



IOWA ADMINISTRATIVE BULLETIN

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Pages 669 to 736

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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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Legislative Services Agency
Capitol Building
Des Moines, IA 50319
Telephone: (515)281-3568

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NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 3 '03	Jan. 22 '03	Feb. 11 '03	Feb. 26 '03	Feb. 28 '03	Mar. 19 '03	Apr. 23 '03	July 21 '03
Jan. 17	Feb. 5	Feb. 25	Mar. 12	Mar. 14	Apr. 2	May 7	Aug. 4
Jan. 31	Feb. 19	Mar. 11	Mar. 26	Mar. 28	Apr. 16	May 21	Aug. 18
Feb. 14	Mar. 5	Mar. 25	Apr. 9	Apr. 11	Apr. 30	June 4	Sept. 1
Feb. 28	Mar. 19	Apr. 8	Apr. 23	Apr. 25	May 14	June 18	Sept. 15
Mar. 14	Apr. 2	Apr. 22	May 7	May 9	May 28	July 2	Sept. 29
Mar. 28	Apr. 16	May 6	May 21	May 23	June 11	July 16	Oct. 13
Apr. 11	Apr. 30	May 20	June 4	June 6	June 25	July 30	Oct. 27
Apr. 25	May 14	June 3	June 18	June 20	July 9	Aug. 13	Nov. 10
May 9	May 28	June 17	July 2	July 4	July 23	Aug. 27	Nov. 24
May 23	June 11	July 1	July 16	July 18	Aug. 6	Sept. 10	Dec. 8
June 6	June 25	July 15	July 30	Aug. 1	Aug. 20	Sept. 24	Dec. 22
June 20	July 9	July 29	Aug. 13	Aug. 15	Sept. 3	Oct. 8	Jan. 5 '04
July 4	July 23	Aug. 12	Aug. 27	Aug. 29	Sept. 17	Oct. 22	Jan. 19 '04
July 18	Aug. 6	Aug. 26	Sept. 10	Sept. 12	Oct. 1	Nov. 5	Feb. 2 '04
Aug. 1	Aug. 20	Sept. 9	Sept. 24	Sept. 26	Oct. 15	Nov. 19	Feb. 16 '04
Aug. 15	Sept. 3	Sept. 23	Oct. 8	Oct. 10	Oct. 29	Dec. 3	Mar. 1 '04
Aug. 29	Sept. 17	Oct. 7	Oct. 22	Oct. 24	Nov. 12	Dec. 17	Mar. 15 '04
Sept. 12	Oct. 1	Oct. 21	Nov. 5	Nov. 7	Nov. 26	Dec. 31	Mar. 29 '04
Sept. 26	Oct. 15	Nov. 4	Nov. 19	***Nov. 19***	Dec. 10	Jan. 14 '04	Apr. 12 '04
Oct. 10	Oct. 29	Nov. 18	Dec. 3	Dec. 5	Dec. 24	Jan. 28 '04	Apr. 26 '04
Oct. 24	Nov. 12	Dec. 2	Dec. 17	***Dec. 17***	Jan. 7 '04	Feb. 11 '04	May 10 '04
Nov. 7	Nov. 26	Dec. 16	Dec. 31	Jan. 2 '04	Jan. 21 '04	Feb. 25 '04	May 24 '04
Nov. 19	Dec. 10	Dec. 30	Jan. 14 '04	Jan. 16 '04	Feb. 4 '04	Mar. 10 '04	June 7 '04
Dec. 5	Dec. 24	Jan. 13 '04	Jan. 28 '04	Jan. 30 '04	Feb. 18 '04	Mar. 24 '04	June 21 '04
Dec. 17	Jan. 7 '04	Jan. 27 '04	Feb. 11 '04	Feb. 13 '04	Mar. 3 '04	Apr. 7 '04	July 5 '04
Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
10	Friday, October 24, 2003	November 12, 2003
11	Friday, November 7, 2003	November 26, 2003
12	Wednesday, November 19, 2003	December 10, 2003

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.

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

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

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1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

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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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AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Whitetail, mule and farm deer— hunting preserves, CWD monitoring, slaughtering, fees, ch 57; amendments to chs 64, 76 IAB 10/1/03 ARC 2790B (See also ARC 2791B)	Auditorium Wallace State Office Bldg. Des Moines, Iowa	October 22, 2003 7 p.m.
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DENTAL EXAMINERS BOARD[650]

Public health supervision by dentists, 10.5, 10.6 IAB 9/17/03 ARC 2783B	Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	October 16, 2003 10 a.m.
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ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Endow Iowa grants program, ch 46 IAB 9/17/03 ARC 2753B	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	October 16, 2003 3 to 4 p.m.
Endow Iowa tax credits, ch 47 IAB 10/1/03 ARC 2797B	Main/ICN Conference Room 200 E. Grand Ave. Des Moines, Iowa	October 24, 2003 3 to 4 p.m.

EDUCATIONAL EXAMINERS BOARD[282]

School psychologist Class A license; Class C special education license, 15.3(8), 15.4 IAB 10/15/03 ARC 2881B	Room 2 South Second Floor Grimes State Office Bldg. Des Moines, Iowa	November 4, 2003 1 p.m.
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EDUCATION DEPARTMENT[281]

Funding for children residing in state institutions or mental health institutes, ch 34 IAB 10/1/03 ARC 2835B (ICN Network)	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 23, 2003 3 to 5 p.m.
	Western Hills AEA 12 1520 Morningside Ave. Sioux City, Iowa	October 23, 2003 3 to 5 p.m.
	AEA 267 706 Cedar Heights Dr. Cedar Falls, Iowa	October 23, 2003 3 to 5 p.m.

EDUCATION DEPARTMENT[281] (Cont'd)

Vocational education council; career academies, ch 47 IAB 10/1/03 ARC 2807B	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 22, 2003 1 p.m.
Regional academies—minimum weighting, maximum funding, 97.1, 97.4 IAB 10/1/03 ARC 2809B	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 22, 2003 3 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Drinking water program; operator and laboratory certification, amendments to chs 40 to 44, 81, 83 IAB 9/17/03 ARC 2779B	Arrowhead AEA 824 Flindt Dr. Storm Lake, Iowa	October 15, 2003 10 a.m.
Water quality standards, 61.2, 61.3, 62.8(2) IAB 9/17/03 ARC 2776B	Public Library Meeting Room A 123 S. Linn St. Iowa City, Iowa	October 15, 2003 11 a.m.
	Fifth Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	October 17, 2003 1 p.m.
Financial assurance requirements for municipal solid waste landfills, 111.3 to 111.6, 111.8 IAB 10/15/03 ARC 2863B	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 5, 2003 10 a.m.

HUMAN SERVICES DEPARTMENT[441]

FIP diversion program, amendments to ch 47 IAB 10/1/03 ARC 2816B	Second Floor Conference Room 126 S. Kellogg St. Ames, Iowa	October 23, 2003 3 to 6 p.m.
	Seventh Floor Conference Room Iowa Bldg. 411 Third St. SE Cedar Rapids, Iowa	October 23, 2003 9:30 to 11:30 a.m.
	ICN Room 417 E. Kanessville Blvd. Council Bluffs, Iowa	October 22, 2003 1:30 p.m.
	Sixth Floor Conference Room Scott County Administrative Center 428 Western Ave. Davenport, Iowa	October 23, 2003 10 a.m.
	Conference Room 102 City View Plaza 1200 University Ave. Des Moines, Iowa	October 22, 2003 9 a.m.
	Third Floor Conference Room Nesler Centre 799 Main St. Dubuque, Iowa	October 23, 2003 10 a.m.

HUMAN SERVICES DEPARTMENT[441] (Cont'd)

First Floor Conference Rooms A & B Trosper-Hoyt Bldg. 822 Douglas St. Sioux City, Iowa	October 22, 2003 1 p.m.
Room 220, Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	October 23, 2003 10 a.m. to 12 noon

INSPECTIONS AND APPEALS DEPARTMENT[481]

Choice of physician and pharmacy, 57.47, 58.51, 62.23, 63.45, 65.25 IAB 10/1/03 ARC 2826B	Conference Room 319 Lucas State Office Bldg. Des Moines, Iowa	October 24, 2003 10 a.m.
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INSURANCE DIVISION[191]

Qualifications of independent certified public accountant, 5.24(3), 5.25 IAB 10/1/03 ARC 2796B	330 Maple St. Des Moines, Iowa	October 22, 2003 10 a.m.
Actuarial opinion and memorandum, 5.34 IAB 10/1/03 ARC 2794B	330 Maple St. Des Moines, Iowa	October 22, 2003 10 a.m.
Iowa FAIR Plan, 20.41 to 20.60 IAB 10/1/03 ARC 2801B	330 Maple St. Des Moines, Iowa	October 23, 2003 10 a.m.
2001 CSO Mortality Table, 42.6, 44.6, 47.7; adopt ch 91 IAB 10/1/03 ARC 2795B	330 Maple St. Des Moines, Iowa	October 21, 2003 10 a.m.

IOWA FINANCE AUTHORITY[265]

State housing trust fund, ch 19 IAB 10/1/03 ARC 2827B (ICN Network)	Main Conference Room, Second Floor 200 E. Grand Ave. Des Moines, Iowa	October 21, 2003 1:30 to 3:30 p.m.
	Room 101 St. Edmond High School 501 N. 22nd St. Fort Dodge, Iowa	October 21, 2003 1:30 to 3:30 p.m.
	Revere Room, Grant Wood AEA 4401 Sixth St. SW Cedar Rapids, Iowa	October 21, 2003 1:30 to 3:30 p.m.
	Room 3, Continuing Ed. Bldg. Iowa Western Community College - 3 2700 College Rd. Council Bluffs, Iowa	October 21, 2003 1:30 to 3:30 p.m.
	Room 211, Southwestern Comm. Coll. 1501 W. Townline Rd. Creston, Iowa	October 21, 2003 1:30 to 3:30 p.m.

IOWA FINANCE AUTHORITY[265] (Cont'd)
(ICN Network)

Kimberly Center 1002 W. Kimberly Davenport, Iowa	October 21, 2003 1:30 to 3:30 p.m.
Carnegie-Stout Public Library 360 W. 11th St. Dubuque, Iowa	October 21, 2003 1:30 to 3:30 p.m.
Newman Catholic High School 2445 19th SW Mason City, Iowa	October 21, 2003 1:30 to 3:30 p.m.
Videoconferencing and Training Ctr. Indian Hills Community College 651 Indian Hills Dr. Ottumwa, Iowa	October 21, 2003 1:30 to 3:30 p.m.
Room 921, Bldg. A Western Iowa Tech. Community Coll. 4647 Stone Ave. Sioux City, Iowa	October 21, 2003 1:30 to 3:30 p.m.
Tama Hall Hawkeye Community College 1501 E. Orange Rd. Waterloo, Iowa	October 21, 2003 1:30 to 3:30 p.m.

LABOR SERVICES DIVISION[875]

Elevators, amendments to chs 71 to 73, 75, 76 IAB 10/1/03 ARC 2831B	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	October 21, 2003 1:30 p.m.
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MANAGEMENT DEPARTMENT[541]

Local government innovation fund committee, ch 15 IAB 10/15/03 ARC 2872B	Room G14 State Capitol Bldg. Des Moines, Iowa	November 6, 2003 10 a.m.
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MEDICAL EXAMINERS BOARD[653]

Approval of resident training programs, 10.1, 10.3(1), 10.4(2), 10.5(2) IAB 10/15/03 ARC 2870B	Suite C 400 SW Eighth St. Des Moines, Iowa	November 4, 2003 3 p.m.
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NATURAL RESOURCE COMMISSION[571]

State parks and recreation areas, 61.4, 61.6, 61.9 IAB 10/1/03 ARC 2819B	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 21, 2003 1:30 p.m.
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PERSONNEL DEPARTMENT[581]

IPERS, 21.10, 21.11(9), 21.16(6), 21.22(1), 21.24, 21.30 IAB 10/15/03 ARC 2875B	7401 Register Dr. Des Moines, Iowa	November 4, 2003 9 a.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Behavioral science examiners, 30.4, 30.6, 31.5, 31.10, 31.13 to 31.15, ch 33, 34.1 IAB 10/15/03 ARC 2859B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	November 5, 2003 9 to 10 a.m.
Respiratory care examiners, 260.4, 260.6, 261.8, 261.11 to 261.13, ch 263, 264.1 IAB 10/15/03 ARC 2860B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	November 5, 2003 10 to 11 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Early hearing detection and intervention, ch 3 IAB 10/1/03 ARC 2820B (ICN Network)	ICN Conference Room, Third Floor Ola Babcock Miller Bldg. Des Moines, Iowa	October 21, 2003 10 to 11 a.m.
	Spirit Lake High School 2701 Hill Ave. Spirit Lake, Iowa	October 21, 2003 10 to 11 a.m.
	Schindler 130A University of Northern Iowa 23rd St. and Hudson Rd. Cedar Falls, Iowa	October 21, 2003 10 to 11 a.m.
	Second Floor, Careers Bldg. Iowa School for the Deaf 1600 South Highway 275 Council Bluffs, Iowa	October 21, 2003 10 to 11 a.m.
	Room 157, Voc. Tech. Bldg. 501 E. Second Ottumwa, Iowa	October 21, 2003 10 to 11 a.m.
	Administration Office Iowa City Community School District 509 S. Dubuque St. Iowa City, Iowa	October 21, 2003 10 to 11 a.m.
	Room 300, Kahl Educational Center Eastern Iowa Community College 326 W. Third St. Davenport, Iowa	October 21, 2003 10 to 11 a.m.
	Room CB118, NIACC 500 College Dr. Mason City, Iowa	October 21, 2003 10 to 11 a.m.
Radioactive waste transport fee schedule, 38.8(11) IAB 10/1/03 ARC 2821B	Conference Room, Suite D 401 SW Seventh St. Des Moines, Iowa	October 21, 2003 8:30 a.m.

UTILITIES DIVISION[199]

Second payment agreements, 19.4(10), 20.4(11) IAB 9/3/03 ARC 2724B	Hearing Room 350 Maple St. Des Moines, Iowa	November 6, 2003 10 a.m.
Temperature trigger for cold weather protections, 19.4(15), 20.4(15) IAB 10/1/03 ARC 2806B (See also ARC 2725B , IAB 9/3/03)	Hearing Room 350 Maple St. Des Moines, Iowa	October 28, 2003 10 a.m.
Eligible telecommunications carrier designation for wireless carriers, 39.2(5), 39.5 IAB 9/17/03 ARC 2773B	Hearing Room 350 Maple St. Des Moines, Iowa	December 10, 2003 10 a.m.
Iowa broadband initiative, ch 43 IAB 9/17/03 ARC 2782B (See also ARC 2620B , IAB 7/23/03)	Hearing Room 350 Maple St. Des Moines, Iowa	October 22, 2003 10 a.m.

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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 Soil Conservation Division[27]
 ATTORNEY GENERAL[61]
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 BEEF INDUSTRY COUNCIL, IOWA[101]
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NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
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NATURAL RESOURCES DEPARTMENT[561]
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PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
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PUBLIC DEFENSE DEPARTMENT[601]
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ARC 2873B**AGRICULTURE AND LAND
STEWARDSHIP DEPARTMENT[21]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 99D.22, the Department of Agriculture and Land Stewardship gives Notice of Intended Action to amend Chapter 62, “Registration of Iowa-Foaled Horses and Iowa-Whelped Dogs,” Iowa Administrative Code.

These proposed amendments reorganize the Department’s disciplinary and records and premises access rules for participants in the Iowa-whelped dog program. They also expand the rules to apply to owners of horses in the Iowa-foaled horse program. Finally, they impose new disciplinary rules for persons who are disqualified from licensure by the Iowa Racing and Gaming Commission.

Any interested person may make written suggestions or comments on the proposed amendments prior to 4:30 p.m. on November 4, 2003. Such written material should be directed to Morris Boswell, Bureau Chief, Horse and Dog Bureau, Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319. Comments may also be submitted by fax to (515)281-8025 or by E-mail to Morris.Boswell@idals.state.ia.us.

There are no waiver provisions in these amendments; however, the Department’s general waiver provisions apply to these proposed amendments.

These amendments are intended to implement Iowa Code section 99D.22.

The following amendments are proposed.

ITEM 1. Rescind rule 21—62.4(99D) and adopt the following **new** rule in lieu thereof:

21—62.4(99D) Disciplinary actions.

62.4(1) A person shall not knowingly provide false information to the department. If the department finds that a person knowingly furnished false information to the department relating to the registration of a horse or dog under these rules, then the department may deny, suspend, or revoke all registrations and eligibility certificates by or on behalf of the person. The department may withhold payment of breeder’s awards to a breeder if the breeder is not in compliance with the rules of this chapter or with animal welfare laws and regulations. If a breeder does not come into compliance, the department may deny the registration of a breeder’s litters, dogs or foals. In addition, the department may suspend or revoke previously approved registrations.

62.4(2) Upon receipt of information from the Iowa racing and gaming commission that a person has been disqualified from licensure (suspended for 365 days, denied or revoked), the department shall suspend, deny, or revoke all registrations and eligibility certificates by or on behalf of the person. The department may determine horses certified as Iowa-foaled horses or dogs certified as Iowa-whelped dogs prior to commission action are eligible to race as Iowa-foaled or Iowa-whelped; however, the disqualified person is denied receipt of any moneys from the Iowa horse and dog breeders’

fund. If the Iowa racing and gaming commission subsequently grants licensing privileges to a previously disqualified person, the department shall make an independent determination as to the person’s eligibility to have registrations and eligibility certificates by or on behalf of the person reinstated or granted.

62.4(3) Whenever action is taken under this rule, the department shall remit the withheld breakage to the breakage pool at the track where the money was generated. In such cases, the money shall instead be retained by the racetrack and distributed in the manner as provided in Iowa Code section 99D.12.

ITEM 2. Adopt the following **new** rule:

21—62.5(99D) Access to premises and records. The department inspectors shall have access to records and to the premises on which qualified Iowa-whelped dogs and Iowa-foaled horses are kept.

ITEM 3. Rescind rules **21—62.43(99D)** and **21—62.44(99D)**.

ARC 2881B**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 15, “Requirements for Special Education Endorsements,” Iowa Administrative Code.

The proposed amendments reflect the appropriate wording regarding the new terminology or classification of licenses. Each time the word “conditional” was referenced in Chapter 15, the appropriate new term “Class A” (one-year conditional) or “Class C” (three-year conditional) was inserted to be consistent with Chapter 14.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Tuesday, November 4, 2003, at 1 p.m. in Room 2 South, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319.

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 proposed amendments. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street 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 before 4 p.m. on Friday, November 7, 2003. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Director, Board of Educational Examiners, at the above address, or sent by E-mail to anne.kruse@ed.state.ia.us, or by fax to (515)281-7669. Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

These amendments are intended to implement Iowa Code chapter 272.

The following amendments are proposed.

ITEM 1. Amend subrule **15.3(8)**, paragraph “c,” as follows:

c. School psychologist one-year ~~conditional~~ *Class A* license.

(1) Requirements for a one-year ~~conditional~~ *Class A* license. A nonrenewable ~~conditional~~ *Class A* license valid for one year may be issued to an individual who must complete an internship or thesis as an aspect of an approved program in preparation for the school psychologist endorsement. The one-year ~~conditional~~ *Class A* license may be issued under the following limited conditions:

1. Verification from the institution that the internship or thesis is a requirement for successful completion of the program.

2. Verification that the employment situation will be satisfactory for the internship experience.

3. Verification from the institution of the length of the approved and planned internship or the anticipated completion date of the thesis.

4. Verification of the evaluation processes for successful completion of the internship or thesis.

5. Verification that the internship or thesis is the only requirement remaining for successful completion of the approved program.

(2) Written documentation of the above requirements must be provided by the official at the institution where the individual is completing the approved school psychologist program and forwarded to the Iowa board of educational examiners with the application form for licensure.

ITEM 2. Amend rule 282—15.4(272) as follows:

282—15.4(272) Conditional Class C special education license. A ~~conditional~~ *Class C* special education license may be issued to an individual under the following conditions:

1. Holds a valid license.

2. Has completed at least one-half of the credits necessary for a special education endorsement.

3. Files a written request from the employing school official. This written request must indicate approval by the respective area education agency special education official.

4. Statement from a college/university outlining the coursework to be completed for the endorsement.

This ~~conditional~~ *Class C* license may be issued for a term of up to three years based on the amount of preparation needed to complete the requirements for the endorsement.

ARC 2863B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 455B.304(1) and 455D.7(1), the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 111, “Financial Assurance Requirements for Municipal Solid Waste Landfills,” Iowa Administrative Code.

These amendments incorporate minor revisions to Chapter 111. In Chapter 111, there are references to subrules found within other chapters of the administrative rules that are no longer accurate and therefore should be updated. Other revisions include adding wording that was unintentionally omitted and clarifying subrules which municipal solid waste landfill owners have had difficulty interpreting. These amendments will provide greater effectiveness, clarity and consistency with legislative intent for municipal solid waste financial assurance requirements.

Any interested person may make written suggestions or comments on these proposed amendments on or before November 5, 2003. Such written materials should be directed to Alex Moon, Energy and Waste Management Bureau, Department of Natural Resources, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895. Persons wishing to convey their views orally should contact Alex Moon at (515)281-6807 or at the Wallace State Office Building.

Also, there will be a public hearing on November 5, 2003, at 10 a.m. in the Fifth Floor West Conference Room of the Wallace State Office Building, at which time persons may present their views 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.

Any persons who will attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These rules are intended to implement Iowa Code sections 455B.304(8) and 455B.306(8).

The following amendments are proposed.

ITEM 1. Rescind rule 567—111.3(455B) and adopt the following **new** rule in lieu thereof:

567—111.3(455B) Financial assurance for closure care. The owner or operator of an MSWLF must establish financial assurance for closure in accordance with the criteria in this chapter. The owner or operator must provide continuous coverage for closure until released from this requirement by demonstrating compliance with 567—subrules 113.26(13) and 113.13(10). Proof of compliance pursuant to subrules 111.3(1) through 111.3(5) must be submitted by the owner or operator yearly by April 1 and approved by the department.

111.3(1) The owner or operator shall submit the current version of department Form 542-8090, Municipal Solid Waste Sanitary Landfill Financial Assurance Report Form,

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which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code sections 455B.306(8)“e” and 455B.306(6)“c,” and the current balances of the closure and postclosure accounts at the time of submittal as required by Iowa Code section 455B.306(8)“b.”

111.3(2) The owner or operator shall submit a copy of the financial assurance instruments or the documents establishing the financial assurance instruments in an amount equal to or greater than the amount specified in 567—111.9(455B). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in subrules 111.6(1) to 111.6(9).

111.3(3) The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to close the MSWLF in accordance with the closure plan as required by 567—subrules 113.26(13) and 113.13(10). Such estimate must be available at any time during the active life of the landfill.

a. The cost estimate must equal the cost of closing the MSWLF at any time during the permitted life of the facility when the extent and manner of its operation would make closure the most expensive.

b. The cost estimates must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

c. During the active life of the MSWLF, the owner or operator must annually adjust the closure cost estimate for inflation.

d. The owner or operator must, annually or at the time of application for a permit amendment that increases closure costs, whichever occurs first, increase the closure cost estimate and the amount of financial assurance provided if changes to the closure plan or MSWLF conditions increase the maximum cost of closure at any time during the remaining active life of the facility.

e. The owner or operator may reduce the amount of financial assurance for closure if the most recent estimate of the maximum cost of closure at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the closure cost estimate and the updated documentation required by subrules 111.3(1) through 111.3(5) and receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

f. The third-party estimate submitted to the department must include the site area subject to closure care and account for at least the following factors determined by the department to be minimal necessary costs for closure:

- (1) Closure and postclosure plan document revisions;
- (2) Site preparation, earthwork and final grading;
- (3) Drainage control culverts, piping and structures;
- (4) Erosion control structures, sediment ponds and terraces;
- (5) Final cap construction;
- (6) Cap vegetation soil placement;
- (7) Cap seeding, mulching and fertilizing;
- (8) Monitoring well, piezometer and gas control modifications;
- (9) Leachate system cleanout and extraction well modifications;
- (10) Monitoring well installations and abandonments;

- (11) Facility modifications to effect closed status;
- (12) Engineering and technical services;
- (13) Legal, financial and administrative services; and
- (14) Closure compliance certifications and documentation.

111.3(4) For publicly owned municipal solid waste landfills, the owner or operator shall submit to the department a copy of the owner’s or operator’s most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

111.3(5) Privately held municipal solid waste landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this chapter. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

ITEM 2. Rescind rule 567—111.4(455B) and adopt the following **new** rule in lieu thereof:

567—111.4(455B) Financial assurance for postclosure care. The owner or operator of an MSWLF must establish financial assurance for the costs of postclosure care in accordance with the criteria in this chapter. The owner or operator must provide continuous coverage for postclosure care until released from this requirement by demonstrating compliance with the postclosure plan and the closure permit. Proof of compliance pursuant to subrules 111.4(1) through 111.4(5) must be submitted by the owner or operator yearly by April 1 and approved by the department.

111.4(1) The owner or operator shall submit the current version of department Form 542-8090, Municipal Solid Waste Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code sections 455B.306(8)“e” and 455B.306(6)“c,” and the current balances of the closure and postclosure accounts required by Iowa Code section 455B.306(8)“b.”

111.4(2) The owner or operator shall submit a copy of the documents establishing a financial assurance instrument in an amount equal to or greater than the amount specified in 567—111.9(455B). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in subrules 111.6(1) to 111.6(9).

111.4(3) The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to conduct postclosure care for the MSWLF in compliance with the plan developed pursuant to 567—subrules 113.26(14) and 113.13(10). The cost estimate must account for the total cost of conducting postclosure care, as described in the plan, for the entire postclosure care period.

a. The cost estimate for postclosure care must be based on the most expensive costs of that care during the entire postclosure care period.

b. The cost estimates contained in the third-party estimate of postclosure care costs must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

c. During the active life of the MSWLF and during the postclosure care period, the owner or operator must annually adjust the postclosure cost estimate for inflation.

d. The owner or operator must, annually or at the time of application for a permit amendment that increases postclo-

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sure costs, whichever occurs first, increase the estimate and the amount of financial assurance provided if changes in the postclosure plan or MSWLF conditions increase the maximum cost of postclosure care.

e. The owner or operator may reduce the amount of financial assurance for postclosure care if the most recent estimate of the maximum cost of postclosure care beginning at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the postclosure cost estimate and the updated documentation required by subrules 111.4(1) through 111.4(5) and receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

f. The third-party estimate submitted to the department must include the site area subject to postclosure care and account for at least the following factors determined by the department to be minimal necessary costs for postclosure:

- (1) General site facilities, access roads and fencing maintenance;
- (2) Cap and vegetative cover maintenance;
- (3) Drainage and erosion control systems maintenance;
- (4) Groundwater to waste separation systems maintenance;
- (5) Gas control systems maintenance;
- (6) Gas control systems monitoring and reports;
- (7) Groundwater and surface water monitoring systems maintenance;
- (8) Groundwater and surface water quality monitoring and reports;
- (9) Groundwater monitoring systems performance evaluations and reports;
- (10) Leachate control systems maintenance;
- (11) Leachate management, transportation and disposal;
- (12) Leachate control systems performance evaluations and reports;
- (13) Facility inspections and reports;
- (14) Engineering and technical services;
- (15) Legal, financial and administrative services; and
- (16) Financial assurance, accounting, audits and reports.

111.4(4) For publicly owned municipal solid waste landfills, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

111.4(5) Privately held municipal solid waste landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this chapter. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

ITEM 3. Amend subrule 111.5(1), introductory paragraph, as follows:

111.5(1) An owner or operator required to undertake corrective action pursuant to 567—subrules ~~103.2(4)~~ *113.26(4)* through ~~103.2(9)~~ *113.26(9)*, inclusive, must have a detailed written estimate prepared by an Iowa-licensed professional engineer, in current dollars, of the cost of hiring a third party to perform the required corrective action. The estimate must account for the total costs of the activities described in the approved corrective action plan for the entire corrective action period. The owner or operator must submit to the department the estimate and financial assurance documentation within

30 days of departmental approval of the corrective action plan.

ITEM 4. Amend subrule 111.5(2), introductory paragraph, as follows:

111.5(2) The owner or operator of an MSWLF required to undertake a corrective action program must establish financial assurance for the most recent corrective action program by one of the mechanisms prescribed in 567—111.6(455B) and, if necessary, one of the mechanisms prescribed in ~~567—111.7(455B)~~. The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements by demonstrating compliance with the following:

ITEM 5. Amend subrule **111.6(2)**, paragraph “a,” as follows:

a. An owner or operator may demonstrate financial assurance for closure or postclosure care by obtaining a payment or performance surety bond which conforms to the requirements of this subrule. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this subrule. The bond must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure care; or no later than 120 days after the corrective action remedy has been approved by the department. The owner or operator must submit a copy of the bond to the department and keep a copy in the facility's official files. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury. *The state shall not be considered a party to the surety bond.*

ITEM 6. Amend subrule **111.6(9)** by adopting the following new paragraphs “f” and “g”:

f. The initial payment into the dedicated fund must be made before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure care; or no later than 120 days after the corrective action remedy has been approved by the department.

g. After the pay-in period has been completed, the dedicated fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimates and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

ITEM 7. Amend rule 567—111.8(455B), introductory paragraph, as follows:

567—111.8(455B) Closure and postclosure accounts. The holder of a permit for a municipal solid waste landfill shall maintain a separate closure account and *for closure and postclosure care* as required by Iowa Code section 455B.306(8)“b.” The ~~accounts~~ *account* shall be specific to a particular facility.

ITEM 8. Amend subrule 111.8(4) as follows:

111.8(4) Withdrawal of funds. Except as provided in 111.8(5), money in the accounts may be withdrawn without departmental approval only for the purpose of funding closure, including partial closure, or postclosure activities that are in conformance with a closure/postclosure plan which has been submitted pursuant to 567—subrule ~~102.12(10)~~ *113.13(10)*. Withdrawals for activities not in conformance with a closure/postclosure plan must receive prior written approval from the department. Permit holders using a trust fund established pursuant to 111.6(1) to satisfy the require-

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ments of this rule must comply with the requirements of 111.6(1)“f” prior to withdrawal.

ARC 2851B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 225C.6, the Department of Human Services proposes to amend Chapter 25, “Disability Services Management,” Iowa Administrative Code.

These amendments move the annual deadline for county applications for risk pool funding from April 1 to January 25 and add a decision date of February 25 for the Risk Pool Board to determine whether the application for assistance will be accepted. These changes make the rules conform to legislative changes in 2003 Iowa Acts, Senate File 458, section 1.

These amendments do not provide for waivers in specified situations because these policies are set by statute.

Any interested person may make written comments on the proposed amendments on or before November 5, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 426B.5(2)(d)(1) as amended by 2003 Iowa Acts, Senate File 458, section 1.

The following amendments are proposed.

ITEM 1. Amend rule 441—25.63(426B) as follows:

Amend subrule 25.63(1) as follows:

25.63(1) Applicants.

a. A county may make an aggregate or individual application at any time on or before ~~April 1~~ January 25 of any given year for the current fiscal year budget whenever:

(1) ~~the~~ The projected net expenditure amount exceeds the sum of 105 percent of the county’s current fiscal year budgeted net expenditure amount; and

(2) ~~the~~ The county’s prior fiscal year accrual ending fund balance exceeds 25 percent of the prior fiscal year’s net expenditure.

b. However, a county shall be considered to have met the basic eligibility requirement and be qualified for risk pool assistance if:

(1) a The county’s services fund ending balance in the previous fiscal year was less than 10 percent of the amount of the county’s gross expenditures from the services fund for that fiscal year; and

(2) ~~the~~ The county has a projected net expenditure amount for the current fiscal year that is in excess of 101 percent of the budgeted net expenditure amount for the current fiscal year, ~~the county shall be considered to have met the basic eligibility requirement and is qualified for risk pool assistance.~~

c. The purpose of the mental health risk pool is to assist counties whose expenditures in the services fund exceed budgeted costs due to unanticipated expenses for new individuals or other unexpected factors. The mental health risk pool is not intended for multiyear usage or as a source of planned revenue.

Amend subrule 25.63(2), introductory paragraph, as follows:

25.63(2) Application procedures. The county shall send Form 470-3723, Risk Pool Application, plus 15 copies, to the division. The division must receive the application no later than 4:30 p.m. on ~~April 1~~ January 25 of each year; or, if ~~April 1~~ January 25 is a holiday, a Saturday or Sunday, the division must receive the application no later than 4:30 p.m. on the first working day thereafter. Facsimiles and electronic mail are not acceptable. The application shall be signed and dated by both the chairperson of the county board of supervisors and the central point of coordination administrator. Staff of the division shall notify each county of receipt of the county’s application.

Amend subrule 25.63(3) as follows:

25.63(3) Request for additional information. Staff shall review all applications for completeness. If an application is not complete, staff of the division shall contact the county within four working days after ~~April 1~~ January 25 or the first working day thereafter, if ~~April 1~~ January 25 is a holiday, a Saturday or Sunday, to request the information needed to complete the application. The county shall submit the required information within five working days from the date of the division’s request for the additional information.

ITEM 2. Amend rule 441—25.64(426B), introductory paragraph, as follows:

441—25.64(426B) Methodology for awarding risk pool funding. *The risk pool board shall make a decision on each application no later than February 25.*

ARC 2862B**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 10A.104(5), the Department of Inspections and Appeals gives Notice of Intended Action to amend Chapter 103, “Bingo,” Iowa Administrative Code.

The proposed amendment provides an exception to licensing requirements for certain bingo occasions conducted by nonprofit organizations. The proposed amendment specifies the organizations exempt from the Department’s bingo licensing requirements, as well the requirements to be met by the organizations.

Any interested person may make written suggestions or comments on this proposed amendment on or before November 4, 2003. Such written materials should be directed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; fax

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

(515)242-6863. E-mail may be sent to david.werning@dia.state.ia.us.

Because the proposed amendment confers a benefit to certain nonprofit organizations and patrons who frequent bingo occasions conducted by these organizations, the proposed amendment is not subject to waiver.

This amendment is intended to implement 2003 Iowa Acts, House File 603, and Iowa Code chapter 99B.

The following amendment is proposed.

Amend rule 481—103.3(99B) by adding the following **new** subrule:

103.3(4) Bingo exceptions. An organization that is exempt from federal income taxes under Section 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code as defined in Iowa Code section 422.3 shall be authorized to conduct a bingo occasion without a license as otherwise required by this chapter if all of the following requirements are met:

- a. Participants in the bingo occasion are not charged to enter the premises where bingo is conducted.
- b. Participants in the bingo occasion are not charged to play.
- c. Any prize awarded at the bingo occasion shall be donated.
- d. The bingo occasion is conducted as an activity and not for fundraising purposes.

ARC 2838B**MANAGEMENT DEPARTMENT[541]****Notice of Termination**

Pursuant to the authority of Iowa Code section 8.6(8), the Department of Management terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on July 9, 2003, as **ARC 2587B**, proposing to adopt a new Chapter 11, "Grants Enterprise Management System," Iowa Administrative Code.

This new chapter was also Adopted and Filed Emergency as **ARC 2602B**. The Notice was published to solicit comments and to provide opportunity for a hearing. Since no comments were received, no one appeared at the hearing, and no changes are required to the emergency adopted rules, there is no further need to proceed with rule making for **ARC 2587B**.

ARC 2872B**MANAGEMENT DEPARTMENT[541]****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 8.6 and 2003 Iowa Acts, Senate File 453, section 27, the Department of Management hereby gives Notice of Intended Action to

adopt Chapter 15, "Local Government Innovation Fund Committee," Iowa Administrative Code.

These rules establish the procedures used by the Local Government Innovation Fund Committee for application review and grant and loan awards and ensure that the proceedings of the Committee are conducted in an orderly manner.

Consideration will be given to all written suggestions or comments on the proposed rules received on or before November 6, 2003. Such written materials should be sent to the Iowa Grants Management Coordinator, Iowa Department of Management, State Capitol Building, Des Moines, Iowa 50319, by facsimile to (515)281-3705, or by electronic mail to steve.ford@iowa.gov.

A public hearing will be held on November 6, 2003, at 10 a.m. in Room G14, State Capitol Building, at which time comments may be submitted orally or in writing. Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact Stephen Ford at (515)281-3705 to advise of any specific needs.

These rules are intended to implement 2003 Iowa Acts, Senate File 453, sections 27 and 28.

The following **new** chapter is proposed.

CHAPTER 15
LOCAL GOVERNMENT INNOVATION
FUND COMMITTEE

541—15.1(80GA,SF453) Purpose. The purpose of these rules is to ensure that the proceedings of the local government innovation fund committee responsible for local government innovation fund awards are conducted in an orderly manner.

541—15.2(80GA,SF453) Membership. The selection, approval, and appointment of members to the local government innovation fund committee for a term of one year are made by the director of the department of management (director) as provided in 2003 Iowa Acts, Senate File 453, section 27. The committee shall consist of seven members.

541—15.3(80GA,SF453) Responsibilities of officers. The officers of the local government innovation fund committee shall consist of a chairperson, a vice chairperson and a secretary.

15.3(1) Chairperson. The chairperson shall be appointed by the director and shall preside over the proceedings of the local government innovation fund committee. Upon a vacancy on the committee, the chairperson shall notify the director that a vacancy exists.

15.3(2) Vice chairperson. The vice chairperson shall serve in the absence of the chairperson and shall be assigned such other duties as the committee determines. The vice chairperson shall be appointed by the director.

15.3(3) Secretary. Yearly, the local government innovation fund committee shall appoint a secretary to record the proceedings of the committee and report the financial condition of the fund. The secretary may or may not be a member of the committee. The secretary shall give advance public notice of the time and place of each meeting. The notice must be in accordance with Iowa Code section 21.4.

The secretary shall keep minutes of all proceedings of each meeting. The minutes will constitute the official record of all actions of the committee. Following each meeting, the secretary shall duplicate the minutes and distribute them to the persons listed on the approved mailing list. When the secretary is absent from a committee meeting, the chairperson shall appoint a member of the committee to act as secretary until such time as the regular secretary is present. The

MANAGEMENT DEPARTMENT[541](cont'd)

secretary shall provide to the committee members a list of the committee's members including the members' addresses and telephone numbers.

541—15.4(80GA,SF453) Meeting. A meeting of the committee shall be held at the call of the director of the department of management. All meetings of the committee shall be open to the public at all times, except that closed meetings may be held for the purposes provided in Iowa Code section 21.5. Closed sessions shall be called and conducted as provided in Iowa Code section 21.5.

541—15.5(80GA,SF453) Compensation. Committee members are to be compensated in accordance with Iowa Code section 7E.6.

541—15.6(80GA,SF453) Office location. All submissions to or requests of the committee shall be made through the department of management during normal working hours. All records, minutes, applications, and other information concerning the proceedings of the committee shall be kept in the office of the director of the department of management. Such information shall be open to inspection by the public during normal working hours.

541—15.7(80GA,SF453) Committee responsibilities. The committee shall review each local government innovation fund application. In addition, the committee may interview applicants to explore the need for technical assistance, gain additional information concerning the proposal, and negotiate the project's work plan.

541—15.8(80GA,SF453) Quorum and majority vote. A quorum shall consist of four members of the committee. All actions of the committee must be approved by a simple majority vote of the members present at a meeting. The secretary shall record the vote of each member of the committee indicating if the vote was an aye, a no, or an abstention.

Members shall abstain from voting on applications that provide assistance to jurisdictions where the members reside.

541—15.9(80GA,SF453) Eligibility. Any Iowa county or city or group of counties and cities is eligible to apply for funding for projects that result in the following:

1. Cost savings;
2. Innovative approach to service delivery; or
3. Added revenue to the city, county, or state.

Eligible projects are those that cannot be funded from a city's or county's operating budget without adversely affecting the city's or county's normal service levels. Preference shall be given to requests involving the sharing of services between two or more local governments. Projects may include, but are not limited to, purchase of advanced technology, contracting for expert services, and acquisition of equipment or supplies.

541—15.10(80GA,SF453) Application process. The committee shall establish the application and review deadlines. Notice of the deadlines shall be sent to city and county member organizations and posted at the state capitol, ground floor, and on the department's Web site. Applications shall be submitted to the Local Government Innovation Fund Committee, Iowa Department of Management, Room 12, State Capitol, Des Moines, Iowa 50319.

541—15.11(80GA,SF453) Application contents. Applications shall be submitted on forms developed by the committee and made available by the department of management. The contents of the application shall include:

1. A summary sheet including title and project overview; name, address and telephone number of one person who will serve as the contact for the application; the cities and counties involved in the application; and type of assistance and amount requested.

2. Return on investment information.

3. Identification of the reduced city, county or state general fund expenditures or how city or county fund revenues will increase without an increase in state costs.

4. A description of how the project will be innovative, based on objective criteria identified in the application.

541—15.12(80GA,SF453) Application review. The committee shall review each application based on the following criteria:

1. Potential impact on savings, revenues, or community residents.

2. Project innovation based on objective criteria.

3. Likelihood of success based on stakeholder involvement.

4. Types of match in the form of cash or in-kind resources committed.

5. Ability to be replicated in other parts of the state.

6. Sharing of services between two or more local governments.

541—15.13(80GA,SF453) Award process. The committee may award loans, forgivable loans, or grants as provided in 2003 Iowa Acts, Senate File 453, sections 27 and 28. In order to maintain the fund as self-supporting, the committee shall establish repayment schedules for each loan awarded. A city or county shall repay the loan over a period not to exceed five years, with interest, at a rate to be determined by the committee. All applicants will be notified in writing after the final decisions are made. Successful applicants shall enter into a chapter 28E agreement executed with the department of management that outlines the loan or grant requirements with the city (cities) or county (counties) receiving the loan or grant.

541—15.14(80GA,SF453) Project management. Within one year of receipt of funds, the award recipient shall provide an annual report that assesses progress on the results achieved to date. As a condition of the award, additional reporting may be required.

541—15.15(80GA,SF453) Performance reviews. Representatives of the department and state auditors shall have access to all books, accounts, and documents belonging to or in use by the award recipient pertaining to the receipt of assistance under this program. All contracts under this program are subject to audit.

These rules are intended to implement 2003 Iowa Acts, Senate File 453, sections 27 and 28.

ARC 2870B**MEDICAL EXAMINERS
BOARD[653]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby proposes to amend Chapter 10, "Resident, Special and Temporary Physician Licensure," Iowa Administrative Code.

The proposed amendments change the word "foreign" in the phrase "foreign medical school" to the word "international," and change the name of the publisher of the Directory of Medical Schools from "World Health Organization" to "International Medical Education Directory." In addition, an amendment clarifies the Board's position on board-approved resident training programs in Iowa.

The Board approved the amendments to Chapter 10 during its regularly held meeting on September 19, 2003.

Any interested person may present written comments on these proposed amendments not later than 4 p.m. on November 4, 2003. Materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686 or ann.mowery@ibme.state.ia.us.

There will be a public hearing on November 4, 2003, at 3 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medical Examiners office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code chapters 148 and 272C.

The following amendments are proposed.

ITEM 1. Amend rule **653—10.1(147,148,150,150A)**, definitions of "ECFMG" and "medical degree," as follows:

"ECFMG" means the Educational Commission for Foreign Medical Graduates, an organization that assesses the readiness of foreign international medical school graduates to enter ACGME-approved residency programs in the United States of America.

"Medical degree" means a degree of doctor of medicine and surgery, osteopathic medicine and surgery, or osteopathy, or comparable education from a foreign an international medical school.

ITEM 2. Amend subrule **10.3(1)**, paragraph "a," as follows:

a. The resident physician license shall authorize the licensee to practice as an intern, resident or fellow while under the supervision of a licensed practitioner of medicine and surgery or osteopathic medicine and surgery in a board-approved resident training program in Iowa. When the ACGME, AOA, RCPSC, or CFPC fails to offer accreditation for a fellowship or the fellowship fails to seek accreditation, the board may approve a training program for purposes of resident physician licensure shall approve the program if the parent program is accredited by one of the aforementioned accrediting bodies. However, completion of one or more years of a program that itself lacks such accreditation does

not fulfill the one-year resident training requirement for permanent licensure.

ITEM 3. Amend subrule **10.4(2)**, paragraph "d," as follows:

d. Present evidence of holding a medical degree from an educational institution that is located in a jurisdiction outside the United States or Canada and that is listed in the Directory of Medical Schools published by the World Health Organization International Medical Education Directory;

ITEM 4. Amend subrule **10.5(2)**, paragraph "b," subparagraph (3), as follows:

(3) Present evidence of holding a medical degree from an educational institution located in a jurisdiction outside the United States or Canada and listed in the Directory of Medical Schools published by the World Health Organization International Medical Education Directory;

ARC 2875B**PERSONNEL DEPARTMENT[581]****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 97B.15, the Iowa Public Employees' Retirement System (IPERS) hereby gives Notice of Intended Action to amend Chapter 21, "Iowa Public Employees' Retirement System," Iowa Administrative Code.

The proposed amendments limit the lump sum death benefit to the Internal Revenue Code maximum amount of no more than 100 times the Option 2 monthly benefit for certain deaths occurring after January 14, 2004; streamline procedures for locating and paying the death benefit to a deceased member's heirs at law; align the refund rules with the retirement rules with respect to required periods of severance for certain elected officials; define the period for which retroactive payments may be paid for regular disability applicants; eliminate the restoration of wage records by quarters for refund buy-backs after the effective date of these amendments; define the time period for valid cost quotes for service purchases; delineate the responsibilities and procedures for obtaining service purchase cost quotes; eliminate special procedures for refund buy-backs; and make minor changes as prescribed by the legislature.

These amendments were prepared after consultation with the IPERS legal, benefits, and operational units, and the members of the Benefits Advisory Committee.

IPERS has included a waiver provision in the proposed amendment to subrule 21.11(9); otherwise there are no additional waiver provisions included because the amendments provide a benefit to members.

Any person may make written suggestions or comments on the proposed amendments on or before November 4, 2003. Such written suggestions or comments should be directed to the IPERS Administrative Rules Coordinator at IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117. Persons who wish to present their comments orally may contact

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the IPERS Administrative Rules Coordinator at (515)281-3081.

Comments may also be submitted by fax to (515)281-0045, or by E-mail to info@ipers.org.

There will be a public hearing on November 4, 2003, at 9 a.m. at IPERS, 7401 Register Drive, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Persons who attend the hearing will be asked to give their names and addresses for the record and to confine their remarks to the subject matter of the proposed amendments.

These amendments are intended to implement Iowa Code chapter 97B as amended by 2003 Iowa Acts, House File 534, sections 170 to 181.

The following amendments are proposed.

ITEM 1. Amend subrule 21.10(12) as follows:

21.10(12) Death benefits. *A death benefit shall not exceed the maximum amount possible under the Internal Revenue Code. To ensure the limit is not exceeded, a member's lump sum death benefit shall not exceed 100 times the member's Option 2 amount for a member who retires, or the Option 2 amount that would have been payable to the member at the member's earliest normal retirement age for a member who died before retiring. All lump sum death benefits payable with respect to a member's account shall be combined in applying this limitation, including an in-the-line-of-duty death benefit. If a beneficiary of a special service member is eligible for an in-the-line-of-duty death benefit, any reduction required under this rule shall be taken first from a death benefit other than the in-the-line-of-duty death benefit. The "100 times" limit shall apply for all death benefits payable on accounts of members whose first month of entitlement is January 2004 or later, and for active and inactive members who die on or after January 14, 2004. A retired reemployed member whose retirement allowance is adjusted after January 14, 2004, or who dies during the period of reemployment shall be subject to the limits described in this subrule.*

ITEM 2. Amend subrule 21.10(16) as follows:

21.10(16) Effective July 1, 1998, a member's beneficiary or heir may file a claim for previously forfeited death benefits. Interest for periods prior to the date of the claim will only be credited through the quarter that the death benefit was required to be forfeited by law. For claims filed prior to July 1, 1998, interest for the period following the quarter of forfeiture will accrue beginning with the third quarter of 1998. For claims filed on or after July 1, 1998, interest for the period following the quarter of forfeiture will accrue beginning with the quarter that the claim is received by IPERS. For death benefits required to be forfeited in order to satisfy Section 401(a)(9) of the federal Internal Revenue Code, in no event will the forfeiture date precede January 1, 1988. IPERS shall not be liable for any excise taxes imposed by the Internal Revenue Service on reinstated death benefits.

Effective January 14, 2004, all claims for a previously forfeited death benefit shall be processed under the procedure set forth at subrule 21.10(19), except that for deaths that occurred prior to July 1, 1998, the death benefit shall be paid by the system as soon as practicable.

ITEM 3. Amend rule 581—21.10(97B) by adopting the following **new** subrule:

21.10(19) If a death benefit cannot be paid under subrule 21.10(7), IPERS will pay a death benefit to the member's heirs according to the following procedure.

1. Children. If there is no surviving spouse, but at least one child survives, the death benefit shall be divided equally among the member's children. If there are living and de-

ceased children, the shares that would have been payable to deceased children shall be payable in equal shares to the surviving children of each such deceased child.

2. Grandchildren. If neither the spouse nor children survive, but at least one grandchild survives, the death benefit shall be divided equally among the member's grandchildren. If there are living and deceased grandchildren, the shares that would have been payable to any deceased grandchild shall be payable in equal shares to the surviving children of such deceased grandchild.

3. Parent(s). If there is no surviving spouse, child, or grandchild, but at least one parent survives, the death benefit shall be divided equally between the member's parents.

4. Siblings. If there is no surviving spouse, child, grandchild, or parent, but at least one sibling survives, the death benefit shall be divided equally among the member's siblings. If there are living and deceased siblings, the shares that would have been payable to any deceased sibling shall be payable in equal shares to the surviving children of such deceased siblings.

5. Nephew(s) and niece(s). If no one from the above-mentioned groups survives, but there is at least one surviving niece or nephew, the death benefit shall be divided equally among the member's surviving nieces and nephews.

6. Estate. If someone other than a member of one of the groups listed above claims the member's death benefit, an estate must be opened and the death benefit shall only be payable to the administrator of that estate.

IPERS shall distribute the death benefit to the heirs making a claim for such benefit in descending order listed in paragraphs "1" to "6" above. A claimant shall be required to submit an affidavit suitable to IPERS that verifies the claimant's share or, to the best of the claimant's knowledge, that there are no other surviving persons from the claimant's group and that there are no living persons in any lower-numbered group that would have a higher priority claim to the death benefit. IPERS shall have no responsibility to determine or search out the member's heirs at law, nor shall IPERS incur any liability for relying on a claimant's affidavits in paying the death benefit hereunder.

If a claimant has identified other persons in the claimant's group who would be entitled to a share of the member's death benefit, but such persons have not filed a claim within five years after the member's death, or by the date required under IRC Section 401(a)(9) if earlier, the remainder of the member's death benefit shall be paid in pro-rata shares to the claimants who were previously paid a share of the death benefit. In order to comply with the applicable IRS limitations, the final payments under this subrule shall be made by December 31 of the fifth year that begins after the member's date of death, or by December 31 of the year that distribution is required under IRC Section 401(a)(9), if earlier. The sole recourse of any claimant who is a member of a group receiving payments hereunder or of any lower-numbered group that should have received all of such payments shall be against the claimants of the group that received death benefit payments.

ITEM 4. Amend subrule **21.11(9)** by adding the following **new** unnumbered paragraphs:

The 30-day bona fide refund period shall be waived for an elected official covered under Iowa Code section 97B.1A(8)"a"(1), and for a member of the general assembly covered under Iowa Code section 97B.1A(8)"a"(2), when the elected official or legislator notifies IPERS of the intent to terminate IPERS coverage for the elective office and, at the same time, terminates all other IPERS covered employ-

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ment prior to the issuance of the refund. Such an official may remain in the elective office and receive an IPERS refund without violating IPERS' bona fide refund rules. If such elected official terminates coverage for the elective office and also terminates all other IPERS covered employment, but is then reemployed in covered employment, and has not received a refund as of the date of hire, the refund shall not be made. Furthermore, if such elected official is reemployed in covered employment, the election to revoke IPERS coverage for the elective position shall remain in effect, and the public official shall not be eligible for new IPERS coverage for such elected position.

The prior election to revoke IPERS coverage for the elected position shall also remain in effect if such elected official is reelected to the same position without an intervening term out of office. The waiver granted in this paragraph shall be applicable to such elected officials who were in violation of the prior bona fide refund rules on and after November 1, 2002, when such individuals have not repaid the previously invalid refund.

ITEM 5. Amend subrule 21.16(6) as follows:

21.16(6) For a leave of absence beginning on or after July 1, 1998, and purchased before July 1, 1999, the service purchase cost shall be equal to the employer and employee contributions and interest payable for the employee's most recent year of covered wages, adjusted by the inflation factor used in rule 21.24(97B). For a leave of absence beginning on or after July 1, 1998, and purchased on or after July 1, 1999, the service purchase cost shall be the actuarial cost, as certified by ~~IPERS' actuary~~ IPERS. In calculating the actuarial cost of a service purchase under this subrule, ~~the actuary~~ IPERS shall apply the same actuarial assumptions and cost methods used in preparing IPERS' annual actuarial valuation, except that: (1) the retirement assumption shall be changed to 100 percent at the member's earliest unreduced retirement age; and (2) if ~~the actuary uses~~ gender-distinct mortality assumptions *are used in the annual actuarial valuation*, the system shall use blended mortality assumptions reasonably representative of the system's experience. The actuarial cost of a service purchase shall be the difference between (1) the actuarial accrued liability for the member using the foregoing assumptions and current service credits, and (2) the actuarial accrued liability for the member using the foregoing assumptions, current service credits, and all quarters of service credit available for purchase. If IPERS changes the service purchase mortality assumptions ~~upon the recommendation of its actuary~~, all outstanding service purchase quotes shall be binding for the remainder of the periods for which the cost quotes were issued. A cost quote for a service purchase shall expire six months after ~~it is delivered to the member~~ *the date printed on the cost quote letter*. After that time, a new cost quote must be obtained for any quarters not previously purchased.

ITEM 6. Amend subrule **21.22(1)** by adding the following new paragraph "d":

d. The period for which up to 36 months of retroactive payments under Iowa Code section 97B.50(2) shall be paid is measured backward from the month the first valid contact occurs. For purposes of this subrule, a "valid contact" means a telephone call, facsimile transmission, E-mail, visit to IPERS at its headquarters or off-site locations, or letter or other writing, whichever first occurs, requesting a benefits estimate or application to retire in which it is indicated that the retirement is due to disability. If a completed Application for IPERS Disability Form is received more than 30 days after such a

benefits estimate or Application for IPERS Disability Form is mailed by IPERS, retroactive payments may only be made for up to 36 months preceding the month in which such completed Application for IPERS Disability Form is received by IPERS. In no event shall retroactive disability benefits payments under Iowa Code section 97B.50(2) precede the month the member actually receives the member's first Social Security or Railroad Retirement disability payment.

ITEM 7. Amend paragraph **21.24(2)"f"** as follows:

f. Effective July 1, 1999, an eligible member must pay the actuarial cost of a buy-in, as certified by ~~IPERS' actuary~~ IPERS. In calculating the actuarial cost of a buy-in, ~~the actuary~~ IPERS shall apply the same actuarial assumptions and cost methods used in preparing IPERS' annual actuarial valuation, except that: (1) the retirement assumption shall be changed to 100 percent at the member's earliest unreduced retirement age; and (2) if ~~the actuary uses~~ gender-distinct mortality assumptions *are used in the annual actuarial valuation*, the system shall use blended mortality assumptions reasonably representative of the system's experience. The actuarial cost of a service purchase shall be the difference between (1) the actuarial accrued liability for the member using the foregoing assumptions and current service credits, and (2) the actuarial accrued liability for the member using the foregoing assumptions, current service credits, and all quarters of service credit available for purchase. If IPERS changes the service purchase mortality assumptions ~~upon the recommendation of its actuary~~, all outstanding service purchase quotes shall be binding for the remainder of the periods for which the cost quotes were issued. A cost quote for a service purchase shall expire six months after ~~it is delivered to the member~~ *the date printed on the cost quote letter*. After that time, a new cost quote must be obtained for any quarters not previously purchased.

ITEM 8. Amend subrule 21.24(3) as follows:

21.24(3) IPERS buy-back. Effective July 1, 1996, only vested or retired members may buy back previously refunded IPERS credit. For the period beginning July 1, 1996, and ending June 30, 1999, an eligible member is required to make membership contributions equal to the accumulated contributions received by the member for the period of service being purchased plus accumulated interest and interest dividends. Effective July 1, 1999, an eligible member must pay the actuarial cost of a buy-back, as certified by ~~IPERS' actuary~~ IPERS. In calculating the actuarial cost, ~~the actuary~~ IPERS shall apply the same actuarial assumptions and cost methods used in preparing IPERS' annual actuarial valuation, except that: (1) the retirement assumption shall be changed to 100 percent at the member's earliest unreduced retirement age; and (2) if ~~the actuary uses~~ gender-distinct mortality assumptions *are used in the annual actuarial valuation*, the system shall use blended mortality assumptions reasonably representative of the system's experience. The actuarial cost of a service purchase shall be the difference between (1) the actuarial accrued liability for the member using the foregoing assumptions and current service credits, and (2) the actuarial accrued liability for the member using the foregoing assumptions, current service credits, and all quarters of service credit available for purchase. If IPERS changes the service purchase mortality assumptions ~~upon the recommendation of its actuary~~, all outstanding service purchase quotes shall be binding for the remainder of the periods for which the cost quotes were issued. A cost quote for a service purchase shall expire six months after ~~it is delivered to the member~~ *the date printed on the cost quote letter*. After

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that time, a new cost quote must be obtained for any quarters not previously purchased.

Effective July 1, 1996, buy-backs may be made in increments of one or more calendar quarters. Prior to July 1, 1996, the member was required to repurchase the entire period of service and repay the total amount received plus accumulated interest and interest dividends.

A member who is vested solely by having attained the age of 55 must have at least one calendar quarter of wages on file with IPERS before completing a buy-back.

IPERS shall restore the wage records of a member who makes a buy-back and utilize those records in subsequent benefit calculations for that member.

For persons who submit requests for buy-back cost quotes and make purchases based on those quotes after January 14, 2004, IPERS shall not restore the wage records for the purchased quarters. After January 14, 2004, such buy-backs shall be treated like all other service purchases and IPERS will only restore service credit.

ITEM 9. Amend paragraph **21.24(5)“f”** as follows:

f. Effective July 1, 1999, an eligible member must pay the actuarial cost of a military service purchase, as certified by ~~IPERS' actuary~~ IPERS. In calculating the actuarial cost, ~~the actuary~~ IPERS shall apply the same actuarial assumptions and cost methods used in preparing IPERS' annual actuarial valuation, except that: (1) the retirement assumption shall be changed to 100 percent at the member's earliest unreduced retirement age; and (2) if ~~the actuary~~ uses gender-distinct mortality assumptions *are used in the annual actuarial valuation*, the system shall use blended mortality assumptions reasonably representative of the system's experience. The actuarial cost of a service purchase shall be the difference between (1) the actuarial accrued liability for the member using the foregoing assumptions and current service credits, and (2) the actuarial accrued liability for the member using the foregoing assumptions, current service credits, and all quarters of service credit available for purchase. If IPERS changes the service purchase mortality assumptions ~~upon the recommendation of its actuary~~, all outstanding service purchase quotes shall be binding for the remainder of the periods for which the cost quotes were issued. A cost quote for a service purchase shall expire six months after it is ~~delivered to the member~~ *the date printed on the cost quote letter*. After that time, a new cost quote must be obtained for any quarters not previously purchased.

ITEM 10. Amend paragraph **21.24(6)“d”** as follows:

d. Actuarial cost. Effective July 1, 1999, an eligible member must pay 40 percent and the Iowa legislature shall pay 60 percent of the actuarial cost of a legislative service purchase, as certified by ~~IPERS' actuary~~ IPERS. In calculating the actuarial cost, ~~the actuary~~ IPERS shall apply the same actuarial assumptions and cost methods used in preparing IPERS' annual actuarial valuation, except that: (1) the retirement assumption shall be changed to 100 percent at the member's earliest unreduced retirement age; and (2) if ~~the actuary~~ uses gender-distinct mortality assumptions *are used in the annual actuarial valuation*, the system shall use blended mortality assumptions reasonably representative of the system's experience. The actuarial cost of a service purchase shall be the difference between (1) the actuarial accrued liability for the member using the foregoing assumptions and current service credits, and (2) the actuarial accrued liability for the member using the foregoing assumptions, current service credits, and all quarters of service credit available for purchase. If IPERS changes the service purchase mortality

~~assumptions upon the recommendation of its actuary~~, all outstanding service purchase quotes shall be binding for the remainder of the periods for which the cost quotes were issued. A cost quote for a service purchase shall expire six months after it is ~~delivered to the member~~ *the date printed on the cost quote letter*. After that time, a new cost quote must be obtained for any quarters not previously purchased.

ITEM 11. Amend subrule 21.24(18) as follows:

21.24(18) Service purchase cost quotes.

a. ~~General requirements~~ *Required information.*

(1) Active and inactive members. ~~IPERS shall provide~~ *For active and inactive members, a service purchase cost quote must include* the following information ~~to IPERS' actuary in order to calculate service purchase cost quotes for active and inactive members:~~ *member's* date of birth, the applicable occupation class code, total years of current unused IPERS service credit, highest calendar year of covered wages on file, member's current investment, *and* the total number of quarters available to purchase on this cost quote, ~~and whether the service purchase cost quote is for a buy-back or buy-in.~~

~~If the service purchase cost quote is for a buy-back, IPERS shall provide the highest calendar year of covered wages on file regardless of whenever those wages occurred, including quarters covered by a refund. Effective July 1, 2003, IPERS shall provide information to the actuary whether the refund included an employer share, and the actuarial cost of the buy-back shall be adjusted accordingly.~~

(2) Retired members. For retired members, ~~IPERS shall provide a service purchase cost quote must include~~ the following information ~~to IPERS' actuary in order to calculate service purchase cost quotes:~~ *member's* date of birth, the applicable occupation class code, average of the highest three calendar years of covered wages, the option the member selected at retirement, the total number of quarters available to purchase on this cost quote, *and* a calculation of the member's new benefit amount if the member actually purchases all of the quarters in this service purchase cost quote, ~~and whether the service purchase is a buy-back or buy-in.~~

~~In addition to providing the above information to IPERS' actuary, if~~ *If* the member retired under Option 4 or 6, IPERS shall provide, if applicable, *must be provided with* either the date of death (if known) or the date of birth, *as applicable*, for the contingent annuitant, and the percent selected by the member for continuation of benefits to the contingent annuitant upon the member's death. If the member retired under Option 6, IPERS shall calculate how the member's benefits will change under Option 2 upon the contingent annuitant's death ~~and provide this information to the actuary.~~ In preparing cost quotes for retirees who selected Option 4 or 6, ~~IPERS' actuary~~ IPERS shall use for beneficiary mortality assumption the reverse of the assumption used for benefit mortality.

~~If the member retired under Option 5, IPERS shall provide a service purchase cost quote shall also include~~ information on how many months are remaining on the guaranteed ten-year payout.

(3) Reemployment. If the member is retired and subsequently reemployed in IPERS covered employment, and then requests a service purchase cost quote, IPERS shall apply the service to be purchased to the period of employment that will provide the greatest increase in benefits to the member. IPERS shall ~~supply to the actuary~~ *use* the same information as described ~~for retirees in paragraph “b” subparagraphs (1) and (2) of this subrule paragraph,~~ and ~~IPERS' actuary~~

PERSONNEL DEPARTMENT[581](cont'd)

will *IPERS* shall appropriately calculate the service purchase cost quote.

(4) Wages restored. When buy-back quarters are purchased, the member's wage record shall be restored, beginning with the lowest wage quarter and restoring additional quarters in ascending order based on the covered wages reported for such quarters. Wage records shall not be created or restored for any other type of service purchase.

(5) For members who submit requests for buy-back cost quotes and make purchases based on those quotes after January 14, 2004, *IPERS* shall not restore the wage records for the purchased quarters. After January 14, 2004, such buy-backs shall be treated like all other service purchases and *IPERS* will only restore service credit.

~~b. Special situations. Buy-backs of special service time. Refunded special service credit may be purchased as special service credit or as regular service credit subject to the following conditions:~~

~~(1) If the member's current unused service credit record consists of only regular service credit, buy-back cost quotes shall be prepared reflecting purchase as regular service credit and alternatively as special service credit. The member may choose whether to buy back the service credit in question as regular service credit or as special service credit, but not as a combination of both.~~

~~(2) If the member's current unused service credit record consists of a combination of regular and special service credit, then, regardless of the member's current occupation classification code, buy-back cost quotes shall be prepared reflecting purchase as regular service credit and alternatively as special service credit. The member may choose whether to buy back the service credit in question as regular service credit or as special service credit, but not as a combination of both.~~

~~(3) If the member is currently working in a special service class position, and the member's current service credit record consists of only special service credit, the buy-back cost quote shall be prepared as a special service class purchase.~~

~~e b. Buy-ins Additional service purchase procedures.~~

~~(1) Buy-in service Service purchase cost quotes for members currently in special service positions shall be prepared as special service credit.~~

~~(2) Buy-in service Service purchase cost quotes for a member with a combination of currently unused regular and special service credit shall be prepared reflecting purchase as regular service credit and alternatively as special service credit, regardless of the member's current occupation classification code. The member may choose whether to purchase the service as regular service credit or as special service credit, but not as a combination of both.~~

~~(3) Members covered under another retirement plan. Members who wish to buy service credit for employment that is covered by another defined benefit retirement plan qualified under IRC Section 401(a) must waive their right to benefits based on the service credit that is being purchased under *IPERS*. If a waiver is not obtained, service purchases for such employment, including but not limited to employment with another public employer, shall be limited to 20 quarters.~~

~~(4) Members retired under *IPERS*' disability formula. A retired member receiving *IPERS* benefits as a result of a disability shall receive a service purchase cost quote which reflects no penalty for early age reduction.~~

~~d c. Limitations.~~

~~(1) Under no circumstances shall service purchases be allowed for quarters already on file with *IPERS* as covered quarters.~~

(2) Service purchases characterized as nonqualified permissive service credit under IRC Section 415(n) shall not exceed 20 quarters.

(3) If a member has requested a service purchase cost quote and, before the six-month expiration has passed, submits another request for a service purchase cost quote for the same or different employer, the new service purchase cost quote will be based on a combination of the two service purchase cost quotes. The latest service purchase cost quote shall supersede all prior cost quotes provided to the member for the quarters that the member purchases after the issuance of the second cost quote.

(4) If before the six-month expiration has passed a member has made a partial purchase under a service purchase cost quote and requests another service purchase cost quote, the quarters covered by the original cost quote will be added to the new request. *IPERS'* actuary *IPERS* will prepare a new service purchase cost quote. The latest service purchase cost quote shall supersede all prior quotes provided to the member for quarters that the member purchases after the issuance of the second cost quote. For example, if the member receives a cost quote of \$300 per quarter for 6 quarters of Illinois public employment and, three months later, after buying 3 Illinois quarters, requests a service purchase cost quote for 8 quarters of military service, the second quote would be prepared using 11 quarters as the basis for the cost quote. The per-quarter cost quote prepared using the 11 quarters would supersede the \$300 per quarter cost previously quoted. This superseding cost principle will apply regardless of whether the recalculated cost is greater or less than the superseded quote. Thus, in the above example, if the second cost quote is \$350, that would be the price for all 11 quarters for the next six months. However, if the new quote comes in at \$250 per quarter, that will be the cost for all 11 quarters for the next six months.

(5) Purchases for service credit for employment outside the U.S. Service credit for employment with a foreign employer is limited to purchases of service with a qualified Canadian governmental entity as permitted under Iowa Code section 97B.73, or with the federal Peace Corps program under Iowa Code section 97B.80B.

(6) Self-employed member. Because of the difficulty in documenting what portion of the amounts paid are actually related to the performance of services, including amounts reported to the federal and state tax authorities, members shall not be permitted to purchase service credit for periods of self-employment.

ITEM 12. Replace all references to "department" or "department's" with "system" or "system's" in rule 581—21.30(97B).

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PROFESSIONAL LICENSURE DIVISION[645]

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

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

of Intended Action to amend Chapter 30, "Administrative and Regulatory Authority for the Board of Behavioral Science Examiners," and Chapter 31, "Licensure of Marital and Family Therapists and Mental Health Counselors"; to rescind Chapter 33, "Discipline for Marital and Family Therapists and Mental Health Counselors," and adopt a new Chapter 33 with the same title; and to amend Chapter 34, "Fees," Iowa Administrative Code.

These proposed amendments adopt new subrules for the conduct of persons who attend public meetings, adopt criteria for obtaining a duplicate or reissued license, adopt requirements for renewal of a license to practice marital and family therapy or mental health counseling, and amend requirements for notifying the Board of name and address changes. These proposed amendments also adopt a new discipline chapter and modify qualifications for supervisors acting as an alternative supervisor.

The Division sent a draft of the proposed amendments to selected associations, but received no comments on the proposed amendments.

Any interested person may make written comments on the proposed amendments no later than November 5, 2003, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, E-mail pwilson@idph.state.ia.us.

A public hearing will be held on November 5, 2003, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views 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 proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 154D and 272C.

The following amendments are proposed.

ITEM 1. Amend subrules 30.4(2) and 30.4(3) as follows:

30.4(2) Notice of change of address. Each licensee shall notify the board ~~in writing~~ of a change of the licensee's current mailing address within 30 days after the change of address occurs.

30.4(3) Notice of change of name. Each licensee shall notify the board ~~in writing of any~~ a change of name within 30 days after changing the name. ~~Notification requires a notarized copy of a marriage license or a notarized copy of court documents.~~

ITEM 2. Amend the parenthetical implementation for rule 645—30.6(17A) as follows:

645—30.6(17A 21)

ITEM 3. Adopt new subrules 30.6(3) and 30.6(4) as follows:

30.6(3) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

30.6(4) Cameras and recording devices may be used at open meetings provided the cameras and recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

ITEM 4. Amend the implementation clause for **645—Chapter 30** as follows:

These rules are intended to implement Iowa Code chapters 17A, 21, 147, and 154D and 272C.

ITEM 5. Amend subrule **31.5(2)**, paragraph "**b**," subparagraph (3), as follows:

(3) Be an alternative supervisor who ~~possesses qualifications equivalent to a licensed marital and family therapist, including mental health professionals licensed pursuant to Iowa Code chapter 147~~ satisfies the criteria for clinical membership of the American Association of Marriage and Family Therapy (AAMFT). Proposed alternative supervisors must submit an alternate supervision request form;

ITEM 6. Rescind subrule **31.5(3)** and renumber subrule **31.5(4)** as **31.5(3)**.

ITEM 7. Rescind rule 645—31.10(147) and adopt the following new rule in lieu thereof:

645—31.10(147) License renewal.

31.10(1) The biennial license renewal period for a license to practice marital and family therapy or mental health counseling shall begin on October 1 of an even-numbered year and end on September 30 of the next even-numbered year. The board shall notify the licensee at the address on record at least 60 days prior to expiration of the license.

31.10(2) An individual who was issued an initial license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.

31.10(3) A licensee shall:

a. Meet the continuing education requirements of rule 645—32.2(272C) and the mandatory reporting requirements of subrule 31.10(4); and

b. Submit the completed renewal application, continuing education report form and renewal fee before the license expiration date.

31.10(4) Mandatory reporter training requirements.

a. A licensee who regularly examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

b. A licensee who regularly examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

c. A licensee who regularly examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

Training may be completed through separate courses as identified in paragraphs "a" and "b" or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

d. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs "a" to "c," including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 32.

f. The board may select licensees for audit of compliance with the requirements in paragraphs “a” to “e.”

31.10(5) When all requirements for license renewal are met, the licensee shall be sent a wallet card by regular mail.

31.10(6) A person licensed to practice as a marital and family therapist or mental health counselor shall keep the person’s license certificate and wallet card displayed in a conspicuous public place at the primary site of practice.

31.10(7) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 34.1(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within one month following the expiration date on the wallet card.

ITEM 8. Renumber rule **645—31.13(17A,147,272C)** as **645—31.15(17A,147,272C)** and adopt the following new rules:

645—31.13(147) Duplicate certificate or wallet card.

31.13(1) A duplicate wallet card or duplicate certificate shall be required if the current wallet card or certificate is lost, stolen or destroyed. A duplicate wallet card or a duplicate certificate shall only be issued under such circumstances.

31.13(2) A duplicate wallet card or duplicate certificate shall be issued upon receipt of the completed application for duplicate license and payment of the fee as specified in rule 645—34.1(147,154D).

31.13(3) If the board receives a completed application for a duplicate license stating that the wallet card or certificate was not received within 60 days after being mailed by the board, no fee shall be required for issuing the duplicate wallet card or duplicate certificate.

645—31.14(147) Reissued certificate or wallet card. The board shall reissue a certificate or current wallet card upon receipt of a written request from the licensee, return of the original document and payment of the fee as specified in rule 645—34.1(147,154D).

ITEM 9. Rescind 645—Chapter 33 and adopt the following new chapter in lieu thereof:

CHAPTER 33

DISCIPLINE FOR MARITAL AND FAMILY THERAPISTS AND MENTAL HEALTH COUNSELORS

645—33.1(154D) Definitions.

“Board” means the board of behavioral science examiners.

“Discipline” means any sanction the board may impose upon licensees.

“Licensee” means a person licensed to practice as a marital and family therapist or mental health counselor in Iowa.

645—33.2(154D,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule

645—33.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

33.2(1) Failure to comply with the national association’s code of ethics.

a. Marital and family therapists. Failure to comply with the current American Association for Marriage and Family Therapy (AAMFT) Code of Ethics, which is hereby adopted by reference. Copies of the Code of Ethics may be obtained from the AAMFT’s Web site.

b. Mental health counselors. Failure to comply with the current Code of Ethics of the American Mental Health Counselors Association (AMHCA), which is hereby adopted by reference. Copies of the Code of Ethics may be obtained from the AMHCA Web site.

33.2(2) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

a. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or

b. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

33.2(3) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of the licensed marital and family therapist or mental health counselor in this state.

e. Mental or physical inability reasonably related to and adversely affecting the licensee’s ability to practice in a safe and competent manner.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

33.2(4) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

33.2(5) Practice outside the scope of the profession.

33.2(6) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

33.2(7) Habitual intoxication or addiction to the use of drugs.

a. The inability of a licensee to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

b. The excessive use of drugs which may impair a licensee’s ability to practice with reasonable skill or safety.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

33.2(8) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

33.2(9) Falsification of client records.

33.2(10) Acceptance of any fee by fraud or misrepresentation.

33.2(11) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

33.2(12) Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

33.2(13) Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of the profession.

33.2(14) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

33.2(15) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the practice of the profession in another state, district, territory or country.

33.2(16) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

33.2(17) Failure to notify the board within 30 days after the occurrence of any judgment or settlement of a malpractice claim or action.

33.2(18) Engaging in any conduct that subverts or attempts to subvert a board investigation.

33.2(19) Failure to comply with a subpoena issued by the board, or to otherwise fail to cooperate with an investigation of the board.

33.2(20) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

33.2(21) Failure to pay costs assessed in any disciplinary action.

33.2(22) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

33.2(23) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

33.2(24) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice as a marital and family therapist or a mental health counselor.

33.2(25) Failure to report a change of name or address within 30 days after it occurs.

33.2(26) Representing oneself as a licensed marital and family therapist or mental health counselor when one's license has been suspended or revoked, or when one's license is lapsed or has been placed on inactive status.

33.2(27) Permitting another person to use the licensee's license for any purpose.

33.2(28) Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

33.2(29) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

a. Verbally or physically abusing a patient, client or co-worker.

b. Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.

c. Betrayal of a professional confidence.

d. Engaging in a professional conflict of interest.

33.2(30) Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control of the United States Department of Health and Human Services.

645—33.3(147,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.

2. Suspension of license until further order of the board or for a specific period.

3. Prohibit permanently, until further order of the board, or for a specific period the engaging in specified procedures, methods, or acts.

4. Probation.

5. Require additional education or training.

6. Require a reexamination.

7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.

8. Impose civil penalties not to exceed \$1000.

9. Issue a citation and warning.

10. Such other sanctions allowed by law as may be appropriate.

645—33.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state;

2. The facts of the particular violation;

3. Any extenuating facts or other countervailing considerations;

4. The number of prior violations or complaints;

5. The seriousness of prior violations or complaints;

6. Whether remedial action has been taken; and

7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

These rules are intended to implement Iowa Code chapters 17A, 147, 154D and 272C.

ITEM 10. Amend subrule 34.1(5) as follows:

34.1(5) Duplicate or reissued license *certificate* fee is \$10.

ITEM 11. Renumber subrules **34.1(6)** to **34.1(8)** as **34.1(7)** to **34.1(9)** and adopt the following **new** subrule:

34.1(6) Duplicate or reissued wallet card fee is \$10.

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**PROFESSIONAL LICENSURE
DIVISION[645]**

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 Respiratory Care Examiners hereby gives Notice of Intended Action to amend Chapter 260, “Administrative and Regulatory Authority for the Board of Respiratory Care Examiners,” and Chapter 261, “Licensure of Respiratory Care Practitioners”; to rescind Chapter 263, “Discipline for Respiratory Care Practitioners,” and adopt a new Chapter 263 with the same title; and to amend Chapter 264, “Fees,” Iowa Administrative Code.

These proposed amendments adopt new subrules for the conduct of persons who attend public meetings, adopt criteria for obtaining a duplicate or reissued license, adopt requirements for renewal of a license to practice respiratory care, and amend requirements for notifying the Board of name and address changes. These proposed amendments also adopt a new discipline chapter.

Any interested person may make written comments on the proposed amendments no later than November 5, 2003, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, E-mail pwilson@idph.state.ia.us.

A public hearing will be held on November 5, 2003, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views 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 proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 152B and 272C.

The following amendments are proposed.

ITEM 1. Amend subrules 260.4(2) and 260.4(3) as follows:

260.4(2) Notice of change of address. Each licensee shall notify the board ~~in writing~~ of a change of the licensee’s current mailing address within 30 days after the change of address occurs.

260.4(3) Notice of change of name. Each licensee shall notify the board ~~in writing of any a~~ change of name within 30 days after changing the name. ~~Notification requires a notarized copy of a marriage license or a notarized copy of court documents.~~

ITEM 2. Amend the parenthetical implementation for rule 645—260.6(17A) as follows:

645—260.6(17A 21)

ITEM 3. Adopt **new** subrules 260.6(3) and 260.6(4) as follows:

260.6(3) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

260.6(4) Cameras and recording devices may be used at open meetings provided the cameras and recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

ITEM 4. Amend the implementation clause for **645—Chapter 260** as follows:

These rules are intended to implement Iowa Code chapters 17A, 21, 147, 152B and 272C.

ITEM 5. Rescind rule 645—261.8(152B) and adopt the following **new** rule in lieu thereof:

645—261.8(152B) License renewal.

261.8(1) The biennial license renewal period for a license to practice respiratory care shall begin on April 1 of an even-numbered year and end on March 31 of the next even-numbered year. The board shall notify the licensee at the address on record at least 60 days prior to expiration of the license.

261.8(2) An individual who was issued an initial license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.

261.8(3) A licensee shall:

a. Meet the continuing education requirements of rule 645—262.2(152B,272C) and the mandatory reporting requirements of subrule 261.8(4); and

b. Submit the completed renewal application, continuing education report form and renewal fee before the license expiration date.

261.8(4) Mandatory reporter training requirements.

a. A licensee who regularly examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph “e.”

b. A licensee who regularly examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph “e.”

c. A licensee who regularly examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph “e.”

Training may be completed through separate courses as identified in paragraphs “a” and “b” or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

d. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs “a” to “c,” including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 262.

f. The board may select licensees for audit of compliance with the requirements in paragraphs “a” to “e.”

261.8(5) When all requirements for license renewal are met, the licensee shall be sent a wallet card by regular mail.

261.8(6) A person licensed to practice as a respiratory care practitioner shall keep the person’s license certificate and wallet card displayed in a conspicuous public place at the primary site of practice.

261.8(7) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 264.1(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within one month following the expiration date on the wallet card.

ITEM 6. Renumber rule **645—261.11(17A,147,272C)** as **645—261.13(17A,147,272C)** and adopt the following **new** rules:

645—261.11(147) Duplicate certificate or wallet card.

261.11(1) A duplicate wallet card or duplicate certificate shall be required if the current wallet card or certificate is lost, stolen or destroyed. A duplicate wallet card or a duplicate certificate shall only be issued under such circumstances.

261.11(2) A duplicate wallet card or duplicate certificate shall be issued upon receipt of the completed application for duplicate license and payment of the fee as specified in rule 645—264.1(147,152B).

261.11(3) If the board receives a completed application for a duplicate license stating that the wallet card or certificate was not received within 60 days after being mailed by the board, no fee shall be required for issuing the duplicate wallet card or duplicate certificate.

645—261.12(147) Reissued certificate or wallet card. The board shall reissue a certificate or current wallet card upon receipt of a written request from the licensee, return of the original document and payment of the fee as specified in rule 645—264.1(147,152B).

ITEM 7. Rescind 645—Chapter 263 and adopt the following **new** chapter in lieu thereof:

CHAPTER 263
DISCIPLINE FOR
RESPIRATORY CARE PRACTITIONERS

645—263.1(152B) Definitions.

“Board” means the board of respiratory care examiners.

“Discipline” means any sanction the board may impose upon licensees.

“Licensee” means a person licensed to practice as a respiratory care practitioner in Iowa.

645—263.2(152B,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—263.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

263.2(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

a. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state; or

b. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

263.2(2) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a respiratory care practitioner in this state.

e. Mental or physical inability reasonably related to and adversely affecting the licensee’s ability to practice in a safe and competent manner.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

263.2(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

263.2(4) Practice outside the scope of the profession.

263.2(5) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

a. Inflated or unjustified expectations of favorable results.

b. Self-laudatory claims that imply that the respiratory care practitioner is skilled in a field or specialty of practice for which the practitioner is not qualified.

c. Extravagant claims or proclaiming extraordinary skills not recognized by the respiratory care profession.

263.2(6) Habitual intoxication or addiction to the use of drugs.

a. The inability of a licensee to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

b. The excessive use of drugs which may impair a licensee’s ability to practice with reasonable skill or safety.

263.2(7) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

263.2(8) Falsification of client records.

263.2(9) Acceptance of any fee by fraud or misrepresentation.

263.2(10) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care including

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

263.2(11) Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

263.2(12) Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of the profession.

263.2(13) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

263.2(14) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the practice of the profession in another state, district, territory or country.

263.2(15) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

263.2(16) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

263.2(17) Engaging in any conduct that subverts or attempts to subvert a board investigation.

263.2(18) Failure to comply with a subpoena issued by the board, or to otherwise fail to cooperate with an investigation of the board.

263.2(19) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

263.2(20) Failure to pay costs assessed in any disciplinary action.

263.2(21) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

263.2(22) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

263.2(23) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice as a respiratory care practitioner.

263.2(24) Failure to report a change of name or address within 30 days after it occurs.

263.2(25) Representing oneself as a respiratory care practitioner when one's license has been suspended or revoked, or when one's license is lapsed or has been placed on inactive status.

263.2(26) Permitting another person to use the licensee's license for any purpose.

263.2(27) Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

263.2(28) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

a. Verbally or physically abusing a patient, client or coworker.

b. Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.

c. Betrayal of a professional confidence.

d. Engaging in a professional conflict of interest.

263.2(29) Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control of the United States Department of Health and Human Services.

645—263.3(147,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period the engaging in specified procedures, methods, or acts.
4. Probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$1000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

645—263.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state;
2. The facts of the particular violation;
3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

These rules are intended to implement Iowa Code chapters 147, 152B and 272C.

ITEM 8. Amend subrule 264.1(5) as follows:

264.1(5) Duplicate *or reissued* license *certificate* fee is \$10.

ITEM 9. Renumber subrules **264.1(6)** to **264.1(8)** as **264.1(7)** to **264.1(9)** and adopt the following **new** subrule:

264.1(6) Duplicate or reissued wallet card fee is \$10.

ARC 2877B**REVENUE 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 hereby gives Notice of Intended Action to amend Chapter 42, "Adjustments to Computed Tax," Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," and Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Allocation of Tax Revenues," Iowa Administrative Code.

These amendments are proposed as a result of 2002 Iowa Acts, chapter 1005, and 2003 Iowa Acts, Senate File 458.

Item 1 amends subrule 42.18(1) to provide that an individual taxed on income from a revocable trust can qualify for the tax credit provided for an investment in a qualifying business.

Item 2 adopts new subrule 42.18(3) to provide for contingent tax credits for individual income tax relating to investments in the Iowa fund of funds organized by the Iowa Capital Investment Corporation.

Item 3 adopts new subrule 52.21(3) to provide for contingent tax credits for corporation income tax relating to investments in the Iowa fund of funds organized by the Iowa Capital Investment Corporation. This change is similar to the one in Item 2.

Item 4 adopts new subrule 58.11(3) to provide for contingent tax credits for franchise tax relating to investments in the Iowa fund of funds organized by the Iowa Capital Investment Corporation. This change is similar to the one in Item 2.

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

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

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.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than November 17, 2003, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before November 4, 2003. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by November 5, 2003.

These amendments are intended to implement Iowa Code chapter 15E as amended by 2002 Iowa Acts, chapter 1005, and by 2003 Iowa Acts, Senate File 458.

The following amendments are proposed.

ITEM 1. Amend subrule 42.18(1) as follows:

42.18(1) Investment tax credit for an equity investment in a qualifying business or community-based seed capital fund. See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity investment in a qualifying business or community-based seed capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board.

The department of revenue and finance will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a community-based seed capital fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

For equity investments made in a qualifying business, only direct investments made by an individual are eligible for the investment tax credit. *Individuals receiving income from a revocable trust's investment in a qualifying business are eligible for the investment tax credit for the portion of the revocable trust's equity investment in a qualifying business.*

ITEM 2. Amend rule 701—42.18(15E,422) by adopting the following **new** subrule and by amending the implementation clause:

42.18(3) Contingent tax credit for investments in Iowa fund of funds. See rule 123—4.1(15E) for the discussion of the contingent tax credit available for investments made in the Iowa fund of funds organized by the Iowa capital investment corporation. Tax credit certificates related to the contingent tax credits will be issued by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when these tax credit certificates are issued and, if applicable, when they are redeemed. If the tax credit certificate is redeemed, the certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If the tax credit certificate is redeemed, any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the tax credit certificate is redeemed, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual.

REVENUE DEPARTMENT[701](cont'd)

The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

This rule is intended to implement Iowa Code sections *section 15E.43 as amended by 2003 Iowa Acts, Senate File 458, and sections 15E.51, 15E.66, 422.11F and 422.11G.*

ITEM 3. Amend rule 701—52.21(15E,422) by adopting the following **new** subrule and by amending the implementation clause:

52.21(3) Contingent tax credit for investments in Iowa fund of funds. See rule 123—4.1(15E) for the discussion of the contingent tax credit available for investments made in the Iowa fund of funds organized by the Iowa capital investment corporation. Tax credit certificates related to the contingent tax credits will be issued by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when these tax credit certificates are issued and, if applicable, when they are redeemed. If the tax credit certificate is redeemed, the certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If the tax credit certificate is redeemed, any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the tax credit certificate is redeemed, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

This rule is intended to implement Iowa Code sections *section 15E.43 as amended by 2003 Iowa Acts, Senate File 458, and sections 15E.51, 15E.66, 422.11F and 422.33(13).*

ITEM 4. Amend rule 701—58.11(15E,422) by adopting the following **new** subrule and by amending the implementation clause:

58.11(3) Contingent tax credit for investments in Iowa fund of funds. See rule 123—4.1(15E) for the discussion of the contingent tax credit available for investments made in the Iowa fund of funds organized by the Iowa capital investment corporation. Tax credit certificates related to the contingent tax credits will be issued by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when these tax credit certificates are issued and, if applicable, when they are redeemed. If the tax credit certificate is redeemed, the certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If the tax credit certificate is redeemed, any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the tax credit certificate is redeemed, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the

partnership, S corporation, limited liability company, or estate or trust.

This rule is intended to implement Iowa Code sections *section 15E.43 as amended by 2003 Iowa Acts, Senate File 458, and sections 15E.51, 15E.66, 422.11F and 422.60(5).*

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REVENUE 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 hereby gives Notice of Intended Action to amend Chapter 42, "Adjustments to Computed Tax," Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," and Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Allocation of Tax Revenues," Iowa Administrative Code.

These amendments are proposed as a result of 2003 Iowa Acts, House File 683.

Item 1 adopts new rule 42.20(15E), which provides for an Endow Iowa tax credit for individual income tax for endowment gifts to a qualified community foundation. This credit is administered by the Iowa Department of Economic Development.

Item 2 adopts new rule 52.23(15E), which provides for an Endow Iowa tax credit for corporation income tax for endowment gifts to a qualified community foundation. This change is similar to the one in Item 1.

Item 3 adopts new rule 58.13(15E), which provides for an Endow Iowa tax credit for franchise tax for endowment gifts to a qualified community foundation. This change is similar to the one in Item 1.

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

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

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.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than November 17, 2003, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before November 4, 2003. Such written comments should be directed to the Policy Section, Compliance Division, Depart-

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ment of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by November 5, 2003.

These amendments are intended to implement Iowa Code chapter 15E as amended by 2003 Iowa Acts, House File 683.

The following amendments are proposed.

ITEM 1. Amend 701—Chapter 42 by adopting the following **new** rule:

701—42.20(15E) Endow Iowa tax credit. Effective for tax years beginning on or after January 1, 2003, a taxpayer who makes an endowment gift to a qualified community foundation may qualify for an endow Iowa tax credit, subject to the availability of the credit. The credit is equal to 20 percent of a taxpayer's endowment gift to a qualified community foundation approved by the Iowa department of economic development. The administrative rules for the endow Iowa tax credit for the Iowa department of economic development may be found under 261—Chapter 47.

The total amount of endow Iowa tax credits available is \$2 million, and the maximum amount of tax credit granted to a single taxpayer shall not exceed \$100,000. An endow Iowa tax credit shall not be authorized after December 31, 2005. The endow Iowa tax credit cannot be transferred to any other taxpayer.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement 2003 Iowa Acts, House File 683, sections 83 and 84.

ITEM 2. Amend 701—Chapter 52 by adopting the following **new** rule:

701—52.23(15E) Endow Iowa tax credit. Effective for tax years beginning on or after January 1, 2003, a taxpayer who makes an endowment gift to a qualified community foundation may qualify for an endow Iowa tax credit, subject to the availability of the credit. The credit is equal to 20 percent of a taxpayer's endowment gift to a qualified community foundation approved by the Iowa department of economic development. The administrative rules for the endow Iowa tax credit for the Iowa department of economic development may be found under 261—Chapter 47.

The total amount of endow Iowa tax credits available is \$2 million, and the maximum amount of tax credit granted to a single taxpayer shall not exceed \$100,000. An endow Iowa tax credit shall not be authorized after December 31, 2005. The endow Iowa tax credit cannot be transferred to any other taxpayer.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 15E.305 and section 422.33 as amended by 2003 Iowa Acts, House File 683, section 85.

ITEM 3. Amend 701—Chapter 58 by adopting the following **new** rule:

701—58.13(15E) Endow Iowa tax credit. Effective for tax years beginning on or after January 1, 2003, a taxpayer who makes an endowment gift to a qualified community foundation may qualify for an endow Iowa tax credit, subject to the availability of the credit. The credit is equal to 20 percent of a taxpayer's endowment gift to a qualified community foundation approved by the Iowa department of economic development. The administrative rules for the endow Iowa tax credit for the Iowa department of economic development may be found under 261—Chapter 47.

The total amount of endow Iowa tax credits available is \$2 million, and the maximum amount of tax credit granted to a single taxpayer shall not exceed \$100,000. An endow Iowa tax credit shall not be authorized after December 31, 2005. The endow Iowa tax credit cannot be transferred to any other taxpayer.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 15E.305 and section 422.60 as amended by 2003 Iowa Acts, House File 683, section 86.

UTILITIES DIVISION

Notice of Formal Notice and Comment Proceeding

The Iowa Utilities Board (Board) hereby gives notice, pursuant to 199 IAC 5.3(3), that on July 2, 2003, Qwest Corporation (Qwest) filed a petition for determination of effective competition and deregulation pursuant to Iowa Code section 476.1D (2003). Qwest asks the Board to determine that its existing retail local exchange services in 37 of its 124 Iowa exchanges are subject to effective competition and should be deregulated. The exchanges include: Council Bluffs, Crescent, Sioux City, Whiting, Alta, Arnolds Park, Estherville, Lake Park, Laurens, Milford, Sioux Rapids, Spencer, Spirit Lake, Storm Lake, Calmar, Decorah, Clinton, Davenport, Muscatine, Cedar Rapids, Iowa City, Mount Vernon, Adel, Altoona, Ankeny, Carlisle, Dallas Center, Dawson, Des Moines, Granger, Grimes, Indianola, Norwalk, Polk City, Perry, Runnells, and Waukee.

If the Board grants that request and deregulates Qwest's retail local exchange services in the identified exchanges,

UTILITIES DIVISION(cont'd)

Qwest requests a determination by the Board that a deregulation accounting plan is not required of Qwest because its rates are presently regulated pursuant to a Board-approved price plan and are not subject to rate of return regulation.

In support of its petition, Qwest states that in each of the identified exchanges at least one competitive local exchange carrier (CLEC) has applied for, and received, a certificate of public convenience and necessity to permit the CLEC to offer competitive telecommunications services in the exchange. Qwest alleges that these CLECs have acquired a substantial percentage of the local exchange service provided in each exchange. In addition, Qwest alleges that other competitive factors are applicable to all its exchanges, including wireless telephone service, cable modems for high speed data transmission, and the use of Voice Over Internet Protocol (VoIP) enabling a customer to utilize a broadband connection to originate and receive voice telephone calls, completely bypassing Qwest's network.

Responses to Qwest's petition were filed, raising various issues regarding the petition, including a request that the Board docket the petition as a contested case. However, 199 IAC 5.3(1) sets forth the manner to be used to process such a request. Pursuant to 199 IAC 5.3(1), the Board has, therefore, initiated a formal notice and comment proceeding, identified as Docket No. INU-03-4, to determine whether all retail local exchange services offered within the identified exchanges are subject to effective competition and should be deregulated.

The Board intends to develop a complete evidentiary record concerning the application of the criteria in subrule 5.6(1) to the identified services. Participants in the docket will be permitted to file sworn statements of position by November 14, 2003, and counterstatements by December 15, 2003. An oral presentation, at which all participants will be permitted to cross-examine other participants, will commence on January 21, 2004. Further details may be obtained from the Board's order, available on the Board's Web site at www.state.ia.us/iub.

ARC 2883B**UTILITIES DIVISION[199]****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 Iowa Code sections 17A.4, 476.1, 476.2, 476.3, 476.6, and 476.33 and 2003 Iowa Acts, Senate File 458, section 134, the Utilities Board (Board) on September 26, 2003, issued an order commencing a rule making, Docket No. RMU-03-14, In re: Capital Infrastructure Investments and Cost of Capital Changes [199 IAC 7.4(6)"g" and 7.11(2)], "Order Commencing Rule Making," to comply with the mandate in 2003 Iowa Acts, Senate File 458, section 134. These proposed amendments would require the Board to consider capital infrastructure costs and cost of capital changes that occur within nine months of the test year in a general rate proceeding under Iowa Code sections 476.3 and 476.6. The "Order Commencing Rule Making" can be found on the Board's Web site, www.state.ia.us/iub.

Pursuant to Iowa Code section 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. Persons filing comments are requested to address the effect that the proposed amendments may have on temporary rate authority under Iowa Code section 476.6(13). The statement must be filed on or before November 4, 2003, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

An oral presentation is not scheduled at this time. Pursuant to Iowa Code section 17A.4(1)"b," an oral presentation may be requested or the Board, on its own motion after reviewing the comments, may determine that an oral presentation should be scheduled.

These amendments are intended to implement Iowa Code sections 17A.4, 476.1, 476.2, 476.3, 476.6, and 476.33 and 2003 Iowa Acts, Senate File 458, section 134.

The following amendments are proposed.

ITEM 1. Amend paragraph 7.4(6)"g" as follows:

g. Additional evidence. The applicant may submit any other *testimony*, schedules, exhibits, and data which it deems pertinent to the application.

(1) *Additional evidence may include:*

1. *Testimony, schedules, exhibits, and data concerning the cost of capital infrastructure investments that will not produce significant revenues and will be in service in Iowa within nine months of the test year.*

2. *Testimony, schedules, exhibits, and data concerning cost of capital changes that will occur within nine months after the conclusion of the test year that are associated with a new generating plant that has been the subject of a ratemaking principles proceeding pursuant to Iowa Code section 476.53.*

(2) *The utility shall specifically identify and support the information, including providing an estimate at the time of filing and addressing prudence issues, regarding the changes that will be verifiable prior to the closing of the record at the hearing in the proceedings.*

(3) *A utility electing to file additional evidence under this paragraph shall include in the reports required in subparagraph 7.4(6)"e"(1) any capital infrastructure investments that will not produce significant revenues and have been placed in service in Iowa, or capital issuances that have been completed that are associated with a new generating plant that has been the subject of a ratemaking principles proceeding pursuant to Iowa Code section 476.53.*

(4) *A utility electing to file additional evidence under this paragraph shall provide additional schedules as required by subparagraphs 7.4(6)"e"(13), (14), and (15) related to capital issuances that have been completed that are associated with a new generating plant that has been the subject of a ratemaking principles proceeding pursuant to Iowa Code section 476.53.*

(5) *Subparagraphs 7.4(6)"g"(1) through (4) are repealed effective July 1, 2007. However, any proceeding that is pending on July 1, 2007, that is being conducted pursuant to Iowa Code section 476.3 or 476.6 shall be completed as if subparagraphs 7.4(6)"g"(1) through (4) had not been repealed. Upon repeal of subparagraphs 7.4(6)"g"(1) through (4), the board may still consider the adjustments addressed in those subparagraphs, but shall not be required to consider them.*

UTILITIES DIVISION[199](cont'd)

ITEM 2. Amend subrule 7.11(2) as follows:

7.11(2) Known and measurable changes. In rate regulatory proceedings under Iowa Code sections 476.3 and 476.6, the board shall consider:

a. verifiable Verifiable data, existing as of the date of commencement of the proceedings, respecting known and measurable changes in costs not associated with a different level of revenue and known and measurable revenues not associated with a different level of costs, that are to occur within 12 months after the date of commencement of the proceedings.

b. Data which becomes verifiable prior to the closing of the record at the hearing respecting known and measurable:

(1) Capital infrastructure investments that will not produce significant additional revenues and will be in service in Iowa within nine months after the conclusion of the test year.

(2) Cost of capital changes that will occur within nine months after the conclusion of the test year that are associated with a new generating plant that has been the subject of a ratemaking principles proceeding pursuant to Iowa Code section 476.53.

Paragraph 7.11(2)“b” is repealed effective July 1, 2007. However, any proceeding that is pending on July 1, 2007, that is being conducted pursuant to Iowa Code section 476.3 or 476.6 shall be completed as if paragraph 7.11(2)“b” had not been repealed. Upon repeal of paragraph 7.11(2)“b,” the board may still consider the adjustments addressed in the paragraph, but shall not be required to consider them.

ARC 2882B

UTILITIES DIVISION[199]

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 Iowa Code sections 17A.4, 476.1, 476.2, 476.10, 476.86, and 476.87, the Utilities Board (Board) gives notice that on September 26, 2003, the Board issued an order in Docket No. RMU-03-6, In re: Revisions to Small Volume Gas Transportation Service Rules [19.13(4)“e,” 19.13(4)“f,” 19.13(6), and 19.14(5)“d”], “Order Commencing Rule Making.” On July 18, 2003, the Board terminated an inquiry into the development of a comprehensive plan for the transporta-

tion of natural gas by residential and other small volume customers. In the order, the Board indicated that 199 IAC 19.13(4)“e,” 19.13(4)“f,” 19.13(6), and 19.14(5)“d” would need to be amended as a result of the closing of the inquiry. The order containing the background and support for the proposed amendments can be found on the Board’s Web site, www.state.ia.us/iub.

Pursuant to Iowa Code section 17A.4(1)“a” and “b,” any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before November 4, 2003, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author’s name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

No oral presentation is scheduled at this time. Pursuant to Iowa Code section 17A.4(1)“b,” an oral presentation may be requested or the Board, on its own motion after reviewing the comments, may determine that an oral presentation should be scheduled.

These amendments are intended to implement Iowa Code sections 17A.4, 476.1, 476.2, 476.10, 476.86, and 476.87.

The following amendments are proposed.

ITEM 1. Rescind paragraph **19.13(4)“e.”**

ITEM 2. Rescind paragraph **19.13(4)“f.”**

ITEM 3. Amend subrule 19.13(6) as follows:

19.13(6) Written notice of risks. The utility must notify *in writing* its large volume users, as defined in 19.14(1), contracting for transportation service ~~in writing~~ that unless the customer buys system supply reserve service from the utility, the utility is not obligated to supply gas to the customer. The notice must also advise the large volume user of the nature of any identifiable penalties, any administrative or reconnection costs associated with purchasing available firm or interruptible gas, and how any available gas would be priced by the utility. The notice may be provided through a contract provision or separate written instrument. The large volume user must acknowledge in writing that it has been made aware of the risks and accepts the risks.

Notice of the risks of supply failure need not be given to small volume users, as defined in subrule 19.14(1), since utilities are obligated to supply gas to a small volume transportation customer if the small volume customer’s supply fails.

ITEM 4. Rescind paragraph **19.14(5)“d.”**

ARC 2871B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 159.5(11) and 163.1, the Department of Agriculture and Land Stewardship hereby adopts amendments to Chapter 64, "Infectious and Contagious Diseases," Iowa Administrative Code.

The purpose of these amendments is to establish low pathogenic avian influenza (H5 and H7 subtypes) as a reportable disease in Iowa and to implement a control program for infected flocks.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 20, 2003, as **ARC 2694B**.

No public hearing was held. Public comments from the poultry industry were received during the public comment period. Changes were made from the Notice of Intended Action and are detailed below.

1. In rule 21—64.185(163), the definition for "affected poultry flock" was modified by substituting "infected" for "affected." The definition of "low pathogenic avian influenza (LPAI)" was modified to further classify the disease as being caused by Type A influenza virus. The definition of "poultry flock" was modified to conform with generally accepted industry standards.

2. In rule 21—64.187(163), surveillance procedures for breeders were modified to recognize that flocks that participate in, and qualify under, the USDA, APHIS, NPIP U.S. Avian Influenza Clean Program meet or exceed the surveillance provisions of this plan and are exempt from further certification. Further clarification of "slaughter" and "pre-slaughter" testing was included to provide a time frame for preslaughter testing and to clarify that slaughter samples will be collected at slaughter.

3. Rule 21—64.189(163) has been clarified to make clear that the quarantine of an exposed premises is only in place pending the results of the epidemiological investigation.

4. In subrule 64.191(2), "will" was changed to "may" in paragraph "f," subparagraph (1), regarding the vaccination of all noninfected poultry on the farm, due to concerns with slaughter withdrawal and the marketing of birds on the premises which are considered to be epidemiologically distinct from the infected birds. Requirements from paragraphs "i" and "j" of the Notice have been incorporated into other paragraphs.

No waiver provision is included in these amendments because 21—Chapter 8 allows for waivers in appropriate cases and applies to these amendments.

Pursuant to 2003 Iowa Acts, House File 636, the Department finds that the fiscal impact of these amendments does not meet the threshold requirements.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and the amendments be made effective upon filing as they confer a benefit to the poultry industry by providing more immediate protections for the industry should the disease be diagnosed in Iowa.

These amendments became effective September 25, 2003, upon filing.

These amendments are intended to implement Iowa Code chapter 163.

The following amendments are adopted.

ITEM 1. Amend rule **21—64.1(163)**, List B, Avian Diseases, by adding the following **new** entry in alphabetical order:

Low pathogenic avian influenza (H5 and H7 subtypes)

ITEM 2. Amend 21—Chapter 64 by adding the following **new** rules:

LOW PATHOGENIC AVIAN INFLUENZA (LPAI)

21—64.185(163) Definitions. Terms used in these rules are defined as follows:

"Affected poultry flock" means a poultry flock from which any animal has been diagnosed as infected with LPAI and which is not in compliance with the provisions of the control program for LPAI as described in this chapter.

"Approved laboratory" means the Iowa State University Veterinary Diagnostic Laboratory, Ames, Iowa, or other American Association of Veterinary Laboratory Diagnosticians (AAVLD) accredited laboratory, including the National Veterinary Services Laboratory, Ames, Iowa.

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

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

"Low pathogenic avian influenza (LPAI)" means an infectious, contagious disease of poultry caused by Type A influenza virus. For the purposes of these rules, LPAI shall include only subtypes identified as H5 or H7.

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

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

"Monitored LPAI poultry flock" means a flock of poultry that is in compliance with the surveillance and testing procedures set forth in these rules.

"Official avian influenza test" means an approved test conducted at a laboratory approved to diagnose avian influenza.

"Poultry" means commercial egg-laying and meat-producing chickens and commercial turkeys. "Poultry" also means breeder flocks and quail.

"Poultry flock" means a group of poultry, generally of the same age, that are hatched, housed, managed, and sold together as one unit.

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

21—64.186(163) Supervision of the low pathogenic avian influenza program. The state veterinarian's office shall provide oversight and supervision of the LPAI program in Iowa.

21—64.187(163) Surveillance procedures. Breeders that participate in, and qualify under, the USDA, APHIS, NPIP U.S. Avian Influenza Clean Program meet or exceed the surveillance provisions of this plan and are exempt from further

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

certification under this rule. For poultry flocks, surveillance procedures shall include the following:

64.187(1) Turkeys.

a. Slaughter testing. Twenty blood samples shall be collected at slaughter and forwarded to an approved laboratory for LPAI testing.

b. Sick flock testing. Twenty blood samples shall be collected two weeks after the onset of respiratory disease and forwarded to an approved laboratory for LPAI testing.

c. Routine serologic testing. A test for LPAI should be included.

64.187(2) Laying chickens and quail.

a. Preslaughter testing. Twenty blood samples shall be collected and forwarded to an approved laboratory for LPAI testing within 30 days prior to depopulation.

b. Sick flock testing. Twenty blood samples shall be collected two weeks after the onset of respiratory disease and forwarded to an approved laboratory for LPAI testing.

c. Routine serologic testing. A test for LPAI should be included.

64.187(3) Broiler chickens.

a. Slaughter testing. Twenty blood samples shall be collected at slaughter and forwarded to an approved laboratory for LPAI testing.

b. Sick flock testing. Twenty blood samples shall be collected two weeks after the onset of respiratory disease and forwarded to an approved laboratory for LPAI testing.

c. Routine serologic testing. A test for LPAI should be included.

21—64.188(163) Official LPAI tests. Official tests for LPAI are:

1. Agar Gel Precipitin (AGP);
2. Enzyme Linked Immunosorbent Assay (ELISA);
3. Any other tests performed by an approved laboratory to confirm a diagnosis of LPAI.

Tests positive to screening for avian influenza must be forwarded to National Veterinary Services Laboratory, Ames, Iowa, for subtype testing.

21—64.189(163) Investigation of LPAI affected poultry identified through surveillance. All poultry diagnosed at an approved laboratory as infected with LPAI must be traced back to the flock of origin.

All flocks of origin having contact with affected or exposed poultry as determined by the designated epidemiologist must be investigated epidemiologically. All flocks of origin and flocks having contact with affected or exposed poultry must be quarantined, pending the results of the epidemiological investigation.

21—64.190(163) Duration of quarantine. Quarantines imposed in accordance with these rules shall be in effect for a minimum of three months after the last detection of active avian influenza virus on the premises. Active avian influenza virus on the premises will be determined through the use of sentinel poultry or virus isolation.

21—64.191(163) Flock plan.

64.191(1) The flock owner, the owner's veterinarian, if requested, and the epidemiologist shall develop a plan for eradicating LPAI in each affected flock. The plan must be designed to reduce and then eliminate LPAI from the flock, to prevent spread of the disease to other flocks, and to prevent reintroduction of LPAI after the flock becomes disease-free. The flock plan must be developed and signed within 15 days after the determination that the flock is affected.

64.191(2) The flock plan will include, but is not limited to, the following areas:

a. Movement of vehicles, equipment, and people on and off the premises.

b. Cleaning and disinfection of vehicles entering and leaving the premises.

c. Proper elimination of daily mortality through composting on premises, incineration on premises, or other approved method.

d. Biosecurity procedures for people entering or leaving the facility.

e. Controlled marketing.

(1) No poultry may be removed from the premises for a minimum of 21 days after the last detection of active avian influenza virus on the premises. Immune flocks that have recovered from avian influenza infection may remain on the premises for the remainder of their scheduled life span.

(2) After 21 days, poultry marketing will only be allowed for delivery to slaughter establishments at the close of business for the week.

(3) Routes used to transport poultry to slaughter must avoid other poultry operations.

(4) Trucks used to transport poultry from an infected premises must be cleaned and disinfected and may not enter another poultry facility for at least 24 hours.

(5) Eggs which are washed, sanitized, and packed in new materials may be moved into normal marketing channels, but trucks hauling these eggs must not visit another premises between the production site and the market. Egg handling materials must be destroyed at the plant or cleaned, sanitized, and returned to the premises of origin without contacting materials going to other premises. Disposable egg flats or sanitized, plastic flats must be used to transport eggs.

f. Vaccination. Avian influenza vaccine will be considered for use only if allowed by the state veterinarian and USDA APHIS.

(1) Killed H5 or H7 vaccine may be used to immunize all noninfected poultry remaining on the premises. Laying-flock replacement poultry should be vaccinated at least two weeks before entering the laying operation.

(2) Twenty sentinel (nonvaccinated) poultry will be kept in each vaccinated flock, and all 20 will be tested for avian influenza every 30 days.

(3) Avian influenza virus will be considered to be no longer active when all sentinel poultry are serologically negative on two consecutive tests conducted at least 14 days apart and when cloacal swabs from each of the 20 sentinel poultry are negative by virus isolation testing.

(4) Positive sentinel poultry must be euthanized and replaced by negative poultry after 14 days.

(5) Slaughter withdrawal times must be followed in the marketing of poultry.

g. Housing facilities and manure. Before a new flock is placed in an infected house, manure must be removed and the housing facilities must be cleaned and disinfected. Manure shall not be removed for a minimum of 30 days after the last active detection of avian influenza virus in a house. Manure from infected housing facilities must be carried in covered conveyances, and transportation routes must avoid other poultry operations. Manure handling and disposal will be at the direction of the state veterinarian.

h. Wild bird, insect, and rodent control. Wild bird, insect, and rodent control programs must be implemented on the premises before a facility is repopulated with poultry. Rodenticide must be set out before feed or birds are removed from the premises.

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

64.191(3) The plan must address flock management and be in compliance with all provisions of these rules. The plan must be formalized as a memorandum of agreement between the owner and program officials, must be approved by the state veterinarian, and must include plans to obtain a disease-free status.

21—64.192(163) Cleaning and disinfecting. The premises must be cleaned and disinfected under state supervision within 15 days after affected poultry have been removed.

These rules are intended to implement Iowa Code chapter 163.

[Filed Emergency After Notice 9/25/03, effective 9/25/03]
[Published 10/15/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/15/03.

ARC 2840B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 17A.3 and 2003 Iowa Acts, House File 667, the Department of Human Services amends Chapter 100, "Child Support Parental Obligation Pilot Projects," Iowa Administrative Code.

These amendments extend until October 1, 2006, the expiration date of rules for parental obligation pilots and incentives for parents involved with those pilots. 2003 Iowa Acts, House File 667, signed on May 23, 2003, directs that the requirements in the 2001 session law for these pilot projects "shall remain applicable." The current rules for the pilot projects are set to expire on October 1, 2003.

The pilot program provides opportunities for local communities to offer incentives that are helpful in engaging fathers in programs that address barriers to the payment of support. The current rules include four child support-related incentives that pilot projects may offer parents to encourage participation. Those incentives are: limited deviation from child support guidelines, expedited modification of child support orders, temporary lowering of income withholding, and satisfaction or forgiveness of child support due the state.

Program participants have paid over \$400,000 in support for families in two years. In state fiscal year 2004, there will be approximately ten funded and unfunded local community programs working with fathers and mothers who are to pay support. These amendments will extend the rules under which these programs are working. Building an awareness of ways to recruit and involve fathers is still very new, and additional experience with community initiatives is necessary.

These amendments do not provide for waivers in specified situations because parents volunteer to participate in the pilot projects, so waiver provisions are inapplicable.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on July 9, 2003, as **ARC 2610B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to the Notice of Intended Action.

The Council on Human Services adopted these amendments on September 17, 2003.

The Department finds that these amendments confer a benefit on the pilot projects and the customers participating in them by allowing continuity through the previous sunset date of October 1, 2003. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date is waived.

These amendments are intended to implement 2003 Iowa Acts, House File 667, section 8, subsection 4, paragraph "b," subparagraph (3).

These amendments became effective on October 1, 2003. The following amendments are adopted.

ITEM 1. Amend the parenthetical implementation for all rules in **441—Chapter 100** as follows:
(~~78GA,SF2435~~ 17A,80GA,HF667)

ITEM 2. Amend subrule **100.3(2)**, paragraph "i," as follows:

i. Project duration, not to exceed ~~three years from extend beyond~~ October 1, ~~2000~~ 2006.

ITEM 3. Amend rule 441—100.8(~~78GA,SF2435~~) as follows:

~~441—100.8(78GA,SF2435~~ 17A,80GA,HF667) **Continued application of rules and sunset provisions.** Except as provided in subrule 100.8(2), these rules shall terminate the earlier of October 1, ~~2003~~ 2006, or when legislative authority is discontinued.

ITEM 4. Amend **441—Chapter 100**, implementation clause, as follows:

These rules are intended to implement ~~2000~~ 2003 Iowa Acts, ~~Senate House~~ File ~~2435~~ 667, section ~~4~~ 8, subsection ~~4d(3)~~ 4b(3).

[Filed Emergency After Notice 9/22/03, effective 10/1/03]
[Published 10/15/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/15/03.

ARC 2874B**VETERANS AFFAIRS
COMMISSION[801]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 35A.3(2), the Commission of Veterans Affairs hereby amends Chapter 10, "Iowa Veterans Home," Iowa Administrative Code.

These amendments increase the personal needs allowance for members, increase the maximum dollar amount of liquid assets members are allowed to keep, change "will" to "shall" throughout, change the number of months assets can be divested, and correct the day interest is accrued.

In compliance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are impracticable because of the immediate need to codify this increase in veterans' monthly allotments.

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 these amendments should be made effective upon filing with the Administrative Rules Coordinator on September 17, 2003, as they confer a benefit on residents in the Iowa Veterans Home by allowing them to retain a greater portion of their income and assets.

VETERANS AFFAIRS COMMISSION[801](cont'd)

These amendments are intended to implement Iowa Code chapter 35D.

These amendments became effective September 17, 2003. The following amendments are adopted.

ITEM 1. Amend paragraphs **10.16(2)“b,” “c” and “d”** as follows:

b. Assets of a single member. When liquid assets, not exempted in paragraph “a” above, are equal to or exceed \$1400 2000, those liquid assets shall be considered an available resource for payment of member support. These assets ~~will~~ *shall* be considered available for payment of member support until such time that the remaining liquid assets total less than \$500.

c. Assets of a married member with spouse in a care facility. If a member’s spouse is residing in a nursing facility, including IVH, the member ~~will~~ *shall* be treated as a single member for asset determination purposes. If the spouse is residing in a residential care facility, the rules pertaining to a spouse living in the community apply.

d. Assets of a married member with spouse living in the community. When liquid assets, not exempted in paragraph “a” above, are equal to or exceed \$1400 2000, those liquid assets shall be considered an available resource for payment of member support. These assets ~~will~~ *shall* be considered available for payment of member support until such time that the remaining liquid assets total less than \$500.

The assets attributed to the member shall be one-half of the documented assets of both the member and spouse living in the community as of the first day of admission to IVH. However, if one-half of the resources is less than the amount set by 441 IAC 75.5(3)“d” and “f,” Public Law 100-365 and Public Law 100-485, then that amount shall be protected for the spouse living in the community. Resources attributed to the spouse living in the community ~~will~~ *shall* be ~~one-half of the total resources~~ *the Medicaid attribution amount* up to a maximum as established by statute.

(1) to (3) No change.

ITEM 2. Amend subrule 10.19(1) as follows:

10.19(1) For members living on Title XIX certified units who are eligible for Title XIX medical assistance, rule 441—75.5(249A) shall apply. For those members participating in the Title XIX medical assistance program, the difference between the \$90 120 personal needs allowance and the Title XIX personal needs allowance shall be returned to the member out of individual member participation.

ITEM 3. Amend subparagraph **10.19(2)“b”(1)** as follows:

(1) All income up to the first \$90 120 shall be kept as a personal needs allowance.

ITEM 4. Amend subrule 10.35(3) as follows:

10.35(3) IVH shall maintain a commercial account with a federally insured bank for the personal deposits of its members. The account shall be known as the IVH membership account. The commandant or designee shall record each member’s personal deposits individually and shall deposit the funds in the membership account where the members’ deposits shall be held in the aggregate. Interest shall accrue on those accounts that are on deposit the last working ~~day of a quarter~~ *Friday of each month*.

ITEM 5. Amend paragraph **10.36(2)“e”** as follows:

e. A bed shall be held for a hospitalized member. The member’s client participation shall be ~~an exception to department of human services’ rules as the member’s bed will be held free of charge after the first ten days of a hospital stay paid according to the department of human services’ income maintenance worker for all hospitalized days~~ until member returns or is discharged.

ITEM 6. Amend subrule 10.42(1) as follows:

10.42(1) A discharged member ~~will~~ *shall* remove all personal property at the time of discharge or within 30 days. Personal property not removed within 30 days after discharge shall become the property of IVH to dispose of as the commandant or designee directs. Personal property may be forwarded at the member’s expense to the member’s last-known address. When the member is discharged from IVH, the member’s funds shall be released to the member or legal representative with a statement provided no later than the tenth day of the month following the month of discharge.

ITEM 7. Amend subrule 10.42(3) as follows:

10.42(3) Upon death of a member with personal funds deposited at IVH, IVH ~~will~~ *shall* convey the member’s funds with a final statement to the legal representative administering the member’s estate. When an estate is not opened or in cases where no executor is appointed, IVH ~~will~~ *shall* attempt to locate the deceased member’s heirs and deliver the funds and property to the heirs within one year after date of death.

[Filed Emergency 9/17/03, effective 9/17/03]

[Published 10/15/03]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/15/03.

ARC 2858B**COLLEGE STUDENT AID
COMMISSION[283]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission amends Chapter 2, "Agency Procedure for Rule Making," Iowa Administrative Code.

The adopted amendments, which ensure consistency in terms and correct unclear wording and grammatical oversights, are made pursuant to Executive Order Number 8.

Notice of Intended Action was published in the June 11, 2003, Iowa Administrative Bulletin as **ARC 2536B**. No comments were received from the public. The adopted amendments are identical to those published under Notice.

These amendments were approved during the September 15, 2003, meeting of the College Student Aid Commission.

These amendments will become effective November 19, 2003.

These amendments are intended to implement Iowa Code section 17A.3(1)"a" and "b" and chapter 261.

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 amendments [amendments to Ch 2] is being omitted. These amendments are identical to those published under Notice as **ARC 2536B**, IAB 6/11/03.

[Filed 9/24/03, effective 11/19/03]
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[For replacement pages for IAC, see IAC Supplement 10/15/03.]

ARC 2857B**COLLEGE STUDENT AID
COMMISSION[283]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission amends Chapter 3, "Declaratory Orders," Iowa Administrative Code.

The adopted amendments, which ensure consistency in terms and correct unclear wording and grammatical oversights, are made pursuant to Executive Order Number 8.

Notice of Intended Action was published in the June 11, 2003, Iowa Administrative Bulletin as **ARC 2535B**. No comments were received from the public. The adopted amendments are identical to those published under Notice.

These amendments were approved during the September 15, 2003, meeting of the College Student Aid Commission.

These amendments will become effective November 19, 2003.

These amendments are intended to implement Iowa Code section 17A.3(1)"a" and "b" and chapter 261.

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 amendments [amendments to Ch 3] is being omitted.

These amendments are identical to those published under Notice as **ARC 2535B**, IAB 6/11/03.

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[For replacement pages for IAC, see IAC Supplement 10/15/03.]

ARC 2856B**COLLEGE STUDENT AID
COMMISSION[283]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission rescinds Chapter 4, "Contested Cases," Iowa Administrative Code, and adopts new Chapter 4, "Due Process."

The new chapter allows the rules to be organized more sequentially by allowing "Due Process," currently Chapter 5, to precede "Contested Cases," currently Chapter 4.

Notice of Intended Action was published in the June 11, 2003, Iowa Administrative Bulletin as **ARC 2534B**. No comments were received from the public. The adopted rules are identical to those published under Notice.

This chapter was approved during the September 15, 2003, meeting of the College Student Aid Commission.

This rule will become effective November 19, 2003.

This rule is intended to implement Iowa Code section 17A.3(1)"a" and "b" and chapter 261.

The following amendment is adopted.

Rescind 283—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4
DUE PROCESS

283—4.1(261) Appeals. This chapter describes procedures for appeal to commission decisions covering student eligibility for state scholarship and grant awards, adjustment in award amounts, refunds of awards, and institutional eligibility for participation in state scholarship and grant programs.

4.1(1) Administrative staff of the commission shall make all decisions in accordance with established policies and published administrative rules approved by the commission and shall notify the concerned individual or institution of these decisions within a reasonable time after inquiry.

4.1(2) If an individual, institution, or any duly appointed representative thereof disagrees with a staff decision, written evidence setting forth the reasons for disagreement shall be presented to the executive director of the commission. The evidence must be presented within 60 days after notification of the staff decision, and the appellant may request a hearing.

a. If no hearing is requested, the executive director will consider all evidence provided and will notify the appellant within 30 days whether the decision is retracted, modified or upheld. The appellant will be advised of the appellant's right to carry the appeal to a meeting of the full commission or to an appeals panel appointed by the commission.

b. If a hearing is requested, the executive director will follow the contested case procedures in 283—Chapter 5.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

This rule is intended to implement Iowa Code section 261.3.

[Filed 9/24/03, effective 11/19/03]

[Published 10/15/03]

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ARC 2855B

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission rescinds Chapter 5, "Due Process," Iowa Administrative Code, and adopts new Chapter 5, "Contested Cases."

The new chapter allows the rules to be organized more sequentially by allowing "Due Process," currently Chapter 5, to precede "Contested Cases," currently Chapter 4.

Notice of Intended Action was published in the June 11, 2003, Iowa Administrative Bulletin as **ARC 2533B**. No comments were received from the public. The adopted rules are identical to those published under Notice.

This chapter was approved during the September 15, 2003, meeting of the College Student Aid Commission.

These rules will become effective November 19, 2003.

These rules are intended to implement Iowa Code section 17A.3(1)"a" and "b" and chapter 261.

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 [Ch 5] is being omitted. These rules are identical to those published under Notice as **ARC 2533B**, IAB 6/11/03.

[Filed 9/24/03, effective 11/19/03]

[Published 10/15/03]

[For replacement pages for IAC, see IAC Supplement 10/15/03.]

ARC 2854B

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 261.3 and 261.37(5), the College Student Aid Commission rescinds Chapter 6, "Public Records and Fair Information Practices," Iowa Administrative Code, and adopts a new Chapter 6 with the same title.

Current Chapter 6 adopts by reference the Uniform Rules on Agency Procedure relating to public records and fair information practices and contains only the exceptions and amendments to those rules that are specific to the College Student Aid Commission. Adopted new Chapter 6 incorporates in their entirety the Uniform Rules on Agency Procedure relating to public records and fair information practices,

including the exceptions and amendments specific to the College Student Aid Commission.

Notice of Intended Action was published in the June 11, 2003, Iowa Administrative Bulletin as **ARC 2532B**. No comments were received from the public. The adopted rules are identical to those published under Notice.

This chapter was approved during the September 15, 2003, meeting of the College Student Aid Commission.

These rules will become effective November 19, 2003.

These rules are intended to implement Iowa Code sections 17A.3(1)"a" and "b" and chapter 261.

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 [Ch 6] is being omitted. These rules are identical to those published under Notice as **ARC 2532B**, IAB 6/11/03.

[Filed 9/24/03, effective 11/19/03]

[Published 10/15/03]

[For replacement pages for IAC, see IAC Supplement 10/15/03.]

ARC 2853B

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission amends Chapter 7, "Uniform Rules for Waivers," Iowa Administrative Code.

The adopted amendments, which ensure consistency in terms and correct unclear wording and grammatical oversights, are made pursuant to Executive Order Number 8.

Notice of Intended Action was published in the June 11, 2003, Iowa Administrative Bulletin as **ARC 2531B**. No comments were received from the public. The adopted amendments are identical to those published under Notice.

These amendments were approved during the September 15, 2003, meeting of the College Student Aid Commission.

These amendments will become effective November 19, 2003.

These amendments are intended to implement Iowa Code section 17A.3(1)"a" and "b" and chapter 261.

The following amendments are adopted.

Amend **283—Chapter 7** as follows:

CHAPTER 7

UNIFORM RULES FOR WAIVERS

283—7.1(261,ExecOrd11,17A) to **283—7.9(261, Exec Ord11,17A)** No change.

283—7.10(261,ExecOrd11,17A) Filing of petition. A petition for a waiver must be submitted in writing to the commission's Executive Director, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609.

283—7.11(261,ExecOrd11,17A) to **283—7.16(261, Exec Ord11,17A)** No change.

283—7.17(261,ExecOrd11,17A) Board Commission discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discre-

COLLEGE STUDENT AID COMMISSION[283](cont'd)

tion of the commission, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the ~~board~~ *commission* based on the unique, individual circumstances set out in the petition.

283—7.18(261, Exec Ord 11, 17A) to 283—7.28(261, Exec Ord 11, 17A) No change.

These rules are intended to implement Iowa Code chapter 17A and Executive Order Number 11.

[Filed 9/24/03, effective 11/19/03]

[Published 10/15/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/15/03.

ARC 2864B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 60, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 62, "Effluent and Pretreatment Standards: Other Effluent Limitations or Prohibitions," and Chapter 63, "Monitoring, Analytical and Reporting Requirements," Iowa Administrative Code.

The purpose of these amendments is to update references to federal effluent and pretreatment standards and associated analytical methods. References to federal effluent and pretreatment standards found in rules 62.4(455B) and 62.5(455B) are amended to reflect updates to 40 Code of Federal Regulations (CFR). The change to rule 60.2(455B) updates the definition of "Act" to include amendments to the Water Pollution Control Act through July 1, 2003. The change to subrule 63.1(1) updates the reference to the latest federally approved methods for the analysis of wastewater samples.

In accordance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are unnecessary. Under rule 62.2(455B), the Commission has determined previously that good cause exists for exempting from the notice and public participation requirements of Iowa Code section 17A.4(1) the adoption by reference of certain federal effluent and pretreatment standards. The Commission found that public participation is unnecessary since the Commission must adopt effluent and pretreatment standards at least as stringent as the enumerated promulgated federal standards in order to have continued approval of the Environmental Protection Agency (EPA) of the Department's NPDES program. Iowa Code section 455B.173(3) requires that the effluent and pretreatment standards adopted by the Commission not be more stringent than the enumerated promulgated federal standards. The Commission also found that public participation is unnecessary when updating the reference to approved methods for analysis because these methods are required by EPA to be used to implement federal effluent and pretreatment standards.

The Commission adopted these amendments on September 15, 2003.

These amendments may have an impact upon small businesses.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

These amendments will become effective on November 19, 2003.

The following amendments are adopted.

ITEM 1. Amend rule **567—60.2(455B)**, definition of "Act," as follows:

"Act" means the Federal Water Pollution Control Act as amended through July 1, ~~2002~~ 2003, 33 U.S.C. §1251 et seq.

ITEM 2. Amend rule 567—62.4(455B), introductory paragraph, as follows:

567—62.4(455B) Federal effluent and pretreatment standards. The federal standards, 40 Code of Federal Regulations (CFR), revised as of July 1, ~~2002~~ 2003, are applicable to the following categories:

ITEM 3. Amend subrule 62.4(12) as follows:

62.4(12) Feedlots point source category Concentrated animal feeding operations (CAFOs). The following is adopted by reference: 40 CFR Part 412.

ITEM 4. Amend subrule 62.4(38) as follows:

62.4(38) Reserved. Metal products and machinery point source category. The following is adopted by reference: 40 CFR Part 438.

ITEM 5. Amend rule 567—62.5(455B) as follows:

567—62.5(455B) Federal toxic effluent standards. The following is adopted by reference: 40 CFR Part 129, revised as of July 1, ~~2002~~ 2003.

ITEM 6. Amend subrule **63.1(1)**, paragraph "a," as follows:

a. The following is adopted by reference: 40 Code of Federal Regulations (CFR) Part 136, revised as of July 1, ~~2002~~ 2003.

[Filed Without Notice 9/25/03, effective 11/19/03]

[Published 10/15/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/15/03.

ARC 2865B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.291 to 455B.299, the Environmental Protection Commission rescinds Chapter 90, "Scope of Title—Definitions—Forms—Rules of Practice," and adopts new Chapter 90, "Scope of Title—Definitions—Forms"; rescinds Chapter 91, "Criteria for Award of Grants," and adopts new Chapter 91, "Criteria for Rating and Ranking Projects for the Water Pollution Control State Revolving Fund"; rescinds Chapter 92, "State Revolving Fund Loans for Wastewater Treatment," and adopts new Chapter 92, "State Revolving Fund Loans for Wastewater Treatment and Water Pollution Control"; and amends Chapter 93, "Onsite Wastewater Treatment System Assistance Program," Iowa Administrative Code.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

These amendments to Chapters 90, 91, 92 and 93 remove all references to the defunct construction grants program, add administrative requirements for financial assistance for non-point source water pollution control projects, consolidate the administrative requirements for municipal point source water pollution control projects, and make changes to allow for consistent terminology.

Notice of Intended Action was published in the July 9, 2003, Iowa Administrative Bulletin as **ARC 2595B**. Three public hearings were held. Comments were received at the public hearings and in writing. The comments resulted in the following changes:

- The definition of “brownfields” is expanded to make it consistent with the federal definition. In rule 90.2(455B, 17A), numbered paragraph “16” of the definition of “needs category” now reads as follows:

“16. Category VIIIh - Brownfields. This category includes needs that address nonpoint source problems associated with real property, the expansion, redevelopment or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.”

- Paragraphs 92.6(10)“e” and 92.6(11)“b” were changed to allow for point source applicants to sponsor non-point source projects. The paragraphs now read as follows:

“e. Special considerations. Exemptions to the point source rating criteria may be considered by the department and funding variances granted by the commission for projects having unique or unusual circumstances but which do not logically fit into the criteria. The commission may grant interest rate reductions or other favorable loan incentives to applicants that sponsor a project that improves impaired waters or restores the physical, chemical or biological integrity of receiving waters impacted by the wastewater treatment facility.”

“b. Special considerations. Exemptions to the nonpoint source rating criteria may be considered by the department and funding variances may be granted by the commission for projects that have unique or unusual circumstances which may not logically fit the criteria and are consistent with the short- or long-term goals of the IUP. Examples of projects that may qualify for exemptions and variances are projects targeted to improve impaired waters or projects where the purchase of land or conservation easements by conservation agencies is targeted to improve impaired waters.”

- The point source application date was changed from July 1 to April 1. As a result, subrule 92.7(4) now reads as follows:

“92.7(4) Timing.

“a. All applications received by the department for eligible projects will be given a score using the rating criteria in 567—Chapter 91 and will be placed on the state project priority list. Applications are due April 1 of each year. Applications received on or before April 1 will be considered for loan assistance in the development of the IUP for the next fiscal year.

“b. Late applications (those received after April 1) will be placed on the state project priority list. The projects will be scored using the rating criteria in 567—Chapter 91 but will not be considered for loan assistance until the next IUP is prepared. If the WPCSRF contains sufficient funds that allow for late applications to receive loan assistance earlier, they may be placed on the IUP in priority order following the applicants which had applied on or by the application date.”

- Paragraph 92.11(5)“b” was changed to make it clear that periodic disbursement of loan funds is allowed for live-

stock water quality projects. The paragraph now reads as follows:

“b. Disbursement of funds. Disbursement of funds shall be done in accordance with the loan agreement. The loan agreement may allow for periodic disbursement of loan funds. The livestock producer shall furnish the lending institution with copies of bills or invoices relating to the cost of the water pollution control facilities and certification from a professional engineer that the facilities have been constructed according to the department’s letter of project approval or construction permit. If the actual costs are less than the amount initially requested on the loan application, then the actual loan will equal those costs. The lending institution is authorized to execute a loan for a principal of up to 5 percent above the amount of the loan application if costs exceed the application amount. In this case, the livestock producer shall provide the lending institution with a written explanation for any cost overruns. The loan shall be subject to the conditions and limitations provided in 567—subrule 92.11(6).”

- Subrule 92.13(1), regarding general nonpoint source assistance, was changed to include environmental insurance as an example of an eligible project under the general non-point source project set-aside. Paragraph “d” of the subrule now reads as follows:

“d. Project eligibility. The general nonpoint source projects that are considered eligible include, but are not limited to, agricultural well sealing, urban sedimentation basins, constructing wetlands and riparian lands, restoration of habitat, stream bank restoration and stabilization, remediation of underground storage tanks, remediation of aboveground storage tanks, urban storm water runoff best management practices and management facilities, sediment traps, wetland flood prevention areas, water conservation and reuse, and development of environmental management systems. Non-traditional nonpoint source project examples that may have a water quality protection or improvement component include, but are not limited to, bird sanctuaries and wildlife enhancement projects, brownfield remediation, environmental insurance for brownfield remediation, vegetative plants, street sweepers and leaf removal equipment, closure of municipal landfills, salt storage sheds, sediment removal, wetland mitigation bank and education programs.”

- A change was made to paragraph 92.13(5)“e” to allow for the purchase of land for projects targeted at improving impaired waters. Paragraph “e” now reads as follows:

“e. Ineligible costs. Costs for livestock water quality facilities are not eligible under this set-aside and are provided for in rule 567—92.11(455B). Costs for the purchase of land are not eligible costs unless specifically approved by the commission when adopting the IUP.”

These amendments were approved during the September 15, 2003, meeting of the Environmental Protection Commission.

These amendments are intended to implement Iowa Code sections 455B.291 through 455B.298 as amended by 2002 Iowa Acts, chapter 1019.

These amendments will become effective on November 19, 2003.

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 amendments [Chs 90 to 92; 93.1, 93.3, 93.4, 93.10, 93.12] is being omitted. With the exception of the changes

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noted above, these amendments are identical to those published under Notice as **ARC 2595B**, IAB 7/9/03.

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[For replacement pages for IAC, see IAC Supplement 10/15/03.]

ARC 2839B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 217.34, 234.6, and 239B.4(4), the Department of Human Services amends Chapter 7, "Appeals and Hearings," Chapter 11, "Overpayments," and Chapter 93, "PROMISE JOBS Program," Iowa Administrative Code.

These amendments:

- Change the procedure for initiating collection of an overpayment in the PROMISE JOBS Program from a notice hand-issued by the PROMISE JOBS worker to an automated notice issued by the Department of Inspections and Appeals, based on worker entries to the Overpayment Recovery System. Separate notice formats are specified depending on whether the overpayment resulted from a client error, a provider error, or an agency error.
- Incorporate procedures for collecting overpayments in the HAWK-I Program.
- Reflect the reorganization of the responsibility for debt collection through offset of state tax refunds and payments from the Department of Revenue and Finance to the new Department of Administrative Services.

These amendments do not provide for waivers in specified situations because all participants should be subject to the same recoupment procedures. Individuals may request a waiver of these rules under the Department's general rule at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on July 23, 2003, as **ARC 2619B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to the Notice of Intended Action.

The Council on Human Services adopted these amendments on September 17, 2003.

These amendments are intended to implement Iowa Code sections 239B.14, 514I.1, and 217.34 as amended by 2003 Iowa Acts, House File 534, section 209.

These amendments shall become effective on December 1, 2003.

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 amendments [amendments to Chs 7, 11, 93] is being omitted. These amendments are identical to those published under Notice as **ARC 2619B**, IAB 7/23/03.

[Filed 9/22/03, effective 12/1/03]
[Published 10/15/03]

[For replacement pages for IAC, see IAC Supplement 10/15/03.]

ARC 2850B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 225C.6, the Department of Human Services rescinds Chapter 39, "Mental Illness Special Services Fund," Iowa Administrative Code.

The state appropriation for the mental illness special services fund was discontinued after state fiscal year 2001, so these rules are no longer needed. Since 1990, funds had been appropriated to match federal grants for construction and start-up costs to develop community facilities for homeless people who have a mental illness.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on July 23, 2003, as **ARC 2614B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to the Notice of Intended Action.

This amendment does not provide for waivers in specified situations because there are no longer funds available for construction and start-up costs to develop community living arrangements for people who are homeless and have a mental illness.

The Mental Health and Developmental Disabilities Commission adopted this amendment on September 18, 2003.

This amendment is intended to implement Iowa Code chapter 225C.

This amendment shall become effective on December 1, 2003.

The following amendment is adopted.

Rescind and reserve **441—Chapter 39**.

[Filed 9/22/03, effective 12/1/03]
[Published 10/15/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/15/03.

ARC 2846B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.12, the Department of Human Services amends Chapter 75, "Conditions of Eligibility," Chapter 76, "Application and Investigation," Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Chapter 84, "Early and Periodic Screening, Diagnosis, and Treatment," and Chapter 88, "Managed Health Care Providers," Iowa Administrative Code.

These amendments change the requirements for Medicaid participation by advanced registered nurse practitioners, in compliance with Iowa Code section 249A.4(7) as amended by 2003 Iowa Acts, House File 479.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments were previously Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on July 9, 2003, as **ARC 2583B**. Notice of Intended Action to solicit comments on these amendments was published in the July 9, 2003, Iowa Administrative Bulletin as **ARC 2572B**. The Iowa Nurses' Association and the Iowa Association of Nurse Practitioners submitted comments in regard to enrollment restrictions on nurse practitioners. In response to these comments, the Department has made the following changes to the Notice of Intended Action:

- Rescinded rules for discrete categories of advanced registered nurse practitioners (certified registered nurse anesthetists and nurse midwives) at 441—77.26(249A), 441—77.31(249A), 441—78.29(249A), and 441—78.35(249A) and rescinded subrule 78.31(5).
- Combined all provisions on conditions of participation and scope of covered services for advanced registered nurse practitioners into the existing rules for family, pediatric, and psychiatric nurse practitioners at 441—77.36(249A) and 441—78.40(249A), with fewer limitations.
- Combined all reimbursement provisions for advanced registered nurse practitioners into one paragraph in 441—subrule 79.1(2).
- Combined application provisions for all categories of advanced registered nurse practitioners into subparagraph 79.14(1)“b”(11), and rescinded subparagraph 79.14(1)“b”(18) and paragraph 79.14(1)“d.”
- Removed language naming specific types of nurse practitioners in rule 441—75.17(249A), paragraph 76.9(7)“b,” subrule 78.1(21), subrule 78.21(1), rule 441—78.23(249A), subrule 78.39(1), rule 441—84.3(249A), paragraph 88.5(2)“a,” and paragraph 88.25(2)“a” and substituted the term “advanced registered nurse practitioners.”
- Added language to subrule 78.25(3) providing that appropriately trained advanced registered nurse practitioners may meet the requirements for physician staffing for high-risk pregnant women receiving enhanced perinatal services from a maternal health center.
- Omitted the word “independent” from new paragraph 88.44(1)“b,” so that the paragraph reads, “Is otherwise eligible to enroll as an Iowa Medicaid provider.”
- Omitted the phrases “and independently practicing” and “otherwise able to enroll” from paragraph 88.48(1)“h,” so that the amended paragraph reads, “Physical therapy, audiology, rehabilitation agency, advanced registered nurse practitioners.”

These amendments allow all categories of advanced registered nurse practitioners to enroll as Medicaid providers and receive direct payment for their services. The amendments also allow advanced registered nurse practitioners to serve as patient managers in the MediPASS (Medicaid Patient Access to Service System). All references to the patient manager as “physician” are changed to “provider.”

As with physicians, only advanced registered nurse practitioners certified in designated specialties are allowed to be patient managers, due to the requirement that the patient manager be able to provide the patient’s primary health care. For advanced registered nurse practitioners, these specialties include the categories of certified nurse midwife, certified family nurse practitioner, certified pediatric nurse practitioner, certified women’s health care nurse practitioner, certified adult nurse practitioner, and certified gerontological nurse practitioner.

These amendments do not provide for waivers in specified situations because the legislation did not authorize any exceptions and because the amendments confer a benefit by

making more practitioners available to Medicaid recipients in general and to MediPASS enrollees as primary care patient managers.

The Council on Human Services adopted these amendments on September 17, 2003.

These amendments are intended to implement Iowa Code section 249A.4(7) as amended by 2003 Iowa Acts, House File 479.

These amendments shall become effective December 1, 2003, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend rule 441—75.17(249A) as follows:

441—75.17(249A) Verification of pregnancy. For the purpose of establishing Medicaid eligibility for pregnant women under this chapter, a signed statement from a maternal health center, family planning agency, physician’s office, physician-directed qualifying provider, or advanced registered nurse practitioner ~~who is a certified nurse midwife, as specified under the federal Social Security Act, Subsection 1902,~~ shall serve as verification of pregnancy. Additionally, the number of fetuses shall be verified if more than one exists, and the probable date of conception shall be established when necessary to determine eligibility. When an examination is required and other medical resources are not available to meet the expense of the examination, the provider shall be authorized to make the examination and submit the claim for payment.

ITEM 2. Amend subrule **76.9(7)**, paragraph “b,” as follows:

b. In addition to referrals from the Surveillance and Utilization Review Subsystem described in paragraph “a,” referrals for utilization review shall be made when utilization data generated by the Medicaid Management Information System reflects *that* utilization of Medicaid recipient outpatient visits to physicians, ~~family and pediatric advanced registered~~ nurse practitioners, federally qualified health centers, rural health centers, other clinics, and emergency rooms exceeds 24 visits in any 12-month period. This utilization review shall not apply to Medicaid recipients who are enrolled in the MediPASS program or a health maintenance organization, or who are children under 21 years of age or residents of a nursing facility. For the purposes of this paragraph, the term “physician” does not include a psychiatrist.

ITEM 3. Rescind and reserve rules **441—77.26(249A)** and **441—77.31(249A)**.

ITEM 4. Amend rule 441—77.36(249A) as follows:

441—77.36(249A) Advanced registered nurse practitioner certified in family, pediatric, or psychiatric mental health specialties practitioners. Advanced registered nurse practitioners are eligible to participate in the Medicaid program if they are duly licensed and registered by the state of Iowa as an advanced registered nurse practitioner ~~practitioners~~ certified in family, pediatric, or psychiatric mental health specialties pursuant to board of nursing rules 655—Chapter 7.

77.36(1) Advanced registered nurse practitioners in another state shall be eligible to participate if they are duly licensed and registered in that state as advanced registered nurse practitioners with certification in ~~family, pediatric, or psychiatric mental health specialties~~ a practice area consistent with board of nursing rules 655—Chapter 7.

HUMAN SERVICES DEPARTMENT[441](cont'd)

77.36(2) Advanced registered nurse practitioners certified in family, pediatric, or psychiatric mental health specialties who have been certified eligible to participate in Medicare shall be considered as having met these guidelines.

77.36(3) *Licensed nurse anesthetists who have graduated from a nurse anesthesia program meeting the standards set forth by a national association of nurse anesthetists within the past 18 months and who are awaiting initial certification by a national association of nurse anesthetists approved by the board of nursing shall be considered as having met these guidelines.*

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

ITEM 5. Amend subrule 78.1(21) as follows:

78.1(21) Utilization review. Utilization review shall be conducted of Medicaid recipients who access more than 24 outpatient visits in any 12-month period from physicians; , advanced registered nurse practitioners certified in family, pediatric, or psychiatric mental health specialties; , federally qualified health centers; , other clinics; , and emergency rooms. For the purposes of utilization review, the term "physician" does not include a psychiatrist. Refer to rule 441—76.9(249A) for further information concerning the recipient lock-in program.

ITEM 6. Amend subrule 78.21(1) as follows:

78.21(1) Utilization review. Utilization review shall be conducted of Medicaid recipients who access more than 24 outpatient visits in any 12-month period from physicians; , advanced registered nurse practitioners certified in family, pediatric, or psychiatric mental health specialties; , federally qualified health centers; , other clinics; , and emergency rooms. Refer to rule 441—76.9(249A) for further information concerning the recipient lock-in program.

ITEM 7. Amend rule **441—78.23(249A)**, first unnumbered paragraph, as follows:

Utilization review shall be conducted of Medicaid recipients who access more than 24 outpatient visits in any 12-month period from physicians; , advanced registered nurse practitioners certified in family, pediatric, or psychiatric mental health specialties; , federally qualified health centers; , other clinics; , and emergency rooms. Refer to rule 441—76.9(249A) for further information concerning the recipient lock-in program.

ITEM 8. Amend subrule 78.25(3), introductory paragraph, as follows:

78.25(3) *Enhanced perinatal services may be provided to a patient who has been determined to have a high-risk pregnancy as documented by Form 470-2942, Medicaid Prenatal Risk Assessment. Enhanced perinatal services may be provided by licensed dietitians; persons with at least a bachelor's degree in social work, counseling, sociology or psychology; physicians; and registered nurses employed by or on contract with the center if the patient is determined to have a high-risk pregnancy using Form 470-2942, Medicaid Prenatal Risk Assessment. An appropriately trained physician or advanced registered nurse practitioner must be involved in staffing the patients receiving enhanced services.*

ITEM 9. Rescind and reserve rule **441—78.29(249A)**.

ITEM 10. Rescind subrule **78.31(5)**.

ITEM 11. Rescind and reserve rule **441—78.35(249A)**.

ITEM 12. Amend subrule 78.39(1) as follows:

78.39(1) Utilization review. Utilization review shall be conducted of Medicaid recipients who access more than 24 outpatient visits in any 12-month period from physicians, family and pediatric advanced registered nurse practitioners, federally qualified health centers, other clinics, and emergency rooms. Refer to rule 441—76.9(249A) for further information concerning the recipient lock-in program.

ITEM 13. Amend rule 441—78.40(249A) as follows:

441—78.40(249A) ~~Independently practicing advanced~~ **Advanced registered nurse practitioners certified in family, pediatric, or psychiatric mental health specialties.** Payment shall be approved for services provided by ~~independently practicing advanced registered nurse practitioners certified in family, pediatric, or psychiatric mental health specialties~~ within their scope of practice *and the limitations of state law, including advanced nursing and physician-delegated functions under a protocol with a collaborating physician, with the exception of services not payable to physicians under rule 441—78.1(249A) or otherwise not payable under any other applicable rule.*

78.40(1) ~~Direct payment.~~ *Nurse practitioners are not considered to be independently practicing when they are auxiliary personnel of a physician as defined in 78.1(13)"b," or when they are employees of a hospital or clinic. Payment shall be made to advanced registered nurse practitioners directly, without regard to whether the advanced registered nurse practitioner is employed by or associated with a physician, hospital, birth center, clinic or other health care provider recognized under state law. An established protocol between a physician and the advanced registered nurse practitioner shall not cause a an advanced registered nurse practitioner to be considered auxiliary personnel of a physician, or an employee of a hospital, birth center, or clinic.*

78.40(2) *Location of service. Payment shall be approved for services rendered in any location in which the advanced registered nurse practitioner is legally authorized to provide services under state law. The nurse practitioner shall have promptly available the necessary equipment and personnel to handle emergencies.*

78.40(3) *Utilization review. Utilization review shall be conducted of Medicaid recipients who access more than 24 outpatient visits in any 12-month period from physicians; , advanced registered nurse practitioners certified in family, pediatric, or psychiatric mental health specialties; , other clinics; , and emergency rooms. Refer to rule 441—76.9(249A) for further information concerning the recipient lock-in program.*

78.40(4) ~~Vaccine administration.~~ *Independently practicing advanced* **Advanced registered nurse practitioners certified in family, pediatric, or psychiatric mental health specialties** who wish to administer vaccines which are available through the vaccines for children program to Medicaid recipients shall enroll in the vaccines for children program. In lieu of payment, vaccines available through the vaccines for children program shall be accessed from the department of public health for Medicaid recipients. ~~Independently practicing~~ **Advanced registered nurse practitioners** shall receive reimbursement for the administration of vaccines to Medicaid recipients.

78.40(5) *Prenatal risk assessment. Risk assessments, using Form 470-2942, Medicaid Prenatal Risk Assessment, shall be completed twice during a Medicaid recipient's pregnancy. If the risk assessment reflects a high-risk pregnancy, referral shall be made for enhanced services. (See description of enhanced services at subrule 78.25(3).)*

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

ITEM 14. Amend subrule **79.1(2)** by rescinding provider categories “certified registered nurse anesthetists” and “nurse-midwives” and amending provider category “advanced registered nurse practitioners certified in family, pediatric, or psychiatric mental health specialties” as follows:

Provider category	Basis of reimbursement	Upper limit
Advanced registered nurse practitioners certified in family, pediatric, or psychiatric mental health specialties	Fee schedule	Fee schedule in effect 6/30/01 less 3%.

ITEM 15. Amend subrule **79.14(1)** as follows:

Amend paragraph “b,” subparagraph (11), as follows:

(11) Advanced registered nurse practitioners certified in family, pediatric, or psychiatric mental health specialties.

Rescind and reserve paragraph “b,” subparagraph (18), and paragraph “d.”

ITEM 16. Amend rule 441—84.3(249A), introductory paragraph, as follows:

441—84.3(249A) Screening services. Screening may be done by a screening center or other qualified providers. Other qualified providers are physicians, family and pediatric advanced registered nurse practitioners, rural health centers, federally qualified health centers, clinics, and dentists. Screening services shall include all of the following services:

ITEM 17. Amend subrule **88.5(2)**, paragraph “a,” subparagraph (9), as follows:

(9) ~~Nurse midwife services (where available) Advanced registered nurse practitioners.~~

ITEM 18. Amend subrule **88.25(2)**, paragraph “a,” subparagraph (9), as follows:

(9) ~~Nurse midwife services (where available) Advanced registered nurse practitioners.~~

ITEM 19. Amend rule **441—88.41(249A)**, definition of “contract,” as follows:

“Contract” shall mean a contract between the department and a Medicaid-participating physician provider or clinic as specified in rule 441—88.44(249A) and subrule 88.45(1) for the purpose of providing patient management to enrolled recipients.

ITEM 20. Amend rule 441—88.44(249A) as follows:

Amend subrules 88.44(1) and 88.44(2) as follows:

88.44(1) Specialties allowed. ~~The following physician types Providers~~ shall be allowed to contract with the department to provide patient management to enrolled recipients as long as the physician provider:

a. ~~is~~ Is a licensed doctor of medicine or osteopathy, or an advanced registered nurse practitioner licensed pursuant to Iowa Code chapter 152 and possessing evidence of certification pursuant to board of nursing rules under 655—Chapter 7 in a specialty area listed in paragraph 88.44(1)“d.”

b. ~~Is~~ otherwise eligible to enroll as an Iowa Medicaid provider.

c. ~~practices in the medical service area, and is~~ Is a provider in good standing with the Medicaid agency as defined in subrule 88.45(1).

d. ~~Is practicing in one of the following specialties in the medical services area:~~

a. (1) Family practitioners practice.

b. (2) General practitioners practice.

c. (3) Pediatricians Pediatrics.

d. (4) Internists Internal medicine.

e. (5) Obstetricians Obstetrics and gynecologists gynecology.

88.44(2) Clinic or group practice participation. Physicians A provider may participate as an individual practitioners practitioner or as a partner or employee of a clinic or group practice. The clinic or group shall be the contractor. Federally qualified health centers and rural health clinics which that employ physicians providers in the specialties specified in subrule 88.44(1) may contract. However, each physician provider participating within the clinic, group, federally qualified health center, or rural health clinic shall sign and be bound by the terms of the clinic or group contract as if the physician provider was in individual practice.

Amend subrule **88.44(3)**, introductory paragraph and paragraph “a,” as follows:

88.44(3) Exceptions. Other physician specialists providers licensed as doctors of medicine or osteopathy or as advanced registered nurse practitioners may request exception to subrule 88.44(1) for specific individual patients in accordance with the procedures set forth in this subrule.

a. If the request is being made in order to allow a different type of physician specialist to be a patient manager, or to allow a physician provider practicing outside the recipient’s medical service area to serve the recipient, the physician provider shall make a written request to the division of medical services department.

(1) The request shall identify the physician provider by name, address, telephone number, specialty, and Medicaid provider number or date of application to be a Medicaid provider. The letter request shall specify the recipients in question and state agreement to provide primary care and patient management as specified in subrule 88.45(2) to the specific recipients in question.

(2) If the request comes initially from the recipients as specified in subrule paragraph 88.46(2)“c,” the division of medical services department shall contact the physician provider in question to offer the physician provider the opportunity to request the exception.

ITEM 21. Amend rule 441—88.45(249A) as follows:

Amend subrule 88.45(1) as follows:

88.45(1) Eligibility to contract. Only Medicaid-participating physicians providers and clinics in good standing shall be eligible to contract with the department to provide patient management.

Amend subrule **88.45(2)**, paragraphs “b” and “f,” as follows:

b. The patient manager shall provide or arrange for 24-hour-per-day, seven-day-per-week physician provider availability to enrolled recipients.

f. The department shall specify the manner in which physicians providers shall be notified of the recipients enrolled with them.

Amend subrule **88.45(5)**, paragraph “a,” as follows:

a. The patient manager may terminate the contract or a clinic may remove a physician provider from a clinic contract by providing the department with written notice of the desire to terminate the contract 60 days in advance of the desired date of termination in order to allow the department or its designee time to disenroll and reenroll the MediPASS patients with other patient managers.

(1) In no situation shall the physician provider stop providing patient management or primary care to the patient un-

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til the patient can be reenrolled with another *physician provider* except as specified in subrule 88.48(4).

(2) Failure to provide the specified period of notice or failure to continue providing patient management or primary care ~~prior to~~ *before* the reenrollment shall result in forfeiture of all remaining patient management fees ~~which that~~ would otherwise have been due the patient manager.

ITEM 22. Amend subrule 88.46(6) as follows:

88.46(6) Enrollment limits.

a. Unless one or more of the following special situations exist, enrollment shall be limited to 1500 enrollees per full-time patient manager with an additional 300 enrollees allowed for each full-time nurse practitioner or physician's assistant employed by the ~~physician~~ *MediPASS provider* or clinic:

a. (1) The ~~physician provider~~ treats a disproportionate share of Medicaid patients in the ~~physician's provider's~~ current practice.

b. (2) A special group practice arrangement exists with a demonstrated ability to manage a large number of enrollees.

(3) Other exceptional situations may be considered as special demonstration projects on a case-by-case basis.

b. Patient managers wishing to receive consideration for one of these special situations must make a request for consideration in writing to the ~~division of medical services department~~ and provide sufficient documentation that they fit one or more of the special situations.

c. ~~A physician provider Providers or clinic clinics~~ may set a lower self-imposed maximum number of enrollees at the time they sign the initial contract and may revise that number by notifying the ~~division of medical services department~~ or its designee in writing.

(1) If the patient manager decreases the patient manager's own maximum to a number below which the patient manager currently has enrolled, the patient manager must continue to serve those recipients until normal disenrollments put the ~~physician provider~~ below the ~~physician's provider's~~ new maximum.

(2) No minimum number of enrollees shall be required.

ITEM 23. Amend subrule **88.47(1)**, paragraph "b," as follows:

b. The patient manager may request that an enrolled recipient be disenrolled by completing Form 470-2169, Managed Health Care Provider Request for Recipient Disenrollment.

(1) Disenrollment may be approved for good cause reasons, such as, but not limited to, inability after reasonable effort to establish or maintain a satisfactory ~~physician provider~~-patient relationship with the recipient. Documentation of the ~~good cause~~ reason for disenrollment ~~will~~ *shall* be included with or attached to the disenrollment request.

(2) The ~~division department~~ shall respond *within 30 days* as to whether the disenrollment request is approved ~~within 30 days~~.

(3) If the request is approved, the patient manager shall continue to serve a mandatory recipient until the recipient can be enrolled with another patient manager or another managed health care option. In no case shall that time exceed 60 days from the date of receipt of the form.

ITEM 24. Rescind subrule **88.48(1)**, paragraph "h," and adopt the following new paragraph in lieu thereof:

h. Physical therapy, audiology, rehabilitation agency, advanced registered nurse practitioner.

ITEM 25. Amend subrule 88.50(3) as follows:

88.50(3) Mode of payment. The *physician provider* shall be paid individually unless a clinic or group practice elects to receive payment for all ~~physicians providers~~ participating under the clinic or group contract. The same mode of payment must be used for both patient management and regular Medicaid claims.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/15/03.

ARC 2845B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 2003 Iowa Acts, House File 560, section 4, the Department of Human Services amends Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 83, "Medicaid Waiver Services," Iowa Administrative Code.

These amendments change requirements for the Medicaid home- and community-based services (HCBS) waiver for persons with mental retardation by:

- Adding provisions for approval for facilities previously licensed as residential care facilities for mentally retarded persons to convert to HCBS supported community living units. Similar provisions were removed from the rules in a previous rule making published in the Iowa Administrative Bulletin on December 11, 2002, as **ARC 2161B**, based on changes made by 2002 Iowa Acts, chapter 1120. New legislation in 2003 Iowa Acts, House File 387, reinstates the waiver of licensure for these facilities.

- Adding provisions for approval of five-bed supported community living units, also in conformity with 2003 Iowa Acts, House File 387.

- Adding transportation, adult day care, and prevocational services as available services under the waiver, as mandated by 2003 Iowa Acts, House File 560. The provider qualifications and scope of these services are based on those under the brain injury waiver, which already covers these services, and discussions with the Iowa State Association of Counties and the Iowa Association of Community Providers. For adult day care, providers are eligible to participate if they hold a current certificate for adult day services from the Department of Inspections and Appeals, as required by 2003 Iowa Acts, House File 672, section 3.

These amendments do not provide for waivers in specified situations since state legislation did not provide for any exceptions and the changes confer a benefit.

These amendments were previously Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on July 9, 2003, as **ARC 2575B**. The amendments were also published on the same date under Notice of Intended Action as **ARC 2564B** to allow for public comment. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published

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under Notice of Intended Action and Adopted and Filed Emergency.

The Council on Human Services adopted these amendments on September 17, 2003.

These amendments are intended to implement Iowa Code section 249A.12 as amended by 2003 Iowa Acts, House File 560, section 1; Iowa Code section 135C.6 as amended by 2003 Iowa Acts, House File 387, section 2; and 2003 Iowa Acts, House File 672, section 3, subsection 4.

These amendments shall become effective December 1, 2003, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

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 amendments [77.37, 78.41, 79.1(2), 83.66] is being omitted. These amendments are identical to those published under Notice as **ARC 2564B** and Adopted and Filed Emergency as **ARC 2575B**, IAB 7/9/03.

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[Published 10/15/03]

[For replacement pages for IAC, see IAC Supplement 10/15/03.]

ARC 2844B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends 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 81, "Nursing Facilities," Iowa Administrative Code.

These amendments change Medicaid reimbursement to hospitals and hospital-based nursing facilities for services to recipients who are "dually eligible," meaning they have health care coverage under both the federal Medicare program and the state Medicaid program. Claims for these services are known as "crossover claims."

Currently, reimbursement policies for dual eligibles require Medicaid payment for the full Medicare coinsurance and deductible. In most cases, these amounts plus the Medicare payment exceed the total Medicaid reimbursement that is calculated for the service. Under these amendments, Medicaid will reimburse for Medicare coinsurance and deductible amounts only to the extent that actual payments from Medicare are less than the Medicaid reimbursement for the service.

Medicare policy generally permits Medicare coinsurance, copayment, and deductible amounts that are not collected to be treated as a "Medicare bad debt." Medicare reimburses hospitals 70 percent of their Medicare bad debt. These amendments provide for Medicaid to pay the remaining 30 percent of the bad debt resulting from the reduction of Medicaid crossover payments.

These amendments are parallel to those adopted for non-hospital-based nursing facilities, as published in the Iowa Administrative Bulletin on March 5, 2003, as **ARC 2235B**, except for the provision of additional payments for unreim-

bursed bad debt due to Medicare payment limits for hospitals. Hospital-based Medicare-certified nursing facilities were exempted from that rule making due to those limits. These amendments make the crossover claim reimbursement policies for hospital-based Medicare-certified nursing facilities identical to those for hospital inpatient and outpatient care.

These amendments will have no effect on crossover payments made for services rendered by critical access hospitals. The Medicaid and Medicare reimbursement rates for services rendered by critical access hospitals are the same. Therefore, Medicaid will continue to reimburse in full for any Medicare coinsurance or deductible amounts for services rendered by critical access hospitals.

These amendments do not provide for waivers because all hospitals and hospital-based nursing facilities should be subject to the same reimbursement criteria. Anticipated savings will not be achieved if waivers are provided.

These amendments were previously Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on July 9, 2003, as **ARC 2576B**. Notice of Intended Action to solicit comments on these amendments was published in the July 9, 2003, Iowa Administrative Bulletin as **ARC 2565B**. The Department received comments on the Notice of Intended Action from 11 people representing four hospitals and the Iowa Hospital Association. The comments concerned the fiscal impact of the amendments on facilities. In response to these comments, the Department has made two changes to the Notice of Intended Action:

- Inserted the following sentence in the introductory paragraph of subrule 79.1(22): "Subject to approval of a state plan amendment by the federal Centers for Medicare and Medicaid Services, payment for crossover claims shall be made as follows." This change mirrors statutory language.

- Inserted at the end of paragraph 81.6(20)"c" the phrase "or by a mutually acceptable schedule consistent with Medicare interim payment schedules." This change will allow more frequent Medicaid payment for the portion of crossover claims not collectible from Medicare.

The Iowa Hospital Association has expressed concerns about potential cash-flow problems due to delayed reimbursement for Medicare bad debts. The Department has contacted the Medicare intermediaries, CAHABA and Mutual of Omaha, regarding the potential for hospitals to receive interim payments rather than an annual payment for bad debt amounts. Both have indicated that interim payments can be made for inpatient and outpatient hospital services and hospital-based nursing facility services.

The Department is in communication with the federal Centers for Medicare and Medicaid Services regarding the Medicare treatment of Medicaid payments, i.e., whether they would be used to offset allowable Medicare bad debt costs. If there is a change in Medicare policy on bad debts, the Department is committed to amending these rules to address any shortfalls in facility payments. This policy is not intended to reduce facility reimbursement.

The Council on Human Services adopted these amendments on September 17, 2003.

These amendments are intended to implement Iowa Code section 249A.4 and 2003 Iowa Acts, House File 667, section 11, subsection 13.

These amendments shall become effective December 1, 2003, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

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ITEM 1. Amend rule **441—78.3(249A)**, second unnumbered paragraph, as follows:

If the recipient is eligible for inpatient or outpatient hospital care through the Medicare program, payment will be made for deductibles and coinsurance ~~applicable in that program~~ *as set out in 441—subrule 79.1(22)*.

ITEM 2. Adopt **new** subrule 79.1(22) as follows:

79.1(22) Medicare crossover claims for inpatient and outpatient hospital services. Subject to approval of a state plan amendment by the federal Centers for Medicare and Medicaid Services, payment for crossover claims shall be made as follows.

a. Definitions. For purposes of this subrule:

“Crossover claim” means a claim for Medicaid payment for Medicare-covered inpatient or outpatient hospital services rendered to a Medicare beneficiary who is also eligible for Medicaid. Crossover claims include claims for services rendered to beneficiaries who are eligible for Medicaid in any category, including, but not limited to, qualified Medicare beneficiaries and beneficiaries who are eligible for full Medicaid coverage.

“Medicaid-allowed amount” means the Medicaid prospective reimbursement for the services rendered (including any portion to be paid by the Medicaid beneficiary as copayment or spenddown), as determined under state and federal law and policies.

“Medicaid reimbursement” means any amount to be paid by the Medicaid beneficiary as a Medicaid copayment or spenddown and any amount to be paid by the department after application of any applicable Medicaid copayment or spenddown.

“Medicare payment amount” means the Medicare reimbursement rate for the services rendered in a crossover claim, excluding any Medicare coinsurance or deductible amounts to be paid by the Medicare beneficiary.

b. Reimbursement of crossover claims. Crossover claims for inpatient or outpatient hospital services covered under Medicare and Medicaid shall be reimbursed as follows.

(1) If the Medicare payment amount for a crossover claim exceeds or equals the Medicaid-allowed amount for that claim, Medicaid reimbursement for the crossover claim shall be zero.

(2) If the Medicaid-allowed amount for a crossover claim exceeds the Medicare payment amount for that claim, Medicaid reimbursement for the crossover claim shall be the lesser of:

1. The Medicaid-allowed amount minus the Medicare payment amount; or

2. The Medicare coinsurance and deductible amounts applicable to the claim.

c. Additional Medicaid payment for crossover claims uncollectible from Medicare. Medicaid shall reimburse hospitals for the portion of crossover claims not covered by Medicaid reimbursement pursuant to paragraph “b” and not reimbursable by Medicare as an allowable bad debt pursuant to 42 CFR 413.80, as amended June 13, 2001, up to a limit of 30 percent of the amount not paid by Medicaid pursuant to paragraph “b.” The department shall calculate these amounts for each provider on a calendar-year basis and make payment for these amounts by March 31 of each year for the preceding calendar year.

d. Application of savings. Savings in Medicaid reimbursements attributable to the limits on inpatient and outpatient crossover claims established by this subrule shall be

used to pay costs associated with development and implementation of this subrule before reversion to Medicaid.

ITEM 3. Amend subrule **81.6(20)** as follows:

Amend paragraph “a” by adopting the following **new** definition:

“Medicaid reimbursement” includes any amount to be paid by the Medicaid beneficiary as Medicaid client participation and any amount to be paid by the department after application of any applicable Medicaid client participation.

Rescind paragraph “c” and adopt the following **new** paragraph in lieu thereof:

c. Additional Medicaid payment for crossover claims uncollectible from Medicare. Medicaid shall reimburse nursing facilities for the portion of crossover claims not covered by Medicaid reimbursement pursuant to paragraph “b” and not reimbursable by Medicare as an allowable bad debt pursuant to 42 CFR 413.80, as amended June 13, 2001, up to a limit of 30 percent of the amount not paid by Medicaid pursuant to paragraph “b.” The department shall calculate these amounts for each provider on a calendar-year basis and make payment for these amounts by March 31 of each year for the preceding calendar year or by a mutually acceptable schedule consistent with Medicare interim payment schedules.

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ARC 2843B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 2003 Iowa Acts, House File 619, section 11, the Department of Human Services amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments create a supplemental payment adjustment applicable to physician services provided to Medicaid recipients at publicly owned acute care teaching hospitals, as mandated by 2003 Iowa Acts, House File 619, section 11, which took effect on May 1, 2003.

Under these amendments, the Department will make supplemental payments for services provided by participating physicians at qualifying hospitals equal to the difference between the physician’s usual and customary charges (the applicable maximum payment for federal financial participation) and the amount otherwise paid pursuant to the fee schedule for physician services under the Iowa Medicaid program.

Participating physicians are those employed by a qualifying hospital, or those who have assigned Iowa Medicaid payments to a qualifying hospital or an organized health care delivery system affiliated with a qualifying hospital so that payment can be made to the hospital or the organized health care delivery system.

Qualifying hospitals are publicly owned acute care teaching hospitals eligible to receive payments under the graduate medical education and disproportionate share fund that enter into an agreement with the Department to make intergovern-

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mental transfers to the Department in amounts equal to all supplemental payments made for physician services provided by participating physicians at the qualifying hospital.

As required by 2003 Iowa Acts, House File 619, the Department will deposit the returned payments in the Department's medical assistance account.

These amendments do not provide for waivers in specified situations because the legislation does not allow for any exceptions.

These amendments were previously Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on July 9, 2003, as **ARC 2577B**. The amendments were also published under Notice of Intended Action as **ARC 2566B** to solicit public comment. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

The Council on Human Services adopted these amendments on September 17, 2003.

These amendments are intended to implement 2003 Iowa Acts, House File 619, section 11.

These amendments shall become effective December 1, 2003, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

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 amendments [79.1(2), 79.1(7)] is being omitted. These amendments are identical to those published under Notice as **ARC 2566B** and Adopted and Filed Emergency as **ARC 2577B**, IAB 7/9/03.

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ARC 2841B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4 and 2003 Iowa Acts, House File 619, section 7, the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

This amendment affects the Medicaid reimbursement policies for prescription drugs. 2003 Iowa Acts, House File 619, section 7, directs the Department to:

- Lower the pharmacy dispensing fee from \$5.17 to \$4.26.
- Lower the estimated acquisition cost (ingredient reimbursement) from the average published wholesale price less 10 percent to the average wholesale price less 12 percent.
- Set the multiplier used to calculate the state maximum allowable cost for drugs at 1.4. This factor, which is multiplied by the average wholesale acquisition cost for a group of equivalent products to set the maximum reimbursement for those drugs, is currently 2.1.
- Require reporting by pharmacies to gather information necessary to monitor and revise drug reimbursement

rates. The Department must keep this information confidential in compliance with Iowa Code chapter 550. Similar reporting provisions were originally part of the state maximum allowable cost rules that took effect on November 1, 2002, but were rescinded in rule making published in the Iowa Administrative Bulletin on December 11, 2002, as **ARC 2163B** (Adopted and Filed Emergency), and on March 5, 2003, as **ARC 2332B** (Adopted and Filed).

This amendment does not provide for waivers in specified situations because the legislation does not provide for waivers and because all providers should be paid on the same basis as a matter of fairness. Also, cost savings needed from the drug reimbursement changes would not be realized if waivers were provided. Individual providers may request a waiver of these rules under the Department's general rule on exceptions at rule 441—1.8(17A,217).

This amendment was previously Adopted and Filed Emergency and published in the July 9, 2003, Iowa Administrative Bulletin as **ARC 2578B**. Notice of Intended Action to solicit comments on this amendment was published in the July 9, 2003, Iowa Administrative Bulletin as **ARC 2567B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice of Intended Action and Adopted and Filed Emergency.

The Council on Human Services adopted this amendment on September 17, 2003.

This amendment is intended to implement 2003 Iowa Acts, House File 619, section 7.

This amendment shall become effective December 1, 2003, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Amend subrule **79.1(8)** as follows:

Amend paragraph "**a**," subparagraphs (1) and (3), as follows:

(1) The estimated acquisition cost, defined as the average wholesale price as published by First Data Bank less 10 percent, plus the professional dispensing fee specified in paragraph "g."

(3) The state maximum allowable cost (SMAC), defined as the average wholesale acquisition cost for a drug and all equivalent products (*the average price pharmacies pay to obtain drugs as evidenced by purchase records*) adjusted by a factor determined appropriate by the department, in consultation with the Medicaid Pharmacy Advisory Committee of the Iowa Pharmacy Association multiplier of 1.4, plus the professional dispensing fee specified in paragraph "g." ~~The department shall set the adjustment factor and adjust the SMAC as often as it deems necessary to ensure adequate product availability at minimum cost.~~

Amend paragraph "**g**" as follows:

g. For services rendered after June 30, 2002 2003, the professional dispensing fee is equal to \$5.17 \$4.26.

Amend paragraph "**i**" as follows:

i. Pharmacies and providers that are enrolled in the Iowa Medicaid program ~~may submit~~ shall make available drug acquisition cost information, ~~or~~ product availability information, and other information deemed necessary by the department to assist the department in monitoring and revising reimbursement rates subject to 79.1(8)"a"(3) and 79.1(8)"c" and for the efficient operation of the pharmacy benefit.

(1) Pharmacies and providers shall produce and submit the requested information in the manner and format re-

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quested by the department or its designee at no cost to the department or its designee.

(2) Pharmacies and providers shall submit information to the department or its designee within 30 days following receipt of a request for information unless the department or its designee grants an extension upon written request of the pharmacy or provider.

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ARC 2842B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 2003 Iowa Acts, House File 619, section 7, the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

This amendment makes the following changes to the rule for recipient copayment for Medicaid services, as directed by 2003 Iowa Acts, House File 619, section 7:

- Change the amount of copayment required for drug prescriptions from \$1 to amounts varying from \$0.50 to \$3, depending on the cost of the drug and whether the drug is brand name or generic.
- Impose a copayment of \$3 for each physician office visit.

These copayments are subject to existing Iowa Medicaid rules providing that no copayments apply to services furnished to recipients who:

- Are under the age of 21, or
- Are pregnant women, or
- Are required to spend all but a minimal amount of their income for the costs of care in a nursing facility or other medical institution.

Copayments also do not apply to emergency services or to family planning services or supplies. Providers collect the copayment from the recipient at the time of services. Although recipients are liable for the copayment, providers are forbidden to deny care or services to a Medicaid-eligible person because of the person's inability to pay a copayment.

This amendment is a cost-saving measure. This amendment does not provide for waivers in specified situations because the legislation did not provide for waivers and because necessary savings would not be achieved if waivers were provided.

This amendment was previously Adopted and Filed Emergency and published in the July 9, 2003, Iowa Administrative Bulletin as **ARC 2579B**. Notice of Intended Action to solicit comments on that submission was published in the July 9, 2003, Iowa Administrative Bulletin as **ARC 2568B**. The Department received no comments on the Notice of Intended Action. The Department has made three changes to the Notice of Intended Action in paragraph 79.1(13)"a" by inserting the word "covered" before "brand-name" in subparagraphs (3), (4), and (5), to match the language in subparagraphs (1) and (2).

The Council on Human Services adopted this amendment on September 17, 2003.

This amendment is intended to implement 2003 Iowa Acts, House File 619, section 7.

This amendment shall become effective December 1, 2003, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Amend subrule **79.1(13)** as follows:

Adopt **new** paragraph "**a**" as follows:

a. The recipient shall pay a copayment for prescription drugs as follows:

(1) The recipient shall pay \$1 for each covered generic drug prescription, including each refill.

(2) The recipient shall pay \$0.50 for each covered brand-name drug prescription, including each refill, for which the cost to the state is \$10 or less.

(3) The recipient shall pay \$1 for each covered brand-name drug prescription, including each refill, for which the cost to the state is \$10.01 to \$25.

(4) The recipient shall pay \$2 for each covered brand-name drug prescription, including each refill, for which the cost to the state is \$25.01 to \$50.

(5) The recipient shall pay \$3 for each covered brand-name drug prescription, including each refill, for which the cost to the state is \$50.01 or more.

(6) For the purpose of this paragraph, the cost to the state is determined without regard to federal financial participation in the Medicaid program.

Amend paragraphs "**b**" and "**d**" as follows:

b. The recipient shall pay \$1 copayment ~~on each covered drug prescription, including each refill, and for total covered service rendered on a given date for podiatrists' services, chiropractors' services, and services of independently practicing physical therapists.~~

d. The recipient shall pay \$3 copayment for:

(1) ~~total~~ Total covered service rendered on a given date for dental services and hearing aids.

(2) All covered services rendered in a physician office visit on a given date. For the purposes of this subparagraph, "physician" means either a doctor of allopathic medicine (M.D.) or a doctor of osteopathic medicine (D.O.), as defined under rule 441—77.1(249A).

[Filed 9/22/03, effective 12/1/03]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/15/03.

ARC 2849B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 237A.12, the Department of Human Services amends Chapter 109, "Child Care Centers," and Chapter 110, "Child Development Homes," Iowa Administrative Code.

These amendments change the child care licensing and registration requirements on criminal and child abuse record checks to conform with statutory changes made by 2003 Iowa Acts, Senate File 351. This legislation defines "trans-

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gressions” that may prohibit a person’s involvement with child care. Certain transgressions automatically prohibit involvement temporarily or permanently, while others require an evaluation by the Department to determine whether the transgression merits prohibition. As an outcome of the evaluation, the Department may require a plan of correction before approval and may specify periodic reevaluation of a prohibition.

The Department may also prohibit a person’s involvement with child care when a license or registration is denied or revoked due to the person’s continued or repeated failure to operate in compliance with the laws and rules governing the facility.

These amendments do not provide for waivers in specified situations because the Department does not have authority to waive statutory provisions.

These amendments were previously Adopted and Filed Emergency and published in the July 9, 2003, Iowa Administrative Bulletin as **ARC 2582B**. Notice of Intended Action to solicit comments on these amendments was published in the July 9, 2003, Iowa Administrative Bulletin as **ARC 2571B**. The Department received no comments on the Notice of Intended Action.

The Department has made several technical changes to the Notice of Intended Action as a result of internal review. These changes include:

- Removing obsolete references to “family day care home” and “group day care home” in the definition of “child care center” in rule 441—109.1(37A) and inserting the current term, “child development home.”
- Removing obsolete references to “family day care home,” “group day care home,” and “group day care home-joint provider” in the tables of qualifications for center directors and on-site supervisors in paragraphs 109.6(1)“e” and 109.6(2)“d” and inserting the current term, “child development home.”
- Updating the form number of the Request for Child Abuse Information in subparagraph 109.6(5)“b”(2) and paragraph 109.9(1)“c” by striking “SS-1606-0” and inserting “470-0643.”
- Striking the word “signed” in paragraph 109.9(1)“b” and making grammatical changes. A prospective employee’s signature on DHS Criminal History Record Check Form B is optional, not required.

The Council on Human Services adopted these amendments on September 17, 2003.

These amendments are intended to implement Iowa Code chapter 237A as amended by 2003 Iowa Acts, Senate File 351.

These amendments shall become effective December 1, 2003, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend rule 441—109.1(237A) as follows:

Amend the definition of “child care center” as follows:

“Child care center” or “center” means a facility providing child day care for seven or more children, except when the facility is registered as a ~~family day care home or group day care~~ child development home. For the purposes of this chapter, the word “center” shall apply to a child care center or preschool, unless otherwise specified.

Adopt the following **new** definitions in alphabetical order:

“Child care facility” or “facility” means a child care center, a preschool, or a registered child development home.

“Involvement with child care” means licensed or registered as a child care facility, employed in a child care facility,

residing in a child care facility, receiving public funding for providing child care, providing child care as a child care home provider, or residing in a child care home.

“Person subject to an evaluation” means a person who has committed a transgression and who is described by any of the following:

1. The person is being considered for licensure or is licensed.
2. The person is being considered by a child care facility for employment involving direct responsibility for a child or with access to a child when the child is alone, or the person is employed with such responsibilities.
3. The person will reside or resides in a child care facility.
4. The person has applied for or receives public funding for providing child care.

“Transgression” means the existence of any of the following in a person’s record:

1. Conviction of a crime.
2. A record of having committed founded child or dependent adult abuse.
3. Listing in the sex offender registry established under Iowa Code chapter 692A.
4. A record of having committed a public or civil offense.
5. Department revocation or denial of a child care facility registration or license due to the person’s continued or repeated failure to operate the child care facility in compliance with licensing and registration laws and rules.

ITEM 2. Amend rule 441—109.2(237A) as follows:

Amend subrule **109.2(1)** by adopting **new** paragraph “**f**” as follows:

f. When the department has denied or revoked a license, the applicant or person shall be prohibited from involvement with child care unless the department specifically permits involvement through a record check decision.

Rescind subrule **109.2(4)**, paragraph “**c**,” and adopt the following **new** paragraph in lieu thereof:

c. A person subject to an evaluation has transgressions that merit prohibition of involvement with child care and of licensure, as determined by the department.

Rescind subrule **109.2(5)**, paragraph “**c**,” and adopt the following **new** paragraph in lieu thereof:

c. A person subject to an evaluation has transgressions that merit prohibition of involvement with child care and of licensure, as determined by the department.

ITEM 3. Amend rule 441—109.6(237A) as follows:

Amend subrule **109.6(1)**, paragraph “**e**,” introductory paragraph and table, as follows:

e. Has achieved a total of 100 points obtained through a combination of education, experience, and child development-related training as outlined in the following chart:

EDUCATION		EXPERIENCE (Points multiplied by years of experience)	CHILD DEVELOPMENT- RELATED TRAINING
Bachelor’s or higher degree in early childhood, child development, or elementary education	75	Full-time (20 hours or more per week) in a child care center or preschool setting	20 One point per contact hour of training

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EDUCATION		EXPERIENCE (Points multiplied by years of experience)		CHILD DEVELOPMENT-RELATED TRAINING
Associate's degree in child development or bachelor's degree in a child-related field	50	Part-time (less than 20 hours per week) in a child care center or preschool setting	10	
Child development associate (CDA) or one-year diploma in child development from a community college or technical school	40	Full-time (20 hours or more per week) child development-related experience	10	
Bachelor's degree in a non-child-related field	40	Part-time (less than 20 hours per week) child development-related experience	5	
Associate's degree in a non-child-related field or completion of at least two years of a four-year degree	20	Registered family day-care child development home, group day care home, or group day care home joint registration provider	10	
		Nonregistered family home provider	5	

Amend subrule **109.6(2)**, paragraph **"d,"** introductory paragraph and table, as follows:

d. Has achieved a total of 75 points obtained through a combination of education, experience, and child development-related training as outlined in the following chart:

EDUCATION		EXPERIENCE (Points multiplied by years of experience)		CHILD DEVELOPMENT-RELATED TRAINING
Bachelor's or higher degree in early childhood, child development, or elementary education	75	Full-time (20 hours or more per week) in a child care center or preschool setting	20	One point per contact hour of training
Associate's degree in child development or bachelor's degree in a child-related field	50	Part-time (less than 20 hours per week) in a child care center or preschool setting	10	
Child development associate (CDA) or one-year diploma in child development from a community college or technical school	40	Full-time (20 hours or more per week) child development-related experience	10	

EDUCATION		EXPERIENCE (Points multiplied by years of experience)		CHILD DEVELOPMENT-RELATED TRAINING
Bachelor's degree in a non-child-related field	40	Part-time (less than 20 hours per week) child development-related experience	5	
Associate's degree in a non-child-related field or completion of at least two years of a four-year degree	20	Registered family day-care child development home, group day care home, or group day care home joint registration provider	10	
		Nonregistered family home provider	5	

Amend subrule **109.6(5)**, paragraph **"b,"** subparagraph **(2)**, as follows:

(2) Complete Form ~~SS-1606-0~~ 470-0643, Request for Child Abuse Information.

Rescind subrule 109.6(6) and adopt the following **new** subrule in lieu thereof:

109.6(6) Record checks. The department shall conduct criminal and child abuse record checks in Iowa for each owner, director, staff member, or subcontracted staff person with direct responsibility for child care or with access to a child when the child is alone and for anyone living in the child care facility who is 14 years of age or older. The department may use Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check Form B, or any other form required for criminal and child abuse record checks. The department may also conduct criminal and child abuse record checks in other states and may conduct dependent adult abuse, sex offender, and other public or civil offense record checks in Iowa or in other states.

a. Mandatory prohibition. A person with the following convictions or founded abuse reports is prohibited from involvement with child care:

- (1) Founded child or dependent adult abuse that was determined to be sexual abuse.
- (2) Placement on the sex offender registry.
- (3) Felony child endangerment or neglect or abandonment of a dependent person.
- (4) Felony domestic abuse.
- (5) Felony crime against a child including, but not limited to, sexual exploitation of a minor.
- (6) Forcible felony.

b. Mandatory time-limited prohibition.
 (1) A person with the following convictions or founded abuse reports is prohibited from involvement with child care for five years from the date of the conviction or founded abuse report:

1. Conviction of a controlled substance offense under Iowa Code chapter 124.
2. Founded child abuse that was determined to be physical abuse.

(2) After the five-year prohibition period from the date of the conviction or the founded abuse report as defined in subparagraph 109.6(6)"b"(1), the person may request the department to perform an evaluation under paragraph 109.6(6)"c" to determine whether prohibition of the person's involvement with child care continues to be warranted.

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c. Evaluation required. For all other transgressions, and as requested under subparagraph 109.6(6)"b"(2), the department shall notify the affected person and the licensee that an evaluation shall be conducted to determine whether prohibition of the person's involvement with child care is warranted.

(1) The person with the transgression shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date on the form. The department shall use the information the person with the transgression provides on this form to assist in the evaluation. Failure of the person with the transgression to complete and return this form by the specified date shall result in denial or revocation of the license or denial of employment.

(2) The department may use information from the department's case records in performing the evaluation.

(3) In an evaluation, the department shall consider all of the following factors:

1. The nature and seriousness of the transgression in relation to the position sought or held.
2. The time elapsed since the commission of the transgression.
3. The circumstances under which the transgression was committed.
4. The degree of rehabilitation.
5. The likelihood that the person will commit the transgression again.
6. The number of transgressions committed by the person.

d. Evaluation decision. Within 30 days of receipt of a completed Form 470-2310, Record Check Evaluation, the department shall make a decision on the person's involvement with child care. The department has final authority in determining whether prohibition of the person's involvement with child care is warranted and in developing any conditional requirements and corrective action plan under this paragraph.

(1) The department shall mail to the individual on whom the evaluation was completed Form 470-2386, Record Check Decision, that explains the decision reached regarding the evaluation of the transgression and Form 470-0602, Notice of Decision.

(2) If the department determines through an evaluation of a person's transgressions that the person's prohibition of involvement with child care is warranted, the person shall be prohibited from involvement with child care. The department may identify a period of time after which the person may request that another record check and evaluation be performed.

(3) The department may permit a person who is evaluated to maintain involvement with child care if the person complies with the department's conditions and corrective action plan relating to the person's involvement with child care.

(4) The department shall send a letter to the employer that informs the employer whether the person subject to an evaluation has been approved or denied involvement with child care. If the person has been approved, the letter shall inform the employer of any conditions and corrective action plan relating to the person's involvement with child care.

e. Notice to parents. The department shall notify the parent, guardian, or legal custodian of each child for whom the person provides child care if there has been a founded child abuse record against an owner, director, or staff member of the child care center. The center shall cooperate with the department in providing the names and addresses of the parent, guardian, or legal custodian of each child for whom the facility provides child care.

f. Repeat of record checks. The child abuse and criminal record checks shall be repeated at a minimum of every two years and when the department or the center becomes aware of any transgressions. Any new transgressions discovered shall be handled in accordance with this subrule.

ITEM 4. Amend subrule **109.9(1)**, paragraphs "**b**" and "**c**," as follows:

b. A signed copy of Form 595-1396, DHS Criminal History Record Check, Form B. The center shall complete the form shall be completed by the center and forwarded forward it to the department prior to before the start of employment.

c. A copy of Form ~~SS-1606-0~~ 470-0643, Request for Child Abuse Information.

ITEM 5. Amend rule **441—110.1(237A)** by adopting the following **new** definitions in alphabetical order:

"Child care facility" or "facility" means a child care center, a preschool, or a registered child development home.

"Child care home" means a person or program providing child care to five or fewer children at any one time that is not registered to provide child care under this chapter, as authorized under Iowa Code section 237A.3.

"Involvement with child care" means licensed or registered as a child care facility, employed in a child care facility, residing in a child care facility, receiving public funding for providing child care, providing child care as a child care home provider, or residing in a child care home.

"Person subject to an evaluation" means a person who has committed a transgression and who is described by any of the following:

1. The person is being considered for registration or is registered.
2. The person is being considered by a child care facility for employment involving direct responsibility for a child or with access to a child when the child is alone, or the person is employed with such responsibilities.
3. The person will reside or resides in a child care facility.
4. The person has applied for or receives public funding for providing child care.
5. The person will reside or resides in a child care home that is not registered but that receives public funding for providing child care.

"Transgression" means the existence of any of the following in a person's record:

1. Conviction of a crime.
2. A record of having committed founded child or dependent adult abuse.
3. Listing in the sex offender registry established under Iowa Code chapter 692A.
4. A record of having committed a public or civil offense.
5. Department revocation or denial of a child care facility registration or license due to the person's continued or repeated failure to operate the child care facility in compliance with licensing and registration laws and rules.

ITEM 6. Amend rule 441—110.7(237A) as follows:

Amend subrule 110.7(3) as follows:

Amend the introductory paragraph and paragraph "**a**" as follows:

110.7(3) Record checks. The department shall submit record checks *in Iowa* for each registrant, substitute, and staff member, and for anyone living in the home who is 14 years of age or older and anyone having access to a child when the child is alone. The purpose of these record checks is to determine whether the person has ~~any founded child abuse reports~~

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~~or criminal convictions or has been placed on the sex offender registry committed a transgression.~~ The department shall may use Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check ~~for this purpose, Form B, or any other form required for criminal and child abuse record checks.~~ The department may also conduct criminal and child abuse record checks in other states and may conduct dependent adult abuse, sex offender registry, and other public or civil offense record checks in Iowa or in other states.

a. *Mandatory prohibition.* A person with the following convictions or founded abuse reports is prohibited from involvement with child care:

(1) *Founded child or dependent adult abuse that was determined to be sexual abuse.*

(2) *Placement on the sex offender registry.*

(3) *Felony child endangerment or neglect or abandonment of a dependent person.*

(4) *Felony domestic abuse.*

(5) *Felony crime against a child including, but not limited to, sexual exploitation of a minor.*

(6) *Forcible felony.*

b. *Mandatory time-limited prohibition.*

(1) A person with the following convictions or founded abuse reports is prohibited from involvement with child care for five years from the date of the conviction or founded abuse report:

1. *Conviction of a controlled substance offense under Iowa Code chapter 124.*

2. *Founded child abuse that was determined to be physical abuse.*

(2) *After the five-year prohibition period from the date of the conviction or the founded abuse report as defined in subparagraph 110.7(3)“b”(1), the person may request the department to perform an evaluation under paragraph 110.7(3)“c” to determine whether prohibition of the person’s involvement with child care continues to be warranted.*

c. *Evaluation required.* ~~If a person who has been checked has a record of founded child abuse, a criminal conviction, or placement on the sex offender registry~~ For all other transgressions, the department shall deny or revoke the registration, unless an evaluation of the ~~abuse or crime transgression~~ determines that the ~~abuse or criminal conviction transgression~~ does not warrant prohibition of registration involvement with child care.

(1) In an evaluation, the department shall consider all of the following factors:

1. *The nature and seriousness of the ~~abuse or crime, transgression.~~*

2. *The time elapsed since the ~~commission of the abuse or crime, transgression.~~*

3. *The circumstances under which the ~~crime or abuse transgression~~ was committed, .*

4. *The degree of rehabilitation, .*

5. *The likelihood that the person will commit the ~~abuse or crime transgression~~ again, and.*

6. *The number of ~~crimes or abuses transgressions~~ committed by the person.*

(2) The person with the ~~criminal conviction or founded child abuse report transgression~~ shall complete and return Form 470-2310, Record Check Evaluation, to be used to assist in the evaluation. Failure of the person to complete and return the form within ten calendar days of the date on the form shall result in denial or revocation of the registration certificate.

(3) *The department may use information from the department’s case records in performing the evaluation.*

Rescind paragraph “b.”

Reletter paragraph “c” as “d” and amend relettered paragraph “d” as follows:

c d. Evaluation decision. The department has final authority in determining whether prohibition of the person’s involvement with child care is warranted and in developing any conditional requirements and a corrective action plan. The evaluation and decision shall be made by the service area manager or designee.

(1) Within 30 days of receipt of the completed Form 470-2310, the ~~service area manager or designee~~ department shall mail to the ~~individual on whom the evaluation was completed~~ person subject to an evaluation and to the registrant for an employee of the registrant Form 470-2386, Record Check Decision, that explains the decision reached regarding the evaluation of an ~~abuse or a crime~~ the transgression. The ~~service area manager or designee~~ department shall also issue Form 470-2386 when an ~~applicant~~ the person subject to an evaluation fails to complete the evaluation form within the ten-calendar-day time frame.

(2) *If the department determines, through the record check evaluation, that the person’s prohibition of involvement with child care is warranted, the person shall be prohibited from involvement with child care.*

(3) *The department may permit a person who is evaluated to be involved with child care if the person complies with the department’s conditions relating to the person’s involvement with child care, which may include completion of additional training. For an employee of a registrant, these conditional requirements shall be developed with the registrant.*

Amend subrule 110.7(5) as follows:

110.7(5) If the department has denied or revoked a registration because the provider has continually or repeatedly failed to operate in compliance with Iowa Code chapter 237A and 441—Chapter 110, the person shall not own or operate a registered facility for a period of 12 months from the date of denial or revocation. The department shall not act on an application for registration submitted by the applicant or provider during the 12-month period. *The applicant shall be prohibited from involvement with child care unless the department specifically permits the involvement.*

ITEM 7. Adopt **new** rule 441—110.14(237A) as follows:

441—110.14(237A) Prohibition from involvement with child care. If the department has prohibited a person or program from involvement with child care, that person or program shall not provide child care as a nonregistered child care home provider.

[Filed 9/22/03, effective 12/1/03]

[Published 10/15/03]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/15/03.

ARC 2848B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 217.6 and 234.6 and 2003 Iowa Acts, House File 667, section 31, the Department of Human Services amends Chapter 150, "Purchase of Service," and Chapter 185, "Rehabilitative Treatment Services," Iowa Administrative Code.

These amendments:

- Continue reimbursement rates for purchase of service providers (for adoption, shelter care, family planning, and independent living services) effectively at their June 30, 2001, levels as directed by 2003 Iowa Acts, House File 667, section 31, subsections 6 and 9.
- Continue reimbursement rates for rehabilitative treatment and supportive services (family preservation, family-centered services, foster family services, and group care services) effectively at their June 30, 2001, level as directed by 2003 Iowa Acts, House File 667, section 31, subsection 8.
- Continue to suspend the ability of Department administrators to renegotiate rates for rehabilitative treatment and supportive services.

These amendments do not provide for waivers in specified situations because the legislation does not provide for waivers.

These amendments were previously Adopted and Filed Emergency and published in the July 9, 2003, Iowa Administrative Bulletin as **ARC 2580B**. Notice of Intended Action to solicit comments on these amendments was published in the July 9, 2003, Iowa Administrative Bulletin as **ARC 2569B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

The Council on Human Services adopted these amendments on September 17, 2003.

These amendments are intended to implement 2003 Iowa Acts, House File 667, section 31, subsections 6, 8, and 9, and section 44.

These amendments shall become effective December 1, 2003, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend subrule **150.3(5)**, paragraph "**p**," subparagraph (2), introductory paragraph and numbered paragraphs "**3**" and "**4**," as follows:

(2) For the fiscal year beginning July 1, ~~2002~~ 2003, the maximum reimbursement rates for services provided under a purchase of social service agency contract (adoption, shelter care, family planning, and independent living) shall be the same as the rates in effect on June 30, ~~2001~~ 2003, except under any of the following circumstances:

3. For the fiscal year beginning July 1, ~~2002~~ 2003, the combined service and maintenance reimbursement rate paid to a shelter care provider shall be based on the financial and statistical report submitted to the department. The maximum reimbursement rate shall be \$83.69 per day. If the department reimburses the provider at less than the maximum rate, but the provider's cost report justifies a rate of at least \$83.69, the department shall readjust the provider's reimbursement

rate to the actual and allowable cost plus the inflation factor or \$83.69, whichever is less.

4. For the fiscal year beginning July 1, ~~2002~~ 2003, the purchase of service reimbursement rate for a shelter care provider's actual and allowable cost plus inflation shall be increased by \$3.99. For state fiscal year ~~2003~~ 2004, beginning July 1, ~~2002~~ 2003, the established statewide average actual and allowable cost shall be increased by \$3.99.

ITEM 2. Amend subrule **185.112(1)**, paragraph "**k**," as follows:

k. Once a negotiated rate is established based on the provisions of this subrule, it shall not be changed or renegotiated during the time period of this rule except in the following circumstances:

(1) By mutual consent of the provider and the service area manager of the host area based upon the factors delineated at paragraph 185.112(1)"f," except that rates shall not be changed or renegotiated for the period of July 1, 2000, through June 30, ~~2003~~ 2004.

(2) In accordance with paragraph 185.112(6)"b," except that rates shall not be changed or renegotiated for services not assumed by a new provider for the period of July 1, 2000, through June 30, ~~2003~~ 2004.

(3) Rates may be changed when funds are appropriated for an across-the-board increase.

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[Published 10/15/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/15/03.

ARC 2847B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 170, "Child Care Services," Iowa Administrative Code.

These amendments change eligibility requirements for child care assistance in conformity with 2003 Iowa Acts, Senate File 351, to provide that:

- Families with medically incapacitated parents may be eligible for assistance. Currently, the parent has to be hospitalized or out of the home for the family to be eligible, and only certain medical conditions qualify.
- Families receiving a state adoption subsidy are exempt from waiting list provisions in order to coordinate benefits under these two programs, as is done for families receiving assistance under the Family Investment Program.

These amendments do not provide for waivers in specified situations because they confer a benefit on the families affected.

These amendments were previously Adopted and Filed Emergency and published in the July 9, 2003, Iowa Administrative Bulletin as **ARC 2581B**. Notice of Intended Action to solicit comments on these amendments was published in the July 9, 2003, Iowa Administrative Bulletin as **ARC 2570B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The Council on Human Services adopted these amendments on September 17, 2003.

These amendments are intended to implement Iowa Code section 237A.13 as amended by 2003 Iowa Acts, Senate File 351, sections 7 and 8.

These amendments shall become effective December 1, 2003, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend subrule **170.2(2)**, paragraph "**b**," subparagraph **(4)**, as follows:

(4) The person who normally cares for the child is absent from the home due to inpatient hospitalization or outpatient treatment for ~~chemotherapy, radiation or dialysis~~ because of physical illness, or mental illness, or ~~death is present but is unable to care for the child, as verified by a physician.~~ Care under this paragraph is limited to a maximum of one month, unless extenuating circumstances are justified and approved after case review by the ~~regional administrator service area manager or designee.~~

ITEM 2. Amend subrule 170.2(3), introductory paragraph, as follows:

170.2(3) Priority for ~~service~~ *assistance*. Funds available for child care ~~services~~ *assistance* shall first be used to continue ~~services~~ *assistance* to families currently receiving child care ~~services~~ *assistance* and to families with protective child care needs. As funds are determined available, families shall be served on a statewide basis from a ~~region~~ *service-area*-wide waiting list based on the following schedule in descending order of prioritization. Recipients of the family investment program, ~~or those whose earned income was taken into account in determining the needs of family investment program recipients, and families that receive a state adoption subsidy for a child~~ are eligible for child care ~~assistance~~ *notwithstanding* waiting lists for ~~child care services~~ *assistance*. Applications for child care ~~services~~ *assistance* shall be taken only for the priority groupings for which funds have been determined available.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/15/03.

ARC 2861B**INSURANCE DIVISION[191]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 505.8 and 514B.23, the Insurance Division hereby amends Chapter 40, "Health Maintenance Organizations," Iowa Administrative Code.

This amendment removes the restrictions on limits for deductibles and coinsurance charges on health services as a percentage of total premium.

Notice of Intended Action was published in the July 23, 2003, Iowa Administrative Bulletin as **ARC 2631B**. A public hearing was held on July 12, 2003. Due to interest in the amendment, additional time was provided for written comment and an informal discussion was held on September 8, 2003. Following those meetings and comments, no changes

were made to the amendment. This amendment is identical to that published under Notice.

The amendment was adopted by the Commissioner on September 10, 2003.

This amendment is intended to implement Iowa Code chapter 514B.

This amendment will become effective November 19, 2003.

The following amendment is adopted.

Rescind and reserve rule **191—40.16(514B)**.

[Filed 9/24/03, effective 11/19/03]

[Published 10/15/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/15/03.

ARC 2869B**MEDICAL EXAMINERS
BOARD[653]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Medical Examiners hereby amends Chapter 14, "Iowa Physician Health Committee," Iowa Administrative Code.

The amendments provide the process for Board referrals to the Iowa Physician Health Program, the Board's licensee review committee, in accordance with 2003 Iowa Acts, House File 641.

The Board adopted the amendments to Chapter 14 during a telephone conference call on September 24, 2003.

Notice of Intended Action regarding these amendments was published in the August 20, 2003, Iowa Administrative Bulletin as **ARC 2704B**. These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective on November 19, 2003.

These amendments are intended to implement Iowa Code section 272C.3(1)"k" as amended by 2003 Iowa Acts, House File 641, section 6.

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 amendments [14.2, 14.3, 14.5, 14.7(1), 14.9(3), 14.10, 14.11] is being omitted. These amendments are identical to those published under Notice as **ARC 2704B**, IAB 8/20/03.

[Filed 9/25/03, effective 11/19/03]

[Published 10/15/03]

[For replacement pages for IAC, see IAC Supplement 10/15/03.]

ARC 2852B**PUBLIC SAFETY
DEPARTMENT[661]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 100.1 and 100.35, the Department of Public Safety hereby amends Chapter 5, "Fire Marshal," Iowa Administrative Code.

Iowa Code section 100.1(5) assigns to the State Fire Marshal the exclusive authority to adopt fire safety rules in Iowa. Iowa Code section 100.35 enumerates various sorts of occupancies for which the State Fire Marshal is required to adopt rules.

Exits are a major area covered by the rules of the State Fire Marshal. The configuration of exits and allowance for means of egress in buildings and structures are major factors in the level of safety from fires afforded to the occupants of those structures.

Current exit requirements in the rules of the State Fire Marshal are outdated, having last been amended in 1992. In addition, the Iowa Occupational Safety and Health Program administered by Iowa Workforce Development, which has jurisdiction over many of the same occupancies, recently amended the exit requirements that it enforces, in response to changes made by the federal Occupational Safety and Health Administration (OSHA). The new OSHA exit requirements allow, as one option, compliance with exit requirements established in the Life Safety Code, which is a standard published by the National Fire Protection Association. The chapter on exit requirements (titled "Means of Egress") from the 2000 edition of the Life Safety Code is adopted by reference in these amendments as the exit requirements to be enforced by the State Fire Marshal.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin on May 28, 2003, as **ARC 2488B**. A public hearing on the amendments was held on June 19, 2003. No comments on the amendments were received either at the public hearing or otherwise. The amendments adopted here are identical to those proposed in the Notice of Intended Action.

These amendments are intended to implement Iowa Code section 100.35.

These amendments will become effective on December 1, 2003.

The following amendments are adopted.

ITEM 1. Amend rule **661—5.2(17A,80,100,101,101A)** by adding the following **new** definition in alphabetical order:

"NFPA" means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References to the form "NFPA xx," where "xx" is a number, refer to the NFPA standard or pamphlet of the corresponding number.

ITEM 2. Rescind rules **661—5.50(100)** through **5.65(100)** and adopt in lieu thereof the following **new** rule:

661—5.51(100) Exits. NFPA 101, 2000 edition, Chapter 7, is adopted as the general rules establishing exit requirements.

NOTE: When exit requirements for a specific form of occupancy are in conflict with this rule, the requirements for the specific occupancy apply.

This rule is intended to implement Iowa Code section 100.35.

[Filed 9/24/03, effective 12/1/03]

[Published 10/15/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/15/03.

ARC 2879B**REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby amends Chapter 39, "Filing Return and Payment of Tax," Chapter 40, "Determination of Net Income," Chapter 41, "Determination of Taxable Income," Chapter 42, "Adjustments to Computed Tax," Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Chapter 53, "Determination of Net Income," and Chapter 59, "Determination of Net Income," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXVI, No. 4, p. 287, on August 20, 2003, as **ARC 2711B**.

Item 1 amends subrule 39.6(3) to provide that, to the extent that any preferences or adjustments for alternative minimum tax are determined by an individual's adjusted gross income, the adjusted gross income must be computed without regard to the additional first-year depreciation allowance set forth in Section 168(k) of the Internal Revenue Code.

Item 2 adopts new rule 40.60(422), which provides that the additional first-year depreciation allowance (special 30 percent bonus depreciation) set forth in Section 168(k) of the Internal Revenue Code does not apply for individual income tax.

Item 3 adopts new subrule 41.5(10) to provide that, to the extent any itemized deductions are determined by an individual's adjusted gross income, the adjusted gross income must be computed without regard to the additional first-year depreciation allowance set forth in Section 168(k) of the Internal Revenue Code.

Item 4 amends subrule 42.2(11) to include federal revisions made in 2002 in the research activities credit for individuals.

Items 5 and 6 are amendments to subrule 52.7(3) and subrule 52.7(5) regarding the research activities credit for corporations and the research activities credit for increasing research activities in a quality job enterprise zone. The amendments show that the Department has adopted 2002 federal income tax changes which might impact the calculation of the Iowa research activities credit.

Items 7 and 8 are amendments to the implementation clauses for rules 52.10(15) and 52.14(422) regarding the research activities credit for research activities conducted by an eligible business and for the research activities credit conducted in an enterprise zone. The amendments show that those research activities credits are to be computed with changes in the federal research credit that occurred in the 2002 calendar year.

Item 9 amends rule 53.1(422) to reference new rule 53.22(422).

Item 10 adopts new rule 53.22(422), which provides that the additional first-year depreciation allowance (special 30 percent bonus depreciation) set forth in Section 168(k) of the

REVENUE DEPARTMENT[701](cont'd)

Internal Revenue Code does not apply for corporation income tax. To clarify the statutory provision, examples are included.

Item 11 adopts new rule 59.23(422), which provides that the additional first-year depreciation allowance (special 30 percent bonus depreciation) set forth in Section 168(k) of the Internal Revenue Code does not apply for franchise tax.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective November 19, 2003, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code sections 15.335, 15A.9, 422.3, 422.5, 422.7, 422.9, 422.10, 422.32, 422.33 and 422.35 as amended by 2003 Iowa Acts, Senate File 442.

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 amendments [amendments to Chs 39 to 42, 52, 53, 59] is being omitted. These amendments are identical to those published under Notice as **ARC 2711B**, IAB 8/20/03.

[Filed 9/26/03, effective 11/19/03]
[Published 10/15/03]

[For replacement pages for IAC, see IAC Supplement 10/15/03.]

ARC 2878B**REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby amends Chapter 42, "Adjustments to Computed Tax," and Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXVI, No. 4, p. 290, on August 20, 2003, as **ARC 2710B**.

Item 1 amends rule 42.16(422) to provide that individual income taxpayers having a fiscal year ending in 2002 are eligible for the ethanol blended gasoline tax credit, provided that a claim for refund is filed prior to October 1, 2003.

Item 2 updates an implementation clause.

Item 3 amends rule 52.19(422) to provide that corporation income taxpayers having a fiscal year ending in 2002 are eligible for the ethanol blended gasoline tax credit, provided that a claim for refund is filed prior to October 1, 2003.

Item 4 updates an implementation clause.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective November 19, 2003, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code sections 422.11C and 422.33 as amended by 2003 Iowa Acts, House File 689.

The following amendments are adopted.

ITEM 1. Amend rule **701—42.16(422)** by adopting the following **new** unnumbered paragraph to appear after the introductory paragraph:

For fiscal years ending in 2002, the tax credit is available for each eligible service station based on the total number of gallons of ethanol blended gasoline sold and dispensed through all metered pumps located at the taxpayer's service station from January 1, 2002, until the end of the taxpayer's fiscal year. Assuming a tax period that began on July 1, 2001, and ended on June 30, 2002, the taxpayer would be eligible for the tax credit based on the gallons of ethanol blended gasoline sold from January 1, 2002, through June 30, 2002. For taxpayers having a fiscal year ending in 2002, a claim for refund to claim the ethanol blended gasoline tax credit must be filed before October 1, 2003, even though the statute of limitations for refund set forth in 701—subrule 43.3(8) has not yet expired.

ITEM 2. Amend rule **701—42.16(422)**, implementation clause, as follows:

This rule is intended to implement 2001 Iowa Acts, ~~House File 716, section 2, chapter 123, section 6, subsection 2,~~ as amended by 2003 Iowa Acts, House File 689.

ITEM 3. Amend rule **701—52.19(422)** by adopting the following **new** unnumbered paragraph to appear after the introductory paragraph:

For fiscal years ending in 2002, the tax credit is available for each eligible service station based on the total number of gallons of ethanol blended gasoline sold and dispensed through all metered pumps located at the taxpayer's service station from January 1, 2002, until the end of the taxpayer's fiscal year. Assuming a tax period that began on July 1, 2001, and ended on June 30, 2002, the taxpayer would be eligible for the tax credit based on the gallons of ethanol blended gasoline sold from January 1, 2002, through June 30, 2002. For taxpayers having a fiscal year ending in 2002, a claim for refund to claim the ethanol blended gasoline tax credit must be filed before October 1, 2003, even though the statute of limitations for refund set forth in 701—subrule 55.3(5) has not yet expired.

ITEM 4. Amend rule **701—52.19(422)**, implementation clause, as follows:

This rule is intended to implement Iowa Code section 422.33 as amended by ~~2004~~ 2003 Iowa Acts, House File 746 689.

[Filed 9/26/03, effective 11/19/03]
[Published 10/15/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/15/03.

ARC 2868B**TRANSPORTATION
DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on September 24, 2003, adopted Chapter 28, "Iowa Transportation Map," Iowa Administrative Code.

Notice of Intended Action for these rules was published in the August 20, 2003, Iowa Administrative Bulletin as **ARC 2688B**.

This new chapter implements Department policy concerning the use of the Iowa transportation map.

TRANSPORTATION DEPARTMENT[761](cont'd)

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

The Department received comments from the Iowa Ethics and Campaign Disclosure Board and, as a result, added the following two numbered paragraphs to clarify the intent of the rules:

1. This policy applies to but is not limited to candidates running for political office.

2. It is not a violation of this policy for the pictures of the Governor and Lieutenant Governor and a personal message to appear on the map.

These rules are intended to implement Iowa Code chapter 307.

These rules will become effective November 19, 2003.

Rule-making action:

Adopt **new** 761—Chapter 28 as follows:

CHAPTER 28

IOWA TRANSPORTATION MAP

761—28.1(307) Definition.

"Iowa transportation map" is the multicolored official map that is produced by the department to provide the motorist with basic information on the location of cities and the highways connecting them.

761—28.2(307) Information. Information regarding the use of the Iowa transportation map may be obtained from: Director's Staff Division, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1642.

761—28.3(307) Policy. The Iowa transportation map is to be distributed to the public without charge. The map is not to be sold or used for purposes of personal or professional gain. The paper version of the map is not to be altered for distribution in any way, including adding a name or address of an individual, business or organization.

1. This policy applies to but is not limited to candidates running for political office.

2. It is not a violation of this policy for the pictures of the governor and lieutenant governor and a personal message to appear on the map.

These rules are intended to implement Iowa Code sections 307.12 and 307.14.

[Filed 9/24/03, effective 11/19/03]

[Published 10/15/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/15/03.

ARC 2837B**TRANSPORTATION
DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on September 16, 2003, rescinded Chapter 115, "Utility Accommodation," and adopted new Chapter 115, "Utility Accommodation," Iowa Administrative Code.

These rules apply to utility facilities occupying the primary highway right-of-way. The rules were reviewed in accordance with Executive Order Number 8. Several minor changes have been made to add definitions for terms used in the chapter, identify a contact office, eliminate redundant provisions and clarify ambiguous language. More significant changes are discussed below.

Where appropriate, the new rules allow more flexibility in materials and methods. For example, detailed listings of encasement materials acceptable to the Department are found in the current rules but are not included in the new rules. Under the new rules, the utility owner is responsible for selecting encasement materials that comply with applicable governmental, franchise and industry standards.

Fees for utility facility attachments to bridges and fees for longitudinal occupancy of freeway right-of-way are increased. The attachment fees set out in the current rules were adopted in 1985. The occupancy fees set out in the current rules were adopted in 1989.

The new rules establish a deadline of 90 days after construction is complete for submission of either an as-built plan or a letter certifying that the utility facility was placed as described in the original utility accommodation permit. Under the current rules, utility owners are required to submit as-built plans, but no deadline is given. The new rules also provide that if the utility owner fails to submit the plan or letter within the time required, the Department may hire a contractor to prepare an as-built drawing, at the cost of the utility owner. The new rules also make it clear that the utility owner is responsible for costs incurred by the Department or its contractors due to errors in as-built plans or improper placement of the utility facility.

The new rules consolidate and simplify clear zone requirements.

The new rules establish administrative procedures for utility facility adjustments made necessary by highway construction projects. The current rules address the accommodation of utility facilities within the right-of-way but do not adequately address the issues and responsibilities of the Department and utility owners when utility facilities must be adjusted as a result of a highway project.

Other new provisions include the following:

1. Federal Highway Administration approval is required for waivers involving interstate highways.

2. A utility accommodation permit is not required for storm sewers, subdrains and lighting designed and constructed as part of a Department highway construction project.

3. The Department may require a performance bond for certain utility work within the primary highway right-of-way.

4. The utility owner is responsible for coordinating its work with other contractors.

5. If a utility owner fails to comply with any provision of this chapter or any term of a utility accommodation permit, the Department may place pending and future permits on hold until the issue is resolved.

6. The Department shall deny issuance of a permit if it determines there is insufficient room for additional utility facilities in the right-of-way.

7. County approval of the permit application is required if the utility will impact a county road connection.

8. When city and county approvals are required, they must be obtained by the applicant before the permit application is submitted to the Department.

9. The utility owner is responsible for obtaining all necessary approvals from the appropriate agencies when it will

TRANSPORTATION DEPARTMENT[761](cont'd)

discharge materials into the nation's waterways. The Department will not issue a permit until these approvals are obtained.

10. When a utility facility is transferred or leased, the transferee or lessee must contact the district representative and provide its name and address, the geographical area involved in the transaction, and the designated telephone number for notification purposes.

11. For nonfreeway primary highways, the Department may permit longitudinal placement of a natural gas line with an operating pressure that is greater than 150 pounds per square inch if a suitable alternate location cannot be found.

12. A utility owner must submit a notice to the Department within 90 days after it abandons or removes a utility facility that occupies the primary highway right-of-way.

Revisions include the following:

1. The Department is no longer obligated to furnish signs necessary to conduct primary highway traffic through the utility construction or repair area. The utility owner is responsible for providing signs.

2. For utility facility attachments to bridges, Department-approved clamps must be used for any attachments to structural steel. The current rules prohibit attachments to structural steel.

3. For transverse occupancies, the Department may require encasement of communication cable. The current rules require encasement from toe of foreslope to toe of foreslope except when cable is buried directly.

4. Gravity flow lines installed prior to highway construction must be encased. The current rules do not require encasement if the lines meet certain requirements.

5. The Department may require multiduct systems for either longitudinal or transverse occupancies. The current rules address multiduct systems for only longitudinal freeway occupancies.

6. When pavement is removed, the minimum width of the cut is six feet. The current rules specify that the minimum cut is the required trench width plus 12 inches on each side.

7. Boring or jacking pits within the clear zone must be protected at all times. The current rules require the closure of these pits at night.

8. A performance bond for longitudinal occupancy of freeway right-of-way shall be in force for the duration of the construction, and the Department shall have the right to file a claim against the bond for two years thereafter. Current language provides for release of the bond once the Department accepts the project. The bond amount, \$100,000, is unchanged.

9. The minimum vertical clearance for all overhead utility facilities is 20 feet. A provision that allowed an 18-foot vertical clearance for service connections was deleted.

Notice of Intended Action was published in the August 6, 2003, Iowa Administrative Bulletin as **ARC 2662B**.

Two changes were made from the Notice of Intended Action:

- Paragraph 115.12(2)“g” pertains to pipeline attachments to bridges. A sentence was added which reads, “Encasement is required for plastic pipe attachments to bridges.” The reason for the addition is that encasement of plastic pipe is required under federal pipeline safety standards.

- The second sentence of 115.13(5)“c”(3) addresses pipeline marker signs. The words “and address” were deleted. The reason for the deletion is that requiring pipeline marker signs to include the owner's address does not comply with federal pipeline safety standards.

These rules are intended to implement Iowa Code chapters 306A and 319, section 314.20, and sections 320.4 to 320.8. These rules will become effective November 19, 2003.

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 [Ch 115] is being omitted. With the exception of the changes noted above, these rules are identical to those published under Notice as **ARC 2662B**, IAB 8/6/03.

[Filed 9/16/03, effective 11/19/03]
[Published 10/15/03]

[For replacement pages for IAC, see IAC Supplement 10/15/03.]

ARC 2836B**TRANSPORTATION
DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on September 16, 2003, adopted an amendment to Chapter 131, “Signing on Primary Roads,” Iowa Administrative Code.

Notice of Intended Action for this amendment was published in the July 9, 2003, Iowa Administrative Bulletin as **ARC 2601B**.

Subrule 131.8(1) applies to signing on primary roads for county conservation parks. The subrule is amended to eliminate requirements that a county conservation park must have an approved drinking water supply, sanitary toilet facilities, picnic facilities and camping facilities in order to qualify for signing. Instead, new language requires a park to have as its primary purposes outdoor recreation and nature appreciation. The effect of the amendment is that more county conservation parks will qualify for the “arrowhead” logo type of sign. The number of signs installed is not anticipated to change. Currently, if a county conservation area does not qualify for “arrowhead” signs, traditional brown and white destination signs are installed.

The Iowa Association of County Conservation Directors requested the amendment. The reasons for its request are to provide consistency with the requirements used to install similar signs on county roads and its belief that the traveling public does not associate “arrowhead” signs with any specific criteria other than being a conservation area managed by a county government. Signs on primary roads for county conservation parks are furnished by the counties.

This amendment does not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code sections 321.252 and 321.253.

This amendment will become effective November 19, 2003.

Rule-making action:

Amend subrule 131.8(1) as follows:

TRANSPORTATION DEPARTMENT[761](cont'd)

131.8(1) Requirements. The park shall have an approved drinking water supply, sanitary toilet facilities, picnic facilities and camping facilities as its primary purposes outdoor recreation and nature appreciation.

[Filed 9/16/03, effective 11/19/03]

[Published 10/15/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/15/03.

ARC 2866B

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10, 307.12 and 326.33, the Department of Transportation, on September 24, 2003, adopted an amendment to Chapter 500, "Interstate Registration and Operation of Vehicles," Iowa Administrative Code.

Notice of Intended Action for this rule was published in the August 20, 2003, Iowa Administrative Bulletin as **ARC 2689B**.

This new rule eliminates unnecessary paper files and allows the Office of Motor Carrier Services to maintain in electronic form all records required under this chapter to the fullest extent possible. This efficiency will reduce filing and record retention costs.

This rule is identical to the one published under Notice of Intended Action.

This rule is intended to implement Iowa Code chapter 326.

This rule will become effective November 19, 2003.

Rule-making action:

Amend 761—Chapter 500 by adopting the following **new** rule:

761—500.24(326) Electronic information. To the greatest extent possible, the office of motor carrier services shall maintain in electronic form all records required under this chapter. The retention period for electronic records must follow the guidelines of the IRP.

500.24(1) IRP vehicle transaction. The office of motor carrier services shall destroy paper copies of IRP vehicle transaction requests 90 days after the IRP invoice is generated.

500.24(2) Heavy highway vehicle schedule. The office of motor carrier services shall destroy paper copies of the heavy highway vehicle schedule once the electronic record is updated.

500.24(3) MCS 150. The office of motor carrier services shall forward the updated Federal Highway Administration's motor carrier identification information report (MCS 150) to the Federal Motor Carrier Safety Administration office after the update is marked on the electronic record. The office of motor carrier services shall not retain paper copies of this form.

This rule is intended to implement Iowa Code section 326.33.

[Filed 9/24/03, effective 11/19/03]

[Published 10/15/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/15/03.

ARC 2867B

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on September 24, 2003, adopted amendments to Chapter 520, "Regulations Applicable to Carriers," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the August 20, 2003, Iowa Administrative Bulletin as **ARC 2690B**.

Iowa Code section 321.449 as amended by 2003 Iowa Acts, Senate File 97, section 17, requires the Iowa Department of Transportation to adopt rules consistent with the federal Motor Carrier Safety Regulations promulgated under United States Code, Title 49, and found in 49 CFR Parts 385 and 390 to 399. 2003 Iowa Acts, Senate File 97, section 17, added Part 385.

Item 1 adds Part 385 to the list of federal regulations adopted by the Department. Adoption of this part will allow the Department to conduct safety audits of new motor carriers. The purpose of a safety audit is to provide the new carrier with educational and technical assistance and to gather safety data needed to assess the new carrier's safety performance and the adequacy of the carrier's basic safety management controls. The safety audit will be performed at the new carrier's place of business and will be completed within 18 months from the day the motor carrier commences business.

Item 1 also adopts 68 FR 22455, dated April 28, 2003. This Federal Register final rule amends the hours-of-service regulations in 49 CFR Parts 385, 390 and 395. The adoption of the revised hours-of-service regulations by the Department will extend the enforcement of these regulations to commercial vehicles operated intrastate unless a statutory exemption applies. The compliance date for the revised regulations is January 4, 2004. Major changes in the hours-of-service regulations are as follows:

- Driving time is increased from 10 to 11 hours.
- On-duty time is decreased from 15 to 14 hours.
- Off-duty time is increased from 8 to 10 hours.
- Sleeper berth requirements are basically unchanged.

The hours are increased from 8 hours to 10 hours. A minimum of 2 hours is required.

- The rules regarding 60 hours on duty in seven days and 70 hours on duty in eight days are unchanged, except for a 34-hour restart provision.

- A 16-hour on-duty time period is permitted for short-haul property carriers under certain circumstances.

There is no on-board recorder requirement. Motor coach operators are subject to existing rules.

Item 2 adopts a rule clarifying the authority of the Department's Office of Motor Vehicle Enforcement to conduct new motor carrier safety audits.

Item 3 contains editorial corrections.

TRANSPORTATION DEPARTMENT[761](cont'd)

These amendments do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 321.449 and 321.450.

These amendments will become effective November 19, 2003.

Rule-making actions:

ITEM 1. Amend paragraph **520.1(1)“a”** as follows:

a. Motor carrier safety regulations. The Iowa department of transportation adopts the Federal Motor Carrier Safety Regulations, 49 CFR Parts 385 and 390-399 (October 1, 2002). *The department also adopts “Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations; Final Rule” as published in the Federal Register on April 28, 2003 (68 FR 22455).*

ITEM 2. Adopt **new** rule 761—520.5(321) as follows:

761—520.5(321) New motor carrier safety audits. Peace officers in the office of motor vehicle enforcement of the Iowa department of transportation shall perform safety audits of new motor carriers and shall have the authority to enter a motor carrier's place of business for the purpose of performing these audits. These audits shall be performed in compliance with 49 CFR Part 385 and shall be completed within 18 months from the day the motor carrier commences business.

This rule is intended to implement Iowa Code sections 321.449 and 321.450.

ITEM 3. Amend rule 761—520.6(307,321) as follows:

761—520.6(307,321) Out-of-service order.

520.6(1) A person shall not operate a commercial vehicle or transport hazardous material in violation of an out-of-service order issued by an Iowa peace officer. An out-of-service order for noncompliance shall be issued when either the vehicle operator is not qualified to operate the vehicle or the vehicle is unsafe to be operated until required repairs are made. The out-of-service order shall be consistent with the North American Uniform Out-of-Service Criteria issued by the Federal Motor Carrier Safety Administration.

520.6(2) Rescinded IAB 5/2/01, effective 6/6/01.

This rule is intended to implement Iowa Code sections 307.42, 321.3, 321.208A, 321.449, and 321.450.

[Filed 9/24/03, effective 11/19/03]

[Published 10/15/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/15/03.

ARC 2880B**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 amends Chapter 25, “Benefit Payment Control,” and Chapter 42, “Public Records and Fair Information Practices,” Iowa Administrative Code.

The amendments to these chapters make corrections that were identified as a result of reviews conducted in accordance with Executive Order Number 8.

Notice of Intended Action was published in the August 20, 2003, Iowa Administrative Bulletin as **ARC 2696B**. These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective on November 19, 2003.

These amendments are intended to implement Iowa Code sections 96.3(3), 96.3(7), 96.4(3), 96.5(1), 96.5(3), 96.5(8), 96.6(1), 96.8(5), 96.11(1), 96.11(6), 96.11(7), 96.11(10), 96.16, 96.17(2), 96.19(38) and 421.17(26,29).

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 amendments [amendments to Chs 25, 42] is being omitted. These amendments are identical to those published under Notice as **ARC 2696B**, IAB 8/20/03.

[Filed 9/26/03, effective 11/19/03]

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[For replacement pages for IAC, see IAC Supplement 10/15/03.]

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