination of the SMAC, before reversion to Medicaid.~~

~~*n.*~~ *h.* Payment to physicians for physician-administered drugs billed with healthcare common procedure coding system (HCPCS) Level II "J" codes, as a physician service, shall be pursuant to physician payment policy under subrule 79.1(2).

ITEM 70. Amend paragraph **79.1(16)"b"** as follows:

b. Outpatient hospital services. Medicaid adopts the Medicare categories of hospitals and services subject to and excluded from the hospital outpatient prospective payment system (OPPS) at 42 CFR 419.20 through 419.22 as amended to October 1, 2007, except as indicated in this subrule.

(1) and (2) No change.

~~(3) All psychiatric services for members who have a primary diagnosis of mental illness and are enrolled in the Iowa Plan program under 441—Chapter 88 shall be the responsibility of the Iowa Plan contractor and shall not be otherwise payable by Iowa Medicaid. The only exceptions to this policy are reference laboratory and radiology services, which will be payable by fee schedule or APC.~~

~~(4) Emergency psychiatric evaluations for members who are covered by the Iowa Plan shall be the responsibility of the Iowa Plan contractor. For members who are not covered by the Iowa Plan, services shall be payable under the APC for emergency psychiatric evaluation.~~

~~(5) Substance abuse services for persons enrolled in the Iowa Plan program under 441—Chapter 88 shall be the responsibility of the Iowa Plan contractor and shall not be otherwise payable by Iowa Medicaid. The only exceptions to this policy are reference laboratory and radiology services, which will be payable by fee schedule or APC.~~

ITEM 71. Amend subparagraph **79.1(16)"r"(3)** as follows:

(3) If the emergency room visit does not result in an inpatient hospital admission and does not involve emergency services as defined in paragraph 79.1(13)*"k,"* payment for treatment provided in the emergency room depends on whether the member had a referral to the emergency room ~~and on whether the member is participating in the MediPASS program~~.

1. For members ~~not participating in the MediPASS program~~ who were referred to the emergency room by appropriate medical personnel ~~and for members participating in the MediPASS program who were referred to the emergency room by their MediPASS primary care physician~~, payment for treatment provided in the emergency room shall be made at 75 percent of the APC payment for the treatment provided.

2. For members ~~not participating in the MediPASS program~~ who were not referred to the emergency room by appropriate medical personnel, payment for treatment provided in the emergency room shall be made at 50 percent of the APC payment for the treatment provided.

~~3. For members participating in the MediPASS program who were not referred to the emergency room by their MediPASS primary care physician, no payment will be made for treatment provided in the emergency room.~~

ITEM 72. Amend subparagraph **79.1(24)"d"(2)** as follows:

(2) For dates of services ~~on or after~~ from January 1, 2014, through December 31, 2015, providers shall be reimbursed by the Iowa Plan for Behavioral Health contractor at the rate negotiated by the

provider and the contractor. However, if a provider fails to submit a cost report for services provided prior to July 1, 2013, that meets the requirements of paragraph 79.1(24)*"b,"* the Iowa Plan for Behavioral Health contractor shall reduce the provider's reimbursement rate to 76 percent of the negotiated rate. The reduced rate shall be paid until acceptable cost reports for all services provided prior to July 1, 2013, have been received.

ITEM 73. Adopt the following **new** subparagraph **79.1(24)"d"(3)**:

(3) For dates of services on or after January 1, 2016, providers shall be reimbursed by fee schedule.

ITEM 74. Amend paragraph **79.1(25)"b"** as follows:

b. Reimbursement methodology for community mental health centers. Effective for services rendered on or after July 1, 2014, community mental health centers may elect to be paid on either a 100 percent of reasonable costs basis, as determined by Medicare reimbursement principles, or in accordance with an alternative reimbursement rate methodology ~~established by the Medicaid program's managed care contractor for mental health services and~~ approved by the department of human services. Once a community mental health center chooses the alternative reimbursement rate methodology ~~established by the Medicaid program's managed care contractor for mental health services~~, the community mental health center may not change its elected reimbursement methodology to 100 percent of reasonable costs.

ITEM 75. Adopt the following **new** subparagraph **79.3(2)"d"(43)**:

(43) Child care medical services:

1. Plan of care.
2. Certification and recertification.
3. Service notes or narratives.
4. Physician orders or medical orders.
5. Abbreviation list (a copy of the abbreviation list utilized within the member's record).
6. If initials or incomplete signatures are noted within the member's record, a signature log (a typed listing of each provider's name, including initials, professional credentials and title, followed by the individual provider's signature).

ITEM 76. Amend rule 441—79.8(249A), introductory paragraph, as follows:

441—79.8(249A) Requests for prior authorization. ~~When the Iowa Medicaid enterprise has not reached a decision on a request for prior authorization after 60 days from the date of receipt, the request will be approved.~~ This rule governs requests for prior authorization for services not provided through a managed care organization. For services provided through a managed care organization, the prior authorization request is submitted, reviewed, and authorized by the managed care organization.

ITEM 77. Amend paragraph **79.8(1)"a"** as follows:

a. Providers may submit requests for prior authorization for any items or procedures by mail or by facsimile transmission (fax) using Form 470-0829, Request for Prior Authorization, or electronically using the Accredited Standards Committee (ASC) X12N 278 transaction, Health Care Services Request for Review and Response. Requests for prior authorization for drugs ~~may also be made by telephone~~ must be submitted on any Request for Prior Authorization form designated for the drug being requested in the preferred drug list published pursuant to Iowa Code chapter 249A.

ITEM 78. Amend subrule 79.8(7) as follows:

79.8(7) Requests for prior approval of services shall be reviewed according to rule 441—79.9(249A) and the conditions for payment as established by rule in 441—Chapter 78.

a. Where ambiguity exists as to whether a particular item or service is covered, requests for prior approval shall be reviewed according to the following criteria in order of priority:

~~*a.*~~ (1) The conditions for payment outlined in the provider manual with reference to coverage and duration.

~~*b.*~~ (2) The determination made by the Medicare program unless specifically stated differently in state law or rule.

~~*c.*~~ (3) The recommendation to the department from the appropriate advisory committee.

~~*d.*~~ (4) Whether there are other less expensive procedures which are covered and which would be as effective.

~~*e.*~~ (5) The advice of an appropriate professional consultant.

b. When the Iowa Medicaid enterprise has not reached a decision on a request for prior authorization after 60 days from the date of receipt, the request will be approved.

ITEM 79. Amend subrule 79.10(5) as follows:

79.10(5) The requirement to obtain preadmission review is waived when the patient is enrolled in the managed health care option known as patient management and proper authorization for the admission has been obtained from the patient manager as described in 441—Chapter ~~88~~ 73.

ITEM 80. Amend subrule 79.11(6) as follows:

79.11(6) The requirement to obtain preprocedure surgical review is waived when the patient is enrolled in the managed health care option known as patient management and proper authorization for the procedure has been obtained from the patient manager as described in 441—Chapter ~~88~~ 73.

ITEM 81. Amend subrule 79.14(1), introductory paragraph, as follows:

79.14(1) Application request. Iowa Medicaid providers ~~other than managed care organizations and Medicaid fiscal agents~~, including those enrolled with a managed care organization, shall begin the enrollment process by completing the appropriate application on the Iowa Medicaid enterprise Web site. Managed care organizations and fiscal agents are exempt from completing an application.

ITEM 82. Adopt the following **new** definitions of "Managed care organization," "Nursing facility level of care" and "Skilled nursing facility level of care" in rule **441—81.1(249A)**:

"Managed care organization" means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of "health maintenance organization" as defined in Iowa Code section 514B.1.

"Nursing facility level of care" means that the following conditions are met:

1. The presence of a physical or mental impairment which restricts the member's daily ability to perform the essential activities of daily living, bathing, dressing, and personal hygiene, and impedes the member's capacity to live independently.
2. The member's physical or mental impairment is such that self-execution of required nursing care is improbable or impossible.

"Skilled nursing facility level of care" means that the following conditions are met:

1. The member's medical condition requires skilled nursing services or skilled rehabilitation services as defined in 42 CFR 409.31(a), 409.32, and 409.34.
2. Services are provided in accordance with the general provisions for all Medicaid providers and services as described in rule 441—79.9(249A).
3. Documentation submitted for review indicates that the member has:

a. A physician order for all skilled services.

b. Services that require the skills of medical personnel, including registered nurses, licensed practical nurses, physical therapists, occupational therapists, speech pathologists, or audiologists.

c. An individualized care plan that identifies support needs.

d. Confirmation that skilled services are provided to the member.

e. Skilled services that are provided by, or under the supervision of, medical personnel as described above.

f. Skilled nursing services that are needed and provided seven days a week or skilled rehabilitation services that are needed and provided at least five days a week.

ITEM 83. Amend rule 441—81.5(249A), introductory paragraph, as follows:

441—81.5(249A) Discharge and transfer. (See ~~subrules 81.13(2)*"a"* and~~ paragraph 81.13(6)*"c."*)

ITEM 84. Amend subrule 81.5(1) as follows:

81.5(1) *Notice.* When a ~~public assistance recipient~~ Medicaid member requests transfer or discharge, or another person requests this for the ~~recipient~~ member, the administrator shall promptly notify ~~the local~~

~~office of~~ the department. This shall be done in sufficient time to permit a social service worker or case manager to assist in the planning for the transfer or discharge.

ITEM 85. Amend subrule 81.7(1) as follows:

81.7(1) *Level of care.* The IME medical services unit shall review Medicaid members' need ~~of~~ for continued care in nursing facilities, pursuant to the standards and subject to the appeals process in subrule 81.3(1). For all members enrolled with a managed care organization, the managed care organization shall review a Medicaid member's need for continued care in a nursing facility at least annually. The managed care organization must submit documentation to the IME medical services unit for all reviews that indicate a change in the member's level of care. The IME medical services unit shall make a final determination for any reviews that indicate a change in the level of care.

ITEM 86. Amend rule 441—81.12(249A) as follows:

441—81.12(249A) Closing of facility. When a facility is planning on closing, the department and the department's contracted managed care organizations with which the facility is enrolled shall be notified at least 60 days in advance of the closing. Plans for the transfer of residents receiving medical assistance shall be approved by the ~~local office of the department~~ resident's managed care organization or by the IME medical services unit for residents not enrolled with a managed care organization.

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

ITEM 87. Amend subparagraph **81.13(6)"a"(4)** as follows:

(4) Notice before transfer. Before a facility transfers or discharges a resident, the facility shall:

1. Notify the resident, the resident's case manager for those residents enrolled with a managed care organization and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.

2. and 3. No change.

ITEM 88. Amend subparagraph **81.13(9)"d"(2)** as follows:

(2) A comprehensive care plan shall be developed within seven days after completion of the comprehensive assessment by an interdisciplinary team and with the participation of the resident, the resident's case manager as appropriate and as allowed by the resident for those residents enrolled with a managed care organization, and the resident's family or legal representative to the extent practicable, and shall be periodically reviewed and revised by a team of qualified persons after each assessment.

The interdisciplinary team shall include the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs.

ITEM 89. Amend subrule 81.14(2) as follows:

81.14(2) *Audit of proper billing and handling of patient funds.*

a. ~~Field~~ The Iowa Medicaid enterprise, the department's contracted managed care organizations, field auditors of the department of inspections and appeals, ~~or~~ and representatives of the U.S. Department of Health and Human Services, upon proper identification, shall have the right to audit billings to the department and receipts of client participation, to ensure the facility is not receiving payment in excess of the contractual agreement and that all other aspects of the contractual agreement are being followed, as deemed necessary.

b. ~~Field~~ The Iowa Medicaid enterprise, the department's contracted managed care organizations, field auditors of the department of inspections and appeals ~~or~~ and representatives of the U.S. Department of Health and Human Services, upon proper identification, shall have the right to audit records of the facility to determine proper handling of patient funds in compliance with subrule 81.4(3).

c. to *f.* No change.

ITEM 90. Amend rule 441—81.20(249A), introductory paragraph, as follows:

441—81.20(249A) Out-of-state facilities. Payment will be made for care in out-of-state nursing facilities. For members enrolled with a managed care organization, authorization for admission must

be obtained from the managed care organization prior to admission. Out-of-state facilities shall abide by the same policies as in-state facilities with the following exceptions:

ITEM 91. Adopt the following **new** definitions of "Intermediate care facility for persons with an intellectual disability (ICF/ID)," "Intermediate care facility for persons with an intellectual disability level of care" and "Managed care organization" in rule **441—82.1(249A)**:

"Intermediate care facility for persons with an intellectual disability (ICF/ID)" means an institution that is primarily for the diagnosis, treatment, or rehabilitation of persons with an intellectual disability or persons with related conditions and that provides, in a protected residential setting, ongoing evaluation, planning, 24-hour supervision, coordination and integration of health or related services to help each person function at the greatest ability and is an approved Medicaid vendor.

"Intermediate care facility for persons with an intellectual disability level of care" means that the individual has a diagnosis of intellectual disability made in accordance with the criteria provided in the current version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or has a related condition as defined in 42 CFR 435.1009; and needs assistance in at least three of the following major life areas: mobility, musculoskeletal skills, activities of daily living, domestic skills, toileting, eating skills, vision, hearing or speech or both, gross/fine motor skills, sensory-taste, smell, tactile, academic skills, vocational skills, social/community skills, behavior, and health care.

"Managed care organization" means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of "health maintenance organization" as defined in Iowa Code section 514B.1.

ITEM 92. Amend rule 441—82.2(249A), introductory paragraph, as follows:

441—82.2(249A) Licensing and certification. In order to participate in the program, a facility shall be licensed as ~~a hospital, nursing facility, or~~ an intermediate care facility for persons with an intellectual disability by the department of inspections and appeals under the department of inspections and appeals rules found in 481—Chapter 64. The facility shall meet the following conditions of participation:

ITEM 93. Amend subparagraph **82.2(4)"c"(2)** as follows:

(2) Appropriate facility staff shall participate in interdisciplinary team meetings. Participation by other agencies serving the client is encouraged. For those clients enrolled with a managed care organization, the client's case manager shall participate as appropriate and as allowed by the client. Participation by the client, the client's parents (if the client is a minor), or the client's legal guardian is required unless that participation is unobtainable or inappropriate.

ITEM 94. Amend subrule 82.6(3) as follows:

82.6(3) *Certification statement.* Eligible individuals may be admitted to an intermediate care facility for persons with an intellectual disability upon the certification of a physician that there is a necessity for care at the facility. For clients enrolled with a managed care organization, authorization for admission must be obtained from the managed care organization prior to admission. Eligibility shall continue as long as a valid need for the care exists.

ITEM 95. Amend paragraph **82.7(2)"b"** as follows:

b. Once ICF/ID placement is approved, including approval of ICF/ID level of care as described in subrule 82.7(3), the eligible person, or the person's representative, is free to seek placement in the facility of the person's or the person's representative's choice, subject to the provision of ICF/ID services through managed care pursuant to 441—Chapter 73.

ITEM 96. Amend subrule 82.7(3) as follows:

82.7(3) *Approval of level of care.* Medicaid payment shall be made for ICF/ID care upon certification of need for this level of care by a licensed physician of medicine or osteopathy and approval by the Iowa Medicaid enterprise (IME) medical services unit. ~~The IME medical services unit shall review ICF/ID admissions and transfers only when documentation is provided which verifies a referral from targeted case management that includes an approval by the department.~~

ITEM 97. Amend rule 441—82.8(249A) as follows:

441—82.8(249A) Determination of need for continued stay. ~~Certification~~ For clients not enrolled with a managed care organization, certification of need for continued stay shall be made according to procedures established by the Iowa Medicaid enterprise (IME) medical services unit. For all clients enrolled with a managed care organization, the managed care organization shall review the Medicaid client's need for continued care in an ICF/ID at least annually. The managed care organization must submit documentation to the IME medical services unit for all reviews that indicate a change in the client's level of care. The IME medical services unit shall make a final determination for any reviews that indicate a change in the level of care.

This rule is intended to implement Iowa Code section 249A.12.

ITEM 98. Amend subrule 82.9(2) as follows:

82.9(2) *Financial participation by resident.* A resident's payment for care may include any voluntary payments made by family members toward cost of care of the resident. The resident's client participation and medical payments from a third party shall be paid toward the total cost of care for the month before any ~~state~~ Medicaid payment is made. ~~The state~~ Medicaid will pay the balance of the cost of care for the remainder of the month. The facility shall make arrangements directly with the resident for payment of client participation.

ITEM 99. Rescind and reserve rule **441—82.11(249A)**.

ITEM 100. Rescind and reserve rule **441—82.12(249A)**.

ITEM 101. Amend subrule 82.15(1) as follows:

82.15(1) *Claims.* Claims for service for clients not enrolled with a managed care organization must be sent to the Iowa Medicaid enterprise after the month of service and within 365 days of the date of service. ~~Claims may~~ Such claims must be submitted electronically ~~on software provided by the Iowa Medicaid enterprise or in writing on Form 470-0039, Iowa Medicaid Long-Term Care Claim~~ through IME's electronic clearinghouse.

a. ~~When payment is made, the facility will receive a copy of Form 470-0039. The white copy of the original shall be returned as a claim for the next month. If the claim is submitted electronically, the facility will receive a remittance statement of the claims paid.~~ A remittance advice of the claims paid may be obtained through the Iowa Medicaid portal access (IMPA) system.

b. ~~When there has been a new admission, a discharge, a correction, or a claim for a reserved bed, the facility shall submit Form 470-0039 with the changes noted.~~ Adjustments to ~~electronically submitted~~ claims may be made electronically as provided for by the Iowa Medicaid enterprise.

ITEM 102. Amend rule 441—82.16(249A) as follows:

441—82.16(249A) Closing of facility. When a facility is planning on closing, the department and the department's contracted managed care organizations with which the facility is enrolled shall be notified at least 60 days in advance of the closing. Plans for the transfer of residents receiving Medicaid shall be approved by the ~~county office of the department~~ resident's managed care organization or by the Iowa Medicaid enterprise for residents not enrolled with a managed care organization.

This rule is intended to implement Iowa Code section 249A.12.

ITEM 103. Amend subrule 82.17(2) as follows:

82.17(2) *Auditing of proper billing and handling of patient funds.*

a. ~~Field~~ The Iowa Medicaid enterprise, the department's contracted managed care organizations, field auditors of the department of inspections and appeals ~~or~~ and representatives of the U.S. Department of Health and Human Services, upon proper identification, shall have the right to audit billings to the department and receipts of client participation, to ensure that the facility is not receiving payment in excess of the contractual agreement and that all other aspects of the contractual agreement are being followed, as deemed necessary.

b. ~~Field~~ The Iowa Medicaid enterprise, the department's contracted managed care organizations, field auditors of the department of inspections and appeals ~~or~~ and representatives of the U.S. Department of Health and Human Services, upon proper identification, shall have the right to audit records of the facility to determine proper handling of patient funds in compliance with subrule 82.9(3).

c. to *f.* No change.

ITEM 104. Adopt the following **new** definitions of "Intermediate care facility for persons with an intellectual disability level of care," "Managed care organization," "Nursing facility level of care" and "Skilled nursing facility level of care" in rule **441—83.1(249A)**:

"Intermediate care facility for persons with an intellectual disability level of care" means that the individual has a diagnosis of intellectual disability made in accordance with the criteria provided in the current version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or has a related condition as defined in 42 CFR 435.1009; and needs assistance in at least three of the following major life areas: mobility, musculoskeletal skills, activities of daily living, domestic skills, toileting, eating skills, vision, hearing or speech or both, gross/fine motor skills, sensory-taste, smell, tactile, academic skills, vocational skills, social/community skills, behavior, and health care.

"Managed care organization" means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of "health maintenance organization" as defined in Iowa Code section 514B.1.

"Nursing facility level of care" means that the following conditions are met:

1. The presence of a physical or mental impairment which restricts the member's daily ability to perform the essential activities of daily living, bathing, dressing, and personal hygiene, and impedes the member's capacity to live independently.
2. The member's physical or mental impairment is such that self-execution of required nursing care is improbable or impossible.

"Skilled nursing facility level of care" means that the following conditions are met:

1. The member's medical condition requires skilled nursing services or skilled rehabilitation services as defined in 42 CFR 409.31(a), 409.32, and 409.34.
2. Services are provided in accordance with the general provisions for all Medicaid providers and services as described in rule 441—79.9(249A).
3. Documentation submitted for review indicates that the member has:

a. A physician order for all skilled services.

b. Services that require the skills of medical personnel, including registered nurses, licensed practical nurses, physical therapists, occupational therapists, speech pathologists, or audiologists.

c. An individualized care plan that identifies support needs.

d. Confirmation that skilled services are provided to the member.

e. Skilled services that are provided by, or under the supervision of, medical personnel as described above.

f. Skilled nursing services that are needed and provided seven days a week or skilled rehabilitation services that are needed and provided at least five days a week.

ITEM 105. 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 Waiver Program.

(1) No change.

(2) The IME medical services unit shall be responsible for ~~approval of the certification of the level of care.~~ the initial determination of the member's level of care certification. The IME medical services unit or the member's managed care organization shall be responsible for annual redetermination of the level of care.

(3) No change.

(4) The managed care organization must submit documentation to the IME medical services unit for all reassessments, performed at least annually, which indicate a change in the member's level of care. The IME medical services unit shall make a final determination for any reassessments which indicate a change in the level of care. If the level of care reassessment indicates no change in level of care, the member is approved to continue at the already established level of care.

ITEM 106. Amend paragraph **83.3(3)"b"** as follows:

b. Decisions shall be mailed or given to the applicant on the date when income maintenance eligibility and level of care determinations ~~and the client case plan~~ are completed.

ITEM 107. Amend subrule 83.3(4) as follows:

83.3(4) *Effective date of eligibility.*

a. Deeming of parental or spousal income and resources ceases and eligibility shall be effective on the date the income and resource eligibility and level of care determinations ~~and the case plan~~ are completed~~,~~ but shall not be earlier than the first of the month following the date of application.

b. The effective date of eligibility for the health and disability waiver for persons who qualify for Medicaid due to eligibility for the waiver services and to whom paragraphs 83.3(4)*"a"* and *"c"* do not apply is the date on which the income eligibility and level of care determinations ~~and the case plan~~ are completed.

c. Eligibility for persons covered under subparagraph 83.2(1)*"c"*(3) shall exist on the date the income and resource eligibility and level of care determinations ~~and case plan~~ are completed~~,~~ but shall not be earlier than the first of the month following the date of application.

d. No change.

ITEM 108. Amend rule 441—83.5(249A) as follows:

441—83.5(249A) Redetermination. A complete redetermination of eligibility for the health and disability waiver shall be completed at least once every 12 months or when there is significant change in the person's situation or condition.

A redetermination of continuing eligibility factors shall be made in accordance with rules 441—76.7(249A) and 441—83.2(249A). A redetermination shall include verification of the existence of a current service plan meeting the requirements listed in rule 441—83.7(249A).

83.5(1) The IME medical services unit or the member's managed care organization shall be responsible for annual redetermination of the level of care.

83.5(2) The managed care organization must submit documentation to the IME medical services unit for all reassessments, performed at least annually, which indicate a change in the member's level of care. The IME medical services unit shall make a final determination for any reassessments which indicate a change in the level of care. If the level of care reassessment indicates no change in level of care, the member is approved to continue at the already established level of care.

ITEM 109. Amend rule 441—83.7(249A), introductory paragraph, as follows:

441—83.7(249A) Service plan. A service plan shall be prepared for health and disability waiver members in accordance with ~~rule 441—130.7(234) except that service~~ 441—paragraph 90.5(1)*"b."* Service plans for both children and adults shall be completed every 12 months or when there is significant change in the person's situation or condition.

ITEM 110. Adopt the following **new** definitions of "Managed care organization," "Nursing facility level of care" and "Skilled nursing facility level of care" in rule **441—83.21(249A)**:

"Managed care organization" means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of "health maintenance organization" as defined in Iowa Code section 514B.1.

"Nursing facility level of care" means that the following conditions are met:

1. The presence of a physical or mental impairment which restricts the member's daily ability to perform the essential activities of daily living, bathing, dressing, and personal hygiene, and impedes the member's capacity to live independently.

2. The member's physical or mental impairment is such that self-execution of required nursing care is improbable or impossible.

"Skilled nursing facility level of care" means that the following conditions are met:

1. The member's medical condition requires skilled nursing services or skilled rehabilitation services as defined in 42 CFR 409.31(a), 409.32, and 409.34.

2. Services are provided in accordance with the general provisions for all Medicaid providers and services as described in rule 441—79.9(249A).

3. Documentation submitted for review indicates that the member has:

a. A physician order for all skilled services.

b. Services that require the skills of medical personnel, including registered nurses, licensed practical nurses, physical therapists, occupational therapists, speech pathologists, or audiologists.

c. An individualized care plan that identifies support needs.

d. Confirmation that skilled services are provided to the member.

e. Skilled services that are provided by, or under the supervision of, medical personnel as described above.

f. Skilled nursing services that are needed and provided seven days a week or skilled rehabilitation services that are needed and provided at least five days a week.

ITEM 111. Amend paragraph **83.22(1)"d"** as follows:

d. Certified as being in need of the intermediate or skilled level of care based on information submitted on Form 470-4392, Level of Care Certification for HCBS Waiver Program.

(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 IME medical services unit shall be responsible for determination of the initial level of care.

(2) The IME medical services unit ~~shall be responsible for approval of the certification of the level of care~~ or the member's managed care organization shall be responsible for annual redetermination of the level of care.

(3) No change.

(4) The managed care organization must submit documentation to the IME medical services unit for all reassessments, performed at least annually, which indicate a change in the member's level of care. The IME medical services unit shall make a final determination for any reassessments which indicate a change in the level of care. If the level of care reassessment indicates no change in level of care, the member is approved to continue at the already established level of care.

ITEM 112. Amend paragraph **83.23(4)"a"** as follows:

a. The effective date of eligibility ~~cannot precede the date the case manager signs the case plan~~ is the date on which the income eligibility and level of care determinations are completed.

ITEM 113. Amend rule 441—83.25(249A) as follows:

441—83.25(249A) Redetermination. A complete redetermination of eligibility for elderly waiver services shall be done at least once every 12 months.

A redetermination of continuing eligibility factors shall be made when a change in circumstances occurs that affects eligibility in accordance with rule 441—83.22(249A). A redetermination shall contain the components listed in rule 441—83.27(249A).

83.25(1) The IME medical services unit or the member's managed care organization shall be responsible for annual redetermination of the level of care.

83.25(2) The managed care organization must submit documentation to the IME medical services unit for all reassessments, performed at least annually, which indicate a change in the member's level of care. The IME medical services unit shall make a final determination for any reassessments which

indicate a change in the level of care. If the level of care reassessment indicates no change in level of care, the member is approved to continue at the already established level of care.

ITEM 114. Adopt the following **new** definitions of "Managed care organization," "Nursing facility level of care" and "Skilled nursing facility level of care" in rule **441—83.41(249A)**:

"Managed care organization" means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of "health maintenance organization" as defined in Iowa Code section 514B.1.

"Nursing facility level of care" means that the following conditions are met:

1. The presence of a physical or mental impairment which restricts the member's daily ability to perform the essential activities of daily living, bathing, dressing, and personal hygiene, and impedes the member's capacity to live independently.

2. The member's physical or mental impairment is such that self-execution of required nursing care is improbable or impossible.

"Skilled nursing facility level of care" means that the following conditions are met:

1. The member's medical condition requires skilled nursing services or skilled rehabilitation services as defined in 42 CFR 409.31(a), 409.32, and 409.34.

2. Services are provided in accordance with the general provisions for all Medicaid providers and services as described in rule 441—79.9(249A).

3. Documentation submitted for review indicates that the member has:

a. A physician order for all skilled services.

b. Services that require the skills of medical personnel, including registered nurses, licensed practical nurses, physical therapists, occupational therapists, speech pathologists, or audiologists.

c. An individualized care plan that identifies support needs.

d. Confirmation that skilled services are provided to the member.

e. Skilled services that are provided by, or under the supervision of, medical personnel as described above.

f. Skilled nursing services that are needed and provided seven days a week or skilled rehabilitation services that are needed and provided at least five days a week.

ITEM 115. Amend subparagraph **83.42(1)"b"(2)** as follows:

(2) The IME medical services unit shall be responsible for approval of the certification of the level of care, and the IME medical services unit or a managed care organization will be responsible for annual redeterminations.

ITEM 116. Amend subrule 83.43(4) as follows:

83.43(4) *Effective date of eligibility.*

a. The effective date of eligibility for the AIDS/HIV waiver for persons who are already determined eligible for Medicaid is the date on which the income and resource eligibility and level of care determinations ~~and the service plan~~ are completed.

b. The effective date of eligibility for the AIDS/HIV waiver for persons who qualify for Medicaid due to eligibility for the waiver services and to whom 441—subrule 75.1(7) and rule 441—75.5(249A) do not apply is the date on which income and resource eligibility and level of care determinations ~~and the service plan~~ are completed.

c. No change.

d. The effective date of eligibility for the AIDS/HIV waiver for persons who qualify for Medicaid due to eligibility for the waiver services and to whom the eligibility factors set forth in 441—subrule 75.1(7) and, for married persons, in rule 441—75.5(249A) have been satisfied is the date on which the income eligibility and level of care determinations ~~and the service plan~~ are completed~~,~~ but shall not be earlier than the first of the month following the date of application.

ITEM 117. Amend rule 441—83.45(249A) as follows:

441—83.45(249A) Redetermination. A complete redetermination of eligibility for AIDS/HIV waiver services shall be completed at least once every 12 months or when there is significant change in the

person's situation or condition. A redetermination of continuing eligibility factors shall be made in accordance with rules 441—76.7(249A) and 441—83.42(249A). A redetermination shall include the components listed in rule 441—83.47(249A).

83.45(1) The IME medical services unit or the member's managed care organization shall be responsible for annual redetermination of the level of care.

83.45(2) The managed care organization must submit documentation to the IME medical services unit for all reassessments, performed at least annually, which indicate a change in the member's level of care. The IME medical services unit shall make a final determination for any reassessments which indicate a change in the level of care. If the level of care reassessment indicates no change in level of care, the member is approved to continue at the already established level of care.

ITEM 118. Adopt the following **new** definitions of "Intermediate care facility for persons with an intellectual disability level of care" and "Managed care organization" in rule **441—83.60(249A)**:

"Intermediate care facility for persons with an intellectual disability level of care" means that the individual has a diagnosis of intellectual disability made in accordance with the criteria provided in the current version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or has a related condition as defined in 42 CFR 435.1009; and needs assistance in at least three of the following major life areas: mobility, musculoskeletal skills, activities of daily living, domestic skills, toileting, eating skills, vision, hearing or speech or both, gross/fine motor skills, sensory-taste, smell, tactile, academic skills, vocational skills, social/community skills, behavior, and health care.

"Managed care organization" means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of "health maintenance organization" as defined in Iowa Code section 514B.1.

ITEM 119. Amend paragraph **83.61(1)"c"** as follows:

c. Be certified as being in need for long-term care that, but for the waiver, would otherwise be provided in an ICF/ID. The IME medical services unit shall be responsible for the initial approval, and the IME medical services unit or a managed care organization will be responsible for the annual approval of the certification of the level of care based on the data collected by the case manager and interdisciplinary team on a tool designated by the department.

~~(1) to (3) Rescinded IAB 3/7/01, effective 5/1/01.~~

ITEM 120. 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, 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.

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) The IME medical services unit or the member's managed care organization shall be responsible for annual redetermination of the level of care.

83.64(2) The managed care organization must submit documentation to the IME medical services unit for all reassessments, performed at least annually, which indicate a change in the member's level of care. The IME medical services unit shall make a final determination for any reassessments which indicate a change in the level of care. If the level of care reassessment indicates no change in level of care, the member is approved to continue at the already established level of care.

ITEM 121. Adopt the following **new** definitions of "Intermediate care facility for persons with an intellectual disability level of care," "Managed care organization," "Nursing facility level of care" and "Skilled nursing facility level of care" in rule **441—83.81(249A)**:

"Intermediate care facility for persons with an intellectual disability level of care" means that the individual has a diagnosis of intellectual disability made in accordance with the criteria provided in the

current version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or has a related condition as defined in 42 CFR 435.1009; and needs assistance in at least three of the following major life areas: mobility, musculoskeletal skills, activities of daily living, domestic skills, toileting, eating skills, vision, hearing or speech or both, gross/fine motor skills, sensory-taste, smell, tactile, academic skills, vocational skills, social/community skills, behavior, and health care.

"Managed care organization" means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of "health maintenance organization" as defined in Iowa Code section 514B.1.

"Nursing facility level of care" means that the following conditions are met:

1. The presence of a physical or mental impairment which restricts the member's daily ability to perform the essential activities of daily living, bathing, dressing, and personal hygiene, and impedes the member's capacity to live independently.

2. The member's physical or mental impairment is such that self-execution of required nursing care is improbable or impossible.

"Skilled nursing facility level of care" means that the following conditions are met:

1. The member's medical condition requires skilled nursing services or skilled rehabilitation services as defined in 42 CFR 409.31(a), 409.32, and 409.34.

2. Services are provided in accordance with the general provisions for all Medicaid providers and services as described in rule 441—79.9(249A).

3. Documentation submitted for review indicates that the member has:

a. A physician order for all skilled services.

b. Services that require the skills of medical personnel, including registered nurses, licensed practical nurses, physical therapists, occupational therapists, speech pathologists, or audiologists.

c. An individualized care plan that identifies support needs.

d. Confirmation that skilled services are provided to the member.

e. Skilled services that are provided by, or under the supervision of, medical personnel as described above.

f. Skilled nursing services that are needed and provided seven days a week or skilled rehabilitation services that are needed and provided at least five days a week.

ITEM 122. 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, and supporting documentation as needed.

a. The IME medical services unit or the member's managed care organization shall be responsible for annual redetermination of the level of care.

b. The managed care organization must submit documentation to the IME medical services unit for all reassessments, performed at least annually, which indicate a change in the member's level of care. The IME medical services unit shall make a final determination for any reassessments which indicate a change in the level of care. If the level of care reassessment indicates no change in level of care, the member is approved to continue at the already established level of care.

ITEM 123. Adopt the following **new** definitions of "Intermediate care facility for persons with an intellectual disability level of care," "Managed care organization," "Nursing facility level of care" and "Skilled nursing facility level of care" in rule **441—83.101(249A)**:

"Intermediate care facility for persons with an intellectual disability level of care" means that the individual has a diagnosis of intellectual disability made in accordance with the criteria provided in the current version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or has a related condition as defined in 42 CFR 435.1009; and needs assistance in at least three of the following major life areas: mobility, musculoskeletal skills, activities of daily living, domestic skills, toileting, eating skills, vision, hearing or speech or both, gross/fine motor skills,

sensory-taste, smell, tactile, academic skills, vocational skills, social/community skills, behavior, and health care.

"Managed care organization" means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of "health maintenance organization" as defined in Iowa Code section 514B.1.

"Nursing facility level of care" means that the following conditions are met:

1. The presence of a physical or mental impairment which restricts the member's daily ability to perform the essential activities of daily living, bathing, dressing, and personal hygiene, and impedes the member's capacity to live independently.

2. The member's physical or mental impairment is such that self-execution of required nursing care is improbable or impossible.

"Skilled nursing facility level of care" means that the following conditions are met:

1. The member's medical condition requires skilled nursing services or skilled rehabilitation services as defined in 42 CFR 409.31(a), 409.32, and 409.34.

2. Services are provided in accordance with the general provisions for all Medicaid providers and services as described in rule 441—79.9(249A).

3. Documentation submitted for review indicates that the member has:

a. A physician order for all skilled services.

b. Services that require the skills of medical personnel, including registered nurses, licensed practical nurses, physical therapists, occupational therapists, speech pathologists, or audiologists.

c. An individualized care plan that identifies support needs.

d. Confirmation that skilled services are provided to the member.

e. Skilled services that are provided by, or under the supervision of, medical personnel as described above.

f. Skilled nursing services that are needed and provided seven days a week or skilled rehabilitation services that are needed and provided at least five days a week.

ITEM 124. Amend paragraph **83.103(2)"e"** as follows:

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 case manager in the development of the service plan~~, which must be approved by the department service worker~~ prior to the start of services.

ITEM 125. Amend subrule 83.103(3) as follows:

83.103(3) *Effective date of eligibility.*

a. The effective date of eligibility for the waiver for persons who are already determined eligible for Medicaid is the date on which the person is determined to meet all of the criteria set forth in ~~rule 441—83.102(249A)~~ subrule 83.102(1).

b. The effective date of eligibility for the waiver for persons who qualify for Medicaid due to eligibility for the waiver services is the date on which the person is determined to meet all of the criteria set forth in ~~rule 441—83.102(249A)~~ subrule 83.102(1) and when the eligibility factors set forth in 441—subrule 75.1(7) and, for married persons, in rule 441—75.5(249A), have been satisfied.

c. Eligibility for the waiver continues until the consumer fails to meet eligibility criteria listed in ~~rule 441—83.102(249A)~~ subrule 83.102(1). Consumers who return to inpatient status in a medical institution for more than 30 consecutive days shall be reviewed by the IME medical services unit to determine additional inpatient needs for possible termination from the physical disability waiver. The consumer shall be reviewed for eligibility under other Medicaid coverage groups in accordance with rule 441—76.11(249A). The consumer shall be notified of that decision through Form 470-0602, Notice of Decision.

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

ITEM 126. Amend subrule 83.107(2) as follows:

83.107(2) *Annual assessment.* The IME medical services unit 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, and supporting documentation as needed.

a. The IME medical services unit or the member's managed care organization shall be responsible for annual redetermination of the level of care.

b. The managed care organization must submit documentation to the IME medical services unit for all reassessments, performed at least annually, which indicate a change in the member's level of care. The IME medical services unit shall make a final determination for any reassessments which indicate a change in the level of care. If the level of care reassessment indicates no change in level of care, the member is approved to continue at the already established level of care.

ITEM 127. Adopt the following **new** definitions of "Managed care organization" and "Psychiatric medical institution for children level of care" in rule **441—83.121(249A)**:

"Managed care organization" means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of "health maintenance organization" as defined in Iowa Code section 514B.1.

"Psychiatric medical institution for children level of care" means that the member has been diagnosed with a serious emotional disturbance and an independent team as identified in 441—subrule 85.22(3) has certified that ambulatory care resources available in the community do not meet the treatment needs of the recipient, that proper treatment of the recipient's psychiatric condition requires services on an inpatient basis under the direction of a physician, and that the services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services will no longer be needed.

ITEM 128. 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 Form 470-4694, Case Management Comprehensive Assessment.

ITEM 129. Amend subrule 83.123(2) as follows:

83.123(2) *Approval of waiver eligibility.*

a. Time limit. Applications for the HCBS children's mental health waiver program shall be processed within 30 days unless one or more of the following conditions exist:

(1) and (2) No change.

(3) The application is pending because the assessment ~~or the service plan~~ has not been completed. When a determination is not completed 90 days after the date of application due to the lack of a ~~service plan~~ completed assessment, the application shall be denied.

b. Notice of decisions. The department shall mail or give decisions to the applicant on the dates when eligibility and level of care determinations ~~and the consumer's service plan~~ are completed.

ITEM 130. Amend subrule 83.123(3) as follows:

83.123(3) *Effective date of eligibility.* The effective date of a consumer's eligibility for children's mental health waiver services shall be the first date that all of the following conditions exist:

a. All eligibility requirements are met; and

b. Eligibility and level of care determinations have been made~~; and~~.

~~*c.* The service plan has been completed.~~

ITEM 131. Amend subrule 83.125(1) as follows:

83.125(1) *Eligibility review.*

a. Every 12 months, the ~~local office~~ department shall review a consumer's eligibility in accordance with procedures in rule 441—76.7(249A). The review shall verify~~:~~

~~*a.* Continuing~~ continuing eligibility factors as specified in rule 441—83.122(249A).

b. ~~The existence of a current service plan meeting the requirements listed in rule 441—83.125(249A).~~ 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 and supporting documentation as needed.

c. The IME medical services unit or the member's managed care organization shall be responsible for annual redetermination of the level of care.

d. The managed care organization must submit documentation to the IME medical services unit for all reassessments, performed at least annually, which indicate a change in the member's level of care. The IME medical services unit shall make a final determination for any reassessments which indicate a change in the level of care. If the level of care reassessment indicates no change in level of care, the member is approved to continue at the already established level of care.

ITEM 132. Amend subrule 85.25(2) as follows:

85.25(2) *Inpatient reimbursement for non-state-owned facilities effective ~~July 1, 2014~~ January 1, 2016*. Services rendered by non-state-owned facilities on or after ~~July 1, 2014, shall be reimbursed according to the Iowa Plan for Behavioral Health contractor's negotiated, provider-specific per diem rate~~ January 1, 2016, are paid on a fee-for-service basis.

ITEM 133. Rescind and reserve subrule **90.3(3)**.

ITEM 134. Amend subparagraph **90.8(1)"a"(2)** as follows:

(2) By the end of the next calendar day after the incident, the case manager who observed the incident shall also report as much information as is known about the incident to the member's managed care organization in the format defined by the managed care organization. If the member is not enrolled with a managed care organization, the staff member shall report the information to the department's bureau of long-term care either:

1. By direct data entry into the Iowa Medicaid Provider Access System, or
2. By faxing or mailing Form 470-4698, Critical Incident Report, according to the directions on the form.

ITEM 135. Rescind and reserve **441—Chapter 92**.

[Filed Emergency After Notice 12/16/15, effective 1/1/16]
[Published 1/6/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/6/16.

ARC 2363C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 217.3(6) and 2015 Iowa Acts, Senate File 505, section 14, the Department of Human Services amends Chapter 52, "Payment," Iowa Administrative Code.

These amendments implement the January 1, 2016, increased personal needs allowance for two State Supplementary Assistance categories: residential care facility and family-life home assistance. These amendments allow the state to adjust the personal needs allowance for residential care facility and family-life home assistance recipients to reflect the increase in the average monthly Medicaid copayment expense for that population.

The Council on Human Services adopted these amendments on December 16, 2015.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because these amendments increase the personal needs allowance under the State Supplementary Assistance program by $2 based on a $2 increase in the average Medicaid copayment for this population, pursuant to the current methodology for setting the personal needs allowance. In

addition, 2015 Iowa Acts, Senate File 505, section 14, permits the Department to adopt emergency rules for this purpose.

Pursuant to Iowa Code section 17A.5(2)"b"(1) and (2) as amended by 2015 Iowa Acts, House File 536, section 27, the Department further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective January 1, 2016. These amendments confer a benefit on the public and are in compliance with 2015 Iowa Acts, Senate File 505, section 14.

These amendments are also published herein under Notice of Intended Action as **ARC 2362C** to allow for public comment.

These amendments do not provide for waivers in specified situations since the increases are required by federal and state law.

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

These amendments are intended to implement Iowa Code section 217.3(6) and 2015 Iowa Acts, Senate File 505, section 14.

These amendments became effective January 1, 2016.

The following amendments are adopted.

ITEM 1. Amend subrule 52.1(1) as follows:

52.1(1) *Protective living arrangement.* The following assistance standards have been established for state supplementary assistance for persons living in a family-life home certified under rules in 441—Chapter 111.

~~$794~~	Care allowance
$792	
~~$101~~	Personal allowance
$103	
$895	Total

ITEM 2. Amend subparagraph **52.1(3)"a"(2)** as follows:

(2) An allowance of ~~$101~~ $103 to meet personal expenses and Medicaid copayment expenses.

[Filed Emergency 12/16/15, effective 1/1/16]
[Published 1/6/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/6/16.

ARC 2358C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4 and 2015 Iowa Acts, Senate File 505, section 12(24), the Department of Human Services adopts a new Chapter 73, "Managed Care," and amends Chapter 88, "Managed Health Care Providers," 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 physical health, behavioral health, and long-term care services and supports. This initiative will deliver quality, patient-centered care to improve the overall health of the Medicaid population and will lead to a more predictable and sustainable budget.

Beginning January 1, 2016, HAWK-I members, Iowa Health and Wellness members, as well as the majority of Medicaid members will have their services coordinated through a managed care organization (MCO). Medicaid members who will not be served by a managed care organization include members of the Health Insurance Premium Payment (HIPP) Program, Medically Needy Program, or Programs for All-Inclusive Care for the Elderly (PACE); persons who are determined to be presumptively eligible for Medicaid services; members who participate in the Medicare Savings Program; and members who

are American Indian or Alaska Natives who do not volunteer to be served through a managed care organization in this program.

This rule making is one of two rule makings that the Department is adopting to implement the Governor's Medicaid Modernization Initiative as referenced in 2015 Iowa Acts, Senate File 505, section 12(24). The other Adopted and Filed Emergency rule making is published herein as **ARC 2361C**.

These amendments adopt a new Chapter 73, "Managed Care," to provide a single set of rules for managed care. Chapter 88 contains two divisions that pertain to managed care (Division I, "Health Maintenance Organization," and Division IV, "Iowa Plan for Behavioral Health") which are rescinded in this rule making. These amendments also rescind Division III, "Medicaid Patient Management," which is no longer applicable. Chapter 88 is retitled as "Specialized Managed Care Programs" and includes the current rules for other managed care options, including prepaid health plans (PHPs) and PACE.

The rules in new Chapter 73 include:

- The requirements for managed care organizations to participate in a contract with the Department.
- The enrollment provisions.
- The disenrollment processes.
- Identification of covered services.
- Provisions regarding access to services and consumer choice of providers.
- The responsibilities for incident reporting, discharge planning, and annual reviews.
- The member appeal and grievance process requirements.
- The record management and documentation requirements.
- The process for making payments to a managed care organization.
- The claims payment requirements.
- The quality assurance and program integrity requirements.

The amendments to Chapter 88:

- Rescind the rules in Division I, "Health Maintenance Organization"; Division III, "Medicaid Patient Management"; and Division IV, "Iowa Plan for Behavioral Health."
- Renumber the rules in Division II, "Prepaid Health Plan," and Division V, "Programs of All-Inclusive Care for the Elderly."

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin as **ARC 2241C** on November 11, 2015.

The Department received multiple comments from 12 respondents during the public comment period and the five public hearings held across the state from December 2, 2015, to December 4, 2015. The comments were lengthy and in many instances duplicative. The public comments and Department responses shown below include the four comments that resulted in changes to the proposed amendments. A full electronic copy of the public comments and Department responses may be found on the Department's Web site, www.dhs.iowa.gov, under the rules section.

These rules are not intended to reiterate all provisions of the managed care contracts or all applicable federal requirements. The Department's contracts with the MCOs require compliance with all applicable legal requirements.

Comment 1: *Level of care.* A respondent stated that the definition of "level of care" mentions an individual's need for the level of care "within the near future (one month or less)." The CFR has different language with regard to the period of time when there is a reasonable indication that a person might need services in the near future. As the standard is different in federal law, the respondent suggested that Iowa should adopt different standards for these different populations as well.

Department response 1: The Department accepts this recommendation and has made the following change to the definition in rule 441—73.1(249A):

"Level of care" means an evaluation to determine and establish an individual's need for the level of care provided in a hospital, a nursing facility, or an ICF/ID within the near future ~~(one month or less)~~.

Comment 2: *90 days, any reason.* A respondent requested additional wording in paragraph 73.4(1)"a" to make it clear that during the first 90 days, the request for disenrollment can be made for any reason.

Department response 2: The Department accepts this recommendation and has made the following change in paragraph 73.4(1)"a":

a. During the first 90 days following the date of the enrollee's initial enrollment with the managed care organization, the enrollee may request disenrollment, for any reason, in writing or by a telephone call to the enrollment broker's toll-free member telephone line.

Comment 3: *Contractor/MCO.* A respondent requested that paragraph 73.12(1)"f" be revised because the wording does not match that of the federal regulations at 42 CFR 438.400(b)(6). For clarity and consistency, the respondent suggested that the word "contractor" be replaced with "MCO."

Department response 3: The Department accepts this recommendation and has made the following change in paragraph 73.12(1)"f":

f. For a resident of a rural area that has only one ~~"contractor"~~ appropriate provider of a needed service, the denial of the enrollee's request to exercise the enrollee's right to obtain services outside of the MCO's network ~~(if applicable)~~.

Comment 4: *State fair hearing.* A respondent recommended an amendment to paragraph 73.14(1)"b" as it is not clear what this language means. Members are entitled to the continuation of benefits until a state fair hearing decision is reached if a member requests the fair hearing within ten days of the MCO's notice of adverse decision. The respondent stated that this paragraph should be clarified to comply with 42 CFR 438.420(c)(2).

Department response 4: The Department accepts this recommendation and has changed paragraph 73.14(1)"b" to read as follows:

"*b.* Ten days pass after the MCO mailed the notice providing the resolution of the appeal against the enrollee, unless the enrollee, within the ten-day time frame, has requested a state fair hearing with continuation of benefits until a state fair hearing decision is reached; or"

Pursuant to Iowa Code section 17A.5(2)"b"(1) as amended by 2015 Iowa Acts, House File 536, section 27, the Department finds that the normal effective date of these amendments, 35 days after publication, can be waived and the amendments made effective January 1, 2016, in accordance with legislative authority as found in 2015 Iowa Acts, Senate File 505, section 12(24).

The Council on Human Services adopted these amendments on December 16, 2015.

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, there will be a reduction in the staff of the current vendors providing administrative support to the current Medicaid program; however, the managed care organizations will be hiring new staff to accommodate their new line of business in Iowa.

These amendments are intended to implement Iowa Code section 249A.4 and 2015 Iowa Acts, Senate File 505, section 12.

These amendments became effective January 1, 2016.

The following amendments are adopted.

ITEM 1. Adopt the following **new** 441—Chapter 73 under Title VIII, "Medical Assistance":

CHAPTER 73
MANAGED CARE

PREAMBLE

This chapter provides that most Iowa medical assistance program benefits will be provided through managed care. Notwithstanding any provisions of 441—Chapters 74 through 91, program benefits shall be provided through managed care as provided in this chapter. The program benefits provided through managed care will be paid for by managed care organizations participating in the program pursuant to this chapter, subject to the conditions, procedures, and payment rates or methodologies established by the managed care organization, consistent with this chapter and with the contract between the department and the managed care organization.

Implementation of managed care pursuant to this chapter is subject to approval by the Secretary of the United States Department of Health and Human Services (Secretary) of any Iowa state plan amendments and any waivers of the requirements of Title XIX of the Social Security Act that are required to allow for federal funding.

This chapter shall be construed to comply with all requirements for federal funding under Title XIX of the Social Security Act or under the terms of any applicable waiver granted by the Secretary. To the extent this chapter is inconsistent with any applicable federal funding requirement under Title XIX or the terms of any applicable waiver, the requirements under Title XIX or the terms of the waiver shall prevail.

441—73.1(249A) Definitions.

"Behavioral health services" means mental health and substance use disorder treatment services.

"Capitated payment" means a monthly payment to the contractor on behalf of each enrollee for the provision of health services under the contract. Payment is made regardless of whether the enrollee receives services during the month.

"Choice counseling" means the provision of unbiased information on managed care plans or provider options and answers to related questions and access to personalized assistance to help members understand the materials provided by the managed care organizations or the state, to answer questions about each of the options available, and to facilitate enrollment with a managed care organization.

"Claim" means a formal request for payment for benefits received or services rendered.

"Clean claim" means a claim that has no defect or impropriety (including any lack of required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment of the claim. "Clean claim" does not include a claim from a provider that is under investigation for fraud or abuse or a claim under review for medical necessity.

"CMS" means the Centers for Medicare and Medicaid Services, a division of the U.S. Department of Health and Human Services.

"Code of Federal Regulations (CFR)" means the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government.

"Community-based case management" means a collaborative process of planning, facilitation, and advocacy for options and services to meet a member's needs through communication and available resources to promote high-quality, cost-effective outcomes.

"Contract" means a contract between the department and a managed care organization. These contracts shall meet all applicable requirements of state and federal law, including the requirements of the Code of Federal Regulations, Title 42 CFR 434 as amended to October 16, 2015.

"Covered services" means physical health, behavioral health and long-term care services set forth in rule 441—73.5(249A).

"Department" means the Iowa department of human services.

"Discharge planning" means the process, which begins at admission, of determining an enrollee's continued need for treatment services and of developing a plan to address ongoing needs.

"Emergency medical condition" means a physical or behavioral condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in the following:

1. Placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;
2. Serious impairment to bodily functions; or
3. Serious dysfunction of any bodily organ or part.

"Emergency services" means covered inpatient and outpatient services that are both furnished by a provider that is qualified to furnish these services and needed to evaluate or stabilize an emergency medical condition.

"EMTALA" means the Emergency Medical Treatment and Active Labor Act.

"Enrollee" means a HAWK-I, Iowa Health and Wellness Plan or Medicaid member who is eligible for managed care organization enrollment and has been enrolled with a managed care organization as defined in subrule 73.3(2).

"Enrollment broker" means the entity the department uses to enroll persons in a managed care organization. The enrollment broker must be conflict free and meet all applicable requirements of state and federal law, including 42 CFR 438.10 as amended to October 16, 2015.

"HAWK-I program" means the healthy and well kids in Iowa program as set forth in 441—Chapter 86, the Iowa program to provide health care coverage for uninsured children of eligible families as authorized by Title XXI of the federal Social Security Act.

"Health maintenance organization" means a public or private organization which is licensed as a managed care organization or prepaid health plan under insurance division rules set forth in 191—Chapter 40.

"HIPP" means the health insurance premium payment program.

"Home- and community-based services (HCBS)" means services that are provided as an alternative to long-term care institutional services in a nursing facility or an intermediate care facility for persons with an intellectual disability (ICF/ID) or to delay or prevent placement in a nursing facility or ICF/ID.

"Incident reporting" means the reporting of critical events or incidents deemed sufficiently serious to warrant near-term review and follow-up by an appropriate authority. Such incidents may include but are not limited to:

1. Abuse and neglect;
2. The unauthorized use of restraint, seclusion or restrictive interventions;
3. Serious injuries that require medical intervention or result in hospitalization, or both;
4. Criminal victimization;
5. Death;
6. Financial exploitation;
7. Medication errors; and
8. Other incidents or events that involve harm or risk of harm to a participant.

"Insolvency" means a financial condition that exists when an entity is unable to pay its debts as they become due in the usual course of business or when the liabilities of the entity exceed its assets.

"Iowa Health and Wellness Plan" means the medical assistance program set forth in 441—Chapter 74.

"Level of care" means an evaluation to determine and establish an individual's need for the level of care provided in a hospital, a nursing facility, or an ICF/ID within the near future.

"Long-term care (LTC)" or *"long-term services and supports (LTSS)"* means the services of a nursing facility (NF), an intermediate care facility for persons with an intellectual disability (ICF/ID), state resource centers or services funded through Section 1915(c) home- and community-based services waivers, Section 1915(i) state plan home- and community-based habilitation program and the PACE program.

"Managed care organization (MCO)" means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of "health maintenance organization" in Iowa Code section 514B.1.

"Mandatory enrollment" means mandatory participation in a managed care organization as specified in subrule 73.3(2).

"Medical loss ratio (MLR)" means the percentage of capitation payments that is used to pay medical expenses.

"Medically necessary services" means those covered services that are, under the terms and conditions of the contract, determined through contractor utilization management to be:

1. Appropriate and necessary for the symptoms, diagnosis or treatment of the condition of the member;
2. Provided for the diagnosis or direct care and treatment of the condition of the member to enable the member to make reasonable progress in treatment;

3. Within standards of professional practice and given at the appropriate time and in the appropriate setting;

4. Not primarily for the convenience of the member, the member's physician or other provider; and

5. The most appropriate level of covered services that can safely be provided.

"Medical records" means all medical, behavioral health, and long-term care histories; records, reports and summaries; diagnoses; prognoses; record of treatment and medication ordered and given; X-ray and radiology interpretations; physical therapy charts and notes; lab reports; other individualized medical, behavioral health, and long-term care documentation in written or electronic format; and analyses of such information.

"Member" means any person determined by the department to be eligible for the HAWK-I program, the Iowa Health and Wellness Plan, or the Medicaid program.

"Money Follows the Person (MFP) Rebalancing Demonstration Grant" means a federal grant that will assist Iowa in transitioning individuals from a nursing facility or ICF/ID into the community and in rebalancing long-term care expenditures.

"Needs-based eligibility" means an evaluation to determine and establish an individual's need for habilitation services.

"Network" or *"provider network"* means a group of participating health care providers (both individual and group practitioners) linked through contractual arrangements to the contractor to supply a range of health care services.

"Out-of-network provider" means any provider that is not directly or indirectly employed by or does not have a provider agreement with the contractor or any of its subcontractors pursuant to the contract between the department and the contractor.

"PACE" means the program for all-inclusive care for the elderly.

"Participating providers" means the providers of covered physical health, behavioral health and long-term care services that have contracted with a managed care organization.

"PMIC" means a psychiatric medical institution for children.

"Prior authorization" means the process of obtaining prior approval as to the appropriateness of a service or medication. Prior authorization does not guarantee coverage.

"Warm transfer" means a telecommunications mechanism in which the person answering the call facilitates transfer to a third party, announces the caller and issue and remains engaged as necessary to provide assistance.

441—73.2(249A) Contracts with a managed care organization.

73.2(1) The department may enter into a contract with a managed care organization licensed under the provisions of insurance division rules set forth in 191—Chapter 40 for the scope of services as defined in rule 441—73.6(249A).

73.2(2) The department shall determine that the managed care organization meets the following requirements:

a. The managed care organization shall make available the services it provides to enrollees as established in the contract.

b. The managed care organization shall provide satisfaction to the department against the risk of insolvency and ensure that neither Medicaid members nor the state shall be responsible for the managed care organization's debts if the managed care organization becomes insolvent. The managed care organization shall comply with insurance division provisions set forth in rule 191—40.12(514B) regarding net worth and rule 191—40.14(514B) containing reporting requirements.

c. The managed care organization shall attain and maintain accreditation by the National Committee on Quality Assurance (NCQA) or URAC (formerly known as the Utilization Review Accreditation Commission).

73.2(3) If not already accredited, the managed care organization must demonstrate it has initiated the accreditation process as of the contract effective date and must achieve accreditation at the earliest date allowed by NCQA or URAC. Prior to the contract effective date, the managed care organization must

be licensed and in good standing in the state of Iowa as a health maintenance organization in accordance with insurance division rules set forth in 191—Chapter 40.

73.2(4) The contract shall meet the following minimum requirements. The contract shall:

a. Be in writing.

b. Specify the duration of the contract period.

c. List the services which must be covered.

d. Describe service access and provide access information.

e. List conditions for nonrenewal, termination, suspension, and modification.

f. Specify the method and rate of reimbursement.

g. Provide for disclosure of ownership and subcontracted relationships.

h. Specify that all subcontracts shall be in writing, shall comply with the provisions of the contract between the department and the managed care organization, and shall include any general requirements of the contract that are appropriate to the service or activity covered by the subcontract.

i. Specify appeal and grievance rights.

j. Specify all operational and service delivery expectations.

k. Specify reporting requirements.

l. Specify requirements for utilization management and quality improvement.

m. Specify requirements for program integrity.

n. Specify termination requirements and assessment of penalties.

441—73.3(249A) Enrollment.

73.3(1) *Enrollment area.* The coverage area for enrollment shall be statewide.

73.3(2) *Members subject to enrollment.* All HAWK-I program and Iowa Health and Wellness Plan members shall be subject to mandatory enrollment in a managed care organization. All Medicaid members, with the exception of the following, shall be subject to mandatory enrollment in a managed care organization:

a. Members who are medically needy as defined at 441—subrule 75.1(35).

b. Individuals eligible only for emergency medical services because the individuals do not meet citizenship or alienage requirements, pursuant to 441—subrule 75.11(4).

c. Persons who are currently presumptively eligible as defined in 441—subrules 75.1(30), 75.1(40), and 75.1(44).

d. Persons eligible for the program of all-inclusive care for the elderly (PACE) who voluntarily elect PACE coverage as defined in 441—subrule 88.24(1).

e. Persons enrolled in the health insurance premium payment program (HIPP) pursuant to rule 441—75.21(249A).

f. Persons eligible only for the Medicare savings program as defined in rules 441—75.1(249A) and 441—76.1(249A).

g. American Indian and Alaska Native populations who are exempt from mandatory enrollment pursuant to 42 CFR 438.50(d)(2) but who may enroll voluntarily.

73.3(3) *Enrollment process.* The department shall notify members who must be enrolled in a managed care organization of enrollment and the effective date of enrollment. The department will implement an enrollment process in accordance with federal funding requirements, including 42 CFR 438 as amended to October 16, 2015.

a. General. Members may receive managed care organization choice counseling from the enrollment broker. The enrollment broker will provide information about individual managed care organization benefit structures, services and network providers, as well as information about other Medicaid programs as requested by the Medicaid member to assist the member in making an informed selection.

b. Tentative assignment. Members shall be tentatively assigned to a managed care organization and offered the opportunity to choose from the available managed care organizations within a time frame specified in the tentative assignment letter.

c. Request to change enrollment.

(1) A member shall have a minimum of ten days from the date of the tentative assignment letter to request enrollment with a different managed care organization. The request may be made on a form designated by the department, in writing, or by telephone call to the enrollment broker's toll-free member telephone line. Changes are subject to the effective date provisions of subrule 73.3(4).

(2) An enrollee may, within 90 days of initial enrollment, request to change enrollment from one managed care organization and enroll in another managed care organization. The request may be made on a form designated by the department, in writing, or by telephone call to the enrollment broker's toll-free member telephone line. Changes are subject to the effective date provisions of subrule 73.3(4).

d. Ongoing enrollment. Enrollees shall remain enrolled with the chosen managed care organization for a total of 12 months.

e. Enrollment cycle. Prior to the end of the enrollee's annual enrollment period, the enrollee shall be notified of the option to maintain enrollment with the current managed care organization or to enroll with a different managed care organization.

73.3(4) *Effective date of enrollment.* The effective date of enrollment shall be no later than the first day of the second month beginning after the date on which the managed care organization receives the designated managed health care choice form or written or verbal request.

73.3(5) *Benefit reimbursement prior to enrollment.*

a. Prior to the effective date of managed care enrollment, except as provided in paragraph 73.3(5)*"b,"* the Medicaid program shall reimburse providers for covered program benefits pursuant to 441—Chapters 74 to 91, as applicable for eligible members.

b. The managed care organization shall be responsible for covering newly retroactive Medicaid eligibility periods, prior to the effective date of enrollment, in the following cases:

(1) Babies born to Medicaid-enrolled women who are retroactively eligible to the month of birth; and

(2) Children enrolled in the HAWK-I program retroactive to the date of application. For purposes of this requirement, a retroactive Medicaid eligibility period is defined as a period of time up to three months prior to the Medicaid determination month.

441—73.4(249A) Disenrollment process.

73.4(1) *Enrollee-requested disenrollment.* An enrollee may request disenrollment with a managed care organization as follows:

a. During the first 90 days following the date of the enrollee's initial enrollment with the managed care organization, the enrollee may request disenrollment, for any reason, in writing or by a telephone call to the enrollment broker's toll-free member telephone line.

b. After the 90 days following the date of the enrollee's enrollment with the managed care organization, when an enrollee is requesting disenrollment due to good cause, the enrollee member shall first make a verbal or written filing of the issue through the managed care organization's grievance system. If the member does not experience resolution, the managed care organization shall direct the member to the enrollment broker. The enrolled member may request disenrollment in writing or by a telephone call to the enrollment broker's toll-free member telephone line and must request a good-cause change for enrollment. Good-cause changes include the following:

(1) The managed care organization does not, because of moral or religious objections, cover the service the member seeks.

(2) The member needs related services to be performed at the same time; not all related services are available within the network; and the member's primary care provider or another provider determines that receiving the services separately would subject the member to unnecessary risk.

(3) Other reasons, including but not limited to poor quality of care, lack of access to services covered under the contract, lack of access to providers experienced in dealing with the member's health care needs, or eligibility and choice to participate in a program not available in managed care (for example, PACE).

c. The final decision for disenrollment shall be determined by the department.

73.4(2) *Disenrollment by department.* Disenrollment will occur when:

a. The contract between the department and the managed care organization is terminated.

b. The enrollee becomes ineligible for Medicaid, the HAWK-I program or the Iowa Health and Wellness Plan. If the enrollee becomes ineligible and is later reinstated to these programs, enrollment in the managed care organization will also be reinstated.

c. The enrollee transfers to an eligibility group excluded from managed care organization enrollment. See definition of "enrollee" in rule 441—73.1(249A).

d. The department has determined that participation in the HIPP program as described in rule 441—75.21(249A) is more cost-effective than enrollment in managed health care.

e. Death of the enrollee.

f. The enrollee has changed residence to another state.

73.4(3) *Managed care organization-requested disenrollment.* A managed care organization shall not disenroll an enrollee or encourage an enrollee to disenroll for any reason, including the enrollee's health care needs or change in health care status or because of the enrollee's utilization of medical services, diminished capacity, or uncooperative or disruptive behavior resulting from the enrollee's special needs (except when the enrollee's continued enrollment seriously impairs the managed care organization's ability to furnish services to either this particular enrollee or other enrollees). In instances where the exception applies, the managed care organization shall provide evidence to the department that continued enrollment of an enrollee seriously impairs the managed care organization's ability to furnish services to either this particular enrollee or other enrollees. The managed care organization shall have methods by which the department is assured that disenrollment is not requested for another reason.

73.4(4) *Disenrollment effective date.* The effective date of a department-approved disenrollment shall be no later than the first day of the second calendar month beginning after the month in which: (1) the enrollee requests disenrollment pursuant to subrule 73.4(1); (2) the department notifies the enrollee and managed care organization of disenrollment pursuant to subrule 73.4(2); or (3) the managed care organization requests disenrollment pursuant to subrule 73.4(3). The enrollee shall remain enrolled in the managed care organization and the managed care organization will be responsible for services covered under the contract until the effective date of disenrollment unless the enrollee is in an inpatient setting at the time of disenrollment. If the enrollee is in an inpatient setting at the time of disenrollment, the managed care organization shall be responsible for the inpatient services for 60 days or until the enrollee is discharged.

441—73.5(249A) Covered services.

73.5(1) *Required services.* A managed care organization shall provide:

a. For enrollees other than Iowa Health and Wellness Plan enrollees and HAWK-I program enrollees, services as set forth in 441—Chapters 78, 81, 82, 83, 84, 85, and 87, with the exception of the following:

(1) Area education agency services.

(2) Dental services not provided in an outpatient hospital setting.

(3) Infant and toddler program services.

(4) Local education agency services.

(5) State of Iowa Veterans Home services.

(6) Money Follows the Person Grant-funded services.

b. Services as set forth in 441—Chapter 74 for Iowa Health and Wellness Plan enrollees.

c. Services as set forth in 441—Chapter 86 for HAWK-I program enrollees.

73.5(2) *Community-based case management service.* The managed care organization is required to provide services that meet requirements specified in the contract and in 441—subrule 90.5(1).

73.5(3) *Health home services.* The managed care organization is required to provide services that meet the requirements specified in 441—subrule 78.53(1) and as specified in the contract.

73.5(4) *Value-added services.* A managed care organization may develop optional services and supports to address the needs of enrollees. These services and supports shall be implemented only after approval by the department.

441—73.6(249A) Amount, duration and scope of services.

73.6(1) The managed care organization shall provide, at a minimum, all benefits and services deemed medically necessary that are covered under the contract with the agency. In accordance with federal funding requirements, including 42 CFR 438.210(a)(3) as amended to October 16, 2015, the managed care organization shall furnish covered services in an amount, duration and scope reasonably expected to achieve the purpose for which the services are furnished. The managed care organization may not arbitrarily deny or reduce the amount, duration and scope of a required service solely because of diagnosis, type of illness, or condition of the enrollee. With the exception of court-ordered services, the managed care organization shall require as a condition of payment managed care organization approval of admissions to a nursing facility, an intermediate care facility for persons with an intellectual disability, psychiatric medical institutions for children, and a mental health institute. Managed care organizations shall also require managed care organization approval of out-of-state placements as a condition of payment.

73.6(2) The managed care organization may place appropriate limits on services on the basis of medical necessity criteria for the purpose of utilization management, provided the services can reasonably be expected to achieve their purpose in accordance with the contract. The managed care organization shall not:

a. Avoid costs for services covered in the contract by referring members to publicly supported health care resources.

b. Deny reimbursement of covered services based on the presence of a preexisting condition.

73.6(3) The managed care organization shall allow each enrollee to choose a health professional, to the extent possible and appropriate, within the managed care organization's provider network. The managed care organization shall ensure compliance with the Americans with Disabilities Act (ADA) in the delivery and approval of all services.

441—73.7(249A) Emergency services.

73.7(1) Emergency services shall be available 24 hours a day, 7 days a week.

73.7(2) In accordance with federal funding requirements, including 42 CFR 438.114 as amended to October 16, 2015, the managed care organization shall:

a. Cover emergency services without the need for prior authorization and may not limit reimbursement to network providers.

b. Cover and pay for emergency services regardless of whether the provider that furnishes the services has a contract with the managed care organization.

c. Pay noncontracted providers for emergency services the amount that would have been paid if the service had been provided under the state's fee-for-service Medicaid program.

d. Cover the medical screening examination, as defined by EMTALA, provided to a member who presents to an emergency department with an emergency medical condition.

73.7(3) The managed care organization shall not deny payment for:

a. Treatment obtained when an enrollee has an emergency medical condition, including cases in which the absence of immediate medical attention would result in placing the health of the enrollee in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

b. Treatment obtained when a representative of the managed care organization instructs the enrollee to seek emergency medical services.

441—73.8(249A) Access to service.

73.8(1) The managed care organization shall ensure enrollees have access to services as specified in the contract. In general, the managed care organization shall provide available, accessible, and adequate numbers of institutional facilities, service locations, and service sites and professional, allied, and paramedical personnel for the provision of covered services, including all emergency services, on a 24-hours-a-day, 7-days-a-week basis. At a minimum, access to services shall comply with the standards described in the contract. For areas of the state where provider availability is insufficient to

meet these standards, for example, in health professional shortage areas and medically underserved areas, the access standards shall meet the usual and customary standards for the community. Exceptions to the requirements contained in this rule shall be justified and documented to the state on the basis of community standards. All other services not specified in this rule shall meet the usual and customary standards for the community.

73.8(2) Choice of providers. An enrollee shall use the managed care organization's provider network unless the managed care organization has authorized a referral to a nonparticipating provider for provision of a service or treatment plan or as specified for provision of emergency services set forth in rule 441—73.7(249A). In accordance with federal funding requirements, including 42 CFR 431.51(b)(2) as amended to October 16, 2015, the managed care organization shall allow enrollees freedom of choice of providers of any department-enrolled family planning service provider including those providers who are not in the managed care organization's network.

73.8(3) Continuity of care. The managed care organization shall have policies and procedures that provide for the continuity of care of treatment to ensure that a new enrollee's existing services are honored as required in the contract.

73.8(4) Adequate service referral support and after-hours call-in coverage. The managed care organization shall ensure enrollee access to service information and medical coverage 24 hours a day, 7 days a week, 365 days a year.

a. Member helpline. The managed care organization shall maintain a dedicated toll-free member services helpline as established in the contract to handle a variety of member inquiries and to provide warm transfer of enrollees to outside entities, such as provider offices, and to internal managed care organization departments, such as to care coordinators.

b. Nurse call line. The managed care organization shall operate a toll-free nurse call line that provides nurse triage telephone services for members to receive medical advice 24 hours a day, 7 days a week from trained medical professionals.

441—73.9(249A) Incident reporting. The managed care organization shall develop and implement a critical incident reporting and management system for participating providers in accordance with the department requirements for reporting incidents for Section 1915(c) HCBS Waivers, the Section 1915(i) Habilitation Program, and as required for licensure of programs through the department of inspections and appeals. The managed care organization shall develop and implement policies and procedures, subject to department review and approval, to:

1. Address and respond to incidents;
2. Report incidents to the appropriate entities in accordance with required time frames; and
3. Track and analyze incidents.

441—73.10(249A) Discharge planning. The managed care organization shall establish policies and procedures, subject to approval by the department, that protect an individual from involuntary discharge that may lead to placement in an inappropriate or more restrictive setting. The managed care organization shall facilitate a seamless transition whenever a member transitions between facilities or residences.

441—73.11(249A) Level of care assessment and annual reviews. The managed care organization shall establish policies and procedures to ensure the implementation of level of care and needs-based eligibility assessments and reassessments as required in the contract and consistent with the department's level of care and needs-based eligibility assessment process and the requirements provided in 441—Chapters 75, 78, 81, 82, 83, and 85. Waiver level of care determinations must be consistent with those made for the appropriate institutional level of care under the state plan.

73.11(1) Initial level of care assessment. Managed care organizations are responsible for conducting level of care and needs-based eligibility assessments for a current enrollee who requires a level of care or a needs-based eligibility assessment. The managed care organization shall perform the assessment using department-approved assessment tools. The results of the assessment shall be submitted to the IME medical services unit for determination of level of care or needs-based eligibility.

73.11(2) Annual continued stay reviews, continued care reviews and redeterminations. When an enrollee requires a continued stay review, a continued care review or a redetermination, the managed care organization shall use department-approved assessment tools. If the managed care organization becomes aware that the enrollee's functional or medical status has changed in a way that may affect the enrollee's level of care or needs-based eligibility, the managed care organization shall submit the assessment findings to the IME medical services unit for determination of level of care or needs-based eligibility.

73.11(3) At any time, if the managed care organization becomes aware that the enrollee's functional or medical status has changed in a way that may affect level of care or needs-based eligibility, the managed care organization shall conduct a level of care or needs-based assessment using the department-approved tools and submit the assessment to the IME medical services unit for determination of level of care or needs-based eligibility.

441—73.12(249A) Appeal of managed care organization actions. The managed care organization shall have written appeal policies and procedures for an enrollee, or an enrollee's authorized representative, to appeal a managed care organization action. The policies must address contractual requirements and federal funding requirements, including 42 CFR 438.400(b) as amended to October 16, 2015.

73.12(1) *Managed care organization appealable actions.* Managed care organization actions that may be appealed include:

a. Denial or limited authorization of a requested service, including the type or level of service.

b. Reduction, suspension, or termination of a previously authorized service.

c. Denial, in whole or in part, of payment of service.

d. Failure to provide services in a timely manner as defined by the department.

e. Failure of the managed care organization to act within the required time frames set forth in federal funding requirements, including 42 CFR 438.408(b) as amended to October 16, 2015.

f. For a resident of a rural area that has only one appropriate provider of a needed service, the denial of an enrollee's request to exercise the enrollee's right to obtain services outside of the MCO's network.

73.12(2) *Appeal process.* The managed care organization appeal process shall be approved by the department and shall:

a. Allow for the appeal request to be submitted in writing or verbally. If the request is submitted verbally, it must be followed up with a written submission.

b. Require acknowledgment of the receipt of a request for an appeal within three working days.

c. Allow for participation by the enrollee and the provider.

d. Provide for resolution of nonexpedited appeals to be concluded within 45 calendar days of receipt of the request unless an extension is requested.

e. Provide for resolution of expedited appeals where the standard time period could seriously jeopardize the member's health or ability to maintain or regain maximum function to be within three business days of receipt of the notice pursuant to federal funding requirements, including 42 CFR 438.402 as amended to October 16, 2015.

f. Ensure that the review will be made by qualified professionals who were not involved with the original action.

g. Ensure issuance of a notice of decision for each appeal. These notices shall contain the member's appeal rights with the department and shall contain an adequate explanation of the action taken and the reason for the decision.

441—73.13(249A) Appeal to department. If the enrollee is not satisfied with the final decision rendered by the managed care organization through the managed care organization's appeal process, the enrollee may appeal an action in accordance with the appeal process available to all persons receiving Medicaid-funded services as set forth in 441—Chapter 7.

441—73.14(249A) Continuation of benefits. The managed care organization shall be required to continue the member's benefits during the appeal in accordance with federal funding requirements, including 42 CFR 438.420 as amended to October 16, 2015.

73.14(1) If the benefits are continued or reinstated while the appeal is pending, the benefits must be continued until one of the following occurs:

a. The enrollee withdraws the appeal request;

b. Ten days pass after the MCO mailed the notice providing the resolution of the appeal against the enrollee, unless the enrollee, within the ten-day time frame, has requested a state fair hearing with continuation of benefits until a state fair hearing decision is reached; or

c. The time period or service limits of a previously authorized service have been met.

73.14(2) If the final resolution of the appeal is adverse to the enrollee, that is, it upholds the managed care organization's action, the managed care organization may recover the cost of the services furnished to the enrollee while the appeal is pending, to the extent that services were furnished solely because of the requirements to maintain benefits during the appeal.

73.14(3) If the managed care organization or state fair hearing officer reverses a decision to deny, limit, or delay services that were not furnished while the appeal was pending, the managed care organization must authorize and provide the disputed services promptly and as expeditiously as the member's health condition requires. If the managed care organization or the state fair hearing officer reverses a decision to deny authorization of services and the enrollee received the disputed services while the appeal was pending, the managed care organization must pay for these services.

441—73.15(249A) Grievances. The managed care organization shall have policies and procedures for review of any nonclinical incidents, nonclinical complaints, or nonclinical concerns. Grievances may be communicated verbally or in writing and require that the review be conducted by someone other than the person or persons involved in the grievance. All policies related to the review of grievances shall be approved by the department prior to implementation.

441—73.16(249A) Written record. All enrollee appeals and grievances shall be logged and reported to the department. The log shall include the status and resolution of all appeals and grievances.

441—73.17(249A) Information concerning procedures relating to the review of managed care organization decisions and actions. The managed care organization's written procedures for the review of managed care organization decisions and actions shall be provided to each new enrollee, to participating providers in a provider manual, and to nonparticipating providers upon request.

441—73.18(249A) Records and reports.

73.18(1) *Records system.* The managed care organization shall document and maintain clinical and fiscal records in accordance with federal and state requirements, including rule 441—79.3(249A) and 42 CFR 456 as amended to October 16, 2015, throughout the course of the contract. The records system shall:

a. Identify transactions with or on behalf of each enrollee by the state identification number assigned to the enrollee by the department.

b. Provide a rationale for and documentation of decisions made by the managed care organization, based upon medical necessity.

c. Permit effective professional review for medical audit processes.

d. Facilitate an adequate system for monitoring treatment reimbursed by the managed care organization including follow up of the implementation of discharge plans and referral to other providers.

73.18(2) *Content of individual treatment record.* The managed care organization shall ensure that participating providers maintain an adequate record-keeping system that includes a complete medical or service record for each enrolled member including documentation of all services provided to each

enrollee in compliance with the contract and provisions of rule 441—79.3(249A) and pursuant to federal funding requirements, including 42 CFR 456 as amended to October 16, 2015.

73.18(3) *Confidentiality of health care, mental health care, and substance abuse information.* The managed care organization shall protect and maintain the confidentiality of health care, mental health care, and substance abuse information by implementing policies for staff and through contract terms with participating providers. The policies must comply with applicable state and federal laws.

441—73.19(249A) Audits. The department or its designee and the U.S. Department of Health and Human Services (HHS) may evaluate through inspections or other means the quality, appropriateness, and timeliness of services performed by the managed care organization. The department or HHS may audit and inspect any records of a managed care organization, or the subcontractor of the managed care organization, that pertain to services performed and the determination of amounts paid under the contract. These records will be made available at times, places, and in a manner as authorized representatives of the department, its designee or HHS may request.

441—73.20(249A) Marketing. Managed care organization marketing activities and materials shall comply with applicable laws and regulations regarding marketing by the managed care organizations and contract terms. The department shall approve all marketing materials, which must comply with federal funding requirements, including 42 CFR 438.10 and 42 CFR 438.104 as amended to October 16, 2015.

441—73.21(249A) Enrollee education.

73.21(1) *Use of services.* The managed care organization shall provide written information to all enrollees on the use of services the managed care organization is responsible to arrange, monitor, and reimburse. Information must include the array of services covered; how to access covered services; the providers participating; an explanation of the process for the review of managed care organization decisions and actions, including the enrollee's right to a fair hearing under 441—Chapter 7 and how to access that fair hearing process; provision of after-hours and emergency care; procedures for notifying enrollees of a change in benefits or office sites; how to request a change in providers; a statement of consumer rights and responsibilities; out-of-area use of service information; availability of toll-free telephone information and crisis assistance; and the appropriate use of the referral system.

73.21(2) *Outreach to members with special needs.* The managed care organization shall provide enhanced outreach to members with special needs including, but not limited to, persons with psychiatric disabilities, an intellectual disability or other cognitive impairments, illiterate persons, non-English-speaking persons, and persons with visual or hearing impairments.

73.21(3) *Patient rights and responsibilities.* The managed care organization shall have in effect a written statement of patient rights and responsibilities which is available upon request as well as issued to all new enrollees. This statement shall be part of the packet of enrollment information provided to all new enrollees.

441—73.22(249A) Payment to the managed care organization.

73.22(1) *Capitation rate.* In consideration for all services rendered by a managed care organization under a contract with the department, the managed care organization will receive a payment each month for each enrolled member. The monthly reimbursement may be reduced by amounts withheld for pay-for-performance components of the contract. The withheld amounts will be distributed based on the terms defined in the managed care contract. Additionally, the department will make an allowance for obligations resulting from Section 9010 of the Patient Protection and Affordable Care Act, the health insurance providers fee. This capitation rate, inclusive of the amounts withheld and the health insurance providers fee, represents the total obligation of the department with respect to the costs of medical care and services provided to enrolled members under the contract except as otherwise designated in the contract rate. Pay-for-performance terms will allow for incentive reimbursement if the managed care organization meets metrics defined in the managed care contract.

73.22(2) *Determination of rate.* The actuarially sound capitation rate will be determined according to the terms of federal funding requirements, including 42 CFR 438.6 as amended to October 16, 2015, Actuarial Standards of Practice 49, and other related CMS regulations and generally accepted actuarial principles and practices.

73.22(3) *Third-party liability.* If an enrolled member has health insurance coverage or a responsible party other than the Medicaid program available for payment of medical expenses, it is the right and responsibility of the managed care organization to investigate these third-party resources and attempt to obtain payment. The managed care organization shall retain all funds collected from third-party resources. A complete record of all income from these sources must be maintained and made available to the department on request.

73.22(4) *Medical loss ratio.* The managed care organization shall report the experienced medical loss ratio for each contract rate period. In the event that the medical loss ratio falls below the department-designated target, the department shall recoup excess capitation paid to the managed care organization.

441—73.23(249A) Claims payment by the managed care organization.

73.23(1) The managed care organizations shall pay or deny:

a. Ninety percent of all clean claims within 14 calendar days of receipt,

b. Ninety-nine point five percent of all clean claims within 21 calendar days of receipt, and

c. One hundred percent of all claims within 90 calendar days of receipt.

73.23(2) Limits on payment responsibility for services.

a. The managed care organization is not required to reimburse providers for the provision of services that do not meet the criteria of medical necessity.

b. The managed care organization has the right to require prior authorization of covered services and to deny reimbursement to providers that do not comply with such requirements.

c. Payment responsibilities for emergency room services are as provided at rule 441—73.7(249A).

73.23(3) Payment to nonparticipating providers. In reimbursing nonparticipating providers, the managed care organization is obligated to pay 90 percent of the payment to participating providers.

441—73.24(249A) Quality assurance. The managed care organization shall have in effect an internal quality assurance and performance improvement system that meets the requirements of any or all applicable state and federal laws.

441—73.25(249A) Certifications and program integrity. The managed care organization shall develop and implement policies, procedures and a mandatory compliance plan to ensure compliance with the contract requirements for certification, program integrity and prohibited affiliations. The managed care organization shall cooperate and collaborate with the department on all program integrity activities. The managed care organization shall comply with state and federal laws pertaining to these requirements, including 42 CFR 438.608 and 42 CFR 455 as amended to October 16, 2015.

These rules are intended to implement Iowa Code section 249A.4 and 2015 Iowa Acts, Senate File 505, section 12.

ITEM 2. Amend **441—Chapter 88**, title, as follows:

SPECIALIZED MANAGED ~~HEALTH~~ CARE ~~PROVIDERS~~ PROGRAMS

ITEM 3. Rescind **441—Chapter 88**, Preamble, and adopt the following **new** preamble in lieu thereof:

PREAMBLE

This chapter provides for specialized programs of managed care, within the Iowa medical assistance program but outside of managed care pursuant to 441—Chapter 73. Managed care providers under these programs are not required to comply with 441—Chapter 73.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 4. Rescind **441—Chapter 88**, **Division I** title and rules **441—88.1(249A)** to **441—88.14(249A)**.

ITEM 5. Amend **441—Chapter 88**, **Division II** title, as follows:

DIVISION ~~II~~ I
PREPAID HEALTH PLANS

ITEM 6. Renumber rules **441—88.21(249A)** to **441—88.33(249A)** as **441—88.1(249A)** to **441—88.13(249A)** and update cross references accordingly.

ITEM 7. Rescind **441—Chapter 88**, **Division III** title and rules **441—88.41(249A)** to **441—88.52(249A)**.

ITEM 8. Rescind **441—Chapter 88**, **Division IV** title and rules **441—88.61(249A)** to **441—88.75(249A)**.

ITEM 9. Amend **441—Chapter 88**, **Division V** title, as follows:

DIVISION ~~V~~ II
PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY

ITEM 10. Renumber rules **441—88.81(249A)** to **441—88.88(249A)** as **441—88.21(249A)** to **441—88.28(249A)** and update cross references accordingly.

[Filed Emergency After Notice 12/16/15, effective 1/1/16]
[Published 1/6/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/6/16.

ARC 2336C

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.3, the Iowa College Student Aid Commission hereby rescinds Chapter 27, "Iowa Grant Program," Iowa Administrative Code.

The rescission of the chapter is a result of changes to the Iowa Code that were enacted in 2015 Iowa Acts, House File 658, section 18.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 28, 2015, as **ARC 2217C**. This amendment is identical to that published under Notice of Intended Action.

The Commission does not intend to grant waivers under the provisions of these rules.

After analysis and review of this rule making, the Commission finds that there is no impact on jobs.

This amendment is intended to implement 2015 Iowa Acts, House File 658, section 18.

This amendment will become effective on February 10, 2016.

The following amendment is adopted.

Rescind and reserve **283—Chapter 27**.

[Filed 12/8/15, effective 2/10/16]
[Published 1/6/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/6/16.

ARC 2343C

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 61, "Iowa Reading Research Center," Iowa Administrative Code.

The Iowa Reading Research Center is charged to adopt program criteria and guidelines for the intensive summer literacy programs required by Iowa Code section 279.68. This amendment contains criteria and guidelines based on the work and recommendations of a multiple-member task team convened by the Center, which examined current practices in Iowa schools and evidence-based research on summer reading acceleration.

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

Notice of Intended Action was published in the October 14, 2015, Iowa Administrative Bulletin as **ARC 2186C**. Public comments were allowed until 4:30 p.m. on November 3, 2015. A public hearing was held on that date. Thirty-eight persons attended the public hearing. Approximately 90 written comments were received regarding this amendment. Based upon the public comments received, the adopted amendment reflects the following changes from the amendment published under Notice.

1. In Criterion 1, a specific reference was added to Iowa Code section 279.68, subsection 2, paragraph "d," subparagraph (3), subparagraph division (a). That subparagraph division requires that a reading curriculum must assist "students assessed as exhibiting a substantial deficiency in reading to develop the skills to read at grade level" and that such assistance shall "include but not be limited to strategies that formally address dyslexia, when appropriate."

2. In Criterion 2, definitional and clarifying language was added to give school districts more flexibility.

3. In Criterion 3, the minimum number of hours of intensive reading instruction was changed from 75 hours to 70 hours.

4. In Criterion 5 and Criterion 7, the attendance requirement for an intensive summer literacy program was changed from 90 percent attendance to 85 percent attendance.

5. In Criterion 8, an option to utilize a private provider for an intensive summer literacy program was added.

In addition, several Iowa Administrative Code references were revised for clarity and consistency.

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(53)"c."

This amendment will become effective February 10, 2016.

The following amendment is adopted.

Amend rule 281—61.3(256) as follows:

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

61.3(1) *Program criteria.* ~~Reserved.~~ Each district's intensive summer literacy program shall be implemented consistent with 281—Chapter 62 and shall meet the following program criteria.

a. Criterion 1. Each district shall adopt instructional practices or programs that have demonstrated success and that include explicit and systematic instruction in foundational reading skills based on student need. 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 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 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.

c. Criterion 3. Each district shall allow sufficient time for intensive 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 provide intensive instruction in small classes and small groups. To meet this criterion, a district must 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 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 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 evaluate student outcomes and program implementation. 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. Criterion 8. Each program shall be under the leadership and supervision of at least one 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 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. Option to use private providers. A district may enter into an agreement with a private provider to provide intensive summer literacy instruction required by 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) *Guidelines for implementation by school districts.* ~~Reserved.~~ The center shall periodically publish guidelines to assist school districts in applying the program criteria contained in subrule 61.3(1) and in improving the performance of intensive summer literacy programs. The center shall make such guidelines available on its Web site.

[Filed 12/15/15, effective 2/10/16]
[Published 1/6/16]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/6/16.

ARC 2341C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services 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 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments implement the provider qualifications, scope of services and reimbursement methodology for community-based neurobehavioral rehabilitation residential and intermittent services.

The Department entered into an agreement with Community NeuroRehab in 2010 to provide community-based neurobehavioral rehabilitation services for adults who have experienced a brain injury co-occurring with a mental health diagnosis, as an alternative to costly out-of-state facility-based neurobehavioral rehabilitation, hospitalization, institutionalization, incarceration or homelessness. The Department has been funding these services through exceptions to policy while administrative rules were being developed with a stakeholder group representing brain injury professionals. These services yield a cost savings to the state for members who would otherwise have been admitted to out-of-state facility-based services for neurobehavioral rehabilitation.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2113C** on August 19, 2015. The Department received comments from two respondents during the public comment period. A summary of the comments and the Department's responses are as follows:

Comment 1: Both respondents stated that the Department should add "formal fire prevention and reaction training on a regular basis" to paragraph 77.52(3)"c."

Department response 1: The Department agreed with the comment and has changed new paragraph 77.52(3)"c" as follows:

c. Within 30 days of commencement of direct service provision, employees shall complete cardiopulmonary resuscitation (CPR) training, a first-aid course, fire prevention and reaction training and universal precautions training. These training courses shall be completed no less than annually.

Comment 2: One respondent stated that the Department should revise subparagraph 77.52(3)"k"(3) to add that the member should participate in the evaluation of the member's progress towards treatment goals. The respondent stated that reference to the evaluation of progress towards treatment goals is implied in the subparagraph regarding development of the individualized service plan (ISP) but appears to have been omitted in subparagraph (3) of paragraph "k" and that the reference to the evaluation of progress towards treatment goals must be there to ensure person-centered focus.

Department response 2: The Department agreed with the comment and has changed new subparagraph 77.52(3)"k"(3) as follows:

(3) The member and the member's treatment team evaluate the member's progress towards treatment goals ~~is evaluated~~ regularly and no less than quarterly. Treatment plans are reviewed regularly, but not less than quarterly, and are revised as the member's status or needs change to reflect the member's progress and response to treatment.

Comment 3: In regard to subparagraph 77.52(3)"k"(5), a respondent stated that any restraint, particularly one of a chemical nature, must be in accordance with a prescription, regular oversight, and support of a licensed medical professional and that, overall, the language about the use of retreating is outdated and not in accordance with best practice of positive behavioral supports. The respondent stated that the language should be brought into accordance with best practice in this area.

Department response 3: The homes where the residential community-based neurobehavioral rehabilitation services are provided are licensed as residential care facilities with a specialized license for three to five beds under rule 481—63.47(135C) of the Department of Inspections and Appeals (DIA). DIA subrule 63.23(4) and rules 481—63.33(135C) and 481—63.37(135C) address residents' rights and the use of least restrictive interventions. The Department agreed with the comment and has changed new subparagraph 77.52(3)"k"(5), introductory paragraph, as follows:

(5) When a member requires any restrictive interventions, the interventions will be implemented in accordance with 481—subrule 63.23(4), rule 481—63.33(135C), and rule 481—63.37(135C). When a member has a guardian or legal representative, that person will provide informed consent to treat and provide informed consent for any restrictive interventions that may be required to protect the health or safety of the member. Restrictive interventions include but are not limited to:

Comment 4: Both respondents noted an error in subparagraph 78.56(2)"b"(2), namely, that "other than" instead should read "inclusive of."

Department response 4: The Department agreed with the comment from the respondents. New subparagraph 78.56(2)"b"(2) has been changed as follows:

(2) The member has a history of presenting with neurobehavioral or psychiatric symptoms resulting in at least one episode that required professional supportive care ~~other than hospitalization, institutionalization, incarceration or homelessness~~ more intensive than outpatient care more than once in a lifetime (e.g., emergency services, alternative home care, partial hospitalization or inpatient hospitalization).

Comment 5: A respondent stated that subparagraph 77.52(3)"a"(6) does not specify how competency in performing assigned duties and interacting with members will be assessed.

Department response 5: Providers have expressed that it is they who are best qualified to determine which methodologies are most useful in assessing the competency of the direct care personnel. The Department does not prescribe specific methodologies of personnel competency assessment for other

Medicaid services and will continue to expect that the providers will determine the best methods of assessing the competency of their direct care personnel and that are most appropriate for their individual organizations. The Department did not make any changes in response to comment 5.

Comment 6: A respondent commented that in subparagraph 77.52(3)"k"(5), the mention of chemical restraint as a restrictive intervention which may be required does not specify how or by whom such a restraint may be prescribed and implies that it is something imposed by the program. The respondent stated that in addition, no parameters are noted for the use of any restraints and no staff training is required relative to the implementation of manual or mechanical restraints. The respondent further stated that no mention is made of what type of professional must approve such a plan and how it is to be monitored. The respondent noted that rules governing more institutional levels of care (SNF, ICF, RCF) require that measures used must be the "least restrictive" and asserted that surely any restraint measures used in a community-based setting should include this language and include strict controls as to their use, if allowed at all.

Department response 6: The Department agreed with the respondent and believes that the changes to subparagraph 77.52(3)"k"(5) as shown in Department response 3 above address this comment.

Comment 7: A respondent stated that subparagraphs 78.56(2)"b"(1) and (2) note that "the member has undergone or is currently undergoing treatment more intensive than outpatient care and is currently hospitalized, institutionalized, incarcerated or homeless; or is at risk of hospitalization, institutionalization, incarceration or homelessness" or has a history of such. The respondent stated that the language does not specify that such treatment has occurred after the individual has sustained a brain injury, so individuals may qualify for this level of service by virtue of their behavior/symptomology unrelated to a brain injury and that, consequently, many individuals will qualify for this level of service by their premorbid history, which was not the intent of the legislature, the Iowa Medicaid Enterprise (IME), or the provider work group focused on the development of these rules.

Department response 7: The Department stated that in order to be eligible for community-based neurobehavioral rehabilitation services (CNRS), the member must have a brain injury diagnosis as set forth in rule 441—83.81(249A). For the purposes of clarity, the introductory paragraph of new paragraph 78.56(2)"b" has been changed as follows:

b. Risk factors. The member has the following post-brain injury risk factors:

The Council on Human Services adopted these amendments on October 14, 2015.

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 February 10, 2016.

The following amendments are adopted.

ITEM 1. Adopt the following **new** rule 441—77.52(249A):

441—77.52(249A) Community-based neurobehavioral rehabilitation services.

77.52(1) *Definitions.*

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

"Brain injury" means a diagnosis in accordance with rule 441—83.81(249A).

"Health care" means the services provided by trained and licensed health care professionals to restore or maintain the member's health.

"Intermittent community-based neurobehavioral rehabilitation services" means services provided to a Medicaid member on an as-needed basis to support the member and the member's family or caregivers to assist the member to increase adaptive behaviors, decrease maladaptive behaviors, and adapt and accommodate to challenging behaviors to support the member to remain in the member's own home and community.

"Member" means a person who has been determined to be eligible for Medicaid under 441—Chapter 75.

"Neurobehavioral rehabilitation" refers to a specialized category of neurorehabilitation provided by a multidisciplinary team that has been trained in, and delivers, services individually designed to address cognitive, medical, behavioral and psychosocial challenges, as well as the physical manifestations of acquired brain injury. Services concurrently work to optimize functioning at personal, family and community levels by supporting the increase of adaptive behaviors, decrease of maladaptive behaviors and adaptation and accommodation to challenging behaviors to support a member to maximize the member's independence in activities of daily living and ability to live in the member's home and community.

"Program" means a set of related resources and services directed to the accomplishment of a fixed set of goals for eligible members.

"Standardized assessment" means a valid, reliable, and comprehensive functional assessment tool(s) or process, or both, approved by the department for use in the assessment of a member's needs.

77.52(2) *Eligible providers.* The following agencies may provide community-based neurobehavioral rehabilitation residential and intermittent services:

a. An organization that is accredited by a department-approved, nationally recognized accreditation organization as a specialty brain injury rehabilitation service provider.

b. Agencies not accredited by a department-approved, nationally recognized accreditation organization as a specialty brain injury rehabilitation service provider that have applied for accreditation within the last 16 months to provide services may be enrolled. However, an organization that has not received accreditation within 16 months after application shall no longer be a qualified provider.

77.52(3) *Provider standards.* All community-based neurobehavioral rehabilitation service providers shall meet the following criteria:

a. The organization meets the outcome-based standards for community-based neurobehavioral rehabilitation service providers as follows:

(1) The organization shall provide high-quality supports and services to members.

(2) The organization shall have a defined mission commensurate with members' needs, desires, and abilities.

(3) The organization shall be fiscally sound and shall establish and maintain fiscal accountability.

(4) The program administrator shall be a certified brain injury specialist trainer (CBIST) through the Academy of Certified Brain Injury Specialists or a certified brain injury specialist under the direct supervision of a CBIST or a qualified brain injury professional as defined in rule 441—83.81(249A) with additional certification as approved by the department.

(5) A minimum of 75 percent of the organization's administrative and direct care personnel shall meet one of the following criteria:

1. Have a bachelor's degree in a human services-related field;
2. Have an associate's degree in human services with two years of experience working with individuals with brain injury;
3. Be an individual who is in the process of seeking a degree in the human services field with two years of experience working with individuals with brain injury; or
4. Be a certified brain injury specialist or have other brain injury certification as approved by the department.

(6) The organization shall have qualified personnel trained in the provision of direct care services to people with a brain injury. The training must be commensurate with the needs of the members served. Employees shall receive training and demonstrate competency in performing assigned duties and in all interactions with members, including but not limited to:

1. Promotion of a program structure and support for persons served so they can re-learn or regain skills for community inclusion and access.
2. Compensatory strategies to assist in managing ADLS (activities of daily living).
3. Quality of life issues.
4. Behavioral supports and identification of antecedent triggers.
5. Health and medication management.
6. Dietary and nutritional programming.

7. Assistance with identifying and utilizing assistive technology.

8. Substance abuse and addiction issues.

9. Self-management and self-interaction skills.

10. Flexibility in programming to meet members' individual needs.

11. Teaching adaptive and compensatory strategies to address cognitive, behavioral, physical, psychosocial and medical needs.

12. Community accessibility and safety.

13. Household maintenance.

14. Service support to the member's family or support system related to the member's neurobehavioral care.

b. The organization provides training and supports to its personnel. Training shall be provided before direct service provision and must be ongoing. At a minimum the training includes the following:

(1) Completion of the department-approved brain injury training modules.

(2) Member rights.

(3) Confidentiality and privacy.

(4) Dependent adult and child abuse prevention and mandatory reporter training.

(5) Individualized rehabilitation treatment plans.

(6) Major mental health disorder basics.

c. Within 30 days of commencement of direct service provision, employees shall complete cardiopulmonary resuscitation (CPR) training, a first-aid course, fire prevention and reaction training and universal precautions training. These training courses shall be completed no less than annually.

d. Within the first six months of commencement of direct service provision, employees shall complete training required by 441—subparagraph 78.54(3)*"a"*(6).

e. Within 12 months of the commencement of direct service provision, employees shall complete a department-approved, nationally recognized certified brain injury specialist training.

f. The organization shall have in place an outcome management system which measures the efficiency and effectiveness of service provision, including members' preadmission location of service, length of stay, discharge location, reason for discharge, member and stakeholder satisfaction, and access to services.

g. The organization shall have in place a systematic, organization-wide, planned approach to designing, measuring, evaluating, and improving the level of its performance. The organization shall be required to:

(1) Measure and analyze organizational activities and services quarterly.

(2) Conduct satisfaction surveys with members, family members, employees and stakeholders, and share the information with the public.

(3) Conduct an internal review of member service records at regular intervals.

(4) Track major and minor incident data according to subrule 77.37(8) and unexpected occurrences involving death or serious physical or psychological injury, or the risk thereof; and analyze the data to identify trends annually to ensure the health and safety of members served by the organization.

(5) Continuously identify areas in need of improvement.

(6) Develop a plan to address the identified areas in need of improvement.

(7) Implement the plan, document the results, and report to the governing body annually.

h. The organization shall have in place written policies and procedures and a personnel training program for the identification and reporting of child and dependent adult abuse to the department pursuant to 441—Chapters 175 and 176.

i. The organization's governing body shall have an active role in the administration of the organization.

j. The organization's governing body shall receive and use input from local community stakeholders, members participating in services, and employees and shall provide oversight that ensures the provision of high-quality supports and services to members.

k. The organization shall implement the following outcome-based standards for rights and dignity:

(1) Members are valued.

(2) The member and the member's treatment team mutually develop an individualized service plan (ISP) that takes into account the member's individual strengths, barriers and interests. The service plan shall include goals which are based on the member's need for services and shall address the neurobehavioral challenges and environmental needs as identified in the member's individual standardized comprehensive functional neurobehavioral assessment.

(3) The member and the member's treatment team evaluate the member's progress towards treatment goals regularly and no less than quarterly. Treatment plans are reviewed regularly, but not less than quarterly, and are revised as the member's status or needs change to reflect the member's progress and response to treatment.

(4) The member and the member's legal representative have the right to file grievances regarding the provider's implementation of the organizational standards, or its employee's or contractual person's action which affects the member. The provider shall provide to members the policies and procedures for member grievances and appeals at the commencement of services and annually thereafter.

(5) When a member requires any restrictive interventions, the interventions will be implemented in accordance with 481—subrule 63.23(4), rule 481—63.33(135C), and rule 481—63.37(135C). When a member has a guardian or legal representative, the guardian or legal representative shall provide informed consent to treat and consent for any restrictive interventions that may be required to protect the health or safety of the member. Restrictive interventions include but are not limited to:

1. Restraint, including chemical restraint, manual restraint or mechanical restraint;
2. Alarms added to a member's natural environment including doors, windows, refrigerators, cabinets, and other home appliances and fixtures;
3. Exclusionary time out;
4. Intensive staffing for control of behavior;
5. Limited access or contingency access to preferred items or activities naturally available in the member's environment;
6. Reprimand;
7. Response cost; and
8. Use of psychotropic medications to control the occurrence of an unwanted behavior.

(6) Members receive individualized services.

(7) Members or their legal representatives provide written consent regarding which personal information is shared and with whom.

(8) Members receive assistance with accessing financial management services as needed.

(9) Members receive assistance with obtaining preventive, appropriate and timely medical and dental care.

(10) The member's living environment is reasonably safe and located in the community.

(11) The member's desire for intimacy is respected and supported.

ITEM 2. Adopt the following **new** rule 441—78.56(249A):

441—78.56(249A) Community-based neurobehavioral rehabilitation services. Payment will be made for community-based neurobehavioral rehabilitation services that do not duplicate other services covered in this chapter.

78.56(1) *Definitions.*

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

"Brain injury" means a diagnosis in accordance with rule 441—83.81(249A).

"Health care" means the services provided by trained and licensed health care professionals to restore or maintain the member's health.

"Intermittent community-based neurobehavioral rehabilitation services" are provided to a Medicaid member on an as-needed basis to support the member and the member's family or caregivers to assist the member to increase adaptive behaviors, decrease maladaptive behaviors, and adapt and accommodate to challenging behaviors to support the member to remain in the member's own home and community.

"Member" means a person who has been determined to be eligible for Medicaid under 441—Chapter 75.

"Neurobehavioral rehabilitation" refers to a specialized category of neurorehabilitation provided by a multidisciplinary team that has been trained in, and delivers, services individually designed to address cognitive, medical, behavioral and psychosocial challenges, as well as the physical manifestations of acquired brain injury. Services concurrently work to optimize functioning at personal, family and community levels, by supporting the increase of adaptive behaviors, decrease of maladaptive behaviors and adaptation and accommodation to challenging behaviors to support a member to maximize the member's independence in activities of daily living and ability to live in the member's home and community.

"Program" means a set of related resources and services directed to the accomplishment of a fixed set of goals for eligible members.

"Standardized assessment" means a valid, reliable, and comprehensive functional assessment tool(s) or process, or both, approved by the department for use in the assessment of a member's individual needs.

78.56(2) *Member eligibility.* To be eligible to receive community-based neurobehavioral rehabilitation services, a member shall meet the following criteria:

a. Brain injury diagnosis. To be eligible for community-based neurobehavioral rehabilitation services, the member must have a brain injury diagnosis as set forth in rule 441—83.81(249A).

b. Risk factors. The member has the following post-brain injury risk factors:

(1) The member is exhibiting neurobehavioral symptoms in such frequency or severity that the member has undergone or is currently undergoing treatment more intensive than outpatient care and is currently hospitalized, institutionalized, incarcerated or homeless or is at risk of hospitalization, institutionalization, incarceration or homelessness; or

(2) The member has a history of presenting with neurobehavioral or psychiatric symptoms resulting in at least one episode that required professional supportive care more intensive than outpatient care more than once in a lifetime (e.g., emergency services, alternative home care, partial hospitalization, or inpatient hospitalization).

c. Need for assistance. The member exhibits neurobehavioral symptoms in such frequency, severity or intensity that community-based neurobehavioral rehabilitation is required.

d. Needs assessment. The member shall have a standardized comprehensive functional neurobehavioral assessment reviewed or completed by a licensed neuropsychologist, neurologist, M.D., or D.O. The neurobehavioral assessment shall document the member's need for community-based neurobehavioral rehabilitation, and the medical services unit of the Iowa Medicaid enterprise has determined that the member is in need of specialty neurobehavioral rehabilitation services.

e. Standards for assessment. Each member will have had a department-approved, standardized comprehensive functional neurobehavioral assessment completed within the 90 days prior to admission. Each needs assessment will include the assessment of a member's individual physical, emotional, cognitive, medical and psychosocial residuals related to the member's brain injury, which must include the following:

(1) Identification of the neurobehavioral needs that put the member at risk, including but not limited to verbal aggression, physical aggression, self-harm, unwanted sexual behavior, cognitive and or behavioral perseveration, wandering or elopement, lack of motivation, lack of initiation or other unwanted social behaviors not otherwise specified.

(2) Identification of triggers of unwanted behaviors and the member's ability to self-manage the member's symptoms.

(3) The member's rehabilitation and medical care history to include medication history and status.

(4) The member's employment history and the member's barriers to employment.

(5) The member's dietary and nutritional needs.

(6) The member's community accessibility and safety.

(7) The member's access to transportation.

(8) The member's history of substance abuse.

(9) The member's vulnerability to exploitation and history of risk of exploitation.

(10) The member's history and status of relationships, natural supports and socialization.

f. *Emergency admission.* In the event that emergency admission is required, the assessment shall be completed within ten calendar days of admission.

78.56(3) *Covered services.*

a. Service setting.

(1) Community-based neurobehavioral residential rehabilitation services are provided to a member living in a three-to-five-bed residential care facility with a specialized license designation issued by the department of inspections and appeals; or

(2) Community-based neurobehavioral intermittent rehabilitation services are provided to a member living in the member's own residence in the community.

No payment shall be made for community-based neurobehavioral rehabilitation when provided in a medical institution such as an intermediate care facility for persons with intellectual disabilities, nursing facility or skilled nursing facility.

b. Community-based neurobehavioral rehabilitation residential services identified in the treatment plan may include:

(1) Prescriptive programming to maintain and advance progress made in rehabilitation;

(2) Modifying or adapting the member's environment to improve overall functioning;

(3) Assistance in obtaining preventative, appropriate and timely medical and dental care;

(4) Compensatory strategies to assist in managing ADLS (activities of daily living);

(5) Assistance with coordinating and obtaining physical, oral, or mental health care and any other professional services necessary to the member's health and well-being;

(6) Behavioral and cognitive programming and supports;

(7) Medication management and consultation with pharmacy;

(8) Health and wellness management including dietary and nutritional programming;

(9) Progressive physical strengthening, fitness and retraining;

(10) Assistance with obtaining and use of assistive technology;

(11) Sobriety support development;

(12) Assistance with the self-identification of antecedent triggers;

(13) Assistance with preparation for transition to less intensive services including accessing the community;

(14) Flexibility in programming to meet individual needs;

(15) Assistance with re-learning coping and compensatory strategies;

(16) Support and assistance in seeking substance abuse and co-occurring disorders services;

(17) Support and assistance with obtaining legal consultation and services;

(18) Assistance with community accessibility and safety;

(19) Assistance with re-learning household maintenance;

(20) Assistance with recreational and leisure skill development;

(21) Assistance with the development and application of self-advocacy skills to navigate the service system;

(22) Opportunities to learn about brain injury and individual needs following brain injury;

(23) Support for carrying out the member's individual goals in the rehabilitation treatment plan;

(24) Assistance with pursuit of education and employment goals;

(25) Protective oversight in the residential setting and community;

(26) Assistance and education to family, providers and other support system interests that are supporting the member receiving neurobehavioral rehabilitation services;

(27) Transitional support and training;

(28) Transportation essential to the attainment of the member's individual goals in the rehabilitation treatment plan;

(29) Promotion of a program structure and support for members served so they can relearn or regain skills for maximum independence, community access, and integration.

c. Community-based neurobehavioral rehabilitation intermittent services identified in the treatment plan may occur in the member's own home with or on behalf of the member and may include:

(1) Promotion of a program structure and support for members served so they can re-learn or regain skills for maximum community inclusion and access;

(2) Modifying or adapting the member's environment to improve overall functioning;

(3) Compensatory strategies to assist in managing ADLS (activities of daily living);

(4) Behavioral supports;

(5) Assistance with obtaining and use of assistive technology;

(6) Assistance with the self-identification of antecedent triggers;

(7) Flexibility in programming to meet the member's individual needs;

(8) Assistance with re-learning coping and compensatory strategies;

(9) Assistance with the development and application of self-advocacy skills to navigate the service system;

(10) Support for carrying out the member's individual goals in the rehabilitation treatment plan;

(11) Assistance and education to family, providers and other support system interests that are supporting the member receiving community-based neurobehavioral rehabilitation services;

(12) Transitional support and training;

(13) Transportation essential to the attainment of the member's individual goals in the rehabilitation treatment plan.

d. Approval of treatment plan. The community-based neurobehavioral services provider shall submit the proposed plan of care, the results of the member's formal assessment, and medical documentation supporting a brain injury diagnosis to the Iowa Medicaid enterprise (IME) medical services unit for approval before providing the services.

e. Initial treatment plan. Within 30 days of admission, the provider shall submit the member's treatment plan to the IME medical services unit.

(1) The IME medical services unit will approve the provider's treatment plan if:

1. The treatment plan conforms to the medical necessity requirements in subrule 78.55(4);

2. The treatment plan is consistent with the written diagnosis and treatment recommendations made by a licensed medical professional that is a licensed neuropsychologist or neurologist, M.D., or D.O.;

3. The treatment plan is sufficient in amount, duration, and scope to reasonably achieve its purpose;

4. The provider can demonstrate that the provider possesses the skills and resources necessary to implement the plan; and

5. The treatment plan does not exceed 180 days in duration.

(2) A treatment summary detailing the member's response to treatment during the previous approval period must be submitted when approval for subsequent plans is requested.

f. Subsequent plans. The IME medical services unit may approve a subsequent neurobehavioral rehabilitation treatment plan that conforms to the conditions of medical necessity pursuant to subrule 78.56(4) and to the conditions pursuant to subrule 78.56(3).

g. Quality review. The IME medical services unit may perform the quality review to evaluate:

(1) The time elapsed from referral to rehabilitation treatment plan development;

(2) The continuity of treatment;

(3) The length of stay per member;

(4) The affiliation of the medical professional recommending services with the neurobehavioral rehabilitation services provider;

(5) Gaps in service;

(6) The results achieved;

(7) Member and stakeholder satisfaction;

(8) The provider's compliance with standards listed in rule 441—77.54(249A).

78.56(4) *Medical necessity.* Nothing in this rule shall be deemed to exempt coverage of community-based neurobehavioral rehabilitation services from the requirement that services be medically necessary. "Medically necessary" means that the service is:

a. Consistent with the diagnosis and treatment of the member's condition;

b. Required to meet the medical needs of the member and is needed for reasons other than the convenience of the member or the member's caregiver;

c. The least costly type of service that can reasonably meet the medical needs of the member; and

d. In accordance with the standards of good medical practice. The standards of good practice for each field of medical and remedial care covered by the Iowa Medicaid program are those standards of good practice identified by:

(1) Knowledgeable Iowa clinicians practicing or teaching in the field; and

(2) The professional literature regarding best practices in the field.

78.56(5) *Documentation standards.* Community-based neurobehavioral rehabilitation service providers shall maintain service provision records, financial records, and clinical records in accordance with the provisions of rule 441—79.3(249A).

ITEM 3. Adopt the following **new** provider category in subrule **79.1(2)** as follows:

Provider category	Basis of reimbursement	Upper limit
Community-based neurobehavioral rehabilitation services	Fee schedule, see 79.1(28)	Residential: Limit in effect as of June 30 each year plus CPI-U for the preceding 12-month period ending June 30. Intermittent: $21.11 per 15-minute unit.

ITEM 4. Adopt the following **new** subrule 79.1(28):

79.1(28) *Reimbursement for community-based neurobehavioral rehabilitation residential services and community-based neurobehavioral rehabilitation intermittent services.*

a. New providers. Providers who are newly enrolled shall be paid prospective rates based on projected reasonable and proper costs of operation based on the statewide average rate paid to community-based neurobehavioral rehabilitation service providers in effect June 30 each fiscal year.

b. Established providers. After establishment of the initial rate for a provider, the rate will be adjusted annually, effective July 1 each year. The provider's new rate shall be the previously established rate adjusted by the consumer price index for all urban consumers for the preceding 12-month period ending June 30, not to exceed the limit in effect June 30.

ITEM 5. Adopt the following **new** subparagraph **79.3(2)"d"(42)**:

(42) Community-based neurobehavioral rehabilitation residential services and community-based neurobehavioral rehabilitation intermittent services:

1. Department-approved standardized neurobehavioral assessment tool.
2. Community-based neurobehavioral treatment order.
3. Treatment plan.
4. Clinical records documenting diagnosis and treatment history.
5. Progress or status notes.
6. Service notes or narratives.
7. Procedure, laboratory, or test orders and results.
8. Therapy notes including but not limited to occupational therapy, physical therapy, and speech-language pathology services as applicable.
9. Medication administration records.

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ARC 2340C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 42 U.S.C. § 1396n(d), the Department of Human Services amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

This amendment changes the name of the "assisted living on-call" service to the "assisted living" service pursuant to direction from the Centers for Medicare and Medicaid Services (CMS).

This amendment also revises the description of the service to agree with the CMS-approved description, including references to consumer-directed attendant care (CDAC) agreements.

The amendment includes the CMS requirement for a documented daily assisted living encounter with the member.

This amendment complies with additional service requirements and the revised service name and definition as directed by CMS through CMS approval of the elderly waiver amendment IA 4155.R04.02. CMS approved the amendment on November 17, 2014, effective March 1, 2013.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2115C** on August 19, 2015.

The Department received comments from three respondents during the public comment period. A summary of the comments and the Department's responses are as follows:

Comment 1: One respondent expressed concerns related to the changes proposed by the Department in **ARC 2115C** and stated that the changes will have a negative impact on access to Medicaid members needing services in an assisted living facility in Iowa.

Department response 1: In November 2014, the Centers for Medicare and Medicaid Services (CMS) approved a home- and community-based services (HCBS) elderly waiver amendment to authorize the assisted living on-call service. Approval of the amendment required that the Department make several revisions to the Iowa Administrative Code (IAC) for the assisted living on-call service. CMS required the following changes:

1. Revision of the name of the service from "assisted living on-call service" to "assisted living service." All references to "on-call" have been removed.
2. Expansion of the definition of the service.
3. That providers must document at least one assisted living encounter per billed day. This documentation must adhere to rule 441—79.3(249A) regarding documentation of Medicaid services.

Comment 2: A respondent asked how the Department intends to define an assisted living service encounter and stated that, according to **ARC 2115C**, the language appears to be attempting to implement the 1915(c) elderly waiver amendment, noting the following rule language:

"The service includes the 24-hour on-site response capability to meet unpredictable member needs as well as member safety and security through incidental supervision."

"The assisted living provider has documented at least one assisted living encounter that day."

Department response 2: Subrule 78.37(18) is a direct result of the 1915(c) HCBS waiver amendment. An encounter is an interaction with a member. The daily assisted living encounter used to document the assisted living service cannot be a part of another service funded through the waiver or through Medicaid. For example, the encounter cannot be related to:

1. Meals if the meal is funded by Medicaid.
2. Medication management if medication management is included in the Consumer-Directed Attendant Care (CDAC) agreement.
3. Bathing assistance if bathing is included in the CDAC agreement.
4. Home health services if those services are included in a home health plan of care and funded through Medicaid.

Comment 3: A respondent asked, for purposes of the new documentation proposed in **ARC 2115C**, what the Department expects to be considered satisfactory.

The respondent commented that the rule amendments state that the provider has documented at least one assisted living services encounter for that day, in accordance with rule. The documentation must include the member's response to the service. The documented assisted living service cannot also be an authorized CDAC service. With that said, the respondent asked whether the following example of documentation would be acceptable documentation: July 5, 2015, 24-hour on-site supervision provided by staff throughout this period to tenant #1 to maintain her safety in her apartment and within the assisted living program tenant #1 was awake the morning at 7 a.m., excited for the day and starting getting dressed.

Department response 3: The above example of documentation would not be sufficient documentation of a billable assisted living encounter. New subrule 78.37(18) states that the encounter must be documented in accordance with rule 441—79.3(249A). Rule 441—79.3(249A) specifically outlines the information that must be contained in the documentation for all Medicaid services, such as the staff person's name, the exact time of the service, the specific nature of the service, etc. Medicaid documentation requirements that apply to all Medicaid providers may be found in the Department's administrative rules. New subrule 78.37(18) for assisted living service further states that the member's response to the encounter is to be documented.

Comment 4: A respondent expressed concern regarding the "unscheduled" nature of the documentation requirement. The respondent expressed the following: As is the risk with any new documentation mandate, the new proposed rules will lead to more staff time documenting for purposes of the waiver, which means less time for staff to provide personal cares and services. Moreover, the unscheduled encounter will be difficult to implement, especially for providers with electronic health systems. As a result, the responsibility to ensure completion of this documentation will often time fall squarely on a caregiver's notation ability. Confusing the situation further, if the service plan notes a service to be done on an "as needed basis," this would presumably not be considered an unscheduled need.

Department response 4: Federal and state requirements for every Medicaid-funded service do require documentation to comply with state and federal guidelines. For Iowa, those guidelines are contained in rule 441—79.3(249A). Every Medicaid provider is responsible for implementing a documentation system that supports the service funded through Medicaid; without appropriate documentation, the service is not payable and both the state and provider are at risk of recoupment through audit.

The assisted living provider must have sufficient documentation to support that the service paid by Medicaid is in no way duplicative of the specific CDAC services that are included in that member's signed CDAC agreement. Each member's CDAC agreement can include a different array of services, so what may be CDAC for one member is not CDAC for another member.

Comment 5: A respondent asked whether an "encounter" is still considered a "supervision visit" of the tenant, and not an IDAL/ADL.

Department response 5: The assisted living encounter can be any interaction with the member that is not part of that member's CDAC agreement or another funded Medicaid service. The assisted living provider must have sufficient documentation to support that the service paid by Medicaid is in no way duplicative of the specific CDAC services that are included in that member's signed CDAC agreement. Each member's CDAC agreement can include a different array of services, so what may be CDAC for one member is not CDAC for another member.

Comment 6: A respondent expressed the opinion that subrule 78.37(18) would not be meant to make the assisted living service the same as a CDAC service.

Department response 6: Subrule 78.37(18) for assisted living services has no impact on CDAC, nor does the subrule change the CDAC service. The subrule does require that documentation for assisted living service fully resemble the documentation needed for other Medicaid-funded services. While CDAC must be included in a formal CDAC agreement and must be anticipated and regularly occurring, assisted living service is flexible to meet the ever-changing or transitory needs of each member.

The Department did not modify the amendment as a result of the comments of the respondents. This amendment is identical to that published in the Iowa Administrative Bulletin under Notice of Intended Action as **ARC 2115C**.

The Council on Human Services adopted this amendment on October 14, 2015.

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 42 U.S.C. § 1396n(d).

This amendment will become effective February 10, 2016.

The following amendment is adopted.

Rescind subrule 78.37(18) and adopt the following **new** subrule in lieu thereof:

78.37(18) *Assisted living service.* The assisted living service includes unanticipated and unscheduled personal care and supportive services that are furnished to waiver participants who reside in a homelike, noninstitutional setting. The service includes the 24-hour on-site response capability to meet unpredictable member needs as well as member safety and security through incidental supervision. Assisted living service is not reimbursable if performed at the same time as any service included in an approved consumer-directed attendant care (CDAC) agreement.

a. A unit of service is one day.

b. A day of assisted living service is billable only if both the following requirements are met:

(1) The member was present in the facility during that day's bed census.

(2) The assisted living provider has documented at least one assisted living service encounter for that day, in accordance with rule 441—79.3(249A). The documentation must include the member's response to the service. The documented assisted living service cannot also be an authorized CDAC service.

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ARC 2342C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services amends Chapter 150, "Purchase of Service," and Chapter 202, "Foster Care Placement and Services," Iowa Administrative Code.

These amendments provide a rate increase of 5 percent to resource family recruitment and retention contractors, child welfare emergency services contractors, and supervised apartment living foster care providers. These amendments align Department administrative rules with 2015 Iowa Acts, Senate File 505, section 29, subsection 6, which states:

"For the fiscal year beginning July 1, 2015, the reimbursement rates for resource family recruitment and retention contractors, child welfare emergency services contractors, and supervised apartment living foster care providers shall be increased by 5 percent over the rates in effect on June 30, 2015."

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2124C** on September 2, 2015.

The Department received comments from one respondent during the comment period. A summary of the comments and the Department's response are as follows:

Comments: The respondent requested that the 5 percent funding increase be reallocated or repealed because, according to the respondent, sufficient explanation is lacking as to how this increase would benefit children and families of Iowa.

The respondent questioned the statement that there would be "no potential cost to the state of Iowa as a whole" when $659,184 is cited as coming from the 2016 and 2017 general fund.

According to the respondent, a drop in service requests to service providers was expected and desired when the Differential Response Program was initiated in 2014. The respondent observed this to be inconsistent with other language from the Department.

The respondent also made reference to "past lobbying by special interest groups who have personal relationships with members of the legislature or Department of Human Services" and suggested that "appropriations in this manner further undermine the public's trust that funding is being appropriated in an ethical manner and for the best interest of children and families."

The respondent offered additional appropriations that the respondent believes would better serve the children and families of Iowa:

- Kinship and/or guardianship care.
- Community services, which have increased since the implementation of Differential Response.
- Improved results.
- Child abuse prevention.

Department response: In this rule making, the Department is amending rules to implement the legislative appropriated action and, therefore, does not have authority to repeal or reallocate the funds appropriated for this purpose. In regard to the question about the cost of this change, there is a legislative appropriation for the rate increase, which represents a cost to the State of $659,184. The Department did not make changes to the rule making in response to the respondent's comments.

These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on October 14, 2015.

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 and 2015 Iowa Acts, Senate File 505, section 29(6).

These amendments will become effective February 10, 2016.

The following amendments are adopted.

ITEM 1. Amend subparagraph **150.3(5)"p"(1)** as follows:

(1) The combined service and maintenance reimbursement rate paid to a shelter care provider shall be based on the financial and statistical report submitted to the department. For the fiscal year beginning July 1, ~~2013~~ 2015, the maximum reimbursement rate shall be ~~$96.98~~ $101.83 per day, based on a 365-day year. If the department reimburses the provider at less than the maximum rate, the department shall adjust the provider's reimbursement rate to the provider's actual and allowable cost plus the inflation factor or to the maximum reimbursement rate, whichever is less.

ITEM 2. Amend paragraph **202.9(4)"e"** as follows:

e. Contractors providing a cluster setting shall be paid ~~$500~~ $551.25 per month per child in the setting for agency staffing costs, in addition to billable units of services provided to the child, but are eligible for this payment only when two or more children are in the setting. For a child who enters a cluster setting during the month, the prorated amount per day is ~~$16.44~~ $18.12. If a child exits the setting on or before the last day of the month, the ~~$500~~ $551.25 shall be prorated up to the date before the date of exit.

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ARC 2348C

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 505.26 as amended by 2015 Iowa Acts, House File 632, section 9, the Insurance Division hereby adopts new Chapter 79, "Prior Authorization—Prescription Drug Benefits," Iowa Administrative Code.

The rules provide for the prior authorization for prescription drug benefits, use of a single prior authorization form and creation of a prior authorization process for approval of prescription drug benefits by health carriers and pharmacy benefits managers.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 28, 2015, as **ARC 2228C**. Written comments were accepted through November 18, 2015, and a public hearing was held on November 18, 2015, at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust, Fourth Floor, Des Moines, Iowa. Comments were received. The following list summarizes the comments received and the changes made in response to public comment:

1. Comments suggesting further reduction of the time frames for urgent and nonurgent claims; the use of business days as opposed to calendar days; allowance of the prescribing physician to override an insurer's denial and requests to delay the effective date of the rules either conflict with the statutory provisions or are beyond the scope of this rule making, and were rejected by the Division.

2. Some commenters expressed concern that creation of a form may result in development of alternatives that would be less efficient than the NCPDP electronic prior authorization standard. The Division recognizes the importance of technology to the industry and modified the proposed rule to emphasize that the statutory language requiring a form does not preclude the use of or compliance with NCPDP SCRIPT standards. The creation of a single prior authorization form is required by Iowa Code section 505.26.

3. A comment requesting the insertion of the descriptive phrase "prescription drug" before the term "prior authorization" in the proposed rule was not accepted in order to avoid redundancy, given that the statutory language limits the subject matter to prescription drug benefits.

4. A suggestion was made during the public hearing that consideration be given to providing a cross reference or link to Iowa Code chapter 514J, External Review Standards, in the Appendix in order to avoid errors in the Appendix in the event Iowa Code chapter 514J is amended. The Division opts not to adopt the suggestion, recognizing that additional due diligence and coordination will be required on the part of the Division to ensure that the Appendix remains parallel to Iowa Code chapter 514J.

5. During the public hearing, a question arose regarding the meaning of the term "immediate" used in the Appendix. The term "immediate" or "immediately" appears several times but is not specifically defined in Iowa Code chapter 514J. The term should be construed in its ordinary and customary usage to mean without delay.

6. A comment was made regarding the applicability of the rules to Medicaid or Medicare. The Division opts not to expand applicability of the rules to Medicaid or Medicare as each program provides specific requirements regarding the prior authorization of prescription drugs, and the change is unnecessary.

7. Some comments raised concerns about the duration of an approved prior authorization request for a minimum of 12 months when such a time period may be inappropriate for certain prescription drugs with defined treatment durations according to FDA-approved package labeling or clinical practice guidelines. An example cited involved certain prescription drugs used to treat Hepatitis C, and the approved course of treatment is 12 weeks. The rule has been clarified to address those circumstances where it is clinically appropriate that a prescription drug approval may be less than 12 months.

This chapter does not provide for waivers. Persons seeking waivers must petition the Division for a waiver in the manner set forth in 191—Chapter 4.

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

These rules are intended to implement Iowa Code section 505.26 as amended by 2015 Iowa Acts, House File 632, section 9.

These rules will become effective February 10, 2016.

The following amendment is adopted.

Adopt the following **new** 191—Chapter 79:

CHAPTER 79
PRIOR AUTHORIZATION—PRESCRIPTION DRUG BENEFITS

191—79.1(505) Purpose. These rules implement Iowa Code section 505.26 as amended by 2015 Iowa Acts, House File 632, section 9, which requires the commissioner to adopt rules to provide for a single prior authorization form and prior authorization process for approval of prescription drug benefits by health carriers and pharmacy benefits managers.

191—79.2(505) Definitions. For purposes of this chapter, the definitions found in Iowa Code section 505.26 as amended by 2015 Iowa Acts, House File 632, section 9, shall apply. In addition, the following definitions shall apply:

"Commissioner" means the Iowa insurance commissioner.

"Division" means the Iowa insurance division.

"Exigent" means circumstances as defined under federal regulations relating to the Affordable Care Act, as provided in 45 CFR 156.122.

"Prescription drug prior authorization" means requests for preapproval from a payor for specified medications or quantities of medications.

"Qualified health plan" or *"QHP"* means a health insurance plan under the Affordable Care Act, which is certified by the health insurance marketplace.

"Urgent" means any claim for medical care or treatment to which the application of time periods that either could seriously jeopardize the life or health of the patient or the ability of the patient to regain maximum function or, in the opinion of the physician or health care professional, as defined in Iowa Code chapter 514J, with knowledge of the patient's medical condition, would subject the patient to severe pain that cannot be adequately managed without the care or treatment that is the subject of the claim.

191—79.3(505) Prior authorization protocols. All health carriers, health benefit plans and pharmacy benefits managers must accept the approved prior authorization form from health care providers.

79.3(1) *Duration of approved prior authorization request.* Health carriers, health benefit plans, and pharmacy benefits managers shall provide that approval of a prior authorization request shall be valid for a minimum of 12 months or for a duration that is clinically appropriate for the condition being treated, in accordance with the rules adopted pursuant to Iowa Code section 505.26 as amended by 2015 Iowa Acts, House File 632, section 9. Updates on disease progression must be provided with each renewal request.

79.3(2) *Posting of prior authorization form.* The approved prior authorization form shall be made available electronically on the Web site of the division and on the Web site of each health carrier, health benefit plan or pharmacy benefits manager that uses the form. Health carriers, health benefit plans and pharmacy benefits managers shall allow health care providers to submit a prior authorization request electronically.

79.3(3) *Assignment of identification number.* The health carrier, health benefit plan or pharmacy benefits manager shall assign to each prior authorization request a unique electronic identification number that a provider may use during the prior authorization process to track the request electronically, through a call center, or by fax. This unique identifier may include a format that consists of a patient's first name, last name and date of birth.

79.3(4) *Posting of required information.* Health carriers, health benefit plans, and pharmacy benefits managers shall make the following available and accessible on their Internet sites:

a. Prior authorization requirements and restrictions, including a list of drugs that require prior authorization.

b. Clinical criteria that are easily understandable to health care providers, including clinical criteria for reauthorization of a previously approved drug after the prior authorization period has expired.

c. Standards for submitting and considering requests, including evidence-based guidelines, when possible, for making prior authorization determinations.

d. Health carriers shall provide a process for health care providers to appeal a prior authorization determination as provided in Iowa Code chapter 514J. Pharmacy benefits managers shall provide a process for health care providers to appeal a prior authorization determination that is consistent with the process provided in Iowa Code chapter 514J. Appeal standards as provided in Iowa Code chapter 514J are set out in Appendix A herein.

79.3(5) *Urgent claims.* Prior authorization requests for urgent claims shall be approved or denied as soon as possible, but in no case later than 72 hours after receipt of the request.

79.3(6) *Nonurgent claims.* Prior authorization requests for nonurgent claims shall be approved or denied as soon as possible, but in no case later than five calendar days after receipt of the request.

79.3(7) *Incomplete or additional information.* If a request for a prescription drug prior authorization is incomplete or additional information is required, the health carrier, health benefit plan, or pharmacy benefits manager may request additional information within the applicable time periods provided in this rule. Once the additional information is submitted, the applicable time period for approval or denial shall begin again.

79.3(8) *Prescription drug benefits provided by a qualified health plan.* A QHP shall have procedures in place that comply with the health insurance issuer standards related to expedited review based on exigent circumstances and coverage determinations no later than 24 hours after receipt of requests as provided for in 45 CFR 156.122(c).

79.3(9) *Prior authorization granted.* If a health carrier, health benefit plan or pharmacy benefits manager does not approve or deny a completed prior authorization request or request additional information from a health care provider within the time limits set forth in this rule, the prior authorization request shall be deemed to have been granted.

79.3(10) *Denial of prior authorization request.* In the case of a denial of a prior authorization request, the health carrier, health benefit plan or pharmacy benefits manager shall provide the reason for the denial, information regarding the denial and, if formulary alternatives are available, direction on how to contact the health carrier or health benefit plan.

191—79.4(505) Filing with the division.

79.4(1) A prior authorization form approved by the commissioner shall meet all of the following requirements:

a. Not exceed two pages in length, except that a prior authorization form may exceed that length as determined to be appropriate by the commissioner. Exceptions to the two-page limit shall consider clinical differences and complexity of the requested prescription drugs.

b. Be available in electronic format.

c. Be transmissible in an electronic format or a fax transmission.

79.4(2) The prior authorization form utilized by health carriers, health benefit plans, and pharmacy benefits managers shall first be examined and approved by the commissioner. Health carriers shall submit the form electronically using the National Association of Insurance Commissioners' System for Electronic Rate and Form Filing (SERFF). Pharmacy benefits managers shall submit the form in writing to the commissioner by regular mail, fax or electronic means. Nothing in this rule shall preclude the use of standards by health carriers and pharmacy benefits managers in accordance with NCPDP SCRIPT.

79.4(3) The form submitted for approval shall consider any prior authorization forms developed by the federal Centers for Medicare and Medicaid Services or the U.S. Department of Health and Human Services and any national standards pertaining to electronic prior authorization for prescription drugs, including ASC X12 278 standard transactions and NCPDP SCRIPT Standard ePA transactions.

191—79.5(505) Violations. A health carrier, health benefit plan or pharmacy benefits manager found after hearing to have violated a provision of this chapter shall be subject to the penalties set forth in Iowa Code chapter 505.

191—79.6(505) Applicability. This chapter shall not apply to Medicare or Medicaid.

These rules are intended to implement Iowa Code section 505.26 as amended by 2015 Iowa Acts, House File 632, section 9.

APPENDIX A
Standards Related to Appeals
(as provided in Iowa Code chapter 514J)

514J.107 External review — standard.

1. A covered person or the covered person's authorized representative may file a written request for an external review with the commissioner within four months after any of the following events:

a. The date of receipt of a final adverse determination.

b. The failure of a health carrier to issue a written decision within thirty days following the date the covered person or the covered person's authorized representative filed a grievance involving an adverse determination as provided in section 514J.106, subsection 2.

c. The agreement of the health carrier to waive the requirement that the covered person or the covered person's authorized representative exhaust the health carrier's internal grievance procedures before filing a request for external review of an adverse determination as provided in section 514J.106, subsection 4.

2. Within one business day after the date of receipt of a request for external review, the commissioner shall send a copy of the request to the health carrier.

3. Within five business days following the date of receipt of the external review request from the commissioner, the health carrier shall complete a preliminary review of the request to determine whether:

a. The individual is or was a covered person under the health benefit plan at the time the health care service was recommended or requested.

b. The health care service that is the subject of the adverse determination or of the final adverse determination, is a covered service under the covered person's health benefit plan, but for a determination by the health carrier that the health care service is not covered because it does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness.

c. The covered person or the covered person's authorized representative has exhausted the health carrier's internal grievance process, unless the covered person or the covered person's authorized representative is not required to exhaust the health carrier's internal grievance process pursuant to section 514J.106 or this section.

d. The covered person or the covered person's authorized representative has provided all the information and forms required to process an external review request.

4. Within one business day after completion of a preliminary review pursuant to subsection 3, the health carrier shall notify the commissioner and the covered person or the covered person's authorized representative in writing whether the request is complete and whether the request is eligible for external review.

a. If the health carrier determines that the request is not complete, the health carrier shall notify the covered person or the covered person's authorized representative and the commissioner in writing that the request is not complete and what information or materials are needed to make the request complete.

b. If the health carrier determines that the request is not eligible for external review, the health carrier shall issue a notice of initial determination in writing informing the covered person or the covered person's authorized representative and the commissioner of that determination and the reasons the request is not eligible for review. The health carrier shall also include a statement in the notice informing the covered person or the covered person's authorized representative that the health carrier's initial determination of ineligibility may be appealed to the commissioner.

5. The commissioner may specify by rule the form required for the health carrier's notice of initial determination and any supporting information to be included in the notice.

6. The commissioner may determine that a request is eligible for external review, notwithstanding a health carrier's initial determination that the request is not eligible, and refer the request for external review. In making this determination, the commissioner's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of this chapter.

7. Within one business day after receipt of notice from a health carrier that a request for external review is eligible for external review or upon a determination by the commissioner that a request is eligible for external review, the commissioner shall do all of the following:

a. Assign an independent review organization from the list of approved independent review organizations maintained by the commissioner and notify the health carrier of the name of the assigned independent review organization. The assignment of an independent review organization shall be done on a random basis among those approved independent review organizations qualified to conduct the particular external review based on the nature of the health care service that is the subject of the adverse determination or final adverse determination and other circumstances, including conflict of interest concerns.

b. Notify the covered person or the covered person's authorized representative in writing that the request is eligible and has been accepted for external review including the name of the assigned independent review organization and that the covered person or the covered person's authorized representative may submit in writing to the independent review organization within five business days following receipt of such notice from the commissioner, additional information that the independent review organization shall consider when conducting the external review. The independent review organization may, in the organization's discretion, accept and consider additional information submitted by the covered person or the covered person's authorized representative after five business days.

8. Within five business days after receipt of notice from the commissioner pursuant to subsection 7, the health carrier shall provide to the independent review organization the documents and any information considered in making the adverse determination or final adverse determination. Failure by the health carrier to provide the documents and information within the time specified shall not delay the conduct of the external review.

9. If the health carrier fails to provide the documents and information within the time specified, the independent review organization may terminate the external review and make a decision to reverse the adverse determination or final adverse determination. Within one business day after making such a decision, the independent review organization shall notify the covered person or the covered person's authorized representative, the health carrier, and the commissioner of its decision.

10. The independent review organization shall review all of the information and documents received pursuant to subsection 8 and any other information submitted in writing to the independent review organization by the covered person or the covered person's authorized representative pursuant to subsection 7, paragraph *"b"*. Upon receipt of any information submitted by the covered person or the covered person's authorized representative, the independent review organization shall, within one business day, forward the information to the health carrier. In reaching a decision the independent review organization is not bound by any decisions or conclusions reached during the health carrier's internal grievance process.

11. Upon receipt of information forwarded pursuant to subsection 10, a health carrier may reconsider its adverse determination or final adverse determination that is the subject of the external review.

a. Reconsideration by the health carrier of its determination shall not delay or terminate the external review. The external review shall only be terminated if the health carrier decides, upon completion of its reconsideration, to reverse its determination and provide coverage or payment for the health care service that is the subject of the adverse determination or final adverse determination.

b. Within one business day after making a decision to reverse its adverse determination or final adverse determination, the health carrier shall notify the covered person or the covered person's authorized representative, the independent review organization, and the commissioner in writing of

its decision. The independent review organization shall terminate the external review upon receipt of notice of the health carrier's decision to reverse its adverse determination or final adverse determination.

12. In addition to the documents and information provided to the independent review organization pursuant to this section, the independent review organization shall, to the extent the information or documents are available and the independent review organization considers them appropriate, consider the following in reaching a decision:

a. The covered person's pertinent medical records.

b. The treating health care professional's recommendation.

c. Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, covered person, or the covered person's treating physician or other health care professional.

d. The terms of coverage under the covered person's health benefit plan with the health carrier, to ensure that the independent review organization's decision is not contrary to the terms of coverage under the covered person's health benefit plan with the health carrier.

e. The most appropriate practice guidelines, which shall include applicable evidence-based standards and may include any other practice guidelines developed by the federal government, national or professional medical societies, boards, and associations.

f. Any applicable clinical review criteria developed and used by the health carrier.

g. The opinion of the independent review organization's clinical reviewer after considering the information or documents described in paragraphs *"a"* through *"f"* to the extent the information or documents are available and the clinical reviewer considers them relevant.

13. *a.* Within forty-five days after the date of receipt of a request for an external review, the independent review organization shall provide written notice of its decision to uphold or reverse the adverse determination or final adverse determination of the health carrier to the covered person or the covered person's authorized representative, the health carrier, and the commissioner.

b. The independent review organization shall include in its decision all of the following:

(1) A general description of the reason for the request for external review.

(2) The date the independent review organization received the assignment from the commissioner to conduct the external review.

(3) The date the external review was conducted.

(4) The date of the decision.

(5) The principal reason or reasons for its decision, including what applicable evidence-based standards, if any, were a basis for its decision.

(6) The rationale for its decision.

(7) References to evidence or documentation, including evidence-based standards, considered in reaching its decision.

14. Upon receipt of notice of a decision reversing the adverse determination or final adverse determination of the health carrier, the health carrier shall immediately approve the coverage that was the subject of the determination.

514J.108 External review — expedited.

1. Notwithstanding section 514J.107, a covered person or the covered person's authorized representative may make an oral or written request to the commissioner for an expedited external review at the time the covered person or the covered person's authorized representative receives any of the following:

a. An adverse determination that involves a medical condition of the covered person for which the time frame for completion of an internal review of a grievance involving an adverse determination would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function.

b. A final adverse determination that involves a medical condition where the time frame for completion of a standard external review would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function.

c. A final adverse determination that concerns an admission, availability of care, continued stay, or health care service for which the covered person received emergency services, and the covered person has not been discharged from a facility.

2. *a.* Upon receipt of a request for an expedited external review, the commissioner shall immediately send written notice of the request to the health carrier.

b. Immediately upon receipt of notice of a request for expedited external review, the health carrier shall complete a preliminary review of the request to determine whether the request meets the eligibility requirements for external review set forth in section 514J.107, subsection 3, and this section.

c. The health carrier shall then immediately issue a notice of initial determination informing the commissioner and the covered person or the covered person's authorized representative of its eligibility determination including a statement informing the covered person or the covered person's authorized representative of the right to appeal that determination to the commissioner.

d. The commissioner may specify by rule the form required for the health carrier's notice of initial determination and any supporting information to be included in the notice.

3. The commissioner may determine that a request is eligible for expedited external review, notwithstanding a health carrier's initial determination that the request is not eligible. In making a determination, the commissioner's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of this chapter. The commissioner shall make a determination pursuant to this subsection as expeditiously as possible.

4. *a.* Upon receipt of notice from a health carrier that a request is eligible for expedited external review or upon a determination by the commissioner that a request is eligible for expedited external review, the commissioner shall immediately assign an independent review organization from the list of approved independent review organizations maintained by the commissioner to conduct the expedited external review. The commissioner shall then immediately notify the health carrier and the covered person or the covered person's authorized representative of the name of the assigned independent review organization.

b. The assignment of an independent review organization shall be done on a random basis among those approved independent review organizations qualified to conduct the particular external review based on the nature of the health care service that is the subject of the adverse determination or final adverse determination and other circumstances, including conflict of interest concerns.

5. Upon receiving notice of the independent review organization assigned to conduct the expedited external review, the health carrier shall provide or transmit all necessary documents and information considered in making the adverse determination or final adverse determination to the independent review organization electronically or by telephone or facsimile or any other available expeditious method.

6. The independent review organization is not bound by any decisions or conclusions reached during the health carrier's internal grievance process. The independent review organization shall consider the documents and information provided by the health carrier, and to the extent the information or documents are available and the independent review organization considers them appropriate, shall consider the following in reaching a decision:

a. The covered person's pertinent medical records.

b. The treating health care professional's recommendation.

c. Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, covered person or the covered person's authorized representative, or the covered person's treating physician or other health care professional.

d. The terms of coverage under the covered person's health benefit plan with the health carrier, to ensure that the independent review organization's decision is not contrary to the terms of coverage under the covered person's health benefit plan with the health carrier.

e. The most appropriate practice guidelines, which shall include applicable evidence-based standards and may include any other practice guidelines developed by the federal government, national or professional medical societies, boards, and associations.

f. Any applicable clinical review criteria developed and used by the health carrier.

g. The opinion of the independent review organization's clinical reviewer after considering the information or documents described in paragraphs *"a"* through *"f"* to the extent the information or documents are available and the clinical reviewer considers them relevant.

7. *a.* As expeditiously as the covered person's medical condition or circumstances require, but in no event more than seventy-two hours after the date of receipt of an eligible request for expedited external review, the assigned independent review organization shall do all of the following:

(1) Make a decision to uphold or reverse the adverse determination or final adverse determination of the health carrier.

(2) Notify the covered person or the covered person's authorized representative, the health carrier, and the commissioner of its decision.

b. If the notice given by the independent review organization pursuant to paragraph *"a"* was not in writing, within forty-eight hours after providing that notice, the independent review organization shall provide written confirmation of the decision to the covered person or the covered person's authorized representative, the health carrier, and the commissioner that includes the information set forth in section 514J.107, subsection 13, paragraph *"b"*.

c. Upon receipt of the notice of decision by an independent review organization pursuant to paragraph *"a"* reversing the adverse determination or final adverse determination, the health carrier shall immediately approve the coverage that was the subject of the adverse determination or final adverse determination.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/6/16.

ARC 2333C

LABOR SERVICES DIVISION[875]

Adopted and Filed

Pursuant to the authority of Iowa Code section 89A.3, the Elevator Safety Board (Board) hereby amends Chapter 71, "Administration of the Conveyance Safety Program," Iowa Administrative Code.

This amendment extends the effective period of an alteration permit and amends the process for getting an alteration permit extension.

The purposes of this amendment are to reduce unnecessary paperwork and implement legislative intent.

Notice of Intended Action was published in the September 30, 2015, Iowa Administrative Bulletin as **ARC 2163C**. No public comment was received on the proposed amendment. This amendment is identical to the amendment published under Notice of Intended Action.

No variance procedures are included in this rule. Applicable variance procedures are set forth in 875—Chapter 66.

After analysis and review of this rule making, no adverse impact on jobs is expected.

This amendment is intended to implement Iowa Code chapter 89A.

This amendment shall become effective on February 10, 2016.

The following amendment is adopted.

Amend subrule 71.9(6) as follows:

71.9(6) The alteration permit shall expire upon the earlier of the completion of the alteration as described in the permit application or ~~120 days~~ one year after issuance. However, ~~between 90 and 110 days~~ during the tenth month after issuance and upon submission to the labor commissioner of the fee set

forth in this chapter, sufficient justification, and other required information, the labor commissioner may grant an extension of the alteration permit ~~may be granted at the discretion of the labor commissioner~~.

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ARC 2346C

MEDICINE BOARD[653]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Medicine hereby amends Chapter 9, "Permanent Physician Licensure," Iowa Administrative Code.

The purpose of Chapter 9 is to establish requirements for the licensure of medical physicians and osteopathic physicians. The amendments implement 2015 Iowa Acts, Senate File 276, which was signed into law on April 17, 2015, and became effective July 1, 2015. The amendments define "relinquishment" and declare that a person's permanent license to practice medicine and surgery, osteopathic medicine and surgery, or administrative medicine shall be deemed relinquished if the person fails to apply for renewal or reinstatement of the license within five years after its expiration.

The Board approved a Notice of Intended Action during a regularly scheduled meeting on August 28, 2015. Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin on October 14, 2015, as **ARC 2203C**.

A public hearing was held on November 10, 2015. Leah McWilliams, representing the Iowa Osteopathic Medical Association, attended the hearing to seek clarification on how the records of relinquished licenses will be retained by the Board. Records of relinquished licenses will be maintained in the Board's licensure database.

These amendments are identical to those published under Notice.

On December 10, 2015, the Board voted to adopt these amendments.

After analysis and review of this rule making, it has been determined that these amendments will have no impact on jobs in Iowa.

These amendments are intended to implement 2015 Iowa Acts, Senate File 276, and Iowa Code chapters 147, 148 and 272C.

These amendments will become effective on February 10, 2016.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definition in rule **653—9.1(147,148)**:

"Relinquishment" means that a person's permanent license to practice medicine and surgery, osteopathic medicine and surgery, or administrative medicine is deemed abandoned if the person fails to renew or reinstate the license within five years after its expiration. A license that has been relinquished is no longer valid or renewable. Relinquishment is not disciplinary in nature.

ITEM 2. Adopt the following **new** rule 653—9.19(147,148):

653—9.19(147,148) Relinquishment of license to practice. A person's permanent license to practice medicine and surgery, osteopathic medicine and surgery, or administrative medicine shall be deemed relinquished if the person fails to apply for renewal or reinstatement of the license within five years after its expiration.

9.19(1) A license shall not be reinstated, reissued, or restored once it is relinquished. The person may apply for a new license pursuant to Iowa Code sections 148.3 and 148.11 and 653—Chapters 9 and 10.

9.19(2) The relinquishment of license may be stayed if, at the date of relinquishment, there is an active:

a. Evaluation order pursuant to Iowa Code section 272C.9(1) and rule 653—24.4(272);

b. Combined statement of charges and settlement agreement pursuant to Iowa Code sections 17A.10(2) and 272C.3(4) and rule 653—25.3(17A);

c. Statement of charges pursuant to Iowa Code section 17A.12(2) and rule 653—25.4(17A);

d. Settlement agreement pursuant to Iowa Code sections 17A.10(2) and 272C.3(4) and rule 653—25.17(272C);

e. Final decision pursuant to Iowa Code sections 17A.12 and 272C.6 and rule 653—25.24(17A); or

f. Application for reinstatement of the license pursuant to rule 653—9.15(147,148) or 653—9.16(147,148).

[Filed 12/15/15, effective 2/10/16]
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ARC 2339C

NURSING BOARD[655]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby amends Chapter 3, "Licensure to Practice—Registered Nurse/Licensed Practical Nurse," Chapter 4, "Discipline," Chapter 5, "Continuing Education," Chapter 9, "Declaratory Orders," and Chapter 11, "Examination of Public Records," and adopts a new Chapter 20, "Contested Cases," Iowa Administrative Code.

The amendments to Chapter 4:

- Clarify the action the Board can take on complaint files.
- Clarify the use of peer review.
- Update language pertaining to ARNPs by replacing the word "registration" with "license."
- Reorganize and update the grounds for discipline to include the statutory basis for each ground and to include disciplinary grounds formerly set forth only in Iowa Code section 147.55 or 152.10, specifically the grounds set forth in Iowa Code sections 147.55(4) through 147.55(9) and 152.10(2).
- Move the content of paragraphs 4.6(3)"c" through "g" to subrule 4.6(11) as paragraphs "a" through "e."
- Update and clarify provisions on behavior which constitutes unethical conduct or practice harmful or detrimental to the public under Iowa Code section 147.55, including the addition of disciplinary grounds for improper prescribing, improper safeguarding and wastage of medication, and professional boundaries violations.
- Add a reference in rule to the disciplinary ground for practicing with an inactive license or without a license or pursuant to Iowa Code sections 147.2 and 147.10.
- Add the disciplinary ground related to the Board's new Iowa Nurse Assistance Program.
- Add disciplinary grounds related to the failure to comply with a Board investigation or subpoena and for threatening or harassing behavior toward Board staff or an agent of the Board.
- Update and clarify the sanctions available to the Board.
- Strike rules related to contested case proceedings. The content of the rules is relocated in new Chapter 20, which governs all types of contested case proceedings, including nondisciplinary proceedings.

In addition, the rules in new Chapter 20:

- Include provisions regarding access to the investigative file and dissemination of public records in a contested case proceeding.
- Contain only those definitions from Chapter 4 that are relevant to contested cases.

- Address the applicability of the Iowa Rules of Civil Procedure and specific discovery procedures available to the parties in a contested case proceeding.
- Clarify the substance of a combined statement of charges/settlement agreement, a notice of hearing, a statement of charges, and a settlement agreement.
- Clarify that legal representation of the public interest is provided by the Office of the Attorney General.
- Clarify who the presiding officer is in contested cases.
- Update procedures for prehearing conferences and continuance requests.
- Clarify the evidentiary standards applicable to contested cases.
- Include procedures for requesting a stay.
- Clarify procedures governing requests for reinstatement.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 19, 2015, as **ARC 2109C**. A public hearing was held on September 8, 2015, and oral and written comments were received from three interested parties. Upon careful review of the comments received, the Board made changes to the proposed amendments as published under Notice of Intended Action to more clearly define the intent of the amendments. Specifically, the following changes have been made in response to the comments:

- An amendment was added to correct a cross reference in rule 655—3.1(17A,147,152,272C).
- Paragraphs 4.6(4)"s," "t" and "u" have been changed to clarify that the paragraphs apply to advanced registered nurse practitioners and not to registered nurses or licensed practical nurses.
- Paragraph 4.6(4)"v" was changed to clarify that the verbal or physical conduct must occur repeatedly.
- Paragraph 4.6(5)"c" was changed to clarify that the identified behavior is for personal gain.
- Paragraph 4.6(5)"e" was changed to clarify that the identified practice must occur repeatedly.
- Paragraph 4.6(13)"a" was changed to clarify that the reference to "knowingly working while having an infectious or contagious disease" does not apply when the nurse takes precautions to meet the current standard of care.
- An amendment was added to correct a cross reference in paragraph 5.3(5)"d."
- An amendment was added to correct a cross reference in subrule 9.6(3).
- An amendment was added to remove an obsolete reference in paragraph 11.3(2)"d."

The rules in new Chapter 20 are identical to those published under Notice of Intended Action.

These rules were adopted by the Board on December 10, 2015.

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

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

These amendments are intended to implement Iowa Code chapters 17A, 147, 152, 272C and 272D.

These amendments will become effective on February 10, 2016.

The following amendments are adopted.

ITEM 1. Amend rule **655—3.1(17A,147,152,272C)**, definition of "Reinstatement," as follows:

"Reinstatement," pursuant to rule 655—~~4.11~~ 20.36(17A,147,152,272C), means the process by which any person whose license to practice nursing has been suspended, revoked or voluntarily surrendered by order of the board may apply for license consideration.

ITEM 2. Amend subrule 3.9(3) as follows:

3.9(3) All hearings held pursuant to this rule shall be held in accordance with the process outlined in 655—Chapter ~~4~~ 20.

ITEM 3. Amend **655—Chapter 4** as follows:

CHAPTER 4
DISCIPLINE

655—4.1(17A,147,152,272C) Board authority. The board of nursing may discipline a registered nurse, a licensed practical nurse or an advanced registered nurse practitioner for any grounds stated in Iowa Code chapters 147, 152, ~~and~~ 272C and 272D, or rules promulgated thereunder.

655—4.2(17A,147,152,272C) Complaints and investigations. Complaints are allegations of wrongful acts or omissions relating to the ethical or professional conduct of a licensee.

4.2(1) In accordance with Iowa Code section 272C.3(1)*"c,"* the board shall investigate or review, upon written complaint or upon its own motion pursuant to other information received by the board, alleged acts or omissions which the board reasonably believes constitute cause for licensee discipline.

4.2(2) The executive director, or an authorized designee, may review and investigate any complaint information received, in order to determine the probability that a violation of Iowa law or administrative rule has occurred.

655—4.3(17A,147,152,272C) Issuance of investigatory subpoenas. The board shall have the authority to issue an investigatory subpoena in accordance with the provisions of Iowa Code section 17A.13.

4.3(1) The executive director or designee may, upon the written request of a board investigator or on the executive director's own initiative, subpoena books, papers, records and other real evidence which are necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

a. The nature of the complaint reasonably justifies the issuance of a subpoena;

b. Adequate safeguards have been established to prevent unauthorized disclosure;

c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and

d. An attempt was made to notify the patient and to secure an authorization from the patient for release of the records at issue.

4.3(2) A written request for a subpoena or the executive director's written memorandum in support of the issuance of a subpoena shall contain the following:

a. The name and address of the person to whom the subpoena will be directed;

b. A specific description of the books, papers, records or other real evidence requested;

c. An explanation of why the documents sought to be subpoenaed are necessary for the board to determine whether it should institute a contested case proceeding; and

d. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 4.3(1) have been satisfied.

4.3(3) Each subpoena shall contain the following:

a. The name and address of the person to whom the subpoena is directed;

b. A description of the books, papers, records or other real evidence requested;

c. The date, time and location for production or inspection and copying;

d. The time within which a motion to quash or modify the subpoena must be filed;

e. The signature, address and telephone number of the executive director or designee;

f. The date of issuance;

g. A return of service.

4.3(4) Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

4.3(5) Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to issue a decision or the board may issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

4.3(6) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

4.3(7) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either (1) the person is notified that the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

655—4.4(17A,147,152,272C) Board action. The board shall review complaints and investigative ~~conclusions~~ materials and do one of the following:

4.4(1) ~~1.~~ Close the ~~investigative~~ complaint case without action.

4.4(2) ~~2.~~ Request further inquiry, including peer review.

4.4(3) ~~3. Appoint a peer review committee to assist with the investigation.~~ Issue a confidential letter of warning to the licensee. A letter of warning is not formal disciplinary action and is not a public document.

4.4(4) ~~4.~~ Determine the existence of sufficient probable cause and ~~order a disciplinary hearing to be held in compliance with Iowa Code section 272C.6~~ file a statement of charges or approve a combined statement of charges and settlement agreement.

655—4.5(17A,147,152,272C) Peer review committee. ~~The board may establish a peer review committee to assist with the investigative process when deemed necessary.~~ Any case may be referred to peer review for evaluation of the professional services rendered by the licensee.

4.5(1) The ~~committee~~ board shall ~~determine if the conduct of the licensee conforms to minimum standards of acceptable and prevailing practice of nursing and submit a report of its findings to the board~~ enter into a contract with peer reviewers to provide peer review services. The board or board staff shall determine which peer reviewer(s) will review a case and what investigative information shall be referred to a peer reviewer.

4.5(2) ~~The board shall review the committee's findings and proceed with action available under rule 655—4.4(17A,147,152,272C).~~ Peer reviewers shall review the information provided by the board and provide a written report to the board. The written report shall contain an opinion of the peer reviewer regarding whether the licensee conformed to minimum standards of acceptable and prevailing practice of nursing and the rationale supporting the opinion.

4.5(3) ~~The peer review committee shall observe the confidentiality requirements imposed by Iowa Code section 272C.6.~~ Peer reviewers shall observe the confidentiality requirements imposed by Iowa Code section 272C.6(4).

4.5(4) The board shall review the committee's findings and proceed with action available under rule 655—4.4(17A,147,152,272C).

655—4.6(17A,147,152,272C) Grounds for discipline. A licensee may be disciplined for failure to comply with the rules promulgated by the board and for any wrongful act or omission related to nursing practice, licensure or professional conduct.

4.6(1) In accordance with Iowa Code section 147.55(1), behavior which constitutes fraud in procuring a license may include, but need not be limited to, the following:

a. Falsification of the application, credentials, or records submitted to the board for licensure or license renewal as a registered nurse, licensed practical nurse, or ~~registration as an~~ advanced registered nurse practitioner.

b. Fraud, misrepresentation, or deceit in taking the licensing examination or in obtaining a license as a registered nurse, licensed practical nurse, or ~~registration as an~~ advanced registered nurse practitioner.

c. Impersonating any applicant in any examination for licensure as a registered nurse, ~~or~~ licensed practical nurse, or advanced registered nurse practitioner.

4.6(2) In accordance with Iowa Code section 147.55(2), professional incompetency may include, but need not be limited to, the following:

a. Lack of knowledge, skill, or ability to discharge professional obligations within the scope of nursing practice.

b. Deviation by the licensee from the standards of learning, education, or skill ordinarily possessed and applied by other nurses in the state of Iowa acting in the same or similar circumstances.

c. Willful or repeated departure from or failure to conform to the minimum standards of acceptable and prevailing practice of nursing in the state of Iowa.

d. Willful or repeated failure to practice nursing with reasonable skill and safety.

e. Willful or repeated failure to practice within the scope of current licensure or level of preparation.

f. Failure to meet the standards as defined in 655—Chapter 6, Iowa Administrative Code.

g. Failure to meet the standards as defined in 655—Chapter 7, Iowa Administrative Code.

~~*g.*~~ *h.* Failure to comply with the requirements of Iowa Code chapter 139A.

4.6(3) In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of a profession may include, but need not be limited to, the following:

a. Oral or written misrepresentation relating to degrees, credentials, licensure status, records and applications.

b. Falsifying records related to nursing practice or knowingly permitting the use of falsified information in those records.

~~*c.* Failing to provide written notification of a change of address to the board within 30 days of the event.~~

~~*d.* Failing to notify the board within 30 days from the date of the final decision in a disciplinary action taken by the licensing authority of another state, territory or country.~~

~~*e.* Failing to notify the board of a criminal conviction within 30 days of the action, regardless of whether the judgment of conviction or sentence was deferred, and regardless of the jurisdiction wherein it occurred.~~

~~*f.* Failing to submit an additional completed fingerprint packet as required and applicable fee, when a previous fingerprint submission has been determined to be unacceptable, within 30 days of a request made by board staff.~~

~~*g.* Failing to submit verification of compliance with continuing education requirements or exceptions for the period of time being audited.~~

4.6(4) In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct or practice harmful or detrimental to the public may include, but need not be limited to, the following:

a. Performing nursing services beyond the authorized scope of practice for which the individual is licensed or prepared.

b. Allowing another person to use one's nursing license for any purpose.

c. Failing to comply with any rule promulgated by the board related to minimum standards of nursing.

d. Improper delegation of nursing services, functions, or responsibilities.

e. Committing an act or omission which may adversely affect the physical or psychosocial welfare of the patient or client.

f. Committing an act which causes physical, emotional, or financial injury to the patient or client.

~~*g.* Engaging in sexual conduct, including inappropriate physical contact or any behavior that is seductive, demeaning, or exploitative, with regard to a patient or client.~~

~~*h.*~~ *g.* Failing to report to, or leaving, a nursing assignment without properly notifying appropriate supervisory personnel and ensuring the safety and welfare of the patient or client.

~~*i.*~~ *h.* Violating the confidentiality or privacy rights of the patient or client.

~~*j.*~~ *i.* Discriminating against a patient or client because of age, sex, race, ethnicity, national origin, creed, illness, disability, sexual orientation or economic or social status.

~~*k.*~~ *j.* Failing to assess, accurately document, evaluate, or report the status of a patient or client.

~~*l.*~~ *k.* Misappropriating medications, property, supplies, or equipment of the patient, client, or agency.

~~*m.*~~ *l.* Fraudulently or inappropriately using or permitting the use of prescription blanks, ~~or~~ obtaining or attempting to obtain prescription medications under false pretenses, or assisting others to obtain or attempt to obtain prescription medication under false pretenses.

~~*n.*~~ *m.* Practicing nursing while under the influence of alcohol, marijuana, or illicit drugs~~,~~ or while impaired by the use of legitimately prescribed pharmacological agents or medications.

~~*o.*~~ *n.* Being involved in the unauthorized manufacture~~, possession,~~ or distribution~~, or use~~ of a controlled substance.

o. Being involved in the unauthorized possession or use of a controlled substance.

~~*p. Pleading guilty to or being convicted of a crime related to the profession of nursing, or conviction of any crime that would affect the licensee's ability to practice nursing, regardless of whether the judgment of conviction or sentence was deferred, and regardless of the jurisdiction wherein the action occurred. A copy of the record of conviction or plea of guilty shall be conclusive evidence.*~~

~~*q.*~~ *p.* Engaging in behavior that is contradictory to professional decorum.

~~*r.*~~ *q.* Failing to report suspected wrongful acts or omissions committed by a licensee of the board.

~~*s.*~~ *r.* Failing to comply with an order of the board.

s. For an advanced registered nurse practitioner, prescribing, dispensing, administering, or distributing drugs in an unsafe manner.

t. For an advanced registered nurse practitioner, prescribing, dispensing, administering or distributing drugs without accurately documenting it or without assessing, evaluating, or instructing the patient or client.

u. For an advanced registered nurse practitioner, prescribing, dispensing, administering or distributing drugs to individuals who are not patients or are outside the licensee's specialty area.

v. Engaging in repeated verbal or physical conduct which interferes with another health care worker's performance or creates an intimidating, hostile, or offensive work environment.

w. Failing to properly safeguard or secure medications.

x. Failing to properly document or perform medication wastage.

4.6(5) For purposes of this subrule, "patient" is defined to include the patient and the patient's family or caretakers who are present with the patient while the patient is under the care of the licensee. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct or practice harmful or detrimental to the public may include, but need not be limited to, the following professional boundaries violations:

a. Sexual contact with a patient, regardless of patient consent.

b. Making lewd, suggestive, demeaning, or otherwise sexual comments to a patient, regardless of patient consent.

c. Initiating, or attempting to initiate, a sexual, emotional, social, or business relationship with a patient, for personal gain, regardless of patient consent.

d. Soliciting, borrowing, or misappropriating money or property from a patient, regardless of patient consent.

e. Repeatedly divulging personal information to a patient for nontherapeutic purposes, regardless of patient consent.

f. Engaging in a sexual, emotional, social, or business relationship with a former patient when there is a risk of exploitation or harm to the patient, regardless of patient consent.

4.6(6) In accordance with Iowa Code section 147.55(4), habitual intoxication or addiction to the use of drugs may include, but need not be limited to, the following:

a. Excessive use of alcohol which may impair a licensee's ability to practice the profession with reasonable skill and safety.

b. Excessive use of drugs which may impair a licensee's ability to practice the profession with reasonable skill and safety.

4.6(7) In accordance with Iowa Code section 147.55(5), conviction of a crime related to the profession or occupation of the licensee or conviction of any crime that would affect the licensee's ability to practice within a profession means the following:

a. Pleading guilty to or being convicted of a crime related to the profession of nursing, or conviction of any crime that would affect the licensee's ability to practice nursing, regardless of whether the judgment of conviction or sentence was deferred, and regardless of the jurisdiction wherein the action occurred. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

b. Reserved.

4.6(8) In accordance with Iowa Code section 147.55(6), fraud in representation as to skill or ability.

4.6(9) In accordance with Iowa Code section 147.55(7), use of untruthful or improbable statements in advertisements.

4.6(10) In accordance with Iowa Code section 147.55(8), willful or repeated violations of provisions of Iowa Code chapter 147, 152, or 272C.

4.6(11) In accordance with Iowa Code section 147.55(9), other acts or offenses as specified by board rule, including the following:

a. Failing to provide written notification of a change of address to the board within 30 days of the event.

b. Failing to notify the board within 30 days from the date of the final decision in a disciplinary action taken by the licensing authority of another state, territory or country.

c. Failing to notify the board of a criminal conviction within 30 days of the action, regardless of whether the judgment of conviction or sentence was deferred, and regardless of the jurisdiction where it occurred.

d. Failing to submit an additional completed fingerprint packet as required and applicable fee, when a previous fingerprint submission has been determined to be unacceptable, within 30 days of a request made by board staff.

e. Failing to respond to the board during a board audit or submit verification of compliance with continuing education requirements or exceptions, within the time period provided.

f. Failing to respond to the board during a board audit or submit verification of compliance with training in child or dependent adult abuse identification and reporting or exceptions, within the time period provided.

g. Failing to respond to the board during a board audit or submit verification of compliance with the requirements for the supervision of fluoroscopy set forth in 655—subrule 7.2(2) or exceptions, within the time period provided.

h. Failing to respond to or comply with a board investigation or subpoena.

i. Engaging in behavior that is threatening or harassing to the board, board staff, or agents of the board.

j. Violating an initial agreement or contract with the Iowa nurse assistance program committee.

4.6(12) In accordance with Iowa Code section 147.2 or 147.10:

a. Engaging in the practice of nursing in Iowa prior to licensure or not pursuant to the nurse licensure compact.

b. Engaging in the practice of nursing in Iowa on an inactive license.

4.6(13) In accordance with Iowa Code section 152.10(2):

a. Continued practice while knowingly having an infectious or contagious disease which could be harmful to a patient's welfare, without taking precautions to meet the current standard of care.

b. Having a license to practice nursing as a registered nurse, licensed practical/vocational nurse or advanced registered nurse practitioner revoked or suspended or having other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or disciplinary action is prima facie evidence of such fact. "Certified copy" means a complete and accurate copy of a document, as verified by the board or the agency providing that document. "Certified copy" includes an electronic version of a document provided to another agency or individual by the board, or received from another agency, so long as the electronic record is:

(1) Obtained directly from the official Web site of the board or other agency;

(2) Regularly updated by the board or the other agency in accordance with standard practice;

(3) Accessible as a "read only" document;

(4) Properly safeguarded to prevent the document from being altered; and

(5) Certified from another agency in accordance with the laws applicable in that jurisdiction.

c. Having a license to practice nursing as a registered nurse, licensed practical/vocational nurse or advanced registered nurse practitioner revoked or suspended, or having other disciplinary action taken, by a licensing authority in another state which has adopted the nurse licensure compact contained in Iowa Code section 152E.1 or the advanced practice registered nurse compact contained in Iowa Code section 152E.3 and which has communicated information relating to such action pursuant to the coordinated licensure information system established by the compact. If the action taken by the licensing authority occurs in a jurisdiction which does not afford the procedural protections of Iowa Code chapter 17A, the licensee may object to the communicated information and shall be afforded the procedural protections of Iowa Code chapter 17A.

d. Knowingly aiding, assisting, procuring, advising, or allowing a person to unlawfully practice nursing.

e. Being adjudicated mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.

f. Inability to practice nursing with reasonable skill and safety by reason of illness or as a result of a mental or physical condition.

655—4.7(17A,147,152,272C) Sanctions. A sanction is a disciplinary action by the board which resolves a contested case. The board may impose one or more of the following:

1. Revocation.
2. Suspension.
3. Restriction on engaging in specified procedures or acts.

~~3.~~ 4. Probation.

5. Order a physical, mental or substance abuse evaluation, alcohol or drug screening, or clinical competency evaluation.

~~4.~~ 6. Civil penalty. A fine may be imposed in accordance with Iowa Code section 272C.3(2)*"e."* Assessment of a fine shall be specified in the order and may not exceed a maximum amount of $1,000. Fines may be incurred for:

- Practicing without an active license: $50 for each calendar month or part thereof, beginning on the date that a license enters inactive status.
- ~~Obtaining a license by falsification of continuing education records~~ Failing to respond to the board during a board audit or to submit verification of compliance with the continuing education requirements or exceptions: $50 for each contact hour ~~falsified~~ that is not verified.
- Violating rule 655—4.6(17A,147,152,272C): an amount deemed appropriate.

~~5.~~ 7. ~~Continuing~~ Additional education, reexamination, or both.

~~6.~~ 8. Citation and warning.

9. Such other sanctions allowed by law as may be appropriate.

~~**655—4.8(17A,147,152,272C) Panel of specialists.** The board may appoint a panel of nurses who are specialists to ascertain the facts of a case pursuant to Iowa Code section 272C.6(2). The board chairperson or designee shall appoint the presiding officer.~~

~~**4.8(1)** The executive director shall set the date, time, and location of the hearing and make proper notification to all parties.~~

~~**4.8(2)** The panel of specialists shall:~~

~~*a.* Enter into the record the names of the presiding officer, members of the panel, the parties and their representatives.~~

~~*b.* Enter into the record the notice and evidence of service, order for hearing, statement of charges, answer, if available, and any other pleadings, motions or orders.~~

~~*c.* Receive opening statements from the parties.~~

~~*d.* Receive evidence, in accordance with Iowa Code section 17A.14, on behalf of the state of Iowa and on behalf of the licensee.~~

~~*e.* Question the witnesses.~~

~~*f.* Receive closing statements from the parties.~~

~~*g.* Determine the findings of fact by a majority vote and make a written report of its findings to the board within a reasonable period.~~

~~**655—4.9(17A,147,152,272C) Informal settlement.** Pursuant to the provisions of Iowa Code sections 17A.10, 17A.12 and 272C.3, the board may consider resolution of disciplinary matters through informal settlement prior to filing charges or the commencement of contested case proceedings. The executive director or a designee may negotiate with the licensee regarding a proposed disposition of the controversy. Upon consent of both parties, the board will review the proposal for action.~~

~~**655—4.10**~~ **655—4.8(17A,147,152,272C) Voluntary surrender.** A voluntary surrender of licensure may be submitted to the board as resolution of a contested case or in lieu of continued compliance with a disciplinary decision of the board. A voluntary surrender, when accepted by the board, has the same force and effect as an order of revocation.

~~**655—4.11(17A,147,152,272C) Application for reinstatement.** Any person whose license to practice nursing has been suspended or revoked by order of the board or has been voluntarily surrendered may apply for reinstatement. A request for reinstatement must be accomplished in accordance with the terms and conditions specified in the board's order and filed in conformance with these rules.~~

~~**4.11(1)** If the license was voluntarily surrendered, or if the order for suspension or revocation did not establish terms and conditions for reinstatement, an initial application may not be filed until one year has elapsed from the date of the order. Persons who have failed to satisfy the terms and conditions imposed by the board shall not be entitled to reinstatement.~~

~~**4.11(2)** The respondent shall initiate proceedings for licensure reinstatement by making application to the board. The application shall be subject to the same rules of procedure as other contested cases before the board. The person filing the application for reinstatement shall immediately serve a copy upon the attorney for the state of Iowa and shall in the same manner serve any additional documents filed in connection with the application.~~

~~**4.11(3)** The application shall allege facts and circumstances which, if established, will be sufficient to enable the board to determine that the basis for the revocation, suspension, or voluntary surrender no longer exists and that it shall be in the public interest for the license to be reinstated. The application shall include written evidence supporting the applicant's assertion that the basis for the revocation, suspension, or voluntary surrender no longer exists and that it shall be in the public interest for the license to be reinstated. Such evidence may include, but is not limited to: medical and mental health records establishing successful completion of any necessary medical or mental health treatment and aftercare recommendations; documentation verifying successful completion of any court-imposed terms of probation; statements from support group sponsors verifying active participation in a support group; verified statements from current and past employers attesting to employability; and evidence establishing that prior professional competency or unethical conduct issues have been resolved. The burden of proof to establish such facts shall be on the applicant.~~

~~**4.11(4)** The executive director or an appointed designee shall review the application for reinstatement and determine if it conforms to the requirements imposed by these rules. Applications failing to comply with these requirements will be denied. Such denial shall be in writing, stating the grounds, and may be appealed to the board in compliance with the provisions of Iowa Code chapter 17A.~~

~~**4.11(5)** Applications not denied for failure to conform to the requirements imposed by these rules shall be set for hearing before the board. The hearing shall be a contested case hearing within the meaning of Iowa Code section 17A.12, and the order to grant or deny reinstatement shall incorporate~~

findings of fact and conclusions of law. If reinstatement is granted, terms and conditions may be imposed. The applicant shall be provided a license reinstatement packet containing an application, a continuing education report form, fingerprint cards, and a statement of the fees as defined in rule 655—3.1(17A,147,152,272C).

655—4.12(17A,147,152,272C) Licensee review committee. In accordance with the provisions of Iowa Code section 272C.3(1)*"k,"* the board shall appoint a licensee review committee for the purpose of evaluating and monitoring licensees who self-report physical or mental impairments. The committee shall be comprised of the executive director or designee, a representative with chemical dependency or mental health treatment experience, and a recovering nurse with at least five consecutive years of sobriety.

4.12(1) Eligibility for referral to the committee shall be determined by the executive director in accordance with the following criteria:

a. The licensee must self-report the impairment.

b. The licensee must submit an evaluation summary, diagnosis, or other evidence which supports a determination that an impairment exists.

c. There must be no indication of practice-related problems.

d. There must be no documented violation of law or board rules related to impairment-associated behaviors.

e. There must be no record of prior board sanction for impairment-related problems.

4.12(2) The committee shall meet as necessary in order to interview potential participants, develop consensual agreements for new referrals, review licensee compliance, and determine eligibility for continued monitoring.

4.12(3) Conditions placed upon the licensee and the duration of the monitoring period shall be established by the committee and communicated to the licensed individual in writing.

4.12(4) The licensee must consent to the conditions proposed by the review committee in order to participate in this program.

4.12(5) Failure to comply with the provisions of the agreement shall require the committee to make immediate referral of the matter to the board for possible disciplinary action.

4.12(6) Information in possession of the licensee review committee shall be subject to the confidentiality requirements of Iowa Code section 272C.6.

655—4.13(17A,147,152,272C) Contested case proceedings. Contested case proceedings before the board of nursing are held in accordance with the provisions of Iowa Code chapter 17A. The following rules apply to board activities initiated upon a determination of probable cause that result in the issuance of a notice of hearing. Any adverse agency action to limit or revoke the multistate licensure privilege granted under the provisions of the nurse licensure compact shall be conducted as a contested case proceeding.

655—4.14(17A,152E) Definitions. Except where otherwise specifically defined by law:

"Adverse action" means a home or remote state action.

"Certified copy," as used in the statutes and rules administered by the board, means a complete and accurate copy of a document, as verified by the board or the agency providing that document. "Certified copy" includes an electronic version of a document provided to another agency or individual by the board, or received from another agency, so long as the electronic record is:

1. Obtained directly from the official Web site of the board or other agency;
2. Regularly updated by the board or the other agency in accordance with standard practice;
3. Accessible as a "read only" document;
4. Properly safeguarded to prevent the document from being altered; and
5. Certified from another agency in accordance with the laws applicable in that jurisdiction.

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

~~*"Home state"* means the party state, which is the nurse's primary state of residence.~~

~~*"Home state action"* means any administrative, civil, equitable, or criminal action permitted by the home state's laws which are imposed on a nurse by the home state's licensening board or other authority, including actions against an individual's license such as revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.~~

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

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

~~*"Presiding officer"* means the chairperson of the board or designee.~~

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

~~*"Remote state"* means a party state, other than the home state, where either of the following applies:~~

~~1. Where the patient is located at the time nursing care is provided.~~

~~2. In the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing care is located.~~

~~*"Remote state action"* means either of the following:~~

~~1. Any administrative, civil, equitable, or criminal action permitted by a remote state's laws which is imposed on a nurse by the remote state's licensing board or other authority, including actions against an individual's multistate licensure privilege to practice in the remote state.~~

~~2. Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards of remote states.~~

~~655—4.15(17A) Time requirements.~~

~~4.15(1)~~ ~~Time shall be computed as provided in Iowa Code subsection 4.1(34).~~

~~4.15(2)~~ ~~For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.~~

~~655—4.16(17A) Notice of hearing.~~ ~~The board shall issue an order, notice of hearing, and statement of charges following its determination of probable cause pursuant to Iowa Code section 17A.12(2). Delivery of the notice of hearing constitutes the commencement of the contested case proceeding.~~

~~4.16(1)~~ ~~The date, time, and location of the hearing shall be set by the chairperson or the executive director. The licensee shall be notified at least 30 days prior to the scheduled hearing.~~

~~4.16(2)~~ ~~Notification shall be in writing delivered either by personal service as in civil actions or by restricted certified mail with return receipt requested. When service cannot be accomplished in such a manner:~~

~~*a.* An affidavit shall be prepared outlining the measures taken to attempt service and shall become a part of the file when a notice cannot be delivered by personal service or certified mail, return receipt requested.~~

~~*b.* Notice of hearing shall be published once each week for three consecutive weeks in a newspaper of general circulation, published or circulated in the county of last-known residence of the licensee. The newspaper will be selected by the executive director or a designee. The first notice of hearing shall be published at least 30 days prior to the scheduled hearing.~~

~~655—4.17(17A) Presiding officer.~~ ~~Disciplinary hearings shall be conducted by the board pursuant to Iowa Code section 272C.6.~~

~~4.17(1)~~ ~~The chairperson of the board shall designate the presiding officer in accordance with the provisions of section 17A.11. For nondisciplinary proceedings, any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the~~

department of inspections and appeals must file a written request within 20 days after service of a notice of hearing.

4.17(2) The executive director may deny the request upon a finding that one or more of the following apply:

a. Neither the agency nor any officer of the agency under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witness is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

h. The request would not conform to the disciplinary hearing provision of Iowa Code section 272C.6.

4.17(3) The agency (or its designee) shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

4.17(4) All rulings by an administrative law judge are subject to appeal to the agency. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

4.17(5) Unless otherwise provided by law, agency heads and members of multimembered agency heads, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

655—4.18(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

655—4.19(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

655—4.20(17A) Disqualification.

4.20(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

4.20(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation or the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrules 4.20(3) and 4.32(9).

4.20(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

4.20(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.20(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 655—4.34(17A).

655—4.21(17A) Consolidation—severance.

4.21(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

4.21(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

655—4.22(17A) Pleadings.

4.22(1) Pleadings may be required by rule, by notice of hearing, or by order of the presiding officer.

4.22(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

(1) The persons or entities on whose behalf the petition is filed;

(2) The particular provisions of statutes and rules involved;

(3) The relief demanded and the facts and laws relied upon for such relief; and

(4) The name, address and telephone number of the petitioner and the petitioner's attorney.

4.22(3) Answer. An answer may be filed within 20 days of service of the petition. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

655—4.23(17A) Service and filing of pleadings and other papers.

4.23(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

4.23(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

4.23(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the board.

4.23(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board office, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

4.23(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in the United States mail or state interoffice mail.

(Date) (Signature)

655—4.24(17A) Discovery.

4.24(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

4.24(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 4.24(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

4.24(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

655—4.25(17A,272C) Issuance of subpoenas in a contested case.

4.25(1) Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing or may be issued separately. Subpoenas may be issued by the executive director

or designee upon written request. A request for a subpoena of mental health records must confirm that the conditions described in subrule 4.3(1) have been satisfied prior to the issuance of the subpoena.

4.25(2) A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:

a. The name, address and telephone number of the person requesting the subpoena;

b. The name and address of the person to whom the subpoena shall be directed;

c. The date, time and location at which the person shall be commanded to attend and give testimony;

d. Whether the testimony is requested in connection with a deposition or hearing;

e. A description of the books, papers, records or other real evidence requested;

f. The date, time and location for production or inspection and copying; and

g. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 4.3(1) have been satisfied.

4.25(3) Each subpoena shall contain, as applicable, the following:

a. The caption of the case;

b. The name, address and telephone number of the person who requested the subpoena;

c. The name and address of the person to whom the subpoena is directed;

d. The date, time and location at which the person is commanded to appear;

e. Whether the testimony is commanded in connection with a deposition or hearing;

f. A description of the books, papers, records or other real evidence the person is commanded to produce;

g. The date, time and location for production or inspection and copying;

h. The time within which the motion to quash or modify the subpoena must be filed;

i. The signature, address and telephone number of the executive director or designee;

j. The date of issuance;

k. A return of service.

4.25(4) Unless a subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes, the executive director or designee shall mail copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

4.25(5) Any person who is aggrieved or adversely affected by compliance with the subpoena or any party to the contested case who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

4.25(6) Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to issue a decision or the board may issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

4.25(7) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

4.25(8) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

655—4.26(17A) Motions.

4.26(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

4.26(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

4.26(3) The presiding officer may schedule oral argument on any motion.

4.26(4) Motions pertaining to the hearing must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

655—4.27(17A) Prehearing conference.

4.27(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the board office to all parties. For good cause the presiding officer may permit variances from this rule.

4.27(2) Each party shall bring to the prehearing conference:

a. A final list of witnesses the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names;

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them; and

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

4.27(3) In addition to the requirements of subrule 4.27(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

4.27(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

655—4.28(17A) Continuances. The executive director shall have the authority to grant a continuance after consultation, if needed, with the chairperson of the board.

A request for continuance of a contested case matter must be submitted in writing to the board not later than seven days prior to the scheduled date of the hearing. Exceptions shall be granted at the discretion of the executive director only in situations involving extenuating, extraordinary, or emergency circumstances.

655—4.29(17A) Hearing procedures.

4.29(1) The presiding officer presides at the hearing and may rule on motions, require briefs, issue a decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

4.29(2) All objections shall be timely made and stated on the record.

4.29(3) Parties have the right to participate or be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney or another person authorized by law.

4.29(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

4.29(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

4.29(6) Witnesses may be sequestered during the hearing.

4.29(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

655—4.30(17A) Evidence.

4.30(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

4.30(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

4.30(3) Evidence in the proceeding shall be confined to those issues to which the parties received notice prior to the hearing, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

4.30(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

4.30(5) Any party may object to specific evidence or may request limits on scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

4.30(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an order of proof and inserted in the record.

655—4.31(17A) Default.

4.31(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

4.31(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

4.31(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 655—4.36(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so

~~stated must be substantiated by at least one sworn affidavit from a person with personal knowledge of each such fact attached to the motion.~~

~~**4.31(4)** The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.~~

~~**4.31(5)** Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.~~

~~**4.31(6)** "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.~~

~~**4.31(7)** A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 655—4.34(17A).~~

~~**655—4.32(17A) Ex parte communication.**~~

~~**4.32(1)** Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case, except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 4.20(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.~~

~~**4.32(2)** Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.~~

~~**4.32(3)** Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.~~

~~**4.32(4)** To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 655—4.23(17A) and may be supplemented by telephone, facsimile, E-mail or other means of notification. Where permitted, oral communications may be initiated through telephone conference call, which includes all parties or their representatives.~~

~~**4.32(5)** Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.~~

~~**4.32(6)** The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under subrule 4.20(1) or other law and they comply with subrule 4.32(1).~~

~~**4.32(7)** Communications with the presiding officer involving scheduling or uncontested procedural matters do not require notice or opportunity for parties to participate. A party should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 655—4.29(17A).~~

~~**4.32(8)** Disclosure of prohibited communications. A presiding officer who received a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding~~

officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

4.32(9) Promptly after being assigned to serve as presiding officer on a hearing panel, as a member of a full board hearing, on an intra-agency appeal, or other basis, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

4.32(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the board's executive director for possible sanctions including: censure, suspension, dismissal, or other disciplinary action.

655—4.33(17A) Recording costs. Upon request, the board of nursing shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of such recording, unless otherwise provided by law.

655—4.34(17A) Final decision. When the board presides over reception of the evidence at the hearing, its decision is a final decision.

4.34(1) When a panel of specialists presides over the reception of evidence at the hearing, the findings of fact shall be considered by the board at the earliest practicable time. The decision of the board is a final decision.

4.34(2) A final decision in a contested case proceeding shall be in writing and include findings of fact and conclusions of law, separately stated.

a. Findings of fact shall be accompanied by a concise and explicit statement of underlying facts supporting the findings.

b. The decision shall include an explanation of why the relevant evidence in the record supports each material finding of fact.

c. Conclusions of law shall be supported by cited authority or by a reasoned opinion.

4.34(3) The decision or order shall be promptly delivered to the parties in the manner provided by Iowa Code section 17A.12 as amended by 1998 Iowa Acts, chapter 1202.

4.34(4) The final decision is a public record pursuant to Iowa Code section 272C.6(4).

655—4.35(17A) Appeals.

4.35(1) *Appeal by party.* Any adversely affected party may appeal a final decision of the board to the district court within 30 days after issuance, in accordance with Iowa Code section 17A.19 as amended by 1998 Iowa Acts, chapter 1202.

4.35(2) *Review.* The board may initiate review of the decision or order on its own motion at any time within 30 days following the issuance of such a decision.

4.35(3) *Notice of appeal.* An appeal of a decision or order is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;

e. The grounds for relief.

4.35(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 15 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

4.35(5) *Scheduling.* The board of nursing shall issue a schedule for consideration of the appeal.

4.35(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present an oral argument shall be filed with the briefs.

The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

655—4.36(17A) Applications for rehearing.

4.36(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

4.36(2) *Content of application.* An application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, upon showing good cause, the applicant requests an opportunity to submit additional evidence.

4.36(3) *Time of filing.* The application shall be filed with the board office within 20 days after issuance of the final decision.

4.36(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies on all parties.

4.36(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

655—4.37(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable.

655—4.38(17A) Emergency adjudicative proceedings.

4.38(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, the agency may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency by emergency adjudicative order. Before issuing an emergency adjudicative order the agency shall consider factors including, but not limited to, the following:

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

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

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

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

~~*e.* Whether the specific action contemplated by the agency is necessary to avoid the immediate danger.~~

~~**4.38(2)** *Issuance.*~~

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

~~(1) Personal delivery;~~

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

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

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

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

~~*b.* To the degree practicable, the agency shall select the procedure for providing written notice that best ensures prompt, reliable delivery.~~

~~**4.38(3)** *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the agency shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.~~

~~**4.38(4)** *Completion of proceedings.* Issuance of a written emergency adjudicative order shall include notification of the date on which agency proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further agency proceedings to a later date will be granted only in compelling circumstances upon application in writing.~~

These rules are intended to implement Iowa Code chapter 17A ~~as amended by 1998 Iowa Acts, chapter 1202,~~ and Iowa Code sections 147.55, 152.10, 272C.4, 272C.5, 272C.6, and 272C.9.

ITEM 4. Amend paragraph **5.3(5)"d"** as follows:

d. The hearing will be conducted by the board pursuant to 655—~~4.13~~ 20.1(17A,147,152,272C).

ITEM 5. Amend subrule 9.6(3) as follows:

9.6(3) In lieu of the words "(uniform rule on contested cases X.12(17A))", insert "655 IAC ~~4.16~~ 20.17(17A)".

ITEM 6. Amend paragraph **11.3(2)"d"** as follows:

d. Disciplinary reports. This information is available from the chief health professions investigator in the board office. These reports contain personally identifiable information about nurses who have had action taken by the board against their licenses. This information is retrieved by individual identifier and some of the information is stored on an automated data processing system. Some is stored as hard copy or microfilmed documents. This information is matched or compared with personally identifiable information in other record systems.

This information is dispersed pursuant to Iowa Code sections 272C.4~~,~~ and 272C.6 ~~and Iowa Administrative Code, Nursing Board[655], 4.16(3)~~*"c."*.

ITEM 7. Adopt the following **new** 655—Chapter 20:

CHAPTER 20
CONTESTED CASES

655—20.1(17A,272C) Scope and applicability. This chapter applies to contested case proceedings conducted by the Iowa board of nursing.

655—20.2(17A,272C) Definitions. Except where otherwise specifically defined by law:

"Board" means a quorum of members of the Iowa board of nursing.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5), including but not limited to licensee disciplinary proceedings, adverse agency action to limit or revoke the multistate licensure privilege granted under the provisions of the nurse licensure compact, license denial proceedings, and license reinstatement proceedings.

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

"Party" means the state of Iowa, as represented by the office of the attorney general, and the respondent or applicant.

"Probable cause" means a reasonable ground for belief in the existence of facts warranting the specified proceeding.

655—20.3(17A,272C) Time requirements. Time shall be computed as provided in Iowa Code section 4.1(34). For good cause, the presiding officer may lengthen or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before lengthening or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

655—20.4(17A,272C) Applicability of Iowa Rules of Civil Procedure. Except as expressly provided in Iowa Code chapter 17A and these rules, the Iowa Rules of Civil Procedure do not apply to contested case proceedings. However, upon application by a party, the board may permit the use of procedures provided for in the Iowa Rules of Civil Procedure unless doing so would unreasonably complicate the proceedings or impose an undue hardship on a party.

655—20.5(17A,272C) Combined statement of charges and settlement agreement. Upon a determination by the board that probable cause exists to take public disciplinary action, the board and the licensee may enter into a combined statement of charges and settlement agreement.

20.5(1) No licensee is entitled to be offered a combined statement of charges and settlement agreement.

20.5(2) Entering into a combined statement of charges and settlement agreement is completely voluntary.

20.5(3) The combined statement of charges and settlement agreement shall include a brief statement of the charges, the circumstances that led to the charges, and the terms of settlement.

20.5(4) A combined statement of charges and settlement agreement shall constitute the commencement and resolution of a contested case proceeding. By entering into a combined statement of charges and settlement agreement, the licensee waives the right to a contested case hearing on the matter.

20.5(5) A combined statement of charges and settlement agreement is a permanent public record open for inspection under Iowa Code chapter 22.

655—20.6(17A,272C) Notice of hearing.

20.6(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

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

b. Certified restricted mail, return receipt requested; or

c. Signed acknowledgment accepting service; or

d. When service cannot be accomplished using the above methods:

(1) An affidavit shall be prepared outlining the measures taken to attempt service; and

(2) Notice of hearing shall be published once each week for three consecutive weeks in a newspaper of general circulation, published or circulated in the county of last-known residence of the respondent. The first notice of hearing shall be published at least 30 days prior to the scheduled hearing.

20.6(2) *Contents.* The notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted;

e. Identification of all parties, including the name, address and telephone number of the assistant attorney general representing the state;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Reference to the procedural rules governing settlement;

h. Identification of the presiding officer;

i. Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11, that the presiding officer be an administrative law judge;

j. Notification of the time period in which the respondent may file an answer; and

k. Notification of the respondent's right to request a closed hearing, if applicable.

20.6(3) *Public record.* Notices of hearing are permanent public records open for inspection under Iowa Code chapter 22.

655—20.7(17A,272C) Statement of charges. In the event the board finds there is probable cause for taking public disciplinary action against a licensee, the board shall file a statement of charges. The statement of charges shall be incorporated within the notice of hearing. The statement of charges shall set forth the acts or omissions with which the respondent is charged including the statute(s) and rule(s) which are alleged to have been violated and shall be in sufficient detail to enable the preparation of the respondent's defense. Every statement of charges prepared by the board shall be reviewed by the office of the attorney general before it is filed. Statements of charges are permanent public records open for inspection under Iowa Code chapter 22.

655—20.8(13,272C) Legal representation. Following the issuance of a notice of hearing, the office of the attorney general shall be responsible for the legal representation of the public interest in the contested case. The assistant attorney general assigned to prosecute a contested case before the board shall not represent the board in that case but shall represent the public interest.

655—20.9(17A,272C) Presiding officer in a disciplinary contested case. The presiding officer in a disciplinary contested case shall be the board. When acting as presiding officer, the board may request that an administrative law judge perform certain functions as an aid to the board, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, and drafting the written decision for review by the board.

655—20.10(17A,272C) Presiding officer in a nondisciplinary contested case.

20.10(1) Any party in a nondisciplinary contested case who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of the notice of hearing.

20.10(2) The board may deny the request only upon a finding that one or more of the following apply:

a. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

b. An administrative law judge is unavailable to hear the case within a reasonable time.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

20.10(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge, the parties shall be notified at least 10 days prior to hearing if an administrative law judge will not be available.

655—20.11(17A,272C) Disqualification.

20.11(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party.

b. Has personally investigated, prosecuted, or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties. If the licensee elects to appear before the board in the investigative process, the licensee waives this provision.

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties.

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years.

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case.

f. Has a spouse or relative within the third degree of relationship who:

(1) Is a party to the case, or an officer, director or trustee of a party;

(2) Is a lawyer in the case;

(3) Is known to have an interest that could be substantially affected by the outcome of the case; or

(4) Is likely to be a material witness in the case.

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

20.11(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include:

a. General direction and supervision of assigned investigators;

b. Unsolicited receipt of information which is relayed to assigned investigators;

c. Review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding; or

d. Exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case.

Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 20.11(3) and 20.28(8).

By electing to participate in an appearance before the board, the licensee waives any objection to a board member's both participating in the appearance and later participating as a decision maker in a contested case proceeding on the grounds that the board member "personally investigated" the matter under this provision.

20.11(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

20.11(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 20.11(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.11(3). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. The individual against whom disqualification is asserted shall make the initial determination as to whether disqualification is required. If the individual elects not to disqualify,

the board shall make the final determination as to disqualification of that individual as part of the record in the case.

655—20.12(17A,272C) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when the board deems the waiver to be inconsistent with the public interest.

655—20.13(17A,272C) Telephone or electronic proceedings. The presiding officer may resolve prehearing matters by telephone conference in which all parties have an opportunity to participate. Contested case hearings will generally not be held by telephone or electronic means in the absence of consent by all parties under compelling circumstances. Nothing shall prohibit a witness from testifying by telephone or electronic means pursuant to paragraph 20.26(3)*"b."*

655—20.14(17A,272C) Consolidation—severance.

20.14(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

20.14(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

655—20.15(17A,272C) Appearance. The respondent or applicant may be represented by an attorney. The attorney must file an appearance in the contested case. If the attorney is not licensed to practice law in Iowa, the attorney must fully comply with Iowa Court Rule 31.14.

655—20.16(17A,272C) Answer. An answer may be filed within 20 days of service of the notice of hearing and statement of charges. An answer shall specifically admit, deny, or otherwise answer all material allegations of the statement of charges to which it responds. It shall state any facts supporting any affirmative defenses and contain as many additional defenses as the respondent may claim. An answer shall state the name, address and telephone number of the person filing the answer. Any allegation in the statement of charges not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

655—20.17(17A,272C) Filing and service of documents.

20.17(1) *Filing—when required.* After the notice of hearing, all documents in a contested case proceeding shall be filed with the board.

20.17(2) *Filing—how made.* Filing shall be made by delivering or mailing the document to the board office located at 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685.

20.17(3) *Filing—when made.* A document is deemed filed at the time it is delivered to the board office, delivered to an established courier service for immediate delivery to the board office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

20.17(4) *Service—when required.* Except as otherwise provided by law, every document filed in a contested case proceeding shall be simultaneously served upon each of the parties of record to the proceeding, including the assistant attorney general representing the state. Except for an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

20.17(5) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order, so long as there is proof of mailing.

20.17(6) *Electronic service.* Service may be made upon a party or attorney by electronic mail (e-mail) if the person consents in writing in that case to be served in that manner. The written consent shall specify the e-mail address for such service. The written consent may be withdrawn by written notice served on the parties or attorneys.

20.17(7) *Proof of mailing/e-mailing.* Proof of mailing/e-mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in the United States mail, state interoffice mail, or e-mail when permitted by 655 IAC 20.17(6).
>
> (Date) (Signature)

655—20.18(272C) Investigative file. The board's investigative file is available to the respondent or applicant upon request only after the commencement of a contested case and only prior to the resolution of the contested case. A licensee who elects to enter into a combined statement of charges and settlement agreement is not entitled to request the investigative file. In accordance with Iowa Code section 272C.6(4), information contained within an investigative file is confidential and may only be used in connection with the disciplinary proceedings before the board.

655—20.19(17A,272C) Discovery.

20.19(1) The scope of discovery described in Iowa Rule of Civil Procedure 1.503 shall apply to contested case proceedings.

20.19(2) The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties in a contested case proceeding: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; and requests for admission. Unless lengthened or shortened by the presiding officer, the time frames for discovery in the specific Iowa Rules of Civil Procedure govern those specific procedures.

a. Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions shall apply to any depositions taken in a contested case proceeding. Any party taking a deposition in a contested case shall be responsible for any deposition costs, unless otherwise specified or allocated in an order. Deposition costs include, but are not limited to, reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

b. Iowa Rule of Civil Procedure 1.509 shall apply to any interrogatories propounded in a contested case proceeding.

c. Iowa Rule of Civil Procedure 1.512 shall apply to any requests for production of documents, electronically stored information, and things in a contested case proceeding.

d. Iowa Rule of Civil Procedure 1.510 shall apply to any requests for admission in a contested case proceeding. Iowa Rule of Civil Procedure 1.511 regarding the effect of an admission shall apply in contested case proceedings.

20.19(3) The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to contested case proceedings. However, upon application by a party, the board may order the parties to comply with these procedures unless doing so would unreasonably complicate the proceedings or impose an undue hardship.

20.19(4) Iowa Rule of Civil Procedure 1.508 shall apply to discovery of any experts identified by a party to a contested case proceeding.

20.19(5) Discovery shall be served on all parties to the contested case proceeding but shall not be filed with the board.

20.19(6) A party may file a motion to compel or other motion related to discovery in accordance with this subrule. Any motion filed with the board relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing

party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within 10 days of the filing of the motion unless the time is lengthened or shortened by the presiding officer. The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

20.19(7) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

655—20.20(17A,272C) Issuance of subpoenas in a contested case.

20.20(1) Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing or may be issued separately. Subpoenas shall be issued by the executive director or designee upon a written request that complies with the requirements of this rule. A request for a subpoena of mental health records must confirm that the conditions described in subrule 20.20(3) have been satisfied prior to the issuance of the subpoena. The executive director or designee may refuse to issue a subpoena if the request does not comply with the requirements of this rule.

20.20(2) A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:

a. The name, address and telephone number of the person requesting the subpoena;

b. The name and address of the person to whom the subpoena shall be directed;

c. The date, time and location at which the person shall be commanded to attend and give testimony;

d. Whether the testimony is requested in connection with a deposition or hearing;

e. A description of the books, papers, records or other real evidence requested and the date, time and location for production or inspection and copying; and

f. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 20.20(3) have been satisfied.

20.20(3) In the case of a request for a subpoena of mental health records, the request must confirm compliance with the following conditions prior to the issuance of the subpoena:

a. The nature of the issues in the case reasonably justifies the issuance of the requested subpoena;

b. Adequate safeguards have been established to prevent unauthorized disclosure;

c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and

d. An attempt was made to notify the patient and to secure an authorization from the patient for the release of the records at issue.

20.20(4) Each subpoena shall contain, as applicable, the following:

a. The caption of the case;

b. The name, address and telephone number of the person who requested the subpoena;

c. The name and address of the person to whom the subpoena is directed;

d. The date, time and location at which the person is commanded to appear;

e. Whether the testimony is commanded in connection with a deposition or hearing;

f. A description of the books, papers, records or other real evidence the person is commanded to produce;

g. The date, time and location for production or inspection and copying;

h. The time within which the motion to quash or modify the subpoena must be filed;

i. The signature, address and telephone number of the executive director or designee;

j. The date of issuance;

k. A return of service.

20.20(5) Unless a subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes, the executive director or designee shall mail copies of all subpoenas to the parties. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

20.20(6) Any person who is aggrieved or adversely affected by compliance with the subpoena or any party to the contested case who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

20.20(7) Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to issue a decision or the board may issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

20.20(8) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the executive director in accordance with subrule 20.17(5) a notice of appeal within 10 days after service of the decision of the administrative law judge.

20.20(9) If the person contesting the subpoena is not a party to the contested case proceeding, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is a party to the contested case proceeding, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

655—20.21(17A,272C) Motions.

20.21(1) No technical form for motions is required. Prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

20.21(2) Any party may file a written response to a motion within 10 days after the motion is served, unless the time period is lengthened or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

20.21(3) The presiding officer may schedule oral argument on any motion.

20.21(4) Motions pertaining to the hearing must be filed and served at least 10 days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or the presiding officer.

20.21(5) Dispositive motions, such as motions for summary judgment or motions to dismiss, must be filed with the board and served on all parties to the contested case proceeding at least 30 days prior to the scheduled hearing date, unless otherwise ordered or permitted by the presiding officer. Any party may file a written response to a dispositive motion within 10 days after the motion is served, unless the time for response is otherwise lengthened or shortened by the presiding officer.

655—20.22(17A,272C) Prehearing conferences.

20.22(1) Any party may request a prehearing conference. Prehearing conferences shall be conducted by the executive director, who may request that an administrative law judge conduct the prehearing conference. A written request for prehearing conference or an order for prehearing conference on the executive director's own motion shall be filed not less than 7 days prior to the hearing date, unless authorized by the person conducting the prehearing conference. A prehearing conference shall be scheduled not less than 3 business days prior to the hearing date.

20.22(2) Each party shall be prepared to discuss the following subjects at the prehearing conference:

a. Submission of expert and other witness lists. Witness lists may be amended subsequent to the prehearing conference within the time limits established by the executive director or administrative law judge at the prehearing conference. Any such amendments must be served on all parties. Witnesses not listed on the final witness list may be excluded from testifying unless there was good cause for the failure to include their names.

b. Submission of exhibit lists. Exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the executive director or administrative law judge at the prehearing conference. Other than rebuttal exhibits, exhibits that are not listed on the final exhibit list may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. The entry of a scheduling order to include deadlines for completion of discovery.

d. Stipulations of law or fact.

e. Stipulations on the admissibility of exhibits.

f. Identification of matters which the parties intend to request be officially noticed.

g. Consideration of any additional matters which will expedite the hearing.

20.22(3) Prehearing conferences shall be conducted by telephone unless otherwise ordered.

20.22(4) A party must seek intra-agency appeal to the board of prehearing rulings made by an administrative law judge in order to adequately exhaust administrative remedies. Such appeals must be filed within 10 days of the date of the issuance of the challenged ruling but no later than the time for compliance with the order or the date of hearing, whichever is first.

655—20.23(17A,272C) Continuances. Unless otherwise provided, requests for continuance shall be filed with the board.

20.23(1) A written request for a continuance shall:

a. Be made at the earliest possible time and no less than 7 days before the hearing except in cases of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's attorney.

20.23(2) No request for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The presiding officer may allow an oral application for continuance at the contested case hearing only in the event of an unanticipated emergency.

20.23(3) The presiding officer or the executive director has the authority to grant or deny a request for a continuance in accordance with this subrule. The executive director or an administrative law judge may enter an order granting an uncontested request for a continuance. Upon consultation with the board chair, the executive director or an administrative law judge may deny an uncontested request for a continuance or may rule on a contested request for continuance.

20.23(4) In determining whether to grant a continuance, the presiding officer or the executive director may require documentation of any grounds for continuance and may consider:

a. Prior continuances;

b. The interests of all parties;

c. The public interest;

d. The likelihood of settlement;

e. The existence of an emergency;

f. Any objection;

g. Any applicable time requirements;

h. The existence of a conflict in the schedules of counsel, parties, or witnesses;

i. The timeliness of the request; and

j. Other relevant factors.

655—20.24(17A,272C) Settlement agreements.

20.24(1) A contested case may be resolved by settlement agreement. Settlement negotiations may be initiated by any party at any stage of a contested case. No party is required to participate in the settlement process.

20.24(2) If the respondent initiates or consents to settlement negotiations, the assistant attorney general prosecuting the case may discuss settlement with the board chair without violating the prohibition against ex parte communications in Iowa Code section 17A.17 and without disqualifying the board chair from participating in the adjudication of the contested case. The full board shall not be involved in settlement negotiations until a proposed settlement agreement executed by the respondent is submitted to the board for approval.

20.24(3) By signing the proposed settlement agreement, the respondent authorizes an assistant attorney general to have ex parte communications with the board related to the terms of the proposed settlement. If the board fails to approve the proposed settlement agreement, it shall be of no force

or effect to either party and shall not be admissible at hearing. Upon rejecting a proposed settlement agreement, the board may suggest alternative terms of settlement, which the respondent is free to accept or reject.

20.24(4) A settlement agreement is a permanent public record open for inspection under Iowa Code chapter 22.

655—20.25(17A,272C) Hearing procedures in contested cases.

20.25(1) The presiding officer shall be in control of the proceedings and shall have the authority to administer oaths and to admit or exclude testimony or evidence and shall rule on all motions and objections. The board may request that an administrative law judge assist the board by performing any of these functions.

20.25(2) When, in the opinion of the board, it is desirable to obtain specialists within an area of practice when holding disciplinary hearings, the board may appoint a panel of three specialists who are not board members to make findings of fact and to report to the board. Such findings shall not include any recommendation for or against licensee discipline.

20.25(3) An applicant or respondent has the right to participate or to be represented in all hearings related to the applicant's or respondent's case. Any applicant or respondent may be represented by an attorney at the party's own expense.

20.25(4) All objections shall be timely made and stated on the record.

20.25(5) Subject to terms prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, submit briefs, and engage in oral argument.

20.25(6) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

20.25(7) All rulings by an administrative law judge who acts either as presiding officer or as an aid to the board are subject to appeal to the board. While a party may seek immediate board review of rulings made by an administrative law judge when the administrative law judge is sitting with and acting as an aid to the board or panel of specialists during a hearing, such immediate review is not required to preserve error for judicial review.

20.25(8) Conduct of hearing. The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter and be subject to examination and cross-examination. The board members and administrative law judge have the right to question a witness. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

20.25(9) The hearing shall be open to the public unless the respondent requests that the hearing be closed, in accordance with Iowa Code section 272C.6(1). At the request of either party, or on the board's own motion, the presiding officer may issue a protective order to protect documents which are privileged or confidential by law.

655—20.26(17A,272C) Evidence.

20.26(1) *General.*

a. Relevant evidence is admissible, subject to the discretion of the presiding officer. Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious

affairs, and may be based on hearsay or other types of evidence which may or would be inadmissible in a jury trial.

b. The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

c. Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

d. Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

e. Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

f. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

20.26(2) *Exhibits.*

a. The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. If admitted, copies of documents should be distributed to individual board members and the administrative law judge. Unless prior arrangements have been made, the party seeking admission of a document should arrive at the hearing prepared with sufficient copies of the document to distribute to opposing parties, board members, the administrative law judge, and witnesses who are expected to examine the document. The state's exhibits shall be marked numerically, and the applicant's or respondent's exhibits shall be marked alphabetically.

b. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

c. An original is not required to prove the content of a writing, recording, or photograph. Duplicates or photocopies are admissible. Any objection related to the authenticity of an exhibit shall go to the weight given to that exhibit and not preclude its admissibility.

20.26(3) *Witnesses.*

a. Witnesses may be sequestered during the hearing.

b. Subject to the terms prescribed by the presiding officer and the limitations in Iowa Rule of Civil Procedure 1.704, parties may present the testimony of witnesses in person, by telephone, by videoconference, by affidavit, or by written or video deposition. If a witness is providing testimony in person, by telephone, or by videoconference, use of any deposition is limited by Iowa Rule of Civil Procedure 1.704.

c. Witnesses are entitled to be represented by an attorney at their own expense. In a closed hearing, the attorney may be present only when the client testifies. The attorney may assert legal privileges personal to the client, but may not make other objections. The attorney may only ask questions to the client to prevent a misstatement from being entered into the record.

d. The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing, unless otherwise specified or allocated in an order. The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. Witnesses are

entitled to reimbursement for mileage and may be entitled to reimbursement for meals and lodging, as incurred.

655—20.27(17A,272C) Default.

20.27(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

20.27(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

20.27(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 655—20.30(17A,272C). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit from a person with personal knowledge of each such fact. The affidavit(s) must be attached to the motion.

20.27(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

20.27(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have 10 days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

20.27(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.971.

20.27(7) A decision by an administrative law judge granting or denying a motion to vacate is subject to appeal to the board within 20 days.

20.27(8) If a motion to vacate is granted and no timely appeal to the board has been filed, the presiding officer shall issue a rescheduling order setting a new hearing date and the contested case shall proceed accordingly.

655—20.28(17A,272C) Ex parte communication.

20.28(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case, except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 20.11(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

20.28(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

20.28(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

20.28(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 655—20.17(17A,272C) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through telephone conference call which includes all parties or their representatives.

20.28(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

20.28(6) The executive director or designee may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as the executive director or designee is not disqualified from participating in the making of a proposed or final decision under subrule 20.11(1) or other law and the executive director or designee complies with subrule 20.28(1).

20.28(7) Communications with the presiding officer involving scheduling or uncontested procedural matters do not require notice or opportunity for parties to participate. A party should notify other parties prior to initiating such contact with the presiding officer when feasible.

20.28(8) A presiding officer who received a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within 10 days after notice of the communication.

20.28(9) Promptly after being assigned to serve as presiding officer, the presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

20.28(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the board. Violation of ex parte communication prohibitions by board personnel shall be reported to the board's executive director for possible sanctions including: censure, suspension, dismissal, or other disciplinary action.

655—20.29(17A,272C) Recording. Contested case hearings shall be recorded by electronic means or by a certified shorthand reporter. A party may request that a hearing be recorded by a certified shorthand reporter instead of through electronic means by filing a request with the board at least 14 days in advance of the hearing. Parties who request that a hearing be recorded by a certified shorthand reporter rather than by electronic means shall bear the cost of the certified shorthand reporter. Upon request, the board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party. If the request for the hearing record is made as a result of a petition for judicial review, the party who filed the petition shall be considered the requesting party.

655—20.30(17A,272C) Proposed decisions. Decisions issued by an administrative law judge in nondisciplinary cases are proposed decisions. A proposed decision issued by an administrative law judge becomes a final decision if not timely appealed or reviewed in accordance with this rule.

20.30(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

20.30(2) *Review.* The board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

20.30(3) *Exhaustion.* A party must timely seek intra-agency appeal of a proposed decision in order to adequately exhaust administrative remedies.

20.30(4) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or an attorney for that party and contain a certificate of service. The notice shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order which is being appealed;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;

e. The grounds for relief.

20.30(5) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

20.30(6) *Scheduling.* The board shall issue a schedule for consideration of the appeal.

20.30(7) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

20.30(8) *Record.* The record on appeal or review shall be the entire record made before the administrative law judge.

655—20.31(17A,272C) Final decisions.

20.31(1) A final decision of the board shall include findings of fact and conclusions of law. When the board presides over the reception of the evidence at the hearing, its decision is a final decision.

20.31(2) The board may charge a fee to the licensee not to exceed $75 for conducting a disciplinary hearing which results in disciplinary action taken against the licensee by the board.

20.31(3) Final decisions shall be served on the respondent or applicant using one of the following methods:

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

b. Certified mail, return receipt requested, or

c. Signed acknowledgment accepting service, or

d. When service cannot be accomplished using the above methods:

(1) An affidavit shall be prepared outlining the measures taken to attempt service; and

(2) The final decision shall be published once each week for three consecutive weeks in a newspaper of general circulation, published or circulated in the county of last-known residence of the respondent.

e. If the respondent or applicant is represented by an attorney, the final decision shall be mailed to the attorney. The attorney may waive the requirement to serve the respondent or applicant through a written acknowledgment that the attorney is accepting service on behalf of the client. The state shall be served by first-class mail or state interoffice mail.

20.31(4) A final decision is a permanent public record open for inspection under Iowa Code chapter 22, in accordance with Iowa Code section 272C.6(4).

655—20.32(17A,272C) Applications for rehearing.

20.32(1) *Who may file.* Any party to a contested case proceeding may file an application for rehearing from a final order.

20.32(2) *Content of application.* An application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the board decision on the existing record and whether, upon showing good cause, the applicant requests an opportunity to submit additional evidence. A party may request the taking of additional evidence after the issuance of a final order only by establishing that:

a. The evidence is material; and

b. The evidence arose after the completion of the original hearing; or

c. Good cause exists for failure to present the evidence at the original hearing; and

d. The party has not waived the right to present additional evidence.

20.32(3) *Time of filing.* The application shall be filed with the board office within 20 days after issuance of the final decision.

20.32(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies on all parties.

20.32(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

20.32(6) *Only remedy.* Application for rehearing is the only procedure by which a party may request that the board reconsider a final board decision.

655—20.33(17A,272C) Stays of agency actions.

20.33(1) *When available.* Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board or pending judicial review. The petition shall state the reasons justifying a stay or other temporary remedy. The petition must be filed within 30 days of the issuance of the final order, or if a party filed a request for rehearing that was denied, the petition must be filed within 30 days after the request for rehearing was denied or deemed denied.

20.33(2) *When granted.* The board shall not grant a stay in any case in which the district court would be expressly prohibited by statute from granting a stay. In determining whether to grant a stay, the presiding officer shall consider the following factors:

a. The extent to which the applicant is likely to prevail when the board or court finally disposes of the matter;

b. The extent to which the applicant will suffer irreparable injury if relief is not granted;

c. The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings;

d. The extent to which the public interest relied on by the board is sufficient to justify the board's action in the circumstances.

20.33(3) *Exhaustion required.* A party must petition the board for a stay pursuant to this rule prior to requesting a stay from the district court in a judicial review proceeding.

655—20.34(17A,272C) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable.

655—20.35(17A,272C) Emergency adjudicative proceedings.

20.35(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, the board may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency by emergency adjudicative order. Before issuing an emergency adjudicative order, the board shall consider factors including, but not limited to, the following:

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

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

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

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

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

20.35(2) *Issuance.*

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

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

(1) Personal service, as provided in the Iowa Rules of Civil Procedure, or

(2) Certified restricted mail, return receipt requested, or

(3) Signed acknowledgment accepting service.

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

20.35(3) *Notice.* Unless the written emergency adjudicative order is served personally on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone and electronic mail the persons who are required to comply with the order.

20.35(4) *Proceedings.* Issuance of a written emergency adjudicative order shall include notification of the date on which agency proceedings are scheduled for hearing. After issuance of an emergency adjudicative order, the licensee subject to the emergency adjudicative order may request a continuance of the hearing at any time by filing a request with the board. The state may only file a request for a continuance in compelling circumstances. Nothing in this subrule shall be construed to eliminate the opportunity to resolve the matter with a settlement agreement.

20.35(5) *Public record.* An emergency adjudicative order is a permanent public record open for inspection under Iowa Code chapter 22.

655—20.36(17A,147,272C) Application for reinstatement. Any person whose license to practice nursing has been revoked or has been voluntarily surrendered may apply for reinstatement. An application for reinstatement must be made in accordance with the terms specified in the board's order of revocation or order accepting the voluntary surrender. Any person whose license to practice nursing has been suspended and the board order imposing the suspension indicates that the respondent must apply for and receive reinstatement may apply for reinstatement in accordance with the terms specified in the board's order. All applications for reinstatement must be filed in accordance with this rule.

20.36(1) If the order for revocation, suspension, or surrender did not establish terms for reinstatement, an initial application for reinstatement may not be filed until at least one year has elapsed from the date of issuance of the order. Persons who have failed to satisfy the terms imposed by the board order revoking, suspending, or surrendering a license shall not be entitled to apply for reinstatement.

20.36(2) Reinstatement proceedings shall be initiated by the respondent, who shall file with the board an application for reinstatement of the respondent's license. Such application shall be docketed in the original contested case in which the license was revoked, suspended, or surrendered. The person filing the application for reinstatement shall immediately serve a copy upon the office of the attorney general and shall serve any additional documents filed in connection with the application.

20.36(3) The application shall allege facts and circumstances which, if established, will be sufficient to enable the board to determine that the basis for the revocation, suspension, or surrender no longer exists and that it shall be in the public interest for the license to be reinstated. The application shall include written evidence supporting the respondent's assertion that the basis for the revocation, suspension, or surrender no longer exists and that it shall be in the public interest for the license to be reinstated. Such evidence may include, but is not limited to: medical and mental health records establishing successful completion of any necessary medical or mental health treatment and aftercare recommendations; documentation verifying successful completion of any court-imposed terms of probation; statements from support group sponsors verifying active participation in a support group; verified statements from current and past employers attesting to employability; and evidence establishing that prior professional competency or unethical conduct issues have been resolved. The burden of proof to establish such facts shall be on the respondent.

20.36(4) The executive director or designee shall review the application for reinstatement and determine if it conforms to the terms established in the board order that revoked, suspended, or surrendered the license and the requirements imposed by this rule. Applications failing to comply with the specified terms or with the requirements in this rule will be denied. Such denial shall be in writing, stating the grounds, and may be appealed by requesting a hearing before the board.

20.36(5) Applications not denied for failure to conform to the terms established in the board order that revoked, suspended, or surrendered the license or requirements imposed by this rule may be set for hearing before the board. The hearing shall be a contested case hearing within the meaning of Iowa Code section 17A.12, and the order to grant or deny reinstatement shall incorporate findings of fact and conclusions of law. If reinstatement is granted, terms may be imposed. Nothing shall prohibit the board from entering into a stipulated order granting reinstatement with or without terms in the absence of a hearing.

20.36(6) A nurse whose license is reinstated must complete the requirements for license reactivation in order to receive an active license.

20.36(7) An order granting or denying reinstatement is a permanent public record open for inspection under Iowa Code chapter 22.

655—20.37(17A,22,272C) Dissemination of public records. All documents identified in this chapter as permanent public records open for inspection under Iowa Code chapter 22 are reported to NURSYS® and national databanks in accordance with applicable reporting requirements. In addition, these documents may be posted on the board's Web site, published in the board's newsletter, distributed to national or state associations, transmitted to mailing lists or news media, issued in conjunction with a press release, or otherwise disseminated.

655—20.38(17A) Judicial review. Judicial review of a final order of the board may be sought in accordance with the terms of Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapters 17A, 147, 152, 152E and 272C.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/6/16.

ARC 2335C

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Pursuant to the authority of Iowa Code section 34A.16 [2015 Iowa Acts, House File 447, section 2], the Department of Public Safety hereby adopts new Chapter 87, "Wireless Communications Service Provider Database," Iowa Administrative Code.

Iowa Code chapter 34A established the Enhanced Emergency 911 Telephone Systems (E911 system) and created a mechanism for funding it. The E911 call system allows for requests for emergency law enforcement, fire fighting, medical, ambulance and other emergency services to be transmitted to a public safety agency so that the appropriate service can respond.

Pursuant to 2015 Iowa Acts, House File 447, this chapter establishes a database of contact information for wireless communications service providers. This database will only be available to law enforcement agencies or a public safety answering point (PSAP), and only in situations where there is an emergency situation that involves the risk of death or serious physical harm.

Nearly every person, including both adults and children, has a cell phone or other wireless communications device. These devices automatically communicate with nearby communications towers in order to receive and send information. The system can be queried in order to determine the location of a particular wireless communications device. This location information is transmitted to and stored on the wireless service provider's system.

The location information is confidential and known only to the service provider. Law enforcement agencies are generally only able to obtain access to that information in an investigation by obtaining a court order or subpoena.

However, emergency situations can occur where there is a risk of death or serious physical harm, and a person is unable to use a wireless communications device to get help. In emergency situations where there is a risk of death or serious physical harm, this database will allow law enforcement agencies and PSAPs to make immediate contact with a wireless communications service provider and obtain location information for the cell phone or other wireless communications device to help locate the person. In all other situations, law enforcement will continue to act consistent with state, federal, and constitutional law in accessing and obtaining location information.

Federal law already authorizes the creation and use of this database, and 2015 Iowa Acts, House File 447, and these rules create the specific steps to implement the database in Iowa. 2015 Iowa Acts, House File 447, requires the database of contact information to be maintained by the Department of Public Safety. The law also requires the Department to adopt rules to implement and administer the database. Having a central database administered by the Department allows the wireless communications service providers to supply their contact information to the Department. The Department can then make that contact information available statewide to law enforcement agencies and PSAPs 24 hours a day. The requirements of 2015 Iowa Acts, House File 447, and these rules are consistent with federal law and do not add any new requirements or burdens to the wireless communications service providers.

There will not be any increase in costs to create and maintain the database. There is no cost to the law enforcement agency or PSAP to access the database. The wireless service providers are required to provide and maintain current contact information which can be used to contact their staff 24 hours a day when cell phone location information is needed, and there is no additional cost to the service providers.

These rules will further the goals of making Iowa a safe and prosperous place to live and enhancing the health, safety and welfare of all persons in Iowa.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 30, 2015, as **ARC 2170C**. A public hearing was held on October 20, 2015, in Room 125 of the Oran Pape Office Building, Des Moines, Iowa. No members of the public attended the hearing, and no public comments were received at the hearing.

A comment was received on October 12, 2015, from the Iowa Department of Transportation (DOT), which requested that DOT motor vehicle enforcement officers be added to the definition of "law

enforcement officer" for purposes of the rule. The term "law enforcement officer" was included in 2015 Iowa Acts, House File 447; however, the term is not part of the federal regulations. To avoid confusion and to ensure that these rules are consistent with federal law, the references to "law enforcement officer" in rules 661—87.1(34A), 661—87.3(34A) and 661—87.6(34A) and in paragraph 87.5(1)"e" and the definition of "law enforcement officer" in rule 661—87.2(34A) have not been adopted. The term "law enforcement agency" remains in the chapter.

The database is primarily intended to be accessible by agencies that have Public Safety Answering Point (PSAPs), or in other words, emergency 911 dispatchers. Those agencies that either have their own dispatch centers or that combine with other agencies to form a joint dispatch center are included. These agencies also have primary law enforcement authority for emergency situations in their jurisdictions.

People routinely call the nearest E911 dispatch center to report an emergency. The purpose of the wireless provider database created by 2015 Iowa Acts, House File 447, is for the E911 dispatchers to quickly obtain the cell phone provider information and then contact the provider to have the provider track the subscriber's cell phone location. That location information is then provided by the PSAP to the law enforcement and other emergency response agencies (fire, ambulance) that are needed to respond in that situation. It is crucial to the success of 2015 Iowa Acts, House File 447, to create the centralized database so that the dispatchers are the primary point of contact to access the database and then coordinate with and disseminate the location information to the appropriate agencies and emergency responders.

However, it should be noted that most of the situations noted in the DOT comment would not constitute an emergency situation that would authorize the obtaining of the cell phone location, such as stopping a commercial motor vehicle in the course of the DOT's statutory duties and discovering human smuggling. Likewise, persons who are lost or stranded in a weather event generally have the ability to use a cell phone to make contact and obtain assistance. Even then, the cell phone call is going to go to the nearest E911 dispatch center. These rules as adopted do not change the fact that the assistance of DOT motor vehicle enforcement officers can be requested as appropriate, just as it may be appropriate to ask for the assistance of the officers of the Department of Natural Resources or the public safety officers of a Regents' institution. The comment submitted by the DOT is respectfully acknowledged.

The Department of Public Safety adopted these rules on December 7, 2015.

Any fiscal impact is expected to be minimal and less than $100,000 annually or $500,000 during the next five years.

The Department does not have the authority to waive requirements established by statute.

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

These rules are intended to implement Iowa Code section 34A.16 [2015 Iowa Acts, House File 447].

These rules will become effective February 10, 2016.

The following amendment is adopted.

Adopt the following **new** 661—Chapter 87:

CHAPTER 87
WIRELESS COMMUNICATIONS SERVICE PROVIDER DATABASE

661—87.1(34A) Wireless communications service provider database established. The wireless communications service provider database is established in the department of public safety. All wireless communications service providers authorized to do business in the state of Iowa, or submitting to the jurisdiction of the state of Iowa, shall submit current contact information to the department of public safety in order to facilitate requests from law enforcement agencies and public safety answering points (PSAPs), so that law enforcement agencies and PSAPs can promptly obtain location information concerning a cell phone or other wireless communications device in emergency situations.

661—87.2(34A) Definitions. The following definitions apply to rules 661—87.1(34A) through 661—87.6(34A):

"Department" means the Iowa department of public safety.

"Public safety answering point" or *"PSAP"* means the same as defined in Iowa Code section 34A.2(16).

661—87.3(34A) Administration of database. The database is administered by the division of intelligence within the department. The information in the database shall only be available to law enforcement agencies and PSAPs and only as authorized in Iowa Code section 34A.16 and these rules.

661—87.4(34A) Confidentiality. All information and records in the wireless communications service provider database maintained by the department and all inquiries and results of inquiries to the service providers are confidential records pursuant to Iowa Code section 22.7(5) and chapter 692 and any other applicable federal or state laws or rules.

661—87.5(34A) Database requirements.

87.5(1) A wireless communications service provider shall provide the following information for the database:

a. Company name of the provider;

b. Physical address;

c. Mailing address;

d. Name of the point of contact for the provider;

e. Phone number and alternate phone number for the point of contact, which will be answered 24 hours a day, 7 days a week, by a person or persons who can promptly provide the location information of the cell phone or other wireless communications device upon the request of the department or other law enforcement agency or PSAP;

f. Fax number; and

g. E-mail address.

87.5(2) Each wireless communications service provider shall immediately provide the department with any updates or changes to the information required in 87.5(1). On or before June 15 of each year, each wireless communications service provider shall confirm to the department the provider's information for the database.

87.5(3) The information required in 87.5(1) shall be submitted to the department by at least one of the following:

a. E-mail: intinfo@dps.state.ia.us.

b. Fax: (515)725-6320, Attn: Division of Intelligence, Subject: Wireless Communications Provider contact information.

c. U.S. mail: Iowa Department of Public Safety, Division of Intelligence, Oran Pape Building, 215 East 7th Street, Des Moines, Iowa 50319-0049.

661—87.6(34A) Procedures to request provider information. Upon a determination by a law enforcement agency or PSAP that emergency location information for a subscriber's cell phone or other wireless communications device is required, the law enforcement agency or PSAP shall contact Iowa state patrol communications to request the contact information for the wireless communications systems provider.

These rules are intended to implement Iowa Code section 34A.16.

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ARC 2349C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 423.42, the Department of Revenue hereby amends Chapter 15, "Determination of a Sale and Sale Price," Chapter 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage," Chapter 219, "Sales and Use Tax on Construction Activities," and Chapter 230, "Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing," Iowa Administrative Code.

The primary purpose of this rule making is to amend rules that are related to the definition of machinery and equipment for purposes of the manufacturing exemption found in Iowa Code section 423.3(47). This exemption and its related rules have been the subject of substantial confusion and controversy. Most recently, the Department has received a petition for rule making with regard to the exemption. Under the Department's previous rules, many items that might ordinarily be thought of as machinery and equipment are considered real property and are therefore taxed as building materials, making the items ineligible for the manufacturer's machinery and equipment exemption under the rules established pursuant to Iowa Code section 423.3(47). The amendments implement a policy that eliminates, to the extent permitted by Iowa Code section 423.3(47), administratively burdensome distinctions that do not reflect modern manufacturing in Iowa.

Notice of Intended Action was published in IAB Vol. XXXVIII, no. 7, p. 487, on September 30, 2015, as **ARC 2178C**. Amended Notice of Intended Action was published in IAB Vol. XXXVIII, no. 10, p. 780, on November 11, 2015, as **ARC 2239C**. The Department allowed public comments until 4:30 p.m. on December 1, 2015. The Department held a public hearing on that date. Fifty-one persons signed the attendance sheet for the public hearing, and fourteen persons spoke at the hearing. Of those persons speaking, seven supported the adoption of **ARC 2239C**, and seven opposed its adoption.

The Department received 16 written public comments regarding these amendments. Of those written comments, 11 supported the adoption of the amendments, and 5 opposed their adoption. The Department has received many questions from local governments about the impact of the amendments on local government funding.

These amendments are identical to those published under Amended Notice.

After analysis and review of this rule making, the Department finds that the changes to the program are likely to have a positive impact on jobs. These amendments expand the number of items that qualify as exempt computers, machinery, or equipment. The Department estimates that, between 2017 and 2021, manufacturers will reduce their sales and use tax burden by $37 million to $41 million annually under the amendments. The Department also estimates that manufacturers will reduce their local option sales tax burden by $5 million to $6 million annually between 2017 and 2021. Reducing the tax burden on business inputs for manufacturers is likely to have a positive impact on jobs.

These amendments are intended to implement Iowa Code sections 423.2(1)"b" and "c," 423.3(47), and 423.3(48).

These amendments will become effective on February 10, 2016.

The following amendments are adopted.

ITEM 1. Amend paragraph **15.3(3)"a,"** definition of "Fuel consumed in processing," as follows:

"Fuel consumed in processing" includes fuel used in grain drying~~,~~ or providing heat or cooling for livestock buildings, fuel used for generating electric current, fuel consumed in implements of husbandry engaged in agricultural production, as well as fuel used in "processing" as defined in rules 701—18.29(422,423)~~,~~ ~~and~~ 701—18.58(422,423), and 701—230.15(423). See rule 701—17.2(422) for a detailed description of "fuel used in processing." See rule 701—17.3(422,423) for extensive discussion regarding electricity and steam used in processing.

ITEM 2. Amend subrule 18.29(7) as follows:

18.29(7) *Other department rules concerned with processing.* Various sections of the Iowa Code set out activities ~~which~~ that are defined by statute to be "processing." The rules interpreting these statutes for the purposes of sales and use tax law are the following:

a. 701—15.3(422,423) ~~Certificates of resale, processing, and fuel used in processing~~ Exemption certificates, direct pay permits, fuel used in processing, and beer and wine wholesalers.

b. 701—17.2(422) Fuel used in processing—when exempt.

c. 701—17.3(422,423) ~~Electricity, steam, or other taxable services to be used in the processing of tangible personal property intended to be sold ultimately at retail are exempt from sales tax~~ Processing exemptions.

d. 701—17.9(422,423) Sales of breeding livestock, fowl, and certain other property used in agricultural production. See 701—subrules 17.9(4), 17.9(5), 17.9(6), and 17.9(7) for processing exemptions.

e. 701—17.14(422,423) Chemicals, solvents, sorbents, or reagents used in processing.

f. 701—18.3(422,423) Chemical compounds used to treat water.

g. 701—18.45(422,423) Sale or rental of computers, industrial machinery and equipment; refund of and exemption from tax paid for periods prior to July 1, 1997.

h. 701—18.58(422,423) Sales or rentals of machinery, equipment, and computers and sales of fuel and electricity to manufacturers and sales or rentals of computers to commercial enterprises for periods on and after July 1, 1997, but before July 1, 2016.

i. 701—26.2(422) Enumerated services exempt. See 701—subrule 26.2(2) for the processing exemption.

j. 701—28.2(423) Processing of property defined.

k. 701—33.3(423) Fuel consumed in creating power, heat, or steam for processing or generating electric current.

l. 701—33.7(423) Property used to manufacture certain vehicles to be leased.

m. For property sold as part of a contract entered into on or after July 1, 2016, computers, machinery, and equipment used for an exempt purpose under Iowa Code section 423.3(47). See rules 701—230.14(423) to 701—230.22(423).

ITEM 3. Amend rule 701—18.58(422,423), introductory paragraph, as follows:

701—18.58(422,423) Exempt sales or rentals of computers, industrial machinery and equipment, and exempt sales of fuel and electricity on and after July 1, 1997, but before July 1, 2016. The sale or rental of machinery, equipment, or computers used by a manufacturer in processing; the sale or rental of a computer used in the processing or storage of data or information by an insurance company, financial institution, or commercial enterprise; and the sale or rental of various other types of tangible personal property are, under certain circumstances, exempt from tax as of July 1, 1997, but before July 1, 2016. For sales that occur as part of a contract entered into on or after July 1, 2016, see rules 701—230.14(423) to 701—230.22(423).

ITEM 4. Amend rule 701—219.11(423) as follows:

701—219.11(423) Distinguishing machinery and equipment from real property. A construction contract may include many activities, but it does not include a contract for the sale and installation of machinery or equipment. Machinery and equipment includes property that is tangible personal property when it is purchased and remains tangible personal property after installation. Generally, tangible personal property can be moved without causing damage or injury to itself or to the structure, it does not bear the weight of the structure, and it does not in any other manner constitute an integral part of a structure. ~~Manufactured machinery and equipment which does not become permanently annexed to the realty remains tangible personal property after installation.~~ For exemptions related to the sale of computers, machinery, and equipment if the sale occurs as part of a contract entered into on or after July 1, 2016, see rules 701—230.14(423) to 701—230.22(423).

219.11(1) The following is a list of property ~~which~~ that, under normal conditions, remains tangible personal property after installation. The list is nonexclusive and is offered for illustrative purposes only:

a. Furniture, radio and television sets and antennas, washers and dryers, portable lamps, home freezers, portable appliances and window air-conditioning units.

b. Portable items such as casework, tables, counters, cabinets, lockers, athletic and gymnasium equipment, and other related easily movable property attached to the structure.

c. Machinery, equipment, tools, appliances, and materials used exclusively as such by manufacturers, industrial processors and others performing a processing function with the items~~.~~, including:

(1) Computers, machinery, and equipment directly and primarily used in processing by a manufacturer (see rule 701—230.15(423)).

(2) Computers, machinery, and equipment directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer (see rule 701—230.16(423)).

(3) Computers, machinery, and equipment directly and primarily used in research and development of new products or processes of processing (see rule 701—230.17(423)).

(4) Computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise (see rule 701—230.18(423)).

(5) Computers, machinery, and equipment directly and primarily used in recycling or reprocessing of waste products (see rule 701—230.19(423)).

(6) Pollution-control equipment used by a manufacturer, including but not limited to that required or certified by an agency of Iowa or the United States government (see rule 701—230.20(423)).

d. Office, bank, and savings and loan association furniture and equipment, including office machines.

e. Radio, television, and cable television station equipment, but not broadcasting towers.

f. Certain equipment used by restaurants and in institutional kitchens; for instance, dishwashers, stainless steel wall cabinets, stainless steel natural gas stoves, stainless steel natural gas convection ovens, and combination ovens and steamers with stands. This paragraph is not applicable to similar items used in residential kitchens. See Petition of Taylor Industries Inc. (Dkt No. 94-30-6-0367, 3-14-95).

219.11(2) The following is a list of property ~~which~~ that, under normal conditions, becomes a part of realty. The list is nonexclusive and is offered for illustrative purposes only:

a. Boilers and furnaces.

b. Built-in household items such as kitchen cabinets, dishwashers, sinks (including faucets), fans, garbage disposals, and incinerators.

c. Buildings, and structural and other improvements to buildings, including awnings, canopies, foundations for machinery, floors (including computer room floors), walls, general wiring and lighting facilities, roofs, stairways, stair lifts, sprinkler systems, storm doors and windows, door controls, air curtains, loading platforms, central air-conditioning units, building elevators, sanitation and plumbing systems, decks, and heating, cooling and ventilation systems.

d. Fixed (year-round) wharves and docks.

e. Improvements to land including patios, retaining walls, roads, walks, bridges, fencing, railway switch tracks, ponds, dams, ditches, wells, underground irrigation systems, drainage, storm and sanitary sewers, and water supply lines for drinking water, sanitary purposes, and fire protection. ~~Reference rule 701—18.35(422,423)~~ See rule 701—226.10(423) relating to drainage tile.

f. Mobile and modular homes installed on foundations.

g. Planted nursery stock.

h. Residential water heaters, water softeners, intercoms, garage door opening equipment, pneumatic tube systems, and music and sound equipment (except portable equipment).

i. Safe deposit boxes, drive-up and walk-up windows, night depository equipment, remote TV auto teller systems, vault doors, and camera security equipment (except portable equipment).

j. Seating in auditoriums and theaters and theater stage lights (except portable seating and lighting).

~~*k.* Silos and grain storage bins.~~

~~*l.* Storage tanks constructed on the site.~~

~~*m.*~~ *k.* Swimming pools (wholly or partially underground (except portable pools)).

~~*n.*~~ *l.* Truck platform scale foundations.

~~*o.*~~ *m.* Walk-in cold storage units that become a component part of a building.

ITEM 5. Amend rule 701—219.12(423) as follows:

701—219.12(423) Tangible personal property ~~which~~ that becomes structures. Items ~~which~~ that are manufactured as tangible personal property can, by their nature, become structures. However, the determination is factual and must be made on an item-by-item basis. For exemptions related to the sale of computers, machinery, and equipment occurring as part of a contract entered into on or after July 1, 2016, see rules 701—230.14(423) to 701—230.22(423). The following is a listing of criteria ~~which~~ that courts have used in making such a determination:

1. The degree of architectural and engineering skills necessary to design and construct the structure.

2. The overall scope of the business and the contractual obligations of the person designing and building the structure.

3. The amount and variety of materials needed to complete the structure, including the identity of materials prior to assembly and the complexity of assembly.

4. The size and weight of the structure.

5. The permanency or degree of annexation of the structure to other real property which would affect its mobility.

6. The cost of building, moving or dismantling the structure.

7. For property sold as part of a contract entered into on or after July 1, 2016, computers, machinery, or equipment used for an exempt purpose under Iowa Code section 423.3(47) remains tangible personal property. See rules 701—230.14(423) to 701—230.22(423).

~~EXAMPLE. A farm silo, which is a prefabricated glass-lined structure, is intended to be permanently installed. The prefabricated glass-lined structure is 70 feet high and 20 feet around, weighs 30 tons, and is affixed to a concrete foundation weighing 60 tons which is set in the ground specifically for the purpose of supporting the silo. The assembly kit includes 105 steel sheets and 7000 bolts. The silo can be removed without material injury to the realty or to the unit itself at a cost of $7,000. In view of its massive size, the firm and permanent manner in which it is erected on a most substantial foundation, its purpose and function, the expense and size of the task and the difficulty of removing it, the silo is considered a structure and not machinery or equipment. *Wisconsin Department of Revenue v. A. O. Smith Harvestore,* 240 N.W.2d 357 (Wisc. 1976).~~

~~The above criteria are intended only to be a summation of factors which the department will consider in determining whether or not a project involves construction. The following cases are used as reference material: *Wisconsin Department of Revenue v. A. O. Smith Harvestore Products, Inc.,* 240 N.W.2d 357 (Wisc. 1976); *Prairie Tank or Construction Co. v. Department of Revenue,* 364 N.W.2d 963 (Ill. 1977); *Levine v. State Board of Equalization,* 299 P. 2d 738 (Calif. 1956); *State of Alabama v. Air Conditioning Engineers, Inc.,* 174 So 2d 315 (Ala. 1965); *A. S. Schulman Electric Company v. State Board of Equalization,* 122 Cal. Rptr 278 (Calif. 1975); *Western Pipeline Constructors, Inc. v. J. M. Dickinson,* 310 S.W.2d 455 (Tenn.); and *City of Pella Municipal Light Plant,* Order of the Director of Revenue, June 16, 1975.~~

ITEM 6. Amend subrule 219.13(3) as follows:

219.13(3) *"On or connected with."* The term "on or connected with" is broad and should be used to convey generally accepted meaning. Therefore, in a specific situation, the facts relating thereto are controlling in determining whether the exemption is applicable. "On or connected with" does not

connote that those things connected have to be primary or subsidiary to the construction, reconstruction, alteration, expansion or remodeling of the real property.

a. Incidental relationship. An incidental relationship can qualify the activity for exemption if the relationship forms an intimate connection with the construction activity. For example, the service of excavating and grading relating to the clearing of land to begin construction of a building would qualify for the exemption; however, excavating and grading land without motive toward construction would not qualify for exemption even though at some later date plans to construct a building were created and a structure was actually erected.

b. Proximity in time. The presence of a time relationship can also be a factor in determining the applicability of exemption. For example, tax would not apply to separate labor charges relating to the installation of ~~production machinery and~~ institutional kitchen equipment in a building while remodeling of the real property was in progress. (Tax could apply to the sales price of the ~~production machinery and equipment; reference rule 701—18.58(422,423)~~ institutional kitchen equipment; see rule 701—230.14(423)). However, if a year after all construction activity has ended, the owner decides to install a piece of ~~production machinery~~ institutional kitchen equipment in the building, any taxable enumerated services relating thereto would be subject to tax. Further, if, following construction, the land is graded for the purpose of seeding a new lawn, the exemption would be applicable. However, if the lawn does not grow and the land is regraded the following year, the exemption would not be applicable. ~~Reference 701—subrule 18.58(8) for the exemption regarding the installation of new industrial machinery and equipment.~~ Therefore, the motive behind the activity and the course of events that could reasonably be expected to occur would be a further consideration in determining if the exemption is applicable.

c. Physical proximity. A physical relationship is also a factor that should be evaluated. If a building is constructed to house machinery, any enumerated services relating to the installation of that machinery would be exempt from tax. For example, piping joining two pieces of equipment housed in separate buildings would qualify for exemption if the equipment in either building was installed while such new construction, reconstruction, alteration, expansion or remodeling to the structure was also taking place to house the equipment.

d. Totality of the facts and circumstances. ~~On the other hand, an~~ An incidental relationship, a time relationship, and close physical proximity may not be enough to support the conclusion that a taxable service is performed in connection with new construction or reconstruction. For example, a homeowner hires a general contractor to add a new room to an existing home (which is new construction; see 219.13(2)*"d"*). The existing home is in need of a number of the repairs described in subrule 219.13(1); for example, it is in need of rewiring and replacement of a broken window. The general contractor rewires the home and repairs the window in addition to building the new room. The taxable services which the general contractor performs while rewiring the home and repairing the window are not performed in connection with the construction of the new room simply because those services happen to be performed at the same time and on the same home as the new construction. If the addition of the new room were the cause of the need for the taxable service (e.g., the window was broken during construction of the new room) and not just a convenient occasion for performance of the service, that performance would be exempt from tax. The ~~department would like to emphasize that~~ facts and motives are important in the determination of the taxability of services relating to construction activities. However, it should also be noted that taxes on enumerated services are applicable to repair or installation work that is not a construction activity. ~~Refer to~~ See subrule 219.13(1) relating to persons who make repairs or perform enumerated services for more information.

ITEM 7. Amend rule 701—230.5(423) as follows:

701—230.5(423) Exempt sales of gases used in the manufacturing process. Sales of argon and other similar gases to be used in the manufacturing process are exempt from tax. For the purposes of this rule, only inert gases are gases ~~which~~ that are similar to argon. An "inert gas" is any gas ~~which~~ that is normally chemically inactive. It will not support combustion and cannot be used as either a fuel or as an oxidizer. Argon, helium, neon, krypton, radon, and xenon are inert gases. Oxygen, hydrogen, and

methane are nonexclusive examples of gases ~~which~~ that are not inert. These sales are exempt only if the gas is purchased by a "manufacturer," for use in "processing," as those terms are defined in ~~referenced 701—subrule 18.58(1)~~ subrules 230.15(3) and 230.15(4).

This rule is intended to implement Iowa Code section 423.3(51).

ITEM 8. Adopt the following **new** rule 701—230.14(423):

701—230.14(423) Exemption for the sale of computers, machinery, and equipment, including replacement parts, and materials used to construct or self-construct computers, machinery, and equipment used for certain manufacturing purposes if the sale occurs as part of a contract entered into on or after July 1, 2016. Rules 701—230.14(423) to 701—230.20(423) exempt the sales price of computers, machinery, and equipment used in an exempt manufacturing purpose. Rule 701—230.21(423) exempts the purchase of fuel used in such machinery and equipment. Rule 701—230.22(423) exempts the service of designing or installing such machinery and equipment. Rules 701—230.14(423) to 701—230.22(423) apply to sales of such products occurring as part of a contract entered into on or after July 1, 2016. For sales occurring as part of a contract entered into prior to July 1, 2016, see rule 701—18.58(422,423). A sale occurs as part of a contract entered into prior to July 1, 2016, if the purchaser enters into a contract with a retailer to purchase the product and the contract date is prior to July 1, 2016, or if the purchaser enters into a contract with a contractor, subcontractor, or builder to construct or assemble the property and the contract date is prior to July 1, 2016.

230.14(1) *Generally.* The sales price of computers, machinery, and equipment, including replacement parts, and materials used to construct or self-construct computers, machinery, and equipment is exempt from sales and use tax if the property is any of the following:

a. Directly and primarily used in processing by a manufacturer (see rule 701—230.15(423)).

b. Directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product (see rule 701—230.16(423)).

c. Directly and primarily used in research and development of new products or processes of processing (see rule 701—230.17(423)).

d. Computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise (see rule 701—230.18(423)).

e. Directly and primarily used in recycling or reprocessing of waste products (see rule 701—230.19(423)).

f. Pollution-control equipment used by a manufacturer, including but not limited to that required or certified by an agency of this state or of the United States government (see rule 701—230.20(423)).

g. Fuel used in creating heat, power, steam, or for generating electrical current, or from the sale of electricity, consumed by computers, machinery, or equipment used in an exempt manner described in paragraph *"a," "b," "c," "e,"* or *"f"* (see rule 701—230.21(423)).

230.14(2) *Computers, machinery, and equipment, including replacement parts, and materials used to construct or self-construct computers, machinery, and equipment.*

a. Computers. A "computer" is an electronic device that accepts information in digital or similar form and manipulates the information for a result based on a sequence of instructions. A computer includes all devices fastened to it by means of signal cables or any communication medium that serves the function of a signal cable. Nonexclusive examples of devices fastened by a signal cable or other communication medium are terminals, printers, display units, card readers, tape readers, document sorters, optical readers, and card or tape punchers. A computer also includes any operating system or executive program, but not application software, purchased as part of the sale of the computer for which the operating system or executive program operates. For purposes of this paragraph, "operating system or executive program" means computer software that is fundamental and necessary to the functioning of a computer. The operating system or executive program controls the operation of a computer by managing the allocation of all system resources, including the central processing unit, main and secondary storage, input/output devices, and the processing of programs. This is in contrast to

application software, which is a collection of one or more programs used to develop and implement the specific applications that the computer is to perform and which calls upon the services of the operating system or executive program. Application software, or an operating system or executive program priced separately or sold at a later time from the computer for which the operating system or executive program operates, may be taxable as "prewritten computer software." See rule 701—211.1(423).

b. Machinery. "Machinery" is any mechanical, electrical, or electronic device designed and used to perform some function and to produce a certain effect or result. Machinery also includes all devices used or required to control, regulate, or operate a piece of machinery, provided such devices are directly connected with or are an integral part of the machinery and are used primarily for control, regulation, or operation of machinery. Jigs, dies, tools, and other devices necessary to the operation of or used in conjunction with the operation of what would be ordinarily thought of as machinery are also considered to be machinery. All property that is in the nature of machinery (other than structural components of a building or other inherently permanent structure) is considered tangible personal property even if located outside of a building. A structure that is essentially machinery remains tangible personal property for purposes of this paragraph. For more information on distinguishing machinery from buildings and other constructed realty, see subparagraph 230.14(2)*"f"*(1).

c. Equipment. In general usage, "equipment" refers to devices or tools used to produce a final product or achieve a given result. Equipment includes supplies that do not qualify as "replacement parts," such as drill bits, grinding wheels, punches, taps, reamers, saw blades, lubricants, coolants, sanding discs, sanding belts, and air filters. All property that is in the nature of equipment (other than structural components of a building or other inherently permanent structure) is considered tangible personal property even if located outside of a building. A structure that is essentially equipment may remain tangible personal property for purposes of this paragraph. For more information on distinguishing equipment from buildings and other constructed realty, see subparagraph 230.14(2)*"f"*(1).

d. Replacement parts. "Replacement part" means tangible personal property other than computers, machinery, or equipment, regardless of the cost or useful life of such tangible personal property. A replacement part can be separated from the computer, machinery, or equipment. A "replacement part" is a part or component of a computer, machinery, or equipment that came with the original item purchased or has been added over time to improve or restore the computer, machinery, or equipment.

e. Materials used to construct or self-construct computers, machinery, and equipment. "Materials used to construct or self-construct computers, machinery, and equipment" means tangible personal property that is incorporated into a computer, machinery, or equipment when the computer, machinery, or equipment is constructed or assembled. Materials used to construct a structure that is essentially machinery or equipment are exempt from sales and use tax so long as the machinery or equipment is used in an exempt manner under rules 701—230.14(423) to 701—230.20(423).

f. Exclusions. Sales of the following property, or materials used to construct or self-construct the following property, are not exempt under rules 701—230.14(423) to 701—230.20(423) regardless of how the property is used.

(1) Constructed realty.

1. Generally. Iowa Code section 423.2(1)*"b"* and *"c"* imposes sales and use tax upon building materials, supplies, and equipment used for the erection of buildings or other realty. However, Iowa Code section 423.3(47) exempts from sales and use tax certain computers, machinery, and equipment as well as items used to construct or self-construct certain computers, machinery, and equipment. Determining whether constructed items are realty or exempt computers, machinery, or equipment under Iowa Code section 423.3(47) ultimately depends on the use of the items. In general, exempt computers, machinery, and equipment under Iowa Code section 423.3(47) are tangible personal property when purchased, and they remain tangible personal property after installation. Materials used to construct realty remain taxable when purchased by the contractor, subcontractor, or builder under Iowa Code section 423.2(1)*"b"* and *"c."* For more information about sales and use tax on construction activities, see 701—Chapter 219.

2. Distinguishing constructed realty from tangible personal property. For purposes of rules 701—230.14(423) to 701—230.22(423), an item remains tangible personal property after installation if all of the following apply:

- The item can be removed without causing material damage or injury to the item or to the building that houses it or the real property upon which it is located;
- The item does not bear the weight of a building or other realty;
- The item does not in any other manner constitute an integral part of a building or other realty; and
- The item is used in an exempt manner under rules 701—230.14(423) to 701—230.20(423).

3. Buildings. Buildings are constructed realty. A "building" is any structure or edifice enclosing a space within its walls, and usually covered by a roof, the purpose of which is, for example, to provide shelter or housing for machinery or equipment or to provide working, office, parking, display, or sales space. Materials used to construct a building or any other realty are not exempt under rules 701—230.14(423) to 701—230.20(423), even if the realty is specially designed to house exempt computers, machinery, or equipment.

4. Examples.

- Property that, under normal conditions, remains tangible personal property after installation for purposes of rules 701—230.14(423) to 701—230.22(423) includes, but is not limited to:

– Storage tanks that rest upon a foundation and are secured with bolts.

– Industrial piping systems directly and primarily used in processing.

– Cooling towers directly and primarily used in processing.

– Structural steel, if exposed and used to support other computers, machinery, or equipment.

- Property that, under normal conditions, becomes constructed realty after installation for purposes of rules 701—230.14(423) to 701—230.22(423) includes, but is not limited to:

– Underground storage tanks constructed on site.

– Foundations made of concrete or other materials, regardless of whether they are used exclusively as platforms for machinery and equipment.

– Cooling towers primarily used to cool a building or other constructed realty.

– Structural steel, if used to construct a building or other constructed realty.

(2) Land.

(3) Intangible property.

(4) Hand tools. "Hand tool" means a tool that can be held in the hand or hands and is powered by human effort.

(5) Point-of-sale equipment and computers. "Point-of-sale equipment and computers" means input, output, and processing equipment used to consummate a sale and to record or process information pertaining to a sale transaction at the time the sale takes place and is located at the counter, desk, or other specific point where the transaction occurs.

(6) Certain centrally assessed industrial machinery, equipment, and computers. Property that is centrally assessed by the department of revenue under Iowa Code sections 428.24 to 428.29 or chapters 433, 434, 437, 437A, 437B, and 438 does not qualify for exemption under rules 701—230.14(423) to 701—230.20(423). Property used but not owned by persons whose property is defined by such provisions of the Iowa Code, which would be assessed by the department of revenue if the persons owned the property, also does not qualify for exemption under rules 701—230.14(423) to 701—230.20(423).

(7) Vehicles subject to registration. The general sales and use tax does not apply to vehicles subject to registration under Iowa Code chapter 321. Instead, such vehicles are subject to the fee for new registration under Iowa Code section 321.105A. Vehicles subject to registration are not exempt from the fee for new registration under rules 701—230.14(423) to 701—230.20(423), unless the vehicle is directly and primarily used in recycling or reprocessing of waste products (see rule 701—230.19(423)).

g. Examples. When used for an exempt purpose under rules 701—230.14(423) to 701—230.20(423), the following items may be exempt computers, machinery, or equipment. This list is not all-inclusive.

(1) Coolers, including coolers that do not change the nature of materials stored in them.

(2) Equipment that eliminates bacteria.
(3) Palletizers.
(4) Storage bins.
(5) Property used to transport raw, semifinished, or finished goods.
(6) Vehicle-mounted cement mixers.
(7) Self-constructed machinery and equipment.
(8) Packaging and bagging equipment, including conveyer systems.
(9) Equipment that maintains an environment necessary to preserve a product's integrity.
(10) Equipment that maintains a product's integrity directly.
(11) Quality control equipment.

230.14(3) *Leased and rented property.* The exemptions under rules 701—230.14(423) to 701—230.22(423) apply to property regardless of how it is sold, including leased or rented property. The lease of computers, machinery, or equipment may be exempt from sales and use tax if the lessee uses the property in an exempt manner under rules 701—230.14(423) to 701—230.20(423). Additionally, a lessor's purchase of computers, machinery, or equipment for lease may be an exempt sale for resale under Iowa Code section 423.3(2).

ITEM 9. Adopt the following **new** rule 701—230.15(423):

701—230.15(423) Exemption for the sale of property directly and primarily used in processing by a manufacturer if the sale occurs as part of a contract entered into on or after July 1, 2016. The sales price of computers, machinery, and equipment, including replacement parts, and materials used to construct or self-construct computers, machinery, and equipment is exempt from sales and use tax when the property is directly and primarily used in processing by a manufacturer. For sales occurring as part of a contract entered into prior to July 1, 2016, see rule 701—18.58(422,423).

230.15(1) *Required elements.* To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, machinery, or equipment, including replacement parts, or materials used to construct or self-construct computers, machinery, or equipment (see subrule 230.14(2));
b. Directly used (see subrule 230.15(2));
c. Primarily used (see subrule 230.15(2));
d. Used in processing (see subrule 230.15(3)); and
e. Used by a manufacturer (see subrule 230.15(4)).

230.15(2) *Directly and primarily used.*

a. Directly used.

(1) Generally. Property is "directly used" only if it is used to initiate, sustain, or terminate an exempt activity. In determining whether any property is "directly used," consideration should be given to the following factors:

1. The physical proximity of the property to the exempt activity;
2. The temporal proximity of the use of the property to the use of other property that is directly used in the exempt activity; and
3. The active causal relationship between the use of the property and the exempt activity. The fact that a particular piece of property may be essential to the conduct of the activity because its use is required either by law or practical necessity does not, of itself, mean that the property is directly used.

(2) Examples. The following property typically is not directly used in an exempt manner:

1. Property used exclusively for the comfort of workers, such as air cooling, air conditioning, or ventilation systems.
2. Property used in support operations, such as a machine shop, where production machinery is assembled, maintained, or repaired.
3. Property used by administrative, accounting, or personnel departments.
4. Property used by security, fire prevention, first aid, or hospital stations.
5. Property used in communications or safety.

b. Primarily used. The primary use of property is the activity or activities for which the property is used more than half of the time.

230.15(3) *Processing.*

a. Generally. "Processing" means a series of operations in which materials are manufactured, refined, purified, created, combined, transformed, or stored by a manufacturer, ultimately into tangible personal property. Processing encompasses all activities commencing with the receipt or producing of raw materials by the manufacturer and ending at the point products are delivered for shipment or transferred from the manufacturer. Processing includes, but is not limited to, refinement or purification of materials; treatment of materials to change their form, context, or condition; maintenance of the quality or integrity of materials, components, or products; maintenance of environmental conditions necessary for materials, components, or products; quality control activities; construction of packaging and shipping devices; placement into shipping containers or any type of shipping device or medium; and the movement of materials, components, or products until shipment from the processor. "Receipt or producing of raw materials" means activities performed upon tangible personal property only. With respect to raw materials produced from or upon real estate, "production of raw materials" is deemed to occur immediately following the severance of the raw materials from the real estate.

b. The beginning of processing. Processing begins with a processor's receipt or production of raw material. Thus, when a processor produces its own raw material, it is engaged in processing. Processing also begins when a supplier transfers possession of raw materials to a processor.

c. The completion of processing. Processing ends when the finished product is transferred from the processor or delivered for shipment by the processor. Therefore, a processor's packaging, storage, and transport of a finished product after the product is in the form in which it will be sold at retail are part of the processing of the product.

d. Examples of the beginning, intervening steps, and the ending of processing. Of the following, Examples A and B illustrate when processing begins under various circumstances; Example C demonstrates the middle stages of processing; and Example D demonstrates when the end of processing takes place.

EXAMPLE A: Company A manufactures fine furniture. Company A owns a grove of walnut trees that it uses as raw material. Company A's employees cut the trees, transport the logs to Company A's facility, store the logs in a warehouse to begin the curing process, and eventually take the logs to Company A's sawmill. The walnut trees are real property while they are growing. Thus, no "production of raw materials" has occurred with regard to the trees until they have been severed from the soil and transformed into logs. Processing of the logs begins when they are placed on vehicles for transport to Company A's factory. However, if the transport vehicles are "vehicles subject to registration," they are not exempt from the fee for new registration under this rule (see subparagraph 230.14(2)*"f"*(7)).

EXAMPLE B: Company A from the previous example also buys mahogany logs from a supplier in Honduras. Company A uses its equipment to offload the logs from railroad cars at its facility. Company A then stores and saws the logs as previously described in Example A. Processing begins when Company A offloads the logs from the railroad cars.

EXAMPLE C: Company C is a microbrewery. It uses a variety of kettles, vats, tanks, tubs, and other containers to mix, cook, ferment, settle, age, and store the beer it brews. Company C also uses a variety of pipes and pumps to move the beer among the various containers involved in the activity of brewing. All stages of this brewing are part of processing, including fermentation or aging (the transformation of the raw materials from one state to another) as well as the storage of hops in a bin and the storage of beer prior to bottling (the holding of materials in an existing state). Any movement of the product between containers is also a part of processing.

EXAMPLE D: After the brewing process is complete, Company C places its beer in various containers, stores the beer, and moves the beer to Company C's customers by a common carrier that picks up the beer at Company C's facility. Company C's activities of placing the beer into bottles, cans, and kegs, storing it after packaging, and moving the beer by use of a forklift to the common carrier's pickup site are part of processing.

230.15(4) *Manufacturer.*

a. Generally. "Manufacturer" means a person that purchases, receives, or holds personal property of any description for the purpose of adding to its value by a process of manufacturing, refining, purifying, or combining of different materials, or by the packing of meats, with a view to selling the property for gain or profit, but also includes contract manufacturers. A "contract manufacturer" is a manufacturer that otherwise falls within the definition of manufacturer, except that a contract manufacturer does not sell the tangible personal property the contract manufacturer processes on behalf of other manufacturers. A business engaged in activities subsequent to the extractive process of quarrying or mining, such as crushing, washing, sizing, or blending of aggregate materials, is a manufacturer with respect to these activities. A person does not need to be primarily engaged in an activity listed in this subrule in order to qualify as a manufacturer for purposes of this rule.

b. Nonexclusive examples. Those who are in the business of printing, newspaper publication, bookbinding, lumber milling, and production of drugs and agricultural supplies are illustrative, nonexclusive examples of manufacturers. Construction contracting; repairing of tangible personal property (such as automobile engines); provision of health care; farming; transportation for hire; and the activities of restaurateurs, hospitals, medical doctors, and those who merely process data are illustrative, nonexclusive examples of businesses that ordinarily are not manufacturers.

EXAMPLE A: Company A owns and operates a gravel pit. Company A sells the gravel extracted from the pit to others who use the gravel for surfacing roads and as an ingredient in concrete manufacture. Company A removes overlay and raw gravel from the pit and then transports the gravel to a plant where washing and sizing of the gravel take place. Company A is a manufacturer, but only with respect to those activities that occur after it extracts the gravel from the ground.

EXAMPLE B: Company B owns a manufacturing plant. Company B also owns a machine shop where it uses a metal press machine to fabricate patterns. All of these patterns are used in Company B's manufacturing plant as part of processing, and the metal press machine is used solely to fabricate these patterns. The sales price of the metal press machine is not exempt from sales and use tax under this rule because Company B does not use the metal press machine to manufacture a product for sale at a gain or profit. However, the computers, machinery, and equipment in Company B's manufacturing plant may be exempt if they are directly and primarily used in processing.

This rule is intended to implement Iowa Code section 423.3(47)*"a"*(1).

ITEM 10. Adopt the following **new** rule 701—230.16(423):

701—230.16(423) Exemption for the sale of property directly and primarily used by a manufacturer to maintain integrity or unique environmental conditions if the sale occurs as part of a contract entered into on or after July 1, 2016. The sales price of computers, machinery, and equipment, including replacement parts, and materials used to construct or self-construct computers, machinery, and equipment is exempt from sales and use tax when the property is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product. For sales occurring as part of a contract entered into prior to July 1, 2016, see rule 701—18.58(422,423).

230.16(1) *Required elements.* To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, machinery, or equipment, including replacement parts, or materials used to construct or self-construct computers, machinery, and equipment (see subrule 230.14(2));

b. Directly used (see subrule 230.15(2));

c. Primarily used (see subrule 230.15(2));

d. Used by a manufacturer (see subrule 230.15(4)); and

e. Used to maintain:

(1) A manufactured product's integrity;

(2) Unique environmental conditions required for a manufactured product; or

(3) Unique environmental conditions required for other computers, machinery, or equipment directly and primarily used in processing by a manufacturer.

230.16(2) *Example of property directly and primarily used to maintain integrity or unique environmental conditions.* A manufacturer purchases a cooling tower to directly and primarily maintain the proper temperature of its machinery and equipment. The manufacturer uses such machinery and equipment directly and primarily in processing. Because the cooling tower maintains the environmental conditions necessary for machinery and equipment that is directly and primarily used in processing, the cooling tower and materials used to construct or self-construct the cooling tower are exempt from sales and use tax under this rule.

This rule is intended to implement Iowa Code section 423.3(47)*"a"*(2).

ITEM 11. Adopt the following **new** rule 701—230.17(423):

701—230.17(423) Exemption for the sale of property directly and primarily used in research and development of new products or processes of processing if the sale occurs as part of a contract entered into on or after July 1, 2016. The sales price of computers, machinery, and equipment, including replacement parts, and materials used to construct or self-construct computers, machinery, and equipment is exempt from sales and use tax when the property is directly and primarily used in research and development of new products or processes of processing. For sales occurring as part of a contract entered into prior to July 1, 2016, see rule 701—18.58(422,423).

230.17(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, machinery, or equipment, including replacement parts, or materials used to construct or self-construct computers, machinery, and equipment (see subrule 230.14(2));

b. Directly used (see subrules 230.15(2) and 230.17(3));

c. Primarily used (see subrule 230.15(2)); and

d. Used in research and development (see subrule 230.17(2)) of:

(1) New products; or

(2) Processes of processing.

230.17(2) "Research and development" means experimental or laboratory activity that has as its ultimate goal the development of new products or processes of processing.

230.17(3) Property is used "directly" in research and development only if it is used in actual experimental or laboratory activity that qualifies as research and development under this rule.

230.17(4) Example of property directly and primarily used in research and development of new products or processes of processing. A hybrid seed producer maintains a research and development laboratory for use in developing new varieties of corn seed. The hybrid seed producer purchases the following items for use in its research and development laboratory: a laboratory computer for processing data related to the genetic structure of various corn plants, an electron microscope for examining the structure of corn plant genes, a steam cleaner for cleaning rugs in the laboratory offices, and a desktop computer for use by the laboratory receptionist. The laboratory computer and the microscope are "directly" used in the research in which the laboratory is engaged; the steam cleaner and the receptionist's computer are not directly used in research. Therefore, the sales prices of the laboratory computer and the microscope are exempt from sales and use tax. The sales prices of the steam cleaner and the receptionist's computer are not exempt from tax under this rule.

This rule is intended to implement Iowa Code section 423.3(47)*"a"*(3).

ITEM 12. Adopt the following **new** rule 701—230.18(423):

701—230.18(423) Exemption for the sale of computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise if the sale occurs as part of a contract entered into on or after July 1, 2016. The sales price of computers is exempt from sales tax when the computers are used in processing or storage of data or information by

an insurance company, financial institution, or commercial enterprise. For sales occurring as part of a contract entered into prior to July 1, 2016, see rule 701—18.58(422,423).

230.18(1) *Required elements.* To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers (see paragraph 230.14(2)*"a"*);

b. Used in processing or storage of data or information (see subrule 230.18(2)); and

c. Used by:

(1) An insurance company (see subrule 230.18(3));

(2) A financial institution (see subrule 230.18(3)); or

(3) A commercial enterprise (see subrule 230.18(3)).

230.18(2) *Processing or storage of data or information.* All computers store and process information. However, only if the "final output" for a user or consumer is stored or processed data will the computer be eligible for exemption from tax under this rule.

230.18(3) *Insurance company, financial institution, or commercial enterprise.*

a. Insurance company. An insurance company is an insurer organized or operating under Iowa Code chapter 508, 514, 515, 518, 518A, 519, or 520 or an insurer authorized to do business in Iowa as an insurer or as a licensed insurance producer under Iowa Code chapter 522B. Excluded from the definition of "insurance company" are benevolent associations governed by Iowa Code chapter 512A, fraternal benefit societies governed by Iowa Code chapter 512B, and health maintenance organizations governed by Iowa Code chapter 514B. This list of exclusions is not intended to be exclusive.

b. Financial institution. A financial institution is any bank incorporated under the provisions of any state or federal law, any savings and loan association incorporated under the provisions of federal law, any credit union organized under the provisions of any state or federal law, any corporation licensed as an industrial loan company under Iowa Code chapter 536A, and any affiliate of a bank, savings and loan association, credit union, or industrial loan company.

c. Commercial enterprise. A commercial enterprise is a business or manufacturer conducted for profit, other than an insurance company or financial institution. "Commercial enterprise" includes centers for data processing services to insurance companies, financial institutions, businesses, and manufacturers, but excludes professions and occupations as well as nonprofit organizations. A hospital that is a not-for-profit organization is not a commercial enterprise. The term "profession" means a vocation or employment requiring specialized knowledge and often long and intensive academic preparation. The term "occupation" means the principal business of an individual, such as the business of farming. A professional entity that carries on any profession or occupation, such as an accounting firm, is not a commercial enterprise.

230.18(4) *Examples of computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.* A health insurance company has four computers. Computer A is used to monitor the temperature within the insurance company's building. Computer A transmits messages to the building's heating and cooling systems, which tell the systems when to raise or lower the level of heating or air conditioning. Computer B is used to store patient records and to recall those records on demand. Computer C is used to tabulate statistics regarding the amount of premiums paid in and the amount of benefits paid out for various classes of insured. Computer D is used to train the insurance company's employees to perform various additional tasks or to better perform work the employees can already do. Computer D uses various canned programs to accomplish this function. The final output of Computer A is neither stored nor processed information. Therefore, Computer A does not meet the definition of an exempt computer. The final output of Computer B is stored information. The final output of Computer C is processed information. The final output of Computer D is processed information consisting of the training exercises appearing on the computer monitor. The sales prices of Computers B, C, and D are exempt from sales and use tax as computers used in processing or storage of data or information by an insurance company.

This rule is intended to implement Iowa Code section 423.3(47)*"a"*(4).

ITEM 13. Adopt the following **new** rule 701—230.19(423):

701—230.19(423) Exemption for the sale of property directly and primarily used in recycling or reprocessing of waste products if the sale occurs as part of a contract entered into on or after July 1, 2016. The sales price of computers, machinery, and equipment, including replacement parts, and materials used to construct or self-construct computers, machinery, and equipment is exempt from sales and use tax when the property is directly and primarily used in recycling or reprocessing of waste products. For sales occurring as part of a contract entered into prior to July 1, 2016, see rule 701—18.58(422,423).

230.19(1) *Required elements.* To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, machinery, or equipment, including replacement parts, or materials used to construct or self-construct computers, machinery, and equipment (see subrule 230.14(2));

b. Directly used (see subrule 230.15(2));

c. Primarily used (see subrule 230.15(2)); and

d. Used in:

(1) Recycling of waste products (see subrule 230.19(2)); or

(2) Reprocessing of waste products (see subrule 230.19(2)).

230.19(2) *Recycling and reprocessing.*

a. "Recycling" is any process by which waste or materials that would otherwise become waste are collected, separated, or processed and revised or returned for use in the form of raw materials or products. Recycling includes, but is not limited to, the composting of yard waste that has been previously separated from other waste. Recycling does not include any form of energy recovery.

b. "Reprocessing" is not a subcategory of processing. Reprocessing of waste products is an activity separate and independent from the processing of tangible personal property.

c. Recycling or reprocessing generally begins when the waste products are collected or separated. Recycling or reprocessing generally ends when waste products are in the form of raw material or another non-waste product. Activities that occur between these two points and are an integral part of recycling or processing qualify as recycling or reprocessing.

230.19(3) *Examples.*

a. Computers, machinery, and equipment that may be exempt from sales and use tax under this rule include, but are not limited to, compactors, balers, crushers, grinders, cutters, and shears if directly and primarily used in recycling or reprocessing.

b. End loaders, forklifts, trucks, conveyor systems, and other moving devices directly and primarily used in the movement of waste products during recycling or reprocessing may be exempt from sales and use tax under this rule.

c. A bin or other container used to store waste products before collection for recycling or reprocessing is not directly and primarily used in recycling or reprocessing, and its sales price is not exempt from sales and use tax under this rule.

d. A vehicle used directly and primarily for collecting waste products for recycling or reprocessing could be a vehicle used for an exempt purpose under this rule, and such a vehicle could be exempt from the fee for new registration. Thus, a garbage truck could qualify for this exemption if the truck is directly and primarily used in recycling; however, a garbage truck primarily used to haul garbage to a landfill does not qualify for exemption under this rule.

EXAMPLE A: Company A recycles household waste. Company A uses several machines in its facility to separate waste products into recyclable and nonrecyclable materials and to further separate the recyclable materials into paper, plastic, or glass. The sales prices of all separating machines are exempt from sales and use tax as machines directly and primarily used in recycling of waste products.

EXAMPLE B: Company B uses grinding machines to convert logs, stumps, pallets, crates, and other waste wood into wood chips. Company B then uses its trucks to deliver the wood chips to local purchasers. The sales prices of the grinding machines are exempt from sales and use tax as machines directly and primarily used in recycling or reprocessing of waste products. The trucks used to transport

the wood chips are not used in recycling or reprocessing because the wood chips are in their final form when loaded onto the trucks.

This rule is intended to implement Iowa Code section 423.3(47)*"a"*(5).

ITEM 14. Adopt the following **new** rule 701—230.20(423):

701—230.20(423) Exemption for the sale of pollution control equipment used by a manufacturer if the sale occurs as part of a contract entered into on or after July 1, 2016. The sales price of pollution control equipment, including but not limited to equipment required or certified by an agency of Iowa or of the United States government, is exempt from sales and use tax when the property is used by a manufacturer. For sales occurring as part of a contract entered into prior to July 1, 2016, see rule 701—18.58(422,423).

230.20(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

a. Pollution control equipment (See subrule 230.20(2)); and

b. Used by a manufacturer (See subrule 230.15(4)).

230.20(2) "Pollution control equipment" is any disposal system or apparatus used or placed in operation primarily for the purpose of reducing, controlling, or eliminating air or water pollution. Pollution control equipment does not include any apparatus used to eliminate noise pollution. Liquid, solid, and gaseous wastes are included within the meaning of the word "pollution." Pollution control equipment specifically includes, but is not limited to, any equipment the use of which is required or certified by an agency of this state or of the United States government. Wastewater treatment equipment, dust mitigation systems, and scrubbers used in smokestacks are examples of pollution control equipment. However, pollution control equipment does not include any equipment used only for worker safety, such as a gas mask.

EXAMPLE: A manufacturer constructs a wastewater treatment facility to treat wastewater from its manufacturing facility. The wastewater treatment facility uses aboveground piping and other equipment to divert wastewater from the local water treatment plant. The facility then converts wastewater into a biogas, which the manufacturer uses as an energy source in its manufacturing facility. The equipment used for the wastewater treatment facility is pollution control equipment used by a manufacturer. The sales price of the equipment is exempt from sales and use tax.

This rule is intended to implement Iowa Code section 423.3(47)*"a"*(6).

ITEM 15. Adopt the following **new** rule 701—230.21(423):

701—230.21(423) Exemption for the sale of fuel or electricity used in exempt property if the sale occurs as part of a contract entered into on or after July 1, 2016. The sales price of fuel or electricity consumed by property that is exempt from sales and use tax under rule 701—230.14(423), 701—230.15(423), 701—230.16(423), 701—230.17(423), 701—230.19(423), or 701—230.20(423) is also exempt from sales and use tax. The sales price of electricity or other fuel consumed by computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise remains subject to tax even if such computers are exempt under rule 701—230.18(423). For sales occurring as part of a contract entered into prior to July 1, 2016, see rule 701—18.58(422,423).

EXAMPLE: A manufacturer operates a power plant. The manufacturer uses energy from the power plant to operate machinery and equipment used directly and primarily in processing at its manufacturing facility. The fuel consumed in the manufacturer's power plant is exempt from sales and use tax.

This rule is intended to implement Iowa Code section 423.3(47)*"b."*

ITEM 16. Adopt the following **new** rule 701—230.22(423):

701—230.22(423) Exemption for the sale of services for designing or installing new industrial machinery or equipment if the sale occurs as part of a contract entered into on or after July 1, 2016. The sales price from the services of designing or installing new industrial machinery or equipment

is exempt from sales and use tax. The enumerated services of electrical or electronic installation are included in this exemption.

230.22(1) Required elements. To qualify for the exemption, the purchaser must prove the service is:

a. A design or installation service (see subrule 230.22(2));

b. Of new (see subrule 230.22(3)); and

c. Industrial machinery or equipment (see subrule 230.22(4)).

230.22(2) Design or installation services include electrical and electronic installation. "Design or installation" services do not include any repair service.

230.22(3) "New" means never having been used or consumed by anyone. The exemption does not apply to design or installation services on reconstructed, rebuilt, repaired, or previously owned machinery or equipment.

230.22(4) Industrial machinery or equipment.

a. Generally. "Industrial machinery or equipment" means machinery or equipment, as defined in subrule 230.14(2). The sale of industrial machinery or equipment must also qualify for exemption under any of the following:

(1) Property used directly and primarily in processing by a manufacturer (see rule 701—230.15(423)).

(2) Property used directly and primarily by a manufacturer to maintain the integrity of the manufacturer's product or to maintain unique environmental conditions for computers, machinery, or equipment (see rule 701—230.16(423)).

(3) Property used directly and primarily in research and development of new products or processes of processing (see rule 701—230.17(423)).

(4) Property used directly and primarily in recycling or reprocessing of waste products (see rule 701—230.19(423)).

(5) Pollution control equipment used by a manufacturer (see rule 701—230.20(423)).

b. Exclusions. The following property is not industrial machinery or equipment regardless of how the purchaser uses it:

(1) Computers (see paragraph 230.14(2)*"a"*).

(2) Supplies, including but not limited to drill bits, grinding wheels, punches, taps, reamers, saw blades, lubricants, coolants, sanding discs, sanding belts, and air filters.

(3) Replacement parts (see paragraph 230.14(2)*"d"*).

230.22(5) Billing. The sales price for designing or installing new industrial machinery or equipment must be separately identified, charged separately, and reasonable in amount for the exemption to apply. The exemption applies to new industrial machinery or equipment regardless of how it is purchased, including leased or rented machinery or equipment.

EXAMPLE: Dealer sells and installs two new machines for Manufacturer. Manufacturer uses one machine on its production floor, where it is directly and primarily used in processing. Manufacturer uses the other machine in its machine shop, where it is not directly and primarily used in processing. Dealer gives an invoice to Manufacturer that separately itemizes the sales prices for each machine and each installation. The machine used on the production floor is new industrial machinery or equipment, and the sales prices of the machine and its installation are exempt from sales and use tax. The machine used in the machine shop is not new industrial machinery or equipment, and the sales prices of the machine and its installation are taxable.

This rule is intended to implement Iowa Code section 423.3(48).

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ARC 2337C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2 as amended by 2015 Iowa Acts, House File 635, section 20, the Iowa Department of Transportation, on December 8, 2015, adopted amendments to Chapter 602, "Classes of Driver's Licenses," Chapter 604, "License Examination," Chapter 605, "License Issuance," and Chapter 607, "Commercial Driver Licensing," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the August 5, 2015, Iowa Administrative Bulletin as **ARC 2070C**. These amendments were also Adopted and Filed Emergency, effective July 14, 2015, and were published in the August 5, 2015, Iowa Administrative Bulletin as **ARC 2071C**.

These amendments implement 2015 Iowa Acts, House File 635, division V, which requires the Department to adopt rules to implement changes in the Federal Motor Carrier Safety Administration's federal regulations within 49 Code of Federal Regulations (CFR) Part 383 to commercial driver's licenses (CDL) and commercial learner's permits (CLP). The primary change within the rule making is the implementation of the CLP as a prerequisite to obtain a new CDL or to upgrade an existing CDL by adding an endorsement or removing a restriction if doing so requires a skills test. The purpose of the CLP is to allow accompanied behind-the-wheel training in a type and class of commercial motor vehicle that the individual's current license (commercial or noncommercial) is not valid to operate. A CLP will be required before the applicant can take the required skills testing and obtain a new or upgraded CDL. Applicants must also meet eligibility requirements and must pass the general knowledge examination to obtain a CLP. The CLP must be held by the applicant for at least 14 days before skills testing can be administered, is valid for 180 days, and can be renewed for another 180-day period without retesting. A CLP is a separate document from the person's underlying license containing the information and markings required by the Iowa Code.

Other amendments make changes to definitions, endorsements, restrictions, testing requirements and military waivers and make other changes to conform rules to comply with 49 CFR Part 383 and 2015 Iowa Acts, House File 635, division V. The Department is also adopting the applicable portions of the CFR as of October 1, 2014. The following Federal Register citations affect amendments to 49 CFR Part 383 that became effective between October 1, 2013, and October 1, 2014.

Amendments to Part 383, Federal Motor Carrier Safety Regulations

Part 383 (FR Vol. 79, No. 53, Pages 15245-15250, 3-19-2014)

This final rule amended the federal motor carrier safety regulations by revising the definition of "gross combination weight rating" (or GCWR) to clarify the applicability of the Federal Motor Carrier Safety Administration's safety regulations for single-unit trucks (vehicles other than truck tractors) when they are towing trailers and when the GCWR information is not included on the vehicle manufacturer's certification label. Effective Date: April 18, 2014.

Part 383 (FR Vol. 78, No. 190, Pages 60226-60234, 10-1-2013)

This final rule adopted certain Federal Motor Carrier Safety Administration regulations required by the Moving Ahead for Progress in the 21st Century surface transportation reauthorization legislation. The majority of the statutory changes were effective on October 1, 2012, while others were effective on October 1, 2013. Conforming changes were made to ensure that the regulations were current and consistent with the applicable statutes. Effective Date: October 1, 2013.

The Department shall not grant any waivers under the provisions of these amendments since the amendments are needed to comply with 49 CFR Part 383 and 2015 Iowa Acts, House File 635, division V.

These amendments are identical to those published under Notice of Intended Action.

After analysis and review of this rule making, these amendments will have a positive impact on jobs. Implementing these amendments allows Iowa's CDL program to continue under the new federal regulations and allows CDL drivers from Iowa to continue to drive out of state. Businesses will be able to

maintain and rely on interstate drivers, and drivers will be allowed to maintain employment as interstate drivers.

These amendments are intended to implement 2015 Iowa Acts, House File 635, division V.

These amendments will become effective February 10, 2016, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend subrule 602.1(2) as follows:

602.1(2) *Special licenses and permits.* The department issues the following special licenses and permits. More than one type of special license or permit may be issued to an applicant. On the driver's license, a restriction number designates the type of special license or permit issued, as follows:

1—Motorcycle instruction permit—includes motorcycle instruction permits issued under Iowa Code subsections 321.180(1) and 321.180B(1)

2—Noncommercial instruction permit (vehicle less than 16,001 gross vehicle weight rating)—includes instruction permits, other than motorcycle instruction permits, issued under Iowa Code subsection 321.180(1) and section 321.180A and subsection 321.180B(1)

3—Commercial ~~driver's instruction~~ learner's permit

4—Chauffeur's instruction permit

5—Motorized bicycle license

6—Minor's restricted license

7—Minor's school license

ITEM 2. Amend subrule 602.1(3) as follows:

602.1(3) *Commercial driver's license (CDL).* See 761—Chapter 607 for information on the procedures, requirements and validity of a commercial driver's license (Classes A, B and C)~~,~~ and a commercial ~~driver's instruction~~ learner's permit, and their restrictions and endorsements.

ITEM 3. Amend paragraph **602.12(1)"b"** as follows:

b. The license shall have one endorsement authorizing a specific type of motor vehicle or type of operation, as listed in 761—subrule ~~605.4(2)~~ 605.4(3). The gross vehicle weight rating shall be determined pursuant to rule 761—604.35(321).

ITEM 4. Amend subrule 604.1(2) as follows:

604.1(2) This chapter of rules shall apply to the examination for all driver's licenses. Information on the additional examination procedures and requirements for a commercial driver's license or commercial ~~driver's instruction~~ learner's permit is given in 761—Chapter 607.

ITEM 5. Amend paragraph **604.31(1)"c"** as follows:

c. Class D driver's licenses. For a Class D driver's license, a driving test in a representative vehicle for the endorsement requested, as set out in 761—subrule ~~605.4(2)~~ 605.4(3), is required.

ITEM 6. Amend rule 761—605.1(321) as follows:

761—605.1(321) Scope. This chapter of rules applies to the issuance of all Iowa driver's licenses. Additional information on the issuance of a commercial driver's license or a commercial ~~driver's instruction~~ learner's permit is given in 761—Chapter 607.

This rule is intended to implement Iowa Code section 321.174.

ITEM 7. Amend rule 761—605.4(321) as follows:

761—605.4(321) Endorsements. The endorsements shall be coded on the face of the driver's license and explained in text on the back of the driver's license.

605.4(1) No change.

605.4(2) *For a commercial learner's permit.* The following endorsements are the only endorsements that may be added to a commercial learner's permit using these letter codes. All other endorsements are prohibited on a commercial learner's permit.

P—Passenger

N—Tank
S—School bus

~~605.4(2)~~ 605.4(3) *For a Class D driver's license (chauffeur).* The following endorsements may be added to a Class D driver's license using these number codes:

1—Truck-tractor semitrailer combination
2—Vehicle with 16,001 pounds gross vehicle weight rating or more. Not valid for truck-tractor semitrailer combination
3—Passenger vehicle less than 16-passenger design

~~605.4(3)~~ 605.4(4) *Motorcycle endorsement.* A motorcycle endorsement may be added to any driver's license that permits unaccompanied driving, other than a Class M driver's license or a motorized bicycle license, using the following letter code:

L—Motorcycle

This rule is intended to implement Iowa Code ~~section~~ sections 321.180 as amended by 2015 Iowa Acts, House File 635, section 50, and 321.189.

ITEM 8. Amend rule 761—605.5(321) as follows:

761—605.5(321) Restrictions. Restrictions shall be coded on the face of the driver's license and explained in text on the back of the driver's license. For purposes of this rule, "CMV" means commercial motor vehicle.

605.5(1) *For all licenses.* The following restrictions may apply to any driver's license:

B—Corrective lenses required
C—Mechanical aid (as detailed in the restriction on the back of the card)
D—Prosthetic aid (as detailed in the restriction on the back of the card)
~~E—Automatic transmission~~
F—Left and right outside rearview mirrors
G—No driving when headlights required
H—Temporary restricted license or permit (work permit)
I—Ignition interlock required
J—Restrictions on the back of card
S—SR required (proof of financial responsibility for the future)
T—Medical report required at renewal
U—Not valid for 2-wheel vehicle
W—Restricted commercial driver's license (CDL)
Y—Intermediate license

605.5(2) *For a noncommercial driver's license.* The following restrictions apply only to a noncommercial driver's license:

~~P~~ 8—Special instruction permit
9—Passenger restriction for intermediate license
Q—No interstate or freeway driving

605.5(3) *For a commercial driver's license.* The following restrictions apply ~~only~~ to a commercial driver's license:

E—No manual transmission equipped CMV
~~K—Commercial driver's license intrastate~~ Intrastate only
L—~~Vehicle without air brakes~~ No air brake equipped CMV
M—~~Except Class A bus~~ No Class A passenger vehicle
N—~~Except Class A and Class B bus~~ No Class A and B passenger vehicle
O—~~Except tractor-trailer~~ No tractor trailer CMV
V—Medical ~~Variance document required~~ variance
Z—No full air brake equipped CMV

605.5(4) *For a commercial learner's permit.* The following restrictions apply to a commercial learner's permit.

K—Intrastate only

L—No air brake equipped CMV
M—No Class A passenger vehicle
N—No Class A and B passenger vehicle
P—No passengers in CMV bus
V—Medical variance
X—No cargo in CMV tank vehicle

~~**605.5(4)**~~ **605.5(5)** *Special licenses.* A numbered restriction will designate a special driver's license using these codes:

1—Motorcycle instruction permit
2—Noncommercial instruction permit (vehicle less than 16,001 gross vehicle weight rating)
3—Commercial ~~driver's instruction~~ learner's permit
4—Chauffeur's instruction permit
5—Motorized bicycle license
6—Minor's restricted license
7—Minor's school license

~~**605.5(5)**~~ **605.5(6)** *Additional information.*

a. to *d.* No change.

This rule is intended to implement Iowa Code chapter 321A and sections 321.178, 321.180 as amended by 2015 Iowa Acts, House File 635, section 50, 321.180A, 321.180B, 321.188 as amended by 2015 Iowa Acts, House File 635, section 53, 321.189, 321.193, 321.194, 321.215, 321J.4, and 321J.20.

ITEM 9. Amend subparagraph **605.25(7)"a"(10)** as follows:

(10) The applicant is not subject to any of the following restrictions:
G—No driving when headlights required
J—Restrictions on the back of card
T—Medical report required at renewal
~~P~~ 8—Special instruction permit
Q—No interstate or freeway driving
R—Maximum speed of 35 mph

ITEM 10. Amend rule 761—607.3(321) as follows:

761—607.3(321) Definitions. The definitions in Iowa Code section 321.1 as amended by 2015 Iowa Acts, House File 635, section 44, apply to this chapter of rules. In addition, the following definitions are adopted:

"Air brake system" means a system that uses air as a medium for transmitting pressure or force from the driver's control to the service brake. "Air brake system" shall include any braking system operating fully or partially on the air brake principle.

"Air over hydraulic brakes" means any braking system operating partially on the air brake and partially on the hydraulic brake principle.

"Automatic transmission" means any transmission other than a manual transmission.

~~*"Commercial driver's license"* or *"CDL"* means a license issued to an individual by a state or other jurisdiction of domicile, in accordance with the standards contained in 49 CFR Part 383, which authorizes the individual to operate a class of a commercial motor vehicle.~~

"Commercial driver's license downgrade" or *"CDL downgrade"* means either:

1. The driver changes the driver's self-certification of type of driving from non-excepted interstate to excepted interstate, non-excepted intrastate, or excepted intrastate driving, or
2. The department removed the CDL privilege from the driver's license.

~~*"Commercial driver's license information system driver's record"* or *"CDLIS driver's record"*~~ means ~~the electronic record of the individual's CDL driver's status and history stored by the state-of-record as part of the commercial driver's license information system established under 49 U.S.C. Section 31309~~ "commercial driver's license information system" as defined in Iowa Code section 321.1 as amended by 2015 Iowa Acts, House File 635, section 44.

"Commercial motor vehicle" or *"CMV"* as defined in Iowa Code section 321.1 does not include a motor vehicle designed as off-road equipment rather than as a motor truck, such as a forklift, motor grader, scraper, tractor, trencher or similar industrial-type equipment. "Commercial motor vehicle" also does not include self-propelled implements of husbandry described in Iowa Code subsection 321.1(32).

"Controlled substance" as used in Iowa Code section 321.208 means a substance defined in Iowa Code section 124.101.

"Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. Section 5103 and is required to be placarded under 49 CFR Part 172, Subpart F, or any quantity of a material listed as a select agent or toxin in 42 CFR Part 73.

"Manual transmission" means a transmission utilizing a driver-operated clutch that is activated by a pedal or lever and a gear-shift mechanism operated either by hand or by foot. All other transmissions, whether semi-automatic or automatic, will be considered automatic.

"Medical examiner" means a person who is licensed, certified or registered, in accordance with applicable state laws and regulations, to perform physical examinations. The term includes but is not limited to doctors of medicine, doctors of osteopathy, physician assistants, advanced registered nurse practitioners, and doctors of chiropractic.

"Medical examiner's certificate" means a certificate completed and signed by a medical examiner under the provisions of 49 CFR Section 391.43.

"Medical variance" means a driver has received one of the following from the Federal Motor Carrier Safety Administration that allows the driver to be issued a medical certificate:

1. An exemption letter permitting operation of a commercial motor vehicle pursuant to 49 CFR Part 381, Subpart C, or 49 CFR Section 391.62, or 49 CFR Section 391.64.
2. A skill performance evaluation certificate permitting operation of a commercial motor vehicle pursuant to 49 CFR Section 391.49.

"Passenger vehicle" means either of the following:

1. A motor vehicle designed to transport 16 or more persons including the operator.
2. A motor vehicle of a size and design to transport 16 or more persons including the operator which is redesigned or modified to transport fewer than 16 persons with disabilities. The size of a redesigned or modified vehicle shall be any such vehicle with a gross vehicle weight rating of 10,001 or more pounds.

"School bus" means a commercial motor vehicle used to transport pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. "School bus" does not include a bus used as a common carrier.

"Self-certification" means a written certification of which category of type of driving an applicant for a commercial driver's license engages in or intends to engage in, from the following categories:

1. Non-excepted interstate. The person certifies that the person operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 CFR Part 391, and is required to obtain a medical examiner's certificate by 49 CFR Section 391.45.
2. Excepted interstate. The person certifies that the person operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 CFR Section 390.3(f), 391.2, 391.68 or 398.3 from all or parts of the qualification requirements of 49 CFR Part 391, and is therefore not required to obtain a medical examiner's certificate by 49 CFR Section 391.45.
3. Non-excepted intrastate. The person certifies that the person operates only in intrastate commerce and is subject to state driver qualification requirements.
4. Excepted intrastate. The person certifies that the person operates only in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the state driver qualification requirements as set forth in Iowa Code section 321.449.

"State," as used in this chapter and in "another state" in Iowa Code subsection 321.174(2), "~~Former~~ former state of residence" in Iowa Code subsection 321.188(5), or "any state" in Iowa Code subsection

321.208(1), means one of the United States~~,~~ or the District of Columbia~~, a Canadian province or a Mexican state~~ unless the context means the state of Iowa.

This rule is intended to implement Iowa Code sections 321.1 as amended by 2015 Iowa Acts, House File 635, section 44, 321.174, 321.188 as amended by 2015 Iowa Acts, House File 635, section 53, 321.191, 321.193, 321.207 and 321.208 ~~and 2011 Iowa Code Supplement sections 321.188 and 321.207~~.

ITEM 11. Amend rule 761—607.7(321) as follows:

761—607.7(321) Records. The operating record of a person who has been issued a commercial driver's license or a commercial learner's permit or a person who has been disqualified from operating a commercial motor vehicle shall be maintained as provided in the department's "Record Management Manual" adopted in 761—Chapter 4.

This rule is intended to implement Iowa Code sections 22.11, 321.12 as amended by 2015 Iowa Acts, House File 635, section 46, and 321.199.

ITEM 12. Amend rule 761—607.10(321) as follows:

761—607.10(321) Adoption of federal regulations.

607.10(1) *Code of Federal Regulations.* The department's administration of commercial driver's licenses shall be in compliance with the state procedures set forth in 49 CFR Section 383.73, and this chapter shall be construed to that effect. The department adopts the following portions of the Code of Federal Regulations which are referenced throughout this chapter of rules:

a. 49 CFR Section 391.11 as adopted in 761—Chapter 520.

b. 49 CFR Section 392.5 as adopted in 761—Chapter 520.

c. The following portions of 49 CFR Part 383 (October 1, ~~2011~~ 2014):

(1) Section ~~383.51(b)~~ 383.51, Disqualification ~~for major offenses, and Section 383.51(a)(5), Reinstatement after lifetime disqualification~~ of drivers.

(2) Subpart E—Testing and Licensing Procedures~~, which contains Sections 383.71-383.77~~.

(3) Subpart G—Required Knowledge and Skills~~, which contains Sections 383.110-383.123~~.

(4) Subpart H—Tests~~, which contains Sections 383.131-383.135~~.

607.10(2) No change.

This rule is intended to implement Iowa Code sections 321.187, 321.188 as amended by 2015 Iowa Acts, House File 635, section 53, 321.207, 321.208 and 321.208A ~~and 2011 Iowa Code Supplement section 321.207~~.

ITEM 13. Amend rule 761—607.15(321) as follows:

761—607.15(321) Application. An applicant for a commercial driver's license shall comply with the requirements of Iowa Code sections 321.180(2)*"e"* as amended by 2015 Iowa Acts, House File 635, section 50, 321.182 and 321.188 as amended by 2015 Iowa Acts, House File 635, section 53, and 761—Chapter 601, and must provide the proofs of citizenship or lawful permanent residence and state of domicile required by 49 CFR Section 383.71. If the applicant is domiciled in a foreign jurisdiction and applying for a nondomiciled commercial driver's license, the applicant must provide a document required by 49 CFR Section 383.71(f).

This rule is intended to implement Iowa Code sections 321.180 as amended by 2015 Iowa Acts, House File 635, section 50, 321.182 and 321.188 as amended by 2015 Iowa Acts, House File 635, section 53.

ITEM 14. Amend paragraph **607.16(3)"b"** as follows:

b. The applicant shall meet the requirements ~~of Iowa Code sections 321.182 and 321.188~~ set forth in rule 761—607.15(321).

ITEM 15. Amend rule 761—607.17(321) as follows:

761—607.17(321) Endorsements. All endorsements except the hazardous material endorsement continue to be valid without retesting or additional fees when renewing or upgrading a license. The

endorsements that authorize additional commercial motor vehicle operations with a commercial driver's license are:

607.17(1) *Hazardous material.* A hazardous material endorsement (~~Hazmat~~ H) is required to transport hazardous ~~material of a type or quantity requiring placarding~~ materials. Upon license renewal, retesting and fee payment are required. Retesting and fee payment are also required when an applicant upgrades an Iowa license or transfers a commercial driver's license from another state unless the applicant provides evidence of passing the endorsement test within the preceding 24 months. A farmer or a person working for a farmer is not subject to the hazardous material endorsement while operating either a pickup or a special truck within 150 air miles of the farmer's farm to transport supplies to or from the farm.

607.17(2) *Passenger vehicle.* A passenger vehicle endorsement (~~Pass~~ P) is required to operate a passenger vehicle as defined in rule 761—607.3(321).

607.17(3) *Tank vehicle.* A tank vehicle endorsement (~~Tank~~ N) is required to operate a tank vehicle as defined in Iowa Code section 321.1 as amended by 2015 Iowa Acts, House File 635, section 44. ~~A commercial motor vehicle upon which is transported an empty storage tank as the vehicle cargo is not a tank vehicle.~~ A vehicle transporting a tank, regardless of the tank's capacity, which does not otherwise meet the definition of a commercial motor vehicle in Iowa Code section 321.1 is not a tank vehicle.

607.17(4) *Double/triple trailer.* A double/triple trailer endorsement (~~Dbl/Trpl Trlr~~ T) is required to operate a commercial motor vehicle with two or more towed trailers when the combination of vehicles meets the criteria for a Class A commercial motor vehicle. Operation of a triple trailer combination vehicle is not permitted in Iowa.

607.17(5) *Hazardous material and tank.* A combined endorsement (~~Hazmat & Tank~~ X) authorizes both hazardous material and tank vehicle operations.

607.17(6) *School bus.* After September 30, 2005, a school bus endorsement (S) is required to operate a school bus as defined in rule 761—607.3(321). An applicant for a school bus endorsement must also qualify for a passenger vehicle endorsement.

607.17(7) No change.

This rule is intended to implement Iowa Code sections 321.1 as amended by 2015 Iowa Acts, House File 635, section 44, 321.176A, and 321.189.

ITEM 16. Amend rule 761—607.18(321) as follows:

761—607.18(321) Restrictions. The restrictions that may limit commercial motor vehicle operation with a commercial driver's license are listed in 761—subrule 605.5(3) and are explained below:

607.18(1) *Air brake.* The air brake restriction (~~Vehicle without air brakes~~ L, no air brake equipped CMV) applies to a licensee who either fails the air brake component of the knowledge test or performs the skills test in a vehicle not equipped with air brakes and prohibits the operation of a commercial motor vehicle equipped with an air brake system~~, as defined in rule 761—607.3(321),~~ until the licensee passes the required air brake tests and pays the fee for upgrading the license. Retesting and fee payment are not required when ~~renewing~~ the license is renewed.

607.18(2) ~~*Class B vehicle*~~ *Full air brake.* ~~The Class B vehicle restriction (except tractor-trailer) prohibits operation of a motor vehicle that meets the criteria for a Class A commercial motor vehicle.~~ The full air brake restriction (Z, no full air brake equipped CMV) applies to a licensee who performs the skills test in a vehicle equipped with air over hydraulic brakes and prohibits the operation of a commercial motor vehicle equipped with any braking system operating fully on the air brake principle until the licensee passes the required air brake tests and pays the fee for upgrading the license. Retesting and fee payment are not required when the license is renewed.

607.18(3) *Manual transmission.* The manual transmission restriction (E, no manual transmission equipped CMV) applies to a licensee who performs the skills test in a vehicle equipped with automatic transmission and prohibits the operation of a commercial motor vehicle equipped with a manual transmission until the licensee passes the required tests and pays the fee for upgrading the license. Retesting and fee payment are not required when the license is renewed.

607.18(4) *Tractor-trailer.* The tractor-trailer restriction (O, no tractor trailer CMV) applies to a licensee who performs the skills test in a combination vehicle for a Class A commercial driver's license with the power unit and towed unit connected with a pintle hook or other non-fifth wheel connection and prohibits operation of a tractor-trailer combination connected by a fifth wheel that requires a Class A commercial driver's license until the licensee passes the required tests and pays the fee for upgrading the license. Retesting and fee payment are not required when the license is renewed.

~~**607.18(3)**~~ **607.18(5)** *Class ~~B~~ A passenger vehicle.* The Class ~~B~~ A passenger vehicle restriction (~~except Class A bus~~ M, no Class A passenger vehicle) applies to a licensee who applies for a passenger endorsement and performs the skills test in a passenger vehicle that requires a Class B commercial driver's license and prohibits operation of a passenger vehicle that ~~meets the criteria for~~ requires a Class A commercial ~~motor vehicle~~ driver's license.

~~**607.18(4)**~~ **607.18(6)** *Class ~~C~~ A and B passenger vehicle.* The Class ~~C~~ A and B passenger vehicle restriction (~~except Class A and Class B bus~~ N, no Class A and B passenger vehicle) applies to a licensee who applies for a passenger endorsement and performs the skills test in a passenger vehicle that requires a Class C commercial driver's license and prohibits operation of a passenger vehicle that ~~meets the criteria for~~ requires a Class A or Class B commercial ~~motor vehicle~~ driver's license.

607.18(7) *Intrastate only.* The intrastate only restriction (K, intrastate only) applies to a licensee who self-certifies to non-excepted intrastate or excepted intrastate driving and prohibits the operation of a commercial motor vehicle in interstate commerce.

607.18(8) *Medical variance.* The medical variance restriction (V, medical variance) applies to a licensee when the department is notified pursuant to 49 CFR Section 383.73(o)(3) that the driver has been issued a medical variance and indicates there is information about a medical variance on the CDLIS driver record.

This rule is intended to implement Iowa Code sections 321.189 and 321.191 as amended by 2015 Iowa Acts, House File 635, section 55.

ITEM 17. Amend rule 761—607.20(321) as follows:

761—607.20(321) Commercial ~~driver's instruction~~ learner's permit.

607.20(1) *Validity.*

a. A commercial ~~driver's instruction~~ learner's permit allows the permit holder to operate a commercial motor vehicle when accompanied ~~by a person licensed for the vehicle being operated. Examples of permissible vehicle operation include but are not limited to:~~ as required by Iowa Code section 321.180(2)*"d"* as amended by 2015 Iowa Acts, House File 635, section 50.

~~(1) Operation of a vehicle requiring a higher class license than the license to which the permit is added.~~

~~(2) Operation of a vehicle requiring an endorsement other than a hazardous material endorsement.~~

~~(3) Operation of a vehicle equipped with air brakes.~~

b. A commercial ~~driver's instruction~~ learner's permit is valid for ~~six months~~ 180 days and may be renewed ~~once within two years from the date of issuance of the first permit~~ for an additional 180 days without retaking the general and endorsement knowledge tests required by Iowa Code section 321.188 as amended by 2015 Iowa Acts, House File 635, section 53.

c. A commercial ~~driver's instruction~~ learner's permit is invalid after the expiration date of the underlying commercial or noncommercial driver's license ~~to which the permit is added~~ issued to the permit holder or the expiration date of the permit whichever occurs first.

d. The issuance of a commercial learner's permit is a precondition to the initial issuance of a commercial driver's license. The issuance of a commercial learner's permit is also a precondition to the upgrade of a commercial driver's license if the upgrade requires a skills test. The holder of a commercial learner's permit is not eligible to take a required driving skills test for the first 14 days after the permit holder is issued the permit. The 14-day period includes the day the commercial learner's permit was issued.

EXAMPLE: The commercial learner's permit is issued on September 1. The earliest date the permit holder would be eligible to take the skills test is September 15.

e. A commercial learner's permit is not valid for the operation of a vehicle transporting hazardous materials.

607.20(2) *Requirements.*

a. An applicant for a commercial ~~driver's instruction~~ learner's permit must ~~be at least 18 years of age and eligible for a commercial driver's license.~~

~~*b.* The applicant must have~~ hold a valid Class A, B, C, or D driver's license issued in this state other than an instruction permit, a special instruction permit, a motorized bicycle license or a temporary restricted license, must be at least 18 years of age, and must meet the requirements to obtain a valid commercial driver's license, including the requirements set forth in Iowa Code section 321.188 as amended by 2015 Iowa Acts, House File 635, section 53. However, the applicant does not have to complete the driving skills tests required for a commercial driver's license to obtain a commercial learner's permit.

~~*c.*~~ *b.* The applicant must successfully pass ~~the~~ a general knowledge test ~~for a commercial driver's license~~ that meets the federal standards contained in 49 CFR Part 383, Subparts F, G and H, for the commercial motor vehicle the applicant operates or expects to operate, including any endorsement for which the applicant applies.

607.20(3) *Endorsements.* A commercial learner's permit may include the following endorsements. All other endorsements are prohibited on a commercial learner's permit.

a. An applicant for a passenger endorsement (P) must take and pass the passenger endorsement knowledge test. A commercial learner's permit holder with a passenger endorsement is prohibited from operating a commercial motor vehicle carrying passengers, other than federal/state auditors and inspectors, test examiners, other trainees, and the commercial driver's license holder accompanying the permit holder required by Iowa Code section 321.180(2)*"d"* as amended by 2015 Iowa Acts, House File 635, section 50.

b. An applicant for a school bus endorsement (S) must take and pass the school bus endorsement knowledge test. A commercial learner's permit holder with a school bus endorsement is prohibited from operating a commercial motor vehicle carrying passengers, other than federal/state auditors and inspectors, test examiners, other trainees, and the commercial driver's license holder accompanying the permit holder required by Iowa Code section 321.180(2)*"d"* as amended by 2015 Iowa Acts, House File 635, section 50.

c. An applicant for a tank vehicle endorsement (N) must take and pass the tank vehicle endorsement knowledge test. A commercial learner's permit holder with a tank vehicle endorsement may only operate an empty tank vehicle and is prohibited from operating any tank vehicle that previously contained hazardous materials that has not been purged of any residue.

607.20(4) *Restrictions.* A commercial learner's permit may include the air brake (L), medical variance (V), Class A passenger vehicle (M), Class A and B passenger vehicle (N) and intrastate only (K) restrictions described in rule 761—607.18(321). In addition, a commercial learner's permit may include the following restrictions that are specific to the commercial learner's permit:

a. Passenger. The passenger restriction (P, no passengers in CMV bus) applies to a permit holder who has a commercial learner's permit with a passenger or school bus endorsement and prohibits the operation of a commercial motor vehicle carrying passengers, other than federal/state auditors and inspectors, test examiners, other trainees, and the commercial driver's license holder accompanying the permit holder required by Iowa Code section 321.180(2)*"d"* as amended by 2015 Iowa Acts, House File 635, section 50.

b. Cargo. The cargo restriction (X, no cargo in CMV tank vehicle) applies to a permit holder who has a commercial learner's permit with a tank vehicle endorsement and prohibits the operation of any tank vehicle containing cargo or any tank vehicle that previously contained hazardous materials that has not been purged of any residue.

This rule is intended to implement Iowa Code sections 321.180 as amended by 2015 Iowa Acts, House File 635, section 50, 321.186, and 321.188 as amended by 2015 Iowa Acts, House File 635, section 53.

ITEM 18. Amend rule 761—607.26(321) as follows:

761—607.26(321) Vision screening. An applicant for a commercial driver's license or commercial learner's permit must pass a vision screening test administered by the department. The vision standards are given in 761—604.11(321).

This rule is intended to implement Iowa Code sections 321.186 and 321.186A.

ITEM 19. Amend subrule 607.27(3) as follows:

607.27(3) ~~*Oral test*~~ *Test methods.* All knowledge tests shall be administered in compliance with 49 CFR Section 383.133(b). All tests other than the hazardous material endorsement test may be administered in written form, verbally, or in automated format and can be administered in a foreign language, provided no interpreter is used in administering the test. ~~An oral~~ A verbal test shall be offered only at specified locations. Information about the locations is available at any driver's license examination station.

ITEM 20. Amend subrule 607.27(5) as follows:

607.27(5) *Requirement.* An applicant must pass the applicable knowledge test(s) before taking the skills test. Passing scores for a knowledge test shall meet the standards contained in 49 CFR Section 383.135(a).

ITEM 21. Amend rule **761—607.27(321)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.186 and 321.188 as amended by 2015 Iowa Acts, House File 635, section 53.

ITEM 22. Amend rule 761—607.28(321) as follows:

761—607.28(321) Skills test.

607.28(1) *Content* ~~*and order*~~. The skills test for a commercial driver's license is a three-part test as required in 49 CFR Part 383, Subparts E, G and H. ~~The three parts must be taken in the following order: the pretrip inspection, the basic vehicle control skills, and an on-the-road driving demonstration. Those elements of the skills test that are not applicable to the vehicle being used in the skills test may be waived by the department. The basic vehicle control skills may be accomplished as part of the on-the-road driving demonstration. The department shall terminate the skills test when it is determined that the applicant has failed the test.~~

607.28(2) *Test methods.* All skills tests shall be administered in compliance with 49 CFR Section 383.133(c). Interpreters are prohibited during the administration of skills tests. Applicants must be able to understand and respond to verbal commands and instructions in English by a skills test examiner. Neither the applicant nor the examiner may communicate in a language other than English during the skills test.

607.28(3) *Order.* The skills test must be administered and successfully completed in the following order: pre-trip inspection, basic vehicle control skills, on-road skills. If an applicant fails one segment of the skills test, the applicant cannot continue to the next segment of the test, and scores for the passed segments of the test are only valid during initial issuance of the commercial learner's permit. If the commercial learner's permit is renewed, all three segments of the skills test must be retaken. However:

a. If the applicant wants to remove an air brake restriction, full air brake restriction, or manual transmission restriction, the applicant does not have to retake the complete skills test, and may complete a modified skills test that demonstrates the applicant can safely and effectively operate the vehicle's full air brakes, air over hydraulic brakes, or manual transmission. In addition, to remove the air brake or full air brake restriction, the applicant must successfully perform the air brake pre-trip inspection and pass the air brake knowledge test.

b. If the applicant wants to remove the tractor-trailer restriction, the applicant must retake all three skills tests in a representative tractor-trailer.

~~**607.28(2)**~~ **607.28(4)** *Vehicle.* The applicant shall provide a representative vehicle for the skills test. "Representative vehicle" means a commercial motor vehicle that meets the statutory description for the class of license applied for.

a. and *b.* No change.

c. To remove an air brake or full air brake restriction, the applicant must take the skills test in a vehicle equipped with an air brake system, as defined in rule 761—607.3(321) and as required in 49 CFR Section 383.113.

d. To remove a manual transmission restriction, the applicant must take the skills test in a vehicle equipped with a manual transmission, as defined in rule 761—607.3(321).

607.28(5) *Skills test scoring.* Passing scores for a skills test shall meet the standards contained in 49 CFR Section 383.135(b).

607.28(6) *Military waiver.* The department may waive the requirement that an applicant pass a required skills test for an applicant who is on active duty in the military service or who has separated from such service in the past year, provided the applicant meets the requirements of Iowa Code subsection 321.188(6) as amended by 2015 Iowa Acts, House File 635, section 53.

~~**607.28(3)**~~ **607.28(7)** *Locations.* The skills test for a commercial driver's license shall be given only at specified locations where adequate testing facilities are available. An applicant may contact any driver's license examination station for the location of the nearest skills testing station. A skills test by appointment shall be offered only at specified regional test sites.

This rule is intended to implement Iowa Code ~~sections~~ section 321.186 and section 321.188 as amended by 2015 Iowa Acts, House File 635, section 53.

ITEM 23. Amend rule 761—607.31(321) as follows:

761—607.31(321) Test results.

607.31(1) ~~*Proof of passing score*~~ *Period of validity.* ~~When necessary, the department shall issue a form valid for 90 days showing the knowledge test(s) or part(s) of the skills test that the applicant passed. The applicant shall retain the form(s) until all tests are passed and present the form(s) to the department to obtain the license.~~ Passing knowledge and skills test results shall remain valid for a period of 180 days.

607.31(2) *Retesting.* ~~An~~ Subject to rule 761—607.28(321), an applicant shall be required to repeat only the knowledge test(s) or part(s) of the skills test that the applicant failed. An applicant who fails a test shall not be permitted to repeat that test the same day.

607.31(3) *Skills test results from other states.* As required by 49 CFR Section 383.79, the department shall accept the valid results of a skills test administered to an applicant who is domiciled in the state of Iowa and that was administered by another state, in accordance with 49 CFR Part 383, Subparts F, G and H, in fulfillment of the applicant's testing requirements under 49 CFR Section 383.71 and the state's test administration requirements under 49 CFR Section 383.73. The results must be transmitted directly from the testing state to the department as required by 49 CFR Section 383.79.

This rule is intended to implement Iowa Code section 321.186 and section 321.188 as amended by 2015 Iowa Acts, House File 635, section 53.

ITEM 24. Amend rule 761—607.35(321) as follows:

761—607.35(321) Issuance of commercial driver's license and commercial learner's permit. A commercial driver's license or commercial learner's permit issued by the department shall ~~be identified by "commercial driver's license" or "CDL" on the face of the license~~ include the information and markings required by Iowa Code section 321.189(2)*"b"* as amended by 2015 Iowa Acts, House File 635, section 54.

This rule is intended to implement Iowa Code section 321.189 as amended by 2015 Iowa Acts, House File 635, section 54.

ITEM 25. Amend rule 761—607.37(321) as follows:

761—607.37(321) Commercial driver's license renewal. The department shall administer commercial driver's license renewals as required by 49 CFR Section 383.73.

607.37(1) *Licensee requirements.* To renew a commercial driver's license, the licensee shall apply at a driver's license examination station~~, certify eligibility and, if required, pass the appropriate test(s).~~ and complete the following:

a. Make a written self-certification of type of driving as required by rule 761—607.50(321) and provide a current medical examiner's certificate if required.

b. If the licensee has and wishes to retain a hazardous material endorsement, the licensee shall pass the test required in 49 CFR Section 383.121 and comply with the Transportation Security Administration security threat assessment standards specified in 49 CFR Sections 383.71(b)(8) and 383.141 for such endorsement. A lawful permanent resident of the United States must also provide the licensee's U.S. Citizenship and Immigration Services alien registration number.

c. Provide proof of citizenship or lawful permanent residency and state of domicile as required by rule 761—607.15(321) and 49 CFR 383.71(d)(7). Proof of citizenship or lawful permanent residency is not required if the licensee provided such proof at initial issuance or a previous renewal or upgrade of the license and the department has a notation on the licensee's record confirming that the required proof of legal citizenship or legal presence check was made and the date on which it was made.

d. If the applicant is domiciled in a foreign jurisdiction and renewing a non-domiciled commercial driver's license, the applicant must provide a document required by 49 CFR 383.71(f) at each renewal.

607.37(2) *Early renewal.* A valid commercial driver's license may be renewed 30 days before the expiration date. If this is impractical, the department for good cause may renew a license earlier, not to exceed one year prior to the expiration date. The department may allow renewal earlier than one year prior to the expiration date for active military personnel being deployed due to actual or potential military conflict.

~~**607.37(3)** A valid commercial driver's license may be renewed within 60 days after the expiration date, unless otherwise specified.~~

This rule is intended to implement Iowa Code sections 321.186, 321.188 as amended by 2015 Iowa Acts, House File 635, section 53, and 321.196.

ITEM 26. Amend paragraph **607.49(4)"c"** as follows:

c. An applicant who currently holds a commercial driver's license or a commercial ~~driver's instruction~~ learner's permit is not eligible for issuance of a restricted commercial driver's license.

ITEM 27. Amend rule 761—607.50(321) as follows:

761—607.50(321) Self-certification of type of driving and submission of medical examiner's certificate.

607.50(1) *Applicants for commercial learner's permit or new, transferred, renewed or upgraded CDL.*

a. A person shall provide to the department a self-certification of type of driving if the person is applying for:

(1) A commercial learner's permit,

~~(1)~~ (2) An initial commercial driver's license,

~~(2)~~ (3) A transfer of a commercial driver's license from a prior state of domicile to the state of Iowa,

~~(3)~~ (4) Renewal of a commercial driver's license, or

~~(4)~~ (5) A license upgrade for a commercial driver's license or an endorsement authorizing the operation of a commercial motor vehicle not covered by the current commercial driver's license.

b. No change.

607.50(2) to **607.50(4)** No change.

607.50(5) *CDL downgrade.* If the medical examiner's certificate or medical variance for a person self-certifying to non-excepted interstate driving expires or if the Federal Motor Carrier Safety Administration notifies the department that the person's medical variance was removed or rescinded, the department shall post a medical certification status of "not certified" to the person's CDLIS driver's record and shall initiate a downgrade of the person's commercial driver's license or commercial

learner's permit. The medical examiner's certificate of a person who fails to maintain a medical certification status of "certified" as required by subrule 607.50(4) shall be deemed to be expired on the date of expiration of the last medical examiner's certificate filed for the person as shown by the person's CDLIS driver's record. The downgrade will be initiated and completed as follows:

a. The department shall give the person written notice that the person's medical certification status is "not certified" and that the commercial ~~driver's license privilege~~ motor vehicle privileges will be removed from the person's commercial driver's license or commercial learner's permit 60 days after the date the medical examiner's certificate or medical variance expired or the medical variance was removed or rescinded unless the person submits to the department a current medical certificate or medical variance or self-certifies to a type of driving other than non-excepted interstate.

b. If the person submits a current medical examiner's certificate or medical variance before the end of the 60-day period, the department shall post a medical certification status of "certified" on the person's CDLIS driver's record and shall terminate the downgrade of the person's commercial driver's license or commercial learner's permit.

c. If the person self-certifies to a type of driving other than non-excepted interstate before the end of the 60-day period, the department shall not remove the commercial ~~driver's license privilege~~ motor vehicle privileges from the person's commercial driver's license or commercial learner's permit, and the person will have no medical certification status on the person's CDLIS driver's record.

d. If the person fails to take the action in either paragraph 607.50(5)*"b"* or *"c"* before the end of the 60-day period, the department shall remove the commercial ~~driver's license privilege~~ motor vehicle privileges from the person's commercial driver's license or commercial learner's permit and shall leave the person's medical certification status as "not certified" on the person's CDLIS driver's record.

607.50(6) and **607.50(7)** No change.

607.50(8) *Reestablishment of the CDL privilege.* A person whose commercial ~~driver's license privilege has~~ motor vehicle privileges have been removed from the person's commercial driver's license or commercial learner's permit under the provisions of paragraph 607.50(5)*"d"* may reestablish the commercial ~~driver's license privilege to the person's driver's license~~ motor vehicle privileges by either of the following methods:

a. Submitting a current medical examiner's certificate or medical variance to the department. A person who has failed to self-certify to a type of driving must also make an initial self-certification of type of driving to non-excepted interstate driving. The department shall then post a medical certification status of "certified" on the person's CDLIS driver's record and reestablish the commercial ~~driver's license privilege to the person's driver's license~~ motor vehicle privileges, provided that the person otherwise remains eligible for a commercial driver's license or commercial learner's permit.

b. Self-certifying to a type of driving other than non-excepted interstate. The department shall then reestablish the commercial ~~driver's license privilege to the person's driver's license~~ motor vehicle privileges, provided that the person otherwise remains eligible for a commercial driver's license or commercial learner's permit; the person will have no medical certification status on the driver's CDLIS driver's record.

607.50(9) and **607.50(10)** No change.

This rule is intended to implement Iowa Code ~~section~~ sections 321.182, ~~and 2011 Iowa Code Supplement sections~~ 321.188 as amended by 2015 Iowa Acts, House File 635, section 53, and 321.207 as amended by 2015 Iowa Acts, House File 635, section 60.

ITEM 28. Amend rule 761—607.51(321) as follows:

761—607.51(321) Determination of gross vehicle weight rating.

607.51(1) *Actual weight prohibited.* In determining whether the vehicle is a representative vehicle for the skills test and the group of commercial driver's license for which the applicant is applying, the vehicle's gross weight rating or gross combination weight rating must be used, not the vehicle's actual gross weight or gross combination weight. For purposes of this rule, "gross weight rating" and "gross combination weight rating" mean as defined in 49 CFR Section 383.5.

~~607.51(1)~~ 607.51(2) *Vehicle ~~other than towed vehicle~~ without legible manufacturer's certification label.* ~~For~~ To complete a skills test using a vehicle ~~other than a towed vehicle~~ that has no legible manufacturer's certification label, whether a power unit or towed vehicle, the applicant ~~may~~ must provide documentation of the vehicle's gross vehicle weight rating, such as a manufacturer's certificate of origin, a title, ~~a vehicle registration document,~~ or the vehicle identification number information for the vehicle. In the absence of ~~the above~~ such documentation, the ~~registered weight of the vehicle shall be presumed to be the gross vehicle weight rating~~ vehicle may not be used, either alone or in combination.

~~**607.51(2)** *Towed vehicle.* For a towed vehicle without a gross vehicle weight rating specified by the manufacturer, the gross vehicle weight rating shall be its gross weight.~~

This rule is intended to implement Iowa Code section 321.1 as amended by 2015 Iowa Acts, House File 635, section 44.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/6/16.

State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA
EXECUTIVE ORDER NUMBER EIGHTY-SEVEN

WHEREAS, All aspects of Iowa's economy are becoming increasingly more reliant on technology, which exposes our computer networks and information systems to the risk of cyberattacks; and

WHEREAS, the advance of information technology has transformed the Iowa and national economies in positive ways and plays a critical role in how the State of Iowa delivers services to its citizens; and

WHEREAS, the State of Iowa should take additional action to secure computer networks and information systems and improve the State's ability to respond to significant cyberattacks that would adversely affect the State's ability to deliver critical services, expose its confidential data to breach, or otherwise threaten the state's critical infrastructure; and

WHEREAS, the State of Iowa should continue to develop strategies and protections to eliminate the impact of cyber disruptions and to prepare a coordinated response plan in the event of a significant cyberattack in order to improve the resiliency of government, private sector operations, and mitigate the consequences of a cyber incident within our State.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, declare cybersecurity a top priority for this administration and the State of Iowa should protect its citizens and economy against cyberattacks. I hereby order and direct that:

1. The Office of the Chief Information Officer (OCIO), in coordination with the Iowa Homeland Security and Emergency Management Department, Iowa Communications Network, Iowa National Guard, Department of Public Safety, and other state agencies and stakeholders, shall draft and submit a State of Iowa Cybersecurity Strategy to the Office of the Governor detailing steps the State of Iowa should take to foster the overall resiliency of State of Iowa's operations in response to a cyberattack. The Strategy shall be submitted to the Office of the Governor no later than July 1, 2016. The Strategy shall:
    i. Address high risk cybersecurity areas for the State's critical infrastructure and develop plans to better identify, protect, detect, respond, and recover from significant cyber incidents;
    ii. Establish a process to regularly assess cybersecurity infrastructure and activities within the State;
    iii. Provide recommendations related to securing networks, systems, and data, including interoperability, standardized plans and procedures, and evolving threats and best practices to prevent the unauthorized access, theft, alteration, or destructions of data held by the State of Iowa;
    iv. Implement cybersecurity awareness training for State government;
    v. Identify opportunities to educate the public on ways to prevent cybersecurity attacks and protect the public's personal information;
    vi. Collaborate with the private sector and educational institutions to implement cybersecurity best practices;
    vii. Recommend Science, Technology, Engineering, and Math (STEM) educational and training programs for K-12 and higher educational programs in order to foster an improved cybersecurity workforce pipeline;
    viii. Establish data breach reporting and notification requirements; and

ix. Reach other goals and objectives as requested by the Office of the Governor.

2. The Iowa Homeland Security and Emergency Management Department shall update the State's Emergency Response Plan to deal with the physical consequences of a significant cyberattack against the State's critical infrastructure.
3. This Order shall apply prospectively as of the date of the signing of this Order. This Order shall be interpreted in accordance with all applicable laws. It is not intended to supersede any law or collective bargaining agreement.
4. If any provision of this Order, or the application of such provision to any person or circumstance, is held to be invalid, the remaining provisions, as applied to any person or circumstance, shall not be affected thereby.
5. This Order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the State of Iowa, its Departments, Agencies, or Political Subdivisions, or its officers, employees, or agents, or any other person.

IN TESTIMONY WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME AND CAUSED THE GREAT SEAL OF IOWA TO BE AFFIXED. DONE AT DES MOINES THIS 21ST DAY OF DECEMBER, IN THE YEAR OF OUR LORD TWO THOUSAND FIFTEEN.

TERRY E. BRANSTAD
GOVERNOR

ATTEST:

PAUL D. PATE
SECRETARY OF STATE