



# IOWA ADMINISTRATIVE BULLETIN

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## PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other "materials deemed fitting and proper by the Administrative Rules Review Committee" include summaries of Public Hearings, Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers' Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)"a"]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

**PLEASE NOTE:** *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

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**Hoover State Office Building, Level A**  
**Des Moines, IA 50319**  
**Telephone: (515)242-5120**

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## Schedule for Rule Making 1999

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Dec. 25 '98	Jan. 13 '99	Feb. 2 '99	Feb. 17 '99	Feb. 19 '99	Mar. 10 '99	Apr. 14 '99	July 12 '99
Jan. 8	Jan. 27	Feb. 16	Mar. 3	Mar. 5	Mar. 24	Apr. 28	July 26
Jan. 22	Feb. 10	Mar. 2	Mar. 17	Mar. 19	Apr. 7	May 12	Aug. 9
Feb. 5	Feb. 24	Mar. 16	Mar. 31	Apr. 2	Apr. 21	May 26	Aug. 23
Feb. 19	Mar. 10	Mar. 30	Apr. 14	Apr. 16	May 5	June 9	Sept. 6
Mar. 5	Mar. 24	Apr. 13	Apr. 28	Apr. 30	May 19	June 23	Sept. 20
Mar. 19	Apr. 7	Apr. 27	May 12	May 14	June 2	July 7	Oct. 4
Apr. 2	Apr. 21	May 11	May 26	May 28	June 16	July 21	Oct. 18
Apr. 16	May 5	May 25	June 9	June 11	June 30	Aug. 4	Nov. 1
Apr. 30	May 19	June 8	June 23	June 25	July 14	Aug. 18	Nov. 15
May 14	June 2	June 22	July 7	July 9	July 28	Sept. 1	Nov. 29
May 28	June 16	July 6	July 21	July 23	Aug. 11	Sept. 15	Dec. 13
June 11	June 30	July 20	Aug. 4	Aug. 6	Aug. 25	Sept. 29	Dec. 27
June 25	July 14	Aug. 3	Aug. 18	Aug. 20	Sept. 8	Oct. 13	Jan. 10 '00
July 9	July 28	Aug. 17	Sept. 1	Sept. 3	Sept. 22	Oct. 27	Jan. 24 '00
July 23	Aug. 11	Aug. 31	Sept. 15	Sept. 17	Oct. 6	Nov. 10	Feb. 7 '00
Aug. 6	Aug. 25	Sept. 14	Sept. 29	Oct. 1	Oct. 20	Nov. 24	Feb. 21 '00
Aug. 20	Sept. 8	Sept. 28	Oct. 13	Oct. 15	Nov. 3	Dec. 8	Mar. 6. '00
Sept. 3	Sept. 22	Oct. 12	Oct. 27	Oct. 29	Nov. 17	Dec. 22	Mar. 20 '00
Sept. 17	Oct. 6	Oct. 26	Nov. 10	Nov. 12	Dec. 1	Jan. 5 '99	Apr. 3 '00
Oct. 1	Oct. 20	Nov. 9	Nov. 24	Nov. 26	Dec. 15	Jan. 19 '99	Apr. 17 '00
Oct. 15	Nov. 3	Nov. 23	Dec. 8	Dec. 10	Dec. 29	Feb. 2 '99	May 1 '00
Oct. 29	Nov. 17	Dec. 7	Dec. 22	Dec. 24	Jan. 12 '99	Feb. 16 '99	May 15 '00
Nov. 12	Dec. 1	Dec. 21	Jan. 5 '00	Jan. 7 '00	Jan. 26 '00	Mar. 1 '00	May 29 '00
Nov. 26	Dec. 15	Jan. 4 '00	Jan. 19 '00	Jan. 21 '00	Feb. 9 '00	Mar. 15 '00	June 12 '00
Dec. 10	Dec. 29	Jan. 18 '00	Feb. 2 '00	Feb. 4 '00	Feb. 23 '00	Mar. 29 '00	June 26 '00
Dec. 24	Jan. 12 '00	Feb. 1 '00	Feb. 16 '00	Feb. 18 '00	Mar. 8 '00	Apr. 12 '00	July 10 '00
Jan. 7 '00	Jan. 26 '00	Feb. 15 '00	Mar. 1 '00	Mar. 3 '00	Mar. 22 '00	Apr. 26 '00	July 24 '00

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
19	Friday, February 19, 1999	March 10, 1999
20	Friday, March 5, 1999	March 24, 1999
21	Friday, March 19, 1999	April 7, 1999

**PLEASE NOTE:**

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days 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.



## PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies  
FROM: Kathleen K. Bates, Iowa Administrative Code Editor  
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses Interleaf 6 to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the processing of rule-making documents, we request a 3.5" High Density (not Double Density) IBM PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, 4th Floor, Lucas State Office Building or included with the documents submitted to the Governor's Administrative Rules Coordinator.

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**Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies by the Governor's office, but not on the diskettes; diskettes are returned unchanged.**

Your cooperation helps us print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

*Guide to Rule Making, June 1995 Edition*, available upon request to the Iowa Administrative Code Division,  
Lucas State Office Building, Fourth Floor, Des Moines, Iowa 50319.

## To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)“b” by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
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**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]**

Enterprise zones, 59.2, 59.3(3) IAB 2/10/99 ARC 8697A	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	March 2, 1999 2 p.m.
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**EDUCATIONAL EXAMINERS BOARD[282]**

Two-year conditional license, 14.16 IAB 2/10/99 ARC 8644A	Conference Room 3 North—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	March 2, 1999 10 a.m.
Removal of expiration dates for endorsements, 14.20, 15.2(9) IAB 2/10/99 ARC 8690A	Conference Room 3 North—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	March 2, 1999 1 p.m.
Science endorsement, 14.21(17) IAB 1/27/99 ARC 8633A	Conference Room 3 South—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	February 26, 1999 10 a.m.

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

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**HUMAN SERVICES DEPARTMENT[441]**

Pilot diversion initiatives, 41.25(9), 47.1 to 47.3, 47.4(4), 47.5, 47.8, 47.9, 47.10(3), 47.11, 47.21, 47.26(1), 47.41, 47.47, 47.48(2), 47.49 to 47.72 IAB 2/10/99 ARC 8656A	Conference Room—6th Floor Iowa Bldg., Suite 600 411 Third St. S.E. Cedar Rapids, Iowa	March 5, 1999 10 a.m.
	Administrative Conference Room 417 E. Kanesville Blvd. Council Bluffs, Iowa	March 3, 1999 9 a.m.
	Conference Room 3 Bicentennial Bldg.—5th Floor 428 Western Davenport, Iowa	March 4, 1999 10 a.m.
	Conference Room 104 City View Plaza 1200 University Des Moines, Iowa	March 4, 1999 10 a.m.

<b>HUMAN SERVICES DEPARTMENT[441] (Cont'd)</b>	Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	March 3, 1999 10 a.m.
	Conference Room 2 120 E. Main Ottumwa, Iowa	March 3, 1999 10 a.m.
	Fifth Floor 520 Nebraska St. Sioux City, Iowa	March 5, 1999 1:30 p.m.
	Conference Room 220 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	March 3, 1999 10 a.m.
CSRU—support obligation, 98.104(2), 99.1, 99.3(2), 99.4(1), 99.5(4) IAB 2/10/99 ARC 8659A	Conference Room—6th Floor Iowa Bldg., Suite 600 411 Third St. S.E. Cedar Rapids, Iowa	March 3, 1999 9 a.m.
	Suite 32 300 W. Broadway Council Bluffs, Iowa	March 4, 1999 9 a.m.
	Conference Room 507 Bicentennial Bldg.—5th Floor 428 Western Davenport, Iowa	March 3, 1999 1 p.m.
	Conference Room, Suite 8 1901 Bell Ave. Des Moines, Iowa	March 3, 1999 8 a.m.
	Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	March 5, 1999 10 a.m.
	Conference Room 3 120 E. Main Ottumwa, Iowa	March 4, 1999 9 a.m.
	Conference Room B 520 Nebraska St. Sioux City, Iowa	March 3, 1999 10 a.m.
	Conference Room Suite 400 501 Sycamore Waterloo, Iowa	March 3, 1999 1 p.m.
Child abuse assessment program, 175.21, 175.24, 175.41, 175.43 IAB 2/10/99 ARC 8661A	Conference Room—6th Floor Iowa Bldg., Suite 600 411 Third St. S.E. Cedar Rapids, Iowa	March 3, 1999 2 p.m.
	Administrative Conference Room 417 E. Kanesville Blvd. Council Bluffs, Iowa	March 3, 1999 10:30 a.m.

**HUMAN SERVICES  
DEPARTMENT[441]  
(Cont'd)**

Large Conference Room Bicentennial Bldg.—5th Floor 428 Western Davenport, Iowa	March 3, 1999 10 a.m.
Conference Room 102 City View Plaza 1200 University Des Moines, Iowa	March 3, 1999 10 a.m.
Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	March 3, 1999 11 a.m.
Conference Room 3 120 E. Main Ottumwa, Iowa	March 3, 1999 12 noon
Fifth Floor 520 Nebraska St. Sioux City, Iowa	March 3, 1999 1:30 p.m.
Conference Room 420 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	March 5, 1999 11 a.m.

**INSURANCE DIVISION[191]**

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Construction safety—powered industrial truck operator training, 26.1 IAB 1/27/99 ARC 8637A	1000 E. Grand Ave. Des Moines, Iowa	February 18, 1999 9 a.m. (If requested)

**LAW ENFORCEMENT ACADEMY[501]**

Officer certification, 3.1(4) IAB 2/10/99 ARC 8639A	Library Law Enforcement Academy Camp Dodge Johnston, Iowa	March 2, 1999 10 a.m.
Telecommunicator training standards, 13.3(4), 13.5(3), 13.6 IAB 2/10/99 ARC 8638A	Library Law Enforcement Academy Camp Dodge Johnston, Iowa	March 2, 1999 9:30 a.m.

**PROFESSIONAL LICENSURE DIVISION[645]**

Marital and family therapists and mental health counselors, 30.2(9), 30.3(2), 30.4(2), 30.6(5), 31.1 to 31.3 IAB 2/10/99 ARC 8688A	Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	March 2, 1999 8 to 10 a.m.
Chiropractic examiners, 40.1, 40.12(3), 40.13, 40.18, 40.19, 40.24(3), 40.62(6), 40.64(5), 40.70, 40.73(2) IAB 1/27/99 ARC 8631A	Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	February 16, 1999 10 a.m. to 12 noon

**PUBLIC EMPLOYMENT RELATIONS BOARD[621]**

Consent for the sale of goods and services, ch 13 IAB 2/10/99 ARC 8649A	Board Hearing Room—2nd Floor 514 E. Locust St. Des Moines, Iowa	March 2, 1999 11 a.m.
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**PUBLIC HEALTH DEPARTMENT[641]**

Trauma education and training, ch 137 IAB 2/10/99 ARC 8691A (ICN Network)	National Guard Armory 11 E. 23rd St. Spencer, Iowa	March 2, 1999 2 to 3 p.m.
	National Guard Armory 1712 LaClark Rd. Carroll, Iowa	March 2, 1999 2 to 3 p.m.
	National Guard Armory 1160 10th St. S.W. Mason City, Iowa	March 2, 1999 2 to 3 p.m.
	ICN Room—6th Floor Lucas State Office Bldg. Des Moines, Iowa	March 2, 1999 2 to 3 p.m.
	National Guard Armory 195 Radford Rd. Dubuque, Iowa	March 2, 1999 2 to 3 p.m.
	National Guard Armory 501 Hwy. 1 South Washington, Iowa	March 2, 1999 2 to 3 p.m.

**RACING AND GAMING COMMISSION[491]**

General, 4.4(5), 13.25(2), 26.17(7) IAB 2/10/99 ARC 8653A	Suite B 717 E. Court Des Moines, Iowa	March 2, 1999 9 a.m.
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**TRANSPORTATION DEPARTMENT[761]**

Administrative rules and declaratory orders, 10.1(2), 10.2 to 10.4 IAB 2/10/99 ARC 8645A	Commission Conference Room 800 Lincoln Way Ames, Iowa	March 5, 1999 9 a.m. (If requested)
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**TRANSPORTATION  
DEPARTMENT[761]  
(Cont'd)**

Default decisions and administrative procedures, 13.6 to 13.8, 13.10, 13.11, 13.13, 13.20, 615.38, 620.4 IAB 2/10/99 ARC 8646A	Commission Conference Room 800 Lincoln Way Ames, Iowa	March 5, 1999 10 a.m. (If requested)
Outdoor advertising 117.1 to 117.8 IAB 1/27/99 ARC 8624A	Commission Conference Room 800 Lincoln Way Ames, Iowa	February 18, 1999 10 a.m. (If requested)
Speed limits on secondary roads; federal-aid urban systems; rail rates, rescind chs 141, 180, 840 IAB 2/10/99 ARC 8647A	Commission Conference Room 800 Lincoln Way Ames, Iowa	March 5, 1999 11 a.m. (If requested)

**VETERANS AFFAIRS COMMISSION[801]**

Iowa Veterans Home, 10.1, 10.12(4), 10.15(5), 10.16(2), 10.18, 10.19, 10.36, 10.42 IAB 1/27/99 ARC 8636A	Ford Memorial Conference Room Iowa Veterans Home 1301 Summit Marshalltown, Iowa	February 17, 1999 10 a.m.
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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(249A)	(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

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“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 which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

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**NOTICE - AVAILABILITY OF PUBLIC FUNDS**

AGENCY	PROGRAM	SERVICE DELIVERY AREA	ELIGIBLE APPLICANTS	SERVICES	APPLICATION DUE DATE	CONTRACT PERIOD
Public Health	PRIMECARRE Loan Repayment Program	Statewide	Communities in Federally Designated Health Provider Shortage Areas in Iowa	Loan Repayment for eligible primary care practitioners	March 1, 1999	Extends until the service commitment has been completed

Faxed requests will be accepted.  
Request application packet from:

Margaret A. Pitiris, MS  
 PRIMECARRE Program Coordinator  
 Bureau of Rural Health & Primary Care  
 Division of Family and Community Health  
 Iowa Department of Public Health  
 Lucas State Office Building  
 321 East 12<sup>th</sup> Street  
 Des Moines, Iowa 50319-0075  
 Telephone: (515) 281-5069  
 FAX: (515) 242-6384

## ARC 8650A

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 159.5 and 200A.4, the Iowa Department of Agriculture and Land Stewardship gives Notice of Intended Action to adopt Chapter 49, "Bulk Dry Animal Nutrients," Iowa Administrative Code.

These proposed rules regulating bulk dry animal nutrients are intended to comply with the requirements of Iowa Code chapter 200A [1998 Iowa Acts, chapter 1145].

Any interested person may make written suggestions or comments on these proposed rules on or before March 2, 1999. Such written materials should be directed to the Fertilizer Bureau, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319; fax (515)281-4185. Persons who wish to convey their views orally should contact the Fertilizer Bureau at (515)281-8599 or at the Fertilizer Bureau office on the second floor of the Wallace State Office Building.

These rules are intended to implement Iowa Code chapter 200A [1998 Iowa Acts, chapter 1145].

The following new chapter is proposed.

#### CHAPTER 49

#### BULK DRY ANIMAL NUTRIENTS

**21—49.1(200A) Definitions.** When used in this chapter:

"Bulk dry animal nutrient product" or "bulk product" means an animal nutrient product delivered to a purchaser in bulk form to which a label cannot be attached.

"County soil survey" means a publication containing a survey of soils and topography of an Iowa county by the Iowa cooperative soil survey.

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

"Distribute" means to offer for sale, sell, hold out for sale, exchange, barter, supply or furnish a bulk dry animal nutrient product on a commercial basis.

"Distributor" means a person who distributes a bulk dry animal nutrient product.

"Dry animal nutrient product" means any unmanipulated animal manure composed primarily of animal excreta if all of the following apply:

1. The manure contains one or more recognized plant nutrients which are used for their plant nutrient content.
2. The manure promotes plant growth.
3. The manure does not flow perceptibly under pressure.
4. The manure is not capable of being transported through a mechanical pumping device designed to move a liquid.
5. The constituent molecules of the manure do not flow freely among themselves but do show the tendency to separate under stress.

"Guaranteed analysis" means the minimum percentage of plant nutrients claimed and reported to the department pursuant to Iowa Code section 200A.6.

"Label" means any written or printed material which accompanies bulk shipments.

"Official sample" means any sample of a bulk dry animal nutrient taken by the department, according to procedures established by the department consistent with this chapter.

"Percent" or "percentage" means percentage by weight.

"Person" means individual, partnership, association, firm or corporation.

"Purchaser" means a person to whom a dry bulk animal nutrient is distributed.

"Ton" means a net weight of 2,000 pounds avoirdupois.

**21—49.2(200A) License.** Any person who distributes bulk dry animal nutrients in Iowa must first obtain a license from the department and shall pay a \$10 license fee for each place from which bulk dry animal nutrients are distributed. Such license fee shall be paid on July 1 of each year. Application for license shall be made on forms furnished by the department.

**21—49.3(200A) Registration.** Each bulk dry animal nutrient shall be registered before being distributed in this state. The application for registration shall be submitted to the department on forms furnished by the department and shall be accompanied by a label which contains information as provided in Iowa Code section 200A.6, subsection 2, paragraphs "a" and "b."

**21—49.4(200A) Additional plant elements.** Additional plant food nutrients, besides nitrogen, phosphorus and potassium, when mentioned in any form or manner, shall be registered and shall be guaranteed. Guarantees shall be made on the elemental basis. The minimum percentages which will be accepted for registration are as follows:

Element	Percent
Calcium(Ca)	1.00
Magnesium(Mg)	0.50
Sulfur(S)	1.00
Boron(B)	0.02
Chlorine(Cl)	0.10
Cobalt(Co)	0.0005
Copper(Cu)	0.05
Iron(Fe)	0.10
Manganese(Mn)	0.05
Molybdenum(Mo)	0.0005
Sodium(Na)	0.10
Zinc(Zn)	0.05

Guarantees or claims for the above-listed additional plant nutrients are the only ones which will be accepted. Proposed labels and directions for use shall be furnished with the application for registration. Any of the above-listed elements which are guaranteed shall appear in the order listed, immediately following guarantees for nitrogen, phosphorus and potassium. A warning statement is required on the label for any product which contains 0.03 or more boron in a water-soluble form or 0.001 percent or more of molybdenum. The statement shall carry the word "WARNING" in letters large enough to be conspicuous; it shall state the crops for which the bulk dry animal nutrient may be used and it shall state that use of the bulk dry animal nutrient on any other than those recommended may result in serious injury to the crops.

**21—49.5(200A) Distribution statement.** Any bulk dry animal nutrient distributed in this state must be accompanied by a form, furnished by the department, which contains all information required by Iowa Code section 200A.7. The distribution statement must be provided to the purchaser before pos-

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

session of bulk dry animal nutrient is transferred to the purchaser and receipt of the distribution statement must be acknowledged by signature or initials of the purchaser. The distributor shall maintain a copy of the distribution statement for one year.

**21—49.6(200A) Distribution reports.** Any person required to be licensed to distribute bulk dry animal nutrients in this state shall file distribution reports on forms furnished by the department as required by Iowa Code section 200A.8.

**21—49.7(200A) Storage of bulk dry animal nutrients.** A distributor shall not store bulk dry animal nutrients in a manner which pollutes the waters of the state. Storage requirements include the following:

1. Bulk dry animal nutrients shall not be stored in a grassed waterway.

2. Bulk dry animal nutrients shall not be stored on ground with a slope of greater than class "B" as defined in the county soil survey.

3. Bulk dry animal nutrients shall not be stored within 200 feet of a shallow private water supply well or within 100 feet of a deep water supply well. Bulk dry animal nutrients shall not be stored within 500 feet of a surface intake, well-head or cistern of agricultural drainage wells, known sink-holes or major water sources or within 200 feet of water-courses other than major water sources (excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided). For purposes of this rule, terms used are considered to have the same meaning as defined in 567—65.1(455B).

**21—49.8(200A) Manure management plans.** Distributors of bulk dry animal nutrients who are confinement feeding operations must comply with rule 567—65.16(455B) and 567—subrule 65.2(9). For the volume of bulk dry animal nutrients to be sold or removed from control of the distributor, the requirements of rule 567—65.16(455B) and 567—subrule 65.2(9) shall be deemed to have been met when a distributor notifies in writing the Iowa department of natural resources.

This rule is intended to implement Iowa Code chapter 200A.

## ARC 8697A

ECONOMIC DEVELOPMENT,  
IOWA DEPARTMENT OF[261]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 59, "Enterprise Zones," Iowa Administrative Code.

The proposed amendments revise the zone certification process and the definition of "full-time." The current rules require the IDED Board to take action on all zone certification requests. The proposed amendments authorize the De-

partment to review and approve, deny, or defer requests for enterprise zone certification.

The amendments also revise the existing definition of "full-time." The proposed revisions would accommodate businesses that operate on a traditional full-time workweek of 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year (including paid holidays, vacations and other paid leave) and allow flexibility to those businesses that operate on full-time schedules which do not fit the traditional definition.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on March 2, 1999. Interested persons may submit written or oral comments by contacting: Bob Henningsen, Business Development Division, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4725.

A public hearing to receive comments about the proposed amendments will be held on March 2, 1999, at 2 p.m. at the above address in the IDED main conference room. Individuals interested in providing comments at the hearing should contact Bob Henningsen by 4 p.m. on March 1, 1999, to be placed on the hearing agenda.

These amendments are intended to implement 1997 Iowa Code Supplement sections 15E.191 through 15E.196.

The following amendments are proposed.

ITEM 1. Amend rule 261—59.2(15E) by striking the definition of "Board" and amending the definition of "Full-time" as follows:

"Full-time" means the employment of one person:

1. ~~for~~ For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations and other paid leave, or

2. The number of hours or days per week currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

ITEM 2. Amend paragraphs 59.3(3)"b," "c" and "d" as follows:

b. ~~Board Department~~ review. The ~~board department~~ will review requests for enterprise zone certification. The ~~board department~~ may approve, deny, or defer a request for zone certification.

c. Notice of ~~board department~~ action. The department will provide notice to a city or county of the ~~board's department's~~ certification, denial, or deferral of the city's or county's request for designation of an area as an enterprise zone. If an area is certified by the ~~board department~~ as an enterprise zone, the notice will include the date of the zone certification and the date this certification expires.

d. Amendments and decertification. A certified enterprise zone may be amended or decertified upon application of the city or county originally applying for the zone designation. However, an amendment shall not extend the zone's ten-year expiration date, as established when the zone was initially certified by the ~~board department~~. An amendment or decertification request shall include, but is not limited to, the following information: reason(s) for the amendment or decertification and confirmation that the amended zone meets the requirements of the Act and these rules. The ~~board department~~ will review the request and may approve, deny, or defer the proposed amendment or decertification.

## ARC 8644A

## ARC 8690A

EDUCATIONAL EXAMINERS  
BOARD[282]

## 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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The proposed amendments clarify the rule for obtaining a two-year conditional license.

There will be a public hearing on the proposed amendments on March 2, 1999, at 10 a.m., in Conference Room 3 North, Third Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. Persons may present their views at the public hearing orally or in writing. Persons who wish to make oral presentation at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515) 281-5849, prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed amendments through 4:30 p.m., March 3, 1999. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address.

These amendments are intended to implement Iowa Code chapter 272.

The following amendments are proposed.

Amend rule 282—14.16(272) as follows:

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

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

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

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

This license is not renewable.

EDUCATIONAL EXAMINERS  
BOARD[282]

## 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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," and Chapter 15, "Requirements for Special Education Endorsements," Iowa Administrative Code.

The proposed amendments remove the expiration dates for the identified endorsements.

There will be a public hearing on the proposed amendments on March 2, 1999, at 1 p.m., in Conference Room 3 North, Third Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. Persons may present their views at the public hearing orally or in writing. Persons who wish to make oral presentation at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515) 281-5849, prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed amendments through 4:30 p.m., March 3, 1999. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address.

These amendments are intended to implement Iowa Code chapter 272.

The following amendments are proposed.

Amend subrules 14.20(3), 14.20(12), and 15.2(9) as follows:

**14.20(3) Teacher—prekindergarten-kindergarten.**

a. Authorization. The holder of this endorsement is authorized to teach at the prekindergarten-kindergarten level.

b. Program requirements.

(1) Degree—baccalaureate.

(2) Completion of an approved human relations program.

(3) Completion of the professional education core. See 14.19(3).

(4) Content:

1. Human growth and development: Infancy and early childhood, unless completed as part of the professional education core. See 14.19(3).

2. Curriculum development and methodology for young children.

3. Child-family-school-community relationships (community agencies).

4. Guidance of young children three to six years of age.

5. Organization of prekindergarten-kindergarten programs.

6. Child and family nutrition.

7. Language development and learning.

8. Kindergarten: programs and curriculum development.

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

~~NOTE: The issuance of this endorsement will terminate on August 31, 2000. However, the holders of this endorsement will continue to be authorized to perform the services inherent in the endorsement, and they will retain the endorsement on their licenses.~~

**14.20(12)** Teacher—prekindergarten through grade three.

a. Authorization. The holder of this endorsement is authorized to teach children from birth through grade three.

b. Program requirements.

(1) Degree—baccalaureate.

(2) Completion of an approved human relations program.

(3) Completion of the professional education core. See 14.19(3).

(4) Content:

1. Child growth and development with emphasis on cognitive, language, physical, social, and emotional development, both typical and atypical, for infants and toddlers, preprimary, and primary school children (grades one through three), unless combined as part of the professional education core. See 14.19(3) of the licensure rules for the professional core.

2. Historical, philosophical, and social foundations of early childhood education.

3. Developmentally appropriate curriculum with emphasis on integrated multicultural and nonsexist content including language, mathematics, science, social studies, health, safety, nutrition, visual and expressive arts, social skills, higher-thinking skills, and developmentally appropriate methodology, including adaptations for individual needs, for infants and toddlers, preprimary, and primary school children.

4. Characteristics of play and creativity, and their contributions to the cognitive, language, physical, social and emotional development and learning of infants and toddlers, preprimary, and primary school children.

5. Classroom organization and individual interactions to create positive learning environments for infants and toddlers, preprimary, and primary school children based on child development theory emphasizing guidance techniques.

6. Observation and application of developmentally appropriate assessments for infants and toddlers, preprimary, and primary school children recognizing, referring, and making adaptations for children who are at risk or who have exceptional educational needs and talents.

7. Home-school-community relationships and interactions designed to promote and support parent, family and community involvement, and interagency collaboration.

8. Family systems, cultural diversity, and factors which place families at risk.

9. Child and family health and nutrition.

10. Advocacy, legislation, and public policy as they affect children and families.

11. Administration of child care programs to include staff and program development and supervision and evaluation of support staff.

12. Pre-student teaching field experience with three age levels in infant and toddler, preprimary and primary programs, with no less than 100 clock hours, and in different settings, such as rural and urban, socioeconomic status, cultural diversity, program types, and program sponsorship.

(5) Student teaching experiences with two different age levels, one before kindergarten and one from kindergarten through grade three.

~~NOTE: The issuance of this endorsement will terminate on August 31, 2000. However, the holders of this endorsement will continue to be authorized to perform the services inher-~~

~~ent in the endorsement, and they will retain the endorsement on their licenses.~~

**15.2(9)** Early childhood—special education.

a. A course of a general survey nature in the area of exceptional children.

b. Coursework specifically focused on special education children from conception to age three which should include:

(1) Development.

(2) Screening, assessment, and evaluation.

(3) Service delivery models.

(4) Curriculum, including behavior management.

(5) Working with adult learners.

(6) Pre-student teaching field experience in home instruction programs.

c. Coursework specifically focused on special education children from age three to six which should include:

(1) Development.

(2) Screening, assessment, and evaluation.

(3) Service delivery models.

(4) Curriculum, including behavior and classroom management.

(5) Pre-student teaching field experience to include severely or multiply handicapped.

d. A course which focuses on specific strategies for working with adult learners and family systems.

e. A course specific to communication development and information on alternative communication systems for special education children.

f. A course specific to methods and materials for working with young children with severe/profound or multiple disabilities to include medical issues, exercises in problem solving specific to adaptations of materials, equipment and programs, and utilization of human resources.

g. A course which focuses on working with others which explores in depth the myriad of related service agencies at the federal, state, and local levels which may be needed to appropriately serve young children and their families who may be categorized as medically fragile, disadvantaged, handicapped, in need of respite services, or from single-parent families.

h. A course in cardiopulmonary resuscitation and first-aid training.

i. Adequate preparation in methods and techniques for working with the medically fragile and technologically dependent children.

j. A student teaching experience in an early childhood special education program.

~~NOTE: The issuance of this endorsement will terminate on August 31, 2000. However, the holders of this endorsement will continue to be authorized to perform the services inherent in the endorsement, and they will retain the endorsement on their licenses.~~

## ARC 8656A

## 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 239B.4, the Department of Human Services proposes to amend Chapter 41, “Granting Assistance,” and Chapter 47, “Pilot Diversion and Self-Sufficiency Grants Programs,” appearing in the Iowa Administrative Code.

The rules in Chapter 47 define and structure the Department of Human Services Pilot Diversion Initiatives. The General Assembly in 1998 Iowa Acts, chapter 1218, section 5, subsection 3, paragraph “e,” appropriated \$2,700,000 to continue the pilot initiatives of providing incentives to assist families who meet income eligibility requirements for the Family Investment Program (FIP) in obtaining or retaining employment, to assist participant families in overcoming barriers to obtaining employment, and to assist families in stabilizing employment and in reducing the likelihood of the families’ returning to the Family Investment Program.

There have been three pilot initiatives in operation since October of 1997 as follows:

1. The Pilot FIP-Applicant Diversion Program provides a voluntary alternative to ongoing FIP cash assistance to families by providing immediate, short-term assistance, thereby postponing or preventing the need to apply for FIP. This program is currently operating in 16 counties in the following 9 project areas: Woodbury; Pottawattamie; Linn and Jones; Story; Cass; Johnson; Des Moines; Buena Vista, Ida, Sac, and Crawford; and Appanoose, Lucas, Davis and Monroe. \$750,000 of the appropriation has been allocated to this program.

2. The Family Self-Sufficiency Grants Program is available statewide for payment to families or on behalf of specific families as a part of the PROMISE JOBS program. Funding is allocated to each of the 15 PROMISE JOBS service delivery regions, based on a formula that uses the number of FIP cases in the region. Family self-sufficiency grants are authorized for removing an identified barrier to self-sufficiency for a family when it can be reasonably anticipated that the assistance will enable participant families to retain employment or obtain employment in the two full calendar months following the date of payment authorization. The grants are not to duplicate assistance available under regular PROMISE JOBS policies but are to address barriers to self-sufficiency by meeting expenses that are not approvable under regular PROMISE JOBS policies. One million dollars of the appropriation has been allocated to this program.

3. Community self-sufficiency grants are awarded to establish pilot projects to identify and remove systemic or community barriers to self-sufficiency, helping multiple PROMISE JOBS participant families to obtain or retain employment. This program is currently operating in Woodbury County. A request has gone out for other proposals. \$400,000 of the appropriation has been allocated to this program.

These amendments add a fourth initiative, the Pilot Post-FIP Diversion Program to help those employed FIP families after they leave FIP to maintain employment, get better employment, and become stabilized in their new way of life. This assistance may be in the form of support services or may be cash value assistance used to meet some employment-related, short-term immediate need or barrier.

Post-FIP Diversion assistance is only available for 12 months after the effective date of FIP cancellation to families whose income does not exceed a maximum of 200 percent of the federal poverty guideline. Receipt of Post-FIP Diversion assistance having a cash value to the family shall result in a period of ineligibility for FIP for that family. County Department offices are responsible for overall project administration but they may delegate assessment and eligibility determination, authorization of support services and cash assistance, provision of services, local fiscal agent authorization to make payments or case plan management to a community entity.

In addition to adding the Pilot Post-FIP Diversion Program to the rules, these amendments make the following changes to clarify the diversion programs: definitions are added and amended; renewal criteria are added; names are changed to better identify the programs; program descriptions are clarified; certain reporting requirements are removed; and pilot project’s options and requirements are specified.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before March 3, 1999.

Oral presentations may be made by persons appearing at the following meetings. Written comments will also be accepted at these times.

Cedar Rapids - March 5, 1999 Cedar Rapids Regional Office Iowa Building - Suite 600 Sixth Floor Conference Room 411 Third St. S.E. Cedar Rapids, Iowa 52401	10 a.m.
Council Bluffs - March 3, 1999 Council Bluffs Regional Office Administrative Conference Room 417 E. Kaneshville Boulevard Council Bluffs, Iowa 51501	9 a.m.
Davenport - March 4, 1999 Davenport Area Office Bicentennial Building - Fifth Floor Conference Room 3 428 Western Davenport, Iowa 52801	10 a.m.
Des Moines - March 4, 1999 Des Moines Regional Office City View Plaza Conference Room 104 1200 University Des Moines, Iowa 50314	10 a.m.
Mason City - March 3, 1999 Mason City Area Office Mohawk Square, Liberty Room 22 North Georgia Avenue Mason City, Iowa 50401	10 a.m.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Ottumwa - March 3, 1999 10 a.m.  
 Ottumwa Area Office  
 Conference Room 2  
 120 East Main  
 Ottumwa, Iowa 52501

Sioux City - March 5, 1999 1:30 p.m.  
 Sioux City Regional Office  
 Fifth Floor  
 520 Nebraska St.  
 Sioux City, Iowa 51101

Waterloo - March 3, 1999 10 a.m.  
 Waterloo Regional Office  
 Pinecrest Office Building  
 Conference Room 220  
 1407 Independence Avenue  
 Waterloo, Iowa 50703

Any persons who intend to attend a public hearing and have special requirements such as hearing or vision impairments should contact the Bureau of Policy Analysis at (515)281-8440 and advise of special needs.

These amendments are intended to implement Iowa Code section 239B.11.

The following amendments are proposed.

ITEM 1. Amend subrule 41.25(9) as follows:

**41.25(9)** Pilot diversion ~~program programs~~. Assistance shall not be approved when an assistance unit is subject to ~~the~~ a period of ineligibility as described at 441—~~subrule 47.5(3)~~ *Chapter 47*.

ITEM 2. Amend the title of **441—Chapter 47** as follows:

**PILOT DIVERSION AND SELF-SUFFICIENCY  
 GRANTS PROGRAMS INITIATIVES**

ITEM 3. Amend **441—Chapter 47, Preamble**, as follows:

PREAMBLE

This chapter describes the department of human services pilot diversion ~~and self-sufficiency grants programs initiatives~~. The purpose of these pilot programs is to determine the potential benefits and cost savings of providing immediate, short-term assistance to families in lieu of ongoing assistance under the family investment program (FIP) (*applicant diversion*), or to meet needs of FIP participants not currently met by existing PROMISE JOBS services (self-sufficiency grants), *or to provide supportive services and short-term cash assistance to families in order to prevent the need to return to FIP (post-FIP diversion)*. Assistance under this chapter is intended to enable families to become or remain self-sufficient by removing barriers to obtaining or retaining employment.

ITEM 4. Amend **441—Chapter 47, Division I, Title**, as follows:

PILOT FIP-APPLICANT DIVERSION PROGRAM

ITEM 5. Amend **441—Chapter 47, Division I, Preamble**, as follows:

PREAMBLE

The pilot *FIP-applicant* diversion program provides a voluntary alternative to ongoing cash assistance to families through the family investment program (FIP) as provided under 441—Chapters 40, 41, and 42. The purpose of the pi-

lot *FIP-applicant* diversion program is to provide immediate, short-term assistance to a family in lieu of ongoing FIP cash assistance. Assistance under this division may postpone or prevent the need to apply for FIP.

ITEM 6. Amend rule **441—47.1(239B)** as follows:

Amend the definitions of “Approved pilot project,” “Candidate,” “Cash value,” “Family,” “Immediate, short-term assistance,” “Pilot proposal,” “Request for application,” and “Written funding agreement” as follows:

“Approved pilot project” means a pilot proposal meeting the conditions in the request for application *or request for renewal* that was reviewed, approved and funded by the division administrator. Each approved pilot project shall have a local plan, as described at rule 441—47.6(239B), approved by the division administrator. The project shall be limited to families in a specific geographic area detailed in the local plan.

“Candidate” means anyone expressing an interest in the pilot *FIP-applicant* diversion program, or identified by a county office having an approved pilot project as likely to meet the criteria for participating in the project, and who is working with the county office to enroll in the program.

“Cash value” means *FIP-applicant* diversion assistance having direct value to the participant, through cash payment, voucher, or vendor payment. Examples of assistance without direct cash value are mentoring and case management.

“Family” means “assistance unit” as defined at rule 441—40.21(239B).

“Immediate, short-term assistance” means assistance provided under this division shall be authorized in less time than it would take to process and issue FIP under normal processing standards described at rule 441—40.25(239B), and that it shall not occur on a regular or frequent basis. Participants may receive assistance under this division more than once under the duration of the pilot, but shall not receive assistance so often as to be considered receiving ongoing assistance as under FIP. Time frames and frequency of assistance shall be detailed in the local plan.

“Pilot proposal” means the project description submitted by the county office prepared within the parameters of a request for application *or request for renewal* issued by the division administrator. ~~Pilot proposals shall be reviewed by a panel of FIP, food stamp, Medicaid, services, data management, child support, workforce development, and county general relief staff for completeness and feasibility of the project. The panel shall make recommendations for approval of pilot projects to the division administrator. The division administrator shall review, approve, modify and approve, or deny the proposal.~~

“Request for application” means a request issued by the division administrator to county offices for proposals to implement a pilot project under this division. The request shall provide background information about the purpose, authorization and funding for the pilot *FIP-applicant* diversion program, as well as general parameters, specific criteria and time frames for submitting a proposal.

“Written funding agreement” means that agreement between a county office having an approved pilot project and a fiscal agent. The agreement shall specify ~~the amount of funds the fiscal agent will receive as well as the responsibilities of both parties~~ *each party to the agreement as well as indicate the amount of FIP-applicant diversion funds allocated to the approved pilot project*. The written funding agreement shall be signed by authorized representatives of the department and the fiscal agent.



## HUMAN SERVICES DEPARTMENT[441](cont'd)

Adopt the following new definitions in alphabetical order:

“Request for renewal” means a request issued by the division administrator to county offices for proposals to renew an approved pilot project under this division. The request shall provide general parameters, specific criteria and time frames for submitting a renewal proposal.

“Support services” means FIP-applicant diversion assistance having no direct cash value for the participant. Services include, but are not limited to, case management, mentoring, job coaching, skill building, and intervention.

ITEM 7. Amend rule 441—47.2(239B) as follows:

~~441—47.2(239B)~~ Availability of program. The pilot FIP-applicant diversion program shall be available only in those counties or other specified areas of the state having an approved pilot project as defined at rule 441—47.1(239B). ~~Assistance~~ FIP-applicant diversion assistance shall be provided to those families determined to be likely candidates for success in a the program, as determined by the local project staff.

ITEM 8. Amend rule 441—47.3(239B) as follows:

~~441—47.3(239B)~~ General criteria. Pilot FIP-applicant diversion program candidates shall be otherwise eligible for FIP, as set forth at subrule 47.5(1). Participation in the pilot FIP-applicant diversion program is voluntary and shall be based on an informed decision by the family. Further, candidates must have identifiable barriers to obtaining or retaining employment that can be substantially addressed through the immediate, short-term assistance offered by this division, and according to the local plan.

ITEM 9. Amend subrule 47.4(4) as follows:

~~47.4(4)~~ Supplanting. ~~Diversion~~ FIP-applicant diversion funds shall not be used for services already available through local resources at no cost to the family or to the department. *In counties that operate both pilot FIP-applicant and post-FIP diversion projects, cash value assistance shall be paid from the post-FIP diversion funds in the initial 12 months following the effective date of FIP cancellation, if the pilot post-FIP diversion project permits cash value assistance payments, and the candidate is otherwise eligible for post-FIP diversion assistance.*

ITEM 10. Amend rule 441—47.5(239B) as follows:

Amend subrule 47.5(1) as follows:

~~47.5(1)~~ Otherwise FIP eligible. *Candidates cannot receive both FIP and assistance under this division in the same calendar month. Candidates for the pilot FIP-applicant diversion program must meet the following FIP eligibility criteria and any other FIP eligibility criteria found in 441—Chapters 40, 41, and 42 included in the local plan of an approved pilot project:*

a. Requirements related to a child's age, deprivation and living with specified relative as described at rules 441—41.21(239B), 441—41.22(239B) and 441—42.22(239B).

b. Social security number requirements described at 441—subrule 41.22(13).

c. Residency requirements described at 441—subrule 41.23(1).

d. Citizenship and alien requirements described at 441—subrules 41.23(4) and 41.23(5).

~~e. Resource requirements described at rule 441—41.26(239), particularly the limits for FIP applicants described at 441—paragraph 41.26(1)“e.”~~

~~f.e.~~ Income requirements described at rule 441—41.27(239B). Candidates must pass the 185 percent income test to be considered. Pilot projects may incorporate more restrictive criteria in their local plans, consistent with other income tests for FIP at rule 441—41.27(239B).

~~g.f.~~ Family members cannot be in a the six-month period of ineligibility applied with a subsequent limited benefit period plan as described at 441—subrule 41.24(8).

~~g.~~ Family members in the indefinite period of ineligibility applied with the limited benefit plan as described at 441—subrule 41.24(8) may receive support services only.

Amend subrule 47.5(2) as follows:

~~47.5(2)~~ Offer to participate declined. Candidates for the pilot FIP-applicant diversion program shall not be denied FIP on the basis that they do not want to participate in the pilot program.

Amend subrule 47.5(3), second unnumbered paragraph, as follows:

The period of ineligibility shall include the seven-day wait period as described at rule 441—40.26(239B), when the household applies at least seven days prior to the end of the period of ineligibility. However, there is no eligibility before the period ends, regardless of application date. If the household does not file an application until after the period of ineligibility, the requirements for effective date of eligibility requirements at 441—40.26(239B) applies apply.

ITEM 11. Amend rule 441—47.8(239B) as follows:

Amend subrule 47.8(1) as follows:

~~47.8(1)~~ Funded amounts. The division administrator shall determine the amounts allocated to each approved pilot project based on available funding and the amount requested by each project. *The division administrator may reallocate funds between approved pilot projects as necessary to meet the objectives of the program.*

Amend subrule 47.8(4), paragraph “a,” as follows:

a. The approved pilot project, in accordance with the local plan, shall notify the fiscal agent when diversion assistance payments are approved. This notification shall include a copy of the Authorization for the Department to Release Information, Form 470-2115, signed by the pilot FIP-applicant diversion participant. It shall also include the participant's name, mailing address and authorized amount of payment.

ITEM 12. Amend rule 441—47.9(239B), numbered paragraph “2,” as follows:

2. The project is at the conclusion of the authorized approval period, unless a ~~new pilot proposal application request for renewal~~ has been submitted and approved.

ITEM 13. Amend subrule 47.10(3) as follows:

~~47.10(3)~~ Reports.

~~a. The department shall complete a report to the legislature about the potential benefits for expanding the program. Pilot projects shall submit an interim evaluation report to the division administrator when directed, in preparation for making a recommendation to the legislature. This interim report shall include a description of actual and perceived advantages or benefits of the pilot diversion program to date, to both families and staff.~~

~~b.a.~~ County offices having approved pilot projects shall provide other reports as requested by the division administrator in a manner, format and frequency specified by the administrator.

~~e.b.~~ County offices shall be responsible for maintaining records sufficient for audit and tracking purposes.



## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 14. Amend 441—Chapter 47 by adopting the following new rule 441—47.11(239B):

**441—47.11(239B) Renewal of existing approved pilot projects.** Contingent on continued authorization and funding, the division administrator may renew existing approved pilot projects. Renewal proposals shall be prepared and submitted within the parameters set forth in the request for renewal issued by the division administrator.

ITEM 15. Amend 441—Chapter 47, Division I, implementation clause, as follows:

These rules are intended to implement Iowa Code Supplement section 239B.11 and 1997 Iowa Acts, chapter 208, section 3, subsection 3, paragraph “f,” subparagraph (1).

ITEM 16. Amend 441—Chapter 47, Division II, Preamble, as follows:

## PREAMBLE

These rules define and structure the ~~department of human services~~ family self-sufficiency grants program *provided through the PROMISE JOBS service delivery regions*. The purpose of the program is to provide immediate and short-term assistance to a ~~FIP PROMISE JOBS~~ participant *families, if it is reasonable to believe that assistance will enable the family to move to self-sufficiency by removing which will remove barriers related to obtaining or retaining employment. If funds were available to remove Removing the barrier barriers to self-sufficiency, a family might reduce the length of time of dependency a family is dependent on the family investment program (FIP).* Family self-sufficiency grants shall be available for payment to families or on behalf of specific families. ~~The self-sufficiency grants to families shall be part of the PROMISE JOBS program.~~

ITEM 17. Amend rule 441—47.21(239B) as follows:

Amend the definitions of “Division administrator,” “Family,” “Family investment program,” “Iowa workforce development (IWD) division administrator,” and “Participant” as follows:

“~~Division~~ *Department* division administrator” means the administrator of the *department of human services* division of economic assistance, or *the administrator’s* designee.

“Family” means “assistance unit” as defined at 441—40.21(239B).

“Family investment program” or “FIP” means the ~~program in Iowa that is a cash grant program designed to sustain families as provided by 441—Chapter Chapters 40, 41, and 42, designed to sustain Iowa families.~~

“Iowa workforce development (IWD) division administrator” means the administrator of the ~~Iowa~~ *department of workforce development* ~~development’s~~ division of workforce development center administration, or *the administrator’s* designee.

“Participant” means anyone receiving assistance under this ~~chapter~~ *division*.

Adopt the following new definitions in alphabetical order:

“Department of workforce development” means the agency that develops and administers employment, placement and training services in Iowa, often referred to as Iowa workforce development, or IWD.

“PROMISE JOBS participant” means any person receiving services through PROMISE JOBS. A PROMISE JOBS participant must be a member of an eligible FIP household.

“Promoting independence and self-sufficiency through employment job opportunities and basic skills (PROMISE

JOBS) programs” means the department’s work and training program as described in 441—Chapter 93, Division II.

ITEM 18. Amend subrule 47.26(1), paragraphs “b,” “c,” “e,” and “g,” as follows:

b. How ~~determination~~ *determinations* will be made that the service or assistance requested meets the program’s objective of helping the family retain employment or obtain employment.

c. How ~~determination~~ *determinations* will be made that the proposed family self-sufficiency grant is not supplanting as required at subrule 47.24(5).

e. Verification procedures or standards for documenting barriers, using written notification policies found at rule 441—93.137(~~249C~~ 239B).

g. Verification procedures or standards for documenting employment attempts if not already tracked by PROMISE JOBS procedures, using policies found at 441—subrules 93.135(3) and 93.135(4) and at rule 441—93.137(~~249C~~ 239B).

ITEM 19. Amend 441—Chapter 47, Division II, implementation clause, as follows:

These rules are intended to implement Iowa Code Supplement section 239B.11 and 1997 Iowa Acts, chapter 208, section 3, subsection 3, paragraph “f,” subparagraph (1).

ITEM 20. Amend 441—Chapter 47, Division III, Title and Preamble, as follows:

## DIVISION III

## PILOT COMMUNITY SELF-SUFFICIENCY GRANTS PROGRAM

## PREAMBLE

These rules define and structure the ~~department of human services~~ *pilot* community self-sufficiency grants *pilot* program. ~~The purpose of this pilot program is to provide assistance to a FIP participant family, if it is reasonable to believe that the assistance will enable the family to move to self-sufficiency by removing systemic or communitywide or community-specific barriers related to obtaining or retaining employment. Community self-sufficiency grants shall establish pilot projects to identify and remove systemic or community barriers to self-sufficiency for targeted PROMISE JOBS participants in a geographic area. If the barrier Removing barriers to self-sufficiency were removed, a family might reduce the length of time of dependency a family is dependent on the family investment program (FIP).~~

~~Community self-sufficiency grants shall establish a limited number of pilot projects to identify and remove systemic or community barriers to self-sufficiency for targeted PROMISE JOBS participants in a geographic area. County department offices and PROMISE JOBS service delivery regions must apply jointly. Either entity can administer pilot projects; however, the department and PROMISE JOBS may work in conjunction with other local resources. This program gives local projects flexibility to better address systemic or community barriers to self-sufficiency for FIP PROMISE JOBS participants.~~

ITEM 21. Amend rule 441—47.41(~~239B~~) as follows:

Amend the definitions of “Department division administrator,” “Family,” “Family investment program,” “Iowa workforce development (IWD) division administrator,” “Pilot proposal,” and “Request for application” as follows:

“Department division administrator” means the administrator of the *department of human services* division of economic assistance, or *the administrator’s* designee.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

"Family" means "assistance unit" as defined at rule 441—40.21(239B).

"Family investment program" or "FIP" means the program in Iowa that is a cash grant program designed to sustain families as provided by 441—Chapter Chapters 40, 41, and 42, designed to sustain Iowa families.

"Iowa workforce development (IWD) division administrator" means the administrator of the Iowa department of workforce development development's division of workforce development center administration, or the administrator's designee.

"Pilot proposal" means the community self-sufficiency grants project description submitted jointly by the department county office or offices and the PROMISE JOBS service delivery region prepared within the parameters of a request for application issued by the department division administrator. The pilot proposal shall be reviewed by a panel of FIP, food stamp, Medicaid, services, data management, child support and PROMISE JOBS staff for completeness and feasibility of the project. Upon recommendation of this panel, the proposals will be referred to the department division administrator and the IWD division administrator. The department and IWD division administrators may shall review, approve, modify and approve, or deny the proposal for a community self-sufficiency grant.

"Request for application" means a request issued by the department division administrator to county offices and PROMISE JOBS service delivery regions for proposals to implement a pilot project under this division. The request shall provide background information about the purpose, authorization and funding for the pilot diversion community self-sufficiency grants program, as well as general parameters, specific criteria and time frames for submitting a proposal.

Adopt the following new definitions in alphabetical order:

"Department of workforce development" means the agency that develops and administers employment, placement and training services in Iowa; often referred to as Iowa workforce development, or IWD.

"PROMISE JOBS participant" means any person receiving services through PROMISE JOBS. A PROMISE JOBS participant must be a member of an eligible FIP household.

"Promoting independence and self-sufficiency through employment job opportunities and basic skills (PROMISE JOBS) programs" means the department's training program as described in 441—Chapter 93, Division II.

"Request for renewal" means a request issued by the department division administrator to county and PROMISE JOBS offices for proposals to renew an approved pilot project under this division. The request shall provide general parameters, specific criteria, and time frames for submitting a renewal proposal.

"Systemic or community barriers" means obstacles to obtaining or retaining employment which affect multiple families. These barriers result from conditions in the geographic area served by the approved pilot project.

ITEM 22. Amend rule 441—47.47(239B), introductory paragraph, as follows:

**441—47.47(239B) Termination of community self-sufficiency grant pilot projects.** The department division administrator, in conjunction with IWD, may immediately terminate an approved pilot project:

ITEM 23. Amend subrule 47.48(2) as follows:

**47.48(2) Reports.** The department shall report to the legislature about the potential benefits for expanding the program. Community self-sufficiency grant pilot projects shall submit an interim evaluation report to the division of economic assistance when directed, in preparation for making a recommendation to the legislature. This interim report shall include a description of actual and perceived advantages or benefits of the community self-sufficiency grant to date, to both families and staff.

a. PROMISE JOBS offices having approved pilot projects shall provide reports as requested by the department and IWD division administrators in a manner, format and frequency specified by the administrators.

b. PROMISE JOBS offices shall be responsible for maintaining records sufficient for audit and tracking purposes.

ITEM 24. Amend 441—Chapter 47 by adopting the following new rule:

**441—47.49(239B) Renewal of existing approved pilot projects.** Contingent on continued authorization and funding, the department division administrator may renew existing approved pilot projects. Renewal proposals shall be prepared and submitted within the parameters set forth in the request for renewal issued by the department division administrator.

ITEM 25. Amend 441—Chapter 47, Division III, implementation clause, as follows:

These rules are intended to implement Iowa Code Supplement section 239B.11 and 1997 Iowa Acts, chapter 208, section 3, subsection 3, paragraph "f," subparagraph (1).

ITEM 26. Reserve rules 441—47.50 to 47.60 as part of Division III.

ITEM 27. Amend 441—Chapter 47 by adopting the following new Division IV:

## DIVISION IV

## PILOT POST-FIP DIVERSION PROGRAM

## PREAMBLE

These rules define and structure the department of human services pilot post-family investment program (FIP) diversion program. The purpose of this pilot program is to provide assistance to stabilize employment of families leaving FIP and reduce the likelihood of the families' returning to FIP. This assistance may be in the form of support services to help maintain or improve employment status or may be cash value assistance used to meet some employment-related, short-term immediate need or barrier. Post-FIP diversion assistance shall be provided (begin and end) no later than 12 months from the effective date of the FIP cancellation. The department shall establish post-FIP diversion programs in a limited number of pilot projects. The program gives local projects considerable flexibility and authority to provide a range of assistance to help families stay off FIP.

**441—47.61(239B) Definitions.**

"Approved pilot project" means a pilot proposal meeting the conditions in the request for application or request for renewal that was reviewed, approved and funded by the division administrator. Each approved pilot project shall have a local plan as described at rule 441—47.67(239B) approved by the division administrator. The project shall be limited to families in a specific geographic area detailed in the local plan. At least one approved pilot project shall demonstrate

## HUMAN SERVICES DEPARTMENT[441](cont'd)

substantial involvement by one or more community entities in developing, implementing and operating the project.

“Candidate” means anyone meeting the general criteria specified at rule 441—47.65(239B) and identified during the assessment process described at subrule 47.65(1) as likely to benefit from post-FIP diversion assistance or anyone expressing an interest in the pilot post-FIP diversion program.

“Cash value” means post-FIP diversion assistance having direct value to the participant, through cash payment, voucher or vendor payment. Examples of assistance without direct cash value are mentoring and case management.

“Community entity” means any local public, private or nonprofit organization, agency, group or business that works in the employment, training or economic development arenas (including financial resources agencies) that may be involved in the development, implementation or operation of a pilot proposal.

“County office” means the county office of the department of human services.

“Department” means the Iowa department of human services.

“Director” means the director of the department of human services.

“Division administrator” means the administrator of the department of human services division of economic assistance, or the administrator’s designee.

“Family” means “assistance unit” as defined at rule 441—40.21(239B).

“Family investment program” or “FIP” means the cash grant program provided by 441—Chapters 40, 41, and 42, designed to sustain Iowa families.

“Fiscal agent” means that entity provided funds under an agreement with a county office having an approved pilot project. The fiscal agent shall, as provided by the approved pilot project and local plan, issue payments for assistance under this division and maintain accounting records as specified by the agreement. Fiscal agents shall be used only if an approved pilot project provides that payment for operating the project, including, but not limited to, payment of post-FIP diversion assistance, is done at the local level.

“Human services area administrator” means the person responsible for delivery of income maintenance and social services programs for a county or multicounty area.

“Local plan” means the written policies and procedures and other components described in rule 441—47.67(239B) for administering an approved pilot project.

“Participant” means anyone receiving assistance under this division.

“Pilot proposal” means the project description prepared and submitted within the parameters of a request for application or request for renewal issued by the division administrator. The division administrator shall review, approve, modify and approve, or deny the proposal.

“Post-FIP diversion assistance” means any type of assistance provided under this division as described at rule 441—47.66(239B).

“Project service provider” means any county office or community entity that directly provides support services as defined in this division for participants in a pilot post-FIP diversion project.

“Request for application” means a request issued by the division administrator to county offices for proposals to implement a pilot project under this division. The request shall provide background information about the purpose, authorization and funding for the pilot post-FIP diversion program, as well as general parameters, specific criteria and time frames for submitting a proposal.

“Request for renewal” means a request issued by the division administrator to county offices for proposals to renew an approved pilot project under this division. The request shall provide general parameters, specific criteria and time frames for submitting a renewal proposal.

“Support services” means post-FIP diversion assistance having no direct cash value for the participant. Services include, but are not limited to, case management, mentoring, job coaching, skill building and intervention.

“Temporary assistance for needy families” or “TANF” means the program for granting benefits to eligible groups under Title IV-A of the federal Social Security Act as amended by Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This replaced the aid to families with dependent children program.

“Written funding agreement” means that agreement between a county office having an approved pilot project and a fiscal agent, and may include one or more community entities involved in the operation of the project. The agreement shall specify the responsibilities of each party to the agreement as well as indicate the amount of post-FIP diversion funds allocated to the approved pilot project. The written funding agreement shall be signed by authorized representatives of the department, the fiscal agent, and any community entity that may be a party to the agreement.

**441—47.62(239B) Submitting proposals.** Only county offices shall submit pilot proposals. Proposals demonstrating substantial involvement by one or more community entities in the development, implementation or operation of the pilot project will be given a higher preference.

**441—47.63(239B) Project administration.** The county office shall be responsible for overall project administration. Pilot proposals and local plans shall specify all community entities involved in the operation of the project and the functions and responsibilities of each. The county office may delegate, by contract or other written agreement, any or all of the following functions, completely or in part, to a community entity:

1. Assessment and eligibility determination.
2. Authorization of support services and cash assistance.
3. Provision of support services.
4. Local fiscal agent authorization to make payments.
5. Case plan management.

**441—47.64(239B) Availability of program.** The pilot post-FIP diversion program shall be available only in those counties or other specified areas of the state having an approved pilot project as defined at rule 441—47.61(239B). Post-FIP diversion assistance shall be provided to those families determined likely to be candidates for success in the program as determined by the criteria and procedures set out in the local plan.

**441—47.65(239B) General criteria.** The following criteria apply to all pilot post-FIP diversion program candidates. Participation in the pilot post-FIP diversion program is voluntary and shall be based on an informed decision by the family.

**47.65(1) Assessment criteria.**

a. Candidate households must have received FIP within the immediate 12 months before being offered or requesting post-FIP diversion assistance.

b. Pilot post-FIP diversion projects shall assess households with earned income immediately upon leaving FIP and may, as an option, assess households anytime within the 12

## HUMAN SERVICES DEPARTMENT[441](cont'd)

months immediately following the effective date of FIP cancellation.

c. Projects shall target households deemed to be at risk of losing employment or returning to FIP due to insufficient employment.

d. Post-FIP assistance shall be available only during the 12 months immediately following the effective date of FIP cancellation.

**47.65(2) Barriers.** Candidates must have barriers to retaining or obtaining more reliable or sustainable employment that can be substantially addressed by the assistance available under this division within the 12 months immediately following the effective date of FIP cancellation. Each project shall identify the types of barriers the project is intended to address in the pilot proposal and local plan.

**47.65(3) Employment status.** Either some adult member of the candidate household must be currently employed; or some adult member of the candidate household must have lost a job while participating in the pilot post-FIP diversion program.

**47.65(4) FIP-related eligibility parameters.** Candidates for the pilot post-FIP diversion program must meet the following eligibility criteria, and any other FIP-related eligibility criteria included in the local plan of an approved pilot project:

a. Requirements related to a child's age, deprivation and living with specified relative as described at rules 441—41.21(239B), 441—41.22(239B), and 441—42.22(239B).

b. Social security number requirements described at 441—subrule 41.22(13).

c. Residency requirements described at 441—subrule 41.23(1).

d. Citizenship and alien requirements described at 441—subrules 41.23(4) and 41.23(5).

e. Family members cannot be in the six-month period of ineligibility applied with a subsequent limited benefit plan as described at 441—subrule 41.24(8).

f. Family members in the indefinite period of ineligibility applied with the limited benefit plan as described at 441—subrule 41.24(8) may receive support services only.

**47.65(5) Income eligibility.** Household income must not exceed 200 percent of the federal poverty guideline for the household size to be considered. Pilot projects may incorporate more restrictive income criteria in their local plans, consistent with other income tests for FIP at rule 441—41.27(239B). Income exemptions include those specified at rule 441—41.27(239B).

**47.65(6) Period of FIP ineligibility.** Receipt of post-FIP diversion assistance having a cash value to the family shall result in a period of ineligibility for FIP for that family, including new members moving into the household. Local projects shall have flexibility in determining the period of ineligibility except that the period shall not exceed the number of calendar days arrived at by using the following formula:

$$\text{diversion amount} + \frac{(\text{payment standard for the family size})}{30} \times 2$$

For example, if the diversion assistance amount is \$500, and the payment standard for the family of three is \$426, the period of ineligibility cannot exceed 70 days.

$$\$500 + \frac{(\$426)}{30} \times 2$$

The period of ineligibility shall include the seven-day waiting period as described at rule 441—40.26(239B), when the household applies for FIP at least seven days prior to the

end of the period of ineligibility. However, there is no eligibility before the period ends, regardless of application date. If the household does not file an application until after the period of ineligibility, the requirements for effective date of eligibility requirements at 441—40.26(239B) apply. The specific period of ineligibility administered by each pilot shall be set forth in the local plan. Periods of ineligibility are applicable statewide, not limited to the local project area providing the assistance. The period of ineligibility shall not apply to diversion family members moving to other families.

**47.65(7) Exempt as income.** Post-FIP diversion assistance shall be exempt as income in determining FIP eligibility as described at 441—paragraph 41.27(7)“ai.”

**47.65(8) Exempt from TANF provisions.** Unless determined otherwise by the U.S. Department of Health and Human Services, receipt of post-FIP diversion assistance shall not subject the family to the following TANF restrictions:

a. The five-year (60-month) lifetime limit.

b. Work participation rates.

c. Cooperation with child support recovery.

**47.65(9) Offer to participate declined.** Candidates for the pilot post-FIP diversion program shall not be denied FIP or any other services provided by the department on the basis that they do not want to participate in the pilot program.

**441—47.66(239B) Assistance available.** Post-FIP diversion assistance shall assist candidate families to stabilize or enhance their employment situation, or help them obtain more reliable or sustainable employment to reduce or eliminate “at risk” factors which threaten the return of the family to FIP. This assistance should enable participants to increase wages, get promotions and acquire other employment benefits.

**47.66(1) Types of assistance.**

a. Support services.

(1) These services include, but are not limited to, skill building, case management, mentoring, job coaching, economic support and reemployment services. Specific types of assistance administered by each pilot shall be set forth in the local plans.

(2) Families in the indefinite period of ineligibility applied with the limited benefit plan as described at 441—subrule 41.24(8) may receive these support services.

(3) Families in the six-month period of ineligibility applied with the subsequent limited benefit plan as described at 441—subrule 41.24(8) shall not receive support services.

b. Short-term cash value assistance.

(1) Cash value assistance may be granted through any or all of the following: cash payments, vendor payments, voucher payments. Specific types of assistance administered by each pilot shall be set forth in the local plans. Cash value assistance shall require a period of ineligibility for FIP as described at subrule 47.65(6).

(2) Families in the limited benefit plan as described at 441—subrule 41.24(8) shall not receive cash value assistance.

**47.66(2) Maximum value.** For assistance having a cash value to the family, each pilot shall establish a maximum amount each family may receive during the 12 months following the effective date of FIP cancellation. Specific maximum values of assistance administered by each pilot shall be set forth in the pilot proposals and local plans.

**47.66(3) Frequency and duration.** Families may be candidates more than once during the 12-month period following the effective date of FIP cancellation; however, this program shall not be considered ongoing assistance. The frequency and duration of assistance for each approved pilot

## HUMAN SERVICES DEPARTMENT[441](cont'd)

project shall be set forth in the local plans. Assistance shall last no longer than 12 months from the effective date of FIP cancellation.

**47.66(4) Supplanting.** Post-FIP diversion program funds shall not be used for support services already available through local resources at no cost to the family, the department or other local service providers. In counties that operate both pilot FIP-applicant and post-FIP diversion projects, cash value assistance shall be paid from the post-FIP diversion funds in the initial 12 months following the effective date of FIP cancellation, if the pilot post-FIP diversion project permits cash value assistance payments, and the candidate is otherwise eligible for post-FIP diversion assistance.

**441—47.67(239B) Local plans.**

**47.67(1) Main components.** Each approved pilot project shall have and maintain written policies and procedures for the project approved by the division administrator. Copies of the local plan shall be available from the county office and any community entity involved in the assessment and candidate eligibility determination. Copies shall also be filed with the division administrator. At a minimum, those policies and procedures shall contain or address the following:

- a. How families most likely to benefit from the project are identified.
  - b. How the project determines which families are at risk of going back on FIP.
  - c. How barriers to stabilizing, retaining or obtaining employment are identified.
  - d. What types of support services or cash value assistance will be available; e.g., skill building, mentoring, reemployment services, cash value assistance for car repair.
  - e. How determinations will be made that the service or cash value assistance provided meets the program's objective of helping participants retain or stabilize their employment to reduce the likelihood of returning to FIP and enhance their self-sufficiency.
  - f. How and when cash value assistance will be provided; e.g., cash payments, vouchers, vendor payments and procedures for issuing payments.
  - g. The period of FIP ineligibility for receipt of cash value assistance.
  - h. The maximum (and minimum if any) values of payments and support services.
  - i. The frequency of receiving assistance.
  - j. How families will access the project services. Any forms required to be completed by the family shall be identified by name and form number in the plan.
  - k. How families will be informed of the availability of the project services, its voluntary nature, and how the program works, including periods of ineligibility for FIP based on cash value assistance payments.
  - l. How written policies and procedures describing the project will be made available.
  - m. How inquiries will be responded to and assistance provided timely to prevent the need for candidates to go back on FIP. The local plans shall specify time frames for taking action steps in administering the pilot project.
  - n. The functions and responsibilities of the county office and all community entities involved in the operation of the project.
- 47.67(2) Other components.** The local plan shall also describe or identify:
- a. How staff will be trained to use the program.
  - b. Total funds received and available.
  - c. Any allocation for support services.

- d. Any allocation for direct cash payments to families.
  - e. Any allocation for vouchers.
  - f. Any allocation for vendor payments.
  - g. Any allocation for evaluation.
  - h. Any allocation for fiscal agent expenses.
  - i. Any allocation for other expenses.
- 47.67(3) Evaluation.** Local plans shall include an evaluation plan. Each project shall be willing to cooperate with Mathematica Policy Research in their state-sponsored evaluation. The local plan shall describe:
- a. The methods for evaluation.
  - b. The scope of evaluation (e.g., what other programs may be included).
  - c. How measurable results will be determined.
  - d. The anticipated results for families in the pilot following receipt of support services.
  - e. Which aspects of the project were successful and which were not.
  - f. Any support needed to conduct an evaluation.

**441—47.68(239B) Notification and appeals.**

**47.68(1) Notification.** All candidate households or households participating in the pilot post-FIP diversion program under this division shall receive adequate written notice as described at 441—paragraph 7.7(1)“b,” using Form 470-0486, Notice of Decision. The written notice shall:

- a. Advise whether assistance under this division shall be provided.
- b. Give the reason for the decision, if assistance shall not be provided.
- c. Give the type, value (if applicable), frequency and duration of assistance as described at rule 441—47.66(239B), if assistance shall be provided.
- d. Give any period of ineligibility for FIP based on the written policies and procedures of the pilot as required by subrule 47.65(6) and described at rule 441—47.67(239B), if assistance shall be provided.
- e. Cite this division as legal authority for the decision.
- f. Advise the household of its appeal rights under 441—Chapter 7 and this division.

**47.68(2) Decisions regarding assistance.** All decisions regarding assistance available under this division shall be in accordance with the rules in this division and the written policies and procedures of the approved project as required by rule 441—47.67(239B).

**47.68(3) Appealable actions.** Decisions made by the pilot projects affecting clients may be appealed pursuant to 441—Chapter 7. All sections of the local plan applicable to an appeal shall be provided as part of the appeal summary.

**47.68(4) Nonappealable actions.** Households shall not be entitled to an appeal hearing if the sole basis for denying, terminating or limiting assistance under this division is that diversion funds for the approved pilot project have been reduced, exhausted, eliminated or otherwise encumbered.

**441—47.69(239B) Funding, rates and method of payment.**

**47.69(1) Funded amounts.** The division administrator shall determine the amounts allocated to each approved pilot project based on available funding and the amount requested by each project. The division administrator may reallocate funds between approved pilot projects as necessary to meet the objectives of the program.

**47.69(2) Rate setting for services not having a cash value.** Rates for post-FIP diversion assistance in the form of sup-

## HUMAN SERVICES DEPARTMENT[441](cont'd)

port services not having a cash value shall be established in accordance with the following procedures:

a. Rates for post-FIP diversion assistance support services shall be established on an individual basis by the human services area administrator (HSAA) or designee.

b. The HSAA or designee shall evaluate proposed payment rates in approving post-FIP diversion assistance support services. Rates approved for providers with a purchase of service contract or Medicaid agreement with the department shall be similar to payment rates for comparable support services provided through the purchase of service or Medicaid agreements. Rates for other types of support services or supports shall be comparable to prevailing community standards.

c. Payment rates approved by an HSAA or designee for post-FIP diversion assistance support services on behalf of a family shall remain in effect for the time period authorized unless approval for modification is granted by the HSAA or designee.

**47.69(3) Payment and billing.** Costs for operating pilot post-FIP diversion projects including, but not limited to, providing post-FIP diversion assistance shall be paid from funds allocated to the project as provided at subrule 47.69(1).

a. Allowable costs include, but are not limited to:

(1) Support services.

(2) Cash assistance.

(3) Administrative costs for fiscal agents with a cap of 5 percent of the allocated funding.

(4) Contracted operational services.

b. Nonallowable costs include, but are not limited to:

(1) Administrative costs for the department.

(2) Cost allocation for existing positions.

(3) Bonuses or incentives of any kind.

c. Funds may be deposited locally and disbursed through a fiscal agent. Each fiscal agent shall enter into a written funding agreement as described at subrule 47.69(4).

d. Funds may be disbursed through the department's division of fiscal management.

**47.69(4) Written funding agreements.** Each approved pilot project that provides for payment of post-FIP diversion operation costs or assistance at the local level shall enter into a written funding agreement with a third party to act as a fiscal agent to disburse payments. The written funding agreement shall stipulate:

a. The entity responsible for authorizing individual payments.

b. The fiscal agent shall be responsible for issuing payments.

c. The department, the fiscal agent and any other entity responsible for authorizing payments shall keep and reconcile records for accountability and audit purposes.

d. All agreements shall be signed by the fiscal agent and the human services area administrator and any community entity that may be a party to the agreement. Any agreements for \$25,000 or more shall also be signed by the director. Other signatures may be required at the discretion of the division administrator.

e. The time frames for the fiscal agent to process payments.

f. Any other responsibilities of the department, the fiscal agent and any other entity responsible for authorizing payments.

g. Provisions customarily required for agreements or contracts entered into by a state agency.

**441—47.70(239B) Termination of pilot projects.** The division administrator may immediately terminate an approved pilot project if:

1. The project is not fulfilling the conditions of its pilot proposal.

2. The project is at the conclusion of the authorized approval period, unless a request for renewal has been submitted and approved.

3. Funding is reduced, exhausted, eliminated or otherwise encumbered.

**441—47.71(239B) Records and reports.**

**47.71(1) Case records.** The provision of post-FIP diversion assistance shall be documented by the department or local community entity in each candidate's appropriate case record.

**47.71(2) Records retention.** All persons who contract with the county office shall maintain all records related to the program for five years. They shall allow federal or state officials access to all records upon request.

**47.71(3) Reports.**

a. County offices having approved pilot projects shall provide reports as requested by the division administrator in a manner, format and frequency specified by the administrator.

b. County offices shall be responsible for maintaining records sufficient for audit and tracking purposes.

**441—47.72(239B) Renewal of existing approved pilot projects.** Contingent on continued authorization and funding, the division administrator may renew existing approved pilot projects. Renewal proposals shall be prepared and submitted within the parameters set forth in the request for renewal issued by the division administrator.

These rules are intended to implement Iowa Code section 239B.11.

**ARC 8657A**

## HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, "Conditions of Eligibility," appearing in the Iowa Administrative Code.

These amendments make the following revisions to the Medically Needy program:

1. Use of the Medical Expense Verification (MEV), Form 470-1932, is eliminated. When Consultec, Medicaid's fiscal agent, implements the Medically Needy subsystem to the Medicaid Management Information System (MMIS), the MEV form will no longer be needed. Providers currently submit their claim form to verify Medicaid-covered expenses. With these changes, providers will use their claim form rather than a MEV form to verify both Medicaid-covered and non-Medicaid-covered medical expenses that the client has incurred.



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When a claim form is submitted to the county office for non-Medicaid-covered expenses, the worker will add information about which certification period the expense is to be applied to before sending the claim to Consultec.

2. Medical expenses for necessary and remedial services covered by Medicaid will be entered into Consultec's MMIS Medically Needy subsystem by chronological date of submission. This is more administratively efficient than entering claims by chronological date of service.

3. Acupuncture expenses will be allowed to meet spend-down. This change is being made as the result of a petition for rule making.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before March 3, 1999.

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

ITEM 1. Amend subrule 75.1(35), paragraph "f," introductory paragraph, as follows:

f. Verification of medical expenses to be used in spend-down calculation. The applicant or recipient shall submit evidence of medical expenses that are for noncovered Medicaid services and for covered services incurred prior to the certification period *to the county office on the Medical Expense Verification, Form 470-1932 a claim form*, which shall be completed by the medical provider. In cases where the provider is uncooperative or where returning to the provider would constitute an unreasonable requirement on the applicant or recipient, the form shall be completed by the worker. Verification of medical expenses for the applicant or recipient that are covered Medicaid services and occurred during the certification period shall be submitted by the provider to the fiscal agent on a claim form. The applicant or recipient shall inform the provider of the applicant's or recipient's spenddown obligation at the time services are rendered or at the time the applicant or recipient receives notification of a spenddown obligation. Verification of allowable expenses incurred for transportation to receive medical care as specified in rule 441—78.13(249A) shall be verified on Form 470-0394, Medical Transportation Claim.

ITEM 2. Amend subrule 75.1(35), paragraph "g," subparagraph (2), as follows:

Amend numbered paragraphs "2" and "3" as follows:

2. An average statewide monthly standard deduction for the cost of medically necessary personal care services provided in a licensed residential care facility shall be allowed as a deduction ~~from income~~ for spenddown. These personal care services include assistance with activities of daily living such as preparation of a special diet, personal hygiene and bathing, dressing, ambulation, toilet use, transferring, eating, and managing medication.

The average statewide monthly standard deduction for personal care services shall be based on the average per day rate of health care costs associated with residential care facilities participating in the state supplementary assistance program for a 30.4-day month as computed in the Unaudited Compilation of Cost and Statistical Data for Residential Care Facilities (Category: All; Type of Care: Residential; Location: All; and Type of Control: All). The average statewide standard deduction for personal care services used in the medically needy program shall be updated and effective the first day of the first month beginning two full months af-

ter the release of the Unaudited Compilation of Cost and Statistical Data for Residential Care Facilities report.

3. Medical expenses for necessary medical and remedial services that are recognized under state law but not covered by Medicaid, *chronologically by date of submission*.

Renumber numbered paragraph "4" as numbered paragraph "5" and adopt the following new numbered paragraph "4":

4. Medical expenses for acupuncture, chronologically by date of submission.

Amend renumbered numbered paragraph "5" as follows:

5. Medical expenses for necessary medical and remedial services that are covered by Medicaid, *chronologically by date of submission*.

**ARC 8658A**

## HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," appearing in the Iowa Administrative Code.

This amendment corrects the Department's rules governing the methodology for determining the level of reimbursement for cost outlier payments to hospitals. It was brought to the Department's attention that outlier payments were not being calculated as determined by the methodology set forth in the current rule. If the current rule were followed, the reimbursement calculation for determining hospital cost outlier payments would become a manual and labor-intensive process. The cost of manually performing these calculations would far outweigh the additional reimbursement to hospitals, which is estimated to be less than \$20,000 annually to all hospitals.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before March 3, 1999.

This amendment is intended to implement Iowa Code section 249A.4.

The following amendment is proposed.

Amend subrule 79.1(5), paragraph "f," subparagraph (3), as follows:

(3) Cost outliers. Cases qualify as cost outliers when costs of service in a given case, *not including any add-on amounts for direct or indirect medical education or for disproportionate share costs*, exceed the cost threshold. This cost threshold is determined to be the greater of two times the statewide average DRG payment for that case or the hospital's individual DRG payment for that case plus \$16,000. Costs are calculated using hospital-specific cost to charge ratios determined in the base year cost reports. Additional pay-

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ment for cost outliers is 80 percent of the excess between the hospital's cost for the discharge and the cost threshold established to define cost outliers. Payment of cost outlier amounts shall be paid at 100 percent of the calculated amount and made at the time the claim is paid. Those hospitals that are notified of any outlier review initiated by the PRO must submit all requested supporting data to the PRO within 60 days of the receipt of outlier review notification, or outlier payment will be forfeited and recouped. In addition, any hospital may request a review for outlier payment by submitting documentation to the PRO within 365 days of receipt of the outlier payment. If requests are not filed within 365 days, the provider loses the right to appeal or contest that payment.

ARC 8659A

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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 252B.7A(1)"d," the Department of Human Services proposes to amend Chapter 98, "Support Enforcement Services," and Chapter 99, "Support Establishment and Adjustment Services," appearing in the Iowa Administrative Code.

These amendments eliminate the Child Support Recovery Unit's (CSRU's) use of states' median income figures in setting a support obligation when a parent's financial information is unknown. Under these rules, CSRU will use Iowa wage rate information when the occupation is known and median income for parents on the CSRU caseload when the occupation is unknown. These amendments also make changes to the way support is calculated for a child in foster care. Numerous complicated deductions are replaced with a 30 percent flat rate deduction in setting the support amount when a parent submits financial documentation.

The Seventy-seventh General Assembly directed the Department to adopt rules for imputing income based on the earning capacity of a parent when income information is unavailable. The proposed use of occupational wage rate information or median income for parents on the CSRU caseload, as appropriate, is believed to be more reflective of the actual earning capacity of obligors on the CSRU caseload.

Other substitutions for median income were considered, e.g., basing the amount on the minimum wage, but were rejected as those methods resulted in obligations that bore little relationship to an obligor's actual ability to provide support. Support obligations calculated using minimum wage under-represent what is already statistically known to be the estimated median income of parents on the CSRU caseload. Other options were considered for estimating the income of obligors who reside outside of Iowa, including continuing to use states' median income figures or implementing the use of states' occupational wage rate information. Those options were rejected for several reasons. First, the income of obligors who reside outside of Iowa is represented in the calculation of median income for parents on the CSRU caseload.

Second, the issues related to establishing and modifying support obligations that more closely represent an obligor's earning capacity are the same whether the obligor lives in or outside of Iowa. Finally, the option of using states' occupational wage rate information was rejected due to the complexity of administering 50 different wage rate tables.

The change to a 30 percent flat rate deduction for a family with a child in foster care simplifies the current process by eliminating the documentation previously required to permit the deductions related to case permanency and financial hardship, allowing a more expedient determination of the child support obligation. It also eliminates confusion parents have regarding their eligibility for allowable deductions and permits families to receive the benefit of those deductions.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before March 3, 1999.

Oral presentations may be made by persons appearing at the following meetings. Written comments will also be accepted at these times.

Cedar Rapids - March 3, 1999 Child Support Recovery Unit Iowa Building - Suite 600 Sixth Floor Conference Room 411 Third St. S.E. Cedar Rapids, Iowa 52401	9 a.m.
Council Bluffs - March 4, 1999 Child Support Recovery Unit 300 West Broadway, Suite 32 Council Bluffs, Iowa 51503	9 a.m.
Davenport - March 3, 1999 Davenport Area Office Bicentennial Building - Fifth Floor Conference Room 507 428 Western Davenport, Iowa 52801	1 p.m.
Des Moines - March 3, 1999 Child Support Recovery Unit 1901 Bell Avenue, Suite 8 Conference Room Des Moines, Iowa 50315	8 a.m.
Mason City - March 5, 1999 Mason City Area Office Mohawk Square, Liberty Room 22 North Georgia Avenue Mason City, Iowa 50401	10 a.m.
Ottumwa - March 4, 1999 Ottumwa Area Office Conference Room 3 120 East Main Ottumwa, Iowa 52501	9 a.m.
Sioux City - March 3, 1999 Sioux City Regional Office Conference Room B 520 Nebraska St. Sioux City, Iowa 51101	10 a.m.
Waterloo - March 3, 1999 Child Support Recovery Unit 501 Sycamore, Suite 400 Conference Room Waterloo, Iowa 50703	1 p.m.



## HUMAN SERVICES DEPARTMENT[441](cont'd)

Any persons who intend to attend a public hearing and have special requirements such as hearing or vision impairments should contact the Bureau of Policy Analysis at (515)281-8440 and advise of special needs.

These amendments are intended to implement Iowa Code sections 234.39 and 252B.7A(1)"d."

The following amendments are proposed.

ITEM 1. Amend subrule 98.104(2) as follows:

**98.104(2)** Payment calculation. If notice was sent to an obligor under subrule 98.103(1) during the conference held in compliance with the provisions of Iowa Code section 252J.4, CSRU shall determine if the obligor's ability to pay varies from the current support order by applying the mandatory supreme court guidelines as contained in 441—Chapter 99, Division I, with the exception of subrules 99.4(3) and 99.5(5). If further information from the obligor is necessary for the calculation, CSRU may schedule an additional conference no less than ten days in the future in order to allow the obligor to present additional information as may be necessary to calculate the amount of the payment. If, at that time, the obligor fails to provide the required information, CSRU shall issue a Certificate of Noncompliance, Form 470-3274, to applicable licensing authorities. If the obligee fails to provide the necessary information to complete the calculation, CSRU shall use whatever information is available. If no income information is available for the obligee, CSRU shall use the state median income as determine the obligee's income in accordance with 441—subrules 99.1(2) and 99.1(4). This calculation is for determining the amount of payment for the license sanction process only, and does not modify the amount of support obligation contained in the underlying court order.

ITEM 2. Amend rule 441—99.1(234,252B,252H) as follows:

Rescind subrule 99.1(2), paragraph "c," and adopt the following new paragraph "c" in lieu thereof:

c. Income as determined through occupational wage rate information published by the Iowa workforce development department or other state or federal agencies.

Further amend subrule 99.1(2) by adopting the following new paragraph "d":

d. The median income for parents on the CSRU caseload, calculated annually.

Amend subrule 99.1(4) as follows:

**99.1(4)** Use of ~~estimated state's occupational wage rate information or median income for parents on the CSRU caseload. The estimated state Occupational wage rate information or median income for a one-person household~~ parents on the CSRU caseload shall be used to determine a parent's income when the parent has failed to return a completed financial statement when requested, and when complete and accurate income information from other readily available sources ~~could not~~ cannot be secured. ~~The estimated annual state median income for the state where the parent resides shall be used in estimating the parent's income.~~

a. *Occupation known.* When the last-known occupation of a parent can be determined through a documented source including, but not limited to, Iowa workforce development or the National Directory of New Hires, occupational wage rate information shall be used to determine income. When the last-known occupation of a parent cannot be determined through a documented source, information may be gathered from the other parent and occupational wage rate information applied. Wage rate information shall be converted to a monthly amount in accordance with subrule 99.3(1).

b. *Occupation unknown.* When the occupation of a parent is unknown, the income of a parent shall be estimated using the median income amount for parents on the CSRU caseload.

ITEM 3. Amend subrule 99.3(2) as follows:

Amend paragraph "a," as follows:

a. The estimated net income of a parent shall be 80 percent of the reported income or the estimated ~~state's median income as determined from occupational wage rate information or derived from the median income of parents on the CSRU caseload~~, as appropriate, minus the deductions enumerated in subrules 99.2(3) to 99.2(8) when the information to calculate these deductions is readily available through automated or other sources.

Amend paragraph "b," subparagraph (2), as follows:

(2) ~~Estimated state Occupational wage rate information or median income of parents on the CSRU caseload has been~~ was used to determine a parent's income.

ITEM 4. Amend rule 441—99.4(234,252B) as follows:

Amend subrule 99.4(1) as follows:

**99.4(1)** Selecting guidelines chart. The child support recovery unit shall use the guidelines chart only for the number of children for whom support is being sought sharing the same two legal parents.

EXCEPTION: For foster care recovery cases the guidelines chart shall be used as set forth in ~~subparagraph~~ paragraph 99.5(4)"c."(2).

Amend subrule 99.4(4), paragraph "b," subparagraph (2), as follows:

(2) The income of the parent whose location is unknown shall be determined by using the estimated ~~state median income for a one-person family for parents on the CSRU caseload~~ and that parent shall be considered the custodial parent in calculating child support.

ITEM 5. Amend subrule 99.5(4) as follows:

Amend the introductory paragraph as follows:

**99.5(4)** Foster care case. In a foster care case, the child support recovery unit may deviate from the guidelines as follows: *by applying a 30 percent flat rate deduction for parents who provide financial documentation. The flat rate deduction represents expenses under the case permanency plan and financial hardship allowances.*

Rescind and reserve paragraphs "a" and "b."

Amend paragraph "c" as follows:

c. CSRU shall calculate the support obligation of the parents of children in foster care when the parents have a legal obligation for additional dependents in the home, as follows:

(1) The support obligation of each parent shall be calculated by allowing all deductions the parent is eligible for under the child support guidelines as provided in rule 441—99.2(234,252B) and by using the guidelines chart corresponding to the number of children in foster care for whom support is sought.

(2) ~~The support obligation of each parent shall be recalculated by using the guidelines chart corresponding to the sum of the children in the home for whom the parent has a legal obligation and the children in foster care. All deductions shall be allowed as in subparagraph (1), except that the qualified additional dependent deduction (QADD) shall be limited to dependents not residing in the home for whom the parent has a legal obligation.~~ The calculated support amount shall be divided by the total number of children in foster care and in the home to compute the support obligation of the parent for each child in foster care.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

~~(3) The support obligation for children in foster care shall be deviated to the lower of the amounts calculated in subparagraphs (1) and (2).~~

## ARC 8660A

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 107, "Certification of Adoption Investigators," Chapter 108, "Licensing and Regulation of Child-Placing Agencies," Chapter 113, "Licensing and Regulation of Foster Family Homes," Chapter 157, "Purchase of Adoption Services," and Chapter 200, "Adoption Services," appearing in the Iowa Administrative Code.

These amendments prohibit licensure of foster parent applicants or approval of adoptive parent applicants who have specific felony convictions.

The Seventy-seventh General Assembly passed legislation to comply with the Adoption and Safe Families Act of 1997 at Iowa Code sections 237.8(2)"a" and "b" and 600.8(2)"b" to prohibit the licensure of persons with the following felony offenses:

1. Within the five-year period preceding the application date, a drug-related offense.
2. Child endangerment or neglect or abandonment of a dependent person.
3. Domestic abuse.
4. A crime against a child including, but not limited to, sexual exploitation of a minor.
5. A forcible felony.

These amendments will benefit children in foster care and those children who are available for adoption by providing placements in safe homes.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before March 3, 1999.

These amendments are intended to implement Iowa Code sections 237.8(2)"a" and "b," and 600.8(2)"b."

The following amendments are proposed.

ITEM 1. Amend subrule 107.8(1), paragraph "c," introductory paragraph and first unnumbered paragraph, as follows:

c. Record checks. The certified adoption investigator shall submit record checks for each applicant and for any other adult living in the home of the applicant to determine whether they have founded child abuse or criminal convictions. Form SS-1606-0 470-0643, Request for Child Abuse Information, and Form 595-1396, Request for Non-Law Enforcement Record Check, shall be used for this purpose.

If there is a record of founded child abuse or a criminal conviction for the applicant, or any other adult living in the

home of the applicant, the applicant shall not be approved as an adoptive family, unless an evaluation determines that the abuse or criminal conviction does not warrant prohibition of approval.

*EXCEPTION: The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or any other adult living in the home of the applicant has been convicted of a felony offense as set forth in Iowa Code section 600.8(2)"b." The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or any other adult living in the home of the applicant has committed a crime in another state that would be a forcible felony if the crime would have been committed in Iowa, as set forth in Iowa Code section 600.8(2)"b."*

The evaluation shall consider the nature and seriousness of the abuse or crime, the time elapsed since the commission of the founded abuse or crime, the circumstances under which the abuse or crime was committed, the degree of rehabilitation, the likelihood that the person will commit the abuse or crime again, and the number of abuses or crimes committed by the person. The person with the founded child abuse or criminal conviction report shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date on the form to be used to assist in the evaluation. Failure of the person to complete and return Form 470-2310 within the specified time frame shall result in denial of the study approval for adoption.

ITEM 2. Amend subrule 108.8(1), paragraph "c," subparagraph (13), introductory paragraph and first unnumbered paragraph, as follows:

(13) Evaluation of child abuse and criminal history record checks. The licensed child-placing agency shall submit record checks for each applicant and for any other adult living in the home of the applicant to determine whether they have founded child abuse reports or criminal convictions. Form SS-1606-0 470-0643, Request for Child Abuse Information, and Form 595-1396, Request for Non-Law Enforcement Record Check, shall be used for this purpose.

If there is a record of founded child abuse or a criminal conviction for the applicant, or any other adult living in the home of the applicant, the applicant shall not be licensed as a foster family, unless an evaluation ~~of~~ determines that the abuse or criminal conviction does not warrant prohibition of license.

*EXCEPTION: An individual applying to be a foster parent shall not be granted a license and an evaluation shall not be performed if the applicant or any other adult living in the home of the applicant has been convicted of a felony offense as set forth in Iowa Code section 237.8(2)"a." The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or any other adult living in the home of the applicant has committed a crime in another state that would be a forcible felony if the crime would have been committed in Iowa, as set forth in Iowa Code section 237.8(2)"a."*

The evaluation shall consider the nature and seriousness of the abuse or crime, the time elapsed since the commission of the founded abuse or crime, the circumstances under which the abuse or crime was committed, the degree of rehabilitation, the likelihood that the person will commit the abuse or crime again, and the number of abuses or crimes committed by the person. The person with the criminal conviction or founded child abuse report shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date of on the form to be used to assist in

## HUMAN SERVICES DEPARTMENT[441](cont'd)

the evaluation. Failure of the person to complete *and return* Form 470-2310 within the specified time frame shall result in denial of licensure.

ITEM 3. Amend subrule 108.9(4), paragraph "d," introductory paragraph and first unnumbered paragraph, as follows:

d. Record checks. The licensed child-placing agency shall submit record checks for each applicant, and for any other adult living in the home of the applicant to determine whether they have any founded child abuse reports or criminal convictions. Form ~~SS-1606-0 470-0643~~, Request for Child Abuse Information, and Form 595-1396, Request for Non-Law Enforcement Record Check, shall be used for this purpose.

If there is a record of founded child abuse or a criminal conviction for the applicant, or any other adult living in the home of the applicant, the applicant shall not be approved as an adoptive family, unless an evaluation ~~of~~ *determines* that the abuse or criminal conviction does not warrant prohibition of approval.

*EXCEPTION: The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or any other adult living in the home of the applicant has been convicted of a felony offense as set forth in Iowa Code section 600.8(2) "b." The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or any other adult living in the home of the applicant has committed a crime in another state that would be a forcible felony if the crime would have been committed in Iowa, as set forth in Iowa Code section 600.8(2) "b."*

The evaluation shall consider the nature and seriousness of the abuse or crime, *the time elapsed since the commission of the founded abuse or crime*, the circumstances under which the abuse or crime was committed, the degree of rehabilitation, the likelihood that the person will commit the abuse or crime again, and the number of abuses or crimes committed by the person. The person with the criminal conviction or founded child abuse report shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date ~~of~~ *on* the form to be used to assist in the evaluation. Failure of the person to complete *and return* Form 470-2310 within the specified time frame shall result in denial of ~~the home study approval for adoption~~.

ITEM 4. Amend rule 441—113.13(237), introductory paragraph and first unnumbered paragraph, as follows:

**441—113.13(237) Record checks.** The department shall submit record checks for each applicant and for any other adult living in the home of the applicant to determine whether they have any founded child abuse reports or criminal convictions. Form ~~SS-1606-0 470-0643~~, Request for Child Abuse Information, and Form 595-1396, Request for Non-Law Enforcement Record Check, shall be used for this purpose.

If there is a record of founded child abuse or a criminal conviction for the applicant or any other adult living in the home of the applicant, the applicant shall not be licensed as a foster family, unless an evaluation ~~of~~ *determines* that the abuse or criminal conviction does not warrant prohibition of license.

*EXCEPTION: An individual applying to be a foster parent shall not be granted a license and an evaluation shall not be performed if the applicant or any other adult living in the home of the applicant has been convicted of a felony offense as set forth in Iowa Code section 237.8(2) "a." The person making the investigation shall not approve a prospective ap-*

*plicant and shall not perform an evaluation if the applicant or any other adult living in the home of the applicant has committed a crime in another state that would be a forcible felony if the crime would have been committed in Iowa, as set forth in Iowa Code section 237.8(2) "a."*

The evaluation shall consider the nature and seriousness of the founded child abuse or crime in relation to the position sought or held, the time elapsed since the circumstances under which the abuse or crime was committed, the degree of rehabilitation, the likelihood that the person will commit the abuse or crime again, and the number of abuses or crimes committed by the person. The person with the founded child abuse or criminal conviction report shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date on the form to be used to assist in the evaluation. Failure of the person to complete and return Form 470-2310 within the specified time frame shall result in denial of licensure.

ITEM 5. Amend subrule 157.3(1), paragraph "b," introductory paragraph and first unnumbered paragraph, as follows:

b. Record checks. The licensed child-placing agency shall submit record checks for each applicant and for any other adult living in the home of the applicant to determine whether they have founded child abuse or criminal convictions. Form ~~SS-1606-0 470-0643~~, Request for Child Abuse Information, and Form 595-1396, Request for Non-Law Enforcement Record Check, shall be used for this purpose.

If there is a record of founded child abuse or a criminal conviction for the applicant or any other adult living in the home of the applicant, the applicant shall not be approved as an adoptive family unless an evaluation ~~of~~ *determines* that the abuse or criminal conviction does not warrant prohibition of approval.

*EXCEPTION: The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or any other adult living in the home of the applicant has been convicted of a felony offense as set forth in Iowa Code section 600.8(2) "b." The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or any other adult living in the home of the applicant has committed a crime in another state that would be a forcible felony if the crime would have been committed in Iowa, as set forth in Iowa Code section 600.8(2) "b."*

The evaluation shall consider the nature and seriousness of the abuse or crime, the time elapsed since the commission of the founded abuse or crime, the circumstances under which the abuse or crime was committed, the degree of rehabilitation, the likelihood that the person will commit the abuse or crime again, and the number of abuses or crimes committed by the person. The person with the founded child abuse or criminal conviction report shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date on the form to be used to assist in the evaluation. Failure of the person to complete and return Form 470-2310 within the specified time frame shall result in denial of ~~the study approval for adoption~~.

ITEM 6. Amend subrule 200.4(1), paragraph "b," introductory paragraph and first unnumbered paragraph, as follows:

b. Record checks. The department shall submit record checks for each applicant and for any other adult living in the home of the applicant to determine whether they have founded child abuse reports or criminal convictions. Form

## HUMAN SERVICES DEPARTMENT[441](cont'd)

~~SS-1606-0 470-0643~~, Request for Child Abuse Information, and Form 595-1396, Request for Non-Law Enforcement Record Check, shall be used for this purpose.

If there is a record of founded child abuse or a criminal conviction for the applicant, or any other adult living in the home of the applicant, the applicant shall not be approved as an adoptive family, unless an evaluation ~~of~~ *determines* that the abuse or criminal conviction does not warrant prohibition of ~~license approval~~.

*EXCEPTION: The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or any other adult living in the home of the applicant has been convicted of a felony offense as set forth in Iowa Code section 600.8(2) "b." The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or any other adult living in the home of the applicant has committed a crime in another state that would be a forcible felony if the crime would have been committed in Iowa, as set forth in Iowa Code section 600.8(2) "b."*

The evaluation shall consider the nature and seriousness of the abuse or crime, the time elapsed since the commission of the *founded* abuse or crime, the circumstances under which the abuse or crime was committed, the degree of rehabilitation, the likelihood that the person will commit the abuse or crime again, and the number of abuses or crimes committed by the person. The person with the founded child abuse or criminal conviction report shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date on the form to be used to assist in the evaluation. Failure of the person to complete and return the ~~form~~ *Form 470-2310* within the specified time frame shall result in denial ~~or revocation of the study approval for adoption~~.

## ARC 8661A

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 234.6, the Department of Human Services proposes to amend Chapter 175, "Abuse of Children," appearing in the Iowa Administrative Code.

These amendments implement the following revisions to the Child Abuse Assessment Program:

- The definition of the word "harm" has been deleted and the use of the word "harm" in the definition of "Denial of critical care" has been removed to eliminate an objection by the Administrative Rules Review Committee. The word "harm" does not appear in the Iowa Code under the child protective assessment section, and the word has minimal effect on the definition of the denial of critical care.

- Policy is amended to allow the Department to notify the appropriate county attorney of all reports of child abuse. Current policy states that the county attorney is only notified of reports accepted for assessment. This policy is in conflict

with Iowa Code section 232.70, subsection 4, which requires the Department to notify the county attorney of all reports of child abuse.

- Form names and numbers used to request child abuse information are updated.

- Policy is added to establish at least three Citizen Review Panels as mandated by the Child Abuse Prevention and Treatment Act of October 3, 1996. These panels are to be operational by July 1, 1999. At least one panel shall be created at the state, multicounty, and county levels.

Policy regarding the Citizen Review Panels was developed with the assistance of the Iowa Citizen Review Panel Planning Team convened by the Department using recommendations found in the Citizen Review Panels for the Child Protective Services System: Guidelines and Protocols.

The Citizen Review Panels are to identify strengths and weaknesses of the child protective service system as a whole, including community-based services and agencies. The specific objectives of the Panels are to clarify expectations for child protective services with current policy; to review consistency of practice with current policy; to analyze trends and recommend policy to address them; and to provide feedback on what is or is not working, and why, and to suggest corrective action if needed.

Each panel established shall be composed of a multidisciplinary team of volunteer members who are broadly representative of the community in which the panel is established, including members who possess knowledge and skills related to the diagnosis, assessments, and disposition of child abuse cases, and who have expertise in the prevention and treatment of child abuse. The membership of each panel shall include professionals practicing in the disciplines of medicine, nursing, public health, substance abuse, domestic violence, mental health, social work, child development, education, law, juvenile probation, law enforcement; or representatives from organizations that advocate for the protection of children.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before March 3, 1999.

Oral presentations may be made by persons appearing at the following meetings. Written comments will also be accepted at these times.

Cedar Rapids - March 3, 1999 Cedar Rapids Regional Office Iowa Building - Suite 600 Sixth Floor Conference Room 411 Third St. S.E. Cedar Rapids, Iowa 52401	2 p.m.
Council Bluffs - March 3, 1999 Council Bluffs Regional Office Administrative Conference Room 417 E. Kanesville Boulevard Council Bluffs, Iowa 51501	10:30 a.m.
Davenport - March 3, 1999 Davenport Area Office Bicentennial Building - Fifth Floor Large Conference Room 428 Western Davenport, Iowa 52801	10 a.m.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Des Moines - March 3, 1999 10 a.m.  
 Des Moines Regional Office  
 City View Plaza  
 Conference Room 102  
 1200 University  
 Des Moines, Iowa 50314

Mason City - March 3, 1999 11 a.m.  
 Mason City Area Office  
 Mohawk Square, Liberty Room  
 22 North Georgia Avenue  
 Mason City, Iowa 50401

Ottumwa - March 3, 1999 12 noon  
 Ottumwa Area Office  
 Conference Room 3  
 120 East Main  
 Ottumwa, Iowa 52501

Sioux City - March 3, 1999 1:30 p.m.  
 Sioux City Regional Office  
 Fifth Floor  
 520 Nebraska St.  
 Sioux City, Iowa 51101

Waterloo - March 5, 1999 11 a.m.  
 Waterloo Regional Office  
 Pinecrest Office Building  
 Conference Room 420  
 1407 Independence Avenue  
 Waterloo, Iowa 50703

Any persons who intend to attend a public hearing and have special requirements such as hearing or vision impairments should contact the Bureau of Policy Analysis at (515)281-8440 and advise of special needs.

These amendments are intended to implement Iowa Code sections 232.68 and 232.70(4).

The following amendments are proposed.

ITEM 1. Amend rule 441—175.21(232,235A) as follows:

Amend the definitions of "Denial of critical care" and "Immediate threat" as follows:

"Denial of critical care" is the failure on the part of a person responsible for the care of a child to provide for the adequate food, shelter, clothing or other care necessary for the child's health and welfare when financially able to do so, or when offered financial or other reasonable means to do so, and shall mean any of the following:

1. Failure to provide adequate food and nutrition to the extent that there is danger of the child suffering ~~harm~~, injury or death.

2. Failure to provide adequate shelter to the extent that there is danger of the child suffering ~~harm~~, injury or death.

3. Failure to provide adequate clothing to the extent that there is danger of the child suffering ~~harm~~, injury or death.

4. Failure to provide adequate health care to the extent that there is danger of the child suffering ~~serious harm~~, injury or death. A parent or guardian legitimately practicing religious beliefs who does not provide specified medical treatment for a child for that reason alone shall not be considered abusing the child and shall not be placed on the child abuse registry. However, a court may order that medical service be provided where the child's health requires it.

5. Failure to provide the mental health care necessary to adequately treat an observable and substantial impairment in the child's ability to function.

6. Gross failure to meet the emotional needs of the child necessary for normal development.

7. Failure to provide for the proper supervision of the child to the extent that there is danger of the child suffering ~~harm~~, injury or death, and which a reasonable and prudent person would exercise under similar facts and circumstances.

8. Failure to respond to the infant's life-threatening conditions (also known as withholding medically indicated treatment) by providing treatment (including appropriate nutrition, hydration and medication) which in the treating physician's reasonable medical judgment will be most likely to be effective in ameliorating or correcting all conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's reasonable medical judgment any of the following circumstances apply: the infant is chronically and irreversibly comatose; the provision of the treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; the provision of the treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane.

"Immediate threat" means conditions which, if no response were made, would be more likely than not to result in ~~significant harm~~ *sexual abuse*, injury or death to a child.

Rescind the definition of "Harm."

ITEM 2. Amend rule 441—175.24(232) as follows:

**441—175.24(232) Child abuse assessment intake process.** The primary purpose of intake is to obtain available and pertinent information regarding an allegation of child abuse and determine whether a report of child abuse becomes a case or a rejected intake. To result in a case, the report of child abuse must include some information to indicate all of the following. The alleged:

1. Victim of child abuse is a child.
2. Perpetrator of child abuse is a caretaker.
3. Incident falls within the definition of child abuse.

Only mandatory reporters or the person making the report may be contacted during the intake process to expand upon or to clarify information in the report. Any contact with subjects of the report or with nonmandatory reporters, other than the original reporter, automatically causes the report of child abuse to be accepted for assessment. When it is determined that the report of child abuse fails to constitute an allegation of child abuse, the report of child abuse shall become a rejected intake. Rejected intake information shall be maintained by the department for six months and then destroyed. The county attorney shall be notified of *all* reports of child abuse ~~accepted for assessment~~. When a report of child abuse is received which does not meet the requirements to become a case, but has information about illegal activity, the department shall notify law enforcement of the report.

ITEM 3. Amend subrules 175.41(1) and 175.41(2) as follows:

**175.41(1) Written requests.** Requests for child abuse information shall be submitted on Form ~~SS-1606-0 470-0643~~, Request for Child Abuse Information, to the county office of the department, except requests made for the purpose of determining employability of a person in a department-operated facility shall be submitted to the central abuse registry. Subjects of a report may submit a request for child abuse information *to the county office of the department on*

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Form ~~SS-1606-0 470-0643, Request for Child Abuse Information, or on Form 470-0686, Child Abuse Notification, 470-3243, Notice of Child Abuse Assessment: Founded; Form 470-3575, Notice of Child Abuse Assessment: Confirmed Not Registered; or on Form 470-3242, Notice of Child Abuse Assessment: Not Confirmed to the county office of the department.~~ The county office is granted permission to release child abuse information to the subject of a report immediately upon verification of the identity and subject status.

**175.41(2) Oral requests.** Oral requests for child abuse information may be made when a person making the request believes that the information is needed immediately and if the person is authorized to access the information. When an oral request to obtain child abuse information is granted, the person approving the request shall document the approval to the central abuse registry through use of Form ~~SS-1606-0 470-0643, Request for Child Abuse Information, or Form 470-0686, Child Abuse Notification 470-3243, Notice of Child Abuse Assessment: Founded.~~

Upon approval of any request for child abuse information authorized by this rule, the department shall withhold the name of the person who made the report of child abuse unless ordered by a juvenile court or district court after a finding that the person's name is needed to resolve an issue in any phase of a case involving child abuse. Written requests and oral requests do not apply to child abuse information that is disseminated to an employee of the department, to a juvenile court, or to the attorney representing the department as authorized by Iowa Code section 235A.15.

ITEM 4. Amend 441—Chapter 175 by adopting the following new rule:

~~441—~~**175.43(235A) Child protection services citizen review panels.** The purposes of the child protection services citizen review panels established in this rule are to comply with requirements set forth by the Child Abuse Prevention and Treatment Act and to take advantage of this process to identify strengths and weaknesses of the child protective service system as a whole, including community-based services and agencies. The specific objectives are to clarify expectations for child protective services with current policy; to review consistency of practice with current policy; to analyze trends and recommend policy to address them; and to provide feedback on what is or is not working, and why, and to suggest corrective action if needed.

**175.43(1) Establishment of panels.** The department shall establish at least three panels, with at least one panel each at the state level, multicounty level, and county level. The department may designate as panels one or more existing entities established under state or federal law, such as multidisciplinary teams, if the entities have the capacity to satisfy the requirements of the function of a citizen review panel set forth in the Child Abuse Prevention and Treatment Act and the department ensures that the entities will satisfy the requirements. The department shall establish procedures to be used for selecting the panels.

**175.43(2) Membership of panels.** Each panel established shall be composed of a multidisciplinary team of volunteer members who are broadly representative of the community in which the panel is established, including members who possess knowledge and skills related to the diagnosis, assessments, and disposition of child abuse cases, and who have expertise in the prevention and treatment of child abuse. The membership of each panel shall include professionals practicing in the disciplines of medicine, nursing, public health, substance abuse, domestic violence, mental health, social

work, child development, education, law, juvenile probation, law enforcement; or representatives from organizations that advocate for the protection of children. The panel shall function under the leadership of a chairperson and vice-chairperson who are elected annually by the membership. Members shall enter into a contract with the department by signing Form 470-3602, Iowa Child Protection System Citizens' Review Panel Contract.

**175.43(3) Meetings.** Each panel established pursuant to this rule shall meet not less than once every three months.

**175.43(4) Functions.** Each panel established pursuant to this rule shall evaluate the extent to which the department effectively discharges the child protection responsibilities in accordance with: the state plan and the child protection standards under subsection (b) of the Child Abuse Prevention and Treatment Act of 1996; the child protection duties of the department set forth in Iowa Code chapters 232 and 235A; and any other criteria that the panel considers important to ensure the protection of children, including a review of the extent to which the child protective services system is coordinated with the foster care and adoption programs established under Part E of Title IV of the Social Security Act (42 USCS 670 et seq.) and a review of child fatalities and near fatalities.

**175.43(5) Redissemination.** No panel member shall re-disseminate child abuse information obtained through the citizen review panel. This shall not preclude redissemination of information as authorized by Iowa Code section 235A.17 when an individual panel member has received information as a result of another authorized access provision of the Iowa Code.

**175.43(6) Department not bound.** The department shall consider the recommendations of the panel but shall not, in any way, be bound by the recommendations.

**175.43(7) Confidentiality.** Members and staff of a panel may not disclose child abuse information about any specific child abuse case to any person or government official and may not make public any information unless authorized by the Iowa Code to do so.

**175.43(8) Reports.** Each panel established under this rule shall prepare and make available to the public, on an annual basis, a report containing a summary of the activities of the panel.

**175.43(9) Staff assistance.** The department shall provide staff assistance to citizen review panels for the performance of their duties, upon request of the panel.

**175.43(10) Access to child abuse information.** Citizen review panels shall be under contract to carry out official duties and functions of the department and have access to child abuse information according to Iowa Code section 235A.15 [2"e"(2)].

ITEM 5. Amend 441—Chapter 175, implementation clause, to read as follows:

These rules are intended to implement Iowa Code sections ~~232.67 and 232.72 to 232.77, and Iowa Code Supplement chapter 235A, and Iowa Code Supplement sections 232.68 to 232.71.~~



**ARC 8664A****INSPECTIONS AND APPEALS  
DEPARTMENT[481]****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 135B.7, the Department of Inspections and Appeals gives Notice of Intended Action to amend Chapter 51, "Hospitals," Iowa Administrative Code.

This amendment deletes obsolete language and updates rules to reflect current standards of practice relating to medical and hospital records and radiological and laboratory services in hospitals. The amendment also brings rules into conformity with Department of Public Health rules.

Interested persons may make written comments or suggestions on the proposed amendment on or before March 2, 1999. Written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, East 12th and Grand Avenue, Des Moines, Iowa 50319-0083, or faxed to (515)242-6863. E-mail may be sent to [rwalsh@max.state.ia.us](mailto:rwalsh@max.state.ia.us).

This amendment is intended to implement Iowa Code chapter 135B.

The following amendment is proposed.

Rescind rules 481—51.12(135B), 481—51.16(135B), and 481—51.18(135B), and insert in lieu thereof the following **new** rules:

**481—51.12(135B) Records and reports.**

**51.12(1)** Medical records. Accurate and complete medical records shall be written for all patients and signed by the attending physician. These records shall be filed and stored in an accessible manner in the hospital and in accordance with the statute of limitations as specified in Iowa Code chapter 614.

**51.12(2) Hospital records.**

a. Admission records. A register of all admissions to the hospital shall be maintained.

b. Death records. A record of all deaths in the hospital shall be kept, including all information required on a standard death certificate as specified in Iowa Code chapter 144.

c. Birth records. A record of all births in the hospital shall be kept, including all information required on a standard birth certificate as specified in Iowa Code chapter 144.

d. Controlled substance records. Controlled substance records shall be maintained in accordance with state and federal laws, rules and regulations.

**51.12(3)** Annual reports. Annual reports shall be filed with the Iowa department of public health within three months after termination of each fiscal year in accordance with Iowa Code section 135.75.

**481—51.16(135B) Radiological services.**

**51.16(1)** The hospital must maintain, or have available, radiological services to meet the needs of the patients.

**51.16(2)** All radiological services including diagnostic, fluoroscopy, mammography, therapeutic, and nuclear medi-

cine furnished by the hospital or its agent shall be furnished in compliance with 641 IAC Chapters 38 to 42.

**481—51.18(135B) Laboratory service.**

**51.18(1)** The hospital must maintain, or have available, adequate laboratory and pathology services and facilities to meet the needs of its patients. The medical staff shall determine which laboratory tests are necessary to be performed on site to meet the needs of the patients.

**51.18(2)** Emergency laboratory services must be available 24 hours a day.

**51.18(3)** The hospital must ensure that all laboratory services provided to its patients are performed in a laboratory certified in accordance with the Code of Federal Regulations in 42 CFR, Part 493, October 1, 1997.

**51.18(4)** All laboratory services shall be under the supervision of a physician, preferably a clinical pathologist.

**ARC 8639A****LAW ENFORCEMENT  
ACADEMY[501]****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 80B.11(7), the Iowa Law Enforcement Academy gives Notice of Intended Action to amend Chapter 3, "Certification of Law Enforcement Officers," Iowa Administrative Code.

This proposed amendment clarifies and defines the term "enrolled," as used in Iowa Code section 80B.17, which automatically extends the time period in which an officer who is enrolled in training within 12 months of initial appointment must achieve certification. Confusion arises over what the word "enrolled" means and its application without this clarification. It is most practical and in harmony with Iowa Code chapter 80B and 501—Chapter 3 to define "enrolled" in this context to mean that the person must be physically present in and currently attending a basic certification class to receive the benefit of the extension.

Any interested person may make written comments or suggestions on this proposed amendment on or before March 2, 1999. Such written materials should be sent to Gene W. Shepard, Director, Iowa Law Enforcement Academy, P.O. Box 130, Johnston, Iowa 50131-0130, or faxed to (515) 242-5471.

There will be a public hearing on this proposed amendment on March 2, 1999, at 10 a.m. in the library at the Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

This amendment was approved by the Iowa Law Enforcement Academy Council on August 6, 1998.

This amendment is intended to implement Iowa Code section 80B.17.

The following amendment is proposed.

## LAW ENFORCEMENT ACADEMY[501](cont'd)

Amend rule 501—3.1(80B) by adopting a new subrule as follows:

3.1(4) In accordance with Iowa Code section 80B.17, the one-year time period in which an officer must become certified is automatically extended for up to 180 days for an officer who is enrolled in training within 12 months of initial appointment. For purposes of this subrule, "enrolled" means physically present in and currently attending a basic certification training class.

ARC 8638A

LAW ENFORCEMENT  
ACADEMY[501]

## 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 80B.11(9) and 80B.11C, the Iowa Law Enforcement Academy gives Notice of Intended Action to amend Chapter 13, "Telecommunicator Training Standards," Iowa Administrative Code.

The proposed amendments establish the periods of validity of approval of telecommunicator training courses and instructors as specified in Chapter 13 and also require the reporting of essential information to the Academy so that the purposes of Iowa Code sections 80B.11(9) and 80B.11C can be carried out.

Any interested person may make written comments or suggestions on these proposed amendments on or before March 2, 1999. Such written materials should be sent to Gene W. Shepard, Director, Iowa Law Enforcement Academy, P.O. Box 130, Johnston, Iowa 50131-0130, or faxed to (515)242-5471.

There will be a public hearing on these proposed amendments on March 2, 1999, at 9:30 a.m. in the library at the Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

These amendments were approved by the Iowa Law Enforcement Academy Council on November 4, 1997.

These amendments are intended to implement Iowa Code sections 80B.11(9) and 80B.11C.

The following amendments are proposed.

ITEM 1. Amend rule 501—13.3(80B) by adopting a new subrule as follows:

13.3(4) Period of validity. The approval of courses under this rule shall be valid for a period of 36 months.

ITEM 2. Amend rule 501—13.5(80B) by adopting a new subrule as follows:

13.5(3) Period of validity. Instructor approval shall be valid for a period of 36 months.

ITEM 3. Amend 501—Chapter 13 by adopting a new rule as follows:

501—13.6(80B) Telecommunicator status forms furnished to academy. Within ten days of any of the following

occurrences, the academy will be notified by the use of prescribed forms:

1. Any hiring, termination or retirement of personnel.
2. Change of status of existing personnel (e.g., promotions, name changes).
3. Training received by telecommunicators not provided at or by personnel of the Iowa law enforcement academy.

ARC 8688A

PROFESSIONAL LICENSURE  
DIVISION[645]

## BOARD OF BEHAVIORAL SCIENCE EXAMINERS

## 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 Behavioral Science Examiners hereby gives Notice of Intended Action to amend Chapter 30, "Licensure of Marital and Family Therapists and Mental Health Counselors," and Chapter 31, "Continuing Education and Disciplinary Process," Iowa Administrative Code.

These proposed amendments change the requirements for obtaining continuing education credit, change renewal requirements for individuals licensed within six months of renewal, establish a deadline for materials to be submitted for review by the board at a regularly scheduled meeting and change the amount of time in which supervision requirements can be completed.

Any interested person may make written comments on the proposed amendments not later than March 2, 1999, addressed to Judy Manning, Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

There will be a public hearing on March 2, 1999, from 8 to 10 a.m. in the Professional Licensure Conference Room, Iowa Department of Public Health, Lucas State Office Building, Fifth Floor, Des Moines, Iowa 50319-0075. Persons may present their views at the public hearing either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

The Board has determined that the amendments will have no impact on small business within the meaning of Iowa Code section 17A.31.

The proposed amendments are intended to implement Iowa Code chapters 154D and 272C.

The following amendments are proposed.

ITEM 1. Amend rule 645—30.2(147,154D) by adopting a new subrule as follows:

30.2(9) All material sent to the board for review must be submitted at least one week before a regularly scheduled meeting. Materials received after this deadline will be reviewed at the next regularly scheduled meeting of the board.

ITEM 2. Amend subrule 30.3(2), paragraph "a," subparagraph (2), as follows:



## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

(2) The learning process is sustained and intense. Appointments are customarily scheduled once a week; three times weekly is ordinarily the maximum and once every other week the minimum. Marital and family therapy supervision is normally completed over a period of ~~one~~ two to three years in blocks of at least 20 hours.

ITEM 3. Amend subrule 30.4(2), paragraph "a," subparagraph (2), as follows:

(2) The learning process is sustained and intense. Appointments are customarily scheduled once a week; three times weekly is ordinarily the maximum and once every other week the minimum. Mental health counseling supervision is normally completed over a period of ~~one~~ two to three years in blocks of at least 20 hours.

ITEM 4. Amend rule 645—30.6(147,154D) by adopting a new subrule as follows:

**30.6(5)** Individuals who were issued their initial license within six months of license renewal will not be required to renew their license until the next renewal two years later. Individuals will be required to report 40 hours of continuing education for their first renewal and every renewal thereafter.

ITEM 5. Amend subrule 31.1(3) as follows:

**31.1(3)** ~~Beginning October 1, 2000, the~~ The continuing education compliance period shall be each biennium beginning October 1 of the even-numbered year to September 30 of the next even-numbered year. During the continuing education compliance period, attendance at sponsor-approved continuing education programs may be used as evidence of fulfilling the continuing education requirement for the subsequent biennial license renewal period beginning October 1. ~~The biennial license renewal period shall extend from October 1 of each even-numbered year until September 30 of the next even-numbered year.~~

ITEM 6. Amend subrule 31.1(4) as follows:

**31.1(4)** Hours of continuing education credit may be obtained by attending and participating in a continuing education activity ~~which meets the requirements in this chapter offered by a sponsor approved by the board.~~ Hours of continuing education credit may also be obtained by attending and participating in a continuing education activity offered by a sponsor approved by the Iowa Board of Social Work Examiners or the Iowa Board of Psychology Examiners. Any nonapproved sponsor that meets the criteria set forth in rule 31.2(272C) will be subject to review by the board at the time of the audit.

ITEM 7. Amend subrule 31.1(6) as follows:

**31.1(6)** When an initial license is issued via examination, the new licensee is exempt from meeting the continuing education requirement for the first renewal of the license continuing education biennium in which the license is originally issued.

ITEM 8. Amend subrule 31.2(1), paragraph "c," as follows:

c. Is conducted by individuals who have ~~special~~ *specialized* education, training and experience by reason of which said individuals should be considered experts concerning the subject matter of the program, and is accompanied by a paper, manual or outline which substantively pertains to the subject matter of the program and reflects program schedule, goals and objectives. The board may request a curriculum vitae of presenters.

ITEM 9. Rescind subrule 31.2(2) and adopt the following new subrule in lieu thereof:

**31.2(2)** Continuing education credit may be granted for attendance at sponsor-approved workshops, conferences and symposiums and for academic coursework. Official transcripts indicating successful completion of academic courses which apply to the field of mental health counseling or marital and family therapy, as appropriate, will be necessary in order to receive the following continuing education credits:

One semester credit = 15 hours of continuing education credit;

One quarter credit = 10 hours of continuing education credit.

ITEM 10. Amend rule 645—31.2(272C) by adopting a new subrule as follows:

**31.2(3)** In addition to attendance at sponsor-approved workshops, conferences and symposiums and academic coursework, a maximum of 20 hours of continuing education credit may be granted for any of the following activities not to exceed a combined total of 20 hours:

a. Presenting professional programs which meet the criteria in 31.2(1). Two hours of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for audit. Presentation at a professional program does not include teaching a class at an institution of higher learning at which the applicant is regularly and primarily employed. Presentations to lay public are excluded.

b. Scholarly research or other activities of which the results are published in a recognized professional publication. The scholarly research must be integrally related to the practice of the professions.

c. Publication in a refereed journal. The article in a refereed journal for which the licensee is seeking continuing education credit must be integrally related to the practice of the professions.

d. Distance learning conferences will be allowed if the following criteria are met:

(1) The program is offered through the Iowa Communications Network (ICN).

(2) The program allows for interaction between the presenter and the participants.

(3) The program meets all of the criteria of 31.2(1).

e. Home study courses will be allowed if the following criteria are met:

(1) The program is recognized by the National Board for Certified Counselors (NBCC) or meets all of the criteria of 31.2(1).

(2) A certificate of completion is presented after successful completion of course.

f. Viewing videotaped presentations will be allowed if the following criteria are met:

(1) There is a sponsoring group or agency.

(2) There is a facilitator or program official present.

(3) The program official may not be the only attendee.

(4) The program meets all of the criteria of 31.2(1).

g. Computer-assisted instructional courses or programs pertaining to the practice of mental health counseling or marital and family therapy will be allowed if the following criteria are met:

(1) The courses and programs are approved by the National Board for Certified Counselors (NBCC) or its affiliates or meets all of the criteria of 31.2(1).

(2) A certificate of completion that includes the following information is presented after successful completion of the course:

1. Date course/program was completed.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

2. Title of course/program.
3. Number of course/program contact hours.
4. Official signature of course/program sponsor.

ITEM 11. Rescind rule 645—31.3(272C) and adopt the following new rule in lieu thereof:

**645—31.3(272C) Accreditation of sponsors.**

**31.3(1) Standards for accreditation of sponsors.** An organization, institution, agency or individual shall be qualified for approval as a sponsor of continuing education activities if the board determines that:

- a. The sponsor presents organized programs of learning; and
- b. The sponsor presents subject matters which integrally relate to the practice of mental health counseling or marital and family therapy or both; and
- c. The sponsor's program activities contribute to the professional competency of the licensee; and
- d. The sponsor's program presenters are individuals who have specialized education, training or experience by reason of which said individuals may be considered qualified to present the subject matter of the programs.

**31.3(2) Procedures for accreditation of sponsors.**

a. An institution, organization, agency or individual desiring to be designated as an accredited sponsor of continuing education activities shall apply for accreditation to the board stating its education history, subjects offered, total hours of instruction presented, and the names and qualifications of instructors. If approved by the board, such institution, organization, agency or individual shall be designated as an accredited sponsor of continuing education activities, and the activities of such an approved sponsor which are relevant to mental health counseling and marital and family therapy shall be deemed automatically approved for continuing education credit. By January 31 of each year, commencing January 31, 1995, all accredited sponsors shall report to the board in writing the education programs conducted during the preceding calendar year on a form approved by the board.

b. All accredited sponsors shall issue a certificate of attendance to each licensee who attends a continuing education activity. The certificate shall include sponsor name and number; date of program; name of participant; total number of clock hours excluding introductions, breaks, and meals; program title and presenter; program site; and whether the program is approved for mental health counseling, marital and family therapy, or both.

c. All accredited sponsors shall keep on file for three years a list of attendees, license numbers, number of continuing education clock hours, and a program description and objectives.

**31.3(3) Review of accredited sponsors and programs.**

a. The board may monitor and review any continuing education program already approved by the accredited sponsor. Upon evidence of significant variation in the program presented from the program approved, the board may disapprove all or any part of the approved hours granted by the program.

b. The board may at any time reevaluate an accredited sponsor. If after such reevaluation the board finds there is a basis for consideration of revocation of the accreditation of a sponsor, the board shall give notice by ordinary mail to that sponsor of a hearing on such possible revocation at least 30 days prior to the hearing.

**ARC 8649A****PUBLIC EMPLOYMENT RELATIONS BOARD[621]****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 68B.4, the Public Employment Relations Board hereby gives Notice of Intended Action to adopt Chapter 13, "Consent for the Sale of Goods and Services," Iowa Administrative Code.

The proposed rules specify the method by which officials of the agency may obtain the agency's consent for their sale of goods or services to individuals or entities subject to the agency's regulatory authority. The adoption of such rules is required by Iowa Code section 68B.4.

Any interested person may make written suggestions or comments on or before March 2, 1999. Such written materials should be directed to the Chairperson, Public Employment Relations Board, Suite 202, 514 East Locust Street, Des Moines, Iowa 50309. Persons who wish to convey their views orally should contact the Chairperson, Public Employment Relations Board, at (515)281-4414 or at the Board's offices at the address noted above.

There will also be a public hearing on Tuesday, March 2, 1999, at 11 a.m. in the Board's hearing room located on the second floor at 514 East Locust Street, Des Moines, Iowa. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make an oral presentation at the public hearing should contact the Chairperson of the Public Employment Relations Board at least one day prior to the date of the public hearing.

These rules are intended to implement Iowa Code section 68B.4.

The following new chapter is proposed.

**CHAPTER 13  
CONSENT FOR THE SALE OF  
GOODS AND SERVICES**

**621—13.1(68B) General prohibition.** An official shall not sell, either directly or indirectly, any goods or services to individuals or entities subject to the regulatory authority of the agency without obtaining written consent as provided in this chapter.

**621—13.2(68B) Definitions.**

"Agency" means the public employment relations board.

"Compensation" means any money, thing of value, or financial benefit conferred in return for goods or services rendered or to be rendered.

"Official" means the chairperson and members of the public employment relations board. Where the term "official" is used in this chapter, it includes a firm in which any of those persons is a partner and a corporation of which any of those persons hold 10 percent or more of the stock, either directly or indirectly, and the spouse and minor children of any of those persons.

"Sale of goods or services" means the receipt of compensation by an official for providing goods or services. For

## PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

purposes of this chapter, the term does not include outside employment activities which constitute an employer-employee relationship.

**621—13.3(68B) Conditions for consent.** Consent to a sale of goods or services shall not be given unless all of the following conditions are met:

1. The official's job duties or functions are not related to the agency's regulatory authority over the individual or entity, or the selling of the good or service does not affect the official's job duties or functions.
2. The selling of the good or service does not include acting as an advocate on behalf of the individual or entity to the agency.
3. The selling of the good or service does not result in the official selling of a good or service to the agency on behalf of the individual or entity.
4. The selling of the good or service does not reasonably appear to create a conflict of interest, a situation where the official's neutrality in the performance of the official's employment duties might thereafter be reasonably questioned, or the appearance of any other impropriety.

**621—13.4(68B) Application for consent.** An application for consent must be in writing and signed by the official seeking consent. The application must be filed with the agency at least 20 calendar days in advance of the proposed sale of goods or services. An application shall not be deemed filed until all of the following information has been provided:

1. A description of the goods or services proposed to be sold.
2. The identity of the prospective recipient(s) of the goods or services and the recipient's relationship to the agency's regulatory authority.
3. The anticipated dates of delivery of the goods or services.
4. The approximate amount and form of the compensation to be received by the official.
5. A statement by the official explaining why the proposed sale of goods or services will not create a conflict of interest, a situation where the official's neutrality in the performance of the official's employment duties might thereafter be reasonably questioned, or the appearance of any other impropriety.

**621—13.5(68B) Consent or denial.**

**13.5(1) Who may consent or deny.** The agency's officials not joining in the application will consider the application and consent to or deny it by majority vote, a tie vote being deemed a denial of the application. The officials entitled to vote on the application may require the submission of additional information prior to taking action on the application.

**13.5(2) Timing and content of consent or denial.** Written consent to or denial of the application will be issued within 14 days following the date of its filing or the receipt of the additional information submitted pursuant to subrule 13.5(1). If the application is denied, the denial will state the reasons therefor.

**13.5(3) Effect of consent.** Any consent granted is valid only for the activity and time period described in it and only to the extent that all material facts have been disclosed and the actual facts are consistent with those set forth in the application. Consent may be revoked at any time upon written notice to the official.

**621—13.6(68B) Public information.** The application and the resulting consent or denial thereof are public records, open for public examination, except to the extent that disclo-

sure of details would constitute a clearly unwarranted invasion of personal privacy or trade secrets and the record is exempt from disclosure under Iowa law.

**621—13.7(68B) Effect of other laws.** Neither these rules nor any consent provided under them constitutes consent for any activity which would constitute a conflict of interest at common law or which violates any applicable statute or rule. Despite agency consent, a sale of goods or services to an individual or entity subject to the jurisdiction of the agency may violate, for example, the gift law or bribery and corruption laws. It is the responsibility of the official to ensure compliance with all applicable laws and to avoid both impropriety and the appearance of impropriety.

These rules are intended to implement Iowa Code section 68B.4.

## ARC 8691A

PUBLIC HEALTH  
DEPARTMENT[641]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147A.27, the Iowa Department of Public Health hereby gives Notice of Intended Action to adopt new Chapter 137, "Trauma Education and Training," Iowa Administrative Code.

The proposed rules establish trauma care education and training requirements for physicians, physician assistants, nurses, and emergency medical care providers. Iowa's Trauma System Advisory Council approved these rules on October 21, 1998.

The Iowa Department of Public Health will hold a public meeting over the Iowa Communications Network (ICN) on Tuesday, March 2, 1999, from 2 to 3 p.m. Sites participating in the ICN broadcast include:

National Guard Armory, 11 East 23rd Street, Spencer, Iowa;

National Guard Armory, 1712 LaClark Road, Carroll, Iowa;

National Guard Armory, 1160 10th Street SW, Mason City, Iowa;

Iowa Department of Public Health, ICN Room, Sixth Floor, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa;

National Guard Armory, 195 Radford Road, Dubuque, Iowa;

National Guard Armory, 501 Highway 1 South, Washington, Iowa.

Any oral or written comments must be received on or before March 2, 1999. Comments should be addressed to Gary Ireland, EMS Bureau Chief, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These rules are intended to implement Iowa Code chapter 147A.

The following new chapter is proposed.

Adopt the following new chapter:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

### CHAPTER 137

#### TRAUMA EDUCATION AND TRAINING

**641—137.1(147A) Definitions.** For the purpose of these rules, the following definitions shall apply:

“ACLS course” means advanced cardiac life support course.

“Advanced registered nurse practitioner (ARNP)” means a nurse pursuant to 655—7.1(152) with current licensure as a registered nurse in Iowa who is registered in Iowa to practice in an advanced role. The ARNP is prepared for an advanced role by virtue of additional knowledge and skills gained through a formal advanced practice education program of nursing in a specialty area approved by the board. In the advanced role, the nurse practices nursing assessment, intervention, and management within the boundaries of the nurse-client relationship. Advanced nursing practice occurs in a variety of settings within an interdisciplinary health care team, which provide for consultation, collaborative management, or referral. The ARNP may perform selected medical-delegated functions when a collaborative practice agreement exists.

“Advanced trauma life support course” means a course for physicians with an emphasis on the first hour of initial assessment and primary management of the injured patient, starting at the point in time of injury continuing through initial assessment, life-saving intervention, reevaluation, stabilization, and transfer when appropriate.

“ARNP” means advanced registered nurse practitioner.

“ATLS” means advanced trauma life support.

“Department” means the Iowa department of public health.

“Director” means the director of the Iowa department of public health.

“Emergency care facility” means a physician’s office, clinic, or other health care center which provides emergency medical care in conjunction with other primary care services.

“Emergency medical care provider” means an individual trained to provide emergency and nonemergency medical care at the first responder, EMT-basic, EMT-intermediate, EMT-paramedic level or other certification levels adopted by rule by the department who has been issued a certificate by the department.

“EMS” means emergency medical services.

“EMT” means emergency medical technician.

“EMT-A” means emergency medical technician ambulance.

“EMT-B” means emergency medical technician basic.

“EMT-D” means emergency medical technician defibrillation.

“EMT-I” means emergency medical technician intermediate.

“EMT-P” means emergency medical technician paramedic.

“FR” means first responder.

“FR-D” means first responder defibrillation.

“Hospital” means a facility licensed under Iowa Code chapter 135B, or comparable emergency care facility located and licensed in another state.

“Licensed practical nurse” means an individual licensed pursuant to Iowa Code chapter 152.

“LPN” means licensed practical nurse.

“NRP course” means neonatal resuscitation provider course.

“PA” means physician assistant.

“PALS course” means pediatric advanced life support course.

“Physician” means an individual licensed under Iowa Code chapter 148, 150 or 150A.

“Physician assistant” means an individual licensed pursuant to Iowa Code chapter 148C.

“Practitioner” means a person who practices medicine or one of the associated health care professions.

“Registered nurse” means an individual licensed pursuant to Iowa Code chapter 152.

“RN” means registered nurse.

“SEQIC” means system evaluation quality improvement committee.

“Service program” means any 24-hour emergency medical care ambulance service or nontransport service program that has received authorization by the department.

“System evaluation quality improvement committee” means the committee established by the department pursuant to Iowa Code section 147A.25 to develop, implement, and conduct trauma care system evaluation, quality assessment, and quality improvement.

“Trauma” means a single or multisystem life-threatening or limb-threatening injury, or an injury requiring immediate medical or surgical intervention or treatment to prevent death or disability.

“Trauma care facility” means a hospital or emergency care facility which provides trauma care and has been verified by the department as having Level I, II, III, or IV care capabilities and has been issued a certificate of verification pursuant to Iowa Code section 147A.23, subsection 2, paragraph “c.”

“Trauma care system” means an organized approach to providing personnel, facilities, and equipment for effective and coordinated trauma care.

“Trauma nursing course objectives” means the trauma nursing course objectives recommended to the department by the trauma system advisory council and adopted by reference in these rules.

“Trauma patient” means a victim of an external cause of injury that results in major or minor tissue damage or destruction caused by intentional or unintentional exposure to thermal, mechanical, electrical or chemical energy, or by the absence of heat or oxygen (ICD9 Codes E800.0 - E999.9).

“Trauma system advisory council” means the council established by the department pursuant to Iowa Code section 147A.24 to advise the department on issues and strategies to achieve optimal trauma care delivery throughout the state, to assist the department in the implementation of an Iowa trauma care plan, to develop criteria for the categorization of all hospitals and emergency care facilities according to their trauma care capabilities, to develop a process for verification of the trauma care capacity of each facility and the issuance of a certificate of verification, to develop standards for medical direction, trauma care, triage and transfer protocols, and trauma registries, to promote public information and education activities for injury prevention, and to review rules adopted under this division, and to make recommendations to the director for changes to further promote optimal trauma care.

“Trauma team” means a team of multidisciplinary health care providers established and defined by a hospital or emergency care facility that provides trauma care commensurate with the level of trauma care facility verification.

“TSAC” means trauma system advisory council.

“Verification” means a process by which the department certifies a hospital or emergency care facility’s capacity to

PUBLIC HEALTH DEPARTMENT[641](cont'd)

provide trauma care in accordance with criteria established for Level I, II, III, and IV trauma care facilities and these rules.

**641—137.2(147A) Initial trauma education for Iowa's trauma system.** Initial trauma education (Table 1) is re-

quired of physicians, physician assistants, advanced registered nurse practitioners, registered nurses, and licensed practical nurses who are identified or defined as trauma team members by a trauma care facility and who participate directly in the initial resuscitation of the trauma patient.

Table 1

Practitioner	Resource (Level I) TCF	Regional (Level II) TCF	Area (Level III) TCF	Community (Level IV) TCF
Physician	1. ATLS 2. Trauma System Overview	1. ATLS 2. Trauma System Overview	1. ATLS 2. Trauma System Overview	1. ATLS 2. Trauma System Overview
PA/ARNP	1. Audit ATLS 2. Trauma System Overview	1. Audit ATLS 2. Trauma System Overview	1. Audit ATLS 2. Trauma System Overview	1. Audit ATLS 2. Trauma System Overview
RN/LPN	1. Successful completion of trauma nursing course objectives recommended by TSAC 2. Trauma System Overview	1. Successful completion of trauma nursing course objectives recommended by TSAC 2. Trauma System Overview	1. Successful completion of trauma nursing course objectives recommended by TSAC 2. Trauma System Overview	1. Successful completion of trauma nursing course objectives recommended by TSAC 2. Trauma System Overview

**137.2(1) General requirements for initial trauma education.**

a. Completion of initial trauma education shall be done within three years of the trauma care facility's initial verification or within one year of the practitioner's joining the trauma care facility's trauma team.

b. Trauma nursing course objectives (1998) are incorporated and adopted by reference for all trauma care facilities. For any differences which may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

c. Trauma nursing course objectives are available from the Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**137.2(2) Initial trauma education (Table 2) is required prior to January 1, 2001, of emergency medical care providers involved in the initial resuscitation of the injured patient while participating on an authorized transporting service program.**

Table 2

Emergency Medical Care Provider	Initial Trauma Education
FR or FR-D EMT-A, B, or D EMT-I EMT-P	1. Overview of Iowa's trauma system. 2. Glasgow coma scale. 3. Out-of-hospital trauma triage destination decision protocol.

**641—137.3(147A) Continuing trauma education for Iowa's trauma system.** Continuing trauma education (Table 3) is required every four years of physicians, physician assistants, advanced registered nurse practitioners, registered

nurses, and licensed practical nurses who are identified or defined as trauma team members by a trauma care facility and who participate directly in the initial resuscitation of the trauma patient.

Table 3

Practitioner	Resource (Level I) TCF	Regional (Level II) TCF	Area (Level III) TCF	Community (Level IV) TCF
Physician	32 hours of continuing trauma education: 8 hours formal (recommend ATLS refresher course), 24 hours informal.	32 hours of continuing trauma education: 8 hours formal (recommend ATLS refresher course), 24 hours informal.	32 hours of continuing trauma education: 8 hours formal (ATLS refresher course required), 24 hours informal.	32 hours of continuing trauma education: 8 hours formal (ATLS refresher course required), 24 hours informal.
PA/ARNP	32 hours of continuing trauma education: 8 hours formal (audit ATLS refresher course required), 24 hours informal.	32 hours of continuing trauma education: 8 hours formal (audit ATLS refresher course required), 24 hours informal.	32 hours of continuing trauma education: 8 hours formal (audit ATLS refresher course required), 24 hours informal.	32 hours of continuing trauma education: 8 hours formal (audit ATLS refresher course required), 24 hours informal.
RN/LPN	16 hours of continuing trauma education: 4 hours formal (refresher course in trauma nursing course objectives recommended by TSAC is required), 12 hours informal.	16 hours of continuing trauma education: 4 hours formal (refresher course in trauma nursing course objectives recommended by TSAC is required), 12 hours informal.	16 hours of continuing trauma education: 4 hours formal (refresher course in trauma nursing course objectives recommended by TSAC is required), 12 hours informal.	16 hours of continuing trauma education: 4 hours formal (refresher course in trauma nursing course objectives recommended by TSAC is required), 12 hours informal.

**137.3(1) Topics for all or part of the continuing trauma education hours may be recommended to the department by SEQIC or TSAC based on trauma care system outcomes.**

**137.3(2) General requirements for continuing trauma education.**

a. Three-fourths of the required continuing trauma education hours may be informal, determined and approved by a trauma care facility from any of the following:

1. Multidisciplinary trauma case reviews;
2. Multidisciplinary trauma conferences;

PUBLIC HEALTH DEPARTMENT[641](cont'd)

3. Multidisciplinary trauma mortality and morbidity reviews;
4. Multidisciplinary trauma committee meetings;
5. Trauma peer review meetings;
6. Any trauma care facility committee meeting with a focus on trauma care evaluation; and
7. Critical care education such as ACLS course, PALS course, NRP course, or equipment inservices.

b. One-fourth of the required continuing trauma education hours shall be obtained through any formalized continuing education programs.

137.3(3) Continuing trauma education (Table 4) is required every two years of currently certified emergency medical care providers involved in the initial resuscitation of the injured patient while participating on an authorized transporting service program.

Table 4

Emergency Medical Care Provider	Continuing education hours per certification period
FR or FR-D	2 hours
EMT-A,B,D	4 hours
EMT-I	6 hours
EMT-P	8 hours

641—137.4(147A) Offenses and penalties.

137.4(1) The department may deny verification as a trauma care facility or authorization as a service program, may give a citation and warning, or may place on probation, suspend, or revoke existing trauma care facility verification or service program authorization if the department finds reason to believe that the facility or service program has not been or will not be operated in compliance with Iowa Code sections 147A.27 and these administrative rules. The denial, citation and warning, period of probation, suspension, or revocation shall be effected and may be appealed in accordance with the requirements of Iowa Code section 17A.12.

137.4(2) All complaints regarding the operation of a trauma care facility or service program, or those purporting to be or operating as the same, shall be reported to the department. The address is: Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

137.4(3) Complaints and the investigative process shall be treated as confidential to the extent they are protected by Iowa Code section 22.7.

137.4(4) Complaint investigations may result in the department's issuance of a notice of denial, citation and warning, probation, suspension or revocation.

137.4(5) Notice of denial, citation and warning, probation, suspension or revocation shall be effected in accordance with the requirements of Iowa Code section 17A.12. Notice to the alleged violator of denial, citation and warning, probation, suspension, or revocation shall be served by certified mail, return receipt requested, or by personal service.

137.4(6) Any request for a hearing concerning the denial, citation and warning, probation, suspension or revocation shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 20 days of the receipt of the department's notice to take action. The address is : Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075. If the request is made within the 20-day time period, the notice to take action shall be deemed to be suspended pending the hearing. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, citation and warning, probation, suspension or revocation has been or will be removed. If no request for a hearing is received within the 20-day time period, the department's notice of denial, citation and warning, probation, suspension or revocation shall become the department's final agency action.

137.4(7) A request for a hearing shall be forwarded within five working days of receipt of the request to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases.

The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

137.4(8) The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

137.4(9) When the administrative law judge makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken.

137.4(10) Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

137.4(11) Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

- a. All pleadings, motions, and rules.
- b. All evidence received or considered and all other submissions by recording or transcript.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections and rulings on them.
- e. All proposed findings and exceptions.
- f. The proposed decision and order of the administrative law judge.

137.4(12) The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or personal service.

137.4(13) It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

137.4(14) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

mail, return receipt requested, or by personal service. The address is: Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**137.4(15)** The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

**137.4(16)** Final decisions of the department relating to disciplinary proceedings may be transmitted to the appropriate professional associations, news media or employer.

These rules are intended to implement Iowa Code chapter 147A.

## ARC 8653A

RACING AND GAMING  
COMMISSION[491]

## 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 99D.7 and 99F.4, the Iowa Racing and Gaming Commission hereby gives Notice of Intended Action to amend Chapter 4, "Practice and Procedure Before the Racing and Gaming Commission," Chapter 13, "Occupational and Vendor Licensing," and Chapter 26, "Rules of the Games," Iowa Administrative Code.

Item 1 allows the gaming board to designate the length and dates of suspensions.

Item 2 defines the weight allowances for apprentice jockeys.

Item 3 allows the winner of a progressive jackpot, in lieu of periodic payments, to select a discounted single cash payment.

Item 4 provides for a method to calculate the present value on any United States Treasury or Iowa state debt instruments.

Any person may make written suggestions or comments on the proposed amendments on or before March 2, 1999. Written material should be directed to the Racing and Gaming Commission, 717 E. Court, Suite B, Des Moines, Iowa 50309. Persons who wish to convey their views orally should contact the Commission office at (515)281-7352.

Also, there will be a public hearing on March 2, 1999, at 9 a.m. in the office of the Racing and Gaming Commission, 717 E. Court, Suite B, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

The following amendments are proposed.

**ITEM 1.** Amend rule 491—4.4(99D,99F) by adding the following new subrule:

**4.4(5)** Designate the length of suspensions and the dates for which all suspensions will be served.

**ITEM 2.** Rescind subrule 13.25(2), paragraph "d," and insert in lieu thereof the following new paragraph:

d. An apprentice jockey may claim the following weight allowance in all overnight races except stakes and handicaps: ten-pound allowances beginning with the first mount and continuing until the apprentice has ridden five winners; a seven-pound allowance until the apprentice has ridden an additional 25 winners; and, if an apprentice has ridden a total of 40 winners prior to the end of a period of one year from the date of the apprentice's fifth winner, the apprentice jockey shall have an allowance of five pounds until one year from the date of the fifth winning mount. If after one year from the date of the fifth winning mount the apprentice jockey has not ridden 40 winners, the applicable weight allowance shall continue for one more year from the date of the fifth winning mount, or until the fortieth winner, whichever comes first. In no event may a weight allowance be claimed for more than two years from the date of the fifth winning mount, unless an extension has been granted under this paragraph "d." A contracted apprentice may claim an allowance of three pounds for an additional one year when riding horses owned or trained by the original contract employer.

The commission may extend the weight allowance of an apprentice jockey when, in the discretion of the commission, an apprentice jockey is unable to continue riding due to physical disablement or illness, military service, attendance in an institution of secondary or higher education, restriction on racing or any other valid reason. In order to qualify for an extension, an apprentice jockey shall have been rendered unable to ride for a period of not less than seven consecutive days during the period in which the apprentice was entitled to an apprentice weight allowance. Under exceptional circumstances, total days lost collectively will be given consideration. The commission currently licensing the apprentice jockey shall have the authority to grant an extension to an eligible applicant, but only after the apprentice has produced documentation verifying time lost as defined by this paragraph "d." An apprentice may petition one of the jurisdictions in which the apprentice is licensed and riding for an extension of the time for claiming apprentice weight allowances, and the apprentice shall be bound by the decision of the jurisdiction so petitioned.

**ITEM 3.** Rescind subrule 26.17(7), paragraph "n," subparagraph (6), and insert in lieu thereof the following new subparagraph:

(6) For multilink system jackpots disbursed in periodic payments, any United States Treasury or Iowa state debt instruments shall be purchased within 90 days following notice of the win of the multilink system jackpot, and a copy of such debt instruments will be provided to the commission office within 30 days of purchase. Any United States Treasury or Iowa state debt instrument shall have a surrender value at maturity, excluding any interest paid before the maturity date, equal to or greater than the value of the corresponding periodic jackpot payment, and shall have a maturity date prior to the date the periodic jackpot payment is required to be made.

**ITEM 4.** Amend subrule 26.17(7) by adding a new paragraph "o" as follows:

o. For multilink system jackpots disbursed in periodic payments, subsequent to the date of the win, a winner may be offered the option to receive, in lieu of periodic payments, a discounted single cash payment in the form of a "qualified prize option," as that term is defined in section 451(h) of the Internal Revenue Code. For purposes of calculating the single cash payment, the trust administrator shall obtain quotes for the purchase of U.S. Government Treasury Securities at least three times per month. The quote selected by



## RACING AND GAMING COMMISSION[491](cont'd)

the trust administrator shall be used to calculate the single cash payment for all qualified prizes that occur subsequent to the date of the selected quote, until a new quote becomes effective.

ARC 8662A

REVENUE AND FINANCE  
DEPARTMENT[701]

## 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 421.14 and 422.68, the Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 12, "Filing Returns, Payment of Tax, Penalty and Interest," Chapter 16, "Taxable Sales," Chapter 17, "Exempt Sales," Chapter 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage," and Chapter 26, "Sales and Use Tax on Services," Iowa Administrative Code.

These rules are amended for a variety of reasons. Items 1 and 2 are amendments which set out the provisions which must be included in any rate agreement negotiated between the Department and a direct pay permit holder. Item 3 removes confusing language from the rule explaining the sales tax on commercial amusement enterprises, a tax repealed in 1984. Item 4 updates the list of states which provide reciprocal sales and use tax exemptions to Iowa. Item 5 limits the definition of "advertising material," the sale of which is exempt from tax, to comply with existing statutory language. Item 6 amends the definition of "replacement parts" applicable to the industrial machinery and equipment exemption to allow a rebuttable presumption as to taxability. Finally, Item 7 corrects a reference to the Iowa Code in the sales tax rule regarding landscaping services.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.31(4). The Department will issue a regulatory flexibility analysis as provided in Iowa Code sections 17A.31 to 17A.33 if a written request is filed by delivery or by mailing postmarked no later than March 2, 1999, to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under Iowa Code sections 17A.31 to 17A.33, or an organization of small businesses representing at least 25 persons which is registered with this agency under Iowa Code sections 17A.31 to 17A.33.

Any interested person may make written suggestions or comments on these proposed amendments on or before March 12, 1999. Such written comments should be directed to the Policy Section, Compliance Division, Department of

Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to orally convey their views should contact the Policy Section, Compliance Division, Department of Revenue and Finance, at (515)281-4250 or at the Department of Revenue and Finance offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by March 5, 1999.

These amendments are intended to implement Iowa Code sections 422.43 and 422.45, and 422.53(8).

The following amendments are proposed.

ITEM 1. Amend rule 701—12.3(422), catchwords, as follows:

**701—12.3(422) Permits and negotiated rate agreements.**

ITEM 2. Amend rule 701—12.3(422) by adopting the following new subrule:

**12.3(3) Negotiated rate agreements.** Any person who has been issued or who has applied for a direct pay permit may request the department to enter into a negotiated rate agreement with the permit holder or applicant. These agreements are negotiated on a case-by-case basis and, if approved by the department, allow a direct pay permit holder to pay the state sales, local option sales, or use tax on a basis calculated by agreement between the direct pay permit holder and the department. Negotiated rate agreements are not applicable to sales and use taxes set out in subrule 12.3(2), paragraph "b," above, and no negotiated rate agreement is effective for any period during which a taxpayer who is a signatory to the agreement is not a direct pay permit holder.

All negotiated rate agreements shall contain the following information or an explanation for its omission:

1. The name of the taxpayer who has entered into the agreement with the department.

2. The name and title of each person signing the agreement and the name, telephone or fax number, and E-mail or physical address of at least one person to be contacted if questions regarding the agreement arise.

3. The period during which the agreement is in effect and the renewal or extension rights (if any) of each party, and the effective date of the agreement.

4. The negotiated rate or rates, the classes of sales or uses to which each separate rate is applicable, any items which will be excluded from the agreement, and any circumstances which will result in a changed rate or rates or changed composition of classes to which rates are applicable.

5. Actions or circumstances which render the agreement void, or voidable at the option of either party, and the time frame in which the agreement will be voided.

6. Rights, if any, of the parties to resort to mediation or arbitration.

7. An explanation of the department's right to audit aspects of the agreement, including any right to audit remaining after the agreement's termination.

8. The conditions by which the agreement may be terminated and the effective date of the termination.

9. The methodology used to determine the negotiated rate and any schedules needed to verify percentages.

10. Any other matter deemed necessary to the parties' mutual understanding of the agreement.

ITEM 3. Amend rule 701—16.30(422) as follows:

**701—16.30(422) Commercial amusement enterprises—companies or persons which contract to furnish show for**



## REVENUE AND FINANCE DEPARTMENT[701](cont'd)

**fixed fee.** Sales by commercial amusement enterprises occurring on or after May 31, 1984, shall not be subject to tax. ~~For any sales occurring prior thereto, any circus, show, carnival company or person contracting with persons to put on a show for a fixed fee or on a percentage basis shall be liable for the current rate of tax on the amount received for such performances or operation of commercial amusement enterprises. Any sponsor of a commercial amusement enterprise may purchase the amusement for resale if the sponsor makes an additional charge to the general public for the commercial amusement and tax is collected on that charge. If no additional charge is made by the sponsor or if tax is not collected on the additional charge by the sponsor, the sponsor is the consumer of the commercial amusement enterprise and tax should be collected on the fixed fee or percentage amount paid to entertainer(s).~~

**EXAMPLE:** A tavern (sponsor) contracts with a rock band for a certain number of performances. The sponsor charges a cover charge for the amusement and tax is collected on this admission. The sponsor would be purchasing the commercial amusement enterprise for resale and tax is collected on the additional charge.

**EXAMPLE:** A group of store owners in a shopping mall (sponsor) contracts with a group of entertainers to put on a show in the mall for a fixed fee. The sponsor does not make an additional charge to the general public for the entertainment. Tax is due on the amount of the fixed fee and since the sponsor has not resold the entertainment, the group of entertainers are selling a taxable amusement to the shopping mall and as such, are responsible for remitting tax on their fee.

**EXAMPLE:** A lounge (sponsor) contracts with a band for a performance on a percentage basis. The sponsor does not charge a cover charge but raises the price of drinks and beer. The sponsor is purchasing the amusement for resale because the sponsor is making an additional charge to the general public. Tax is collected on the price of the drinks and beer, thus no tax is due on the percentage amount paid by the sponsor to the entertainer.

This rule is intended to implement Iowa Code section 422.43.

ITEM 4. Amend rule 701—17.23(422,423) as follows:

**701—17.23(422,423) Sales to other states and their political subdivisions.** On and after July 1, 1990, gross receipts from the sale of tangible personal property or from the furnishing of electrical energy, natural or artificial gas, or communication service to another state or political subdivision of another state are exempt from tax if that other state provides a similar reciprocal exemption for Iowa and its political subdivisions. ~~As of August 1, 1990, the only states bordering Iowa to which this exemption is applicable are Illinois and South Dakota. See Illinois Rev. Stat., Ch 120, Retailers' Occupation Tax, Sec. 2, and South Dakota Rev. Stat., Sec. 10-45-10. The states known to provide a similar reciprocal exemption to Iowa and its subdivisions (as of October 1, 1998) are Illinois, Kentucky, North Dakota, and South Dakota and the District of Columbia.~~

This rule is intended to implement Iowa Code section 422.45.

ITEM 5. Amend rule 701—18.54(422,423) as follows:

**701—18.54(422,423) Sales of advertising material.** On and after July 1, 1990, gross receipts from the sales of advertising material to any person in Iowa are exempt from tax if that person, or any agent of that person, will, after the sale,

send that advertising material outside of Iowa and subsequent sole use of that material will be outside this state.

For the purposes of this subrule "advertising material" is tangible personal property only, including paper. ~~Examples of "advertising "Advertising material" include, but are not limited to,~~ the following: brochures, catalogs, leaflets, fliers, order forms, return envelopes, and any similar items of tangible personal property which will be used to promote sales of property or services.

This rule is intended to implement Iowa Code section 422.45.

ITEM 6. Amend subrule **18.58(1)**, definition of "Replacement parts," as follows:

"Replacement parts." A "replacement part" is any machinery, equipment, or computer part which is substituted for another part that has broken, has become worn out or obsolete, or is otherwise unable to perform its intended function. "Replacement parts" are those parts which materially add to the value of industrial machinery, equipment, or computers or appreciably prolong their lives or keep them in their ordinarily efficient operating condition. Excluded from the meaning of the term "replacement parts" are supplies, the use of which is necessary if machinery is to accomplish its intended function. Drill bits, grinding wheels, punches, taps, reamers, saw blades, lubricants, coolants, sanding discs, sanding belts, and air filters are nonexclusive examples of supplies. Sales of supplies remain taxable.

*Tangible personal property with an expected useful life of 12 months or more which is used in the operation of machinery, equipment, or computers is rebuttably presumed to be a "replacement part." Tangible personal property used in the same manner with an expected useful life of less than 12 months is rebuttably presumed to be a "supply."*

ITEM 7. Amend rule 701—26.62(422) as follows:

**701—26.62(422) Landscaping.** On or after July 1, 1985, the gross receipts from the service of "landscaping" are subject to tax. The services performed by one who arranges and modifies the natural condition of a given parcel or tract of land so as to render the land suitable for public or private use or enjoyment is engaged in the business of "landscaping." Any services for which registration is required as a "landscape architect" under Iowa Code section ~~118A.2 544B.2~~ are not subject to tax on the service of "landscaping" if performed by a registered landscape architect and separately stated and separately billed on a charge for landscape architecture. The gross receipts from landscaping performed on or in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure shall not be subject to tax. See rule 701—19.13(422,423).

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

## ARC 8645A

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 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 10, "Administrative Rules and Declaratory Rulings," Iowa Administrative Code.

The purpose of these amendments is to bring the Department's rules on administrative rule making and declaratory orders into conformance with 1998 Iowa Acts, chapter 1202, and to delete provisions that are obsolete. Chapter 1202 amended the Administrative Procedure Act.

Items 1, 10 and 11 reflect the fact that "declaratory rulings" are now termed "declaratory orders."

Items 2 and 13 update Iowa Code citations.

Item 2 also adds a definition of "written criticisms." 1998 Iowa Acts, chapter 1202, section 11, provides for a review of a rule, upon request, if a review has not been conducted for five years. One element of the review is a statement of the "Written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule tendered to the agency or granted by the agency."

Item 3 states that the Notice of Intended Action shall contain the information required by statute or rule.

Item 4 rescinds subrule 10.2(4) that is superseded by the new Iowa Code section on regulatory analysis and adopts a new subrule 10.2(4) which states that a request for a regulatory analysis shall be submitted to the Department's rules coordinator.

Items 5 and 7 correct terminology.

Item 6 reflects the statutory time frame for issuing a concise statement.

Items 8 and 9 strike obsolete or repetitive provisions regarding petitions for rule making.

Item 12 rescinds subrules 10.4(3) to 10.4(6) which are superseded by the new Iowa Code section on declaratory orders and adopts new subrules 10.4(3) to 10.4(5), the last of which lists the reasons the Department may cite for declining to issue a declaratory order. This listing is required by 1998 Iowa Acts, chapter 1202.

Any person or agency may submit written comments concerning these proposed amendments 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 the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: rules@iadot.e-mail.com.
5. Be received by the Director's Staff Division no later than March 2, 1999.

A meeting to hear requested oral presentations is scheduled for Friday, March 5, 1999, at 9 a.m. in the Commission Conference Room of the Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

These amendments are intended to implement Iowa Code chapter 17A and 1998 Iowa Acts, chapter 1202.

Proposed rule-making actions:

ITEM 1. Amend the title of **761—Chapter 10** as follows:

ADMINISTRATIVE RULES AND  
DECLARATORY RULINGS ORDERS

ITEM 2. Amend subrule 10.1(2) as follows:

Amend the introductory paragraph as follows:

**10.1(2) Definitions.** The definitions in Iowa Code section 17A.2 and the definition of "small business" in Iowa Code section ~~17A.31~~ 17A.4A are hereby adopted. In addition:

Adopt the following new definition in alphabetical order: "Written criticisms" means:

1. Petitions for rule making, objections filed pursuant to Iowa Code subsection 17A.4(4), and written and oral submissions received during rule making pursuant to Iowa Code paragraph 17A.4(1)"b."
2. Petitions for waiver of a rule tendered to the department or granted by the department.
3. Letters to the director criticizing or recommending changes to a rule.

ITEM 3. Amend subrule **10.2(1)** by rescinding paragraph "c" and adopting in lieu thereof the following new paragraph:

c. Any other information required by statute or rule.

ITEM 4. Amend rule 761—10.2(17A) by rescinding subrule 10.2(4) and adopting in lieu thereof the following new subrule:

**10.2(4) Regulatory analysis.** A request for issuance of a regulatory analysis shall be submitted to the department's administrative rules coordinator at the address in subrule 10.1(3).

ITEM 5. Amend subrule 10.2(6), catchwords, as follows:  
**10.2(6) Position affirmation Concise statement.**

ITEM 6. Amend subrule **10.2(6)** by rescinding paragraphs "b" and "c" and adopting new paragraph "b" as follows:

b. A requested concise statement shall be issued either at the time of rule adoption or within 35 days after the department's administrative rules coordinator receives the request.

ITEM 7. Amend paragraph **10.3(1)"a,"** heading of the petition form, by striking the word "promulgation" and inserting in lieu thereof the word "adoption".

ITEM 8. Rescind subrules **10.3(3)** and **10.3(4)**.

ITEM 9. Amend subrule 10.3(5) as follows:

~~10.3(5) Disposition of petitions acceptable for consideration:~~

a. **10.3(3) Upon request** *If requested* in the petition, the department shall schedule an informal meeting with the petitioner to discuss the petition.

b. **10.3(4)** The department shall notify the petitioner of the director's or commission's determination to grant or

## TRANSPORTATION DEPARTMENT[761](cont'd)

deny the petition. If the petition is denied, the notification shall include a summary of the reasons for denial.

~~e. The 60-day time limit specified in Iowa Code section 17A.7 for disposition of petitions begins the day a petition acceptable for consideration is received.~~

ITEM 10. Amend rule 761—10.4(17A), catchwords, as follows:

**761—10.4(17A) Declaratory rulings orders.**

ITEM 11. Amend subrule 10.4(1) by striking all occurrences of the word "ruling" and inserting in lieu thereof the word "order" and by striking all occurrences of the word "rulings" and inserting in lieu thereof the word "orders".

ITEM 12. Amend rule 761—10.4(17A) by rescinding subrules 10.4(3) to 10.4(6) and adopting new subrules 10.4(3), 10.4(4) and 10.4(5) as follows:

**10.4(3)** A declaratory order or a statement declining to issue a declaratory order shall be issued by the director.

**10.4(4)** The director shall not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

**10.4(5)** The director may decline to issue a declaratory order for any of the following reasons:

a. The petition does not substantially comply with the required form.

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the agency to issue a declaratory order.

c. The agency does not have jurisdiction over the questions presented in the petition.

d. The questions presented in the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding that may definitively resolve them.

e. The questions presented in the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The questions posed or facts presented in the petition are unclear, vague, incomplete, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue a declaratory order.

g. There is no need to issue a declaratory order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.

j. The petitioner requests the agency to determine whether a statute is unconstitutional on its face.

ITEM 13. Amend the implementation clause at the end of **761—Chapter 10** as follows:

These rules are intended to implement Iowa Code chapter 25B and sections 17A.1 to 17A.9, 17A.19, ~~17A.31, 17A.32, 17A.33~~ and 307.10 and 307.12.

**ARC 8646A****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 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 13, "Contested Cases," Chapter 615, "Sanctions," and Chapter 620, "OWI and Implied Consent," Iowa Administrative Code.

These amendments add a new rule to Chapter 13 and a new subrule to Chapter 620 on default decisions. These amendments implement 1998 Iowa Acts, chapter 1202, section 16. Chapter 1202 amended the Administrative Procedure Act. These amendments also change the term "administrative law judge" to "presiding officer." This reflects the terminology used in 1998 Iowa Acts, chapter 1202.

Any person or agency may submit written comments concerning these proposed amendments 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 amendment, 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 the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: rules@iadot.e-mail.com.

5. Be received by the Director's Staff Division no later than March 2, 1999.

A meeting to hear requested oral presentations is scheduled for Friday, March 5, 1999, at 10 a.m. in the Commission Conference Room of the Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

These amendments are intended to implement Iowa Code chapter 17A and 1998 Iowa Acts, chapter 1202.

Proposed rule-making actions:

ITEM 1. Amend rules 761—13.6(17A) to 761—13.8(17A) and 761—13.10(17A) and 761—13.11(17A) as follows:

**761—13.6(17A) Contested case decision.** After a contested case hearing, a written decision will be issued by the administrative law judge presiding officer.

**761—13.7(17A) Appeal from an administrative law judge's decision.** A decision by an administrative law judge a presiding officer shall become the final decision of the department and shall be binding on the department and the party whose legal rights, duties and privileges are being determined unless either appeals the decision to the director of transportation within twenty days after issuance of the decision as provided in this rule.

**13.7(1)** No additional evidence shall be presented on appeal which shall be decided on the basis of the record made

## TRANSPORTATION DEPARTMENT[761](cont'd)

before the ~~administrative law judge~~ *presiding officer* in the contested case hearing.

**13.7(2)** The appeal shall include a statement of the specific issues presented for review and the precise ruling or relief requested.

**13.7(3)** An appeal of an ~~administrative law judge's~~ *a presiding officer's* decision shall be submitted in writing to the director of the office or division which administers the matter being contested. The appeal shall be deemed timely submitted if it is delivered to the director of the appropriate office or division or properly addressed and postmarked within 20 days after ~~issuance~~ *the date* of the ~~administrative law judge's~~ *presiding officer's* decision.

**13.7(4)** The director of the administering office or division shall forward the appeal to the director of transportation.

**13.7(5)** Failure to timely appeal an ~~administrative law judge's~~ *a presiding officer's* decision shall be considered a failure to exhaust administrative remedies.

~~13.7(6) to 13.7(8) Reserved.~~

~~13.7(9)~~ **13.7(6)** The director of transportation may make a decision affirming, modifying or reversing the ~~administrative law judge's~~ *presiding officer's* decision, or may remand the case to the ~~administrative law judge~~ *presiding officer*.

~~13.7(10)~~ **13.7(7)** The decision of the director of transportation shall be the final decision of the department and shall constitute final agency action for purposes of judicial review. No further steps are necessary to exhaust administrative remedies.

**761—13.8(17A) Motion for review.** The director of transportation may, on the director's own motion, review the ~~administrative law judge's~~ *presiding officer's* decision. The motion for review is subject to the same time limits as an appeal from an ~~administrative law judge's~~ *a presiding officer's* decision. If there is a motion for review, subrules ~~13.7(9) and 13.7(10)~~ *13.7(6) and 13.7(7)* apply.

**761—13.10(17A) Maintenance of records.** The department shall retain for three years from the date of the final decision copies of decisions received from ~~administrative law judges~~ *presiding officers*, decisions issued by the director, and related correspondence.

**761—13.11(17A) Use of legal assistants or paralegals.** The department may be represented by legal assistants or paralegals at contested case hearings.

These authorized legal assistants or paralegals shall be under the supervision of attorneys from the department's general counsel division.

ITEM 2. Adopt new rule 761—13.13(17A) as follows:

**761—13.13(17A) Default.**

**13.13(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 continuance is granted, either enter a default decision or proceed with the hearing and render a decision in the absence of the party.

**13.13(2)** Any party may move for default against a party who has requested the contested case proceeding and who has failed to appear after proper service.

**13.13(3)** A default decision or a decision rendered on the merits after a party has failed to appear or participate in a contested case proceeding becomes final agency action unless, within 20 days after the date of the decision, either a motion to vacate is filed and served on the presiding officer and the other parties or an appeal of a decision on the merits is timely submitted in accordance with rule 761—13.7(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.

**13.13(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.

**13.13(5)** Timely filed motions to vacate shall be granted only for good cause shown. The burden of proof is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate.

**13.13(6)** "Good cause" for the purpose of this rule means surprise, excusable neglect or unavoidable casualty.

**13.13(7)** A decision denying a motion to vacate is subject to further appeal in accordance with rule 761—13.7(17A).

**13.13(8)** A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party in accordance with rule 761—13.7(17A).

**13.13(9)** If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

ITEM 3. Amend paragraph 13.20(3)"b" as follows:

b. A controversy may be settled informally by the persons involved at any time before the department ~~transmits the matter to the department of inspections and appeals as a contested case~~ *initiates a contested case proceeding*.

ITEM 4. Amend paragraph 13.20(4)"b" as follows:

b. The notice shall specify the following: If the department is not notified of a settlement within ~~twenty~~ 20 days after the notice is mailed, the department shall ~~transmit the controversy to the department of inspections and appeals as a~~ *initiate a contested case proceeding*.

ITEM 5. Amend paragraph 615.38(2)"b" as follows:

b. A request for an informal settlement, a request for a contested case hearing, or an appeal of an ~~administrative law judge's~~ *a presiding officer's* decision shall be submitted to the director of the office of driver services at the address in 761—600.2(17A).

ITEM 6. Amend subrule 615.38(4) as follows:

~~615.38(4) Appeal of an administrative law judge's decision.~~ An appeal of an ~~administrative law judge's~~ *a presiding officer's* decision shall be submitted in accordance with 761—13.7(17A).

ITEM 7. Amend paragraph 615.38(5)"a," introductory paragraph, as follows:

a. When the department receives a properly submitted, timely request for an informal settlement, request for a contested case hearing or appeal of the ~~administrative law judge's~~ *a presiding officer's* proposed decision regarding a sanction listed in subrule 615.38(1), it shall, after a review of its records to determine eligibility, stay (stop) the sanction pending the outcome of the settlement, hearing or appeal unless prohibited by statute or rule or unless otherwise specified by the requester/appellant.

ITEM 8. Amend paragraph 620.4(1)"e" as follows:

e. After a hearing, a written decision will be issued by the ~~administrative law judge~~ *presiding officer*.

ITEM 9. Amend subrule 620.4(2) as follows:

~~620.4(2) Appeal of an administrative law judge's decision.~~ A decision by an ~~administrative law judge~~ *a presiding officer* shall become the final decision of the department and shall be binding on the department and the person who re-

## TRANSPORTATION DEPARTMENT[761](cont'd)

quested the hearing unless either appeals the decision in accordance with this subrule.

a. The appeal shall be decided on the basis of the record made before the ~~administrative law judge~~ *presiding officer* in the contested case hearing and no additional evidence shall be presented.

b. The appeal shall include a statement of the specific issues presented for review and the precise ruling or relief requested.

c. An appeal of the ~~administrative law judge's~~ *presiding officer's* decision shall be submitted in writing by sending the original and one copy of the appeal to the director of the office of driver services at the address given in 761—620.2(321J).

d. An ~~administrative~~ appeal shall be deemed timely submitted if it is delivered to the director of the office of driver services or properly addressed and postmarked within ten days after receipt of the ~~administrative law judge's~~ *presiding officer's* decision.

e. The director of the office of driver services shall forward the appeal to the director of transportation. The director of transportation may affirm, modify or reverse the decision of the ~~administrative law judge~~ *presiding officer*, or may remand the case to the ~~administrative law judge~~ *presiding officer*.

f. Failure to timely appeal a decision shall be considered a failure to exhaust administrative remedies.

ITEM 10. Amend rule 761—620.4(321J) by adopting new subrule 620.4(4) as follows:

**620.4(4) Default.**

a. If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no continuance is granted, either enter a default decision or proceed with the hearing and render a decision in the absence of the party.

b. Any party may move for default against a party who has requested the contested case proceeding and who has failed to appear after proper service.

c. A default decision or a decision rendered on the merits after a party has failed to appear or participate in a contested case proceeding becomes final agency action unless, within ten days after receipt of the decision, either a motion to vacate is filed and served on the presiding officer and the other parties or an appeal of a decision on the merits is timely submitted in accordance with subrule 620.4(2). 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.

d. 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.

e. Timely filed motions to vacate shall be granted only for good cause shown. The burden of proof is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate.

f. "Good cause" for the purpose of this rule means surprise, excusable neglect or unavoidable casualty.

g. A decision denying a motion to vacate is subject to further appeal in accordance with subrule 620.4(2).

h. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party in accordance with subrule 620.4(2).

i. If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue

another notice of hearing and the contested case shall proceed accordingly.

**ARC 8647A****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 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to rescind Chapter 141, "Traffic and Engineering Investigations on Secondary Roads," Chapter 180, "Federal-Aid Urban Systems," and Chapter 840, "Rail Rate Regulation," Iowa Administrative Code.

Chapter 141 reflected a statutory requirement for counties to follow when they wished to change speed limits on secondary roads. 1994 Iowa Acts, chapter 1173, section 15, removed this requirement.

Chapter 180 established the requirements for the federal-aid urban systems program. The federal Intermodal Surface Transportation Efficiency Act of 1991 eliminated this program.

Chapter 840 addressed departmental regulation of rates for the intrastate transportation of freight by rail. The Interstate Commerce Commission Termination Act of 1995 eliminated Iowa's regulatory authority over intrastate freight rates. The Act gave sole jurisdiction over freight rates to the federal Surface Transportation Board.

Any person or agency may submit written comments concerning these proposed rescissions 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 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 the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: rules@iadot.e-mail.com.
5. Be received by the Director's Staff Division no later than March 2, 1999.

A meeting to hear requested oral presentations is scheduled for Friday, March 5, 1999, at 11 a.m. in the Commission Conference Room of the Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

These rescissions are intended to implement Iowa Code chapter 307.

Proposed rule-making actions:

ITEM 1. Rescind and reserve **761—Chapter 141**, "Traffic and Engineering Investigations on Secondary Roads."

ITEM 2. Rescind and reserve **761—Chapter 180**, "Federal-Aid Urban Systems."

## TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 3. Rescind and reserve 761—Chapter 840, “Rail Rate Regulation.”

### NOTICE—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, 1998 — January 31, 1998	8.00%
February 1, 1998 — February 28, 1998	7.75%

March 1, 1998 — March 31, 1998	7.50%
April 1, 1998 — April 30, 1998	7.50%
May 1, 1998 — May 31, 1998	7.75%
June 1, 1998 — June 30, 1998	7.75%
July 1, 1998 — July 31, 1998	7.75%
August 1, 1998 — August 31, 1998	7.50%
September 1, 1998 — September 30, 1998	7.50%
October 1, 1998 — October 31, 1998	7.25%
November 1, 1998 — November 30, 1998	6.75%
December 1, 1998 — December 31, 1998	6.50%
January 1, 1999 — January 31, 1999	6.75%
February 1, 1999 — February 28, 1999	6.75%

## ARC 8652A

RACING AND GAMING  
COMMISSION[491]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 99F.4, the Iowa Racing and Gaming Commission hereby amends Chapter 26, "Rules of the Games," Iowa Administrative Code.

The Commission adopted these amendments January 21, 1999.

Item 1 provides for a method to calculate the present value on any United States Treasury or Iowa state debt instruments.

Item 2 allows the winner of a progressive jackpot, in lieu of periodic payments, to select a discounted single cash payment.

The Commission finds, pursuant to Iowa Code section 17A.4(2), that Notice of Intended Action for these amendments is impracticable as the delay would not allow the public this cash option should they win a jackpot.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments should be waived and the amendments made effective upon filing with the Administrative Rules Coordinator. These amendments allow a benefit to the public by allowing them the option, should they win a jackpot, to take it as a single cash payment.

These amendments are intended to implement Iowa Code chapter 99F.

These amendments became effective January 22, 1999.

The following amendments are adopted.

ITEM 1. Rescind subrule 26.17(7), paragraph "n," subparagraph (6), and insert in lieu thereof the following new subparagraph:

(6) For multilink system jackpots disbursed in periodic payments, any United States Treasury or Iowa state debt instruments shall be purchased within 90 days following notice of the win of the multilink system jackpot, and a copy of such debt instruments will be provided to the commission of- fice within 30 days of their purchase. Any United States Treasury or Iowa state debt instrument shall have a surrender value at maturity, excluding any interest paid before the ma- turity date, equal to or greater than the value of the corre- sponding periodic jackpot payment, and shall have a maturi- ty date prior to the date the periodic jackpot payment is re- quired to be made.

ITEM 2. Amend subrule 26.17(7) by adopting a new paragraph as follows:

o. For multilink system jackpots disbursed in periodic payments, subsequent to the date of the win, a winner may be offered the option to receive, in lieu of periodic payments, a discounted single cash payment in the form of a "qualified prize option," as that term is defined in Section 451(h) of the Internal Revenue Code. For purposes of calculating the single cash payment, the trust administrator shall obtain quotes for the purchase of U.S. Government Treasury Secu- rities at least three times per month. The quote selected by the trust administrator shall be used to calculate the single cash payment for all qualified prizes that occur subsequent to the date of the selected quote, until a new quote becomes ef- fective.

[Filed Emergency 1/21/99, effective 1/22/99]

[Published 2/10/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/10/99.

## ARC 8683A

## DENTAL EXAMINERS BOARD[650]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby adopts an amendment to Chapter 1, "Definitions," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 18, 1998, as ARC 8474A. The Board of Dental Examiners adopted this amendment on January 14, 1999.

This amendment adds the definition of "Dental hygiene committee." The Board was mandated by Iowa Code section 153.33A [1998 Iowa Acts, chapter 1010] to set up a Dental Hygiene Committee within the Board of Dental Examiners.

This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 153.33A.

This amendment will become effective on March 17, 1999.

The following amendment is adopted.

Amend rule 650—1.1(153) by adopting the following new definition in alphabetical order:

"Dental hygiene committee," as defined in Iowa Code section 153.33A, means the dental hygiene committee of the board of dental examiners.

[Filed 1/22/99, effective 3/17/99]

[Published 2/10/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/10/99.

## ARC 8682A

## DENTAL EXAMINERS BOARD[650]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby adopts amendments to Chapter 5, "Organization," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 18, 1998, as ARC 8477A. The Board of Dental Examiners adopted these amendments on January 14, 1999.

The Board was mandated by Iowa Code section 153.33A [1998 Iowa Acts, chapter 1010] to set up a Dental Hygiene Committee within the Board of Dental Examiners.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 153.33A.

These amendments will become effective on March 17, 1999.

The following amendments are adopted.

ITEM 1. Amend rule 650—5.1(153) as follows:

Amend the catchwords as follows:

**650—5.1(153) Board and dental hygiene committee.**

Adopt new subrules 5.1(3) and 5.1(4) as follows:

**5.1(3)** The dental hygiene committee of the board shall be composed of the two dental hygiene members of the board

and one dentist member of the board. The dentist member will be elected annually to serve on the committee by a majority vote of the board. The dentist member of the committee must have supervised and worked in collaboration with a dental hygienist for a period of at least three years immediately preceding election to the committee. Beginning January 1, 2000, persons appointed to the board as dental hygienist members shall not be employed by or receive any form of remuneration from a dental or dental hygiene educational institution.

**5.1(4)** Two members of the dental hygiene committee shall constitute a quorum for the purpose of conducting business.

ITEM 2. Adopt new subrules 5.2(5) and 5.2(6) as follows:

**5.2(5)** The dental hygiene committee shall hold an annual meeting each year in Des Moines, Iowa, to elect officers and conduct such other business as may properly come before the committee. Officers of the committee shall consist of a chairperson, vice chairperson, and secretary. Officers shall assume their duties immediately following their election at the annual meeting.

**5.2(6)** The dental hygiene committee may hold additional meetings as the chairperson or vice chairperson or majority of the committee deems necessary.

ITEM 3. Adopt new rule 650—5.6(153) as follows:

**650—5.6(153) Dental hygiene committee.**

**5.6(1)** All matters regarding the practice, discipline, education, examination, and licensure of dental hygienists will be initially directed to the dental hygiene committee. The committee shall have the authority to adopt recommendations regarding the practice, discipline, education, examination, and licensure of dental hygienists and shall carry out duties as assigned by the board. Recommendations by the committee shall include a statement and documentation supporting its recommendation to the board. The board shall review all committee recommendations. The recommendations shall be ratified by the board unless the board makes a specific written finding that the recommendation exceeds the jurisdiction or expands the scope of the committee beyond the authority granted in subrule 5.6(2), creates an undue financial impact on the board, or is not supported by the record. The board may not amend a committee recommendation without the concurrence of the majority of the members of the dental hygiene committee.

**5.6(2)** This subrule shall not be construed as impacting or changing the scope of practice of the profession of dental hygiene or authorizing the independent practice of dental hygiene.

**5.6(3)** The committee shall not have regulatory or disciplinary authority with regard to dentists, dental assistants, dental lab technicians, or other auxiliary dental personnel.

This rule is intended to implement Iowa Code section 153.33A.

[Filed 1/22/99, effective 3/17/99]

[Published 2/10/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/10/99.



**ARC 8684A****DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby adopts an amendment to Chapter 6, "Public Records and Fair Information Practices," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 2, 1998, as **ARC 8520A**. The Board of Dental Examiners adopted this amendment on January 14, 1999.

This amendment implements Iowa Code sections 261.121 to 261.127 [1998 Iowa Acts, chapter 1081], requiring professional licensing boards to deny the issuance or renewal of a license or to suspend or revoke a license upon receipt of a certificate of noncompliance from the College Student Aid Commission.

This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code sections 261.121 to 261.127.

This amendment will become effective on March 17, 1999.

The following amendment is adopted.

Amend subrule **6.9(2)** by adopting new paragraph "i" as follows:

i. Notwithstanding any statutory confidentiality provision, the board may share information with the college student aid commission for the sole purpose of identifying applicants or licensees subject to enforcement under Iowa Code sections 261.121 to 261.127.

[Filed 1/22/99, effective 3/17/99]

[Published 2/10/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/10/99.

**ARC 8681A****DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby adopts an amendment to Chapter 7, "Rules," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 18, 1998, as **ARC 8481A**. The Board of Dental Examiners adopted this amendment on January 14, 1999.

This amendment provides for the dental hygiene committee to review dental hygiene petitions for rule making. The Board was mandated by Iowa Code section 153.33A [1998 Iowa Acts, chapter 1010] to set up a Dental Hygiene Committee within the Board of Dental Examiners.

This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 153.33A.

This amendment will become effective on March 17, 1999.

The following amendment is adopted.

Renumber subrule **7.1(5)** as **7.1(6)** and adopt new subrule **7.1(5)** as follows:

**7.1(5)** If the petition raises an issue regarding the practice of dental hygiene, the petition shall be referred to the dental hygiene committee for review. The dental hygiene committee shall review the petition and timely submit its recommendations to the board. The board's review of the dental hygiene committee recommendation is subject to 650—Chapter 5.

[Filed 1/22/99, effective 3/17/99]

[Published 2/10/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/10/99.

**ARC 8680A****DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby adopts an amendment to Chapter 10, "General," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 18, 1998, as **ARC 8487A**. The Board of Dental Examiners adopted this amendment on January 14, 1999.

This amendment adds a definition of unauthorized practice of dental hygiene. The Board was mandated by Iowa Code section 153.33A [1998 Iowa Acts, chapter 1010] to set up a Dental Hygiene Committee within the Board of Dental Examiners.

This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 153.33A.

This amendment will become effective on March 17, 1999.

The following amendment is adopted.

Amend rule 650—10.4(153) as follows:

**650—10.4(153) Unauthorized practice.** A dental hygienist who assists a dentist in practicing dentistry in any capacity other than as an employee or independent contractor supervised by a licensed dentist or who directly or indirectly procures a licensed dentist to act as nominal owner, proprietor, director, or supervisor of a practice as a guise or subterfuge to enable such dental hygienist to engage in the practice of dentistry or dental hygiene, or who renders dental service(s) directly or indirectly on or for members of the public other than as an employee or independent contractor supervised by a licensed dentist shall be deemed to be practicing illegally. *The unauthorized practice of dental hygiene means allowing a person not licensed in dentistry or dental hygiene to perform dental hygiene services authorized in Iowa Code section 153.15 and rule 650—1.1(153). The unauthorized practice of dental hygiene also means the performance of services by a dental hygienist which exceeds the scope of practice granted in Iowa Code section 153.15.*

[Filed 1/22/99, effective 3/17/99]

[Published 2/10/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/10/99.

## ARC 8679A

## DENTAL EXAMINERS BOARD[650]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby adopts amendments to Chapter 11, "Applications," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 18, 1998, as ARC 8486A. The Board of Dental Examiners adopted these amendments on January 14, 1999.

These amendments replace the word "board" with the term "dental hygiene committee" regarding the application to practice dental hygiene. The Board was mandated by Iowa Code section 153.33A [1998 Iowa Acts, chapter 1010] to set up a Dental Hygiene Committee within the Board of Dental Examiners.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 153.33A.

These amendments will become effective on March 17, 1999.

The following amendments are adopted.

ITEM 1. Amend subrules 11.5(1) to 11.5(3) and adopt new subrule 11.5(5) as follows:

**11.5(1)** Applications for licensure to practice dental hygiene in this state shall be made to the ~~board dental hygiene committee~~ on the form provided by the ~~board dental hygiene committee~~ and must be completely answered.

**11.5(2)** Applications for licensure must be filed with the ~~board dental hygiene committee~~ along with:

a. Satisfactory evidence of graduation from an accredited school of dental hygiene approved by the ~~board dental hygiene committee~~.

b. to d. No change.

e. The fee as specified in 650—Chapter 15 is nonrefundable to applicants whose applications are considered by the ~~board dental hygiene committee~~. A statement of reasons for rejection shall be sent to the applicant.

f. Successful completion of the jurisprudence examination administered by the ~~board of dental examiners dental hygiene committee~~.

g. No change.

**11.5(3)** The ~~board dental hygiene committee~~ may require additional information be provided by the applicant relating to character, education and experience as may be necessary to pass upon the applicant's qualifications.

**11.5(5)** *Following review by the dental hygiene committee, the committee shall make recommendation to the board regarding the issuance or denial of any license to practice dental hygiene. The board's review of the dental hygiene committee recommendation is subject to 650—Chapter 5.*

ITEM 2. Amend subrules 11.6(1) to 11.6(4) and adopt new subrule 11.6(6) as follows:

**11.6(1)** Applications of licensure by credentials to practice dental hygiene in this state shall be made to the ~~board dental hygiene committee~~ on the form provided by the ~~board dental hygiene committee~~ and must be completely filled out.

**11.6(2)** Applications must be filed with the ~~board dental hygiene committee~~ along with:

a. Satisfactory evidence of graduation from an accredited school of dental hygiene approved by the ~~board dental hygiene committee~~.

b. to d. No change.

e. Certification by the state board of dentistry, or equivalent authority, from a state in which applicant has been licensed for at least three years immediately preceding the date of application and evidence of having engaged in the practice of dental hygiene in that state for three years immediately preceding the date of application or evidence of practice satisfactory to the ~~board dental hygiene committee~~.

f. to i. No change.

j. The fee for licensure by credentials as specified in 650—Chapter 15 of these rules shall be made payable to the Iowa State Board of Dental Examiners. Applications considered by the ~~board dental hygiene committee~~ are nonrefundable.

k. No change.

**11.6(3)** Applicant shall appear for a personal interview conducted by the ~~dental hygiene committee or the board~~ by request only.

**11.6(4)** The ~~board dental hygiene committee~~ may also require such examinations as necessary to evaluate the applicant for licensure by credentials, including jurisprudence examination.

**11.6(6)** *Following review by the dental hygiene committee, the committee shall make a recommendation to the board regarding issuance or denial of a dental hygiene license. The board's review of the dental hygiene committee recommendation is subject to 650—Chapter 5.*

ITEM 3. Amend rule 650—11.7(153) as follows:

**650—11.7(153) Character references.** The board or the dental hygiene committee may require any applicant to submit two character references from persons who are not licensed members of the profession.

This rule is intended to implement Iowa Code section 147.3.

ITEM 4. Amend rule 650—11.8(153) as follows:

**650—11.8(153) Felonies.** The board or the dental hygiene committee may consider the past felony record of any applicant if the felony conviction relates to the practice of dentistry or dental hygiene.

This rule is intended to implement Iowa Code sections 147.3 and 147.10.

[Filed 1/22/99, effective 3/17/99]

[Published 2/10/99].

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/10/99.

## ARC 8685A

## DENTAL EXAMINERS BOARD[650]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby adopts an amendment to Chapter 11, "Applications," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 2, 1998, as ARC 8521A. The Board of Dental Examiners adopted this amendment on January 14, 1999.

## DENTAL EXAMINERS BOARD[650](cont'd)

This amendment implements Iowa Code sections 261.121 to 261.127 [1998 Iowa Acts, chapter 1081] requiring professional licensing boards to deny the issuance or renewal of a license upon receipt of a certificate of noncompliance from the College Student Aid Commission.

This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code sections 261.121 to 261.127.

This amendment will become effective on March 17, 1999.

The following amendment is adopted.

Adopt **new** rule 650—11.11(261) as follows:

**650—11.11(261) Receipt of certificate of noncompliance.**

The board shall consider the receipt of a certificate of noncompliance from the college student aid commission pursuant to Iowa Code sections 261.121 to 261.127 and 650—Chapter 34 of these rules or receipt of a certificate of noncompliance of a support order from the child support recovery unit pursuant to Iowa Code chapter 252J and 650—Chapter 33 of these rules. License denial shall follow the procedures in the statutes and board rules as set forth in this rule.

This rule is intended to implement Iowa Code sections 261.121 to 261.127.

[Filed 1/22/99, effective 3/17/99]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/10/99.

**ARC 8678A****DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby adopts amendments to Chapter 12, "Examinations," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 18, 1998, as **ARC 8485A**. The Board of Dental Examiners adopted these amendments on January 14, 1999.

These amendments delete unnecessary text and substitute "dental hygiene committee" for "board". The Board was mandated by Iowa Code section 153.33A [1998 Iowa Acts, chapter 1010] to set up a Dental Hygiene Committee within the Board of Dental Examiners.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 153.33A.

These amendments will become effective on March 17, 1999.

The following amendments are adopted.

ITEM 1. Rescind subrules **12.3(1)** to **12.3(5)** and renumber **12.3(6)** to **12.3(8)** as **12.3(1)** to **12.3(3)**.

ITEM 2. Amend subrule 12.4(2) as follows:

**12.4(2)** Third examination. Prior to the third examination attempt, a dental hygiene examinee must submit proof of

additional formal education or clinical experience approved in advance by the ~~board~~ *dental hygiene committee*.

[Filed 1/22/99, effective 3/17/99]

[Published 2/10/99]

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**ARC 8677A****DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby adopts an amendment to Chapter 13, "Special Licenses," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 18, 1998, as **ARC 8484A**. The Board of Dental Examiners adopted this amendment on January 14, 1999.

This amendment provides that application for issuance of a dental hygiene faculty permit be made to the dental hygiene committee. The Board was mandated by Iowa Code section 153.33A [1998 Iowa Acts, chapter 1010] to set up a Dental Hygiene Committee within the Board of Dental Examiners.

This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 153.33A.

This amendment will become effective on March 17, 1999.

The following amendment is adopted.

Amend subrule 13.2(2) and adopt **new** subrule 13.2(7) as follows:

**13.2(2)** The dean of the college of dentistry or chairperson of a dental hygiene program shall certify to the board *or the dental hygiene committee* those bona fide members of the college's or a dental hygiene program's faculty who are not licensed and registered to practice dentistry or dental hygiene in Iowa. Any faculty member so certified shall, prior to commencing duties in the college of dentistry or a dental hygiene program, make written application to the board *or the dental hygiene committee* for such permit.

**13.2(7)** *Application for issuance of a dental hygiene program faculty permit shall be made to the dental hygiene committee for consideration and recommendation to the board pursuant to 650—Chapter 5.*

[Filed 1/22/99, effective 3/17/99]

[Published 2/10/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/10/99.

**ARC 8676A****DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby adopts amendments to Chapter 14, "Renewal," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 18, 1998, as **ARC 8483A**. The Board of Dental Examiners adopted these amendments on January 14, 1999.

These amendments provide for the dental hygiene committee to review applications for renewal of a dental hygiene license and applications for reinstatement of a lapsed dental hygiene license. The Board was mandated by Iowa Code section 153.33A [1998 Iowa Acts, chapter 1010] to set up a Dental Hygiene Committee within the Board of Dental Examiners.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 153.33A.

These amendments will become effective on March 17, 1999.

The following amendments are adopted.

ITEM 1. Adopt new subrule 14.1(5) as follows:

**14.1(5)** The dental hygiene committee may, in its discretion, review any applications for renewal of a dental hygiene license and make recommendations to the board. The board's review is subject to 650—Chapter 5.

ITEM 2. Adopt new subrule 14.5(4) as follows:

**14.5(4)** The dental hygiene committee may, in its discretion, review any applications for reinstatement of a lapsed dental hygiene license and make recommendations to the board. The board's review of the dental hygiene committee recommendation is subject to 650—Chapter 5.

[Filed 1/22/99, effective 3/17/99]

[Published 2/10/99]

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**ARC 8675A****DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby adopts amendments to Chapter 15, "Fees," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 18, 1998, as **ARC 8476A**. The Board of Dental Examiners adopted these amendments on January 14, 1999.

These amendments add the Dental Hygiene Committee to rule 15.1(153) regarding license application fees. The Board was mandated by Iowa Code section 153.33A [1998 Iowa Acts, chapter 1010] to set up a Dental Hygiene Committee within the Board of Dental Examiners. These amendments also increase the fees for renewal of dentist and dental hygienist licenses.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 153.33A.

These amendments will become effective on March 17, 1999.

The following amendments are adopted.

ITEM 1. Amend rule 650—15.1(153), introductory paragraph, as follows:

**650—15.1(153) License application fees.** Applications considered by the board or dental hygiene committee are non-refundable.

ITEM 2. Amend subrules 15.2(1) and 15.2(2) as follows:

**15.2(1)** The fee for renewal of a license to practice dentistry for a biennial period shall be ~~\$160~~ **\$240** for an active practitioner and ~~\$160~~ **\$240** for an inactive practitioner.

**15.2(2)** The fee for renewal of a license to practice dental hygiene for a biennial period shall be ~~\$80~~ **\$120** for an active practitioner and ~~\$80~~ **\$120** for an inactive practitioner.

[Filed 1/22/99, effective 3/17/99]

[Published 2/10/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/10/99.

**ARC 8674A****DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby adopts an amendment to Chapter 22, "Minimum Training Standards for Dental Assistants Engaging in Dental Radiography," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 18, 1998, as **ARC 8475A**. The Board of Dental Examiners adopted this amendment on January 14, 1999.

This amendment increases the fee for renewal of a certificate of qualification in dental radiography.

This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 136C.3 and chapter 153.

This amendment will become effective on March 17, 1999.

The following amendment is adopted.

Amend subrule 22.9(2) as follows:

**22.9(2)** The fee for renewal of a certificate shall be ~~\$30~~ **\$60**.

[Filed 1/22/99, effective 3/17/99]

[Published 2/10/99]

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**ARC 8673A****DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby adopts an amendment to Chapter 25, "Continuing Education," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 18, 1998, as **ARC 8482A**. The Board of Dental Examiners adopted this amendment on January 14, 1999.

This amendment provides for the Dental Hygiene Committee to review dental hygiene continuing education. The Board was mandated by Iowa Code section 153.33A [1998 Iowa Acts, chapter 1010] to set up a Dental Hygiene Committee within the Board of Dental Examiners.

This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 153.33A.

This amendment will become effective on March 17, 1999.

The following amendment is adopted.

Adopt **new** rule 650—25.11(153) as follows:

**650—25.11(153) Dental hygiene continuing education.** The dental hygiene committee, in its discretion, shall make recommendations to the board for approval or denial of requests pertaining to dental hygiene education. The dental hygiene committee may utilize the continuing education advisory committee as needed. The board's review of the dental hygiene committee recommendation is subject to 650—Chapter 5. The following items pertaining to dental hygiene shall be forwarded to the dental hygiene committee for review.

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

[Filed 1/22/99, effective 3/17/99]

[Published 2/10/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/10/99.

**ARC 8672A****DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby adopts an amendment to Chapter 27, "Principles of Professional Ethics," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 18, 1998, as **ARC 8478A**. The Board of Dental Examiners adopted this amendment on January 14, 1999.

This amendment adds principles relating to specific dental hygiene ethics to rule 650—27.1(153). The Board was mandated by Iowa Code section 153.33A [1998 Iowa Acts, chapter 1010] to set up a Dental Hygiene Committee within the Board of Dental Examiners.

This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 153.33A.

This amendment will become effective on March 17, 1999.

The following amendment is adopted.

Amend rule 650—27.1(153) as follows:

**650—27.1(153) General.**

**27.1(1) Dental ethics.** The following principles relating to dental ethics are compatible with the Code of Professional Ethics and advisory opinions published in ~~June 1987~~ *August 1998* by the American Dental Association. These principles are not intended to provide a limitation on the ability of the board to address problems in the area of ethics but rather to provide a basis for board review of questions concerning professional ethics. The dentist's primary professional obligation shall be service to the public with the most important aspect of that obligation being the competent delivery of appropriate care within the bounds of the clinical circumstances presented by the patient, with due consideration being given to the needs and desires of the patient. Unprofessional conduct includes, but is not limited to, any violation of these rules.

**27.1(2) Dental hygiene ethics.** *The following principles relating to dental hygiene ethics are compatible with the Code of Ethics of the American Dental Hygienists' Association published in 1995. Standards of practice for dental hygienists are compatible with the Iowa dental hygienists' association dental hygiene standards of practice adopted in May 1993. These principles and standards are not intended to provide a limitation on the ability of the dental hygiene committee to address problems in the area of ethics and professional standards for dental hygienists but rather to provide a basis for committee review of questions regarding the same. The dental hygienist's primary responsibility is to provide quality care and service to the public according to the clinical circumstances presented by the patient, with due consideration of responsibilities to the patient and the supervising dentist according to the laws and rules governing the practice of dental hygiene.*

[Filed 1/22/99, effective 3/17/99]

[Published 2/10/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/10/99.

**ARC 8686A****DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby adopts amendments to Chapter 30, "Discipline," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 2, 1998, as **ARC 8522A**. The Board of Dental Examiners adopted these amendments on January 14, 1999.

These amendments implement Iowa Code sections 261.121 to 261.127 [1998 Iowa Acts, chapter 1081] requiring professional licensing boards to suspend or revoke a license upon receipt of a certificate of noncompliance from the College Student Aid Commission.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 261.121 to 261.127.

These amendments will become effective on March 17, 1999.

The following amendments are adopted.

Amend rule **650—30.4(153)** as follows:

Amend numbered paragraph "**41**" as follows:

41. Noncompliance with a support order or with a written agreement for payment of support as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 252J. Disciplinary proceedings initiated under this subrule shall follow the procedures set forth in Iowa Code chapter 252J and Iowa Administrative Code 650—Chapter 33.

Adopt new numbered paragraph "**42**" as follows:

42. Receipt of a certificate of noncompliance issued by the college student aid commission pursuant to Iowa Code sections 261.121 to 261.127. Disciplinary proceedings initiated under this subrule shall follow the procedures set forth in Iowa Code sections 261.121 to 261.127 and Iowa Administrative Code 650—Chapter 34.

[Filed 1/22/99, effective 3/17/99]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/10/99.

**ARC 8671A****DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby adopts amendments to Chapter 31, "Complaints," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 18, 1998, as **ARC 8480A**. The Board of Dental Examiners adopted these amendments on January 14, 1999.

These amendments provide for the Dental Hygiene Committee to review and investigate complaints regarding the practice of dental hygiene. The Board was mandated by Iowa Code section 153.33A [1998 Iowa Acts, chapter 1010]

to set up a Dental Hygiene Committee within the Board of Dental Examiners.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 153.33A.

These amendments will become effective on March 17, 1999.

The following amendments are adopted.

ITEM 1. Amend rule 650—31.1(272C) as follows:

**650—31.1(272C) Complaint review.** The board shall, upon receipt of a complaint, or may upon its own motion, pursuant to other evidence received by the board, review and investigate alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rule for licensee discipline. *All complaints regarding the practice of dental hygiene will be initially directed to the dental hygiene committee. The committee shall review the complaint and make a recommendation to the board.*

ITEM 2. Amend rule 650—31.5(153) as follows:

**650—31.5(153) Peer review.** A complaint ~~made to the board~~ may be assigned to a peer review committee for review, investigation, and report ~~to the board~~. ~~The board shall determine which peer review committee will review a case and what complaints or other matters shall be referred to a peer review committee for investigation, review, and report to the board.~~

~~31.5(1) The board may use the peer review committee system organized under the dental care programs council of the Iowa dental association or a specifically constituted peer review committee designated by the board for matters involving dentists; the ethics committee of the Iowa dental hygienists' association or a specifically constituted peer review committee designated by the board may serve as peer review committees for matters involving dental hygienists. The Iowa dental association and the Iowa dental hygienists' association shall register yearly and keep current its peer review system with the board. Board appointed peer review committee members shall be registered with the board when appointed. The board shall determine which peer review committee will review a case involving a dentist and what complaints or other matters shall be referred to a peer review committee for investigation, review, and report to the board. The board may use the peer review committee system organized under the dental care programs council of the Iowa dental association or a specifically constituted peer review committee designated by the board for matters involving dentists.~~

*31.5(2) The dental hygiene committee shall determine which peer review committee will review a case involving a dental hygienist and what complaints or other matters shall be referred to a peer review committee for investigation, review, and report to the dental hygiene committee. The dental hygiene committee may use the peer review system organized under the ethics committee of the Iowa dental hygienists' association or a specifically constituted peer review committee designated by the dental hygiene committee for matters involving dental hygienists.*

*31.5(3) The Iowa dental association and the Iowa dental hygienists' association shall register yearly and keep current their peer review systems with the board. Board- or dental hygiene committee-appointed peer review committee members shall be registered with the board when appointed.*

## DENTAL EXAMINERS BOARD[650](cont'd)

**31.5(2) 31.5(4)** Members of the peer review committees shall not be liable for acts, omissions or decisions made in connection with service on the peer review committee. However, immunity from civil liability shall not apply if the act is done with malice.

[Filed 1/22/99, effective 3/17/99]

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ARC 8687A

## DENTAL EXAMINERS BOARD[650]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby adopts Chapter 34, "Student Loan Default/Noncompliance with Agreement for Payment of Obligation," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 2, 1998, as **ARC 8523A**. The Board of Dental Examiners adopted these rules on January 14, 1999.

These rules implement Iowa Code sections 261.121 to 261.127 [1998 Iowa Acts, chapter 1081] requiring professional licensing boards to deny the issuance or renewal of a license upon receipt of a certificate of noncompliance from the College Student Aid Commission.

These rules are identical to those published under Notice of Intended Action.

These rules are intended to implement Iowa Code sections 261.121 to 261.127.

These rules will become effective on March 17, 1999.

The following rules are adopted.

Adopt new 650—Chapter 34 as follows:

## CHAPTER 34

STUDENT LOAN DEFAULT/NONCOMPLIANCE  
WITH AGREEMENT FOR  
PAYMENT OF OBLIGATION

**650—34.1(261) Definitions.** For the purpose of this chapter, the following definitions shall apply:

"Board" means the board of dental examiners.

"Certificate of noncompliance" means written certification from the college student aid commission to the licensing authority certifying that the licensee has defaulted on an obligation owed to or collected by the commission.

"Commission" means the college student aid commission.

**650—34.2(261) Issuance or renewal of a license—denial.** The board shall deny the issuance or renewal of a license upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code sections 261.121 to 261.127. In addition to those procedures, this rule shall apply.

**34.2(1)** The notice required by Iowa Code section 261.126 shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or licensee may accept service personally or through authorized counsel.

**34.2(2)** The effective date of the denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the applicant or licensee.

**34.2(3)** The board's executive director is authorized to prepare and serve the notice required by Iowa Code section 261.126 upon the applicant or licensee.

**34.2(4)** Applicants and licensees shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

**34.2(5)** All board fees required for application, license renewal or license reinstatement must be paid by applicants or licensees, and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to Iowa Code chapter 261.

**34.2(6)** In the event an applicant or licensee timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**34.2(7)** The board shall notify the applicant or licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license, and shall similarly notify the applicant or licensee when the license is issued or renewed following the board's receipt of a withdrawal of the certificate of noncompliance.

**650—34.3(261) Suspension or revocation of a license.** The board shall suspend or revoke a license upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code sections 261.121 to 261.127. In addition to those procedures, the following shall apply:

**34.3(1)** The notice required by Iowa Code section 261.126 shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the licensee may accept service personally or through authorized counsel.

**34.3(2)** The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code sections 261.126, shall be 60 days following service of the notice upon the licensee.

**34.3(3)** The executive director is authorized to prepare and serve the notice required by Iowa Code section 261.126 and is directed to notify the licensee that the license will be suspended, unless the license is already suspended on other grounds. In the event a license is on suspension, the executive director shall notify the licensee of the board's intention to revoke the license.

**34.3(4)** Licensees shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261



## DENTAL EXAMINERS BOARD[650](cont'd)

and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of non-compliance by the college student aid commission.

34.3(5) All board fees required for license renewal or reinstatement must be paid by licensees, and all continuing education requirements must be met before a license will be renewed or reinstated after the board has suspended or revoked a license pursuant to Iowa Code chapter 261.

34.3(6) In the event a licensee timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

34.3(7) The board shall notify the registrant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license, and shall similarly notify the licensee when the license is reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

These rules are intended to implement Iowa Code sections 261.121 to 261.127.

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## ARC 8670A

## DENTAL EXAMINERS BOARD[650]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby adopts amendments to Chapter 51, "Procedural Rules," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 18, 1998, as ARC 8479A. The Board of Dental Examiners adopted these amendments on January 14, 1999.

These amendments provide for the Dental Hygiene Committee to conduct a disciplinary hearing. The Board was mandated by Iowa Code section 153.33A [1998 Iowa Acts, chapter 1010] to set up a Dental Hygiene Committee within the Board of Dental Examiners.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 153.33A.

These amendments will become effective on March 17, 1999.

The following amendments are adopted.

ITEM 1. Adopt the following new subrule 51.4(2) and renumber existing subrules 51.4(2) to 51.4(6) as 51.4(3) to 51.4(7), respectively.

51.4(2) Hearing by the dental hygiene committee. In the event the licensee who is the subject of the contested case is a dental hygienist, the hearing shall be held before the dental hygiene committee, which shall constitute a panel of the board. The dental hygiene committee may in its discretion recommend to the board that the hearing be held instead before a panel of the board or the full board.

ITEM 2. Amend subrule 51.7(3), introductory paragraph, as follows:

51.7(3) When a panel of three board members or the dental hygiene committee presides over the hearing, the panel's decision is a proposed decision. A proposed decision becomes a final decision without further proceedings unless appealed in accordance with the following procedures:

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## ARC 8692A

ECONOMIC DEVELOPMENT,  
IOWA DEPARTMENT OF[261]

## Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts amendments to Chapter 1, "Organization"; Chapters 21 and 50, each entitled "Division Responsibilities"; Chapter 53, "Community Economic Betterment Program"; and Chapter 80, "Additional Program Requirements," Iowa Administrative Code.

The IDED Board adopted these amendments on January 21, 1999.

Notice of Intended Action was published in the September 9, 1998, Iowa Administrative Bulletin as ARC 8313A.

Pursuant to 1998 Iowa Acts, chapter 1175, section 14, the Community Builder Program was repealed. Iowa Code section 15.108(3)"a"(5) of this legislation authorizes the Department to award supplementary credit for communities and other specified organizations if they have developed a comprehensive community and economic development plan. The amendments rescind the rules for the Community Builder Program, delete references to community builder plans in Chapter 53, and replace them with references to "comprehensive community and economic development plans."

The amendments update the rules that describe the Department's organizational structure and division responsibilities in Chapters 1, 21 and 50.

Additionally, a revision of the CEBA rules is adopted. This amendment is an administrative change to clarify, for fiscal and accounting purposes, when collection efforts may be discontinued. The amendment authorizes the discontinuance of collection efforts by IDED once a claim is referred to the Attorney General's office for disposition.

A public hearing was held on September 30, 1998. No public comments were received. Based on further internal review of the descriptions of the organizational structure of the Department, the following changes were made to the proposed rules to clarify the responsibilities of the community



ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF [261](cont'd)

and rural development division and the bureau of business finance:

1. The introductory paragraph of rule 261—21.2(15) was revised to delete the reference to “rural development program.”

2. Subrule 21.2(1) was amended to reflect that the Community and Rural Development Division (CARD) is responsible for the housing component of the Enterprise Zone program.

3. Subrule 21.2(2) was amended to indicate that CARD provides assistance to businesses as well as communities and that this assistance also addresses workforce and other community development issues. This subrule was revised to include CARD’s administrative responsibilities for the manufacturing extension partnership. Because the role of the city development board has expanded over the years, a phrase (“which deals with corporate boundary changes”) that may be interpreted as narrowing its authority was removed from this subrule. The final revision to this subrule occurs in the last unnumbered paragraph. The division revised the existing description of its rural development activities and inserted a more detailed narrative of the types of community and rural development assistance it provides.

4. Subrule 50.2(2) was amended to include the following programs in the description of the functions of the bureau of business finance: Physical Infrastructure Assistance Program (PIAP); the Entrepreneurs with Disabilities program (EWD); and the Entrepreneurial Ventures Assistance program (EVA).

These amendments will become effective on March 17, 1999.

These amendments are intended to implement Iowa Code chapters 15 and 17A.

The following amendments are adopted.

ITEM 1. Amend rule 261—1.4(15) as follows:

Amend subrules 1.4(1) to 1.4(4) as follows:

1.4(1) General. The department’s organizational structure consists of the director, deputy director, and ~~six~~ five administrative divisions.

1.4(2) Director. The department of economic development is administered by a director appointed by the governor, who serves at the pleasure of the governor, and is subject to confirmation by the senate. The director is the chief administrative officer of the department and in that capacity administers the programs and services of the department in compliance with applicable federal and state laws and regulations. The duties of the director include preparing a budget subject to board approval, establishing an internal administrative structure and employing personnel, reviewing and submitting to the board legislative proposals, recommending rules to the board, reporting to the board on grants and contracts awarded by the department, and other actions to administer and direct the programs of the department.

The administrators of the ~~six~~ five divisions and the deputy director report to the director.

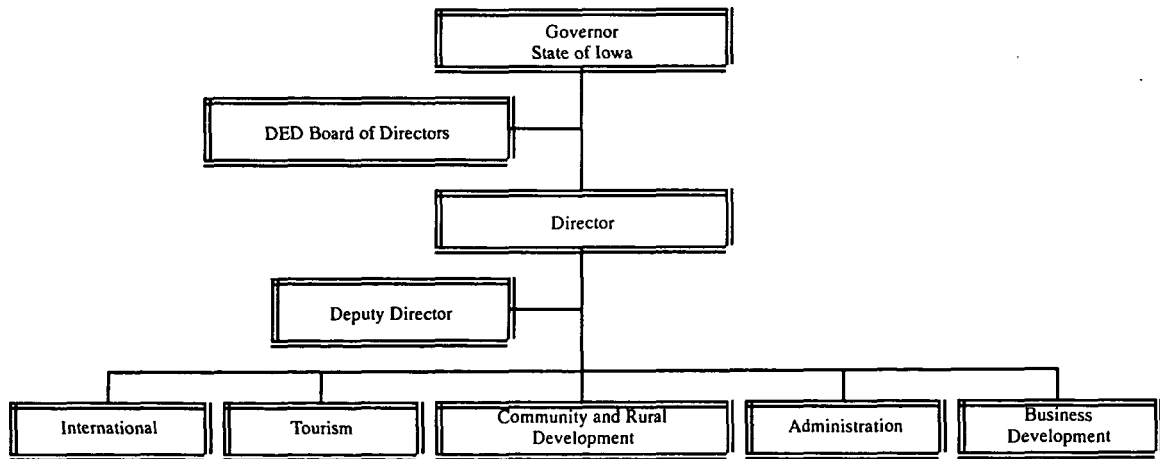
1.4(3) Deputy director. The deputy director, appointed by the director, directs and administers the department in the director’s absence. The deputy director also serves as the division administrator for the division of administration.

1.4(4) Divisions. The director has established the following administrative divisions within the department in order to most efficiently and effectively carry out the department’s responsibilities:

1. Division of administration;
- ~~2. Division of work force development;~~
2. Division of business development;
- ~~3. Division for community and rural development;~~
3. Division of tourism; and
4. International division.

Rescind subrule 1.4(5) and adopt the following new subrule in lieu thereof:

1.4(5) Table of organization.



ITEM 2. Amend rule 261—21.2(15) as follows:

261—21.2(15) Structure. The division consists of two bureaus: ~~and the rural development program.~~

21.2(1) Bureau of community ~~financing facilities and services~~. The bureau of community ~~financing facilities and services~~ is responsible for the following federal programs: Community Development Block Grant Nonentitlement Program (CDBG); Home Investment Partnership Program (HOME); ~~the housing component of the enterprise zone program~~; ~~Public Facilities Set-Aside (PFSA)~~; and Emergency Shelter Grants Program (ESGP) ~~as well as the state-funded~~

~~Homeless Shelter Operating Grants (HSOG) and the Local Housing Assistance Program (LHAP)~~. The bureau administers available federal funds for housing through the housing fund and is also responsible for developing a consolidated state plan for infrastructure and housing.

21.2(2) Bureau of community ~~assistance planning and development~~. The bureau assists communities ~~and businesses~~ through training, grants and technical assistance to address industrial, commercial, ~~work force and other~~ community development issues. The programs include community outreach, the Iowa community betterment program, ~~the manufacturing extension partnership~~ and main street. The

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

city development board, which deals with corporate boundary changes, and the Iowa rural development council is also staffed by this bureau.

~~21.2(3) Rural development. This program provides technical assistance and grants to rural communities and clusters of rural communities to help them address community and economic development initiatives including industrial, commercial, housing, leadership, local government, and tourism challenges. The programs include the rural enterprise fund, governmental services sharing program, rural leadership, and rural action. This bureau also provides direct technical and financial assistance for comprehensive community and rural development, including but not limited to: local capacity building for business development, leadership and volunteer development, and growth management activities, including community planning and technical assistance for infrastructure investments.~~

ITEM 3. Amend rule 261—50.2(15) as follows:

**261—50.2(15) Structure.** The division is divided into three segments: the marketing and business expansion bureau, bureau of business finance, and the small business resource office.

**50.2(1) Marketing and business expansion bureau.** The bureau has two sections: marketing and promotion and business expansion. It also includes the department's procurement outreach office.

a. The marketing and promotion section is responsible for promoting Iowa as a location for business site expansion. The section is responsible for implementation of the bureau's five-year marketing plan which includes marketing strategies for advertising, public relations, direct mail, trade shows, conference/seminars, and other programs aimed at recruiting new businesses and encouraging existing businesses to expand in the state.

b. The business expansion section works one-on-one with business expansion clients to identify sites, buildings and communities which meet the client's location or expansion criteria. Once communities have been identified, IDED's site location managers work with the communities to prepare customized proposals for the client.

~~c. Procurement outreach office. This office is responsible for identifying federal procurement opportunities for Iowa businesses.~~

**50.2(2) Bureau of business finance.** The bureau provides financial assistance to businesses expanding in the state of Iowa, as well as to new business start-ups and business relocations to the state. The bureau administers the community economic betterment account (CEBA) which provides financial assistance to businesses and industries that require assistance in order to create new job opportunities or retain existing jobs which are in jeopardy. Other financial assistance programs administered by the bureau include the economic development set-aside (EDSA) program which is designed to encourage economic growth by providing financial assistance to businesses in communities of less than 50,000 in population and is aimed at providing employment opportunities for individuals from low- and moderate-income households; the value-added agricultural products and processes financial assistance program (VAAPFAP); the physical infrastructure assistance program (PIAP); the entrepreneurs with disabilities program (EWD); the entrepreneurial ventures assistance program (EVA); the self-employment loan program (SELP) which is designed to encourage self-employment for disadvantaged individuals; and the targeted small business financial assistance program (TSBFAP)

which fosters the entrepreneurial spirit of women and minority owners by assisting with start-ups or expansions.

**50.2(3) Small business resource office (SBRO).** The SBRO's mission is to facilitate the growth of emerging small businesses in the state by providing entrepreneurial assistance, networking opportunities, and education programs. *The SBRO is also responsible for identifying federal procurement opportunities for Iowa businesses.* The SBRO's activities focus on the following *three issues of concern to small business: procurement and marketing development, regulatory assistance, and entrepreneurial services.* The SBRO is organized as follows:

a. ~~Small business forums program. This program is the core of the SBRO's small business activities in entrepreneurial development and education. The forums program organizes quarterly entrepreneurial education round tables at multiple sites throughout Iowa, develops education programs for emerging small businesses, and forms entrepreneurial networking groups.~~

b. ~~Small business advocacy program. The advocate works with small businesses both on a case managed basis and as a referral service. The program identifies small business service providers including sources of financial assistance for emerging businesses, regulatory information including licensing and permits, management assistance sources, and other small business service providers.~~

c. ~~Management assistance program. The management assistance program is responsible for identifying and developing networks of sources of managerial talent including establishing an entrepreneurial mentor program utilizing middle management volunteers, members of SCORE and other retired management executives, and other successful entrepreneurs.~~

d. ~~Targeted small business program. This program promotes the growth and development of small businesses owned and operated by minorities and women. It works with state purchasing officials to increase the number of contracts awarded to targeted small businesses (TSBs), and it identifies procurement opportunities for TSBs in both public and private sectors.~~

a. *Procurement and marketing development team. The procurement and marketing development team includes the Iowa procurement outreach center and the targeted small business marketing programs.*

b. *Regulatory assistance team. The regulatory assistance team focuses on providing key business, licensing and regulatory information for the management of small businesses.*

c. *Entrepreneurial services team. The entrepreneurial services team includes small business case management and the operation of the venture network of Iowa.*

ITEM 4. Amend rule 261—53.2(15) by rescinding the definition of "Community builder program" and adopting the new definition of "Comprehensive community and economic development plan" as follows:

~~"Community builder program" means the community builder program as defined in 261—Chapter 80.~~

*"Comprehensive community and economic development plan" means a plan that meets the requirements of 261—Chapter 80.*

ITEM 5. Amend paragraph 53.8(3)"d" as follows:

d. ~~Certified community builder community. Maximum—10 points. A community will receive 10 points upon completion and subsequent certification by the department of a plan prepared in accordance with 261—Chapter 80.~~

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

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

ITEM 6. Amend paragraph 53.9(4)“c” as follows:

c. ~~Certified community builder community (as defined in 53.8(3)“e”).~~ *Comprehensive community and economic development plan (as defined in 53.8(3)“d”).* Maximum—10 points;

ITEM 7. Amend subrule 53.14(1) as follows:

53.14(1) The committee may approve negotiated settlements or the discontinuance of collection efforts by *IDED* if it determines that any of the following conditions exist:

a. The cost of collection would exceed the amount that would be recovered.

b. The claim is not legally feasible, e.g., the claim cannot be substantiated by the evidence, a statute of limitations has run, there is little likelihood of prevailing in a legal proceeding, the claim has been discharged in bankruptcy.

c. *The claim has been referred to the Iowa attorney general's office for disposition.*

e d. Other conditions exist that would not allow the recovery of funds.

ITEM 8. Amend 261—Chapter 80 by rescinding Division I, title, and rules 261—80.1(15) through 261—80.12(15) and adopting in lieu thereof the following new division:

DIVISION I  
COMPREHENSIVE COMMUNITY AND  
ECONOMIC DEVELOPMENT PLANS

**261—80.1(15) Supplementary credit.** The department shall award supplementary credit to applications submitted by cities, counties, local and regional government organizations, and local and regional economic development organizations that have developed a comprehensive community and economic development plan.

**261—80.2(15) Technical assistance.** Subject to the availability of funds for this purpose, the department may provide financial assistance to cities, counties, local and regional government organizations, and local and regional economic development organizations for the purpose of developing comprehensive community and economic development plans.

These rules are intended to implement Iowa Code chapter 15.

[Filed 1/22/99, effective 3/17/99]  
[Published 2/10/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/10/99.

## ARC 8696A

### ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Develop-

ment adopts Chapter 4, “Workforce Development Accountability System,” Iowa Administrative Code.

The IDEED Board adopted these rules on January 21, 1999. Notice of Intended Action was published in the December 16, 1998, Iowa Administrative Bulletin as **ARC 8553A**.

The new chapter includes a description of the information the Department is required by Iowa Code section 84A.5 to submit to the Department of Workforce Development for inclusion in its accountability system. In order to meet this statutory reporting requirement, the Department must compile information concerning individuals trained. The Department has determined that the most effective way to access information about wages earned by individuals trained, project identifier codes, and other information needed to evaluate the effectiveness of training is through the use of social security numbers. The new chapter provides for the development, in conjunction with community colleges, of a mechanism and timetable for compiling information on individuals trained.

A public hearing to receive comments about the proposed new chapter was held on January 6, 1999. No comments were offered at the public hearing. A comment was received from the Administrative Rules Review Committee about the use of social security numbers to collect information, and concern was expressed about the confidentiality of the information collected. Numerous alternative methods for gathering the required information to meet the statutory reporting obligations were considered, but not selected, because they did not permit comparison to the data in the Workforce Development Department's system. Efforts will be taken to ensure that the confidentiality of individual social security numbers is safeguarded. For example, aggregate information will be used for reporting purposes whenever possible rather than using individual social security numbers.

In response to the concern about confidentiality of social security numbers, one change was made to the proposed rules. A sentence was added to rule 261—4.2(15) that will require that, when developing procedures for compiling the information, the community colleges and the Department will incorporate procedures to safeguard confidentiality.

These rules will become effective on March 17, 1999.

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

The following new chapter is adopted.

#### CHAPTER 4 WORKFORCE DEVELOPMENT ACCOUNTABILITY SYSTEM

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

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

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

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

**261—4.2(15) Compilation of information.** The department of economic development, in conjunction with the com-

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

munity colleges, shall develop a mechanism and timetable for compiling relevant information which shall include the social security numbers of individuals trained, in order to access wages earned by those individuals, project identifier codes, and information needed to evaluate the effectiveness of training in raising the skills of trainees. When developing procedures for compiling this information, the community colleges and the department will incorporate procedures to safeguard confidentiality of social security numbers.

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

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**ARC 8695A****ECONOMIC DEVELOPMENT,  
IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 23, "Iowa Community Development Block Grant Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 8554A** on December 16, 1998. The IDED Board adopted the amendments on January 21, 1999.

The amendments (1) provide for the reallocation of CDBG funds recaptured from the former quality jobs program, which is no longer in operation, and (2) clarify the required amount of the average starting wage for jobs created or retained by projects assisted through the economic development set-aside program.

A public hearing was held on January 5, 1999. No comments concerning the proposed amendments were received from the public. The Board made one revision to the final amendments. Paragraph 23.7(1)"c" was revised to remove the option of reducing the wage based upon a showing of severe economic distress. The Board concluded that this change was necessary to be consistent with the Board's intent to clarify that all projects must meet the wage floor.

These amendments are intended to implement Iowa Code section 15.108(1)"a."

These amendments will become effective on March 17, 1999.

The following amendments are adopted.

ITEM 1. Amend rule **261—23.2(15)** by adopting the following **new** definition:

"Quality jobs program" means a job training program formerly funded with CDBG funds that is no longer operational.

ITEM 2. Amend subrule 23.4(8) as follows:

**23.4(8)** Recaptured funds. Recaptured funds *from all programs except the former quality jobs program* shall be returned to the competitive program for use through the water and sewer fund and community facilities and services fund according to the percentages set forth in subrule 23.4(6). *Funds recaptured from the former quality jobs program shall*

*revert to the job creation, retention and enhancement fund.* Recaptured funds shall be committed to open contracts. Preference for reimbursement shall be given to those contracts funded in prior years, with priority given to those from the earliest year not yet closed out. Reimbursement will then proceed on a first-in, first-out basis.

ITEM 3. Amend subrule 23.7(1), paragraph "c," as follows:

c. The average starting wage of jobs to be created or retained by a proposed project ~~must shall meet or exceed the greater of 75 percent of the county average wage scale or \$7 an hour, unless evidence exists of a negative condition that has the potential to cause severe economic distress on the community.~~

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[Published 2/10/99]

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**ARC 8694A****ECONOMIC DEVELOPMENT,  
IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 51, "Self-Employment Loan Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 8453A** on November 18, 1998. The IDED Board adopted the amendments on January 21, 1999.

The first amendment updates subrule 51.3(3) so it is consistent with the program's definition of "low income." The last time the SELP rules were amended, the definition of "low income" was revised to increase the percentage from 70 percent to 125 percent. A corresponding amendment should have been made to subrule 51.3(3). This amendment, which corrects the percentage, provides that an applicant must have annualized household family income that is equal to or less than 125 percent of the most current poverty guidelines as published on an annual basis by the Department of Health and Human Services.

The second amendment removes a restriction on use of loan funds. Paragraph 51.3(8)"b" requires that the first \$5,000 can be used for purchase of land, buildings, machinery, equipment, furniture, fixtures, inventory, tools of the trade, vehicles used in the business and initial operating capital. Any loan amount over \$5,000 can only be used for the purchase of fixed assets or to leverage other project funds on a one-to-one basis. The Department is rescinding these limitations because they prevent some desirable projects from being funded. By rescinding paragraph 51.3(8)"b," the full amount of needed funding for those projects (up to \$10,000) can be approved.

A public hearing was held on December 9, 1998. No comments were received at the hearing.

The adopted amendments are identical to the proposed amendments.

These amendments will become effective on March 17, 1999.

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

These amendments are intended to implement Iowa Code section 15.241.

The following amendments are adopted.

ITEM 1. Amend subrule 51.3(3), introductory paragraph, as follows:

**51.3(3) Income.** To qualify to apply for a loan an applicant must have annualized household family income that is ~~no more than 70 percent of the lower living standard income~~ *equal to or less than 125 percent of the most current poverty guidelines as published on an annual basis by the Department of Health and Human Services (DHHS).* For purposes of calculating family income, exclusions are:

ITEM 2. Rescind and reserve paragraph **51.3(8)“b.”**

[Filed 1/22/99, effective 3/17/99]

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**ARC 8693A****ECONOMIC DEVELOPMENT,  
IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 60, "Entrepreneurial Ventures Assistance Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 8454A** on November 18, 1998. The IDED Board adopted the amendments on January 21, 1999.

The amendments increase the award level for financial assistance from \$20,000 to \$50,000 and for technical assistance from \$5,000 to \$10,000. These increases are adopted to respond to the businesses' need for a larger initial investment and additional technical assistance to help bridge the gap between the different levels of financing.

A public hearing was held on December 9, 1998. No comments were received at the hearing.

The adopted amendments are identical to the proposed amendments.

These amendments will become effective on March 17, 1999.

These amendments are intended to implement Iowa Code sections 15.338 and 15.339.

The following amendments are adopted.

ITEM 1. Amend rule 261—60.4(15) as follows:

**261—60.4(15) Financial assistance.** Applicants may apply to IDED for financial assistance to assist with their business start-up or early-stage growth. The applicant may request up to ~~\$20,000~~ *\$50,000* to be used for business expenses and to leverage conventional financing from commercial lenders or private investors. The assistance under this program is limited to 50 percent or less of the total original capitalization, if a new business, or total project costs, if an existing business. Funds may be used to purchase machinery, equipment, software, or for working capital needs, or other business expenses deemed reasonable and appropriate by IDED.

ITEM 2. Amend rule 261—60.5(15) as follows:

**261—60.5(15) Technical assistance.** Applicants may also apply for assistance in paying for consulting, or technical assistance, either in conjunction with the request for financial assistance, or after a period of time that the business has been in operation. Assistance of this nature is limited to no more than ~~\$5,000~~ *\$10,000* per applicant.

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**ARC 8643A****GENERAL SERVICES  
DEPARTMENT[401]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 18.27, the Department of General Services hereby amends Chapter 5, "Printing Division," Iowa Administrative Code.

The purpose of this amendment is to implement requirements of Iowa Code section 618.11 which requires the Superintendent of Printing to periodically review and adjust allowable fees paid to newspapers for official publications, notices, orders, citations or other publications required or allowed by law.

The amendment was Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on August 26, 1998, as **ARC 8271A**. The amendment was Adopted and Filed Emergency because the rates in effect expired June 30, 1998. The time frame to review rates will be corrected by the Department to avert emergency filings. Notice of Intended Action was published simultaneously as **ARC 8270A** to solicit public comment. The amendment is identical to that published under Notice.

A public hearing was held September 15, 1998. No one attended. Written comments on the amendment were received from affected organizations both in support of and opposed to the amendment. Comments concerned the amended rate newspapers are permitted to charge for publishing public notices, the time period covered by the amendment, and emergency filing.

An Economic Impact Statement was published in the Iowa Administrative Bulletin on December 2, 1998, showing there is a fiscal impact on local governments required to give public notice. The Economic Impact Statement further showed that the amendment continues a significant discount to local government from publication rates charged private entities.

The two-year time period covered by the amendment is of concern to local government associations due to a required annual review. These same associations are concerned about getting adequate notice to plan for the rates in the budgeting process. The amendment sets rates for the current fiscal year and provides notice for budgets being developed for the fiscal year beginning July 1, 1999.

This amendment is intended to implement Iowa Code section 618.11.

This amendment will become effective March 17, 1999, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

## GENERAL SERVICES DEPARTMENT[401](cont'd)

Amend rule 401—5.21(618) as follows:

**401—5.21(618) Fees paid to newspapers.** The fees paid to newspapers for official publications, notices, orders, citations or other publications required or allowed by law shall not exceed the following rates:

1. Fiscal year ~~1997 1999~~—~~29~~ 31 cents for one insertion and ~~19~~ 21 cents for each subsequent insertion, for each line of eight-point type two inches in length, or its equivalent.

2. Fiscal year ~~1998 2000~~—~~30~~ 33 cents for one insertion and ~~20~~ 23 cents for each subsequent insertion, for each line of eight-point type two inches in length, or its equivalent.

[Filed 1/15/99, effective 3/17/99]

[Published 2/10/99]

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## ARC 8640A

### HUMAN SERVICES DEPARTMENT[441]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services hereby amends Chapter 53, "Rent Subsidy Program," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments January 13, 1999. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on December 2, 1998, as **ARC 8512A**.

The Rent Subsidy program is designed to provide rent assistance to eligible persons to help them live successfully in their own home and community. An eligible person may receive assistance in meeting rental expense and, in the initial two months of eligibility, in purchasing necessary household furnishings and supplies.

These amendments revise the Rent Subsidy program as directed by the Seventy-seventh General Assembly as follows:

- Eligibility for the program has been expanded from persons receiving only the Home- and Community-Based Services (HCBS) mental retardation waiver to persons receiving any HCBS waiver, including the ill and handicapped waiver, the elderly waiver, the AIDS/HIV waiver, the mental retardation waiver, the brain injury waiver, and the soon to be implemented physical disabilities waiver.

- The program will be available to persons leaving any medical institution, rather than just intermediate care facilities for the mentally retarded.

- The beginning date of eligibility for having left a medical institution has been moved back one year, to July 1, 1995. From April 1, 1999, through May 30, 1999, persons discharged from a medical institution between July 1, 1995, and June 30, 1996, shall receive first consideration for eligibility and participation in the program. At the end of the 60-day period, all applications received during that time from other persons shall be considered in the chronological order they were received and, if applicable, participation in the program will be approved retroactive to the date that would have been allowed had an application been processed immediately on receipt.

- Up to 100 persons who can avoid placement in a medical institution by using this program and by using services provided under a waiver shall be eligible for the rent subsidy if they meet other eligibility requirements.

- Rent subsidy funds are also available to persons able to leave a medical institution by use of services provided under an HCBS waiver who turned 18 during the last year of their institutional stay.

- Applicants must provide evidence that they are responsible for paying more than 30 percent of their income for rent and that they are not receiving and are ineligible for other rental assistance.

The following revision was made to the Notice of Intended Action:

Rule 441—53.1(77GA,ch1218) was revised by removing group foster care living arrangements from the definition of "Medical institution." Group foster care living arrangements are not considered medical institutions for any other purpose and the appropriation language refers to medical institutions. The 18-year-olds coming out of group foster care living arrangements will be included in the 100 slots for persons in the community.

These amendments are intended to implement Iowa Code section 217.6 and 1998 Iowa Acts, chapter 1218, section 11, subsection 3.

These amendments shall become effective April 1, 1999.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 53, Preamble**, as follows:

#### PREAMBLE

This chapter defines and structures the rent subsidy program for persons ~~moving from an ICF/MR who are eligible for the Home- and Community-Based Service Waiver program for persons with mental retardation (HCBS MR), who participate in a home- and community-based service (HCBS) waiver program and who were:~~

1. *Discharged from a medical institution in which they have resided,*

2. *At risk of institutional placement, or*

3. *Able to leave a medical institution by use of services provided under an HCBS waiver upon turning 18 years of age during the last year of their institutional stay.*

This program is designed to provide rent assistance to these persons to help them live successfully in their own home and community. An eligible person may receive assistance in meeting rental expense and, in the initial two months of eligibility, in purchasing necessary household furnishings and supplies.

ITEM 2. Amend **441—Chapter 53** by changing the parenthetical implementation statute "77GA,HF715" to "77GA,ch1218" wherever it appears.

ITEM 3. Amend rule **441—53.1(77GA,ch1218)** as follows:

Amend the definition of "Adult," as follows:

"Adult" means a person ~~with mental retardation~~ aged 18 or over.

Adopt the following new definitions in alphabetical order:

"Home- and community-based waiver program" means any of the waiver programs administered by the department under the provisions set forth in 441—Chapter 83 including, but not limited to, the ill and handicapped waiver, the elderly waiver, the AIDS/HIV waiver, the mental retardation waiv-

## HUMAN SERVICES DEPARTMENT[441](cont'd)

er, the brain injury waiver, and the physical disabilities waiver.

"Medical institution" means an ICF/MR, nursing facility, skilled nursing facility, or hospital that is an approved Medicaid provider.

ITEM 4. Rescind rule 441—53.2(77GA,ch1218) and adopt the following new rule in lieu thereof:

**441—53.2(77GA,ch1218) Eligibility requirements.** All of the following criteria shall be met.

**53.2(1) HCBS recipient.** The person shall be an adult recipient of one of the home- and community-based services waiver programs.

**53.2(2) Discharged from a medical institution.** Except as provided in subrules 53.2(4) and 53.2(5), the person shall have been discharged from a medical institution on or after July 1, 1995, and immediately prior to receiving HCBS services. For a period of 60 days after April 1, 1999, persons who were discharged from a medical institution immediately prior to entering an HCBS program between July 1, 1995, and June 30, 1996, shall receive first consideration for eligibility and participation in this program if they demonstrate a need for rental assistance. These persons shall not replace anyone who is actively participating in this program at the time of their application. During this 60-day period, applications may be submitted by anyone, although first consideration will be given to the persons described above, whose applications will be acted upon in the order they are received. At the end of the 60-day period, all applications received during that time from persons not described above shall be considered in the chronological order that they were received and, if applicable, participation in the program shall be approved retroactive to the date that would have been allowed had an application been processed immediately on receipt.

**53.2(3) Demonstrated need.** To demonstrate need, applicants must provide evidence that they are responsible for paying more than 30 percent of their income for rent and that they are not receiving and are ineligible for other rental assistance. This program may not be used to substitute for any other subsidy that a person had been receiving at the time of or prior to the time of application to this program. Persons receiving rental assistance at the time of or prior to the time of application to this program shall not be eligible.

**53.2(4) Risk of institutional placement.** Up to 100 persons who can avoid placement in a medical institution by accessing this rent subsidy program and by use of services provided under an HCBS waiver shall be eligible for rental assistance. Applicants must meet all eligibility criteria of this program, except the requirements of subrule 53.2(2), and be able to demonstrate both of the following:

a. That they have insufficient funds to pay their community housing costs and that insufficient funds will cause them to enter a medical institution.

b. That participating in an HCBS waiver will prevent them from entering a medical institution and that access to this rental subsidy program is required so that they may live in a community living arrangement permitted under a waiver.

**53.2(5) Turning 18 years of age.** In lieu of meeting the criteria in subrule 53.2(2) or 53.2(4) above, rent subsidy funds may be made available to persons who are able to leave a medical institution by use of services provided under an HCBS waiver who turn 18 years of age during the last year of their institutional stay.

**53.2(6) Ineligible for other rent subsidies.** The person shall have been determined ineligible or be on the waiting list for rent subsidy programs under the U.S. Department of Housing and Urban Development (HUD) or any other available rent subsidy programs.

**53.2(7) Responsible for rent.** The person shall be financially responsible for rent or housing costs.

ITEM 5. Amend rule 441—53.3(77GA,ch1218), introductory paragraph and subrules 53.3(1) and 53.3(2), as follows:

**441—53.3(77GA,ch1218) Application.** Applications for the rent subsidy program may be obtained at the *any* county office of the department ~~in the county in which the applicant resides~~. Applications shall be submitted to the Department of Human Services, Division of Mental Health and Developmental Disabilities, Hoover State Office Building, Des Moines, Iowa 50319-0114.

**53.3(1) Application process.** A person who wishes to apply shall complete Form 470-3302, Application for HCBS ~~MR~~ Rent Subsidy and Household Assistance, and provide verification of the following:

a. The person's ~~taxable income for the previous calendar year and~~ estimated monthly income for the 12 months following application, *including written evidence from the income sources used to determine that income.*

b. *Written evidence from sources of local rental assistance available in the applicant's community that the applicant has applied for that rental assistance and that the applicant has been determined ineligible or placed on a waiting list for that rental assistance.*

c. The amount of the person's rent payment.

d. The amount of assistance needed for purchase of needed household furnishings and supplies.

**53.3(2) Date of application.** The date of the application shall be the date the application, ~~and including written verification of income and written verification of application to other rental assistance programs, are~~ received by the division of mental health and developmental disabilities. *Applications received through June 30, 1999, on behalf of persons who would have met all of the qualifying criteria between July 1, 1998, and their date of application will be assessed for payment consideration retroactive to July 1, 1998, or the date between July 1, 1998, and the date of application on which the applicant would have met all eligibility criteria.*

ITEM 6. Amend subrule 53.4(3) as follows:

**53.4(3) Assistance with other purchases.** Assistance may be given in the initial two months of eligibility for purchases necessary for household furnishings and supplies. The maximum available for household furnishings and supplies shall be \$500. This shall be a one-time payment *and shall be available only to persons leaving a medical institution immediately prior to applying to this program.* The maximum amount shall be available to all eligible persons, including those who may have entered this program prior to the time this maximum amount took effect. In these cases, payments may be made retroactively to persons to reconcile the differences.

ITEM 7. Amend subrule 53.5(2) as follows:

**53.5(2) Review packet.** The division shall send a review packet, which shall include instructions and necessary forms for verification of continuing eligibility, to all recipients of subsidy payments at least 60 calendar days prior to the deadline date for annual redetermination of eligibility. The completed Form 470-3302, Application for HCBS ~~MR~~ Rent Subsidy and Household Assistance, and required verifica-



## HUMAN SERVICES DEPARTMENT[441](cont'd)

tion materials shall be submitted annually to the Department of Human Services, Division of Mental Health and Developmental Disabilities, Hoover State Office Building, Des Moines, Iowa 50319-0114. If the signed application and verification of continuing eligibility are not received by the division by the thirtieth day following the date the review packet is sent, the person's subsidy shall be terminated.

ITEM 8. Amend the implementation clause following 441—Chapter 53 as follows:

These rules are intended to implement Iowa Code section 217.6 and 1997 Iowa Acts, House File 715, section 8, subsection 3 1998 Iowa Acts, chapter 1218, section 11, subsection 3.

[Filed 1/13/99, effective 4/1/99]

[Published 2/10/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/10/99.

ARC 8641A

HUMAN SERVICES  
DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 83, "Medicaid Waiver Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments on January 13, 1999. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on November 4, 1998, as ARC 8427A.

Appropriations for state fiscal years 1997 and 1998 directed the Department to develop and implement a Home- and Community-Based Services waiver for persons with physical disabilities. A similar directive was contained in the appropriation for state fiscal year 1999 but was vetoed due to a disagreement regarding the language. However, the Governor directed the Department to proceed with the waiver. These amendments implement that waiver.

This waiver will be available to persons with a physical disability who currently reside in a medical institution and who have been residents of a medical institution for a minimum of 30 days. It is estimated that there are approximately 800 persons in institutions who will qualify for this waiver. In addition, two slots per each of the five Department regions will be available for persons with physical disabilities who are residing in the community at the time of their application for the waiver. The Department is requesting that a total of 100 slots consisting of 90 slots for persons in institutions and 10 slots for persons in the community be approved by the Health Care Financing Authority for the initial year. Persons not eligible because of the slot limitation will be placed on either a statewide waiting list for persons in institutions or on a regional waiting list for persons living in the community.

These amendments provide for the participation of counties in the nonfederal costs for the waiver for adults requiring the ICF/MR level of care and allow counties to limit the

number of slots available for persons requiring this level of care. A county may choose not to establish payment slots for this program. Persons not approved because of a county slot limitation will be placed on a waiting list maintained by the Department.

To be eligible for this waiver the applicant must:

- Have a physical disability;
- Be blind or disabled as determined by the receipt of social security disability benefits or by a disability determination made through the division of medical services;
- Be ineligible for the HCBS MR waiver;
- Have the ability to hire, supervise, and fire the provider as determined by the service worker and be willing to do so or have a guardian named by probate court who will take this responsibility on behalf of the consumer;
- Be eligible for Medicaid; and be aged 18 years to 64 years;
- Use a minimum of one unit of consumer-directed attendant care service or personal emergency response system service each quarter.

Services available on this waiver include consumer-directed attendant care, home and vehicle modification, personal emergency response system, specialized medical equipment, and transportation.

The total cost of physical disability waiver services provided to a recipient shall not exceed \$1,150 per month.

Eight public hearings were held around the state. Eight persons attended. The following revisions were made to the Notice of Intended Action:

Subrule 78.46(1), paragraph "h," was revised, paragraphs "i" to "k" were relettered as "j" to "l," and a new paragraph "i" was added to make the policy for consumer-directed attendant care services for persons with guardians consistent with the policy being promulgated for the other waivers. (See ARC 8544A in the December 16, 1998, Iowa Administrative Bulletin.)

Subrule 83.102(1), paragraph "h," subrule 83.107(2), and subrule 83.109(2), introductory paragraph and paragraph "a," were revised to clarify the appeal process for level of care determinations by the Iowa Foundation for Medical Care in response to comments. Subrule 83.102(1), paragraph "h," was further revised to clarify that persons who are in need of the ICF/MR level of care must also be residing in an ICF/MR to be eligible for this waiver program.

Subrule 83.102(2), paragraph "a," and rule 441—83.107(249A), introductory paragraph, were revised in response to comments to add the consumer as a participant in the development and approval of the service plan.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments shall become effective April 1, 1999.

The following amendments are adopted.

ITEM 1. Amend 441—Chapter 77 by adding the following new rule:

441—77.41(249A) **HCBS physical disability waiver service providers.** Consumer-directed attendant care, home and vehicle modification, personal emergency response system, specialized medical equipment, and transportation service providers shall be eligible to participate as approved physical disability waiver service providers in the Medicaid program based on the applicable subrules pertaining to the individual service. Enrolled providers shall maintain the certification listed in the applicable subrules in order to remain eligible providers.



## HUMAN SERVICES DEPARTMENT[441](cont'd)

**77.41(1)** Enrollment process. Reviews of compliance with standards for initial enrollment shall be conducted by the department's division of medical services quality assurance staff. Enrollment carries no assurance that the approved provider will receive funding.

Review of a provider may occur at any time.

The department may request any information from the prospective service provider that is pertinent to arriving at an enrollment decision. This may include, but is not limited to:

a. Current accreditations, evaluations, inspection reports, and reviews by regulatory and licensing agencies and associations.

b. Fiscal capacity of the prospective provider to initiate and operate the specified programs on an ongoing basis.

c. The prospective provider's written agreement to work cooperatively with the state and central point of coordination in the counties to be served by the provider.

**77.41(2)** Consumer-directed attendant care providers. The following providers may provide consumer-directed attendant care service:

a. An individual who contracts with the consumer to provide consumer-directed attendant care and who is:

(1) At least 18 years of age.

(2) Qualified by training or experience to carry out the consumer's plan of care pursuant to the department-approved case plan or individual comprehensive plan.

(3) Not the spouse or guardian of the consumer.

(4) Not the recipient of respite services paid through home- and community-based services on behalf of a consumer who receives home- and community-based services.

b. Home care providers that have a contract with the department of public health or have written certification from the department of public health stating that they meet the home care standards and requirements set forth in department of public health rules 641—80.5(135), 641—80.6(135), and 641—80.7(135).

c. Home health agencies that are certified to participate in the Medicare program.

d. Chore providers subcontracting with area agencies on aging or with letters of approval from the area agencies on aging stating that the organization is qualified to provide chore services.

e. Community action agencies as designated in Iowa Code section 216A.103.

f. Providers certified under an HCBS waiver for supported community living.

g. Assisted living programs that are voluntarily accredited or certified by the department of elder affairs.

h. Adult day service providers which meet the conditions of participation for adult day care providers as specified at 441—subrule 77.30(3), 77.33(1), 77.34(7), or 77.39(27) and which have provided a point-in-time letter of notification from the department of elder affairs or an area agency on aging stating the adult day service provider also meets the requirements of department of elder affairs rules in 321—Chapter 25.

**77.41(3)** Home and vehicle modification providers. A home and vehicle modification provider shall be an approved HCBS brain, injury or mental retardation supported community living service provider and shall meet the following standards:

a. The provider shall obtain a binding contract with a community business to perform the work at the reimbursement provided by the department without additional charge. The contract shall include, at a minimum, cost, time frame

for work completion, employer's liability coverage, and workers' compensation coverage.

b. The business shall provide physical or structural modifications to homes or vehicles according to service descriptions listed in 441—subrule 78.46(2).

c. The business, or the business's parent company or corporation, shall have the necessary legal authority to operate in conformity with federal, state and local laws and regulations.

**77.41(4)** Personal emergency response system providers. Personal emergency response system providers shall be agencies which meet the conditions of participation set forth in subrule 77.33(2).

**77.41(5)** Specialized medical equipment providers. The following providers may provide specialized medical equipment:

a. Medical equipment and supply dealers participating as providers in the Medicaid program.

b. Retail and wholesale businesses participating as providers in the Medicaid program which provide specialized medical equipment as defined in 441—subrule 78.46(4).

**77.41(6)** Transportation service providers. The following providers may provide transportation:

a. Area agencies on aging as designated in 321—4.4(231) or with letters of approval from the area agencies on aging stating the organization is qualified to provide transportation services.

b. Community action agencies as designated in Iowa Code section 216A.93.

c. Regional transit agencies as recognized by the Iowa department of transportation.

d. Nursing facilities licensed pursuant to Iowa Code chapter 135C.

This rule is intended to implement Iowa Code section 249A.4.

ITEM 2. Amend 441—Chapter 78 by adding the following **new** rule:

**441—78.46(249A) Physical disability waiver service.** Payment shall be approved for the following services to consumers eligible for the HCBS physical disability waiver established in 441—Chapter 83 when identified in the consumer's service plan. All services shall include the applicable and necessary instructions, supervision, assistance and support as required by the consumer in achieving the goals written specifically in the service plan and those delineated in Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement. The service shall be delivered in the least restrictive environment consistent with the consumer's needs and in conformity with the consumer's service plan.

Reimbursement shall not be available under the waiver for any services that the consumer can obtain through regular Medicaid or from any other funding source.

All services shall be billed in whole units as specified in the following subrules.

**78.46(1)** Consumer-directed attendant care service. Consumer-directed attendant care services are service activities listed below performed by a person to help a consumer with self-care tasks which the consumer would typically do independently if the consumer were otherwise able. The services must be cost-effective and necessary to prevent institutionalization.

Providers must demonstrate proficiency in delivery of the services in the consumer's plan of care. Proficiency must be demonstrated through documentation of prior training or experience or a certificate of formal training. All training or

## HUMAN SERVICES DEPARTMENT[441](cont'd)

experience will be detailed on Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement, which must be reviewed and approved by the service worker for appropriateness of training or experience prior to the provision of services. Form 470-3372 becomes an attachment to and part of the case plan. Consumers shall give direction and training for activities which are not medical in nature to maintain independence. Licensed registered nurses and therapists must provide on-the-job training and supervision to the provider for skilled activities listed below and described on Form 470-3372. The training and experience must be sufficient to protect the health, welfare and safety of the consumer.

a. Nonskilled service activities covered are:

- (1) Help with dressing.
- (2) Help with bath, shampoo, hygiene, and grooming.
- (3) Help with access to and from bed or a wheelchair, transferring, ambulation, and mobility in general. Certification for this is available through the area community colleges.
- (4) Toilet assistance, including bowel, bladder, and catheter assistance which includes emptying the catheter bag, collecting a specimen and cleaning the external area around the catheter. Certification of training which includes demonstration of competence for catheter assistance is available through the area community colleges.
- (5) Meal preparation, cooking, eating and feeding assistance but not the cost of meals themselves.
- (6) Housekeeping services which are essential to the consumer's health care at home.
- (7) Help with medications ordinarily self-administered including those ordered by a physician or other qualified health care provider. Certification of training in a medication aide course is available through the area community colleges.
- (8) Minor wound care which does not require skilled nursing care.
- (9) Assistance needed to go to, or return from, a place of employment but not assistance to the consumer while the consumer is on the job site.
- (10) Cognitive assistance with tasks such as handling money and scheduling.
- (11) Fostering communication through interpreting and reading services as well as assistance in use of assistive devices for communication.
- (12) Assisting and accompanying a consumer in using transportation essential to the health and welfare of the consumer, but not the cost of the transportation.

b. Skilled service activities covered are the following performed under the supervision of a licensed nurse or licensed therapist working under the direction of a licensed physician. The licensed nurse or therapist shall retain accountability for actions that are delegated. The licensed nurse or therapist shall ensure appropriate assessment, planning, implementation, and evaluation. The licensed nurse or therapist shall make on-site supervisory visits every two weeks with the provider present. The cost of the supervision provided by the licensed nurse or therapist shall not be included in the reimbursement for consumer-directed attendant care services.

- (1) Tube feedings of consumers unable to eat solid foods.
- (2) Assistance with intravenous therapy which is administered by a registered nurse.
- (3) Parenteral injections required more than once a week.

(4) Catheterizations, continuing care of indwelling catheters with supervision of irrigations, and changing of Foley catheters when required.

(5) Respiratory care including inhalation therapy and tracheotomy care or tracheotomy care and ventilator.

(6) Care of decubiti and other ulcerated areas, noting and reporting to the nurse or therapist.

(7) Rehabilitation services including bowel and bladder training, range of motion exercises, ambulation training, restorative nursing services, reteaching the activities of daily living, respiratory care and breathing programs, reality orientation, reminiscing therapy, remotivation, and behavior modification.

(8) Colostomy care.

(9) Care of medical conditions such as brittle diabetes and comfort care of terminal conditions.

(10) Postsurgical nurse-delegated activities under the supervision of the registered nurse.

(11) Monitoring medication reactions requiring close supervision because of fluctuating physical or psychological conditions, e.g., antihypertensives, digitalis preparations, mood altering or psychotropic drugs or narcotics.

(12) Preparing and monitoring response to therapeutic diets.

(13) Recording and reporting of changes in vital signs to the nurse or therapist.

c. A unit of service is 1 hour for up to 7 hours per day or one 8- to 24-hour day provided by an individual or an agency. Each service shall be billed in whole units.

d. The consumer or guardian shall be responsible for selecting the person or agency who will provide the components of the attendant care services to be provided.

e. The consumer or guardian shall determine the components of the attendant care services to be provided with the person who is providing the services to the consumer.

f. The service activities may not include parenting or child care on behalf of the consumer.

g. The consumer or guardian and provider shall complete and sign Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement. A copy of the completed agreement shall be attached to the service plan which is signed by the service worker prior to the initiation of services and kept in the consumer's and department's records.

h. If the consumer has a guardian, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the consumer's needs are being adequately met.

i. If the consumer has a guardian, the guardian shall sign the claim form in place of the consumer, indicating that the service has been provided as presented on the claim.

j. The frequency or intensity of services shall be indicated in the service plan.

k. Consumer-directed attendant care services may not be simultaneously reimbursed with any other HCBS waiver services.

l. Consumer-directed attendant care services may be provided to a recipient of in-home health-related care services, but not at the same time.

**78.46(2)** Home and vehicle modifications. Covered home and vehicle modifications are those physical modifications to the consumer's home environment and vehicle which are necessary to provide for the health, welfare and safety of the consumer and which enable the consumer to function with greater independence in the home or vehicle.

HUMAN SERVICES DEPARTMENT[441](cont'd)

a. Services shall be included in the consumer's service plan and shall exceed the regular Medicaid services.

b. These services may include the purchase, installation, or modification of:

(1) Kitchen counters, sink space, cabinets, special adaptations to refrigerators, stoves and ovens, grab bars and handrails.

(2) Bathtubs and toilets to accommodate wheelchair transfer, shower and bathtub seats, grab bars, special handles and hoses for shower heads, water faucet controls, wheelchair-accessible showers and sink areas, and turnaround space adaptations.

(3) Entrance ramps and rails; lifts for porches or stairs; door, hall and window widening; motion-activated and electronic devices; air filtering, heating and cooling adaptations.

(4) Vehicle floor or wall bracing, lifts, and driver-specific adaptations.

c. A unit of service is the completion of needed modifications or adaptations.

d. All modifications and adaptations shall be in accordance with applicable federal, state and local building and vehicle codes.

e. Home and vehicle modifications shall be provided by community businesses. Services shall be performed following department approval of a contract between the supported community living provider and the community business.

**78.46(3)** Personal emergency response system. The personal emergency response system allows a consumer experiencing a medical emergency at home to activate electronic components that transmit a coded signal via digital equipment over telephone lines to a central monitoring station. The service shall be identified in the consumer's service plan. A unit is a one-time installation fee or one month of service. Maximum units per state fiscal year are the initial installation and 12 months of service. The necessary components of a system are:

a. An in-home medical communications transceiver.

b. A remote, portable activator.

c. A central monitoring station with backup systems staffed by trained attendants 24 hours per day, seven days a week.

d. Current data files at the central monitoring station containing response protocols and personal, medical, and emergency information for each consumer.

**78.46(4)** Specialized medical equipment. Specialized medical equipment shall include medically necessary items for personal use by consumers with a physical disability which provide for the health and safety of the consumer that are not covered by Medicaid, are not funded by vocational rehabilitation programs, and are not provided by voluntary means. This includes, but is not limited to: electronic aids and organizers, medicine-dispensing devices, communication devices, bath aids and noncovered environmental control units. This includes repair and maintenance of items purchased through the waiver in addition to the initial costs.

a. Consumers may receive specialized medical equipment once a month until a maximum yearly usage of \$6000 has been reached.

b. The need for specialized medical equipment shall be documented by a health care professional as necessary for the consumer's health and safety and shall be identified in the consumer's service plan.

**78.46(5)** Transportation. Transportation services may be provided for consumers to conduct business errands and essential shopping, to receive medical services when not reimbursed through Medicaid as medical transportation, to travel

to and from work or day programs, and to reduce social isolation. A unit of service is per mile or per trip.

This rule is intended to implement Iowa Code section 249A.4.

ITEM 3. Amend rule 441—79.1(249A) as follows:

Amend subrule 79.1(2) by adding the following **new** provider category in alphabetical order:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
HCBS physical disability waiver service providers, including:		
1. Consumer-directed attendant care:		
Agency provider	Fee agreed upon by consumer and provider	\$18 per hour \$104 per day
Individual provider	Fee agreed upon by consumer and provider	\$12 per hour \$70 per day
2. Home and vehicle modification providers	Fee schedule	\$500 per month, not to exceed \$6000 per year
3. Personal emergency response system	Fee schedule	Initial one-time fee of \$45. Ongoing monthly fee of \$35.
4. Specialized medical equipment	Fee schedule	\$500 per month, not to exceed \$6000 per year
5. Transportation	Fee schedule	State per mile rate for regional transit providers, or rate established by area agency on aging. Reimbursement shall be at the lowest cost service rate consistent with the consumer's needs.

ITEM 4. Amend subrule 79.14(1), paragraph "e," as follows:

e. All HCBS waiver providers shall submit Form 470-2917, Medicaid HCBS Provider Application, *at least 90 days before the planned service implementation date. Consultec shall forward the application to the department for processing.*

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 5. Reserve rules **441—83.92** to **83.100**.

ITEM 6. Amend **441—Chapter 83** by adding the following new Division VI:

## DIVISION VI

## PHYSICAL DISABILITY WAIVER SERVICES

**441—83.101(249A) Definitions.**

“Adaptive” means age-appropriate skills related to taking care of one’s self and the ability to relate to others in daily living situations. These skills include limitations that occur in the areas of communication, self-care, home living, social skills, community use, self-direction, safety, functional academics, leisure and work.

“Adult” means a person with a physical disability aged 18 years to 64 years.

“Appropriate” means that the services or supports or activities provided or undertaken by the organization are relevant to the consumer’s needs, situation, problems, or desires.

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

“Behavior” means skills related to regulating one’s own behavior including coping with demands from others, making choices, controlling impulses, conforming conduct to laws, and displaying appropriate sociosexual behavior.

“Client participation” means the amount of the consumer’s income that the person must contribute to the cost of physical disability waiver services, exclusive of medical vendor payments, before Medicaid will provide additional reimbursement.

“Department” means the Iowa department of human services.

“Guardian” means a guardian appointed in probate court for an adult.

“Iowa Foundation for Medical Care” is the entity designated by the federal government to be the peer review organization for the state of Iowa.

“Medical institution” means a nursing facility, a skilled nursing facility, intermediate care facility for the mentally retarded, or hospital which has been approved as a Medicaid vendor.

“Physical disability” means a severe, chronic condition that is attributable to a physical impairment that results in substantial limitations of physical functioning in three or more of the following areas of major life activities: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

“Service plan” means a written consumer-centered, outcome-based plan of services developed using an interdisciplinary process which addresses all relevant services and supports being provided. It may involve more than one provider.

“Third-party payments” means payments from an individual, institution, corporation, or public or private provider which is liable to pay part or all of the medical costs incurred as a result of injury or disease on behalf of a consumer of medical assistance.

“Waiver year” means a 12-month period commencing on April 1 of each year.

**441—83.102(249A) Eligibility.** To be eligible for physical disability waiver services, a consumer must meet eligibility criteria set forth in subrule 83.102(1) and be determined to need a service allowable under the program per subrule 83.102(2).

**83.102(1) Eligibility criteria.** All of the following criteria must be met. The person must:

- a. Have a physical disability.
- b. Be blind or disabled as determined by the receipt of social security disability benefits or by a disability determination made through the division of medical services. Disability determinations are made according to supplemental security income guidelines as per Title XVI of the Social Security Act.
- c. Be ineligible for the HCBS MR waiver.
- d. Have the ability to hire, supervise, and fire the provider as determined by the service worker, and be willing to do so, or have a guardian named by probate court who will take this responsibility on behalf of the consumer.
- e. Be eligible for Medicaid under 441—Chapter 75.
- f. Be aged 18 years to 64 years.
- g. Be a current resident of a medical institution and have been a resident for at least 30 consecutive days at the time of initial application for the physical disability waiver.

EXCEPTION: During any waiver year, up to ten persons, two per departmental region as established in 441—subrule 1.4(2), in need of the skilled nursing facility or intermediate care facility level of care who are not residents of a medical institution at the time of application may receive HCBS physical disability waiver services as provided in subrule 83.102(3).

h. Be in need of intermediate care facility for the mentally retarded (ICF/MR), skilled nursing, or intermediate care facility level of care. For those who are in need of ICF/MR level of care and who are currently residing in an ICF/MR facility, the discharge planner must contact the county of financial responsibility for the consumer to determine the county’s agreement with referral to the physical disability waiver. Initial decisions on level of care shall be made for the department by the Iowa Foundation for Medical Care (IFMC) within two working days of receipt of medical information. After notice of an adverse decision by IFMC, the Medicaid applicant or recipient or the applicant’s or recipient’s representative may request reconsideration by IFMC pursuant to subrule 83.109(2). On initial and reconsideration decisions, IFMC determines whether the level of care requirement is met based on medical necessity and the appropriateness of the level of care under 441—subrules 79.9(1) and 79.9(2). Adverse decisions by IFMC on reconsiderations may be appealed to the department pursuant to 441—Chapter 7 and rule 441—83.109(249A).

- i. Choose HCBS.
- j. Use a minimum of one unit of consumer-directed attendant care service or personal emergency response system service each quarter.

**83.102(2) Need for services.**

a. The consumer shall have a service plan which is developed by the consumer and a department service worker. This must be completed and approved prior to service provision and at least annually thereafter.

The service worker shall identify the need for service based on the needs of the consumer as well as the availability and appropriateness of services.

b. The total monthly cost of physical disability waiver services shall not exceed \$1150 per month.

**83.102(3) State slots.** The total number of persons receiving HCBS physical disability waiver services in the state shall be limited to the number provided in the waiver approved by the Secretary of the U.S. Department of Health and Human Services. Of these, ten slots during any waiver year (two in each departmental region) shall be reserved for

## HUMAN SERVICES DEPARTMENT[441](cont'd)

persons who were not residents of a medical institution at the time of initial application for the physical disability waiver as allowed by the exception under paragraph 83.102(1)“g.” These slots shall be available on a first-come, first-served basis.

**83.102(4)** County payment slots for persons requiring the ICF/MR level of care. Waiver slots for adult persons in need of the ICF/MR level of care with legal settlement in a county must be identified in the county management plan submitted to the department pursuant to 441—Chapter 25. Each county shall inform the department regarding the number of payment slots desired by April 1 and October 1 of each year. These slots must be within the statewide total under subrule 83.102(3). The county shall have financial responsibility for the nonfederal share of the costs of services for these consumers as stated in rule 441—83.110(249A). A county may choose not to establish any payment slots under the HCBS physical disability waiver.

**83.102(5)** Securing a state slot.

a. The county department office shall contact the division of medical services for all cases to determine if a slot is available for all new applications for the HCBS physical disability waiver program.

(1) For persons not currently receiving Medicaid, the county department office shall contact the division of medical services by the end of the second working day after receipt of a completed Form 470-0442, Application for Medical Assistance or State Supplementary Assistance, submitted on or after April 1, 1999.

(2) For current Medicaid recipients, the county department office shall contact the division of medical services by the end of the second working day after receipt of a signed and dated Form 470-0660, Home- and Community-Based Service Report, submitted on or after April 1, 1999.

b. On the third day after the receipt of the completed Form 470-0442 or 470-0660, if no slot is available, the division of medical services shall enter persons on the HCBS physical disabilities waiver state waiting list for institutionalized persons or on a regional waiting list for the slots reserved for persons who are not institutionalized according to the following:

(1) Persons not currently eligible for Medicaid shall be entered on the basis of the date a completed Form 470-0442, Application for Medical Assistance or State Supplementary Assistance, is submitted on or after April 1, 1999, and date-stamped in the county department office. Consumers currently eligible for Medicaid shall be added on the basis of the date the consumer requests HCBS physical disability program services as documented by the date of the consumer's signature on Form 470-0660 submitted on or after April 1, 1999. In the event that more than one application is received on the same day, persons shall be entered on the waiting list on the basis of the day of the month of their birthday, the lowest number being first on the list. Any subsequent tie shall be decided by the month of birth, January being month one and the lowest number.

(2) Persons who do not fall within the available slots shall have their applications rejected but their names shall be maintained on the state waiting list for institutionalized persons or on a regional waiting list for the slots reserved for persons who are not institutionalized. As slots become available, persons shall be selected from the waiting lists to maintain the number of approved persons on the program based on their order on the waiting lists.

**83.102(6)** Securing a county payment slot.

a. In addition to contacting the division of medical services for all cases pursuant to 83.102(5), the county department office shall contact the county of legal settlement for adults coming from a medical institution who are in need of the ICF/MR level of care to determine if a county payment slot is available for new applications for the HCBS physical disability waiver program.

(1) For persons not currently receiving Medicaid, the county department office shall contact the county central point of coordination by the end of the second working day after receipt of a completed Form 470-0442, Application for Medical Assistance or State Supplementary Assistance, submitted on or after April 1, 1999.

(2) For current Medicaid recipients, the county department office shall contact the county central point of coordination by the end of the second working day after receipt of a signed and dated Form 470-0660, Home- and Community-Based Service Report, submitted on or after April 1, 1999.

b. On the third day after the receipt of the completed Form 470-0442 or 470-0660, if no payment slot is available, persons shall be entered on a waiting list by the county central point of coordination according to the following:

(1) Persons not currently eligible for Medicaid shall be entered on the waiting list on the basis of the date a completed Form 470-0442, Application for Medical Assistance or State Supplementary Assistance, is submitted on or after April 1, 1999, and date-stamped in the county department office. Consumers currently eligible for Medicaid shall be added to the list on the basis of the date the consumer requests HCBS physical disability program services as documented by the date of the consumer's signature on Form 470-0660 submitted on or after April 1, 1999. In the event that more than one application is received on the same day, persons shall be entered on the waiting list on the basis of the day of the month of their birthday, lowest number being first on the list. Any subsequent tie shall be decided by the month of birth, January being month one and the lowest number.

(2) Persons who do not fall within the available slots shall have their applications rejected but their names shall be maintained on the county waiting list. As slots become available, persons shall be selected from the list to maintain the number of approved persons on the program based on their order on the waiting list.

**83.102(7)** HCBS physical disability waiver waiting lists. When services are denied because the statewide limit for institutionalized persons is reached, a notice of decision denying service based on the limit and stating that the person's name shall be put on a statewide waiting list shall be sent to the person by the department.

When services are denied because the two slots per region for persons already residing in the community at the time of application are filled, a notice of decision denying service based on the limit on those slots and stating that the person's name shall be put on a waiting list by region for one of the community slots shall be sent to the person by the department.

When services are denied because the county of legal settlement has not established any slots in the county plan, a notice of decision will be issued denying service stating that the person is not eligible because the county has chosen not to participate in the HCBS physical disabilities waiver. The names of the persons who are not eligible because the county has chosen not to participate shall be placed on a waiting list by county by the department in case the county decides to participate.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

When services are denied because all county of legal settlement slots are filled, a notice of decision will be issued denying service stating that the person is not eligible because all county slots are filled. The names of the persons who are not eligible because all county slots are filled shall be placed on a waiting list by county by the department in case a slot becomes available or the county decides to add additional slots.

**441—83.103(249A) Application.**

**83.103(1)** Application for financial eligibility. The application process as specified in rules 441—76.1(249A) to 441—76.6(249A) shall be followed. Applications for this program may only be filed on or after April 1, 1999.

**83.103(2) Approval of application for eligibility.**

a. Applications for this waiver shall be initiated on behalf of the applicant who is a resident of a medical institution with the applicant's consent or with the consent of the applicant's legal representative by the discharge planner of the medical facility where the applicant resides at the time of application. The discharge planner shall complete Form 470-3502, Physical Disability Waiver Assessment Tool, and submit it to the Iowa Foundation for Medical Care (IFMC) review coordinator. After completing the determination of the level of care needed by the applicant, the IFMC review coordinator shall inform the income maintenance worker and the discharge planner on behalf of the applicant or the applicant's guardian of its decision.

b. Applications for this waiver shall be initiated by the applicant or by the applicant's legal guardian on behalf of the applicant who is residing in the community. The applicant or the applicant's legal guardian shall complete Form 470-3502, Physical Disability Waiver Assessment Tool, and submit it to the Iowa Foundation for Medical Care (IFMC) review coordinator. After completing the determination of the level of care needed by the applicant, the IFMC review coordinator shall inform the income maintenance worker and the applicant or the applicant's legal guardian.

c. Eligibility for this waiver shall be effective as of the date when both the eligibility criteria in subrule 83.102(1) and need for services in subrule 83.102(2) have been established. Decisions shall be mailed or given to the consumer or the consumer's legal guardian on the date when each eligibility determination is completed.

d. An applicant shall be given the choice between waiver services and institutional care. The applicant shall complete and sign Form 470-0660, Home- and Community-Based Service Report, indicating the consumer's choice of caregiver.

e. The consumer or the consumer's guardian shall cooperate with the service worker in the development of the service plan, which must be approved by the department service worker prior to the start of services.

f. HCBS physical disability waiver services provided prior to both approvals of eligibility for the waiver cannot be paid.

g. HCBS physical disability waiver services are not available in conjunction with other HCBS waiver programs. The consumer may also receive in-home health-related care service if eligible for that program.

**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).

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) 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). Consumers who return to inpatient status in a medical institution for more than 30 consecutive days shall be reviewed by IFMC 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.

**83.103(4) Attribution of resources.** For the purposes of attributing resources as provided in rule 441—75.5(249A), the date on which the waiver consumer meets the institutional level of care requirement as determined by IFMC or an appeal decision shall be used as the date of entry to the medical institution. Only one attribution of resources shall be completed per person. Attributions completed for a prior institutionalization shall be applied to the waiver application.

**441—83.104(249A) Client participation.** Consumers who are financially eligible under 441—subrule 75.1(7) (the 300 percent group) must contribute a client participation amount to the cost of physical disability waiver services.

**83.104(1) Computation of client participation.** Client participation shall be computed by deducting a maintenance needs allowance equal to 300 percent of the maximum SSI grant for an individual from the consumer's total income. For a couple, client participation is determined as if each person were an individual.

**83.104(2) Limitation on payment.** If the sum of the third-party payment and client participation equals or exceeds the reimbursement for the specific physical disability waiver service, Medicaid shall make no payments for the waiver service. However, Medicaid shall make payments to other medical providers.

**441—83.105(249A) Redetermination.** A complete financial redetermination of eligibility for the physical disability waiver shall be completed 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—83.102(249A). A redetermination shall contain the components listed in rule 441—83.102(249A).

**441—83.106(249A) Allowable services.** The services allowable under the physical disability waiver are consumer-directed attendant care, home and vehicle modification, personal emergency response system, transportation service, and specialized medical equipment as set forth in rule 441—78.46(249A).

**441—83.107(249A) Individual service plan.** An individualized service plan shall be prepared and used for each HCBS physical disability waiver consumer. The service plan shall be developed and approved by the consumer and the DHS service worker prior to services beginning and payment being made to the provider. The plan shall be reviewed by the



## HUMAN SERVICES DEPARTMENT[441](cont'd)

consumer and the service worker annually, and the current version approved by the service worker.

**83.107(1)** Information in plan. The plan shall be in accordance with 441—subrule 24.2(2) and shall additionally include the following information to assist in evaluating the program:

- a. A listing of all services received by a consumer at the time of waiver program enrollment.
- b. The name of all providers responsible for providing all services.
- c. All service funding sources.
- d. The amount of the service to be received by the consumer.

**83.107(2)** Annual assessment. The Iowa Foundation for Medical Care shall review the consumer's need for continued care annually and recertify the consumer's need for long-term care services, pursuant to the standards and subject to the reconsideration and appeal processes at paragraph 83.102(1)"h" and rule 441—83.109(249A), based on the completed Form 470-3502, Physical Disability Waiver Assessment Tool, and supporting documentation as needed. Form 470-3502 is completed by the service worker at the time of recertification.

**83.107(3)** Case file. The consumer case file shall contain the following completed forms:

- a. Eligibility for Medicaid Waiver, Form 470-0563.
- b. Home- and Community-Based Service Report, Form 470-0660.
- c. Medicaid Home- and Community-Based Payment Agreement, Form 470-0379.
- d. HCBS Consumer-Directed Attendant Care Agreement, Form 470-3372, when consumer-directed attendant care services are being provided.
- e. The service plan.
- f. The county central point of coordination's final approval of service costs if the county is voluntarily participating at the intermediate care facility for the mentally retarded (ICF/MR) level of care.

**441—83.108(249A) Adverse service actions.**

**83.108(1)** Denial. An application for services shall be denied when it is determined by the department that:

- a. All of the medically necessary service needs cannot be met in a home- or community-based setting.
- b. Service needs exceed the reimbursement maximums.
- c. Service needs are not met by the services provided.
- d. Needed services are not available or received from qualifying providers.
- e. The physical disability waiver service is not identified in the consumer's service plan.
- f. There is another community resource available to provide the service or a similar service free of charge to the consumer that will meet the consumer's needs.
- g. The consumer receives services from other Medicaid waiver providers.
- h. The consumer or legal representative requests termination from the services.

**83.108(2)** Reduction. A particular service may be reduced when the department determines that the provisions of 441—subrule 130.5(3), paragraph "a" or "b," apply.

**83.108(3)** Termination. A particular service may be terminated when the department determines that:

- a. The provisions of 441—subrule 130.5(2), paragraph "d," "g," or "h," apply.
- b. Needed services are not available or received from qualifying providers.

c. The physical disability waiver service is not identified in the consumer's annual service plan.

- d. Service needs are not met by the services provided.
- e. Services needed exceed the service unit or reimbursement maximums.

f. Completion or receipt of required documents by the consumer for the physical disability waiver service has not occurred.

g. The consumer receives services from other Medicaid providers.

h. The consumer or legal representative requests termination from the services.

**441—83.109(249A) Appeal rights.** Notice of adverse actions and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234).

**83.109(1)** Appeal to county. The applicant or consumer for whom a county has legal payment responsibility shall be entitled to a review of adverse decisions by the county by appealing to the county pursuant to rule 441—25.21(331). If dissatisfied with the county's decision, the applicant or consumer may file an appeal with the department.

**83.109(2)** Reconsideration request to Iowa Foundation for Medical Care (IFMC). After notice of an adverse decision by IFMC on the level of care requirement pursuant to paragraph 83.102(1)"h," the Medicaid applicant or recipient or the applicant's or recipient's representative may request reconsideration by IFMC by sending a letter requesting a review to IFMC not more than 60 days after the date of the notice of adverse decision. Adverse decisions by IFMC on reconsiderations may be appealed to the department pursuant to 441—Chapter 7.

a. If a timely request for reconsideration of an initial denial determination is made, IFMC shall complete the reconsideration determination and send written notice including appeal rights to the Medicaid applicant or recipient and the applicant's or recipient's representative within ten working days after IFMC receives the request for reconsideration and a copy of the medical record.

b. If a copy of the medical record is not submitted with the reconsideration request, IFMC will request a copy from the facility within two working days.

c. The notice to parties. Written notice of the IFMC reconsidered determination will contain the following:

- (1) The basis for the reconsidered determination.
- (2) A detailed rationale for the reconsidered determination.
- (3) A statement explaining the Medicaid payment consequences of the reconsidered determination.

(4) A statement informing the parties of their appeal rights, including the information that must be included in the request for hearing, the locations for submitting a request for an administrative hearing, and the time period for filing a request.

d. If the request for reconsideration is mailed or delivered to IFMC within ten days of the date of the initial determination, any medical assistance payments previously approved will not be terminated until the decision on reconsideration. If the initial decision is upheld on reconsideration, medical assistance benefits continued pursuant to this rule will be treated as an overpayment to be paid back to the department.

**441—83.110(249A) County reimbursement.** The consumer's county of legal settlement must agree to reimburse the department for all of the nonfederal share of the cost of physical disability waiver services to persons at the ICF/MR

## HUMAN SERVICES DEPARTMENT[441](cont'd)

level of care with legal settlement in the county if the county chooses to participate in the physical disability waiver. The county shall enter into a Medicaid Home- and Community-Based Payment Agreement, Form 470-0379, with the department for reimbursement of the nonfederal share of the cost of services provided to HCBS physical disability waiver adults at the ICF/MR level of care.

The county shall enter into the agreement using the criteria in subrule 83.102(2).

**441—83.111(249A) Conversion to the X-PERT system.** For conversion to the X-PERT system at a time other than review, the consumer may be required to provide additional information. To obtain this information, a consumer may be required to have an interview. Failure to respond for this interview when so requested, or failure to provide requested information, shall result in cancellation.

These rules are intended to implement Iowa Code sections 249A.3 and 249A.4.

[Filed 1/13/99, effective 4/1/99]

[Published 2/10/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/10/99.

**ARC 8642A****HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby amends Chapter 185, "Rehabilitative Treatment Services," appearing in the Iowa Administrative Code.

These amendments combine two Notices of Intended Action. The Council on Human Services adopted these amendments January 13, 1999. Notices of Intended Action regarding these amendments were published in the Iowa Administrative Bulletin on November 18, 1998, as **ARC 8467A** and on December 2, 1998, as **ARC 8502A**.

The amendment noticed as **ARC 8467A** extends the current procedures for establishing rates for Rehabilitative Treatment and Supportive Services (RTSS) for 12 months. Major changes are in process within the RTSS program. This amendment avoids unnecessary cost reporting by providers at this time and provides stability in the rate-setting methodology until the changes to the RTSS program are finalized. At that time a modified rate-setting methodology will also be implemented.

RTSS provider representatives have reviewed this amendment and are in general agreement with the changes.

The amendment noticed as **ARC 8502A** specifies the expected time frames for contact with families in the Family Preservation Program and clarifies that supportive services are included in family preservation services.

These time frames were in rules previously, but were inadvertently deleted when the authorization process for services was revised.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 234.6 and 234.38.

These amendments shall become effective March 17, 1999.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 185, Division III, Preamble**, as follows:

**PREAMBLE**

The family preservation program provides highly intensive and time-limited ~~in-home~~ service interventions that are developed to prevent out-of-home placement of children. Services are designed to meet the needs of the family in crisis, with children that are in imminent or high risk of placement outside the home. *The program is defined by:*

- *A brief service duration averaging 45 calendar days and not exceeding 60 calendar days.*
- *Small caseloads with an average staff-to-client ratio of 1 to 3.5 and not to exceed 1 to 4.*
- *A greater intensity and frequency of services provided to children and families in family preservation than the intensity of services provided to children and families participating in family-centered services.*

The goals of the family preservation program are to ~~diffuse~~ *defuse* the current crisis, evaluate its nature and intervene to reduce the likelihood of its recurrence, ensure linkage to needed community services and resources, improve the ability of parents to care for their children, and prevent out-of-home placements.

The family preservation program is designed to complement an existing array of family-centered services and is distinguished from family-centered services by the capacity to intervene immediately in a crisis situation ~~on a 24-hour basis, a brief service duration averaging 45 calendar days and not exceeding 60 calendar days, small caseloads with an average staff-to-client ratio of 1 to 3.5 and not to exceed 1 to 4, and a greater intensity and frequency of services provided to children and families in family preservation than the intensity and frequency of services provided to children and families participating in family-centered services.~~ *by having:*

- *Availability to referral workers and families 24 hours a day, 7 days a week.*
- *Face-to-face contact within 24 hours of referral for children at high risk of placement.*
- *Immediate voice contact with face-to-face contact within three hours of referral for children at immediate risk of placement.*

*Family preservation services are to be provided with family preservation supportive services as defined in rule 441—181.1(234).*

ITEM 2. Amend rule 441—185.112(234) as follows:

Amend the introductory paragraph as follows:

**441—185.112(234) Interim determination of rates.** Rules 441—185.102(234) to 441—185.107(234), 185.109(234) and 185.110(234) shall be held in abeyance for purposes of establishing rates effective during the time period beginning January 1, 1998, to June 30, ~~1999~~ 2000, unless otherwise provided for in these rules. Rates for a service to be effective on or after February 1, 1998, shall be established based on the payment rate negotiated between the provider and the department. This negotiated rate shall be based upon the historical and future reasonable and necessary cost of providing that service, other payment-related factors and availability of funding. A rate in effect as of December 31, 1997, shall continue in effect until a negotiated rate is established in accordance with the requirements of subrules 185.112(1) to 185.112(3), subrule 185.112(6), or subrule 185.112(12) or



## HUMAN SERVICES DEPARTMENT[441](cont'd)

until the service is terminated in accordance with subrule 185.112(4).

Amend subrule 185.112(1), paragraph "a," as follows:

a. On or after January 1, 1998, the department shall begin negotiating payment rates with providers of rehabilitative treatment and supportive services to be effective for services provided on or after February 1, 1998, through June 30, 1999 2000.

Amend subrule 185.112(6), paragraphs "d" and "e," as follows:

d. If an existing provider ceases to contract for and provide a service or program for which a zero rate has been established, and decides to again contract for and provide that program or service and has a contract for that service in effect prior to June 30, 1999 2000, the rate shall be established in accordance with subrule 185.112(2) and the starting point for negotiations shall be the weighted average rate.

e. If a provider ceases to contract for and provide a service or program after a rate has been established in accordance with subrule 185.112(1) and prior to June 30, 1999 December 31, 1999, decides to again contract for and provide that program or service, the rate shall be established at the rate in effect when service was interrupted.

Amend subrule 185.112(10) as follows:

185.112(10) Rates for services provided on or after July 1, 1999 2000. In absence of an alternative rate-setting methodology effective July 1, 1998 1999, rules 441—185.102(234) to 441—185.107(234) shall be the basis of establishing rates to be effective for services provided on or after July 1, 1999 2000.

a. In absence of a new rate-setting methodology set forth in rule, all providers, regardless of when their fiscal year ends, shall submit a Financial and Statistical Report, Form 470-3049, for the time period July 1, 1998 1999, to December 31, 1998 1999, based on the cost principles set forth in rules 441—185.101(234) to 441—185.107(234). This report shall be submitted no later than March 31, 1999 2000. Rates based on reports submitted pursuant to this paragraph shall be effective no earlier than July 1, 1999 2000, and no later than August 1, 1999 2000, when the report is sufficient for the establishment of rates. However, if a provider with a contract in effect as of June 30, 1996, has a fiscal year which ends at the end of January, February, or March 1999 2000, the provider shall submit the financial and statistical report for the time period July 1, 1998 1999, through the end of the provider's fiscal year, 1999 2000. The report shall be submitted no later than three months after the close of the provider's established 1999 2000 fiscal year. Rates shall be effective no later than the first day of the second full month after receipt by the project manager of a complete financial and statistical report.

b. Failure by providers to submit the report within the established time frames without written approval from the chief of the bureau of purchased services or the chief's designee shall be cause to reduce the payment to 75 percent of the rate in effect June 30, 1999 2000, or the weighted average rate as of July 1, 1997, whichever is less. Approval for an extension for the submission shall be granted only when the provider can demonstrate that there have been catastrophic circumstances prohibiting timely submission.

c. If an extension is granted, the rate in effect as of June 30, 1999 2000, shall be continued until the new rate is established. If a new rate is not established by the date set forth by the chief of the bureau of purchased services or the chief's designee in the notice of approval of the request to extend the time frame for submission of the Financial and Statistical

Report, Form 470-3049, the provider's rate in effect as of June 30, 1999 2000, shall be reduced to 75 percent of the rate in effect June 30, 1999 2000, or the weighted average rate as of July 1, 1997, whichever is less, until such time as the new rate can be established.

d. If a provider has submitted the report on time, but a rate cannot be established within four months of the original due date due to incomplete or erroneous information, payment shall be reduced to 75 percent of the rate in effect June 30, 1999 2000, or the weighted average rate as of July 1, 1997, whichever is less, until the new rate can be established.

e. No change.

f. Rates for individual providers shall be established pursuant to subrule 185.103(7) with the exception of rates to be in effect July 1, 1999 2000. Individual providers shall submit the information required by subrule 185.103(7) to the department no later than March 31, 1999 2000, to establish rates to be effective July 1, 1999 2000. Rates shall be recalculated annually on the anniversary of the effective date of the contract from that point forward.

[Filed 1/13/99, effective 3/17/99]

[Published 2/10/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/10/99.

**ARC 8667A**

## **INSPECTIONS AND APPEALS DEPARTMENT[481]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 10A.104(5), the Department of Inspections and Appeals hereby rescinds Chapter 30, "Food and Consumer Safety"; Chapter 31, "Food Establishment Inspections"; Chapter 32, "Food Service Establishment Inspections"; and Chapter 33, "Food and Beverage Vending Machine Inspections"; and adopts new Chapter 30, "Food and Consumer Safety," and Chapter 31, "Food Establishment and Food Processing Plant Inspections," Iowa Administrative Code.

The amendments implement 1998 Iowa Acts, chapter 1162 [House File 2166], which adopted the 1997 edition of the United States Food and Drug Administration's Model Food Code; repealed Iowa Code chapters 137A, 137B, and 137E, and created a new Iowa Code chapter 137F; and increased license fees for food establishments and food processing plants.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 16, 1998, as **ARC 8560A**. One comment letter was received from the City of Ames regarding the definition of "food establishment" and the requirement for Department approval of the qualification of instructors who teach food certification course(s).

The language in subrule 30.5(3) was also added to rule 481—31.8(137F). This change was necessary to clarify that, in addition to the other remedies that may be employed if violations are discovered, a civil penalty may also be imposed for violations of the rules.

The amendments will become effective March 17, 1999.

These amendments are intended to implement Iowa Code section 10A.104, Iowa Code chapters 137C and 137D, and 1998 Iowa Acts, chapter 1162 [House File 2166].

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

The following amendments are adopted.

ITEM 1. Rescind 481—Chapters 30 and 31 and adopt the following new chapters in lieu thereof:

CHAPTER 30  
FOOD AND CONSUMER SAFETY

**481—30.1(10A) Inspections division's food and consumer safety bureau.** The inspections division's food and consumer safety bureau inspects egg handlers, food establishments (retail), food processing establishments (wholesale), food and beverage vending machines, hotels, and food service operations in schools, correctional and penal institutions.

**481—30.2(10A) Definitions.**

"Baked goods" means breads, cakes, doughnuts, pastries, buns, rolls, cookies, biscuits and pies (except meat pies).

"Bed and breakfast home" means a private residence which provides lodging and meals for guests, in which the host or hostess resides and in which no more than four guest families are lodged at the same time. The facility may advertise as a bed and breakfast home, but not as a hotel, motel or restaurant. The facility is exempt from licensing and inspection as a hotel or as a food establishment. A bed and breakfast home may serve food only to overnight guests, unless a food establishment license is secured.

"Bed and breakfast inn" means a hotel which has nine or fewer guest rooms.

"Boarder" means a person who rents a room, rooms or apartment for at least a week. A boarder is considered permanent and is not a transient guest.

"Boarding house" means a house in which lodging is rented and meals are served to permanent guests. A boarding house is not a food service establishment or hotel unless it rents or caters to transient guests.

"Commissary" means a food establishment used for preparing, fabricating, packaging and storage of food or food products for distribution and sale through the food establishment's own outlets.

"Contractor" means a municipal corporation, county or other political subdivision that contracts with the department to license and inspect under Iowa Code chapter 137C, 137D or 137F.

"Criminal offense" means a public offense, as defined in Iowa Code section 701.2, that is prohibited by statute and is punishable by fine or imprisonment.

"Department" means the department of inspections and appeals.

"Egg handler" or "handler" means any person who engages in any business in commerce which involves buying or selling any eggs (as a poultry producer or otherwise), or processing any egg products, or otherwise using any eggs in the preparation of human food. An egg handler does not include a food establishment or home food establishment if either establishment obtains eggs from a licensed egg handler or supplier which meets standards referred to in rule 481—31.2(137F). Producers who sell eggs produced exclusively from their own flocks directly to egg handlers or to consumer customers are exempt from regulation as egg handlers.

"Farmers market" means a marketplace which operates seasonally as a common market for fresh fruits and vegetables on a retail basis for consumption elsewhere.

The following products may be sold at a farmers market without being licensed under Iowa Code section 137F.4 at the market location:

1. Baked goods except the following: soft pies and bakery products with custard or cream fillings, as well as other potentially hazardous items. These products must be labeled in accordance with rule 481—34.3(137D).

2. Wholesome, fresh eggs.

3. Honey which is labeled per rule 481—34.3(137D).

4. Prepackaged, nonhazardous food products prepared in an establishment licensed under Iowa Code section 137F.4 as a food establishment or a food processing establishment.

5. Fresh fruits and vegetables.

"Food establishment" means an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption and includes a food service operation in a school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, the state training school or the Iowa juvenile home. "Food establishment" does not include the following:

1. A food processing plant.

2. An establishment that offers only prepackaged foods that are nonpotentially hazardous.

3. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.

4. Premises which are a home food establishment pursuant to Iowa Code chapter 137D.

5. Premises which operate as a farmers market.

6. Premises of a residence in which food that is nonpotentially hazardous is sold for consumption off the premises, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food. "Nonpotentially hazardous food" means only the following:

- Baked goods, except the following: soft pies, bakery products with custard or cream fillings, or any other potentially hazardous goods.

- Wholesome, fresh eggs that are kept at a temperature of 45 degrees Fahrenheit or 7 degrees Celsius or less.

- Honey which is labeled with additional information as provided by departmental rule.

7. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.

8. A private home that receives catered or home-delivered food.

9. Child day care facilities and other food establishment facilities located in hospitals or health care facilities which are subject to inspection by other state agencies or divisions of the department.

10. Supply vehicles, vending machine locations or boarding houses for permanent guests.

11. Establishments exclusively engaged in the processing of meat and poultry which are licensed pursuant to Iowa Code section 189A.3.

12. Premises covered by a current Class "A" beer permit as provided in Iowa Code chapter 123.

13. Premises covered or regulated by Iowa Code section 192.107 with a milk or milk products permit issued by the department of agriculture and land stewardship.

14. Premises or operations which are regulated by or subject to Iowa Code section 196.3 and which have an egg handler's license.

"Food processing plant" means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer. "Food processing plant" does not include premises

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covered by a Class "A" beer permit as provided in Iowa Code chapter 123.

"Food service establishment" means a food establishment where food is prepared or served for individual portion service intended for consumption on the premises or subject to Iowa sales tax as provided in Iowa Code section 422.45.

"Home food establishment" means a business on the premises of a residence where potentially hazardous bakery goods are prepared for consumption elsewhere. Annual gross sales of these products cannot exceed \$20,000. This term does not include a residence where food is prepared to be used or sold by churches, fraternal societies, or charitable, civic or nonprofit organizations. Residences which prepare or distribute honey, shell eggs or nonhazardous baked goods are not required to be licensed as home food establishments. Home food establishments with annual gross sales of \$1,000 or less in sales of potentially hazardous bakery products are exempt from licensing under Iowa Code section 137D.2, if the food is labeled and the label states that the food comes from a kitchen not under state inspection or licensure and that labeling complies with rule 481—34.3(137D).

"Hotel" means any building equipped, used or advertised to the public as a place where sleeping accommodations are rented to temporary or transient guests.

"License holder" means an individual, corporation, partnership, governmental unit, association or any other entity to whom a license was issued under Iowa Code chapter 137C, 137D or 137F.

"Mobile food unit" means a food establishment that is readily movable, which either operates up to three consecutive days at one location or returns to a home base of operation at the end of each day.

"Panned candies" are those with a fine hard coating on the outside and a soft candy filling on the inside. Panned candies are easily dispensed by a gumball-type machine.

"Pushcart" means a non-self-propelled vehicle food establishment limited to serving nonpotentially hazardous foods or commissary-wrapped foods maintained at proper temperatures, or limited to the preparation and serving of frankfurters.

"Retail food establishment" means a food establishment that sells food or food products to consumer customers intended for preparation or consumption off the premises.

"Revoke" means to void or annul by recalling or withdrawing a license issued under Iowa Code chapter 137C, 137D or 137F. The entire application process, including the payment of applicable license fees, must be repeated to regain a valid license following a revocation.

"Salvage food" means food from truck wrecks, fires, tornadoes or other disasters which involve food products.

"Suspend" means to render a license issued under Iowa Code chapter 137C, 137D, 137F or 196 invalid for a period of time, with the intent of resuming the validity of a license at the end of that period.

"Temporary food establishment" means a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

"Transient guest" means an overnight lodging guest who does not intend to stay for any permanent length of time. Any guest who rents a room for more than 31 consecutive days is not classified as a transient guest.

"Vending machine" means a food establishment which is a self-service device that, upon insertion of a coin, paper currency, token, card or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation. Vending machines

that dispense only prepackaged, nonpotentially hazardous foods, panned candies, gumballs or nuts are exempt from licensing, but may be inspected by the department upon receipt of a written complaint.

**481—30.3(137C,137D,137F,196) Licensing.** A license to operate any of the above must be granted by the department of inspections and appeals. Application for a license is made on a form furnished by the department which contains the names of the business, owner, and manager; location of buildings; or other data relative to the license requested. Applications are available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

**30.3(1)** A license is not transferable. Licenses are not refundable unless the license is surrendered to the department prior to the effective date of the license.

**30.3(2)** A license is renewable and expires after one year.

**30.3(3)** A valid license shall be posted no higher than eye level where the public can see it. Vending machines shall bear a tag to affirm the license.

**30.3(4)** Any change in business ownership or business location requires a new license. Vending machines, mobile food units and pushcarts may be moved without obtaining a new license.

Nutrition sites for the elderly licensed under Iowa Code chapter 137F may change locations in the same city without obtaining a new license.

**30.3(5)** The regulatory authority may require documentation from a license holder of the annual gross sales of food and drink sold by a licensed food establishment or a licensed food processing establishment. The documentation submitted by the license holder will be kept confidential and will be used to verify that the license holder is paying the appropriate license fee based on annual gross sales of food and drink. Documentation shall include at least one of the following:

- a. A copy of the firm's business tax return;
- b. Quarterly sales tax data;
- c. A letter from an independent tax preparer;
- d. Other appropriate records.

This rule is intended to implement Iowa Code sections 10A.502(2), 137C.8, 137D.2 and 137F.4 to 137F.6.

**481—30.4(137C,137D,196) License fees.** The license fee is the same for an initial license and a renewal license. Licenses expire one year from the date of issuance, except for temporary food establishments. Applications for licenses are available from the Department of Inspections and Appeals, Inspections Division, Lucas State Office Building, Des Moines, Iowa 50319-0083; or from a contracting local health department. License fees are set by the Iowa Code sections listed below and charged as follows:

**30.4(1)** Retail food establishments are based on annual gross sales of food or food products to consumer customers intended for preparation or consumption off the premises (Iowa Code section 137F.6) as follows:

- a. For annual gross sales of less than \$10,000—\$30;
- b. For annual gross sales of \$10,000 to \$250,000—\$75;
- c. For annual gross sales of \$250,000 to \$500,000—\$115;
- d. For annual gross sales of \$500,000 to \$750,000—\$150;
- e. For annual gross sales of \$750,000 or more—\$225.

**30.4(2)** Food service establishments are based on annual gross sales of food and drink for individual portion service intended for consumption on the premises (Iowa Code sec-

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tion 137F.6) or subject to Iowa sales tax as provided in Iowa Code section 422.45 as follows:

- a. For annual gross sales of less than \$50,000—\$50;
- b. For annual gross sales of \$50,000 to \$100,000—\$85;
- c. For annual gross sales of \$100,000 to \$250,000—\$175;
- d. For annual gross sales of \$250,000 to \$500,000—\$200;
- e. For annual gross sales of \$500,000 or more—\$225.

**30.4(3)** Food and beverage vending machines, \$20 for the first machine and \$5 for each additional machine (Iowa Code section 137F.6).

**30.4(4)** Home food establishments, \$25 (Iowa Code section 137D.2(1)).

**30.4(5)** Hotels are based on the number of rooms provided to transient guests (Iowa Code section 137C.9) as follows:

- a. For 1 to 15 guest rooms—\$20;
- b. For 16 to 30 guest rooms—\$30;
- c. For 31 to 75 guest rooms—\$40;
- d. For 76 to 149 guest rooms—\$50;
- e. For 150 or more guest rooms—\$75.

**30.4(6)** Mobile food unit or pushcart, \$20 (Iowa Code section 137F.6).

**30.4(7)** Temporary food service establishments issued for up to 14 consecutive days in conjunction with a single event or celebration, \$25 (Iowa Code section 137F.6).

**30.4(8)** For food processing plants, the annual license fee is based on the annual gross sales of food and food products handled at that plant or warehouse (Iowa Code section 137F.6) as follows:

- a. Annual gross sales of less than \$50,000—\$50;
- b. Annual gross sales of \$50,000 to \$250,000—\$100;
- c. Annual gross sales of \$250,000 to \$500,000—\$150;
- d. Annual gross sales of \$500,000 or more—\$250.

**30.4(9)** Egg handlers are based on the total number of cases of eggs purchased or handled during the month of April (Iowa Code section 196.3) as follows:

- a. For less than 125 cases—\$15;
- b. For 125 to 249 cases—\$35;
- c. For 250 to 999 cases—\$50;
- d. For 1,000 to 4,999 cases—\$100;
- e. For 5,000 to 9,999 cases—\$175;
- f. For 10,000 or more cases—\$250.

For the purpose of determining fees, each case shall be 30 dozen eggs.

**481—30.5(137F) Penalty and delinquent fees.**

**30.5(1)** Food establishment licenses and food processing plant licenses that are renewed by the licensee after the license expiration date shall be subject to a penalty of 10 percent of the license fee per month.

**30.5(2)** A person who opens or operates a food establishment or food processing plant without a license is subject to a penalty of up to twice the amount of the annual license fee.

**30.5(3)** A person who violates Iowa Code chapter 137F or these rules shall be subject to a civil penalty of \$100 for each violation. Prior to the assessment of any civil penalties, a hearing conducted by the appeals division in the department of inspections and appeals must be provided as required in rule 481—30.13(10A).

This rule is intended to implement Iowa Code sections 137F.4, 137F.9 and 137F.17.

**481—30.6(137C,137D,137F,196) Returned checks.** If a check intended to pay for any license provided for under Iowa Code chapters 137C, 137D, 137F or 196 is not honored for

payment by the bank on which it is drafted, the department will attempt to redeem the check. The department will notify the applicant of the need to provide sufficient payment. An additional fee of \$25 shall be assessed for each dishonored check. If the department does not receive cash to replace the check, the establishment will be operating without a valid license.

**481—30.7(137F) Double licenses.**

**30.7(1)** Any establishment which holds a food service establishment license and has gross sales over \$20,000 annually in packaged food items intended for consumption off the premises shall also be required to obtain a retail food establishment license.

The license holder shall keep a record of these food sales and make it available to the department upon request.

**30.7(2)** A retail food establishment and a food service establishment which occupy the same premises must be licensed separately and the applicable fees paid. The license fee for each is based on only the annual gross sales of food and drink covered under the scope of that particular type of license.

**30.7(3)** A food establishment that is licensed both with a food service establishment license and a retail food establishment license shall pay 75 percent of the license fees required in subrules 30.4(1) and 30.4(2).

**30.7(4)** Licensed retail food establishments serving only coffee, soft drinks, popcorn, prepackaged sandwiches or other food items manufactured and packaged by a licensed establishment need only obtain a retail food establishment license.

**30.7(5)** A temporary food establishment license is not required when the temporary food establishment is owned and operated on the premises of a licensed food establishment.

**30.7(6)** The dominant form of business in annual gross sales shall determine the type of license for establishments which engage in operations covered under both the definition of a food establishment and a food processing plant. Sale of products at wholesale to outlets not owned by a commissary owner requires a food processing plant license. Food establishments that process low-acid food in hermetically sealed containers or process acidified foods are required to have a food processing plant license.

This rule is intended to implement Iowa Code sections 10A.502 and 137F.6.

**481—30.8(137C,137D,137F) Inspection frequency.**

**30.8(1)** Food establishments shall be inspected at an interval specified in Section 8-401.10 of the Food Code Recommendations of the Food and Drug Administration. Food service operations in schools, summer camps, assisted living facilities, residential service substance abuse treatment facilities, halfway house substance abuse treatment facilities, correctional facilities operated by the department of corrections, the state training school, and the Iowa juvenile home shall be inspected at least once annually.

**30.8(2)** Food processing plants shall be inspected at least annually.

**30.8(3)** Hotels shall be inspected at least once biennially.

**30.8(4)** Home food establishments and vending machine license holders shall be inspected at least once annually.

**30.8(5)** Egg handlers shall be inspected at least once annually.

This rule is intended to implement Iowa Code sections 137C.11, 137D.2, 137F.2 and 196.2.

**481—30.9(137D,137F,196) Disposal standards.** Standards in the 1984 edition of the "Model Food Salvage Code"

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are used to regulate the disposal of salvaged or distressed merchandise. A copy is available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

**481—30.10(137C,137D,137F) Local contracts.** The department may contract with municipal corporations to inspect and collect license fees from any establishment covered by these rules. Inspections shall be pursuant to 481—Chapters 30, 31 and 37. A list of contracts is available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

This rule is intended to implement Iowa Code section 137F.3.

**481—30.11(22) Examination of records.** Information collected by the inspections division is considered public information. Records are stored in computer files and are not matched with any other data system. Information is available for public review and will be provided when requested from the office of the director.

**481—30.12(137C,137D,137F,196) Denial, suspension or revocation of a license to operate.** Notice of denial, suspension or revocation of a license will be provided by the department and shall be effective 30 days after mailing or personal service of the notice.

**481—30.13(10A) Formal hearing.** All decisions of the bureau may be contested by an adversely affected party. Request for a hearing must be made in writing to the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319, within 30 days of the mailing or service of a decision. Appeals and hearings are controlled by 481—Chapter 10, "Contested Case Hearings."

**30.13(1)** The proposed decision of the administrative law judge becomes final 30 days after it is mailed.

**30.13(2)** Any request for administrative review of a proposed decision must:

- a. Be made in writing;
- b. Be filed with the director of the department of inspections and appeals within 30 days after the proposed decision was mailed to the aggrieved party (date of receipt by personal service or the postmarked date is time of filing);
- c. State the reason(s) for the request.

**30.13(3)** The decision of the director shall be based upon the record and becomes final agency action upon mailing.

**481—30.14(137D,137F,196) False label or defacement.** No person shall use any label required by Iowa Code chapter 137C, 137F or 196 which is deceptive as to the true nature of the article or place of production, or which has been carelessly printed or marked, nor shall any person erase or deface any label required by these chapters.

This rule is intended to implement Iowa Code section 137F.3.

These rules are intended to implement Iowa Code sections 10A.104, 10A.502 and 22.11 and Iowa Code chapters 137C, 137D, 137F and 196.

## CHAPTER 31

FOOD ESTABLISHMENT AND FOOD  
PROCESSING PLANT INSPECTIONS

**481—31.1(137F) Inspection standards.** Standards in the 1997 edition of the Food Code Recommendations of the Food

and Drug Administration are used to inspect all food establishments. Exceptions to the Code are as follows:

**31.1(1)** Subparagraph 1-201.10(B)(31) and Section 3-403.10 are deleted.

**31.1(2)** Food prepared in a home food establishment, licensed under Iowa Code section 137D.2 or a premises as provided in Iowa Code section 137F.1(8)"f," can be offered for sale.

**31.1(3)** Paragraph 3-301.11(b) is changed to read:

a. Except when washing fruits and vegetables, food employees should, to the extent practicable, avoid contact with exposed, ready-to-eat food with their bare hands. Where food is routinely handled by employees, employers should adopt reasonable sanitary procedures to reduce the risk of the transmission of pathogenic organisms.

b. In seeking to minimize employee's physical contact with ready-to-eat foods, no single method or device is universally practical or necessarily the most effective method to prevent the transmission of pathogenic organisms in all situations. As such, each public food service establishment shall review its operations to identify procedures where ready-to-eat food must be routinely handled by its employees and adopt one or more of the following sanitary alternatives, to be used alone or in combination, to prevent the transmission of pathogenic organisms:

(1) The use of suitable food handling materials including, but not limited to, deli tissues, appropriate utensils, or dispensing equipment. Such materials must be used in conjunction with thorough hand-washing practices in accord with subparagraph (3).

(2) Single-use gloves, for the purpose of preparing or handling ready-to-eat foods, shall be discarded when damaged or soiled or when the process of food preparation or handling is interrupted. Single-use gloves must be used in conjunction with thorough hand-washing practices in accord with subparagraph (3).

(3) The use, pursuant to the manufacturer's instructions, of anti-microbial soaps, with the additional optional use of anti-bacterial protective skin lotions or anti-microbial hand sanitizers, rinses or dips. All such soaps, lotions, sanitizers, rinses and dips must contain active topical anti-microbial or anti-bacterial ingredients, registered by the United States Environmental Protection Agency, cleared by the United States Food and Drug Administration, and approved by the United States Department of Agriculture.

(4) The use of such other practices, devices, or products that are found by the division to achieve a comparable level of protection to one or more of the sanitary alternatives in subparagraphs (1) through (3).

c. Regardless of the sanitary alternatives in use, each public food service establishment shall establish:

(1) Systematic focused education and training of all food service employees involved in the identified procedures regarding the potential for transmission of pathogenic organisms from contact with ready-to-eat food. The importance of proper hand washing and hygiene in preventing the transmission of illness, and the effective use of the sanitary alternatives and monitoring system utilized by the public food service establishment, shall be reinforced. The content and duration of this training shall be determined by the manager of the public food service establishment.

(2) A monitoring system used to demonstrate the proper and effective use of sanitary alternatives utilized by the public food service establishment.

**31.1(4)** Section 3-501.16 shall be amended by adding the following: "Shell eggs shall be received and held at an ambi-

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ent temperature not to exceed forty-five degrees Fahrenheit or seven degrees Celsius.”

**31.1(5)** Paragraph 3-502.12(A) shall be amended by adding the following: “Packaging of raw meat and raw poultry using an oxygen packaging method, with a 30-day ‘sell by’ date from the date it was packaged, shall be exempt from having a HACCP Plan that contains the information required in this section and Section 8-201.14.”

**31.1(6)** Section 3-603.11 shall be amended by adding the following: “The following standardized language shall be used on the required consumer advisory: ‘Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, pork, poultry, or shellfish reduces the risk of food-borne illness. Individuals with certain health conditions may be at higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information.’”

**31.1(7)** Section 5-203.15 shall be amended so that a carbonating device in a food establishment shall have a dual check valve which shall be installed so that it is upstream from the carbonating device and downstream from any copper in the water supply line.

**31.1(8)** Section 2-301.15 shall be amended by adding the following: “Establishments originally licensed prior to the effective date of this law, January 1, 1999, where a combination sink was approved by the department of inspections and appeals for both hand washing and use as a service sink can use this combination sink for both hand washing and as a service sink for the disposal of mop water as long as the establishment is not remodeled.”

**31.1(9)** Section 5-203.13 is amended so that food service establishment license holders for establishments built prior to January 1, 1979, are not required to have a service or utility sink for the disposal of mop water unless the establishment is remodeled.

**31.1(10)** Subparagraph 3-201.17(A)(4) is amended to state that field-dressed wild game shall not be permitted in food establishments.

**31.1(11)** Section 5-203.14 is amended by adding the following: “Water outlets with hose attachments, except for water heater drains and clothes washer connections, shall be protected by a non-removable hose bibb backflow preventer or by a listed atmospheric vacuum breaker installed at least six inches above the highest point of usage and located on the discharge side of the last valve.”

**31.1(12)** Paragraph 5-402.11(C) is amended by adding the following: “A culinary sink or sink used for food preparation shall not have a direct connection between the sewage system and a drain originating from that sink. Culinary sinks or sinks used in food preparation shall be separated by an air gap of not less than one inch between the outlet and the rim of the floor sink or receptor.”

#### **481—31.2(137F) Food processing plant standards.**

1. Standards used to inspect establishments where wholesale food is manufactured, processed, packaged or stored are found in the Code of Federal Regulations in 21 CFR, Part 110, April 1, 1998, publication, “Current Good Manufacturing Practices in Manufacturing, Processing, Packing or Holding Human Food.”

2. Standards used to inspect establishments where bakery products, flour, cereals, food dressings and flavorings are manufactured on a wholesale basis are found in the Code of Federal Regulations, in 21 CFR, Parts 136, 137 and 169, April 1, 1998, publication.

3. Standards used to inspect establishments which process low-acid food in hermetically sealed containers are

found in 21 CFR, Part 113, April 1, 1998, “Thermally Processed Low-Acid Food Packaged in Hermetically Sealed Containers.”

4. Standards used to inspect establishments which process acidified foods are found in 21 CFR, Part 114, April 1, 1998, “Acidified Foods.”

5. Standards used to inspect establishments which process bottled drinking water are found in the Code of Federal Regulations in 21 CFR, Parts 129 and 165, April 1, 1998, publication, “Processing and Bottling of Bottled Drinking Water” and “Beverages.”

6. In addition to compliance with 31.2“1,” manufacturers of packaged ice must comply with the following:

- Equipment must be cleaned on a schedule of frequency that prevents the accumulation of mold, fungus and bacteria. A formal cleaning program and schedule which includes the use of sanitizers to eliminate micro-organisms must be developed and used.

- Packaged ice must be tested every 120 days for the presence of bacteria.

- Plants that use a non-public water system must sample the water supply monthly for the presence of bacteria and annually for chemical and pesticide contamination.

Copies of these regulations are available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

#### **481—31.3(137F) Trichinae control for pork products prepared at retail.**

Pork products prepared at retail shall comply with the Code of Federal Regulations found in 9 CFR, Section 318.10, January 1, 1998, publication, regarding the destruction of possible live trichinae in pork and pork products. Examples of pork products that require trichinae control include raw sausages containing pork and other meat products, raw breaded pork products, bacon used to wrap around steaks and patties, and uncooked mixtures of pork and other meat products contained in meat loaves and similar types of products. The use of “certified pork” as authorized by the department of agriculture and land stewardship or the United States Department of Agriculture, Food Safety and Inspection Service shall meet the requirements of this rule.

#### **481—31.4(137F) Demonstration of knowledge.**

Section 2-102.11 shall be amended by adding the following: “Completion of a certified food protection program by the person in charge who has shown proficiency of the required information through passing a test that is part of an approved program. Course content, teaching materials, testing criteria, test administration and security, and qualification of instructors must be approved by the department. A list of approved food certification course(s) will be maintained by the department and is available upon request.”

**481—31.5(137F) Labeling.** The following labeling standards are required in addition to those in the Food Code. Labels on or with packaged foods shall be in legible English and state:

1. The true name, brand or trademark of the article;
2. The names of all ingredients in the food, beginning with the one present in the largest proportion and in descending order of predominance;
3. The quantity of the contents in terms of weight, measure or numerical count;
4. The name and address of the manufacturer, packer, importer, distributor or dealer.

Foods and food products labeled in conformance with the labeling requirements of the government of the United States as listed in the Code of Federal Regulations in 21 CFR, April



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1, 1998, publication, Parts 101 and 102, are considered in compliance with the Iowa labeling law.

**481—31.6(137F) Adulterated food and disposal.** No one may produce, distribute, offer for sale or sell adulterated food. "Adulterated" is defined in the federal Food, Drug and Cosmetic Act, Section 402.

Adulterated food shall be disposed of in a reasonable manner as determined by the department. The destruction of adulterated food shall be watched by a person approved by the department.

**481—31.7(137F) Mobile food units/pushcarts.** In addition to the Food Code provisions outlined in the FDA Food Code Mobile Food Establishment Matrix, mobile food units/pushcarts must comply with the following:

**31.7(1)** All mobile food units/pushcarts must be licensed by the department. Applications for licenses are available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. The unit shall be inspected by a representative of the department and determined to be in compliance with the rules and regulations of the department prior to the granting of the license.

**31.7(2)** All equipment and utensils, including the interior of cabinet units or storage compartments, shall be smooth, nonabsorbent and easily cleanable.

**31.7(3)** During operation, food shall not be displayed, stored or served from any place other than the unit or other licensed facility.

**31.7(4)** Food condiments shall be in prepackaged, individual servings or dispensed from department-approved containers.

**31.7(5)** Potentially hazardous foods shall be maintained at 41°F or below, or 140°F or above. Frozen foods shall be kept frozen.

**31.7(6)** Mobile food units/pushcarts which handle unpackaged food are required to meet the following conditions, in addition to those listed in subrules 31.7(1) to 31.7(5):

a. A hand-washing sink, equipped with pressurized hot and cold running water, shall be installed in all mobile food units/pushcarts.

b. The mobile/pushcart unit shall contain a fresh water supply tank and a permanently installed waste retention tank with a capacity at least 15 percent larger than the water supply tank.

c. The unit shall contain hand cleanser and sanitary towels.

d. All units shall either contain a three-compartment sink or shall have access, at least daily, to a three-compartment sink located at another licensed establishment, where utensils and equipment can be washed, rinsed and sanitized.

e. A sanitizing solution shall be provided on the location of the mobile/pushcart so the unit and utensils can be kept cleaned and sanitized.

**481—31.8(137F) Enforcement.** A person who violates Iowa Code chapter 137F or these rules shall be subject to a civil penalty of \$100 for each violation. Prior to the assessment of any civil penalties, a hearing conducted by the appeals division in the department of inspections and appeals must be provided as required in rule 481—30.13(10A). Additionally, the department may employ various other remedies if violations are discovered:

1. A license may be revoked or suspended.
2. An injunction may be sought.

3. A case may be referred to a county or city attorney for criminal prosecution.

**481—31.9(137F) Toilets and lavatories.**

**31.9(1)** Retail food establishment license holders. Toilets and lavatories shall be well lighted and available to employees and patrons at all times. Retail food establishments built or remodeled after July 1, 1986, shall be electrically vented to the outside of the building.

**31.9(2)** Food service establishment license holders.

a. Toilets and lavatories shall be well lighted and available to employees and patrons at all times. Establishments built or remodeled after January 1, 1979, shall be electrically vented to the outside of the building. On-site restrooms are not required in the licensed premises when the licensed premises does not have on-site seating, and restrooms in the mall or shopping center are convenient and available to patrons and employees at all times.

b. Separate toilet facilities for men and women shall be provided in:

(1) Places built or remodeled after January 1, 1979, which seat 50 or more people, or

(2) All places built or remodeled after January 1, 1979, which serve beer or alcoholic beverages.

**481—31.10(137F) Warewashing sinks in establishments serving alcoholic beverages.** When alcoholic beverages are served in a food service establishment, a sink with not fewer than three compartments shall be used in the bar area for manual washing, rinsing and sanitizing of bar utensils and glasses. When food is served in a bar, a separate three-compartment sink for washing, rinsing and sanitizing food-related dishes shall be used in the kitchen area, unless a dishwasher is used to wash utensils.

**481—31.11(137F) Criminal offense—conviction of license holder.**

**31.11(1)** The department may revoke the license of a license holder who:

a. Conducts an activity constituting a criminal offense in the licensed food establishment; and

b. Is convicted of a felony as a result.

**31.11(2)** The department may suspend or revoke the license of a license holder who:

a. Conducts an activity constituting a criminal offense in the licensed food establishment; and

b. Is convicted of a serious misdemeanor or aggravated misdemeanor as a result.

**31.11(3)** A certified copy of the final order or judgment of conviction or plea of guilty shall be conclusive evidence of the conviction of the license holder.

**31.11(4)** The department's decision to revoke or suspend a license may be contested by the adversely affected party pursuant to the provisions of 481—30.13(10A).

These rules are intended to implement Iowa Code section 137F.7.

ITEM 2. Rescind and reserve **481—Chapters 32 and 33.**

[Filed 1/21/99, effective 3/17/99]

[Published 2/10/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/10/99.

## ARC 8665A

### INSPECTIONS AND APPEALS DEPARTMENT[481]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 135H.10, the Department of Inspections and Appeals hereby amends Chapter 41, "Psychiatric Medical Institutions for Children (PMIC)," Iowa Administrative Code.

This amendment updates references to reflect changes in Iowa Code chapters 135H and 237.

The adopted amendment is identical to the one published under Notice of Intended Action in the Iowa Administrative Bulletin on October 7, 1998, as **ARC 8380A**. No public comment was received on the amendment.

The Board of Health approved the adoption of this amendment on January 13, 1999.

The amendment will become effective March 17, 1999.

This amendment is intended to implement Iowa Code section 135H.7.

The following amendment is adopted.

Amend rule 481—41.2(135H) as follows:

**481—41.2(135H) Application for license.** In order to obtain an initial license for a PMIC, the applicant must comply with Iowa Code Supplement chapter 135H and the rules in this chapter. Each applicant must submit the following documents to the department:

1. A completed Psychiatric Medical Institutions for Children application;
2. A copy of a department of human services license as a comprehensive residential care facility *issued pursuant to Iowa Code section 237.3(2)"a,"* or a copy of a license granted by the department of public health pursuant to Iowa Code section 125.13, as a facility which provides substance abuse treatment;
3. A floor plan of each floor of the facility on 8½" by 11" paper showing:
  - Room areas in proportion,
  - Room dimensions,
  - Numbers for all rooms including bathrooms,
  - A designation of use for each room, and
  - Window and door locations.
4. A photograph of the front and side elevation of the facility;
5. The PMIC license fee; and
6. Evidence of:
  - Accreditation by the joint commission on accreditation of health care organizations (JCAHO);
  - Department of public health certificate of need;
  - Department of human services determination of approval; and
  - Three years under the direction of an agency which has operated a facility:
    - Licensed under Iowa Code section 237.3(2)"a"(3), or
    - Providing services exclusively to children or adolescents and the facility meets or exceeds the requirements for licensure under Iowa Code section 237.3(2)"a"(3).

This rule is intended to implement Iowa Code Supplement sections 135H.4 and 135H.5.

[Filed 1/21/99, effective 3/17/99]

[Published 2/10/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/10/99.

## ARC 8666A

### INSPECTIONS AND APPEALS DEPARTMENT[481]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 135C.14, the Department of Inspections and Appeals hereby amends Chapter 58, "Intermediate Care Facilities," Iowa Administrative Code.

The amendment modifies the time period that an acting administrator can be appointed to assume administrative responsibilities for an intermediate care facility under specified circumstances. Under the current rule, an acting administrator can be appointed for consecutive 6-month periods. The amendment clarifies that the 6-month time period under which a facility may have an acting administrator must be limited to one appointment during any 12-month period.

The adopted amendment is identical to the one published under Notice of Intended Action in the Iowa Administrative Bulletin on October 7, 1998, as **ARC 8381A**. No one attended the public hearing held on October 27, 1998, and no public comment was received on the amendment.

The Board of Health approved the adoption of this amendment on January 13, 1999.

The amendment will become effective March 17, 1999.

This amendment is intended to implement Iowa Code section 135C.14(8).

The following amendment is adopted.

Amend subrules 58.8(1) and 58.8(4) as follows:

**58.8(1)** Each intermediate care facility shall have one person in charge, duly licensed as a nursing home administrator or acting in a provisional capacity ~~in accordance with the laws of the state of Iowa and the rules of the Iowa board of examiners for nursing home administrators.~~ (III)

**58.8(4)** A provisional administrator may be appointed on a temporary basis by the intermediate care facility licensee to assume the administrative responsibilities for an intermediate care facility for a period not to exceed six months ~~duties when the facility, through no fault of its own, the home has lost its administrator and has not been able~~ *unable* to replace the administrator provided ~~that no facility licensed under Iowa Code chapter 135C shall be permitted to have a provisional administrator for more than 6 months in any 12-month period and further provided that:~~

- a. The department has been notified prior to the date of the administrator's appointment; (III)
- b. The board of examiners for nursing home administrators has approved the administrator's appointment and has



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

confirmed such appointment in writing to the department.  
(III)

[Filed 1/21/99, effective 3/17/99]  
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## ARC 8698A

### PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 455G.4(3), 455G.6(15), 455G.9 and 455G.21, the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (Board) hereby amends Chapter 11, "Remedial or Insurance Claims," Iowa Administrative Code.

Chapter 11 describes the guidelines for remedial or insurance claims. These guidelines require compliance with UST system upgrade deadlines established by the Iowa legislature, and provide for reimbursement limitations consistent with the Iowa Code. These amendments address legislative changes which expand certain benefits and extend the upgrade deadline from January 1, 1995, to December 22, 1998.

Notice of Intended Action was published in the November 18, 1998, Iowa Administrative Bulletin as **ARC 8470A**. The adopted amendments are identical to those published under Notice.

These amendments were approved January 22, 1999.

This amendment will become effective on March 17, 1999.

These amendments are intended to implement Iowa Code sections 455G.9 and 455G.21.

The following amendments are adopted.

ITEM 1. Amend subparagraph **11.1(3)"d"(6)** as follows:

(6) A retroactive claim for a release ~~for a small business~~ shall be subject to the copayment requirements of Iowa Code section 455G.9(4). ~~For all other retroactive claims, the program shall pay the lesser of \$50,000 or the total cost of corrective action for that release or total corrective action costs for that release as determined under 455G.9(4).~~

ITEM 2. Amend paragraph **11.1(3)"o,"** introductory paragraph, as follows:

o. An owner/operator eligible for remedial benefits who complied with 11.1(3)"b" by using program insurance authorized pursuant to Iowa Code section 455G.11 will remain eligible for remedial benefits even though the insured tanks were not upgraded by ~~January 1, 1995,~~ *December 22, 1998,* under the following conditions:

[Filed 1/22/99, effective 3/17/99]  
[Published 2/10/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/10/99.

## ARC 8700A

### PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 455G.4(3), 455G.6(15), 455G.9 and 455G.21, the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (Board) hereby amends Chapter 11, "Remedial or Insurance Claims," Iowa Administrative Code.

Chapter 11 describes the guidelines for remedial or insurance claims. Remedial claims address releases from UST systems which occurred prior to October 26, 1990. As part of the corrective action associated with these past releases, UST systems needed to be removed. In addition, as sites were upgraded, many of these systems needed to be removed. Therefore, the remedial account paid for tank and piping removal and other costs associated with the over excavation around these tank removals.

All sites were to be fully upgraded on or before December 22, 1998. If a site was eligible for remedial benefits, the system associated with the release was to be upgraded or removed on or before December 22, 1998. Therefore, there should no longer be a need to remove UST tanks and piping to address a release which occurred prior to October 26, 1990. Any such removals after December 22, 1998, will be for replacement of upgraded systems and, as such, are a capital improvement to the property and not a part of the corrective action associated with the past release.

These amendments will become effective March 17, 1999. Therefore, the limitation on upgrade benefits will coincide with the effective date.

These amendments will limit benefits associated with tank closure and upgrade for activities which occur after the federal upgrade deadline and the effective date of these amendments, March 17, 1999. These changes will also impact the available upgrade benefits which were created to assist owners to meet the upgrade deadline. With the passing of that deadline, these benefits are no longer required. The Board's records indicate that less than 1 percent of all sites eligible for benefits have not upgraded to date. It was anticipated that all of these sites would be fully upgraded or permanently closed on or before the December 22, 1998, deadline. Therefore, there should be minimal impact as a result of these amendments.

Notice of Intended Action was published in the December 16, 1998, Iowa Administrative Bulletin as **ARC 8557A**. One change from the Notice involves the addition of language to 11.1(3)"f" to clarify that the time limitation for closure is for active systems only and does not apply to closed or abandoned systems.

These amendments were approved January 22, 1999.

These amendments will become effective on March 17, 1999.

These amendments are intended to implement Iowa Code sections 455G.9 and 455G.21.

The following amendments are adopted.

ITEM 1. Amend subrule **11.1(3),** paragraph "**f,"** as follows:

f. Remedial and retroactive claims may be paid monthly and will include all approved expenses, including tank and piping removal *for active systems if the tank and piping re-*

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591](cont'd)

removal occurs on or before March 17, 1999, and other costs as provided in Iowa Code chapter 455G. Costs of replacement materials excavated shall be a reimbursable expense. Contractors and groundwater professionals shall confirm that the work meets department of natural resources requirements.

ITEM 2. Amend subrule 11.4(4) as follows:

11.4(4) Upgrade benefit payments under subrule 11.4(6) shall be made upon evidence that the upgrade met standards in 567—Chapter 135 and the department registration Form 148 has been completed and mailed to the department and the administrator. These upgrade benefits shall be paid only if all requirements of 591—Chapter 15 have been met. If a site does not comply with the applicable provisions of 591—Chapter 15, the site is not eligible for these upgrade benefits unless installation or upgrade occurred prior to October 26, 1990. In that event, the individual reimbursement request will be reviewed to determine if other information is necessary before upgrade benefit payment can be made. In addition, the completed work must be within the budget previously approved by the administrator pursuant to Iowa Code section 455G.12A.

ITEM 3. Amend subrule 11.4(6) as follows:

11.4(6) Tank and piping upgrades and replacements eligible for upgrade benefits.

a. The following tank and piping upgrades or replacements are eligible for upgrade benefits if completed on or before March 17, 1999:

(1) to (4) No change.

b. The following tank and piping upgrades and replacements are eligible for upgrade benefits when the tank upgrade or replacement occurs on or after March 25, 1992, and on or before March 17, 1999, on sites which are classified as being environmentally sensitive:

(1) and (2) No change.

c. The following tank and piping upgrades and replacements are eligible for upgrade benefits when the tank upgrade or replacement occurs on or after March 25, 1992, and on or before March 17, 1999, on sites which are not classified as being environmentally sensitive:

(1) and (2) No change.

[Filed 1/22/99, effective 3/17/99]

[Published 2/10/99]

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ARC 8699A

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455G.4(3), 455G.6(15), 455G.9 and 455G.21, the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (Board) hereby amends Chapter 11, "Remedial or Insurance Claims," Iowa Administrative Code.

Chapter 11 describes the guidelines for remedial or insurance claims. Subrule 11.1(3) relates to eligibility criteria for remedial and retroactive claims. Subrule 11.1(5) relates to

eligibility criteria for innocent landowner claimants. The purpose of these amendments is to establish deadlines for submittal of risk-based corrective action evaluations at sites eligible for reimbursement. Claimants will be required to submit a Tier 1 or, if required, a Tier 2 evaluation by June 30, 2000, or 180 days after confirmation of a release, whichever is later, to remain eligible for reimbursement. In addition, the amendments require that claimants comply with Department of Natural Resources report submittal deadlines to maintain eligibility.

These amendments are intended to expedite the corrective action process by basing reimbursement eligibility on compliance with Department report submittal deadlines. Establishing an initial deadline of June 30, 2000, will allow for sufficient time for the Board to notify all claimants of the deadline and provide sufficient time for all evaluations to be completed.

Notice of Intended Action was published in the November 18, 1998, Iowa Administrative Bulletin as ARC 8471A. The adopted amendments are identical to those published under Notice.

These amendments were approved January 22, 1999.

These amendments will become effective on March 17, 1999.

These amendments are intended to implement Iowa Code sections 455G.9 and 455G.21.

The following amendments are adopted.

ITEM 1. Amend subrule 11.1(3) by adopting the following new paragraph:

r. Compliance with report submittal deadlines. To be eligible for remedial benefits, claimants must comply with all department deadlines for submittal of Tier 1, Tier 2 and corrective action design report (CADR) requirements and must submit a Tier 1, and Tier 2 if required, by June 30, 2000, or 180 days after confirmation of a release from the site, whichever is later.

ITEM 2. Amend subrule 11.1(5) by adopting the following new paragraph:

f. Compliance with report submittal deadlines. To be eligible for remedial benefits, claimants must comply with all department deadlines for submittal of Tier 1, Tier 2 and corrective action design report (CADR) requirements and must submit a Tier 1, and Tier 2 if required, by June 30, 2000, or 180 days after confirmation of a release from the site, whichever is later.

[Filed 1/22/99, effective 3/17/99]

[Published 2/10/99]

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ARC 8689A

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF OPTOMETRY EXAMINERS

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Optometry Examiners hereby

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

amends Chapter 180, "Board of Optometry Examiners," Iowa Administrative Code.

These amendments rescind the requirement for a written and practical examination by the Board of Optometry Examiners.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 2, 1998, as ARC 8524A. A public hearing was held on December 22, 1998, from 1 to 3 p.m. in the Third Floor Conference Room, Side 2, Lucas State Office Building. Gary Ellis, assistant director for the Iowa Optometric Association was present at the hearing. No comments were received. The adopted amendments are unchanged from those published under Notice of Intended Action.

These amendments were adopted by the Board of Optometry Examiners on January 20, 1999.

These amendments will become effective March 17, 1999.

These amendments are intended to implement Iowa Code sections 147.76, 272C.3, and 154.3.

The following amendments are adopted.

ITEM 1. Rescind and reserve rule 645—180.4(154).

ITEM 2. Amend rule 645—180.5(154), catchwords, as follows:

~~645—180.5(154) Rules for examinations~~ **Requirements for licensure.**

ITEM 3. Amend subrule 180.5(1) as follows:

~~180.5(1) All applicants for examination shall apply to the Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075 for application forms.~~

ITEM 4. Amend subrule 180.5(2) as follows:

~~180.5(2) The forms properly completed shall be filed with the department, together with satisfactory evidence of compliance with Iowa Code sections 154.3(1) and 154.3(2) 30 days prior to the examination.~~

ITEM 5. Amend subrule 180.5(3) as follows:

~~180.5(3) An applicant for admission to practice optometry in Iowa shall successfully pass the examinations specified in paragraphs "a" through "c." Examination results from the examination of the National Board of Examiners in Optometry and the examination of the International Board of Examiners in Optometry on "The Treatment and Management of Ocular Disease" (incorporated into the N.B.E.O. examination effective April 1993) shall be valid for ten years prior to the next scheduled administration date of the Iowa state board licensing examination date of application. An applicant shall present a diploma from an accredited school or college of optometry and, if the applicant graduated from optometry school prior to January 2, 1988, shall submit proof of satisfactory completion of all educational requirements contained in Iowa Code chapter 154.~~

~~a. All parts of the examination of the National Board of Examiners in Optometry in effect on the next scheduled administration date of the Iowa state board licensing examination at the time of application;~~

~~b. The examination of the National Board of Examiners in Optometry (formerly given by the International Board of Examiners in Optometry) on "Treatment and Management of Ocular Disease." This paragraph does not apply to those applicants taking the examination of the National Board of Examiners in Optometry after January 1, 1993; and~~

~~c. The written and practical clinical examinations of the Iowa state board of optometry examiners. The Iowa jurisprudence examination. Successful completion of the juris-~~

~~prudence examination requires a minimum score of 75 percent.~~

~~d. An applicant must provide an official verification from each state board of examiners in which applicant is currently or formerly licensed, regarding the status of the applicant's license, including issue date, expiration date and information regarding any pending or prior investigations or disciplinary action.~~

~~e. Incomplete applications will be held in office files for three years. Applicants will be required to reapply after that time span.~~

~~e.—If the examinee fails the examination and desires to take a subsequent examination, the examinee shall:~~

~~(1) Complete an application at least 30 days prior to the first day of the next examination;~~

~~(2) Certify that the material statements contained in the original application are current, true and correct;~~

~~(3) Supplement the application information as necessary; and~~

~~(4) Pay the requisite fee.~~

~~f.—On subsequent examinations, applicant shall be required to take only those sections (written or practical) of the examinations which the applicant did not pass.~~

~~g.—Prior to the third or any subsequent examination attempt, the applicant must submit proof of additional formal education or clinical experience to be approved in advance by the board.~~

ITEM 6. Amend subrule 180.12(5), paragraph "d," as follows:

d. Provides evidence of satisfactory completion of continuing education requirements during the period since the license lapsed. The total number of continuing education hours required for license reinstatement is computed by multiplying 25 for therapeutically certified optometrists or 15 for nontherapeutically certified optometrists by the number of years (or quarterly fraction thereof) since the license lapsed. If the license has lapsed for more than five years, the applicant shall be reexamined and show evidence of successfully passing *successfully pass* the Iowa state optometry license *jurisprudence* examination with a passing *minimum* grade ~~on the reexamination of 75 percent.~~

[Filed 1/22/99, effective 3/17/99]

[Published 2/10/99]

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ARC 8669A

PUBLIC HEALTH  
DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 136C.3, the Department of Public Health hereby amends Chapter 41, "Safety Requirements for the Use of Radiation Machines and Certain Uses of Radioactive Materials," Iowa Administrative Code.

These amendments to subrules 41.1(1) and 41.6(2) make changes in the mammography rules to address the new federal standards that have an effective date of April 28, 1999. This action is necessary because of Iowa's status as a federally approved mammography accrediting and certifying body.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on November 4, 1998, as **ARC 8446A**. A public hearing was held on November 24, 1998, at 9 a.m. in the Third Floor Conference Room, Side 2, Lucas State Office Building, Des Moines, Iowa. There were no attendees.

The State Board of Health adopted these amendments at their regular board meeting on January 13, 1999. The adopted amendments are identical to those published in the Notice of Intended Action.

These amendments will become effective April 28, 1999.

The amendments are intended to implement Iowa Code chapter 136C.

The following amendments are adopted.

ITEM 1. Amend subrule 41.1(1) as follows:

**41.1(1) Scope.** This rule establishes requirements, for which a registrant is responsible, for use of X-ray equipment by or under the supervision of an individual authorized by and licensed in accordance with state statutes to engage in the healing arts or veterinary medicine. The provisions of this rule are in addition to, and not in substitution for, any other applicable provisions of these rules. The provisions of Chapter 41 are in addition to, and not in substitution for, any other applicable portions of 641—Chapters 38 to 42. All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of July 1, ~~1998~~ 1999.

ITEM 2. Amend subrule 41.6(2) by adopting the following new paragraph "g."

g. Federal mammography regulations. All Iowa facilities performing mammography shall comply with the applicable regulations found in 21 CFR Parts 16 and 900 which have an effective date of April 28, 1999. Persons authorized to perform mammography in Iowa shall be responsible for ensuring compliance with the appropriate CFR regulations or Iowa administrative rules, whichever are more stringent.

[Filed 1/21/99, effective 4/28/99]

[Published 2/10/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/10/99.

**ARC 8668A****PUBLIC HEALTH  
DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 135.11(9) and 144.3, the Department of Public Health hereby amends Chapter 101, "Death Certification, Autopsy and Disinterment," Iowa Administrative Code.

These amendments clarify the procedures to be followed in the removal, transportation, and disposition of a dead human body or fetus and will ensure that the burial-transit permit rule is consistent with the amendment made in Iowa Code section 144.32 in 1997.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 18, 1998, as **ARC 8496A**. The Department of Public Health accepted written comments on the proposed amendments until December 8, 1998. In addition, a public hearing was held on December 8,

1998. After receiving oral and written comments from interested parties, including the Iowa Board of Mortuary Science Examiners and the Iowa Funeral Director's Association, the Department was alerted to the inadvertent omission of part of the burial-transit rule when it was moved to rule 641—101.5(144). The inadvertently omitted portion has been reinstated.

The Iowa Board of Mortuary Science Examiners and the Iowa Funeral Director's Association proposed that the department omit the last sentence of subrule 101.6(3), which provides that all rules and regulations of the department other than subrule 101.6(3), shall not apply to a dead human body or fetus that has been cremated. The department has chosen to retain this sentence because the department does not believe it would be appropriate for rules generally applicable to dead human bodies or fetuses, such as the burial-transit rule or disinterment rules, to apply to cremated remains.

These amendments were adopted by the Board of Health on January 13, 1999.

These amendments are intended to implement Iowa Code sections 135.11(9) and 144.32.

These amendments shall become effective March 17, 1999.

The following amendments are adopted.

ITEM 1. Rescind rule 641—101.4(135,144) and adopt new rule 641—101.4(135) as follows:

**641—101.4(135) Removal of dead body or fetus.**

**101.4(1)** Before assuming custody of a dead human body or fetus, any person shall:

a. Contact the attending physician and receive assurance that death is from natural causes and that the physician will assume responsibility for certifying to the cause of death or fetal death; or

b. If the case comes within the jurisdiction of the medical examiner, contact the medical examiner and receive authorization to remove the dead human body or fetus.

**101.4(2)** If a person other than a funeral director, medical examiner, or emergency medical service assumes custody of a dead human body or fetus, the person shall secure a burial-transit permit.

ITEM 2. Rescind rule 641—101.5(135,144) and adopt new rule 641—101.5(144) as follows:

**641—101.5(144) Burial-transit permit.**

**101.5(1)** The burial-transit permit shall be issued upon a form prescribed by the state registrar and shall state:

a. The name, date of death, cause of death and other necessary details required by the state registrar;

b. That a satisfactory certificate of death has been filed;

c. That permission is granted to inter, remove or otherwise dispose of the body; and

d. The name and location of the cemetery or crematory where final disposition of the body is to be made.

The burial-transit permit shall be issued by the county medical examiner, a funeral director, or the county registrar of the county where the certificate of death or fetal death was filed.

**101.5(2)** The burial-transit permit shall be delivered to the person in charge of the place of final disposition.

**101.5(3)** The person in charge of every place of final disposition shall see that all of the requirements of this chapter relative to burial-transit permits have been complied with before disposition. Such person shall retain the burial-transit

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

permit for a period of one year from the date of final disposition.

**101.5(4)** A burial-transit permit shall not be issued prior to the filing of a certificate of death or fetal death in the county where the death occurred.

**101.5(5)** A burial-transit permit shall not be issued to a person other than a licensed funeral director if the death or fetal death is of a suspected or known communicable disease as defined by 641—paragraph 1.2(1)“a.”

**101.5(6)** In all cases where a fetus has reached a gestation period of 20 completed weeks or more, or with a weight of 350 grams or more, a burial-transit permit must be obtained for the disposition of the fetus.

ITEM 3. Rescind rule 641—101.6(135,144) and adopt new rule 641—101.6(135), as follows:

**641—101.6(135) Transportation and disposition of dead body or fetus.**

**101.6(1)** A dead human body or fetus shall be transported only after enclosure in a tightly sealed outer receptacle, unless the body or fetus has been embalmed. In addition, the transport of a dead human body or fetus shall be in a manner that, applying contemporary community standards with respect to what is suitable, is respectful of the dead, the feelings of relatives, and the sensibilities of the community.

**101.6(2)** When a dead human body or fetus is transported from the state, the burial-transit permit shall accompany the body or fetus. When a dead human body or fetus is brought into the state, a burial-transit permit under the law of the state in which the death occurred shall accompany the body or fetus.

**101.6(3)** If the final disposition of a dead human body or fetus is cremation at a licensed cremation establishment, scattering of cremated remains shall be subject to the local ordinances of the political subdivision, and any and all regulations of the cemetery, if applicable, in which the scattering site is located. However, such local ordinances and cemetery regulations shall not allow scattering of cremated remains upon state property or upon private property without the property owner's consent. In the absence of an applicable local ordinance or cemetery regulation, scattering of cremated remains shall not be allowed upon any public property or upon private property without the property owner's consent. All other rules and regulations of the department relating to dead human bodies or fetuses shall not apply to the cremated remains.

**101.6(4)** If the final disposition of a dead human body or fetus is burial, interment or entombment, local ordinances of the political subdivision in which the final disposition site is located and any and all regulations of the cemetery, if applicable, shall apply. In the absence of an applicable local ordinance, the depth of the grave at its shallowest point shall be at least three feet from the top of the burial container.

[Filed 1/21/99, effective 3/17/99]

[Published 2/10/99]

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**ARC 8663A**

**PUBLIC HEALTH  
DEPARTMENT[641]**

**Adopted and Filed**

Pursuant to the authority of 1998 Iowa Acts, chapter 1221, section 5, subsection 4“a”(2)(c), the Department of Public Health hereby adopts Chapter 150, “Iowa Regionalized System of Perinatal Health Care,” Iowa Administrative Code.

This chapter implements the recommendations of the Department's perinatal guidelines advisory committee and of the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists for Iowa's voluntary regionalized system of perinatal health care. Hospitals within the state may choose to participate in Iowa's regionalized system of perinatal health care and select the hospital's level of participation in the regionalized system. A hospital having determined to participate in the regionalized system shall comply with the rules appropriate to the level of participation selected by the hospital.

These rules present a description of the levels of care among Iowa perinatal hospitals. The levels are as follows: Level I hospital, Level II hospital, Level II regional center, and Level III center. The Department is very much aware of the need for organization of limited resources in a rural state. Accordingly, the rules are designed to encourage and support the presence of a Level II regional center in areas not populous enough to support a Level III center.

The primary purpose of designation is to assure Iowa perinatal patients appropriate care as close to their homes as possible. The further intent of these rules is to ensure that when a hospital markets itself at a particular level of perinatal care, it is capable of providing that care. The rules provide the framework to be used in defining and evaluating the level of perinatal services being offered.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 18, 1998, as **ARC 8497A**. A public hearing was held on December 9, 1998, over the Iowa Communications Network (ICN) at five sites throughout the state. Twelve individuals were in attendance at the various sites. Several comments were received during the public comment period. The Department met with the Perinatal Guidelines Advisory Committee on December 18, 1998, to review and discuss the comments received. The following table identifies the source of comment, the comment itself, and the Department's response. The response identifies any changes made to the Notice of Intended Action. The Advisory Committee was supportive of all changes.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

## Comments received on "The Iowa Regionalized System of Perinatal Health Care"

Rule	Person/ Association	Comment	Action Taken by Advisory Committee and Department
150.5(1)	Deb Renner - Iowa Association of Neonatal Nurses	"from the department" should be included after "Upon receipt of the hospital's application information"	Change made as suggested
150.6(3) "b"(2)"5"	Deb Renner	Would it be easier to add "and a consult with a pediatrician or neonatologist should be initiated if respiratory distress persists for more than two hours"?	No change pertaining to comment; however, moved definition of "respiratory distress" to definitions in 150.2
150.8(5)	Deb Renner	"special interest" should be changed to "additional education, training, and/or certification"	Changed to "demonstrated competencies"; also "training" references changed throughout document
150.2	Deb Renner	Definitions of "neonatal death," "perinatal death," and "postneonatal death" are somewhat confusing	Any definitions not cited in rules were deleted
150.3(2)"d"	Deb Renner	If a committee member is absent three times, will the chairperson notify the organization the member is representing to select another member?	Change made for clarification
150.6(2)	Deb Renner	Delete "regarding sibling visitation"	Change made as suggested
150.6(2)"i"	Deb Renner	Should be "transfer by" instead of "transport to a Level II Regional..." to avoid any confusion whether the Level I should perform a transport	Change made deleting text after "transfer"
150.2	James M. Zahnd - Iowa Health Systems	Alter definition of "Statewide perinatal care program" to read: "means the educational team retained by the department of public health"	Sentence changed to include both notations
150.7(2) "b" and "c"	Richard A. Seidler - interested person	Propose rule to read: "Manage neonates 34 weeks and greater gestation unless medical specialties, i.e., neonatologist, are available to manage the less than 34 week fetus"	Changed to read "at a minimum manage neonates..." and eliminated paragraph "c"
150.6(4)	Lorelei Brewick - interested person	Amend paragraph "b" to strike the phrase "under the supervision of a licensed physician" and insert instead the phrase "by a qualified anesthesia provider" or other similar language	Changes made as suggested; also changed 150.9(3)"c" to make it consistent with the Nurse Anesthetist Act
150.6(4)"b"	Don Franzen - interested person	Insert alternate statement "Adequate anesthesia coverage be provided by qualified anesthesia providers in a timely fashion..." instead of "Adequate anesthesia coverage under the supervision of a licensed physician is available in a timely fashion..."	Change made as above in 150.6(4)"b"
150.9(3)"c"	Don Franzen	Change the word "anesthesiologists" to "anesthesia provider"	As above
150.4(1)"d"	Kim Piper - IDPH staff	Clarification as to "overlap": Is this geographic, economic, population served...?	Sentence deleted
150.6(2)	Kim Piper	Subrule addresses only neonatal transfers/consults. Recommend language that includes maternal transfers or consults. (Same for subsequent subrules addressing transfers and consults)	Change made as suggested
150.8(5)	Kim Piper	Change statement "special interest" to nurses with "special education, training, or certification"	Change made to "demonstrated competency"
150.9(4)	Kim Piper	Recommend not limiting bachelor's degree to nursing, but state "in a related field"	Change made to "or bachelor's degree in a related field"
150.9(9)	Kim Piper	What is meant by "fully staffed" crews? Recommend this specify "crews with specialized training in neonatal/maternal resuscitation"	Changed to "whose crews have demonstrated competencies in maternal/neonatal resuscitation"
150.3(2)"b"	Janet Peterson - IDPH staff	Add "and the Division of Family and Community Health medical director at the department." Correct the sentence to allow for the additional ex officio member.	Change made as suggested
150.6(2)"j"	Committee	Discussion resulted in addition of "obstetrician"	Change made
150.9(1)	Committee	Discussion resulted in deletion of "under 34 weeks gestation"	Change made

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The State Board of Health, at their regularly scheduled meeting on January 13, 1999, adopted new Chapter 150.

This chapter is intended to implement 1998 Iowa Acts, chapter 1221, section 5, subsection 4“a”(2)(c).

This chapter shall become effective on March 17, 1999.

The following new chapter is adopted.

**CHAPTER 150**  
**IOWA REGIONALIZED SYSTEM**  
**OF PERINATAL HEALTH CARE**

**641—150.1(135,77GA,ch1221) Purpose and scope.** Hospitals within the state shall determine whether to participate in Iowa's regionalized system of perinatal health care and shall select the hospital's level of participation in the regionalized system. A hospital having determined to participate in the regionalized system shall comply with the rules appropriate to the level of participation selected by the hospital.

Iowa's regionalized system of perinatal health care helps practitioners in rural Iowa to rapidly access specialty services for their patients even though such services may not exist in the local community. This is predicated on several factors, including the willingness of certain hospitals in moderate-to-large Iowa cities to provide specialty services and the presence of a functional system of patient transportation. These rules address how participating Iowa hospitals relate to the regionalized system and suggest a level of functioning which should identify the role each participating hospital plays in the system.

The following rules present a description of the levels of care among Iowa perinatal hospitals. The levels are as follows: Level I hospital, Level II hospital, Level II regional center, and Level III center. The department is very much aware of the need for organization of limited resources in a rural state. Accordingly, the rules are designed to encourage and support the presence of a Level II regional center in areas not populous enough to support a Level III center.

These rules are not meant to hold Iowa hospitals and Iowa perinatal professionals to an impractical ideal. Although the rules are clearly not intended to serve as standards, they do specify particulars when feasible. For example, specification of a designated level of care for a hospital should be clearly evident from the descriptions. Levels of care are designated by the functional capacity of the hospital. Thus, it may be possible to have a number of Level II hospitals or Level III centers in one city.

The primary purpose of designation is to ensure Iowa perinatal patients appropriate care as close to their homes as possible. In an ideal situation, no community hospital would be more than 50 miles from a perinatal center. Unfortunately, Iowa's low population density precludes this. Accordingly, Iowa developed a network of regional centers.

The further intent of these rules is to ensure that when a hospital markets itself at a particular level of perinatal care, it is capable of providing that care. The public is entitled to know the level of functioning. The rules provide the framework to be used in defining and evaluating the level of perinatal services being offered.

**641—150.2(135,77GA,ch1221) Definitions.** For the purpose of these rules, the following definitions shall apply:

“Categorization” means a preliminary determination by the department that a hospital is capable of providing perinatal care at Level I, Level II, Level II regional, or Level III care capabilities.

“Certificate of verification” means a document awarded by the department that identifies a hospital's level of perinatal care and term of verification at that level.

“Department” means the Iowa department of public health.

“Director” means the director of the Iowa department of public health.

“Hospital” means a facility licensed under Iowa Code chapter 135B or a comparable facility located and licensed in another state.

“On-site verification survey” means an on-site survey conducted by the department's statewide perinatal care program based at the University of Iowa hospitals and clinics to assess a hospital's ability to meet the level of designation selected by the hospital.

“Perinatal advisory committee” means the committee that provides review and counsel to the statewide perinatal care program based at the University of Iowa hospitals and clinics.

“Perinatal guidelines advisory committee” means the committee that provides consultation to the department regarding these rules for the regionalized system of perinatal health care.

“Regionalized system of perinatal health care” means the department's program for the provision of appropriate perinatal care as close to patients' homes as possible.

“Respiratory distress” means tachypnea (respiratory rate of 60 or more per minute), grunting, tugging, retracting, nasal flaring, or cyanosis. Any or all of these may constitute respiratory distress.

“Statewide perinatal health care program” means the educational team based at the University of Iowa hospitals and clinics and retained by the department of public health.

“Verification” means a process by which the department certifies a hospital's capacity to provide perinatal care in accordance with criteria established for Level I hospitals, Level II hospitals, Level II regional centers, and Level III centers under these rules.

**641—150.3(135,77GA,ch1221) Perinatal guidelines advisory committee.**

**150.3(1) Purpose.** The director shall appoint an advisory committee to consult with the department in its development and maintenance of the regionalized system of perinatal health care. This advisory committee should not be confused with the perinatal advisory committee that provides review and counsel to the statewide perinatal care program.

**150.3(2) Appointment.**

a. Members of the advisory committee shall include a representative from each of the following organizations that chooses to designate a nominee to the director: Iowa Hospitals and Health Systems; Iowa Medical Society; Iowa Osteopathic Medical Association; Iowa Chapter, American Academy of Pediatrics; Iowa Section, American College of Obstetricians and Gynecologists; Iowa Academy of Family Physicians; Iowa Nurses Association; Iowa Association of Neonatal Nurses; Iowa Association of Women's Health, Obstetrical and Neonatal Nurses; and Iowa Chapter, Great Plains Organization for Perinatal Health Care.

b. Nonvoting ex officio members of the committee shall include representatives from the department of inspections and appeals, the statewide perinatal health care program at the University of Iowa hospitals and clinics and the division of family and community health medical director at the department.

c. Vacancies shall be filled in the same manner in which the original appointments were made.



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d. Three consecutive unexcused absences shall be grounds for the director to consider dismissal of the committee member and appointment of another. The chairperson of the committee shall notify the director of the department.

**150.3(3) Officers.** Officers of the committee shall be a chairperson and a vice-chairperson and shall be elected at the first meeting of each fiscal year unless designated at the time of appointment. Vacancies in the office of chairperson shall be filled by elevation of the vice-chairperson. Vacancies in the office of vice-chairperson shall be filled by election at the next meeting after the vacancy occurs. The chairperson shall preside at all meetings of the committee, appoint such subcommittees as deemed necessary, and designate the chairperson of each subcommittee. If the chairperson is absent or unable to act, the vice-chairperson shall perform the duties of the chairperson. When so acting, the vice-chairperson shall have all the powers of and be subject to all restrictions upon the chairperson. The vice-chairperson shall also perform such other duties as may be assigned by the chairperson.

**150.3(4) Meetings.**

a. The committee shall establish a meeting schedule on an annual basis to conduct its business. Meetings may be scheduled as business requires, but notice to members must be at least five working days prior to the meeting date. A four-week notice is encouraged to accommodate the schedules of members.

b. Robert's Rules of Order shall govern all meetings.

c. Action on any issue before the committee can be taken only by a majority vote of the entire membership. The committee shall maintain information sufficient to indicate the vote of each member present.

**150.3(5) Subcommittees.** The committee may designate one or more subcommittees to perform such duties as may be deemed necessary.

**150.3(6) Expenses of committee members.** The following may be considered necessary expenses for reimbursement of committee members when incurred on behalf of committee business and are subject to established state reimbursement rates:

- a. Reimbursement for travel in a private car.
- b. Actual lodging and meal expenses including sales tax on lodging and meals.
- c. Actual expense of public transportation.

**641—150.4(135,77GA,ch1221) Categorization and selection of level of care designation.** Hospitals that have previously participated in the regionalized system of perinatal health care shall be categorized by the department at the level of care designation last verified by the department. A hospital that has chosen to participate in the regionalized system for the first time or that has chosen to select a new level of care designation shall:

1. Submit the following information to the department:
  - Description of the geographic area to be served.
  - Identification of the target population to be served.
  - Identification of Level I hospitals to be served.
  - Identification of unmet needs of the area to be served.
  - Demonstration of the ability to meet these rules.
2. Mail the information to:
 

Iowa Regionalized System of Perinatal Health Care  
Iowa Department of Public Health  
Division of Family and Community Health  
321 East 12th Street, Lucas State Office Building  
Des Moines, Iowa 50319-0075
3. Seek a certificate of need reviewability determination and, if reviewable, obtain certificate of need approval. See

Iowa Code sections 135.61 to 135.83 and Iowa Administrative Code 641—Chapters 202 and 203.

**641—150.5(135,77GA,ch1221) Recommendation by the statewide perinatal care program.**

**150.5(1)** Upon receipt of the hospital's application information from the department, the statewide perinatal care program will provide verification of the hospital's ability to meet the criteria for the level of designation selected by the hospital. The results of the verification shall be submitted to the department, along with a recommendation to grant or deny the hospital a certificate of verification.

**150.5(2)** The statewide perinatal health care program shall also perform periodic on-site verification surveys of established perinatal service programs to verify the continued ability of each hospital visited to meet the criteria for the level of designation selected by the hospital. The results of each survey shall also be submitted to the department, along with a recommendation to continue, suspend, or revoke the hospital's certificate of verification.

**150.5(3)** Any review and evaluation of the University of Iowa hospitals and clinics' established perinatal service program shall be performed by the department, or for the department, by a person or entity unaffiliated with the University of Iowa hospitals and clinics.

**641—150.6(135,77GA,ch1221) Level I hospitals.**

**150.6(1) Definition.** Level I hospitals provide basic inpatient care for pregnant women and newborns without complications; manage perinatal emergencies, including neonatal resuscitation; provide leadership in early risk identification before and after birth; seek consultation or referral for high-risk patients; and provide public and professional education.

**150.6(2) Functions.** Level I hospitals have a family-centered philosophy. Parents have reasonable access to their newborns 24 hours a day within all functional units and are encouraged to participate in the care of their newborns. Generally, parents can be with their newborns in the mother's room. Noninfectious siblings may visit in the mother's room or in a designated space.

Level I hospitals have the capability to:

- a. Provide surveillance and care of all patients admitted to the obstetric service with an established triage system for identifying high-risk patients who should be transferred to a facility that provides Level II or higher care, prior to delivery;
- b. Provide proper detection and supportive care of unanticipated maternal-fetal problems that occur during labor and delivery;
- c. Perform emergency Cesarean sections as soon as possible after the decision to do the operation has been made;
- d. Provide transfusions of blood and fresh frozen plasma on a 24-hour basis;
- e. Provide anesthesia, pharmacy, radiology, respiratory support, electronic fetal heart-rate monitoring, and laboratory services on a 24-hour basis;
- f. Provide care of postpartum conditions;
- g. Evaluate the condition of healthy neonates and their continuing care until discharge;
- h. Resuscitate all neonates using the neonatal resuscitation program guidelines as published by the American Heart Association/American Academy of Pediatrics;
- i. Stabilize all neonates including unexpectedly small or sick neonates before transfer;



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j. Consult and arrange transfers in conjunction with the obstetrician, pediatrician or neonatologist at the referral center;

k. Maintain a nursery for normal-term or near-term newborns.

**150.6(3) Physical facilities.** Physical facilities for perinatal care in hospitals should be conducive to care that meets the normal physiologic and psychosocial needs of mothers, neonates, fathers, and families. Special facilities should be available when deviations from the norm require uninterrupted physiologic, biochemical, and clinical observations of patients throughout the perinatal period. Labor, delivery, and newborn care facilities should be located contiguously.

The following recommendations are intended as general guidelines and are meant to be flexible enough to meet local needs. It is recognized that individual limitations of physical facilities for perinatal care may impede strict adherence to the recommendations. Furthermore, not all hospitals will have all the functional units described. Provisions for individual units should be consistent within the framework of a regionalized perinatal care system and the state and local public health regulations.

a. Obstetric functional units.

(1) Labor. Areas used for women in labor are equipped with the following components:

1. Adequate space for support persons, personnel, and equipment;

2. Adequate ventilation and temperature control;

3. A labor or birthing bed;

4. A storage area for the patient's clothing and personal belongings;

5. Adjustable lighting that is pleasant for the patient and adequate for examinations;

6. An emergency signal and an intercommunication system;

7. A sphygmomanometer and stethoscope;

8. Mechanical infusion equipment;

9. Fetal monitoring equipment;

10. Oxygen and suction outlets;

11. Access to at least one shower for use by labor patients; and

12. Storage facilities for supplies and equipment.

(2) Delivery.

1. Delivery rooms should be close to the labor rooms in order to afford easy access and to provide privacy to women in labor. A waiting area for families should be adjacent to the delivery suite, and restrooms should be located nearby.

2. Traditional delivery rooms and Cesarean birth rooms are similar in design to operating rooms. Vaginal deliveries can be performed in either room, whereas Cesarean birth rooms are designed especially for that purpose and are thus larger. Each type of birthing room is well lighted and environmentally controlled to prevent chilling of the mother and neonate.

3. It is desirable that Cesarean deliveries be performed in the obstetric unit; however, if this is not possible due to cost and space, equipment for neonatal stabilization and resuscitation, as described herein under 150.6(3)"b"(1), is available during delivery.

4. Each delivery room is maintained as a separate unit with the following equipment and supplies necessary for normal delivery and for the management of complications:

- Delivery/operating table that allows variation in position for delivery;

- Instrument table and solution basin stand;

- Instruments and equipment for vaginal delivery, repair of laceration, Cesarean delivery, and the management of obstetric emergencies;

- Solutions and equipment for the intravenous administration of fluids;

- Equipment for administration of all types of anesthesia, including equipment for emergency resuscitation of the mother;

- Individual oxygen, air, and suction outlets for mother and neonate;

- An emergency call system;

- Mirrors for patients to observe the birth;

- Wall clock with a second hand;

- Equipment for fetal heart rate monitoring; and

- Scrub sinks with controls strategically placed to allow observation of the patient.

5. Trays containing drugs and equipment necessary for emergency treatment of both mother and neonate are kept in the delivery room area. Equipment necessary for the treatment of cardiac arrest is easily accessible.

(3) Postpartum care. The postpartum unit is flexible enough to permit comfortable accommodation of patients when the patient census is at its peak and use of beds for alternate functions when the patient census is low. Ideally, single-occupancy rooms should be provided; however, not more than two patients should share one room. If possible, each room in the postpartum unit should have its own toilet and hand-washing facilities. When this is not possible and it is necessary for patients to use common facilities, patients should be able to reach them without entering a general corridor. When the newborn rooms-in with the mother, the room should have hand-washing facilities, a mobile bassinet unit, and supplies necessary for the care of the newborn.

(4) Combined units (labor/delivery/recovery or labor/delivery/recovery/postpartum room).

1. Comprehensive obstetric and neonatal care can be provided to the low-risk and the high-risk parturient and infant and the family in a single room. A homelike, family-centered environment with the capability for providing high-risk care is a key design criterion for both the labor/delivery/recovery (LDR) and labor/delivery/recovery/postpartum (LDRP) rooms. Each room is equipped for all types of delivery except Cesarean deliveries or those that may require general anesthesia.

2. During the labor, delivery, and recovery phases, care can be provided in an LDR room or can be extended to include the postpartum period in an LDRP room.

3. Nurses providing care in combined units are knowledgeable in antepartum care, labor and delivery, postpartum care, and neonatal care, making the use of staff cost-effective and increasing the continuity and quality of care.

b. Neonatal functional units.

(1) Resuscitation/stabilization.

1. A resuscitation and stabilization bed should be available in the immediate area of delivery for those neonates who require it. Contingent upon their condition, neonates are moved from this area to the nursery for admission and stabilization and possible transfer to a Level II regional center or Level III center.

2. The resuscitation area contains the following items:

- Overhead source of radiant heat that can be regulated based on the infant's temperature; radiant warmers with accommodations for X-ray capabilities are recommended;

- Thin resuscitation/examination mattress that allows access on three sides;

- Wall clock;

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- Equipment and medications as recommended by the neonatal resuscitation program. This includes a laryngoscope with infant-sized blades, endotracheal tubes, and resuscitation (breathing) bags with masks for full-term and preterm neonates;

- Oxygen, compressed air and suction sources that are separate from those for the mother;
- Equipment for examination, immediate care, and identification of the neonate.

3. The resuscitation area is usually within the delivery room, although it may be in a designated, contiguous, separate room. If resuscitation takes place in the delivery room, the area is large enough to ensure that the resuscitation of the neonate can be achieved without interference with or from the ongoing care of the mother. Following stabilization of the neonate, the newborn's vital signs must be maintained (e.g., by using prewarmed blankets). The room temperature is kept at a level higher than that customary for patient rooms or operating suites. Qualified nursing staff is available to assess the newborn during this period.

(2) Admission/observation (transitional care stabilization).

1. The admission/observation area is for careful assessment of the neonate's condition during the first 24 hours after birth (i.e., during the period of physiologic adjustment to extrauterine life). This assessment may take place within one or more functional areas (e.g., the room in which the mother is recovering, the LDRP room, the newborn nursery, or a separate admission/observation area). In some hospitals, the newborn nursery is the primary area for transitional care, both for neonates born within the hospital and for those born outside the hospital.

2. The admission/observation area should be near the delivery/Cesarean birth room. If it is part of the maternal recovery area, which is preferable, physical separation of the mother and newborn during this period can be avoided.

3. The capacity of the admission/observation area depends on the size of the delivery service and the duration of close observation. The admission/observation area is well lighted, has a wall clock, and contains emergency resuscitation equipment similar to that in the designated resuscitation area.

4. The physicians' and registered nurses' assessments of the neonate's condition determine the subsequent level of care. Most neonates are transferred from the admission/observation area to the newborn nursery or to the postpartum area for rooming-in. Some neonates may require transfer to another facility. Consultation with a pediatrician or neonatologist and possible referral to a hospital offering a higher level of care should be initiated for infants with respiratory distress or those infants requiring oxygen therapy for more than two hours.

(3) Newborn nursery. Routine care of apparently normal full-term neonates who have demonstrated successful adaptation to extrauterine life may be provided either in the newborn nursery or in the area where the mother is receiving postpartum care. The nursery should be relatively close to the postpartum area. The newborn nursery is well lighted, has a large wall clock, and is equipped for emergency resuscitation.

**150.6(4) Medical personnel.**

a. The obstetric/newborn care area is under the supervision of a board-eligible or board-certified obstetrician-gynecologist, pediatrician or a physician with special interest and experience in obstetrics or pediatrics.

b. Adequate anesthesia coverage by a qualified anesthesia provider is available in a timely fashion for emergency situations on a 24-hour-a-day, 7-day-a-week basis.

c. For Cesarean sections or if neonatal problems are anticipated during vaginal delivery, a second physician or attendant who is skilled in resuscitation and care of the neonate should be in attendance.

**150.6(5) Nursing personnel.** Nurses assigned to the obstetrical/neonatal service demonstrate competency in the care of the mother and infant.

a. Staffing. Registered nurses assigned to the obstetrical/neonatal service must be licensed to practice in Iowa, complete an obstetrical or neonatal orientation and demonstrate obstetrical or neonatal competencies as defined by each hospital. At least one of these registered nurses must be available at all times. The primary responsibility of the registered nurse is the delivery of nursing care and departmental organization.

b. Labor/delivery/immediate postpartum/newborn.

(1) A registered nurse is responsible for the admission assessment of the gravida in labor, as well as continuing assessment and support of the mother and fetus during labor, delivery and the early postpartum period.

(2) A registered nurse is responsible for the admission assessment of the newborn, as well as continuing assessment during the stabilization period.

(3) Licensed practical nurses, nursing assistants and other appropriate technical personnel may assist in the care of the gravida in labor, but should be under the direct supervision of the registered nurse.

c. Later postpartum period/newborn care.

(1) Nursing care of the mother and newborn is directed and supervised by a registered nurse. A licensed practical nurse may provide care for patients without complications.

(2) Nurses have a supporting and teaching role in assisting mothers to care for their infants. This should be recognized and fostered.

**150.6(6) Outreach education.** Level I hospitals should assume an active role in the development and coordination of wellness and preventive programs concerning maternal/child health at the community level (e.g., programs on family planning, family-life education, parenting, breast feeding, cessation of smoking).

**150.6(7) Allied health personnel and services.** Level I hospitals have available, but are not limited to, the following allied health personnel and services:

a. Registered dietitian with knowledge of maternal and neonatal nutrition management;

b. Social worker;

c. Bioengineer-safety and environmental control;

d. Pharmacy;

e. Radiology;

f. Laboratory;

g. Pathology.

**150.6(8) Infection control.**

a. Each hospital establishes written policies and procedures for assessing the health of personnel assigned to the perinatal care services and those who have significant contact with the newborn. This includes restricting their contact with patients when necessary. These policies and procedures include screening for tuberculosis and rubella. Routine culturing of specimens obtained from personnel is not useful, although selective culturing may be of value when a pattern of infection is suspected.

b. No special or separate isolation facilities are required for neonates born at home or in transit to the hospital. Detailed descriptions of the isolation categories and require-

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ments should be available in each hospital's infection control manual.

**150.6(9) Newborn safety.** The protection of infants is the responsibility of all personnel in a facility. Infants are to be transported in a bassinet or stroller and should never be carried. Infants are transported one at a time and are never grouped in a hallway without direct supervision. Infants should always be within the sight and supervision of staff, the mother, or other family members or friends designated by the mother. Each hospital has a policy established that addresses strategies to promote infant safety.

**150.6(10) Maternal-fetal transport.** Maternal-fetal transport is an essential component of modern perinatal care. All facilities in the state providing obstetrics need to be familiar with their own resources and capabilities in dealing with obstetrical and neonatal complications. In most instances, maternal-fetal transport is preferable to neonatal transport. Each hospital, when transporting or accepting a transport, needs a system in place to facilitate a smooth transition of care in the most expeditious manner possible. The majority of maternal-fetal transports can be carried out by ground transportation. It is important for ambulance services to be equipped for maternal-fetal transport and have appropriately trained staff.

**641—150.7(135,77GA,ch1221) Level II hospitals.**

**150.7(1) Definition.** Level II hospitals provide the same care and services as Level I hospitals plus they provide management of certain high-risk pregnancies and services for newborns with selected complications. These hospitals deliver approximately 500 or more babies annually and have an obstetrician and pediatrician on staff. The perinatal unit is under the co-direction of a pediatrician and an obstetrician.

**150.7(2) Functions.** In addition to the functions of Level I hospitals, Level II hospitals have the capability to:

- a. Manage selected high-risk pregnancies.
- b. At a minimum, manage neonates of 34 weeks and greater gestation.
- c. Manage recovering neonates who can be appropriately transferred from the referral center.
- d. Maintain a special area designated for the care of sick neonates.
- e. Maintain nursing personnel with demonstrated competency in the care of sick neonates.
- f. Maintain nursing personnel with demonstrated competency in the care of high-risk mothers.

Consultation with a pediatrician or neonatologist and possible referral to a higher-level perinatal center should be initiated for infants requiring oxygen therapy for more than six hours or ventilatory care for more than two hours.

**150.7(3) Physical facilities.** Level II hospitals have the same physical facilities as Level I hospitals.

**150.7(4) Medical personnel.** Level II hospitals have the same medical personnel as Level I hospitals. In addition, the perinatal units in Level II hospitals are under the co-direction/supervision of either a board-eligible or board-certified obstetrician/gynecologist or a board-eligible or board-certified pediatrician for their respective areas. Allied medical specialists in various disciplines are on staff, including specialists in internal medicine, radiology, and pathology. Psychiatric services are available.

**150.7(5) Nursing personnel.** Level II hospitals have the same minimal requirements for nursing personnel as Level I hospitals. Nursing orientation and competencies in a Level II hospital are specific to the patient population they serve.

**150.7(6) Outreach education.** Level II hospitals have the same responsibility for outreach education as Level I hospitals.

**150.7(7) Allied health personnel and services.** Level II hospitals have the same allied health personnel and services available as Level I hospitals, with the addition of the following:

- a. Respiratory therapy.
- b. Ultrasound.

**150.7(8) Infection control.** Infection control guidelines are the same as for Level I hospitals.

**150.7(9) Newborn safety.** Level II hospitals have at least the same requirements for newborn safety as Level I hospitals.

**150.7(10) Maternal-fetal transport.** Level II hospitals have the same requirements for maternal-fetal transport as Level I hospitals. In addition, Level II hospitals are expected to accept patient referrals when appropriate. A critical function of providers at Level II hospitals is to communicate with the providers at Level I hospitals in deciding whether a particular patient should be transported to the Level II hospital. Careful assessment of the hospital's capabilities for perinatal management will be critical in these decisions. This information will need to be disseminated among the hospital staff. Providers of obstetric care need to know the critical gestational age limitations for their particular nursery. Below this gestational age, maternal-fetal transport should be utilized if delivery is anticipated and the circumstances permit.

**150.7(11) Perinatal care committee.**

a. All Level II hospitals maintain a perinatal care committee. Members of this committee should represent, but not be limited to, the fields of obstetrics, pediatrics, family practice, nursing, administration, laboratory, respiratory therapy, anesthesia and social services.

b. Responsibilities of the perinatal care committee include the following:

- (1) Develop policies for the unit including provisions to ensure adequate patient care by qualified providers.
- (2) Conduct a meeting at least semiannually to resolve problems related to the unit.
- (3) Review educational activities conducted by the unit.
- (4) Serve as a general liaison between the various groups represented on the committee.

**641—150.8(135,77GA,ch1221) Level II regional centers.**

**150.8(1) Definition.**

a. Level II regional centers have a developed neonatal intensive care unit (NICU). The sizes of the units vary because of the differing demands in the various regions in Iowa. Accordingly, a Level II regional center may have as few as four neonatal intensive care beds.

b. The obstetric service in a Level II regional center provides services for maternity patients at higher risk than those in Level II hospitals because of the presence of an NICU. However, reasonable efforts should be expended to transfer those patients whose newborns are likely to require a higher intensity of care not available in the Level II regional center but offered in a Level III center.

c. Level II regional centers provide the same care and services as Level II hospitals. In addition, Level II regional centers have the following differentiating characteristics:

- (1) A defined referral area;
- (2) A defined relationship with a Level III center either in Iowa or a contiguous state;
- (3) A minimum of three pediatricians and three obstetricians on staff; and

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(4) The ability to manage patients at higher risk than Level I or Level II hospitals. Complexity of care is determined by the training and experience of physicians and nursing staff and extent of support services available.

**150.8(2) Functions.** Level II regional centers have the same functions as Level II hospitals. In addition, Level II regional centers have the capability to:

- a. Accept selected maternal transports based on criteria developed in conjunction with the Level III center;
- b. Maintain nursing personnel demonstrating competency in the care of high-risk mothers;
- c. Maintain a defined neonatal intensive care unit;
- d. Maintain nursing personnel that demonstrate competency in the care of infants in neonatal intensive care;
- e. Provide care for infants requiring ventilatory support;
- f. Maintain a functioning neonatal transport team for the regional area served; and
- g. Provide for follow-up care of high-risk newborns in accordance with the Iowa high-risk infant follow-up program.

**150.8(3) Physical facilities.** Level II regional centers have the same physical facilities as Level II hospitals with the addition of the following.

- a. Obstetric functional units.

(1) Labor/delivery. Patients who have significant medical or obstetric complications are cared for in a room especially equipped with cardiopulmonary resuscitation equipment and other monitoring equipment necessary for observation and special care. It is preferable that this room be located in the labor and delivery area and meet the physical requirements of any other intensive care room in the hospital. When patients with significant medical or obstetric complications are cared for in the labor and delivery area, the unit has the same capabilities as an intensive care unit.

(2) Postpartum. Larger services may have a specific recovery room for postpartum patients with a separate area for high-risk patients. Required equipment is similar to that needed in any surgical recovery room and includes equipment for monitoring vital signs, suctioning, administering oxygen, and infusing fluids intravenously. Cardiopulmonary resuscitation equipment must be immediately available.

- b. Neonatal functional units.

(1) Continuous cardiopulmonary monitoring and constant nursing care and other support for severely ill infants are provided in the intensive care area. Because emergency care is provided in this area, laboratory and radiological services are readily available 24 hours a day. The results of blood gas analysis are available soon after blood sample collection.

(2) The neonatal intensive care area should be near the delivery/Cesarean birth room and should be easily accessible from the hospital's ambulance entrance. It should be away from routine hospital traffic.

(3) The amount and complexity of equipment are considerably greater than required in Level I and Level II nurseries. Equipment and supplies in the intensive care area include the same items as needed in the resuscitation and intermediate care areas. Immediate availability of emergency oxygen is essential. Continuous monitoring of delivered oxygen concentrations, patient oxygenation, body temperature, ECG, respirations and blood pressure should be available. Supplies should be kept close to the patient station so that nurses are not away from the neonate unnecessarily and may use their time and skills efficiently.

- a. Level II regional centers have the same medical personnel as Level II hospitals with the addition of a board-

eligible or board-certified pediatrician serving as director of the NICU. This physician maintains a consultative relationship with Level III physicians. Additionally, Level II regional centers have a minimum of three pediatricians and three obstetricians on staff.

b. If an infant is placed on mechanical ventilation, a physician, nurse practitioner, physician assistant, or appropriate person capable of airway management and experienced in diagnosis is available in-house on a 24-hour basis.

**150.8(5) Nursing personnel.** Level II regional centers have the same minimal requirements for nursing personnel as Level II hospitals. Additionally, Level II regional center registered nurses have demonstrated competency in high-risk obstetrics or neonatal care.

**150.8(6) Outreach education.** Outreach education is provided to each hospital in the referral area at least once per year. This can be achieved by one or more of the following:

- a. Sponsoring an annual conference;
- b. Visiting Level I and Level II hospitals;
- c. Providing educational programs at the regional center for the staff members of the Level I and Level II hospitals;
- d. Sending written educational materials to the Level I and II hospitals.

**150.8(7) Allied health personnel and services.** Level II regional centers have the same allied health personnel and services available as Level II hospitals, with the addition of the following:

a. A respiratory therapist, certified lab technician/blood gas technician and an X-ray technologist should be in-house on a 24-hour basis when a neonate is being managed on mechanical ventilation.

b. Allied personnel should have special training and an interest in high-risk mothers and infants.

**150.8(8) Infection control.** Infection control guidelines are the same as for Level II hospitals.

**150.8(9) Newborn safety.** Level II regional centers have at least the same requirements for newborn safety as Level II hospitals.

**150.8(10) Maternal-fetal transport.** Level II regional centers have the same requirements for maternal-fetal transport as Level II hospitals. In addition, Level II regional centers are expected to provide transportation services.

**150.8(11) Perinatal care committee.** Level II regional centers have at least the same requirements for a perinatal care committee as Level II hospitals.

#### 641—150.9(135,77GA,ch1221) Level III centers.

**150.9(1) Definition and function.** Level III centers provide the same care and services as Level II regional centers, plus they manage high-risk pregnancies and neonates, with the possible exception of a few very specialized complications. The Level III center is an extension of the Level II regional center and serves the same regional functions. The differentiating factor between them is primarily one of additional professional staff and more extensive physical facilities. There may be multiple Level III centers in the same city.

**150.9(2) Physical facilities.** Level III centers have the same physical facilities as Level II regional centers; however, they have more equipment and serve a more complicated patient population.

- a. Medical personnel.

The medical director of the maternal-fetal intensive care unit is a full-time, board-eligible or board-certified obstetrician with certification in maternal-fetal medicine.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

b. The medical director of the neonatal intensive care unit is a full-time, board-eligible or board-certified pediatrician with certification in neonatal/perinatal medicine.

c. Anesthesia providers on staff have special training or experience in obstetric and pediatric anesthesia.

d. A pediatric surgeon is on staff.

e. A pediatric cardiologist is on staff.

f. These physicians must be immediately available to the Level III center and reside in the same metropolitan area as the hospital.

g. A neonatologist should be on the premises when unstable critically ill infants are in the Level III center. An obstetrician should be on the premises when unstable critically ill mothers are in the Level III center.

**150.9(4) Nursing personnel.** Level III centers have the same minimal requirements for nursing personnel as Level II regional centers. The nurse managers of the perinatal units in Level III centers have prior experience in maternal or pediatric nursing and have a minimum of a bachelor of science in nursing degree, or a bachelor's degree in a related field.

**150.9(5) Outreach education.** Level III centers have the same responsibilities for outreach education as Level II regional centers.

**150.9(6) Allied health personnel and services.** Level III centers have the same allied health personnel and services as Level II regional centers. Additionally, Level III centers have respiratory therapists, certified lab technicians/blood gas technicians, X-ray technologists and ultrasound technicians with neonatal/perinatal experience available on a 24-hour basis. Level III centers also have social work services with social workers assigned specifically to the maternal and neonatal units.

**150.9(7) Infection control.** Infection control guidelines are the same as for Level II regional centers.

**150.9(8) Newborn safety.** Level III centers have at least the same requirements for newborn safety as Level II regional centers.

**150.9(9) Maternal-fetal transport.** Level III centers have the same requirements for maternal-fetal transport as Level II regional centers. In addition, Level III centers are capable of providing ground and air transportation whose crews have demonstrated competencies in maternal/neonatal resuscitation. Important decisions to be made jointly will include the appropriateness of transport, the best mode of transportation, the need for additional personnel accompanying the transport, and the appropriate medical management to initiate prior to transport.

**150.9(10) Perinatal care committee.** Level III centers maintain a perinatal care committee with additional representation by surgical specialties.

**641—150.10(135,77GA,chl221) Grant or denial of certificate of verification; and offenses and penalties.**

**150.10(1)** Upon receipt of the on-site survey results, the department shall within 30 days issue its decision to grant or deny the hospital a certificate of verification. The department may deny verification or may give a citation and warning, place on probation, suspend, or revoke existing verification if the department finds reason to believe the hospital's perinatal care program has not been or will not be operated in compliance with these rules. The denial, citation and warning, period of probation, suspension, or revocation shall be effected and may be appealed in accordance with the requirements of Iowa Code section 17A.12.

**150.10(2)** All complaints regarding the operation of a participating hospital's perinatal care program shall be re-

ported to the department and to the department of inspections and appeals.

**150.10(3)** Complaints and the investigative process shall be treated as confidential to the extent they are protected by Iowa Code section 22.7.

**150.10(4)** Complaint investigations may result in the department's issuance of a notice of denial, citation and warning, probation, suspension or revocation.

**150.10(5)** Notice of denial, citation and warning, probation, suspension or revocation shall be effected in accordance with the requirements of Iowa Code section 17A.12. Notice to the hospital of denial, citation and warning, probation, suspension or revocation shall be served by certified mail, return receipt requested, or by personal service.

**150.10(6)** Any request for a hearing concerning the denial, citation and warning, probation, suspension or revocation shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 20 days of the receipt of the department's notice to take action. The address is: Iowa Regionalized System of Perinatal Health Care, Iowa Department of Public Health, Division of Family and Community Health, 321 East 12th Street, Lucas State Office Building, Des Moines, Iowa 50319-0075. If the request is made within the 20-day time period, the notice to take action shall be deemed to be suspended pending the hearing. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, citation and warning, probation, suspension or revocation has been or will be removed. If no request for a hearing is received within the 20-day time period, the department's notice of denial, citation and warning, probation, suspension or revocation shall become the department's final agency action.

**150.10(7)** Upon receipt of a request for hearing, the request shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information, which may be provided by the aggrieved party, shall also be provided to the department of inspections and appeals.

**150.10(8)** The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

**150.10(9)** When the administrative law judge makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken.

**150.10(10)** Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

**150.10(11)** Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

- a. All pleadings, motions, and rules.

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- b. All evidence received or considered and all other submissions by recording or transcript.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections and rulings on them.
- e. All proposed findings and exceptions.
- f. The proposed decision and order of the administrative law judge.

150.10(12) The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

150.10(13) It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

150.10(14) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Iowa Regionalized System of Perinatal Health Care, Iowa Department of Public Health, Division of Family and Community Health, 321 East 12th Street, Lucas State Office Building, Des Moines, Iowa 50319-0075.

150.10(15) The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

150.10(16) Final decisions of the department relating to disciplinary proceedings may be transmitted to the department of inspections and appeals and to the appropriate professional associations or news media.

641—150.11(135,77GA,ch1221) **Prohibited acts.** A hospital that imparts or conveys, or causes to be imparted or conveyed, that it is a participating hospital in Iowa's regionalized system of perinatal health care, or that uses any other term, such as a designated level of care, to indicate or imply that the hospital is a participating hospital in the regionalized system of perinatal health care without having obtained a certificate of verification from the department is subject to licensure disciplinary action by the department of inspections and appeals, as well as to the application by the director to the district court for a writ of injunction to restrain the use of the term or terms "Level I hospital," "Level II hospital," "Level II regional center," and "Level III center" in relation to the provision of perinatal health care services.

641—150.12(135,77GA,ch1221) **Construction of rules.** Nothing in these administrative rules shall be construed to restrict a hospital from providing any services for which it is duly authorized.

These rules are intended to implement 1998 Iowa Acts, chapter 1221, section 5, subsection 4"a"(2)(c).

[Filed 1/21/99, effective 3/17/99]

[Published 2/10/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/10/99.

ARC 8654A

RACING AND GAMING  
COMMISSION[491]

## Adopted and Filed

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby adopts amendments to Chapter 5, "Applications for Track Licenses and Racing Dates," Chapter 10, "Thoroughbred Racing," Chapter 20, "Application Process for Excursion Boats and Racetrack Enclosure Gaming License," Chapter 21, "Criteria for Granting an Excursion Boat and Racetrack Enclosure Gaming License," and Chapter 25, "Riverboat Operation," Iowa Administrative Code.

Items 1 and 6 prohibit applicants or licensees from promising anything of value with the intent to influence the action or decision of an individual.

Items 2 and 9 require a licensee that operates gambling games to adopt and implement policies and procedures relating to the gambling treatment program.

Item 3 requires a minimum of two outriders during each race of a performance.

Item 4 makes it each occupational licensee's responsibility and continuing duty to follow and comply with racetrack policies as published.

Item 5 allows the stewards the discretion to declare any horse precluded from having a fair start to be declared a non-starter.

Items 7 and 8 change the catchwords from "Promote gaming industry" to "Gaming integrity" and remove the "promote the gaming industry" language.

These adopted amendments are identical to those published under Notice of Intended Action in the December 16, 1998, Iowa Administrative Bulletin as ARC 8555A.

A public hearing was held on January 5, 1999. No comments were received.

These amendments will become effective March 17, 1999.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

The following amendments are adopted.

ITEM 1. Amend subrule 5.7(1), introductory paragraph, as follows:

5.7(1) Duties and obligations of applicants and licensees. No person shall give or promise to give anything of value with the intent to influence the action or decision of an individual, on any matter brought before that individual acting in the individual's official capacity, including but not limited to:

ITEM 2. Amend rule 491—5.15(99D) by adopting the following new subrule and renumbering existing subrules 5.15(10) through 5.15(12) as 5.15(11) through 5.15(13):

5.15(10) Gambling treatment program.

a. The holder of a license to operate gambling games within a racetrack enclosure shall adopt and implement policies and procedures designed to:

(1) Identify problem gamblers; and

(2) Prevent previously identified problem gamblers from gambling at the licensee's facility or other facilities licensed by the state of Iowa.

b. The policies and procedures shall be developed in cooperation with the gambling treatment program and shall include without limitation the following:



RACING AND GAMING COMMISSION[491](cont'd)

- (1) Training of key employees to identify and report suspected problem gamblers;
- (2) Procedures for recording and tracking identified problem gamblers;
- (3) Policies designed to prevent serving alcohol to intoxicated casino patrons;
- (4) Steps for removing problem gamblers from the casino; and
- (5) Procedures for preventing reentry of problem gamblers.

c. A licensee shall include in its racing program and a substantial number of its advertisements information on the availability of the gambling treatment program.

ITEM 3. Amend rule 491—5.16(99D) by adopting the following new subrule and renumbering existing subrule 5.16(26) as 5.16(27):

5.16(26) Outriders. During each race of a performance, the licensee shall provide a minimum of two outriders.

ITEM 4. Amend subrule 10.2(6), paragraph "a," by adopting the following new subparagraph:

(7) Racetrack policies. It shall be the affirmative responsibility and continuing duty of each occupational licensee to follow and comply with the racetrack policies as published in literature distributed by the racetrack or posted in a conspicuous location.

ITEM 5. Amend subrule 10.2(6), paragraph "c," by adopting the following new subparagraph:

(6) At the discretion of the stewards, any horse(s) precluded from having a fair start may be declared a nonstarter, and any wagers involving said horse(s) may be ordered refunded.

ITEM 6. Amend subrule 20.15(1), introductory paragraph, as follows:

20.15(1) Duties and obligations of applicants and licensees. No person shall give or promise to give anything of value with the intent to influence the action or decision of an individual on any matter brought before that individual acting in the individual's official capacity including but not limited to:

ITEM 7. Amend subrule 21.10(12) as follows:

21.10(12) ~~Promote gaming industry~~ *Gaming integrity*. The commission will consider whether the proposed operation would ~~serve to promote the gaming industry in Iowa and provide~~ *ensure* high gaming integrity in Iowa.

ITEM 8. Amend subrule 21.13(4) as follows:

21.13(4) ~~Promote gaming industry~~ *Gaming integrity*. The commission will consider whether the proposed operation would ~~serve to promote the gaming industry in Iowa and provide~~ *ensure* high gaming integrity in Iowa.

ITEM 9. Amend rule 491—25.20(99F) by adopting the following new subrule:

25.20(9) Gambling treatment program.

a. The holder of a license to operate gambling games within an excursion gambling boat shall adopt and implement policies and procedures designed to:

- (1) Identify problem gamblers; and
- (2) Prevent previously identified problem gamblers from gambling at the licensee's facility or other facilities licensed by the state of Iowa.

b. The policies and procedures shall be developed in cooperation with the gambling treatment program and shall include without limitation the following:

- (1) Training of key employees to identify and report suspected problem gamblers;
- (2) Procedures for recording and tracking identified problem gamblers;
- (3) Policies designed to prevent serving alcohol to intoxicated casino patrons;
- (4) Steps for removing problem gamblers from the casino; and
- (5) Procedures for preventing reentry of problem gamblers.

c. A licensee shall include in a substantial number of its advertisements information on the availability of the gambling treatment program.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/10/99.

**ARC 8655A**

**RACING AND GAMING COMMISSION[491]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 99F.4, the Racing and Gaming Commission hereby amends Chapter 25, "Riverboat Operation," Iowa Administrative Code.

This amendment allows the administrator to grant permission for a certified peace officer not to be present on a riverboat during gaming hours.

This adopted amendment is identical to the one published under Notice of Intended Action in the November 18, 1998, Iowa Administrative Bulletin as **ARC 8456A**.

A public hearing was held on December 8, 1998. No comments were received.

This amendment will become effective March 17, 1999.

This amendment is intended to implement Iowa Code chapter 99F.

The following amendment is adopted.

Amend subrule 25.14(2) as follows:

25.14(2) Peace officer. Each licensee will ensure that a person who is a certified peace officer is present during all gaming hours, *unless permission is otherwise granted by the administrator*.

[Filed 1/21/99, effective 3/17/99]  
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**ARC 8651A**

**TRANSPORTATION DEPARTMENT[761]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 306.6A, the Farm-to-Market Review Board, on January 20, 1999,

TRANSPORTATION DEPARTMENT[761](cont'd)

adopted Chapter 101, "Farm-to-Market Review Board," Iowa Administrative Code.

Notice of Intended Action for these rules was published in the December 16, 1998, Iowa Administrative Bulletin as ARC 8572A.

The Farm-to-Market Review Board was created by Iowa Code section 306.6A [1998 Iowa Acts, chapter 1075, section 3]. The Farm-to-Market Review Board is responsible for making final administrative determinations based on sound farm-to-market road system designation principles for all modifications relative to the farm-to-market road system.

Iowa Code section 306.6A [1998 Iowa Acts, chapter 1075, section 4], requires the Farm-to-Market Review Board to adopt procedural rules for modifications to the existing farm-to-market system and designation of farm-to-market routes on new alignment. These rules implement this rule-making requirement.

Changes from the Notice of Intended Action are as follows: All references to "chairperson" were changed to "chair." In subrule 101.3(3), the phrase "shall chair a meeting" was changed to "shall preside at a meeting." The first sentence of rule 761—101.7(306) was deleted. In subrule 101.7(1), the number of members constituting a quorum was changed from seven to eight. In rule 761—101.11(306), three sentences plus the subrule numbers were deleted. These changes resulted from Board comments plus suggestions made by a member of the Administrative Rules Review Committee.

These rules are intended to implement Iowa Code sections 306.6 and 306.6A.

These rules will become effective March 17, 1999.

The following new chapter is adopted:

CHAPTER 101  
FARM-TO-MARKET REVIEW BOARD

**761—101.1(306) Purpose.** The purpose of these procedural rules is to formalize the process by which the farm-to-market review board, created by Iowa Code section 306.6, will administer its duties.

**101.1(1)** Iowa Code section 306.6, requires the farm-to-market review board to make final administrative decisions based on sound farm-to-market road system designation principles for all modifications relative to the farm-to-market road system.

**101.1(2)** Iowa Code section 306.6A, requires the farm-to-market review board to adopt procedural rules for modifications to the existing farm-to-market road system and designation of farm-to-market routes on new alignment. These rules implement this requirement.

**101.1(3)** Iowa Code section 306.5, states that the farm-to-market road system shall be a continuous, interconnected system and that provision shall be made for continuity by the designation of extensions within municipalities, state parks, state institutions, other state lands, and county parks and conservation areas.

**761—101.2(306) Definitions.**

"Area service roads" or "local roads" or "local road system" means those secondary roads that are not a part of the farm-to-market road system.

"Board" means the farm-to-market review board.

"Executive board" means the Iowa county engineers association executive board.

"Farm-to-market extensions" means extensions of the farm-to-market road system within municipalities, state parks, state institutions, other state lands, and county parks and conservation areas. The mileage of these extensions of

the system shall be included in the total mileage of the farm-to-market road system.

"Farm-to-market roads" or "farm-to-market road system" means those county jurisdiction intracounty and intercounty roads which serve principal traffic generating areas and connect such areas to other farm-to-market roads and primary roads. The farm-to-market road system includes those county jurisdiction roads providing service for short-distance intracounty and intercounty traffic or providing connections between farm-to-market and area service roads, and includes those secondary roads which are federal aid eligible. The farm-to-market road system shall not exceed 35,000 miles.

"President" means the president of the Iowa county engineers association.

**761—101.3(306) Composition and membership of the farm-to-market review board.**

**101.3(1)** The farm-to-market review board shall be composed of 12 county engineers selected by the Iowa county engineers association. Two members shall be selected from each district to serve staggered terms. After the first complete term rotation as shown below, the members shall serve six-year terms. Rotations shall be staggered so that no more than one-sixth of the membership is rotated off the board in any one year. The rotation of board members shall further provide that two members from one district will not be rotated off the board in the same year, and that their rotations will be varied by three years. Initial board rotation shall be as follows and shall be extended in future years in the same pattern:

<u>Year</u>	<u>Rotation</u>
2000	District 1 Representative A District 4 Representative A
2001	District 2 Representative A District 5 Representative A
2002	District 3 Representative A District 6 Representative A
2003	District 1 Representative B District 4 Representative B
2004	District 2 Representative B District 5 Representative B
2005	District 3 Representative B District 6 Representative B

**101.3(2)** Members shall be nominated by their districts and approved by the executive board. A county engineer may serve multiple, consecutive terms if so nominated by the county engineer's district. If a county engineer is unable to complete a term for any reason, the president shall select another county engineer within the district to serve the balance of the term.

**101.3(3)** The farm-to-market review board shall select from its membership a chair and a vice-chair to serve one-year terms. The chair serves at the pleasure of the board and may be elected to multiple terms as deemed appropriate by the board. The vice-chair shall preside at a meeting in the absence of the chair.

**761—101.4(306) Collection of system modification requests and frequency of meetings.**

**101.4(1)** The department of transportation will collect applications for modifications to the farm-to-market road sys-



## TRANSPORTATION DEPARTMENT[761](cont'd)

tem. The board chair shall schedule meetings of the board. In general, the farm-to-market review board shall meet in conjunction with statewide meetings of the Iowa state association of counties and Iowa county engineers association to review accumulated applications for farm-to-market road system modifications. Applications must be filed no less than 30 days prior to each scheduled board meeting. Additional board meetings shall be called as determined by the chair.

**101.4(2)** The farm-to-market review board is required to follow the provisions of Iowa Code chapter 21 with regard to open meetings. The chair shall post a meeting agenda on the "Service Bureau Bulletin Board" and send copies of the agenda to all counties.

**101.4(3)** Minutes of each meeting shall be kept; the chair shall be responsible for the minutes. Meetings may be tape recorded to facilitate the preparation of meeting minutes, but any tapes made shall not be retained after the minutes have been completed.

**761—101.5(306) Procedure for requesting modifications to the farm-to-market road system.** To apply for a modification to the farm-to-market road system, a county must file an application through the department of transportation.

**101.5(1)** The application must include the following:

a. A copy of a resolution of the county board of supervisors requesting the modification to the existing farm-to-market road system. Farm-to-market modifications may include proposed roads, redesignation of area service roads, or transfers of jurisdiction.

b. A report of the county engineer explaining and justifying the addition of new mileage to the farm-to-market road system or the change in the route or farm-to-market classification proposed by the county.

**101.5(2)** In the case of intercounty routes, joint applications may be filed. Resolutions shall be required of each county.

**761—101.6(306) Review criteria for determining eligibility for inclusion of additional roads into the farm-to-market road system.**

**101.6(1)** The farm-to-market review board shall make final administrative determinations based on sound farm-to-market road system designation principles for all modifications relative to the farm-to-market road system.

**101.6(2)** The board shall consider the following factors in making decisions to modify the farm-to-market road system:

- a. Intracounty and intercounty continuity of systems.
- b. Properly integrated systems.
- c. Existing and potential traffic.
- d. Land use.
- e. Location of the route.
- f. Equitable distribution of farm-to-market mileage.

**761—101.7(306) Voting and approval of requested modifications.** Each member is a voting member and is eligible to vote at every meeting at which that member is in attendance. Attendance may include members being present at the meeting through a conference telephone call, Iowa communications network connection, or other electronic means deemed appropriate by the chair.

**101.7(1)** Determination of a quorum. A minimum of eight board members is required for a quorum. If a quorum is not present at a meeting, the meeting shall be rescheduled.

**101.7(2)** Number of votes needed to approve or deny a modification. For a requested modification to the farm-to-market road system to be approved, it must receive a mini-

um of seven affirmative votes; in other words, a majority of the entire board. A motion to deny a requested modification need only receive six votes for the denial to be approved.

**761—101.8(306) Report of board decision to applicant county.** Within 30 calendar days after a board meeting, the chair shall send a letter to each county whose request was acted upon by the board at the meeting. The letter shall apprise each applicant of the decision of the farm-to-market review board, briefly explain the reasons for the board's decision, and explain the reapplication and judicial review processes.

**761—101.9(306) Reapplication for modification.** A county may reapply for a modification to the farm-to-market road system if its initial request is denied. The county must again follow all provisions for requesting a modification and should be prepared to present additional information in support of the requested change. Any requested system modification that receives two denials may not be resubmitted for consideration for a minimum of three years.

**761—101.10(306) Judicial review.** Any county that is aggrieved or adversely affected by a decision of the farm-to-market review board may seek judicial review of such agency action under the provisions of Iowa Code section 17A.19.

**761—101.11(306) Adoption and modification of rules.** The chair shall direct the board to review these rules annually. Board members may recommend changes to these rules.

**761—101.12(306) Severability clause.** If any section, provision, or part of these rules is adjudged invalid or unconstitutional, such adjudication shall not affect the validity of these rules as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

These rules are intended to implement Iowa Code sections 306.6 and 306.6A.

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ARC 8648A

WORKFORCE DEVELOPMENT  
DEPARTMENT[871]

Adopted and Filed

Pursuant to the authority of Iowa Code section 96.11, the Director of the Workforce Development Department hereby rescinds 345—Chapter 1, "Administration"; adopts Chapter 21, "Unemployment Insurance Services Division"; and amends Chapter 22, "Employer Records and Reports," Chapter 23, "Employer's Contribution and Charges," Chapter 24, "Claims and Benefits," and Chapter 25, "Benefit Payment Control," Iowa Administrative Code.

These amendments are identical to those published under Notice of Intended Action in the December 16, 1998, Iowa Administrative Bulletin as ARC 8571A.

Chapter 1 of Job Service Division[345] is rescinded due to Workforce Development Department reorganization.

Chapter 21 describes the organizational structure of Unemployment Insurance Services.

## WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

Subrule 22.1(2) is amended by adding paragraph "h" which describes the work site reporting which has now been moved to these rules.

Subrule 23.10(2), paragraph "a," is rescinded since the requirement for a bond was deleted from the law.

Subrule 23.52(6) is amended to reference rule 26.5(17A, 96) and "appeals bureau" is changed to "administrative law judge."

Subrules 23.54(1) and 23.54(2) are amended and subrule 23.54(3) is rescinded and reserved to adopt a changed definition of when acquiescence applies pursuant to a suggestion by the state ombudsman's office.

Subrules 23.70(3) and 23.70(6) are amended and subrules 23.70(4), 23.70(5), and 23.70(7) to 23.70(9) are rescinded and reserved because the requirement for bond was removed from the law.

Subrule 24.1(4) is rescinded and reserved since area claims offices are now called Workforce Development Centers due to reorganization.

Subrules 24.1(8), 24.1(9), and 24.1(54) to 24.1(56) are rescinded and reserved since application and claim record cards are no longer used.

Subrule 24.4(1) is amended to change the name of Form 70-6200 to "Facts About Unemployment Insurance."

Subrule 24.8(2), paragraph "d," subparagraph (2), is rescinded to reduce paperwork for employers.

Subrule 24.23(24) is amended to delete obsolete wording. Subrule 24.23(41) is amended to correct the Iowa Code citation.

Subrule 24.26(14) is added to provide domestic and workplace violence within the voluntary quit provision.

Subrule 24.26(15) is added to reflect recent law changes defining separations from temporary employment firms.

Subrule 24.39(1), paragraphs "a," "b," "c," and "f," are rescinded and paragraph "c" is added to reduce paperwork. Information is already in the possession of the Department and additional questions will be asked verbally.

Subrule 24.58(6) is added to reflect recent legislation.

Subrule 25.12(2) is amended to change wording from "section" to "bureau."

Subrule 25.12(3) is added to specify that an employer may submit wages for crossmatch using automated procedures.

These amendments were adopted on January 20, 1999.

These amendments are intended to implement Iowa Code sections 84A.1, 96.4(6)"a," 96.5(1), 96.6(2), 96.7(8), 96.10, 96.12, and 96.14 and Federal VCX Law (5 U.S.C. 8525).

These amendments will become effective on March 17, 1999.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [rescind 345—Ch 1; adopt 871—Ch 21; amend chs 22 to 25] is being omitted. These rules are identical to those published under Notice as **ARC 8571A**, IAB 12/16/98.

[Filed 1/20/99, effective 3/17/99]

[Published 2/10/99]

[For replacement pages for IAC, see IAC Supplement 2/10/99.]

**AGENCY**

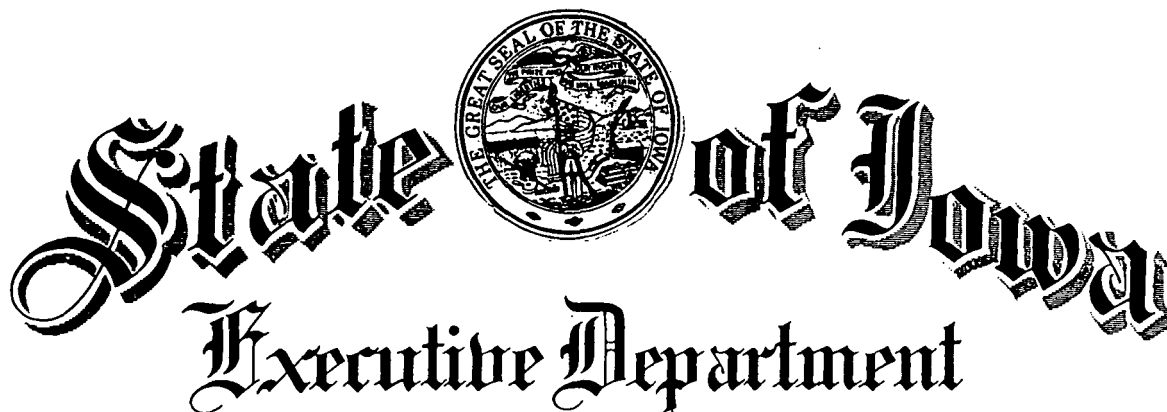
Transportation Department[761]

**RULE**

600.13  
[IAB 11/18/98, ARC 8461A, Item 6]

**DELAY**

Effective date of December 23, 1998, delayed until adjournment of the 1999 Session of the General Assembly by the Administrative Rules Review Committee at its meeting held January 5, 1999. [Pursuant to §17A.8(9)]

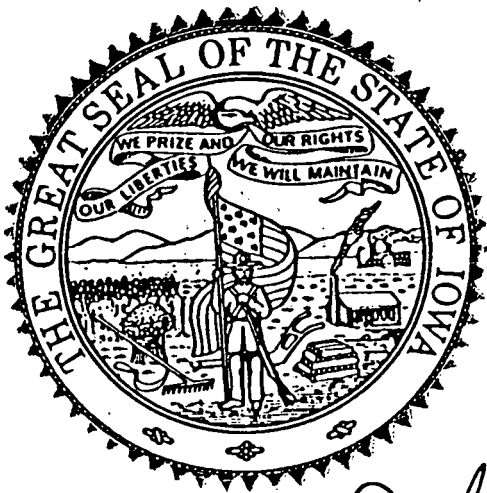


IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER ONE

- WHEREAS, Senate File 2409 eliminated the Department of Employment Services, created the Department of Workforce Development, and established a Workforce Development Board; and
- WHEREAS, Governor Branstad signed Senate File 2409 into law on May 2, 1996; and
- WHEREAS, the Department of Workforce Development was established to administer the laws of this State relating to unemployment compensation insurance, job placement and training, employment safety, labor standards, and worker's compensation; and
- WHEREAS, the duties of the Iowa Workforce Development Board include, but are not limited to the following activities: the development and implementation of a twenty-year comprehensive workforce development plan; the preparation of a five-year strategic plan; the development of evaluation methods; the establishment of guidelines for the awarding of grants; the review of grants awarded by the department; the recommendation of departmental usage of federal funding; and the adoption of rules recommended by the director of the department; and
- WHEREAS, the Workforce Development Board meets the requirements of the federal Workforce Investment Act of 1998, Chapter 1, Section 111, as an alternative entity that is substantially similar to the State Workforce Investment Board described therein; and
- WHEREAS, the Workforce Development Department Governing Board created by Executive Order Number 59, under Governor Branstad, has similar duties and responsibilities to the Workforce Development Board described herein; and
- WHEREAS, the Iowa Workforce Development Board continues to fulfill its duties under Iowa law.
- NOW, THEREFORE, I Thomas J. Vilsack, Governor of the State of Iowa, by the power vested in me by the Laws and the Constitution of the State of Iowa, do hereby order that:
- I. Executive Order Number 59 shall be rescinded.

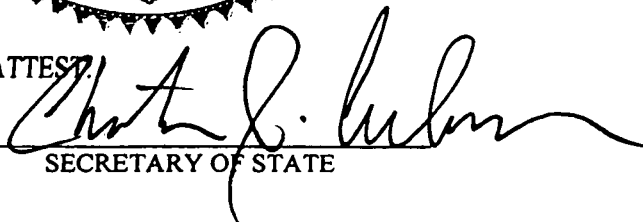
- II. The Iowa Workforce Development Board shall be deemed to be the state Workforce Investment Board under the federal Workforce Investment Act of 1998, and shall have the responsibility to serve the functions assigned under that federal act.
- III. The Workforce Development Department shall provide the necessary coordination and support needed to permit the Iowa Workforce Development Board to fulfill its duties under state and federal law.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 25<sup>th</sup> day of January in the year of our Lord one thousand nine hundred and ninety-nine.

  
GOVERNOR

ATTEST

  
SECRETARY OF STATE

**\*SUMMARY OF DECISIONS  
THE SUPREME COURT OF IOWA  
FILED JANUARY 21, 1999**

*Note:* Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA, 50319, for a fee of 40 cents per page.

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**No. 98-1644. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT v. SUNLEAF.**

On review of the report of the Grievance Commission. **ATTORNEY REPRIMANDED.** Considered by Harris, P.J. and Carter, Neuman, Snell, and Ternus, JJ. Opinion by Harris, J. (3 pages \$1.20)

The grievance commission has recommended that attorney Roger Sunleaf be reprimanded for commingling his own funds with his clients' trust accounts, denying the commingling in a letter to our ethics board, and certifying there was no commingling of funds on his 1997 client security combined statement and questionnaire. **OPINION HOLDS:** The commission was convinced this episode is an aberration. Sunleaf's reputation for honesty was established by lawyers of unquestioned ability and discernment, and he has come to terms with his alcoholism. An audit uncovered no evidence of misappropriation of client funds. We accordingly accede to the commission's recommendation. Roger W. Sunleaf is hereby publicly reprimanded.

**No. 98-1771. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT v. DOUGHTY.**

On review of the report of the Grievance Commission. **LICENSE SUSPENDED.** Considered by McGiverin, C.J., and Larson, Lavorato, Snell, and Cady, JJ. Opinion by Larson, J. (4 pages \$1.60)

H. Reed Doughty of Davenport, Iowa, failed to file federal and Iowa income tax returns from 1985 through 1995 and pled guilty to federal misdemeanor charges involving four of those years. He served time under a federal sentence. He was temporarily suspended by this court on September 12, 1997, under Court Rule 118.14. Following a hearing, our grievance commission recommended Doughty's license be suspended for a minimum of eighteen months from the date of his temporary suspension. **OPINION HOLDS:** Based on our prior cases and the substantial number of years involved in this case, we conclude that a minimum suspension of eighteen months is warranted. It is ordered that Doughty's license be suspended indefinitely with no possibility of reinstatement until eighteen months following his temporary suspension of September 12, 1997. Any reinstatement shall be conditioned on Doughty's demonstration that he is in compliance with all restitution plans regarding his income taxes. Costs are assessed to Doughty.

**No. 98-1598. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT v. CARR.**

On appeal from the report of the Grievance Commission. **LICENSE REVOKED.** Considered by Larson, P.J., and Lavorato, Neuman, Snell, and Cady, JJ. Opinion by Cady, J. (5 pages \$2.00)

This attorney disciplinary proceeding involves a request by lawyer Donald L. Carr, II for a bogus fee from a client, and his failure to subsequently account for the receipt of the money to his law firm. The grievance commission found the conduct constituted moral turpitude, as well as dishonesty, fraud, deceit, or misrepresentation in violation of various disciplinary rules. It recommended revocation of the license to practice law. **OPINION HOLDS:** I. On our de novo review we agree with the findings of the commission. Carr's claim that he was benevolently holding the money for the client's daughter is utterly implausible. Carr was dishonest to his client and his firm, and this dishonesty permeated his defense. The credible evidence convincingly reveals Carr falsely represented to his client a fee was due. It also revealed he accepted this false fee, and failed to account for the receipt of the money to his law firm. He violated DR 1-102(A)(3) and (4). II. Although the violation in this case was confined to a single episode, it involved several serious dishonest acts. We are obliged to protect the public from theft and deceit. Carr's conduct shows he is unfit to continue to practice law. We therefore revoke his license to practice law. Costs are assessed to Carr.

**No. 98-1660. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT v. STEFFES.**

On review of the report of the Grievance Commission. **LICENSE SUSPENDED.** Considered en banc. Opinion by Ternus, J. (9 pages \$3.60)

Respondent, James C. Steffes of Creston, Iowa, took photographs of his partially-clothed client under the pretext of documenting her back injury. Our grievance commission found that he violated disciplinary rules prohibiting engaging in (1) conduct that is prejudicial to the administration of justice, (2) conduct that adversely reflects on the fitness to practice law, and (3) sexual harassment. The commission recommended a six-month suspension. **OPINION HOLDS:** I. Steffes's bold exploitation of a vulnerable client reflects adversely on his fitness to practice law and impeded his client's access to effective legal representation. II. We reject Steffes's argument that DR 1-102(A)(7) applies only to workplace discrimination. An attorney's sexual harassment of a client is just as unprofessional as the same treatment of an employee or partner. We conclude the photographs were sexual in nature, taken to satisfy Steffes's own prurient interests. We hold, therefore, that Steffes violated DR 1-102(A)(7) by engaging in sexual harassment of his client. III. Steffes exploited a very vulnerable client for his own sexual gratification. He then tried to get his client to destroy the photographs. Finally, in arguing for leniency before the commission, Steffes attempted to shift the focus to his client's bad character and her failure to actively resist his requests or exhibit emotion when she was photographed. We conclude that Steffes's actions warrant a two-year suspension. As a condition of license reinstatement, Steffes will be required to demonstrate that he has completed formal training in sensitivity to sexual harassment issues to prevent a reoccurrence of his misconduct. Costs are taxed to Steffes.



**No. 98-1772. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT v. RUNGE.**

On review of the report of the Grievance Commission. **LICENSE SUSPENDED.** Considered by Larson, P.J., and Lavorato, Neuman, Snell, and Cady, JJ. Opinion by Lavorato, J. (6 pages \$2.40)

The Iowa Supreme Court Board of Professional Ethics and Conduct alleged, and the Grievance Commission found, that Ronald E. Runge failed to file state income tax returns for four years and pay the taxes on the dates due. The commission recommended a ninety-day suspension. **OPINION HOLDS:** We agree with the commission that the board has established by a convincing preponderance of the evidence that Runge failed to pay his Iowa income tax and failed to file his state returns on the due dates for the four years involved. After carefully considering sanctions in other comparable tax cases and Runge's previous ethical violation, we think the appropriate sanction in this case is a six-month suspension. We therefore suspend Runge's license to practice law in this state indefinitely, with no possibility of reinstatement for six months from the filing date of this opinion. Costs are assessed against Runge.

**No. 96-2032. GODAR v. EDWARDS.**

Appeal from the Iowa District Court for Linn County, David M. Remley, Judge. **AFFIRMED AND REMANDED.** Considered by McGiverin, C.J., and Harris, Carter, Snell and Ternus, JJ. Opinion by McGiverin, C.J. (17 pages \$6.80)

Plaintiff Luke Godar filed an action naming as defendants, the school district and Gerald Edwards, seeking damages for sexual abuse allegedly perpetrated upon him by Edwards who was curriculum director for the school district. Godar's action raised claims of intentional torts by Edwards and negligence by the school district. At trial, Godar's counsel moved to reopen his case in chief against both defendants on grounds another individual came forward stating he was also sexually abused by Edwards when he was a student in the school district. The district court overruled the motion. Thereafter, the court granted the school district's directed verdict motion as to all counts of Godar's petition. Godar appeals. **OPINION HOLDS:** I. We agree with the district court's determination that any alleged sexual abuse by Edwards was not an act committed within the scope of his employment for which the school district may be held liable under the doctrine of respondeat superior. II. We conclude the district court properly granted the school district's motion for directed verdict concerning Godar's claim of negligence in not preventing the alleged sexual abuse by Edwards. III. We now join those jurisdictions that have recognized a claim by an injured third party for negligent hiring, including actions for negligent retention and negligent supervision, and conclude an employer has a duty to exercise reasonable care in hiring individuals, who because of their employment, may pose a threat of injury to members of the public. We believe the district court properly concluded the school district was not liable for negligence in hiring, retaining or supervising Edwards. IV. We believe the district court did not abuse its discretion in overruling Godar's motion to reopen the case. We affirm the district court judgment as to the school district.

**No. 97-1150. SIMONSON v. SNAP-ON TOOLS CORP.**

Appeal from the Iowa District Court for Kossuth County, John P. Duffy, Judge. **AFFIRMED ON BOTH APPEALS.** Considered by McGiverin, C.J., and Harris, Carter, Snell and Ternus, JJ. Opinion by McGiverin, C.J.

(13 pages \$5.20)

Nancy Simonson sustained work-related injuries while employed by Snap-On Tools. After her discharge by Snap-On Tools, Simonson attempted to find other work, but her ability to perform certain physical tasks such as lifting continued to be limited by her work injuries. On Simonson's claims for workers' compensation benefits, the industrial commissioner awarded Simonson an industrial disability award of thirty-five percent and permanent partial disability benefits. Also, the commissioner awarded no penalty benefits Simonson requested for the period up to April 10, 1990. These awards were essentially affirmed during judicial review proceedings except for a remand on an issue of temporary disability benefits. Simonson then filed a review-reopening petition with the commissioner seeking an increase in the industrial disability award. She also sought a determination on her claim from the petition of March 6, 1991, for penalties pursuant to Iowa Code section 86.13 for the delay in payments since the April 10, 1990 arbitration hearing. The commissioner determined that Simonson was not entitled to penalty benefits for any alleged delay in payment of benefits by Snap-On. The commissioner also refused to rule on the merits of the penalty claim. On judicial review, the district court affirmed the decision of the commissioner concerning Simonson's review-reopening claim, but found the commissioner erred in deciding that Simonson's claim for penalties was barred on res judicata and jurisdictional grounds. Simonson appeals. Snap-On and its insurer, Royal Insurance Company, cross-appeal from the district court's decision on the penalty issue. **OPINION HOLDS:** I. The commissioner, after adequately considering all relevant factors regarding the review-reopening petition, properly decided Simonson failed to show she sustained an economic change of condition since the original award such as to justify an increase in compensation benefits. While it is true that Simonson has sustained a reduction in earnings since her separation from Snap-On, that reduction in earnings is in substantial part the result of personal decisions and not proximately caused by her original work-related injury. We affirm the the district court judgment regarding the review-reopening claim. II. A. The district court properly determined that Simonson's current claim for penalty benefits under section 86.13 was not barred by res judicata. The decision on penalty benefits in prior proceedings only covered alleged delay in payments for the time up to the arbitration decision and not the claim for the subsequent period. B. The district court properly determined that the commissioner's jurisdiction was in no way limited by the prior remand decision. C. An employee may pursue both a claim for penalty benefits for delay in payment of benefits pursuant to section 86.13 and may seek to enforce an award pursuant to section 86.42 by obtaining a judgment in district court based on the commissioner's award of benefits. We agree with the district court that the case must be remanded to the commissioner for determination on the merits of Simonson's claim for penalty benefits.

**No. 98-112. STATE v. NEUZIL.**

Appeal from the Iowa District Court for Washington County, Phillip R. Collett, Judge. **AFFIRMED.** Considered by Larson, P.J., and Lavorato, Neuman, Snell, and Cady, JJ. Opinion by Neuman, J. (8 pages \$3.20)

Defendant was charged with stalking in violation of a protective order. Prior to trial, defendant's counsel submitted a written request for the uniform jury instruction on specific intent. At the close of evidence, however, the court gave the uniform instruction on general intent. The jury found defendant guilty as charged and he appeals. **OPINION HOLDS:** By its terms, the crime of stalking merely requires proof of purposeful conduct directed at a specific person that would cause *a reasonable person* to fear injury to that specific person or members of her family. The statute's focus is not on the defendant's mental state but on the result defendant's purposeful acts cause in a reasonable person. The crime of stalking is a general-intent crime, and the court committed no error in submitting a jury instruction on general intent. Accordingly his trial counsel was not ineffective for failing to pursue a jury instruction on the issue of specific intent. The district court's judgment is affirmed.

**No. 97-1117. STATE v. CAMPBELL.**

Appeal from the Iowa District Court for Black Hawk County, James D. Coil and J.G. Johnson, District Associate Judges. **REVERSED AND REMANDED WITH INSTRUCTIONS.** Considered by Larson, P.J., and Lavorato, Neuman, Snell, and Cady, JJ. Opinion by Neuman, J. (7 pages \$2.80)

Robert Campbell pleaded guilty to eighty-four charges stemming from only eight traffic stops. He pleaded guilty to numerous driving under suspension (DUS) charges under different Code sections, as well as multiple charges under the same Code section. On appeal Campbell claims his counsel was ineffective for allowing him to plead guilty to multiple DUS offenses which arose out of one driving episode. He claims those pleas lacked a factual basis. He also claims his sentences for marijuana possession must be vacated. **OPINION HOLDS:** I. The crux of Campbell's argument is that each separate driving episode may yield but one DUS offense, no matter how many times and how many ways the license has been suspended. We conclude a series of suspensions based on the same statute may only give rise to one conviction for a single driving episode. Multiple convictions per driving episode can only be based on multiple suspensions if the suspensions have been imposed under different statutes. The excessive charges do not have a factual basis and must be dismissed. We therefore reverse and remand for further proceedings. II. The State concedes that the court erred when it imposed two one-year sentences on Campbell's two convictions for marijuana possession. These particular judgments must be vacated and remanded for resentencing.

**No. 97-2127. STATE v. NOE.**

Appeal from the Iowa District Court for Black Hawk County, James D. Coil, District Associate Judge. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED WITH INSTRUCTIONS.** Considered by Larson, P.J., and Lavorato, Neuman, Snell, and Cady, JJ. Per curiam. (2 pages \$ .80)

Jonathan Noe stands convicted, among other crimes, of five counts of driving under suspension (DUS). The convictions stemmed from one driving episode, but were based on five separate notices of suspension Noe received for nonpayment of fines. Noe appeals, claiming his counsel was ineffective for failing to challenge the multiple DUS charges. **OPINION HOLDS:** In another opinion filed today, *State v. Campbell*, \_\_\_ N.W.2d \_\_\_ (Iowa 1999), we held that no factual basis exists "for entry of multiple pleas to DUS for one driving episode where the charges merely reflect the original suspension, and extensions thereof, for violation of the same Code section." Accordingly, Noe would have been entitled to judgment of acquittal on the four excess charges. Trial counsel was ineffective for failing to move to dismiss the charges or move for judgment of acquittal. We therefore reverse and remand for dismissal of the four excess DUS charges. Because the remaining DUS charge is supported by substantial evidence, we affirm that conviction but vacate the sentence and remand for resentencing.

**No. 97-1557. KEPPLER v. AMERICAN FAMILY MUT. INS. CO.**

Appeal from the Iowa District Court for Clayton County, John Bauercamper, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Harris, Carter, Snell, and Ternus, JJ. Opinion by Harris, J. (4 pages \$1.60)

In 1992 a minor child entered the back of Eugene Keppler's parked van and was bitten by his dog. The engine was not running; the keys were not even in the ignition. Upon being sued on behalf of the injured child, Keppler brought this action against American Family Insurance Co., claiming coverage under his policy. The policy provided coverage when an insured is legally liable for damages "due to the use of a car." On a motion and cross-motion for summary judgment, the court entered a ruling favoring Keppler's claim of coverage. American Family appeals. **OPINION HOLDS:** We conclude no coverage was provided for Keppler's loss. The words "due to" cannot be stretched to situations where there is no connection between the injury and a vehicle being—at least remotely—used as such. Because Keppler's van was not in any manner functioning as a vehicle at the time, there was no connection between the injury and the use of a vehicle for the triggering of coverage. The case must be reversed and remanded for entry of judgment in favor of American Family, finding no coverage. This conclusion renders moot Keppler's claim for attorney fees.

**No. 97-1142. AMERICAN FIRE & CAS. CO. v. FORD MOTOR CO.**

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Harris, Carter, Snell, and Ternus, JJ. Opinion by Harris, J.  
(5 pages \$2.00)

The plaintiff brought a products liability action against the defendant. It claimed a defect caused a 1991 pickup truck, designed, manufactured, and distributed by the defendant, to catch fire, causing property damage to the truck and its contents. The trial court dismissed the claim for loss of the product itself. The plaintiff appeals. **OPINION HOLDS:** I. The economic-loss theory prohibits tort recovery for purely economic losses, consigning such claims to contract law. The line to be drawn is one between tort and contract rather than between physical harm and economic loss. Tort theory is generally only available when the harm results from a sudden or dangerous occurrence, frequently involving some violence or collision with external objects, resulting from a genuine hazard in the nature of the product defect. II. The common thread running through our cases rejecting recovery is the lack of danger created by the defective product. Recovery is denied where the product merely failed to perform as expected, and the plaintiff suffered the loss of the benefit of the bargain. Our cases have distinguished between disappointed consumers and those who were actually endangered by a defective product. III. A truck starting itself on fire qualifies more as a danger than as a disappointment. The dismissal of the case must be reversed and the matter remanded to district court to proceed on its merits.

**No. 97-1741. VOGAN v. HAYES APPRAISAL ASSOCS., INC.**

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Polk County, Ray A. Fenton, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by McGiverin, C.J., and Harris, Carter, Snell, and Ternus, JJ. Opinion by Carter, J.  
(10 pages \$4.00)

In June 1989 Rollin and Susan Vogan contracted with Gary Markley to build them a new home in West Des Moines. The Vogans obtained a \$170,000 mortgage from MidAmerica Savings Bank. MidAmerica orally contracted with Hayes Appraisal to do the initial appraisal and make periodic appraisals of the construction's progress. MidAmerica agreed to disburse payments based on Hayes Appraisal's progress reports. Construction began in November 1989, but by February 1990, only \$2000 remained of the original loan due to cost overruns. The Vogans took out an additional mortgage and used their private funds for completion of the home. On March 20, 1990, Hayes Appraisal reported that the home was sixty percent complete, and eight days later reported the home was ninety percent complete. MidAmerica had dispersed virtually all the construction funds. Markley subsequently defaulted on the project. The Vogans stopped making mortgage payments and ultimately reached a settlement with MidAmerica on its foreclosure action. The Vogans then filed an action against Hayes Appraisal, claiming it negligently certified the construction's completion. Hayes Appraisal filed a motion for summary judgment, arguing it could not have proximately caused harm to the Vogans because MidAmerica had already

**No. 97-1741. VOGAN v. HAYES APPRAISAL ASSOCS., INC.** (continued)

dispersed most of the funds prior to the March 1990 report. The motion was denied. Following trial, a jury awarded damages to the Vogans. On appeal the court of appeals reversed, concluding the March 1990 report did not result in any damages to the Vogans because MidAmerica had already dispersed more funds than recommended. We subsequently granted further review. **OPINION HOLDS:** I. We conclude the Vogans qualify as third-party beneficiaries of the agreement between MidAmerica and Hayes Appraisal, since the purpose of the progress reports from Hayes to MidAmerica was to provide them with protection for monies invested in their new home. II. We also conclude that, although the initial \$170,000 construction loan might have been disbursed prior to the faulty completion estimate, the erroneous reporting of the project's completion caused MidAmerica to disburse other funds that would have been retained had the report been accurate. We find support for the jury's verdict that the faulty progress reports caused some injury to the Vogans. III. We are convinced that, to the extent the Vogans' recovery included sums advanced to Markley by MidAmerica based on an inaccurate report from Hayes Appraisal, that element of recovery was not beyond Hayes' contemplation at the time it contracted with MidAmerica. We vacate the court of appeals decision and affirm the district court judgment.

**No. 97-1464. IN RE MARRIAGE OF CUTLER.**

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Jefferson County, Robert Bates, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT REVERSED.** Considered by McGiverin, C.J., and Harris, Carter, Snell, and Ternus, JJ. Opinion by Carter, J. (10 pages \$4.00)

In August 1995 Jonathan and Tere Cutler discussed the impending dissolution of their marriage. They contacted Kenneth Ketterhagen, a family friend and attorney, who informed them he could only represent one of them but would agree to act as a mediator. In September 1995 Tere, without her own counsel, attended a conference with Ketterhagen. During this period, Ketterhagen also represented several of Jonathan's employees and Ketterhagen and Jonathan were financially intertwined in a business venture. The parties discussed financial settlements that Tere found unsatisfactory. In October 1995 Ketterhagen drew up a stipulation and arranged for another attorney, Stephan Small, to represent Tere at the next conference. The parties ultimately signed the stipulation and Ketterhagen requested the court waive the filing of financial affidavits. Following entry of the decree, Tere discovered that Jonathan considered selling his ophthalmology practice for \$2 million. The sale, however, did not take place. Tere obtained new counsel and filed a petition under Iowa Rule of Civil Procedure 252(b) based on fraud. The district court concluded that, although there was significant irregularities in the original decree, they stopped short of fraud. The court, however, found that Tere was underrepresented during the dissolution proceedings, justifying vacation of the decree pursuant to rule 252(b). On appeal the court of appeals affirmed on different grounds, holding that Jonathan's and Ketterhagen's actions were sufficient to prove extrinsic fraud. We granted further review. **OPINION HOLDS:** I. We conclude that circumstances were insufficient to establish irregularity cognizable under rule 252(b). II. We

**No. 97-1464. IN RE MARRIAGE OF CUTLER.** (continued)

conclude that, although certain aspects of Ketterhagen's role raised questions of possible dual representation, the consequences of such action on Tere's decision to settle for an agreed amount without a trial do not establish fraud as a matter of law. There is ample evidence in the record that Tere negotiated assertively until reaching an agreement to her satisfaction. We vacate the court of appeals decision and reverse the district court judgment.

**No. 97-927. FRANK MILLARD & CO. v. HOUSEWRIGHT LUMBER CO.**

Appeal from the Iowa District Court for Des Moines County, William L. Dowell, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Carter, Lavorato, Snell, and Cady, JJ. Opinion by Carter, J. (5 pages \$2.00)

Housewright Lumber Company was the general contractor and Frank Millard & Company a subcontractor on a project. Millard submitted a bid for the mechanical portion of the project, but not for pipe and duct insulation work desired by Housewright. Housewright mailed a contract to Millard after Millard had begun work. The contract added \$2000 to the bid for insulation work. Millard refused to sign due to uncertainty about the extent of the work required. Three months later the parties signed an identical contract containing a handwritten addendum added by Millard: "At end of project we will review the cost of duct insulation and responsibility." After completing work, Millard invoiced Housewright an additional \$12,000.56 for the insulation work, which Housewright refused to pay. Millard filed suit, and following a bench trial, the district court found in Millard's favor. Housewright appeals. **OPINION HOLDS:** I. We find the evidence supports the district court's interpretation that the addendum required Housewright to pay Millard on a time-and-material basis for all insulation work actually performed, including both pipe and duct insulation. II. We reject Housewright's argument that Millard should be denied recovery for failing to present evidence that its labor rates and material costs were fair and reasonable. Millard's recovery was not based on *quantum meruit*, but on an express contract. We affirm the district court's judgment.

**No. 97-1679. STATE v. MOELLER.**

Appeal from the Iowa District Court for Black Hawk County, Walter W. Rothschild, District Associate Judge. **AFFIRMED.** Considered by Larson, P.J., and Lavorato, Neuman, Snell, and Cady, JJ. Opinion by Larson, J. (5 pages \$2.00)

A court entered a no-contact order against Dean Moeller based on his abusive conduct, prohibiting him from having any contact with his wife, Karen, or her two children. Months later, Karen called the police and said that she and Moeller had been living together since the entry of the no-contact order. Moeller was later arrested for violating the no-contact order. Karen provided the police with a handwritten statement explaining that she and Moeller had been living together in violation of the court's no-contact order. At the time of Moeller's



**No. 97-1679. STATE v. MOELLER. (continued)**

trial, Karen refused to testify because she also was facing charges. The State introduced Karen's handwritten statement. The court found Moeller guilty of violating the no-contact order but made no specific finding whether Moeller did so willfully. We granted Moeller's application for discretionary review. **OPINION HOLDS:** I. Karen's written statement was merely cumulative of other evidence properly in the record, and its admission therefore was not prejudicial. II. Moeller contends the court erred in not requiring a showing of willful disobedience of a court order. Moeller was not cited for contempt; he was charged with a simple misdemeanor violation, as permitted by Iowa Code section 236.8 (Supp. 1995). Under the criminal prosecution alternative of section 236.8, the State need not prove willfulness. Even if we were to accept Moeller's argument, the facts in this case compel a finding that he willfully violated the order. We affirm.

**No. 97-1215. COMPIANO v. HAWKEYE BANK & TRUST.**

Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Carter, Snell, and Ternus, JJ. Opinion by Ternus, J. (7 pages \$2.80)

This appeal arises out of the same circumstances as does another appeal we decide today, *Financial Marketing Services, Inc. v. Hawkeye Bank & Trust*, \_\_\_ N.W.2d \_\_\_ (Iowa 1999). In the present case, independent insurance agents licensed through Financial Marketing Services, Inc. brought suit against Hawkeye, claiming Hawkeye's actions interfered with their existing contracts and their prospective business relations. The district court granted summary judgment for Hawkeye and the agents appeal. **OPINION HOLDS:** I. The agents' contracts with the individual banks were terminable at will and are more properly protected as a prospective business advantage rather than as a contract. Consequently, the higher standard of proof requiring substantial evidence that the defendant's predominant or sole motive was to damage the plaintiff is required. II. The evidence shows Hawkeye made a decision to sell life insurance and annuities without the assistance of outside agents. There is not substantial evidence that this decision was motivated by anything other than Hawkeye's desire to improve its own financial condition and improve its service to its clients. While Hawkeye's efforts had the incidental effect of adversely affecting the independent agents' business, they are not evidence of a predominant motive to injure or destroy the agents' present or future contractual relations. The district court correctly concluded the agents could not recover on their claims of intentional interference as a matter of law and we affirm its grant of summary judgment.

**No. 96-2002. FINANCIAL MARKETING SERVICES, INC. v. HAWKEYE BANK & TRUST.**

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge. **AFFIRMED ON APPEAL; REVERSED AND REMANDED ON CROSS-APPEAL.** Considered by McGiverin, C.J., and Harris, Larson, Neuman, and Ternus, JJ. Opinion by Ternus, J. (20 pages \$8.00)

Written contracts provided for the sale of life insurance and annuity products by plaintiff Financial Marketing Services, Inc. (FMS) to customers of defendant Hawkeye Bank. When Hawkeye began to internalize its life insurance and annuity programs, FMS filed suit. The district court granted temporary injunctive relief pending a decision on the merits, and FMS was required to post a \$250,000 bond. The district court granted Hawkeye's motion for summary judgment on FMS's request for declaratory and injunctive relief and its claims of tortious interference. After the close of evidence, the trial court granted Hawkeye's motion for directed verdict on the unjust enrichment claim, and the jury returned a verdict in the bank's favor on the contract claim. Over Hawkeye's objections, the trial court granted FMS's motion to release it from its obligation to post security and to exonerate it and its surety from any liability on the bond and. FMS appeals the district court's rulings on Hawkeye's motions for summary judgment and directed verdict and in its cross-appeal Hawkeye challenges FMS's motion on the bond. **OPINION HOLDS:** I. FMS's vesting privileges under the 1983 contract are not equivalent to ownership of the book of business developed while that contract was in effect. The 1990 contract between the parties does not provide protection to FMS against competition from Hawkeye upon termination of the agreement. A covenant not to compete is not essential to effectuate the parties' intent under the 1990 contract, and cannot be implied. The district court properly granted summary judgment on the claims for declaratory and injunctive relief. II. There is not substantial evidence in the record to show that Hawkeye acted improperly or that it acted with the sole or predominant purpose to financially injure or destroy FMS, and the district court correctly granted summary judgment on the tortious interference claims. III. Because FMS did not own the clients who had been referred by Hawkeye and its affiliated banks, Hawkeye did not obtain anything that rightfully belonged to FMS when Hawkeye solicited these clients. There is not substantial evidence to support a finding of unjust enrichment, and the district court did not err in directing a verdict on this claim. IV. The district court erred in exonerating the bond and releasing the surety. Hawkeye has a due process right to be heard on its claim for damages prior to a decision on whether the bond should be exonerated and the surety released.

**No. 97-2218. STATE v. AYERS.**

Appeal from the Iowa District Court for Henry County, John C. Miller, Judge. **SENTENCES VACATED; REMANDED FOR RESENTENCING.** Considered by Larson, P.J., and Lavorato, Neuman, Snell, and Cady, JJ. Opinion by Lavorato, J. (15 pages \$6.00)

A jury convicted Cyrus Tao Tai Chi Ayers of willful injury, while using a dangerous weapon, and eluding. The district court sentenced Ayers to an indeterminate ten-year prison term on the willful injury conviction and ordered him

**No. 97-2218. STATE v. AYERS. (continued)**

to serve at least five years of the sentence imposed because willful injury is a forcible felony. The court also imposed a concurrent, indeterminate two-year prison term on the eluding charge. In addition, the court imposed a \$500 fine for each conviction. Ayers appeals only from the sentence imposed. He argues the sentencing court failed to exercise its discretion as to the imposition of the five-year mandatory minimum sentence and as to the fines. **OPINION HOLDS:** I. The State's error preservation claims must fail. We consider the court's failure to exercise its discretion a defective sentencing procedure to which our error preservation rules do not apply. II. Under the plain language of Iowa Code section 901.10 (1997), the sentencing court had the discretion to order Ayers to serve less than the five-year mandatory minimum sentence. The record shows, however, the parties and the court were under the erroneous impression that the court had no discretion. Because the court did not exercise its discretion, we vacate that portion of the sentence imposing a five-year mandatory minimum and we remand for resentencing on that portion of the sentence. III. Based upon our prior case law, the statutory language of Iowa Code section 903.1, and the absence of any language to the contrary, we conclude a court has the discretion to suspend the fine for aggravated misdemeanors called for in section 903.1(2). The record shows that the parties and the court were unaware that the court had the authority to suspend the fine on the eluding charge. Because the court did not exercise its discretion, we must vacate the sentence of fine on the eluding conviction and remand for resentencing on that portion of the sentence. IV. We conclude a sentencing court is not required to impose a fine for a class "C" felony under Iowa Code section 902.9(3). The record again reveals that both parties and the court erroneously believed the court lacked discretion not to impose a fine. We therefore vacate the \$500 fine imposed on the willful injury conviction and remand for resentencing on this issue.

**No. 97-1075. IN RE MARRIAGE OF HUTCHINSON.**

Appeal from the Iowa District Court for Webster County, Kurt L. Wilke, Judge. **AFFIRMED.** Considered by Larson, P.J., and Lavorato, Neuman, Snell, and Cady, JJ. Opinion by Lavorato, J. (14 pages \$5.60)

Roy and Sela Hutchinson's marriage was dissolved and Roy was granted primary physical care of their son, Jacob. During the dissolution proceedings, Roy sought to obtain Sela's privileged medical and mental health records and testimony from health care professionals regarding their treatment of her. The issue again arose in proceedings to modify the visitation provisions of the dissolution decree. Roy then filed civil suits on Jacob's behalf against Sela's medical health providers, seeking money damages for loss of parental consortium. Roy again sought production of Sela's medical records. The court ordered disclosure of the records to the attorneys and experts involved in the suit. Roy sought to expand the ruling to allow use of the records when deposing Sela, her therapists, and nontreating experts, relying on Iowa Code section 622.10 (1997). The district court refused, absent Sela's waiver of the privilege. Roy appeals. **OPINION HOLDS:** We reject Roy's imaginative attempt to trigger the section 622.10 patient-litigant exception to the privilege in this case. We find Jacob is not "claiming through or under" his mother in his consortium claim, as required to trigger the statutory exception. Those words refer to a person acting in a representative capacity. Sela is not a party to the litigation either in an individual or a representative capacity. We affirm the district court's ruling.

**No. 97-2058. STATE v. LEMONS.**

Appeal from the Iowa District Court for Lee County, Harlan W. Bainter, Judge. **SENTENCE VACATED; REMANDED FOR RESENTENCING.** Considered by Larson, P.J., and Lavorato, Neuman, Snell, and Cady, JJ. Per curiam. (2 pages \$0.80)

A jury found Michael Ray Lemons guilty of child endangerment and simple assault. As part of his sentence the district court imposed a \$500 fine on the child endangerment conviction. Lemons appeals, arguing the district court failed to exercise its discretion with respect to the fine. **OPINION HOLDS:** I. In *State v. Ayers*, \_\_\_ N.W.2d \_\_\_, \_\_\_ (Iowa 1999), filed today, we held a sentencing court has discretion to suspend a fine imposed upon an aggravated misdemeanor pursuant to Iowa Code section 903.1(2) (1997). In imposing the fine on the child endangerment conviction, the court used the terms "mandatory \$500 fine," leading us to conclude the court erroneously believed it had no discretion to suspend the fine. Because the court here did not exercise its sentencing discretion, we vacate only that portion of the sentence imposing the fine. We remand for resentencing as to the fine.

**No. 97-95. BARATTA v. POLK COUNTY HEALTH SERVS., INC.**

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge. **REVERSED AND REMANDED.** Considered en banc. Opinion by Snell, J. Concurrence in part and dissent in part by Carter, J. (18 pages \$7.20)

A Nebraska court dissolved Sandra and Frank Baratta's marriage in 1970. Frank failed to pay child support and Sandra alleges he is \$63,632.69 in arrears. Frank subsequently moved to Polk County and married Rose, his current wife. In 1989 they purchased a home in Polk County as joint tenants, which they claimed as their homestead. In an attempt to collect the unpaid child support, Sandra registered the Nebraska divorce decree in the Polk County District Court clerk's office in 1992. In December 1995, Frank and Rose Baratta sold their homestead property to Polk County Health Services (PCHS). Sandra's judgment against Frank was inadvertently omitted from the abstract and was not uncovered as a cloud on the title at the time of sale. In April 1996, Sandra filed a foreclosure petition against PCHS in an attempt to enforce the judgment lien. PCHS filed a counterclaim seeking to quiet title in the property and requesting attorney fees. Both parties filed motions for summary judgment. The district court granted Sandra's motion, concluding she had a valid lien against the property which could be enforced against PCHS. The court foreclosed the lien, rendered judgment in favor of Sandra for \$63,632.69, and ordered special execution to issue for sale of the property. PCHS appeals. **OPINION HOLDS:** I. The homestead exemption prevents both execution against homestead property and the attachment of judgment liens unless a statutory exception applies. II. The statutory exception for prior existing debts does not apply to Rose's interest in the homestead property as she is not a judgment debtor for the outstanding child support. Despite Frank's liability for the child support debt, Rose's ownership interest in the property prevented the judgment lien from attaching. III. There was no

**No. 97-95. BARATTA v. POLK COUNTY HEALTH SERVS., INC.**  
(continued)

judgment lien attached to the property at the time PCHS purchased the property and consequently there is no lien upon which to foreclose. IV. Property owned as a homestead passes free and clear of any debts of the grantor. We reject Sandra's argument that the lien attached at the time of sale. V. Iowa Code section 624.23 (1995) is used to clear title and does not apply to this case because Rose's homestead interest prevented Sandra's judgment lien from being enforceable against the property. VI. We reverse and remand for entry of judgment in favor of PCHS. PCHS's title to the property at issue is quieted against all claims raised by Sandra. We award \$25 in attorney fees to PCHS pursuant to Iowa Code section 649.5. **CONCURRENCE IN PART AND DISSENT IN PART ASSERTS:** I concur in the conclusion that the district court erred in granting summary judgment for Sandra. The court's opinion is wrong, however, in holding that Sandra's claim must fail as a matter of law and that PCHS should prevail as a matter of law. There are issues of fact that, if resolved in Sandra's favor, should allow her to foreclose her judgment lien on the undivided one-half interest in the subject property that had been owned by Frank. The majority mistakenly concludes that the occupancy right of the co-owner that is not subject to the judgment somehow prevents the judgment lien from attaching to the interest of the other co-owner that is subject to the judgment. There is no language in the applicable statutes that suggests this is so. I would reverse the district court judgment and remand for further proceedings to resolve the factual issues that might stand as a bar to or reduction of her recovery.

**No. 97-1484. LOVICK v. WIL-RICH.**

Appeal from the Iowa District Court for Grundy County, Todd Geer, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Carter, Lavorato, Snell, and Cady, JJ. Opinion by Cady, J. (22 pages \$8.80)

On May 20, 1993, Leo Lovick set out to cultivate a field preparatory to spring planting. The wings of the cultivator were in the upright, vertical position to accommodate its transportation. The wings were secured in the upright position by a metal pin manually inserted under each wing, near the rear of the implement. The pins were designed to hold the wing in the vertical position in the event of hydraulic or mechanical failure. Lovick was severely injured when a wing immediately fell after he removed the pin. Lovick instituted a strict liability and negligence action against Wil-Rich, seeking compensatory and punitive damages. The trial court submitted the case to the jury on the strict liability theory of defective design and the negligence claim of breach of a post-sale duty to warn. The jury returned a verdict for Lovick. Wil-Rich appeals. **OPINION HOLDS:** I. We believe the post-sale failure to warn instruction must be more specific. We adopt the Restatement (Third) of Torts: Products Liability § 10 (1997), including the need to articulate the relevant factors to consider in determining the reasonableness of providing a warning after the sale. Accordingly, it was prejudicial error for the district court to only submit a general reasonable standard of care instruction to the jury. II. We cannot conclude the district court abused its discretion by admitting evidence of the safety program Deere &

**No. 97-1484. LOVICK v. WIL-RICH. (continued)**

Company instituted after it learned of injuries sustained by operators of their similarly designed cultivator. III. We find evidence of five prior accidents admitted by the court was clearly relevant and was highly probative on the issue of the existence of a dangerous condition. IV. Although we recognize the merits of merging negligence and strict liability theories in design defect cases, we nevertheless decline the opportunity to do so in this case. V. Viewing the evidence in the light most favorable to Lovick, we agree with the trial court that punitive damages were properly submitted to the jury. VI. We conclude the trial court properly overruled Wil-Rich's directed verdict motion alleging the danger was open and obvious. We reverse and remand for a new trial.









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