



IOWA ADMINISTRATIVE BULLETIN

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CONTENTS IN THIS ISSUE

Pages 1000 to 1073 include **ARC 2979B** to **ARC 3003B** and **ARC 3005B** to **ARC 3025B**

ALL AGENCIES

Schedule for rule making	992
Publication procedures	993
Administrative rules on CD-ROM	993
Agency identification numbers	998

ATTORNEY GENERAL[61]

Notice, Quarterly escrow installments from particular nonparticipating manufacturers, ch 5 ARC 2993B	1000
---	------

COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]*"umbrella" Notice, Osteopathic physician recruitment program, 14.1, 14.4 ARC 2988B	1000
--	------

CREDIT UNION DIVISION[189]

COMMERCE DEPARTMENT[181]*"umbrella" Filed Emergency, Conversion of an Iowa-chartered credit union to another charter type, ch 3 ARC 2985B	1040
---	------

EDUCATION DEPARTMENT[281]

Notice Terminated, Professional development, 12.7 ARC 3025B	1001
Notice, Teacher quality program, 83.6 ARC 2999B	1001
Filed, Court-ordered drinking drivers' school attendance, 21.33 ARC 2994B	1051
Filed, Funding for children residing in state institutions or mental health institutes, ch 34 ARC 2995B	1051
Filed, Career academies, ch 47 ARC 2996B	1051
Filed, Iowa public charter schools, ch 68 ARC 2998B	1053
Filed, Supplementary weighting—regional academy; minimum weighting, maximum funding, 97.1, 97.4 ARC 2997B	1053

ELDER AFFAIRS DEPARTMENT[321]

Notice, Adult day services programs, rescind chs 22 to 24; adopt ch 24 ARC 3002B	1003
---	------

Notice, Assisted living programs, ch 25 ARC 3001B	1012
Notice, Elder group homes; monitoring, civil penalties, complaints and investigation for adult day services and assisted living programs; fees for adult day services and assisted living programs, renumber ch 26 as ch 29; rescind ch 27; adopt chs 26, 27 ARC 3000B	1023

ENVIRONMENTAL PROTECTION

COMMISSION[567] NATURAL RESOURCES DEPARTMENT[561]*"umbrella" Notice, Adoption by reference—requirements and compliance schedules for control of emissions from existing commercial and industrial solid waste incineration (CISWI) units not covered by an approved state plan, 23.1(5)"c" ARC 3005B	1026
Filed, Controlling pollution—small unit exemption, 22.1(2)"w" ARC 3006B	1054
Filed, Emission standards for contaminants, 23.2 ARC 3007B	1054
Filed, Reauthorization of General Permit No. 4, 64.15(4), 69.1(2), 69.2, 69.9(1)"c," 69.10(6), 69.11(1)"c" ARC 3008B	1056

EXECUTIVE DEPARTMENT

Executive Order number 32	1074
---------------------------------	------

HUMAN SERVICES DEPARTMENT[441]

Notice, Quality assurance assessment for nursing facilities; quality assurance payment, 36.1 to 36.4, 36.6 to 36.8, 81.6(21) ARC 3022B	1026
Notice, Annual SSI cost-of-living adjustments—SSA and Medicaid, 51.4(1), 51.7, 52.1, 75.5(3), 75.16(2) ARC 3024B	1027
Filed Emergency, Quality assurance assessment for nursing facilities; quality assurance payment, 36.1 to 36.4, 36.6 to 36.8, 81.6(21) ARC 3021B	1043

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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All checks should be made payable to the Treasurer, State of Iowa. Send all inquiries and subscription orders to:

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

HUMAN SERVICES DEPARTMENT[441] (Cont'd)

- Filed Emergency After Notice, Expansion of FIP diversion pilot program; elimination of pilot community self-sufficiency grants program and pilot post-FIP diversion program, amendments to ch 47 **ARC 3017B** . . . 1045
- Filed Emergency, Annual SSI cost-of-living adjustments—SSA and Medicaid, 51.4(1), 51.7, 52.1, 75.5(3), 75.16(2) **ARC 3023B** 1046
- Filed, SSA reimbursement rates—in-home health-related care and residential care facility care, 52.1(3), 177.4 **ARC 3019B** 1057
- Filed Emergency After Notice, Food assistance, amendments to ch 65 **ARC 3018B** . . 1047
- Filed Emergency, Medicaid coverage limitations for drugs—prior authorization, preferred drug list, 78.1(2), 78.28(1) **ARC 3020B** 1048

INSPECTIONS AND APPEALS DEPARTMENT[481]

- Notice, Process for appeal of involuntary discharge or transfer of a resident from a long-term care facility; date, time and place of hearing to be set by administrative law judge, 57.2(3), 57.36(1), 58.2(3), 58.40(1), 62.4(3), 62.14(4), 63.2(3), 63.34(1), 63.36(1), 64.2(3), 64.36(1), 65.4(3), 65.16(6) **ARC 2987B** 1028
- Filed, Bingo exceptions, 103.3(4) **ARC 2986B** 1058

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

- Filed, Iowa FAIR plan Act, 20.41 to 20.60 **ARC 2992B** 1058

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

- Notice, Nonresident deer hunting, 94.7(1), 94.8, 94.10(7) **ARC 3009B** 1030
- Filed, Retail and wholesale bait dealers' licenses, 15.1(1) **ARC 3013B** 1058
- Filed, State parks and recreation areas, 61.4, 61.6, 61.9 **ARC 3015B** 1059
- Filed, Threatened species—removal of bobcat from list, 77.2(2) **ARC 3014B** 1059
- Filed, Fishing regulations, 81.1, 81.2 **ARC 3011B** 1059
- Filed, Permissive catch on the Missouri River, 82.2(1) **ARC 3010B** 1060

- Filed, Taking and possession of mussels for sport, 87.2 **ARC 3012B** 1060
- Filed, Wild turkey spring hunting, 98.2(1)"b," 98.3, 98.5, 98.13(1), 98.14, 98.16 **ARC 3016B** 1061

PERSONNEL DEPARTMENT[581]

- Filed, IPERS, amendments to ch 21 **ARC 3003B** 1061

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Notice, Speech pathologists and audiologists, 300.2 to 300.16, 305.1 **ARC 2990B** 1031

PUBLIC HEALTH DEPARTMENT[641]

- Notice, Reporting, investigation and surveys; quarantine and isolation, 1.1, 1.4, 1.9 **ARC 2979B** 1032
- Filed Emergency After Notice, Early hearing detection and intervention, ch 3 **ARC 2981B** 1049
- Filed, General provisions for radiation machines and radioactive materials, 38.8(11)"a," "c" **ARC 2980B** 1062

PUBLIC SAFETY DEPARTMENT[661]

- Notice, Fire safety standards for adult day services programs, 5.5(2), 5.500, 5.510 **ARC 2983B** 1036
- Notice, Fire safety standards for assisted living facilities, 5.626 **ARC 2984B** 1037

PUBLIC HEARINGS

- Summarized list 994

REVENUE DEPARTMENT[701]

- Notice, Interest rate on interest-bearing taxes—calendar year 2004, 10.2(23) **ARC 2991B** 1039

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

- Filed, Purchasing, 5.1 to 5.4, 5.12, 5.13, 5.15, 5.17 to 5.19 **ARC 2982B** 1062

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

- Filed, Executive orders 8 and 9—customer service rules revisions, amendments to chs 6, 19, 20 **ARC 2989B** 1063

Schedule for Rule Making 2004

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. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04
Jan. 16	Feb. 4	Feb. 24	Mar. 10	Mar. 12	Mar. 31	May 5	Aug. 2
Jan. 30	Feb. 18	Mar. 9	Mar. 24	Mar. 26	Apr. 14	May 19	Aug. 16
Feb. 13	Mar. 3	Mar. 23	Apr. 7	Apr. 9	Apr. 28	June 2	Aug. 30
Feb. 27	Mar. 17	Apr. 6	Apr. 21	Apr. 23	May 12	June 16	Sept. 13
Mar. 12	Mar. 31	Apr. 20	May 5	May 7	May 26	June 30	Sept. 27
Mar. 26	Apr. 14	May 4	May 19	May 21	June 9	July 14	Oct. 11
Apr. 9	Apr. 28	May 18	June 2	June 4	June 23	July 28	Oct. 25
Apr. 23	May 12	June 1	June 16	June 18	July 7	Aug. 11	Nov. 8
May 7	May 26	June 15	June 30	July 2	July 21	Aug. 25	Nov. 22
May 21	June 9	June 29	July 14	July 16	Aug. 4	Sept. 8	Dec. 6
June 4	June 23	July 13	July 28	July 30	Aug. 18	Sept. 22	Dec. 20
June 18	July 7	July 27	Aug. 11	Aug. 13	Sept. 1	Oct. 6	Jan. 3 '05
July 2	July 21	Aug. 10	Aug. 25	Aug. 27	Sept. 15	Oct. 20	Jan. 17 '05
July 16	Aug. 4	Aug. 24	Sept. 8	Sept. 10	Sept. 29	Nov. 3	Jan. 31 '05
July 30	Aug. 18	Sept. 7	Sept. 22	Sept. 24	Oct. 13	Nov. 17	Feb. 14 '05
Aug. 13	Sept. 1	Sept. 21	Oct. 6	Oct. 8	Oct. 27	Dec. 1	Feb. 28 '05
Aug. 27	Sept. 15	Oct. 5	Oct. 20	Oct. 22	Nov. 10	Dec. 15	Mar. 14 '05
Sept. 10	Sept. 29	Oct. 19	Nov. 3	Nov. 5	Nov. 24	Dec. 29	Mar. 28 '05
Sept. 24	Oct. 13	Nov. 2	Nov. 17	***Nov. 17***	Dec. 8	Jan. 12 '05	Apr. 11 '05
Oct. 8	Oct. 27	Nov. 16	Dec. 1	Dec. 3	Dec. 22	Jan. 26 '05	Apr. 25 '05
Oct. 22	Nov. 10	Nov. 30	Dec. 15	***Dec. 15***	Jan. 5 '05	Feb. 9 '05	May 9 '05
Nov. 5	Nov. 24	Dec. 14	Dec. 29	Dec. 31	Jan. 19 '05	Feb. 23 '05	May 23 '05
Nov. 17	Dec. 8	Dec. 28	Jan. 12 '05	Jan. 14 '05	Feb. 2 '05	Mar. 9 '05	June 6 '05
Dec. 3	Dec. 22	Jan. 11 '05	Jan. 26 '05	Jan. 28 '05	Feb. 16 '05	Mar. 23 '05	June 20 '05
Dec. 15	Jan. 5 '05	Jan. 25 '05	Feb. 9 '05	Feb. 11 '05	Mar. 2 '05	Apr. 6 '05	July 4 '05
Dec. 31	Jan. 19 '05	Feb. 8 '05	Feb. 23 '05	Feb. 25 '05	Mar. 16 '05	Apr. 20 '05	July 18 '05

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
14	Wednesday, December 17, 2003	January 7, 2004
15	Friday, January 2, 2004	January 21, 2004
16	Friday, January 16, 2004	February 4, 2004

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

The Administrative Code Division uses QuickSilver XML Publisher, version 1.5.3, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the 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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kathleen.bates@legis.state.ia.us

2. Alternatively, you may send a PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, Third Floor West, Ola Babcock Miller Building, or included with the documents submitted to the Governor's Administrative Rules Coordinator.

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

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

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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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ATTORNEY GENERAL[61]

Quarterly escrow installments from particular nonparticipating manufacturers, ch 5 IAB 12/10/03 ARC 2993B	O'Connor Conference Room Second Floor Hoover State Office Bldg. Des Moines, Iowa	December 30, 2003 3 to 4 p.m.
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EDUCATION DEPARTMENT[281]

Teacher quality—professional development, 83.6 IAB 12/10/03 ARC 2999B (ICN Network)	Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 7, 2004 1 to 3 p.m.
	NIACC 500 College Dr. Mason City, Iowa	January 7, 2004 1 to 3 p.m.
	Grant Wood AEA 4401 Sixth St. SW Cedar Rapids, Iowa	January 7, 2004 1 to 3 p.m.
	Southern Prairie AEA 2814 N. Court St. Ottumwa, Iowa	January 7, 2004 1 to 3 p.m.
	Great River AEA 3601 West Avenue Rd. Burlington, Iowa	January 7, 2004 1 to 3 p.m.
	Keystone AEA 2310 Chaney Rd. Dubuque, Iowa	January 7, 2004 1 to 3 p.m.
	Iowa Central Community College 916 N. Russell Storm Lake, Iowa	January 7, 2004 1 to 3 p.m.
	Atlantic Middle School 1100 Linn St. Atlantic, Iowa	January 7, 2004 1 to 3 p.m.

ELDER AFFAIRS DEPARTMENT[321]

Adult day services programs, rescind chs 22 to 24, adopt ch 24 IAB 12/10/03 ARC 3002B (ICN Network)	Third Floor Conference Room Wallace State Office Building Des Moines, Iowa	January 7, 2004 9 to 11 a.m.
	Room 550 411 Third Street SE Cedar Rapids, Iowa	January 7, 2004 9 to 11 a.m.

ELDER AFFAIRS DEPARTMENT[321] (Cont'd)
(ICN Network)

	Room 211 Southwestern Iowa Comm. College 1501 West Townline Road Creston, Iowa	January 7, 2004 9 to 11 a.m.
	Public Library 529 Pierce Street Sioux City, Iowa	January 7, 2004 9 to 11 a.m.
Assisted living programs, ch 25 IAB 12/10/03 ARC 3001B (ICN Network)	Third Floor Conference Room Wallace State Office Building Des Moines, Iowa	January 7, 2004 9 to 11 a.m.
	Room 550 411 Third Street SE Cedar Rapids, Iowa	January 7, 2004 9 to 11 a.m.
	Room 211 Southwestern Iowa Comm. College 1501 West Townline Road Creston, Iowa	January 7, 2004 9 to 11 a.m.
	Public Library 529 Pierce Street Sioux City, Iowa	January 7, 2004 9 to 11 a.m.
Monitoring, civil penalties, complaints and investigation for adult day services and assisted living programs; fees; elder group homes, chs 26, 27, 29 IAB 12/10/03 ARC 3000B (ICN Network)	Third Floor Conference Room Wallace State Office Building Des Moines, Iowa	January 7, 2004 9 to 11 a.m.
	Room 550 411 Third Street SE Cedar Rapids, Iowa	January 7, 2004 9 to 11 a.m.
	Room 211 Southwestern Iowa Comm. College 1501 West Townline Road Creston, Iowa	January 7, 2004 9 to 11 a.m.
	Public Library 529 Pierce Street Sioux City, Iowa	January 7, 2004 9 to 11 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Emission guidelines and compliance schedules for commercial and industrial solid waste incineration units, 23.1(5) IAB 12/10/03 ARC 3005B	Musser Public Library 304 Iowa Ave. Muscatine, Iowa	January 16, 2004 1 p.m.
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HUMAN SERVICES DEPARTMENT[441]

Quality assurance assessment for nursing facilities, 36.1 to 36.8, 81.6(21)
IAB 12/10/03 **ARC 3022B**
(See also **ARC 3021B** herein)

Fifth Floor Southwest Conference Rm.
Hoover State Office Bldg.
Des Moines, Iowa

January 5, 2004
9 to 10 a.m.

LAW ENFORCEMENT ACADEMY[501]

Reserve officer personal standards, 10.100 to 10.106
IAB 11/26/03 **ARC 2978B**

Conference Room
Law Enforcement Academy
Camp Dodge
Johnston, Iowa

December 30, 2003
10 a.m.

NATURAL RESOURCE COMMISSION[571]

Nonresident deer hunting, 94.7(1), 94.8, 94.10(7)
IAB 12/10/03 **ARC 3009B**

Fourth Floor West Conference Room
Wallace State Office Bldg.
Des Moines, Iowa

December 30, 2003
2 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Cosmetology arts and sciences examiners, 60.4, 60.6, 60.9 to 60.13, 62.1(5)
IAB 11/26/03 **ARC 2960B**

Fifth Floor Board Conference Room
Lucas State Office Bldg.
Des Moines, Iowa

December 17, 2003
10 to 11 a.m.

Psychology examiners, 240.6(1), 240.10, 240.12, 240.16, 240.17, 243.1
IAB 11/26/03 **ARC 2959B**

Fifth Floor Board Conference Room
Lucas State Office Bldg.
Des Moines, Iowa

December 18, 2003
9 to 10 a.m.

Speech pathology and audiology examiners, 300.2 to 300.16, 305.1
IAB 12/10/03 **ARC 2990B**

Fifth Floor Board Conference Room
Lucas State Office Bldg.
Des Moines, Iowa

January 6, 2004
9 to 10 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Reporting, investigation, and surveys; quarantine and isolation, 1.1, 1.4, 1.9
IAB 12/10/03 **ARC 2979B**
(**ICN Network**)

ICN Room, Sixth Floor
Lucas State Office Bldg.
Des Moines, Iowa

December 30, 2003
10 to 11 a.m.

Kirkwood Community College
6301 Kirkwood Blvd.
Cedar Rapids, Iowa

December 30, 2003
10 to 11 a.m.

Resource Center
711 S. Vine St.
Glenwood, Iowa

December 30, 2003
10 to 11 a.m.

Indian Hills Community College
651 Indian Hills Dr.
Ottumwa, Iowa

December 30, 2003
10 to 11 a.m.

PUBLIC HEALTH DEPARTMENT[641] (Cont'd)
(ICN Network)

	Buena Vista University 610 W. Fourth St. Storm Lake, Iowa	December 30, 2003 10 to 11 a.m.
	Newman Catholic High School 2445 19th St. SW Mason City, Iowa	December 30, 2003 10 to 11 a.m.
Volunteer health care provider program, ch 88 IAB 11/26/03 ARC 2975B	Room 517, Fifth Floor Lucas State Office Bldg. Des Moines, Iowa	December 16, 2003 1 to 2 p.m.

PUBLIC SAFETY DEPARTMENT[661]

Fire safety standards for adult day services programs, 5.5(2), 5.500, 5.510 IAB 12/10/03 ARC 2983B (ICN Network)	Third Floor Conference Room Wallace State Office Building Des Moines, Iowa	January 7, 2004 11 a.m.
	Room 550 411 Third Street SE Cedar Rapids, Iowa	January 7, 2004 11 a.m.
	Room 211 Southwestern Iowa Comm. College 1501 West Townline Road Creston, Iowa	January 7, 2004 11 a.m.
	Public Library 529 Pierce Street Sioux City, Iowa	January 7, 2004 11 a.m.
Fire safety standards for assisted living facilities, 5.626 IAB 12/10/03 ARC 2984B (ICN Network)	Third Floor Conference Room Wallace State Office Building Des Moines, Iowa	January 7, 2004 11:30 a.m.
	Room 550 411 Third Street SE Cedar Rapids, Iowa	January 7, 2004 11:30 a.m.
	Room 211 Southwestern Iowa Comm. College 1501 West Townline Road Creston, Iowa	January 7, 2004 11:30 a.m.
	Public Library 529 Pierce Street Sioux City, Iowa	January 7, 2004 11:30 a.m.

UTILITIES DIVISION[199]

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.
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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:

ADMINISTRATIVE SERVICES DEPARTMENT[11]
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 Agricultural Development Authority[25]
 Soil Conservation Division[27]
 ATTORNEY GENERAL[61]
 AUDITOR OF STATE[81]
 BEEF INDUSTRY COUNCIL, IOWA[101]
 BLIND, DEPARTMENT FOR THE[111]
 CAPITAL INVESTMENT BOARD, IOWA[123]
 CITIZENS’ AIDE[141]
 CIVIL RIGHTS COMMISSION[161]
 COMMERCE DEPARTMENT[181]
 Alcoholic Beverages Division[185]
 Banking Division[187]
 Credit Union Division[189]
 Insurance Division[191]
 Professional Licensing and Regulation Division[193]
 Accountancy Examining Board[193A]
 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
 Real Estate Commission[193E]
 Real Estate Appraiser Examining Board[193F]
 Savings and Loan Division[197]
 Utilities Division[199]
 CORRECTIONS DEPARTMENT[201]
 Parole Board[205]
 CULTURAL AFFAIRS DEPARTMENT[221]
 Arts Division[222]
 Historical Division[223]
 ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
 City Development Board[263]
 Grow Iowa Values Board[264]
 Iowa Finance Authority[265]
 EDUCATION DEPARTMENT[281]
 Educational Examiners Board[282]
 College Student Aid Commission[283]
 Higher Education Loan Authority[284]
 Iowa Advance Funding Authority[285]
 Libraries and Information Services Division[286]
 Public Broadcasting Division[288]
 School Budget Review Committee[289]
 EGG COUNCIL, IOWA[301]
 ELDER AFFAIRS DEPARTMENT[321]
 EMPOWERMENT BOARD, IOWA[349]
 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
 EXECUTIVE COUNCIL[361]
 FAIR BOARD[371]
 GENERAL SERVICES DEPARTMENT[401]
 HUMAN INVESTMENT COUNCIL[417]
 HUMAN RIGHTS DEPARTMENT[421]
 Community Action Agencies Division[427]
 Criminal and Juvenile Justice Planning Division[428]
 Deaf Services Division[429]
 Persons With Disabilities Division[431]
 Latino Affairs Division[433]
 Status of African-Americans, Division on the[434]
 Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]
INFORMATION TECHNOLOGY DEPARTMENT[471]
INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board for[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
 Emergency Management Division[605]
 Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Substance Abuse Commission[643]
 Professional Licensure Division[645]
 Dental Examiners Board[650]
 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and
 Workforce Development Center Administration Division[877]

ARC 2993B**ATTORNEY GENERAL[61]****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 2003 Iowa Acts, chapter 97, section 5, subsection 5, the Attorney General hereby gives Notice of Intended Action to adopt new Chapter 5, “Quarterly Escrow Installments from Particular Nonparticipating Manufacturers,” Iowa Administrative Code.

The purpose of this chapter is to help ensure that nonparticipating tobacco product manufacturers whose products are sold in Iowa comply with Iowa Code section 453C.2, which requires such manufacturers to establish and fund escrow accounts based on the sale of their cigarettes and roll-your-own tobacco products in the state.

Public comments concerning this proposed chapter will be accepted until 4:30 p.m. on December 30, 2003. Interested persons may submit written or oral comments by contacting Donald Stanley, Assistant Attorney General, Attorney General’s Office, Hoover State Office Building, Second Floor, 1305 E. Walnut, Des Moines, Iowa 50319; telephone (515) 281-8480; fax (515)281-6771; E-mail dstanle@ag.state.ia.us.

A public hearing to receive comments about this proposed new chapter will be held on December 30, 2003, from 3 to 4 p.m. in the O’Connor Conference Room, Hoover State Office Building, Second Floor, 1305 E. Walnut, Des Moines, Iowa 50319.

These rules are intended to implement 2003 Iowa Acts, chapter 97, section 5, subsection 5.

The following **new** chapter is proposed.

CHAPTER 5**QUARTERLY ESCROW INSTALLMENTS
FROM PARTICULAR NONPARTICIPATING
MANUFACTURERS**

61—5.1(80GA,ch97) Purpose. To promote compliance with Iowa Code chapter 453C and 2003 Iowa Acts, chapter 97, section 5, subsection 5, the attorney general may require nonparticipating manufacturers to make escrow payments required by Iowa Code section 453C.2(2) in quarterly installments during the year in which sales covered by such payments are made.

61—5.2(80GA,ch97) Definitions.

“Nonparticipating manufacturer” has the same meaning in this rule as that cited in 2003 Iowa Acts, chapter 97, section 2, subsection 7.

“Participating manufacturer” has the same meaning in this rule as that cited in 2003 Iowa Acts, chapter 97, section 2, subsection 8.

61—5.3(80GA,ch97) Applicability. The attorney general may require quarterly payments from a nonparticipating manufacturer to which any of the following criteria apply:

5.3(1) No previous escrow deposit. The nonparticipating manufacturer has not previously established and funded a qualified escrow fund in Iowa;

5.3(2) No escrow deposit for more than one year. The nonparticipating manufacturer has not made any escrow deposits for more than one year;

5.3(3) Untimely or incomplete deposits. The nonparticipating manufacturer has failed to make a timely and complete escrow deposit for any prior calendar year;

5.3(4) Outstanding judgments. The nonparticipating manufacturer has failed to pay any judgment awarded to the state, including any civil penalty;

5.3(5) Large sales volume. The nonparticipating manufacturer sells more than 1,630,000 sticks or 147,000 ounces of roll-your-own product during a quarter.

5.3(6) Other reasonable cause. In addition to the criteria specified in subrules 5.3(1) to 5.3(5), the attorney general may require quarterly payments from a nonparticipating manufacturer if the attorney general has reasonable cause to believe that the nonparticipating manufacturer may not make its full required escrow deposit at the end of the sales year.

61—5.4(80GA,ch97) Deadlines. Nonparticipating manufacturers required to make quarterly payments must do so as follows:

5.4(1) Payments for sales occurring in the first quarter, January 1 through March 31, are due April 30 of the same year. The attorney general’s office must receive official notification of the payments no later than May 10 of the same year.

5.4(2) Payments for sales occurring in the second quarter, April 1 through June 30, are due July 31 of the same year. The attorney general’s office must receive official notification of the payments no later than August 10 of the same year.

5.4(3) Payments for sales occurring in the third quarter, July 1 through September 30, are due October 31 of the same year. The attorney general’s office must receive official notification of the payments no later than November 10 of the same year.

5.4(4) Payments for sales occurring in the fourth quarter, October 1 through December 31, are due January 31 of the next year. The attorney general’s office must receive official notification of the payments no later than February 10 of the next year.

61—5.5(80GA,ch97) Penalties. The nonparticipating manufacturer and its brands may be removed from the Iowa Directory of Certified Tobacco Manufacturers and Brands if:

1. Required quarterly escrow payments are not timely made in full; or

2. The attorney general is not timely notified that the quarterly escrow payments have not been made in full.

These rules are intended to implement 2003 Iowa Acts, chapter 97.

ARC 2988B**COLLEGE STUDENT AID
COMMISSION[283]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission proposes to amend Chap-

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

ter 14, "Osteopathic Physician Recruitment Program," Iowa Administrative Code.

The proposed amendments increase state-funded loan repayment awards from up to \$30,000 to up to \$40,000 and are intended to help communities with limited resources recruit and retain qualified physicians and to help correct an imbalance in the annual after-tax benefits that has developed as tuition scholarships have increased with tuition charges and increases in student loan borrowing. Finally, these amendments update the official name of the university, include emergency room medicine under the category of primary care, and make a minor change to language in order to reflect the definition of "eligible rural community."

Interested persons may submit comments orally or in writing by 4:30 p.m. on December 30, 2003, to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309; telephone (515) 242-3344.

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

The following amendments are proposed.

ITEM 1. Amend **283—Chapter 14**, preamble, as follows:

PREAMBLE

The osteopathic physician recruitment program administered by the college student aid commission is a state-supported program that consists of forgivable loans and tuition scholarships for students and loan repayment benefits for graduates of the Des Moines University-Osteopathic Medical Center, hereinafter "university," Des Moines, Iowa.

ITEM 2. Amend rule **283—14.1(261)**, definition of "primary care," as follows:

"Primary care" means family medicine, general internal medicine, and pediatrics, and emergency room medicine.

ITEM 3. Amend subrules 14.4(3) and 14.4(4) as follows:
14.4(3) Award. The physician may receive up to \$30,000 \$40,000 in state-funded repayment benefits when a community agrees to fund matching benefits of at least \$30,000 \$40,000.

14.4(4) Disbursement.

a. The commission shall disburse state funds to the university upon receipt of the physician's contract to practice in a *an eligible rural physician shortage* community.

b. No change.

ARC 3025B**EDUCATION DEPARTMENT[281]****Notice of Termination**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on May 28, 2003, as **ARC 2499B** and its Amended Notice of Intended Action published in the June 25, 2003, Iowa Administrative Bulletin as **ARC 2542B**, amending Chapter 12, "General Accreditation Standards," Iowa Administrative Code.

The rule making was intended to align Chapter 12 with teacher quality program expectations. Issues have been raised regarding the placement of these amendments and the authority for particular provisions of the Notice of Intended

Action. Therefore, the State Board is terminating its rule making commenced in **ARC 2499B** and **ARC 2542B**. The amendments will be noticed to incorporate them into an alternative appropriate chapter.

ARC 2999B**EDUCATION DEPARTMENT[281]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code subsection 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 83, "Teacher Quality Program," Iowa Administrative Code.

The proposed subrules align Teacher Quality Program expectations with Iowa Code section 284.6, by providing requirements for school district professional development, including professional development standards, district career development plan expectations, and professional development provider requirements.

These rules reflect statutory provisions. Therefore, a waiver of this amendment or any portion of this amendment would conflict with state law. The Department provides an agencywide waiver provision in 281—Chapter 4.

Any interested party may make written suggestions or comments on the proposed amendment on or before January 7, 2004. Written materials should be directed to Deb Hansen, Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146, or by fax to (515) 281-7700. Persons who wish to convey their views orally should contact Deb Hansen at (515)281-6131 or at the Department's offices on the second floor of the Grimes State Office Building.

Persons may also present their views either orally or in writing at the public hearing conducted over the Iowa Communications Network (ICN) on January 7, 2004, from 1 to 3 p.m. at the locations listed below. 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 amended chapter.

Department of Education (origination site)
Grimes State Office Building, Second Floor
Des Moines
(515)281-3038

Atlantic Middle School
1100 Linn Street
Atlantic
(712)243-1330

Great River Area Education Agency
3601 West Avenue Road
Burlington
(319)753-6561

Grant Wood Area Education Agency
4401 Sixth Street SW
Cedar Rapids
(319)399-6700

EDUCATION DEPARTMENT[281](cont'd)

Keystone Area Education Agency #1
2310 Chaney Road
Dubuque
(563)556-3310

North Iowa Area Community College
500 College Street
Mason City
(641)423-1264

Southern Prairie Area Education Agency
2814 North Court Street
Ottumwa
(641)682-8591

Iowa Central Community College
916 North Russell
Storm Lake
(712)732-2991

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact Deb Hansen at (515)281-6131, no later than December 22, 2003.

This amendment is intended to implement Iowa Code section 284.6.

The following amendment is proposed.

Amend rule 281—83.6(284) by adding the following **new** subrules:

83.6(2) Professional development for school districts. The following requirements shall apply to professional development for school districts as required by Iowa Code section 284.6.

a. District career development plan. Each school district shall incorporate the district career development plan into its comprehensive school improvement plan pursuant to Iowa Code subsection 284.6(3). The district career development plan shall be a long-term plan designed and implemented to increase student achievement and shall include all site and district personnel responsible for instruction. The district career development plan shall contain, but not be limited to, the following:

(1) Documentation that the professional development is based on student data and other needs assessment; aligned with district student achievement goals; and focused on instruction, curriculum, and assessment.

(2) Documentation that professional development learning opportunities are research-based and aligned with the Iowa teaching standards and criteria.

(3) Identification of the approved professional development provider(s).

(4) A description of a process that includes theory, demonstration, practice, observation, collaboration, and the study of implementation.

(5) A description of a program evaluation design for formative and summative evaluation processes.

b. Professional development standards. Implementation of a school district's career development plan shall meet the following standards:

(1) Align with the Iowa teaching standards and criteria;

(2) Deliver research-based instructional strategies aligned with the student achievement goals established by the district;

(3) Deliver professional development training and learning opportunities that are targeted at instructional improvement and designed with the following components:

1. Student achievement data and analysis;

2. Theory;

3. Classroom demonstration and practice;

4. Observation and reflection;

5. Teacher collaboration and study of implementation;

and

6. Integration of instructional technology, if applicable;

(4) Include an evaluation component of professional development that documents the improvement in instructional practice and the effect on student learning; and

(5) Support the professional development needs of district certified staff responsible for instruction.

c. Individual career development plans. The school district shall support the development and implementation of the individual teacher career development plan for each career teacher as outlined in subrule 83.6(1). Each individual teacher career development plan shall align to the fullest extent possible with the district career development plan.

d. Beginning teacher mentoring and induction. The school district shall support the development and implementation of a beginning teacher mentoring and induction plan as outlined in subrule 83.3(3). The district beginning teacher mentoring and induction plan shall be included in the comprehensive school improvement plan submitted pursuant to Iowa Code section 256.7, subsection (21a), and shall align with the district career development plan described in subrule 83.6(2), paragraph "a."

e. Organizational support for professional development. The school district shall provide resources and support for the district career development plan, including professional development provider(s), time for collaborative work of staff, budget, policies, and procedures.

83.6(3) Professional development provider requirements.

a. A provider may be a school district, an area education agency, a higher education institution, a public or private entity including a professional organization that provides long-term, ongoing support of the district's career development plan, or a consortium of any of the foregoing. An educational organization or program with specific professional development accreditation or approval from the department is an approved provider.

b. Provider approval procedures must be followed to approve providers identified in the district's career development plan that are not currently accredited or approved through state accreditation procedures. The potential provider must submit to the school district a written application that provides the following documentation:

(1) How the provider will deliver technical assistance that meets the Iowa professional development standards provided in subrule 83.6(2), paragraph "b."

(2) How the provider intends to assist the local district in designing, implementing, and evaluating professional development that meets the requirements established in subrule 83.6(2), paragraph "a."

(3) A description of the qualifications of the provider.

(4) Evidence of the provider's expertise in professional development.

(5) A budget.

(6) Procedures for evaluating the effectiveness of the technical assistance delivered by the provider.

83.6(4) Professional development for accredited schools. Each accredited school shall incorporate into its comprehensive school improvement plan provisions for the professional development of staff. To meet the professional needs of instructional staff, staff development activities shall align with school achievement goals and shall be based on student achievement needs and staff professional development needs. The plan shall deliver research-based instructional

EDUCATION DEPARTMENT[281](cont'd)

practices to achieve increased student achievement, learning, and performance as stated in the comprehensive school improvement plan.

ARC 3002B

ELDER AFFAIRS DEPARTMENT[321]

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 231.23(10), the Elder Affairs Department hereby gives Notice of Intended Action to rescind Chapter 22, "Elder Family Homes (EFH)," and Chapter 23, "Representative Payee Program (RPP) and Bill Payer Program (BPP)"; and to rescind Chapter 24, "Adult Day Care and Facility-Based Respite Care," and adopt a new Chapter 24, "Adult Day Services Programs," Iowa Administrative Code.

These rules establish requirements for program certification and standards for adult day services programs. Procedures are established for emergency removal of participants from adult day services programs.

These rules were written in consultation with the Department of Inspections and Appeals and affected industry professional and consumer groups. The Department's work group and the Commission of the Department of Elder Affairs each met with the Department staff to review and comment on these rules. Written comments were also received. The department reviewed all comments and made revisions as appropriate.

Any interested person may make written suggestions or comments on these proposed amendments prior to January 7, 2004. Such written comments should be directed to the Department of Elder Affairs, 200 10th Street, Des Moines, Iowa 50309, or by E-mail to joel.wulf@iowa.gov or fax (515) 242-3300.

There will be a public hearing on January 7, 2004, from 9 to 11 a.m. over the Iowa Communications Network, at which time persons may present their views either orally or in writing. Access to the public hearing will be available through the following locations:

Third Floor Conference Room
Wallace State Office Building
East Ninth and Grand
Des Moines

Department of Human Services
411 3rd Street SE, Room 550
Cedar Rapids

Southwestern Iowa Community College
1501 West Townline Road, Room 211
Creston

Public Library
529 Pierce Street
Sioux City

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 intend to attend a public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Elder Affairs Department and advise of specific needs.

These amendments are intended to implement 2003 Iowa Acts, chapter 165.

The following amendments are proposed.

ITEM 1. Rescind and reserve **321—Chapters 22 and 23.**

ITEM 2. Rescind 321—Chapter 24 and adopt the following **new** chapter in lieu thereof:

CHAPTER 24

ADULT DAY SERVICES PROGRAMS

321—24.1(80GA,ch165) Definitions.

"Adult" means a person 18 years of age or older.

"Adult day services," "adult day services program," or "program" means an organized program providing a variety of health, social, and related support services for 16 hours or less in a 24-hour period to two or more persons with a functional impairment on a regularly scheduled, contractual basis.

"Adult with functional impairments" means an adult who has a psychological, cognitive or physical impairment that creates an inability to perform personal and instrumental activities of daily living and associated tasks and that necessitates some form of supervision or assistance or both.

"Allied health care professional" means a person licensed through the Iowa department of public health, other than a physician, physician's assistant, registered nurse or advanced registered nurse practitioner, who provides health services to the participant.

"Assistance" means aid to a participant who self-directs or participates in the task or activity or who retains the mental or physical ability, or both, to participate in a task or activity. Cueing of the participant regarding a particular task or activity shall not be construed to mean the participant has not participated in the task or activity.

"CARF" means the Rehabilitation Accreditation Commission.

"Cognitive disorder" means a disorder characterized by cognitive dysfunction presumed to be the result of illness that does not meet criteria for dementia, delirium, or amnesic disorder.

"Contractual agreement" means a legally binding written agreement between the program and the participant or legal representative.

"Dementia" means an illness characterized by multiple cognitive deficits which represent a decline from previous levels of functioning and include memory impairment and one or more of the following cognitive disturbances: aphasia, apraxia, agnosia, and disturbance in executive functioning.

"Dementia-specific adult day services program" means an adult day services program certified under this chapter that either serves five or more participants with dementia between stages four and seven on the Global Deterioration Scale or holds itself out as providing specialized care for persons with a cognitive disorder or dementia, such as Alzheimer's disease, in a dedicated setting.

"Department" means the department of elder affairs.

"DIA" means the department of inspections and appeals.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

“Functional impairment” means a psychological, cognitive, or physical impairment that creates an inability to perform personal and instrumental activities of daily living and associated tasks and that necessitates some form of supervision or assistance or both.

“Global Deterioration Scale” means the seven-stage scale for assessment of primary degenerative dementia developed by Dr. Barry Reisberg.

“Health care” means services provided by a health care professional, allied health care professional or supervised designated health care giver on a part-time or intermittent basis.

“Health care professional” means a physician, physician’s assistant, registered nurse or advanced registered nurse practitioner licensed through the department of public health.

“Human service professional” means an individual with at least a bachelor’s degree in a human service field including human services, gerontology, social work, sociology, psychology, and family science. Experience in a human service field may be substituted for up to two years of required education.

“In the proximate area” means located within a less-than-five-minute response time.

“Legal representative” means a person appointed by the court to act on behalf of the participant, or a person acting pursuant to a power of attorney.

“Nurse-delegated assistance” means those delegated tasks or activities for which a professional nurse has assumed responsibility for assessing, planning, implementing, and evaluating, and for which the nurse remains legally accountable.

“Participant” means an adult with a functional impairment who meets eligibility requirements for the program and who has a contractual agreement with the program.

“Part-time or intermittent health-related care” means licensed nursing services and professional therapies, in combination with nurse-delegated assistance, which are provided to a participant not to exceed a total of three hours per day.

“Program” means “adult day services” or “adult day services program” as defined in this rule.

“Qualified professional” means a licensed or registered safety engineer, a representative of a state or federal agency that provides an OSHA-type inspection, an engineer involved in industrial operations, a plant engineer familiar with the type of program being provided, a safety specialist familiar with the type of program being provided, an architect/designer familiar with the type of program being provided, a safety consultant who represents the organization’s fire insurance carrier, a safety consultant who represents the organization’s workers’ compensation carrier, a safety consultant who is in private practice, an industrial health specialist, a representative of the state fire marshal’s office, a local fire control authority, a state or federal technical assistance consultant in safety, a state or federal technical assistance consultant in health, or a risk management specialist.

“Recognized accrediting entity” means a nationally recognized accrediting entity that the department recognizes as having specific adult day services program standards equivalent to the standards established by the department.

“Remodeling” means modification of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building. “Modification” means any addition to or change in dimensions or structure except as incidental to the customary maintenance of the program structure.

“Routine” means regular, customary or not occasional or intermittent.

“Self-administration” means a participant’s taking personal responsibility for all medication needs, including ordering, refilling, remembering dosing schedule, and self-administering medications.

“Service plan” means the document that defines the services to meet the needs and preferences of a participant.

“Supervision of self-administration” means a staff person’s activities such as routine prompting and reminding, opening of containers or packaging at the direction of the participant, or reading instructions or other label information in order for a participant to self-administer a medication.

“Unmanageable incontinence” means a condition that requires staff provision of total care for an incontinent participant who lacks the ability to assist in bladder or bowel continence care.

“Visiting day(s)” means up to 16 hours in a two-day period during which a person may visit an adult day services program prior to admission for the purpose of assessing program eligibility and personal satisfaction. A written explanation of the expectations for the visiting day shall be provided.

321—24.2(80GA,ch165) Program certification. New programs and existing accredited programs shall be certified and operated in accordance with 2003 Iowa Acts, chapter 165, and all applicable administrative rules. Programs not accredited by a recognized accrediting entity shall become certified by meeting all of the requirements set forth in 321—24.3(80GA,ch165) and all requirements imposed by 2003 Iowa Acts, chapter 165, and this chapter. A current certificate shall be visibly displayed within the designated area of the operation of the program.

321—24.3(80GA,ch165) Certification of a nonaccredited program.

24.3(1) The applicant shall complete an approved application packet obtained from the department of inspections and appeals (DIA). Application materials may be obtained on the Health Facilities Division Web site at www.dia.hfd.state.ia.us; by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

24.3(2) The applicant shall submit one copy of the completed application and all supporting documentation to DIA at the above address. The time frame for submission of the application shall be as follows:

a. For a new operation, at least 60 calendar days prior to the expected date of beginning operation;

b. For a program in operation on or before [insert the effective date of these rules], within 30 calendar days following compliance with structural and life safety requirements pursuant to 24.19(80GA,ch165) and 24.41(80GA,ch165).

24.3(3) The appropriate fees, as stated in 321—Chapter 27, shall accompany each application and are payable by check or money order to the Department of Inspections and Appeals. The fees are nonrefundable.

24.3(4) No application shall be considered by DIA until it is received with all supporting documents and fees.

321—24.4(80GA,ch165) Nonaccredited program application content. An application for certification or recertification of a nonaccredited adult day services program shall include the following:

24.4(1) A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 10 percent

ELDER AFFAIRS DEPARTMENT[321](cont'd)

equity interest in the program. The program shall notify DIA of any changes in the list within ten working days of the change;

24.4(2) A statement affirming that the individuals listed in 24.4(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state;

24.4(3) A statement disclosing whether any of the individuals listed in 24.4(1) have or have had an ownership interest in an adult day services program, assisted living program, elder group home, home health agency, or licensed health care facility as defined under Iowa Code section 135C.1 which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare programs; or have been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect;

24.4(4) A copy of the current policy and procedure for evaluation of each participant, which includes a copy of the evaluation tool or tools to be used to identify the functional, cognitive and health status of each participant;

24.4(5) Identification of target population;

24.4(6) A copy of the current service plan format;

24.4(7) If the adult day services program contracts for personal care or health-related care services from a certified home health agency, mental health center or a licensed health care facility, a copy of that entity's current license;

24.4(8) A copy of the current policy and procedure for addressing medication needs of participants;

24.4(9) A copy of the current policy and procedure describing accident and emergency response procedures;

24.4(10) A copy of the current participant contractual agreement;

24.4(11) A copy of the current policy and procedure for managing risk and upholding participant autonomy when participant decision making may result in poor outcomes for the participant or others;

24.4(12) A copy of the current state license(s) for the entity providing food service, whether it is the program or an outside entity or a combination of both;

24.4(13) A copy of the written policies and procedures for food service that includes staffing, nutrition, menu planning, therapeutic diets, preparation, service and storage.

321—24.5(80GA,ch165) Initial certification process for nonaccredited program.

24.5(1) DIA shall determine whether or not the proposed adult day service program meets applicable requirements contained in 2003 Iowa Acts, chapter 165, and this chapter within 20 working days of receiving all completed documentation, including state fire marshal approval and structural and evacuation review approval.

24.5(2) DIA shall notify the applicant within five working days of any preliminary determination.

a. If the determination is to certify, DIA shall issue a conditional certification not to exceed one year.

b. If the determination is to deny certification, DIA shall provide the applicant the opportunity for hearing in accordance with 321—26.4(17A,231C,80GA,ch165).

24.5(3) The conditional certification shall allow the applicant to begin operation and accept participants into the program.

24.5(4) Within 90 calendar days following issuance of conditional certification, DIA shall conduct an on-site monitoring evaluation to determine compliance with the provisions of 2003 Iowa Acts, chapter 165, and this chapter.

24.5(5) If regulatory insufficiencies are identified as a result of the monitoring evaluation, DIA shall issue a report of the findings to the program by certified mail within 20 working days following the monitoring evaluation. The program shall be required to submit a plan of correction to DIA within ten working days following receipt of the report.

24.5(6) DIA shall make a final certification decision based on the results of the monitoring evaluation and review of an acceptable plan of correction.

24.5(7) DIA shall notify the program of a final certification decision within 10 working days following the finalization of the on-site monitoring evaluation report or receipt of an acceptable plan of correction, whichever is applicable.

24.5(8) If the decision is to continue certification, DIA shall issue a full two-year certification effective from the date of the original conditional certification.

24.5(9) If the decision is to discontinue certification through denial, DIA shall provide the program the opportunity for a hearing under 321—26.4(17A,231C,80GA,ch165).

321—24.6(80GA,ch165) Recertification of nonaccredited program.

24.6(1) Certification of an adult day services program, unless conditionally issued, suspended or revoked, shall expire at the end of the time period specified on the certificate.

24.6(2) DIA shall send recertification application materials to each program at least 120 calendar days prior to expiration of its certificate.

321—24.7(80GA,ch165) Recertification process for non-accredited program. To obtain recertification, a program shall:

24.7(1) Submit one copy of the completed application, associated documentation and the recertification fee as listed in 321—Chapter 27 to DIA at the address stated in 24.3(1) at least 90 calendar days prior to the expiration of the program's certification.

24.7(2) Submit additional documentation that the following systems have been inspected by a qualified professional and are found to be maintained in conformance with manufacturer's recommendations and nationally recognized standards: heating, cooling, water heater, electricity, plumbing, sewage, artificial light, and ventilation; and, if located on site, garbage disposal, cooking, laundry, and elevators.

321—24.8(80GA,ch165) Notification of recertification.

24.8(1) DIA shall review the application and associated documentation and fees for completion and notify the program of application status within 10 working days of receipt of the required application materials.

24.8(2) DIA shall conduct an on-site monitoring evaluation of the program between 60 and 90 days prior to expiration of the program's certification.

24.8(3) If regulatory insufficiencies are identified as a result of the monitoring evaluation, DIA shall issue a report of the findings to the program by certified mail within 20 working days following the monitoring evaluation. The program shall be required to submit a plan of correction to DIA within 10 working days following receipt of the report. DIA shall determine the program's compliance with applicable requirements contained in 2003 Iowa Acts, chapter 165, and this chapter within 10 working days of receiving all documentation, including state fire marshal approval and an acceptable plan of correction, and make a recertification decision.

24.8(4) If no regulatory insufficiencies are identified as a result of the monitoring evaluation, DIA shall issue a report of the findings with the final recertification decision. DIA shall determine the program's compliance with applicable re-

ELDER AFFAIRS DEPARTMENT[321](cont'd)

quirements contained in 2003 Iowa Acts, chapter 165, and this chapter within 15 working days of receiving all finalized documentation, including state fire marshal approval, and make a recertification decision.

24.8(5) If the decision is to recertify, DIA shall issue the program a two-year certification effective from the date of the expiration of the previous certificate.

24.8(6) If the decision is to deny recertification, DIA shall provide the program the opportunity for a hearing under 321—26.4(17A,231C,80GA,ch165).

24.8(7) If DIA is unable to recertify a program through no fault of the program, DIA shall issue a time-limited extension to the program.

321—24.9(80GA,ch165) Certification and recertification process for an accredited program.

24.9(1) An applicant program accredited by a recognized accrediting entity shall:

a. Submit a completed application packet obtained from DIA. Application materials may be obtained from the health facilities division Web site at www.dia.hfd.state.ia.us; by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

b. Submit a copy of the current accreditation outcome from a recognized accrediting entity.

c. Apply for certification within 30 calendar days following compliance with life safety requirements pursuant to this chapter for a program in operation on or before [insert the effective date of these rules].

d. Apply for recertification within 60 calendar days following verification of compliance with life safety requirements pursuant to this chapter.

e. Maintain compliance with life safety requirements pursuant to this chapter.

24.9(2) DIA shall not consider an application until it is completed and received with all supporting documentation.

321—24.10(80GA,ch165) Accredited program certification or recertification application content. An application for certification or recertification of an accredited adult day services program shall include the following:

24.10(1) A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 10 percent equity interest in the program. The program shall notify DIA of any changes in the list within ten working days of the change;

24.10(2) A statement affirming that the individuals listed in rule 24.10(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state;

24.10(3) A statement disclosing whether any of the individuals listed in 24.10(1) have or have had an ownership interest in an adult day services program, assisted living program, elder group home, home health agency, or licensed health care facility as defined under Iowa Code section 135C.1 which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect;

24.10(4) Identification of target population;

24.10(5) A copy of the current accreditation outcome from the recognized accrediting entity.

321—24.11(80GA,ch165) Initial certification process for accredited program.

24.11(1) DIA shall determine whether or not the accredited program meets applicable requirements contained in these rules within 20 working days of receiving all finalized documentation, including state fire marshal approval.

24.11(2) DIA shall notify the accredited program within 10 working days of the final certification decision.

a. If the decision is to certify, a full certification shall be issued for the term of the accreditation, not to exceed three years, unless conditionally issued, suspended or revoked by either DIA or the recognized accrediting entity.

b. If the determination is to deny certification, DIA shall provide the applicant the opportunity for hearing in accordance with 321—26.4(17A,231C,80GA,ch165).

321—24.12(80GA,ch165) Recertification for accredited program.

24.12(1) Certification for an adult day services program, unless conditionally issued, suspended or revoked, shall expire at the end of the time period specified on the certificate.

24.12(2) DIA shall send recertification application materials to each program at least 90 calendar days prior to expiration of its certificate.

24.12(3) To obtain recertification, an accredited program shall submit one copy of the completed application and associated documentation to DIA at the address stated in 24.9(1) at least 60 calendar days prior to the expiration of the program's certificate.

24.12(4) The program shall submit to DIA a copy of the current accreditation outcome from the recognized accrediting entity.

24.12(5) DIA shall determine the program's compliance with applicable requirements contained in these rules within 20 working days of receiving all finalized documentation, including state fire marshal approval, and make a recertification decision.

24.12(6) DIA shall notify the accredited program within 10 working days of the final recertification decision.

a. If the decision is to recertify, a full certification will be issued for the term of the accreditation not to exceed three years, unless conditionally issued, suspended or revoked either by DIA or the recognized accrediting entity.

b. If the determination is to deny recertification of the program, DIA shall provide the applicant the opportunity for hearing in accordance with 321—26.4(17A,231C,80GA,ch165).

24.12(7) If DIA is unable to recertify a program through no fault of the program, DIA shall issue a time-limited extension to the program.

321—24.13(80GA,ch165) Duration of certification for all programs.

24.13(1) Certification as a nonaccredited adult day services program by DIA will be applicable for two years, unless conditionally issued, suspended or revoked.

24.13(2) Certification as an accredited adult day services program by DIA will be applicable for the term of the accreditation, not to exceed three years, unless conditionally issued, suspended or revoked either by DIA or the recognized accrediting entity.

24.13(3) DIA shall maintain a list of all certified adult day services programs. The list shall be readily available from DIA upon request.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

321—24.14(80GA,ch165) Recognized accrediting entity.

24.14(1) The department designates CARF as a recognized accrediting entity for adult day services programs.

24.14(2) To apply for designation by the department as a recognized accrediting entity for adult day services programs, an accrediting organization shall submit a letter of request and meet the requirements found in this rule.

24.14(3) The designation shall remain in effect for as long as the accreditation standards continue to meet the minimum requirements of 2003 Iowa Acts, chapter 165, and this chapter.

24.14(4) The accrediting entity shall provide DIA and the department, at no cost, a current edition of the applicable standards manual and survey preparation guide, and training thereon, within 20 working days after publication is released.

321—24.15(80GA,ch165) Requirements for accredited adult day programs. Each accredited program shall:

24.15(1) Provide DIA a copy of the survey reports including outcomes, quality improvement plans and annual conformance to quality reports generated or received, as applicable, within ten working days of receipt of the reports.

24.15(2) Notify DIA by the most expeditious means possible of any credible report of alleged improper or inappropriate conduct or conditions and any actions taken by the accrediting entity with respect thereto.

24.15(3) Notify DIA within two working days of the expiration, suspension, revocation or other loss of a program's accreditation.

321—24.16(80GA,ch165) Maintenance of program accreditation.

24.16(1) An accredited program shall continue to be recognized for certification by DIA if both of the following requirements are met:

a. The program complies with the requirements outlined in 24.15(80GA,ch165).

b. The program maintains voluntary accreditation for the duration of the time-limited certification period.

24.16(2) A program that does not maintain its voluntary accreditation status must become certified by DIA prior to any lapse in accreditation.

24.16(3) A program that does not maintain its voluntary accreditation status and is not certified by DIA prior to any lapse in voluntary accreditation shall be considered an uncertified program.

321—24.17(80GA,ch165) Transfer of certification.

24.17(1) A certificate, unless conditionally issued, suspended or revoked, will be transferable to a new owner/sponsor of a program.

24.17(2) The new owner/sponsor is required to notify DIA in writing within 30 calendar days prior to the change in ownership. The notice shall include assurance that the new owner meets all requirements of 2003 Iowa Acts, chapter 165, and this chapter.

24.17(3) DIA may conduct an on-site monitoring evaluation within 90 days following a change in ownership or management corporation to ensure that the program complies with requirements and shall take any necessary enforcement action authorized by 2003 Iowa Acts, chapter 165, and this chapter.

321—24.18(80GA,ch165) Structural and life safety reviews for a new program.

24.18(1) Prior to construction or remodeling of a building for use as an adult day services program, DIA shall review

blueprints for compliance with requirements pursuant to 24.41(80GA,ch165).

24.18(2) A program applicant shall submit to DIA blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in 321—Chapter 27 at Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0038.

24.18(3) Failure to submit the blueprint plan review fee with the blueprints shall result in the delay of the blueprint plan review until the fee is received.

24.18(4) DIA shall review the blueprints within 20 working days of receipt and immediately notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

24.18(5) The Iowa-licensed architect or Iowa-licensed engineer shall respond to DIA within 20 working days to state how any noncompliance with requirements will be resolved.

24.18(6) Upon final notification by DIA that the blueprints meet structural and life safety requirements, construction or remodeling of the adult day services program may commence.

24.18(7) DIA shall schedule an on-site visit of the program with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the construction or remodeling process to ensure compliance with the approved blueprints. Any noncompliance with requirements must be resolved prior to approval for certification.

321—24.19(80GA,ch165) Structural and life safety reviews for existing adult day services programs.

24.19(1) In lieu of a blueprint review, DIA shall conduct an on-site visit of the structure for an adult day services program in operation on or before the effective date of these rules for compliance with structural requirements pursuant to this chapter.

24.19(2) DIA shall notify the program applicant in writing of the status of compliance with requirements within ten working days following the on-site visit.

24.19(3) The program applicant shall resolve any non-compliance with requirements prior to approval for certification.

24.19(4) The program applicant shall submit with the application the preliminary plan review fee stated in 321—Chapter 27.

24.19(5) Failure to submit the preliminary plan review fee with the application shall result in the delay of review of the application for certification until the fee is received.

321—24.20(80GA,ch165) Structural and life safety review prior to the remodeling of a building for certified adult day services programs.

24.20(1) Prior to remodeling of a building for a certified adult day services program, DIA shall review the blueprints for compliance with requirements pursuant to 24.41(80GA,ch165).

24.20(2) A certified program shall submit blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in 321—Chapter 27 to DIA at Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083.

24.20(3) Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

24.20(4) DIA shall review the blueprints within 20 working days of receipt and immediately notify the Iowa-licensed

ELDER AFFAIRS DEPARTMENT[321](cont'd)

architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

24.20(5) The Iowa-licensed architect or Iowa-licensed engineer shall respond to DIA within 20 working days to state how any noncompliance with requirements will be resolved.

24.20(6) Upon final notification by DIA that the blueprints meet structural and life safety requirements, remodeling of the adult day services program may commence.

24.20(7) DIA shall schedule an on-site visit of the program with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the remodeling process to ensure compliance with the approved blueprints. Any noncompliance with requirements must be resolved prior to approval for continued certification or recertification.

321—24.21(80GA,ch165) Emergency response policies and procedures review. A program applicant or certified program shall submit emergency response policies and procedures with the application to DIA at the address stated in 24.3(1). Failure to submit the emergency policies and procedures with the application shall delay the review of the application for certification until receipt of the information. The emergency response policies and procedures shall comply with the requirements pursuant to this chapter.

321—24.22(80GA,ch165) Program alteration. A program shall notify DIA within ten working days of any operational changes that are a deviation from the most current certification or recertification application and associated documentation.

321—24.23(80GA,ch165) Cessation of program operation.

24.23(1) If a certified adult day services program ceases operation at any time prior to expiration of the program's certificate, the program shall submit to DIA, at least 90 days in advance of closure unless there is some type of emergency, the certificate and written notice.

24.23(2) If a certified adult day services program will cease operation at the time the program's certificate expires, the program shall provide written notice of this fact to DIA and the department at least 90 calendar days prior to expiration of the certificate.

24.23(3) At the time an adult day services program decides to cease operations, the program shall make arrangements and submit plans to DIA for the safe and orderly transfer of all participants.

24.23(4) DIA or another appropriate agency shall do on-site monitoring during the 90-day period to ensure the safety of participants during the transfer process.

24.23(5) DIA may conduct an on-site visit to verify that the program has ceased operation in accordance with the notice provided by the program.

321—24.24(80GA,ch165) Contractual agreement.

24.24(1) At the time of a participant's admission, the participant and the adult day services program shall enter into a contractual agreement that clearly describes the rights and responsibilities of the participant and of the program.

24.24(2) The contractual agreement shall be in 12-point type or larger and be written in language that is clear and understandable to the participant or the legal representative.

24.24(3) The contractual agreement shall state current certification status of the program and contain language stating that the program complies with all state and federal codes, administrative rules and federal regulations applicable to adult day services.

24.24(4) Upon admission, each participant or legal representative, if applicable, shall sign a contractual agreement and a managed risk policy disclosure statement.

24.24(5) The written contractual agreement shall include, but not be limited to, the following:

a. A description of all fees, scheduled days, transportation agreements, charges and rates;

b. A statement regarding the impact of the fee structure on third-party payments and whether third-party payments and resources will be accepted by the adult day services program;

c. The procedure to be followed if a participant fails to make payment;

d. Identification of the party responsible for payment of fees;

e. A guarantee that the adult day services program will give written notification to the participant at least 30 days in advance of any changes to the contractual agreement;

f. A guarantee that all participant information will be maintained in a confidential manner to the extent allowable under state and federal law;

g. A copy of admission and transfer criteria;

h. A copy of the internal appeal process for involuntary transfer;

i. A copy of the emergency response policy;

j. A copy of the staffing policy which identifies how staffing will be adapted to changing participant needs;

k. A copy of the services and programming provided to meet the life skills and social activity needs of participants;

l. A copy of the document summarizing the quality improvement program, including a customer satisfaction component;

m. A procedure for filing a complaint with DIA, including contact information;

n. A copy of the statement of Rights and Responsibilities of Adult Day Services Participants, adopted and published by the National Adult Day Services Association, March 1997 or later version; and

o. The toll-free number for the dependent adult abuse hotline.

24.24(6) Attachments to the contract are considered part of the contract.

24.24(7) A participant who is subject to an involuntary transfer initiated solely by the program and not as a result of a monitoring evaluation or complaint investigation by DIA shall not be transferred until an internal appeal process is completed if one is requested by the participant or legal representative.

24.24(8) A copy of the contract shall be provided to the participant or legal representative, if any, and the program shall keep a copy.

24.24(9) The contractual agreement shall be reviewed and updated as necessary to reflect the changes in the services and financial arrangements.

24.24(10) A copy of the contractual agreement form shall be made available to the general public upon request.

321—24.25(80GA,ch165) Admission to and transfer from an adult day services program.

24.25(1) Evaluation prior to admission or transfer. An adult day services program shall upon admission or transfer evaluate each proposed participant's functional, cognitive and health status and abilities to determine eligibility for the program, including whether needed services can be provided. The evaluation shall be conducted by a health care professional or a human service professional.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

24.25(2) Evaluation within 30 days of admission or transfer. After the initial evaluation, an adult day services program shall evaluate each participant's functional, cognitive and health status and abilities within 30 days and then at least annually or more often as needed, to determine continued eligibility for the program and to determine any modifications to needed services. The evaluation shall be conducted by a health care professional or a human service professional.

24.25(3) Criteria for exclusion of participants. An adult day services program shall not knowingly admit or retain a participant who:

- a. Is bed-bound; or
- b. Requires routine three-person assistance with standing, transfer or evacuation; or
- c. Is dangerous to self or others, including but not limited to a participant who:

(1) Despite intervention, chronically wanders into danger, is sexually or physically aggressive or abusive, or displays unmanageable verbal abuse or aggression; or

(2) Displays behavior that places another participant at risk; or

d. Is in an acute stage of alcoholism, drug addiction, or uncontrolled mental illness; or

e. Is under age 18; or

f. Requires more than part-time or intermittent health-related care; or

g. On a routine basis has unmanageable incontinence.

24.25(4) Disclosure of additional admission or transfer criteria. An adult day services program may have additional admission or transfer criteria if disclosed in the written contractual agreement prior to admission.

24.25(5) An adult day services program shall provide assistance to a participant and legal representative, if applicable, to ensure a safe and orderly transfer when the participant meets program retention requirements.

24.25(6) Assistance with transfer. Under contractual agreement, each participant shall have the right to an internal appeal of an involuntary transfer.

24.25(7) Visiting days. A program may choose to allow a visiting day(s) prior to admission.

321—24.26(80GA,ch165) Waiver of admission and retention criteria.

24.26(1) Upon receipt of a waiver petition submitted by a program, DIA may grant a waiver of the admission and retention criteria under 24.27(80GA,ch165) for an individual participant on a time-limited basis.

24.26(2) Waiver procedures. The following procedures shall be used to request and to receive approval of a waiver from the admission and retention criteria:

a. A program shall submit a request on a form and in a manner designated by DIA for a waiver from the admission and retention criteria for an individual participant as soon as it becomes apparent that a participant meets the transfer criteria;

b. DIA shall respond in writing to a request within two working days of receipt of required documentation;

c. The program shall notify DIA within five working days of any changes in the condition of the participant as described in the waiver request.

321—24.27(80GA,ch165) Criteria for granting admission and retention waivers. DIA shall use the following criteria in granting a waiver:

1. It is the informed choice of the participant or legal representative, if applicable, to remain in the program; and

2. The adult day services program is able to obtain the staff necessary to meet the participant's service needs in addition to the service needs of the other participants; and

3. The waiver shall not jeopardize the health, safety, security or welfare of the party for whom the waiver is being requested or other program participants or program staff.

321—24.28(80GA,ch165) Service plan documents.

24.28(1) A file for each participant shall be maintained at the adult day services program and shall contain:

a. Admission record, including participant's name, birth date, and home address; identification numbers; date of admission; name, address and telephone number of health professional(s); diagnosis; and names, addresses and telephone numbers of family members, friends or other designated people to contact in the event of illness or an emergency;

b. Application forms;

c. Initial evaluations and updates;

d. Nutritional assessment as necessary;

e. Initial individual service plan and updates;

f. Signed authorizations for permission to release medical information, photos, or other media information as necessary;

g. Signed authorization for the participant to receive emergency medical care if necessary;

h. When appropriate, medical information sheet, documentation of health professional, treatment, therapy, medication and service notes;

i. Advance health care directives as applicable;

j. A complete copy of the participant's contractual agreement including any updates;

k. Written acknowledgment that the participant or the participant's legal representative, if applicable, has been fully informed of the participant's rights;

l. Copy of guardianship, power of attorney, conservatorship or other documentation of a legal representative as necessary.

24.28(2) The adult day services program records relating to a participant shall be retained for a minimum of three years after the transfer or death of the participant before the records are destroyed.

24.28(3) All records shall be protected from loss, damage and unauthorized use.

321—24.29(80GA,ch165) Service plan.

24.29(1) A service plan shall be developed for each participant based on the evaluation conducted under 24.25(1) and 24.25(2) and designed to meet the specific service needs of the individual participant.

24.29(2) Upon admission of a participant, an initial service plan shall be developed by a health care professional or human service professional in consultation with the participant and, if applicable, with the legal representative. All persons who develop the plan and the participant or legal representative shall sign the plan. The service plan shall subsequently be updated at least annually and whenever changes are needed.

24.29(3) The service plan shall be updated after the evaluation of a participant in consultation with a multidisciplinary team that consists of at least three individuals, including a human service professional and either a health care professional or an allied health professional, as appropriate.

24.29(4) The service plan shall be individualized and shall indicate, at a minimum:

a. The participant's identified needs and participant's requests for assistance and expected outcomes;

b. Any services and care to be provided pursuant to the agreement with the participant;

ELDER AFFAIRS DEPARTMENT[321](cont'd)

c. The provider(s) if other than the adult day services program; and

d. For participants who are unable to plan their own activities, including participants with dementia, planned and spontaneous activities based on the individual's abilities and personal interests.

321—24.30(80GA,ch165) Medications.

24.30(1) Each adult day services program shall have a written medication policy that includes the following:

a. Participants shall self-administer medications unless:

(1) The prescription states that the participant is not to self-administer the medication; or

(2) The participant or, if applicable, the legal representative, delegates administration to the adult day services program by contractual agreement or signed service plan.

b. Participants shall keep their own medications in their possession unless:

(1) The prescription states that the medication is to be stored by the adult day services program; or

(2) The participant, or if applicable, the legal representative delegates partial or complete control of medications to the adult day services program by contractual agreement or signed service plan.

c. The program shall list in the participant's record any medications to be stored or administered by the program.

24.30(2) When the medications are administered or stored by, or the participant's self-administration of medications is supervised by the program, the following requirements shall apply:

a. Supervision of self-administration and the administration of medications shall be provided by an Iowa-licensed registered nurse or advanced registered nurse practitioner registered in Iowa or the authorized agent in accordance with 655—subrule 6.2(5) and Iowa Code chapter 155A.

b. The program shall document any medication the program has agreed to administer or supervise.

c. Only a licensed nurse, certified medication manager or certified medication aide shall supervise or administer medications.

d. The medications shall be kept in a locked place or container that is not accessible to persons other than employees responsible for the supervision of such medications.

e. The medications shall be labeled and maintained in compliance with label instructions and state and federal laws.

f. No person other than the dispensing pharmacist shall alter a prescription label.

g. The program shall follow a written policy that complies with federal and state codes and administrative rules regarding controlled substances.

h. The program shall follow written policies and procedures for narcotic medications in accordance with Iowa Code chapter 155A.

321—24.31(80GA,ch165) Nurse review. An adult day services program that administers prescription medications or provides health care professional-directed or health-related care shall provide for a registered nurse to:

24.31(1) Monitor, at least every 90 days, each participant receiving program-administered prescription medications for adverse reactions to program-administered medications and make appropriate interventions or referral, ensure that the prescription medication orders are current and that the prescription medications are administered consistent with such orders at least every 90 days or after a change in condition; and

24.31(2) Ensure that health professionals' orders for participants' receiving health care professional-directed care from the adult day services program are current; and

24.31(3) Assess and document the health status of each participant, make recommendations and referrals as appropriate, and monitor progress on previous recommendations at least every 90 days or if there are changes in health status; and

24.31(4) Provide the adult day services program with written documentation of the above activities, showing the date, time and signature.

321—24.32(80GA,ch165) Nursing assistant work credit.

24.32(1) A person certified as a nursing assistant who is supervised by a licensed nurse in the program may submit information to DIA to obtain credit toward maintaining certification for working in an adult day services program.

24.32(2) An adult day services program shall complete and submit to DIA a Nurse Aide Registry Application for each nursing assistant working in the program. The application may be obtained by telephone at (515)281-4077 or via the Health Facilities Division Web site at <http://www.dia-hfd.state.ia.us/nurseaides> under the "Resource" tab.

24.32(3) An adult day services program shall complete and submit to DIA an Iowa Nurse Aide Registry Quarterly Employment Report whenever a change in employment for a certified nursing assistant occurs. The report may be obtained by telephone at (515)281-4077 or via the Health Facilities Division Web site at <http://www.dia-hfd.state.ia.us/nurseaides> under the "Resource" tab.

321—24.33(80GA,ch165) Food service.

24.33(1) The adult day service program shall have the capacity to provide hot or other appropriate meals and snacks or coordinate with other community providers to make arrangements for the availability of meals and snacks. A period of no more than four hours shall lapse between the service of meals and of snacks.

24.33(2) Meals and snacks provided by the adult day service program but not prepared on site shall be obtained from or provided by an entity that meets the standards of state and local health laws and ordinances concerning the preparation and serving of food.

24.33(3) Menus shall be planned with 33 1/3 percent of the daily Recommended Dietary Allowances/Adequate Intake as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences.

24.33(4) Therapeutic diets are not required but may be provided by an adult day services program. If therapeutic diets are provided, they shall be prescribed by a health care professional. A current copy of the Iowa Simplified Diet Manual, Iowa State Press, shall be available and used in the planning and serving of therapeutic diets. A licensed dietitian shall be responsible for writing and approving the therapeutic menu and reviewing procedures for preparation and service of food for therapeutic diets.

24.33(5) Personnel who are employed by or contracting with the program and who are responsible for preparing or serving food, or both preparing and serving food, shall have an orientation on sanitation and safe food handling prior to handling food and annual in-service training on food protection. At a minimum, one person directly responsible for food preparation shall have successfully completed a state-approved food protection program.

24.33(6) Programs engaged in the preparation and serving of meals and snacks shall meet the standards of state and local health laws and ordinances pertaining to the preparation

ELDER AFFAIRS DEPARTMENT[321](cont'd)

and serving of food, including the requirements imposed under Iowa Code chapter 137F.

321—24.34(80GA,ch165) Staffing.

24.34(1) Sufficient trained staff shall be available at all times to fully meet participants' identified needs. No fewer than two staff persons who monitor participants as indicated in each participant's service plan shall be awake and on duty during all hours of operations when two or more participants are present.

24.34(2) An adult day services program that serves one or more participants with cognitive disorder or dementia shall follow written procedures that address how the program will respond to the emergency needs of the participant(s).

24.34(3) The owner or management corporation of the adult day services program is responsible for ensuring that all personnel employed by or contracting with the program receive training appropriate to assigned tasks and the target population.

24.34(4) Any nursing services shall be available in accordance with Iowa Code chapter 152 and 655—Chapter 6.

24.34(5) The adult day services program shall have a training and staffing plan on file and shall maintain documentation of training received by program personnel.

24.34(6) All personnel of an adult day services program shall be able to implement the adult day services program's accident, fire safety and emergency procedures.

321—24.35(80GA,ch165) Dementia-specific education for personnel.

24.35(1) All personnel employed by or contracting with a dementia-specific program shall receive a minimum of six hours of dementia-specific education and training prior to or within 90 days of employment or the beginning date of the contract.

24.35(2) The dementia-specific education or training shall include, at a minimum, the following:

- a. An explanation of Alzheimer's disease and related disorders;
- b. The adult day services program's specialized dementia care philosophy and program;
- c. Skills for communicating with persons with dementia;
- d. Skills for communicating with family and friends of persons with dementia;
- e. An explanation of family issues such as role reversal, grief and loss, guilt, relinquishing the care-giving role, and family dynamics;
- f. The importance of planned and spontaneous activities;
- g. Skills in providing assistance with activities of daily living;
- h. The importance of the care plan and social history information;
- i. Skills in working with challenging participants;
- j. Techniques for simplifying, cueing, and redirecting; and
- k. Staff support and stress reduction.

24.35(3) All personnel employed by or contracting with a dementia-specific program shall receive a minimum of two hours of dementia-specific continuing education annually. Direct-contact personnel shall receive a minimum of six hours of dementia-specific continuing education annually.

321—24.36(80GA,ch165) Another business or activity in an adult day services program.

24.36(1) A business or activity serving nonrecipients of adult day services is allowed in a designated part of the physical structure in which the adult day services program is pro-

vided, if the other business or activity meets the requirements of the applicable state and federal codes, administrative rules, and federal regulations.

24.36(2) A business or activity conducted in the designated part of the physical structure in which the adult day services program is provided shall not interfere with the use of the program by participants, or interfere with services provided to participants or be disturbing to participants.

24.36(3) A business or activity conducted in the designated part of the physical structure in which the adult day services program is provided shall not reduce space, services or staff available to participants or necessary to meet the needs of the participants.

321—24.37(80GA,ch165) Managed risk statement. The adult day services program shall have a managed risk statement which includes the participant's or, if applicable, the legal representative's, signed acknowledgment of the shared responsibility for identifying and meeting needs of the participant and the process for managing risk and upholding participant autonomy when participant decision making may result in poor outcomes for the participant or others.

321—24.38(80GA,ch165) Life safety-emergency policies and procedures and structural safety requirements.

24.38(1) The adult day services program shall have and follow written emergency policies and procedures, which include the following elements:

- a. Emergency plan (identify where located for easy reference);
- b. Fire safety procedures;
- c. Other general or personal emergency procedures;
- d. Provisions for amending or revising the emergency plan;
- e. Provisions for periodic training of all employees;
- f. Fire drill procedures;
- g. Regulations about smoking;
- h. Interior and exterior maintenance of buildings and grounds;
- i. Furnishings;
- j. Monitoring and testing of smoke-control systems;
- k. Evacuation of participants; and
- l. Procedures for reporting and documentation.

24.38(2) An adult day services program that serves persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall also include written procedures regarding appropriate staff response if a participant with cognitive impairment or dementia is missing.

24.38(3) The adult day services program's structure and procedures shall meet the life safety standards as designated for this category in 661—Chapter 5.

24.38(4) Visual and audible fire alarms shall be installed in exit corridors and common spaces, as required by the Americans with Disabilities Act.

321—24.39(80GA,ch165) Transportation. When transportation services are provided directly or under contract with the adult day services program:

1. The vehicle shall be accessible and appropriate to the participants using it, with consideration for any physical disabilities and impairments.
2. Every participant shall have a seat in the vehicle, except those participants who remain in their wheelchairs.
3. Wheelchairs shall be secured when the vehicle is in motion.
4. Vehicles shall have adequate seat belts and securement devices for ambulatory and wheelchair-bound passengers.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

5. During loading and unloading of a participant, the driver shall be in the proximate area of the other participants in a vehicle.

6. Assistance, if needed, shall be provided from the ground floor of the participant's residence to the ground floor of the adult day services facility.

7. The driver shall have a valid and appropriate Iowa driver's license. The driver shall meet any state requirements for licensure or certification for the vehicle operated.

8. Each vehicle shall have a first-aid kit, fire extinguisher, safety triangles and a device for two-way communication.

321—24.40(80GA,ch165) Activities.

24.40(1) The adult day services program shall provide appropriate activities for each program participant. The type of activities shall reflect a participant's preferences, abilities, desires, history, family system, ethnic and cultural experiences, faith community, personal beliefs and values by providing a variety of opportunities and experiences that have meaning and purpose for the program participant.

24.40(2) Activities shall be planned to support the participant's service plan and shall be consistent with the program statement and admission policies.

24.40(3) A written schedule of activities shall be developed at least monthly and made available to participants or their legal representatives.

24.40(4) Participants shall be given the opportunity to select the degree to which they choose to participate in all activities offered in the program.

24.40(5) Appropriate activities shall be offered at all times when participants are present.

321—24.41(80GA,ch165) Structural requirements.

24.41(1) The structure, equipment and physical environment of the adult day services program shall be designed and operated to meet the needs of the participants. The building, grounds and equipment shall be well-maintained, clean, safe and sanitary.

24.41(2) There shall be at least one toilet for every ten participants and staff members.

24.41(3) Toilets and bathing and toileting appliances shall be equipped for use by participants with multiple disabilities.

24.41(4) There shall be a ratio of at least one hand-washing sink for every two toilets. The sink(s) shall be proximate to the toilets. Hand-washing facilities shall be readily accessible to participants and staff.

24.41(5) Shower and tub areas, if provided, shall be equipped with grab bars and slip-resistant surfaces.

24.41(6) Signaling emergency call devices shall be installed or placed in all bathroom areas, restroom stalls and showers, if any.

24.41(7) A telephone shall be available to participants to make and receive calls in a private manner and for emergency purposes.

24.41(8) Program supplies and participants' possessions shall be stored in such a manner that, when not in use, will prevent personal injury by participants and staff.

24.41(9) The adult day services program shall provide a separate area to permit privacy for evaluations and to isolate participants who become ill.

24.41(10) The program shall meet other building and public safety codes, including:

- a. Americans with Disabilities Act.
- b. Applicable regulations of the Occupational Safety and Health Administration.

c. Rules pertaining to accessibility contained in the Iowa state building code, administration section, division 7, and 661—Chapter 18.

24.41(11) The program shall have the means to control the maximum temperature of water at sources accessible by a participant to prevent scalding and shall do so for participants with cognitive impairment or dementia or at the request of a participant.

321—24.42(80GA,ch165) Quality improvement. Each adult day services program shall develop, implement and document an ongoing quality improvement program that includes at a minimum:

1. An internal monitoring process that tracks performance measures;
2. A review of actions taken to address identified issues;
3. A process to monitor the satisfaction of participants and other program stakeholders.

321—24.43(80GA,ch165) Interpretive guidelines. The department shall develop interpretive guidelines as situations arise requiring them.

These rules are intended to implement 2003 Iowa Acts, chapter 165.

ARC 3001B**ELDER AFFAIRS
DEPARTMENT[321]****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 231.23(10), the Elder Affairs Department hereby gives Notice of Intended Action to rescind Chapter 25, "Non-Facility-Based Respite Care," and adopt new Chapter 25, "Assisted Living Programs," Iowa Administrative Code.

Chapter 25 establishes requirements for program certification and standards for assisted living programs. An appeal process for involuntary tenant transfer is established.

Any interested person may make written suggestions or comments on this proposed amendment prior to January 7, 2004. Such written comments should be directed to the Department of Elder Affairs, 200 10th Street, Des Moines, Iowa 50309, or E-mailed to joel.wulf@iowa.gov, or faxed to (515) 242-3300.

There will be a public hearing on January 7, 2004, from 9 until 11 a.m. over the Iowa Communications Network, at which time persons may present their views either orally or in writing. Access to the public hearing will be available through the following locations:

Third Floor Conference Room
Wallace State Office Building
East Ninth and Grand
Des Moines

Department of Human Services
411 3rd Street SE, Room 550
Cedar Rapids

ELDER AFFAIRS DEPARTMENT[321](cont'd)

Southwestern Iowa Community College
1501 West Townline Road, Room 211
Creston

Public Library
529 Pierce Street
Sioux City

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Elder Affairs Department and advise of specific needs.

This amendment is intended to implement Iowa Code chapter 231C as amended by 2003 Iowa Acts, chapter 166.

The following amendment is proposed.

Rescind 321—Chapter 25 and adopt the following **new** chapter in lieu thereof:

CHAPTER 25
ASSISTED LIVING PROGRAMS

321—25.1(231C) Definitions.

“Allied health care professional” means a person licensed through the department of public health, other than a physician, physician’s assistant, registered nurse or advanced registered nurse practitioner, who provides health care services to the tenant.

“Assistance” means aid to a tenant who self-directs or participates in the task or activity or who retains the mental or physical ability, or both, to participate in a task or activity. Cueing of the tenant regarding a particular task or activity shall not be construed to mean the tenant has not participated in the task or activity.

“Assisted living” means provision of housing with services, which may include but are not limited to health-related care, personal care, and assistance with instrumental activities of daily living, to three or more tenants in a physical structure, which provides a homelike environment. “Assisted living” also includes encouragement of family involvement, tenant self-direction, and tenant participation in decisions that emphasize choice, dignity, privacy, individuality, shared risk, and independence. “Assisted living” includes the provision of housing and assistance with instrumental activities of daily living only if personal care or health-related care is also included.

“CARF” means the Rehabilitation Accreditation Commission.

“Cognitive disorder” means a disorder characterized by cognitive dysfunction presumed to be the result of illness that does not meet criteria for dementia, delirium, or amnesic disorder.

“Dementia” means an illness characterized by multiple cognitive deficits which represent a decline from previous levels of functioning and include memory impairment and one or more of the following cognitive disturbances: aphasia, apraxia, agnosia, and disturbance in executive functioning.

“Dementia-specific assisted living program” means an assisted living program certified under this chapter that either serves five or more tenants with dementia between stages 4 and 7 on the Global Deterioration Scale or holds itself out as providing specialized care for persons with dementia, such as Alzheimer’s disease, in a dedicated setting.

“Department” means the department of elder affairs.

“DIA” means the department of inspections and appeals.

“Dwelling unit” means an apartment, group of rooms, or single room that is occupied as a separate living quarter, or, if vacant, that is intended for occupancy as a separate living quarter, in which the occupants can live and sleep separately from any other persons in the building and that has direct access from the outside of the building or through a common hall.

“Global Deterioration Scale” means the seven-stage scale for assessment of primary degenerative dementia developed by Dr. Barry Reisberg.

“Health care” means services provided by a registered nurse or a licensed practical nurse, on a part-time or intermittent basis, and services provided by other licensed health care professionals, on a part-time or intermittent basis.

“Health care professional” means a physician, physician’s assistant, registered nurse or advanced registered nurse practitioner licensed through the department of public health.

“Human service professional” means an individual with at least a bachelor’s degree in a human service field including human services, gerontology, social work, sociology, psychology, and family science. Experience in a human service field may be substituted for up to two years of required education.

“Instrumental activities of daily living” means those activities that reflect the tenant’s ability to perform household and other tasks necessary to meet the tenant’s needs within the community, which may include but are not limited to shopping, housekeeping, chores, and traveling within the community.

“In the proximate area” means located within a less-than-five-minute response time.

“JCAHO” means the Joint Commission on Accreditation of Healthcare Organizations.

“Legal representative” means a person appointed by the court to act on behalf of the tenant, or a person acting pursuant to a power of attorney.

“Nurse-delegated assistance” means delegated tasks or activities for which a professional nurse has assumed responsibility for assessing, planning, implementing, and evaluating, and for which the nurse remains legally accountable.

“Occupancy agreement” means a legally binding written contract entered into between an assisted living program and a tenant that clearly describes the rights and responsibilities of the assisted living program and the tenant, and other information required by rule. The occupancy agreement may include a separate signed lease and signed service agreement.

“Part-time or intermittent care” means licensed nursing services and professional therapies that are provided no more than 5 days per week; or licensed nursing services and professional therapies that are provided 6 or 7 days per week for temporary periods of time with a predictable end within 21 days; or licensed nursing services and professional therapies in combination with nurse-delegated assistance with medications or activities of daily living that do not exceed 28 hours per week.

“Personal care” means assistance with the essential activities of daily living which may include but are not limited to transferring, bathing, personal hygiene, dressing, grooming, housekeeping essential to the health and welfare of the tenant, and supervising of self-administered medications, but does not include the administration of medications.

“Program” means a program that provides assisted living services as defined in this rule.

“Qualified professional” means a licensed or registered safety engineer, a representative of a state or federal agency that provides an OSHA-type inspection, an engineer in-

ELDER AFFAIRS DEPARTMENT[321](cont'd)

involved in industrial operations, a plant engineer familiar with the type of program being provided, a safety specialist familiar with the type of program being provided, an architect/designer familiar with the type of program being provided, a safety consultant who represents the organization's fire insurance carrier, a safety consultant who represents the organization's workers' compensation carrier, a safety consultant who is in private practice, an industrial health specialist, a representative of the state fire marshal's office, a local fire control authority, a state or federal technical assistance consultant in safety, a state or federal technical assistance consultant in health, or a risk management specialist.

"Recognized accrediting entity" means a nationally recognized accrediting entity that the department recognizes as having specific assisted living program standards equivalent to the standards established by the department.

"Remodeling" means modification of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building. "Modification" means any addition to or change in dimensions or structure except as incidental to the customary maintenance of the program structure.

"Routine" means regular, customary or not occasional or intermittent.

"Self-administration" means a tenant's taking personal responsibility for all medication needs, including ordering, refilling, remembering dosing schedule, and self-administering medications.

"Service plan" means the document that defines the services to meet the needs and preferences of a tenant.

"Supervision of self-administration" means a staff person's activities such as routine prompting and reminding, opening of containers or packaging at the direction of the tenant, or reading instructions or other label information in order for a tenant to self-administer a medication.

"Tenant" means an individual who receives assisted living services pursuant to an occupancy agreement through a certified assisted living program.

"Tenant advocate" means the office of long-term care resident's advocate established in Iowa Code section 231.42.

"Unmanageable incontinence" means a condition that requires staff provision of total care for an incontinent tenant who lacks the ability to assist in bladder or bowel continence care.

321—25.2(231C) Program certification. A program may become certified by meeting all the requirements in Iowa Code chapter 231C as amended by 2003 Iowa Acts, chapter 166, and the applicable rules of this chapter and:

1. Being accredited by either CARF or JCAHO; or
2. Meeting the requirements set forth in 321—25.3(231C).

A current certificate shall be visibly displayed within the designated area of the operation of the program.

321—25.3(231C) Certification of a nonaccredited program.

25.3(1) The applicant shall complete an approved application packet obtained from the department of inspections and appeals (DIA). Application materials may be obtained from the health facilities division Web site at www.dia-hfd.state.ia.us; by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-4077.

25.3(2) The applicant shall submit one copy of the completed application and all supporting documentation to DIA

at the above address at least 60 calendar days prior to the expected date of beginning operation.

25.3(3) The appropriate fees, as stated in 321—Chapter 27, shall accompany each application and be payable by check or money order to the Department of Inspections and Appeals. The fees are nonrefundable.

25.3(4) DIA shall consider the application when all supporting documents and fees are received.

321—25.4(231C) Nonaccredited program application content. An application for certification or recertification of a nonaccredited assisted living program shall include the following:

25.4(1) A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 10 percent equity interest in the program. The program shall notify DIA of any changes in the list within ten working days of the change;

25.4(2) A statement affirming that the individuals listed in 25.4(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state;

25.4(3) A statement disclosing whether any of the individuals listed in 25.4(1) have or have had an ownership interest in an assisted living program, elder group home, home health agency, or licensed health care facility as defined under Iowa Code section 135C.1 or licensed hospital as defined under Iowa Code section 135B.1 which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect;

25.4(4) A copy of the current policy and procedure for evaluation of each tenant, which includes a copy of the evaluation tool or tools to be used to identify the functional, cognitive and health status of each tenant;

25.4(5) Identification of target population;

25.4(6) A copy of the current service plan format;

25.4(7) If the assisted living program contracts for personal care or health-related care services from a certified home health agency, mental health center or a licensed health care facility, a copy of that entity's current license;

25.4(8) The current policy and procedure for addressing medication needs of tenants;

25.4(9) The current policy and procedure describing accident and emergency response;

25.4(10) A copy of the current tenant contractual agreement;

25.4(11) The current policy and procedure for managing risk and upholding tenant autonomy when tenant decision making may result in poor outcomes for the tenant or others;

25.4(12) A copy of the current state license for the entity providing food service, whether it is the program or an outside entity or a combination of both;

25.4(13) A copy of the written policies and procedures for food service relating to staffing, nutrition, menu planning, therapeutic diets, preparation, service and storage.

321—25.5(231C) Initial certification process for a non-accredited program.

25.5(1) DIA shall determine whether or not the proposed assisted living program meets applicable requirements contained in Iowa Code chapter 231C as amended by 2003 Iowa Acts, chapter 166, and this chapter within 20 working days of

ELDER AFFAIRS DEPARTMENT[321](cont'd)

receiving all completed documentation, including state fire marshal approval and structural and evacuation review approval.

25.5(2) DIA shall notify the applicant within 5 working days of any preliminary certification determination.

a. If the determination is to certify, DIA shall issue a conditional certification not to exceed one year.

b. If the determination is to deny certification, DIA shall provide the applicant the opportunity for hearing in accordance with 321—26.4(17A,231C,80GA,ch165).

25.5(3) A conditional certification shall allow the applicant to begin operation and accept tenants into the program.

25.5(4) Within 90 calendar days following issuance of conditional certification, DIA shall conduct an on-site monitoring evaluation to determine compliance with the provisions of Iowa Code chapter 231C as amended by 2003 Iowa Acts, chapter 166, and this chapter.

25.5(5) If regulatory insufficiencies are identified as a result of the on-site monitoring evaluation, DIA shall issue a report of the findings to the program by certified mail within 20 working days following the monitoring evaluation. The program shall be required to submit a plan of correction to DIA within 10 working days following receipt of the report.

25.5(6) DIA shall make a final certification decision based on the results of the monitoring evaluation and review of an acceptable plan of correction.

25.5(7) DIA shall notify the program of a final certification decision within 10 working days following the finalization of the on-site monitoring evaluation report or receipt of an acceptable plan of correction, whichever is applicable.

25.5(8) If the decision is to continue certification, DIA shall issue a full two-year certification effective from the date of the original conditional certification.

25.5(9) If the decision is to discontinue certification through denial, DIA shall provide the program the opportunity for a hearing under 321—26.4(17A,231C,80GA,ch165).

321—25.6(231C) Recertification of a nonaccredited program.

25.6(1) Certification of an assisted living program, unless conditionally issued, suspended or revoked, shall expire at the end of the time period specified on the certificate.

25.6(2) DIA shall send recertification application materials to each program at least 120 calendar days prior to expiration of its certification.

321—25.7(231C) Recertification process for a non-accredited program. To obtain recertification, a program shall:

25.7(1) Submit one copy of the completed application, associated documentation and the recertification fee as listed in 321—Chapter 27 to DIA at the address stated in 25.3(1) at least 90 calendar days prior to the expiration of the program's certification.

25.7(2) Submit additional documentation that the following systems have been inspected by a qualified professional and are found to be maintained in conformance with manufacturer's recommendations and nationally recognized standards: heating, cooling, water heater, electricity, plumbing, sewage, artificial light, and ventilation; and, if located on site, garbage disposal, cooking, laundry, and elevators.

321—25.8(231C) Notification of recertification for a non-accredited program.

25.8(1) DIA shall review the application and associated documentation and fees for completion, and notify the program of application status within 10 working days of receipt of the required application materials.

25.8(2) DIA shall conduct an on-site monitoring evaluation of the program between 60 and 90 days prior to expiration of the program's certification.

25.8(3) If regulatory insufficiencies are identified as a result of the monitoring evaluation, DIA shall issue a report of the findings to the program by certified mail within 20 working days following the monitoring evaluation. The program shall be required to submit a plan of correction to DIA within 10 working days following receipt of the report. DIA shall determine the program's compliance with applicable requirements contained in Iowa Code chapter 231C as amended by 2003 Iowa Acts, chapter 166, and this chapter within 10 working days of receiving all finalized documentation, including state fire marshal approval and an acceptable plan of correction, and make a recertification decision.

25.8(4) If no regulatory insufficiencies are identified as a result of the monitoring evaluation, DIA shall issue a report of the findings with the final recertification decision. DIA shall determine the program's compliance with applicable requirements contained in Iowa Code chapter 231C as amended by 2003 Iowa Acts, chapter 166, and this chapter within 15 working days of receiving all finalized documentation, including state fire marshal approval, and make a recertification decision.

25.8(5) If the decision is to recertify, DIA shall issue the program a two-year certification effective from the date of the expiration of the previous certification.

25.8(6) If the decision is to deny recertification, DIA shall provide the program the opportunity for a hearing under 321—26.4(17A,231C,80GA,ch165).

25.8(7) If DIA is unable to recertify a program through no fault of the program, DIA shall issue a time-limited extension to the program.

321—25.9(231C) Certification and recertification process for an accredited program.

25.9(1) An applicant program accredited by a recognized accrediting entity shall:

a. Submit a completed application packet obtained from DIA. Application materials may be obtained from the health facilities division Web site at www.dia-hfd.state.ia.us; by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-4077.

b. Submit a copy of the current accreditation outcome from a recognized accrediting entity.

c. Apply for certification within 30 calendar days following verification of compliance with life safety requirements pursuant to this chapter for a program in operation on or before [insert effective date of these rules].

d. Apply for recertification within 60 calendar days following verification of compliance with life safety requirements pursuant to this chapter.

e. Maintain compliance with life safety requirements pursuant to this chapter.

f. Submit an administrative fee as set forth in 321—27.2(231C).

25.9(2) DIA shall not consider an application until it is complete and received with all supporting documentation and fees.

321—25.10(231C) Accredited program certification or recertification application content. An application for certification or recertification of an accredited assisted living program shall include the following:

ELDER AFFAIRS DEPARTMENT[321](cont'd)

25.10(1) A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 10 percent equity interest in the program. The program shall notify DIA of any changes in the list within ten working days of the change;

25.10(2) A statement affirming that the individuals listed in 25.10(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state;

25.10(3) A statement disclosing whether any of the individuals listed in 25.10(1) have or have had an ownership interest in an assisted living program, elder group home, home health agency, or licensed health care facility as defined under Iowa Code section 135C.1 or licensed hospital as defined under Iowa Code section 135B.1 which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect;

25.10(4) Identification of target population;

25.10(5) A copy of the current accreditation outcome from the recognized accrediting entity.

321—25.11(231C) Initial certification process for an accredited program.

25.11(1) DIA shall determine whether or not the accredited program meets applicable requirements contained in these rules within 20 working days of receiving all finalized documentation, including state fire marshal approval.

25.11(2) DIA shall notify the accredited program within 10 working days of the final certification decision.

a. If the decision is to certify, a full certification shall be issued for the term of the accreditation not to exceed three years, unless conditionally issued, suspended or revoked by either DIA or the recognized accrediting entity.

b. If the determination is to deny certification, DIA shall provide the applicant the opportunity for hearing in accordance with 321—26.4(17A,231C,80GA,ch165).

321—25.12(231C) Recertification process for an accredited program.

25.12(1) Certification for an assisted living program, unless conditionally issued, suspended or revoked, shall expire at the end of the time period specified on the certificate.

25.12(2) DIA shall send recertification application materials to each program at least 90 calendar days prior to expiration of its certification.

25.12(3) To obtain recertification, an accredited program shall submit one copy of the completed application and associated documentation including the administrative fee as found in 321—27.2(231C) to DIA at the address stated in 25.9(231C) at least 60 calendar days prior to the expiration of the program's certification.

25.12(4) The program shall submit to DIA a copy of the current accreditation outcome from the recognized accrediting entity.

25.12(5) DIA shall determine the program's compliance with applicable requirements contained in these rules within 20 working days of receiving all finalized documentation, including state fire marshal approval, and make a recertification decision.

25.12(6) DIA shall notify the accredited program within 10 working days of the final recertification decision.

a. If the decision is to recertify, a full certification shall be issued for the term of the accreditation not to exceed three years, unless conditionally issued, suspended or revoked by either DIA or the recognized accrediting entity.

b. If the determination is to deny recertification, DIA shall provide the applicant the opportunity for hearing in accordance with 321—26.4(17A,231C,80GA,ch165).

25.12(7) If DIA is unable to recertify a program through no fault of the program, DIA shall issue a time-limited extension to the program.

321—25.13(231C) Duration of certification for all programs.

25.13(1) Certification as a nonaccredited assisted living program by DIA shall be applicable for two years, unless conditionally issued, suspended or revoked.

25.13(2) Certification as an accredited assisted living program by DIA shall be applicable for the term of the accreditation not to exceed three years, unless conditionally issued, suspended or revoked by either DIA or the recognized accrediting entity.

DIA shall maintain a list of all certified assisted living programs. The list shall be readily available at DIA upon request.

321—25.14(231C) Recognized accrediting entity.

25.14(1) The department designates CARF and JCAHO as recognized accrediting entities for assisted living programs.

25.14(2) To apply for designation by the department as a recognized accrediting entity for assisted living programs, an accrediting organization shall submit a letter of request and meet the accrediting entity requirements in this rule.

25.14(3) The designation shall remain in effect for so long as the accreditation standards continue to meet the minimum requirements of Iowa Code chapter 231C as amended by 2003 Iowa Acts, chapter 166, and this chapter.

25.14(4) The accrediting entity shall provide annually to DIA and the department, at no cost, a current edition of the applicable standards manual and survey preparation guide, and training thereon, within 20 working days after the publication is released.

321—25.15(231C) Requirements for an accredited program. Each accredited program shall:

25.15(1) Provide DIA a copy of all survey reports including outcomes, quality improvement plans and annual conformance to quality reports generated or received, as applicable, within ten working days of receipt of the reports.

25.15(2) Notify DIA by the most expeditious means possible of all credible reports of alleged improper or inappropriate conduct or conditions within the accredited program and any actions taken by the accrediting entity with respect thereto.

25.15(3) Notify DIA within two working days of the expiration, suspension, revocation or other loss of a program's accreditation.

321—25.16(231C) Maintenance of program accreditation.

25.16(1) An accredited program shall continue to be recognized for certification by DIA if both of the following requirements are met:

a. The program complies with the requirements outlined in 25.15(231C).

b. The program maintains its voluntary accreditation status for the duration of the time-limited certification period.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

25.16(2) A program that does not maintain its voluntary accreditation status must become certified by DIA prior to any lapse in accreditation.

25.16(3) A program that does not maintain its voluntary accreditation status and is not certified by DIA prior to any lapse in voluntary accreditation shall be considered an uncertified program.

321—25.17(231C) Transfer of certification.

25.17(1) A certificate, unless conditionally issued, suspended or revoked, will be transferable to a new owner of a program.

25.17(2) The new owner is required to notify DIA in writing within 30 calendar days prior to the change in ownership. The notice shall include assurance that the new owner meets all requirements of Iowa Code chapter 231C as amended by 2003 Iowa Acts, chapter 166, and this chapter.

25.17(3) DIA may conduct an on-site monitoring evaluation within 90 days following a change in ownership or management corporation to ensure that the program complies with requirements and shall take any necessary enforcement action authorized by Iowa Code chapter 231C as amended by 2003 Iowa Acts, chapter 166, and this chapter.

321—25.18(231C) Structural and life safety reviews for a new program.

25.18(1) Prior to construction or remodeling of a building for use as an assisted living program, DIA shall review the blueprints for compliance with requirements pursuant to this chapter. Construction and remodeling shall include new construction, modification of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

25.18(2) A program applicant shall submit to DIA blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in 321—Chapter 27 at Department of Inspections and Appeals, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083.

25.18(3) Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

25.18(4) DIA shall review the blueprints within 20 working days of receipt and immediately notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

25.18(5) The Iowa-licensed architect or Iowa licensed-engineer shall respond to DIA within 20 working days to state how any noncompliance with requirements will be resolved.

25.18(6) Upon final notification by DIA that the blueprints meet structural and life safety requirements, construction or remodeling of the assisted living program may commence.

25.18(7) DIA shall schedule an on-site visit of the program with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the construction or remodeling process to ensure compliance with the approved blueprints. Any noncompliance with requirements must be resolved prior to approval for certification.

321—25.19(231C) Structural and life safety review prior to the remodeling of a building for a certified assisted living program.

25.19(1) Prior to the remodeling of a building for a certified assisted living program, DIA shall review the blueprints for compliance with requirements pursuant to 25.41(231C). Remodeling shall include modification of any part of an ex-

isting building, addition of a new wing or floor to an existing building, or conversion of an existing building.

25.19(2) A certified program shall submit to DIA blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in 321—Chapter 27 at Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083.

25.19(3) Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

25.19(4) DIA shall review the blueprints within 20 working days of receipt and immediately notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

25.19(5) The Iowa-licensed architect or Iowa licensed-engineer shall respond to DIA within 20 working days to state how any noncompliance with requirements will be resolved.

25.19(6) Upon final notification by DIA that the blueprints meet structural and life safety requirements, remodeling of the assisted living program may commence.

25.19(7) DIA shall schedule an on-site visit of the program with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the remodeling process to ensure compliance with the approved blueprints. Any noncompliance with requirements must be resolved prior to approval for continued certification or recertification.

321—25.20(231C) Emergency response policies and procedures review. A program applicant or certified program shall submit emergency response policies and procedures with the application to DIA at the address stated in 25.3(1). Failure to submit the emergency response policies and procedures with the application shall delay the review of the application for certification until receipt of the information. The emergency response policies and procedures shall comply with the requirements of this chapter.

321—25.21(231C) Program alteration. A program shall notify DIA within ten working days of any operational changes that are a deviation from the most current certification or recertification application and associated documentation.

321—25.22(231C) Cessation of program operation.

25.22(1) If a certified assisted living program ceases operation at any time prior to expiration of the program's certification, the program shall submit the certificate to DIA. The assisted living program shall provide, at least 90 days in advance of closure unless there is some type of emergency, written notification to DIA, the department, and the tenant advocate of the date the operation will cease.

25.22(2) If a certified assisted living program will cease operation at the time the program's certification expires, the program shall provide written notice of this fact to DIA, the department and the tenant advocate at least 90 days prior to expiration of the certification.

25.22(3) At the time an assisted living program decides to cease operation, the program shall make arrangements and submit a plan to DIA for the safe and orderly transfer of all tenants.

25.22(4) DIA or another appropriate agency shall conduct on-site monitoring during the 90-day period to ensure safety of tenants during the transfer process.

25.22(5) DIA may conduct an on-site visit to verify that the program has ceased operations in accordance with the notice provided by the program.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

321—25.23(231C) Occupancy agreement.

25.23(1) Prior to occupancy, the tenant and the assisted living program shall enter into an occupancy agreement that clearly describes the rights and responsibilities of the tenant and of the program.

25.23(2) Each tenant or legal representative, if applicable, shall sign an occupancy agreement and managed risk policy disclosure statement prior to occupancy.

25.23(3) The occupancy agreement shall be in 12-point type or larger, and be written in language that is clear and understandable to the tenant or the tenant's legal representative.

25.23(4) The written occupancy agreement shall include, but not be limited to, the following:

- a. A description of all fees and a description of each service covered and related costs;
- b. A statement regarding the impact of the fee structure on third-party payments and whether third-party payments and resources will be accepted by the assisted living program;
- c. A procedure to be followed if a tenant fails to make payment;
- d. A description of the refund policy;
- e. The term of the occupancy agreement;
- f. The identification of the party responsible for payment of fees;
- g. A guarantee that the assisted living program shall give written notification to the tenant or the tenant's legal representative, as applicable, at least 30 days in advance of any changes to the occupancy agreement with the exceptions stated in Iowa Code section 231C.5 as amended by 2003 Iowa Acts, chapter 166, section 12;
- h. A guarantee that all tenant information shall be maintained in a confidential manner to the extent allowable under state and federal law;
 - i. A copy of occupancy and transfer criteria;
 - j. A copy of the grievance policy and procedure;
 - k. A copy of the policies and procedures for addressing grievances between the assisted living program and the tenants, including grievances relating to transfer and occupancy;
 - l. A copy of the internal appeal process for involuntary transfer;
 - m. A copy of the emergency response policy;
 - n. A copy of the staffing policy that identifies how staffing shall be adapted to changing tenant needs;
 - o. A copy of the services and programming provided to meet the life skills and social activity needs of tenants in dementia-specific assisted living programs;
 - p. A copy of the document summarizing the quality improvement program that includes customer satisfaction input;
 - q. A statement that the tenant landlord law applies to assisted living programs;
 - r. A procedure for filing a complaint with DIA, including contact information;
 - s. A copy of the statement of tenant's rights as found in the April 2003 report "Assuring Quality in Assisted Living: Guidelines for Federal and State Policy, State Regulation, and Operations" to the U.S. Senate Special Committee on Aging (<http://www.aahsa.org/alw.htm>);
 - t. A procedure for contacting the tenant advocate including the name, address and toll-free telephone number of the office of the tenant advocate;
 - u. A statement of the prohibition against retaliation as prescribed in 2003 Iowa Acts, chapter 166, section 20;
 - v. A copy of the managed risk disclosure statement.

25.23(5) Attachments to the occupancy agreement are considered part of the agreement.

25.23(6) A copy of the occupancy agreement shall be provided to the tenant or the tenant's legal representative, if any, and a copy shall be kept by the program.

25.23(7) The occupancy agreement shall be reviewed and updated as necessary to reflect the change in the services and financial arrangements.

25.23(8) A copy of the occupancy agreement form shall be made available to the general public upon request.

25.23(9) A tenant who is subject to an involuntary transfer shall have the right to an internal appeal of the transfer before the transfer occurs.

321—25.24(231C) Occupancy in and transfer from an assisted living program.

25.24(1) Evaluation prior to occupancy. An assisted living program shall evaluate each proposed tenant's functional, cognitive and health status prior to occupancy to determine eligibility for the program, including whether needed services can be provided. The evaluation shall be conducted by a health care professional or a human service professional.

25.24(2) Evaluation within 30 days of occupancy. An assisted living program shall evaluate each tenant's functional, cognitive and health status within 30 days of occupancy and as needed, but not less than annually, to determine continued eligibility for the program and to determine any modifications to needed services. The evaluation shall be conducted by a health care professional or a human service professional.

25.24(3) Criteria for exclusion of tenants. An assisted living program shall not knowingly admit or retain a tenant who:

- a. Is bed-bound; or
- b. Requires routine two-person assistance with standing, transfer or evacuation; or
- c. Is dangerous to self or other tenants or staff, including but not limited to a tenant who:
 - (1) Despite intervention chronically wanders into danger, is sexually or physically aggressive or abusive, or displays unmanageable verbal abuse or aggression; or
 - (2) Displays behavior that places another tenant at risk; or
 - d. Is in an acute stage of alcoholism, drug addiction, or uncontrolled mental illness; or
 - e. Is under the age of 18; or
 - f. Requires more than part-time or intermittent health-related care; or
 - g. On a routine basis, has unmanageable incontinence.

25.24(4) Disclosure of additional occupancy and transfer criteria. An assisted living program may have additional occupancy or transfer criteria if disclosed in the written occupancy agreement prior to occupancy.

25.24(5) Assistance with transfer. An assisted living program shall provide assistance to a tenant and the tenant's legal representative, if applicable, to ensure a safe and orderly transfer when the tenant meets program transfer requirements.

25.24(6) Right to appeal involuntary transfer. Under the occupancy agreement and Iowa Code section 231C.6 as amended by 2003 Iowa Acts, chapter 166, section 13, each tenant shall have the right to an internal appeal of an involuntary transfer.

321—25.25(231C) Waiver of occupancy and retention criteria.

25.25(1) Upon receipt of a waiver petition submitted by a program, DIA may grant a waiver of the occupancy and

ELDER AFFAIRS DEPARTMENT[321](cont'd)

retention criteria under 25.26(231C) for an individual tenant on a time-limited basis.

25.25(2) Waiver procedures. The following procedures shall be used to request and to receive approval of a waiver from the occupancy and retention criteria:

- a. A program shall submit a request on a form and in a manner designated by DIA for a waiver from the occupancy and retention criteria for an individual tenant as soon as it becomes apparent that a tenant meets the criteria;
- b. DIA shall respond in writing to a request within two working days of receipt of required documentation;
- c. The program shall provide written notification to DIA within five working days of any changes in the condition of the tenant as described in the waiver request.

321—25.26(231C) Criteria for granting occupancy and retention waivers. DIA shall use the following criteria in granting a waiver:

1. It is the informed choice of the tenant or the tenant's legal representative, if applicable, to remain in the program; and
2. The assisted living program is able to obtain the staff necessary to meet the tenant's service needs in addition to the service needs of the other tenants; and
3. The waiver shall not jeopardize the health, safety, security or welfare of the tenant for whom the waiver is being requested, program staff, or other program tenants.

321—25.27(231C) Involuntary transfer.

25.27(1) Program initiation of transfer. If an assisted living program initiates the involuntary transfer of a tenant and the action is not a result of a monitoring evaluation or complaint investigation by DIA, and if the tenant or tenant's legal representative contests the transfer, the following procedure shall apply:

- a. The assisted living program shall notify the tenant or tenant's legal representative, in accordance with the occupancy agreement, of the need to transfer, the reason for the transfer, and the contact information of the tenant advocate.
- b. The assisted living program shall immediately provide to the tenant advocate, by certified mail, a copy of the notification to the tenant.
- c. The tenant advocate shall offer the notified tenant or tenant's legal representative assistance with the program's internal appeal process. The tenant or tenant's legal representative is not required to accept the assistance of the tenant advocate.
- d. If, following the internal appeal process, the assisted living program upholds the transfer decision, the tenant or tenant's legal representative may utilize other remedies authorized by law to contest the transfer.

25.27(2) Transfer pursuant to results of monitoring evaluation or complaint investigation by DIA. If one or more tenants are identified as meeting the occupancy and transfer criteria and need to be transferred as a result of a monitoring evaluation or complaint investigation conducted by DIA, the following procedures shall apply:

- a. DIA shall notify the assisted living program, in writing within 20 working days of the monitoring evaluation or complaint investigation, of the identification of any tenant(s) meeting occupancy and transfer criteria, as a part of the report of the findings.
- b. The assisted living program, each tenant identified, the tenant's legal representative, if applicable, and other providers of services to the tenant shall have the opportunity to provide specific written comment, information and docu-

mentation directly addressing any agreement or disagreement with the identification.

c. The assisted living program shall notify each tenant identified, the tenant's legal representative if applicable, and other providers of services to the tenant of their opportunity to submit input.

d. The program shall submit one response, including all inputs received, to DIA. The response shall identify the tenant and others submitting input, and also identify with particularity their agreement or disagreement. The program's response shall be submitted to DIA within 10 working days of the receipt of the report of the findings. Submission of a response does not eliminate the requirement under this chapter or 321—Chapter 26 to submit a plan of correction to address the regulatory insufficiency.

e. Within 10 working days of receipt of the program's response for each identified tenant, DIA shall consider the response and make a determination regarding continued inclusion of a tenant.

f. If DIA's determination is to amend the regulatory insufficiency based on the response, DIA shall modify the report of findings and send an amended report to the program.

g. If the determination is to uphold the regulatory insufficiency, DIA shall review the plan of correction in accordance with this chapter and 321—Chapter 26. DIA shall notify the assisted living program of the opportunity for the assisted living program or the tenant or the tenant's legal representative, as applicable, to appeal the report findings as they relate to the occupancy and transfer decision. In addition, DIA shall provide to the tenant or the tenant's legal representative the contact information for the tenant advocate. A copy of the final report shall also be sent to the tenant advocate.

h. For each tenant identified in the final report, if the assisted living program is in agreement with the report and the tenant or the tenant's legal representative, if applicable, disagrees with the report, the tenant or the tenant's legal representative, if applicable, may appeal the decision to DIA in accordance with 321—subrule 26.3(2).

i. For each tenant identified in the final report, if the tenant or the tenant's legal representative, if applicable, and the assisted living program disagree with the report, both parties may appeal the decision to DIA in accordance with 321—subrule 26.3(2).

j. The tenant advocate shall offer the notified tenant or tenant's legal representative, if applicable, assistance with the appeal process. The tenant or the tenant's legal representative, if applicable, is not obligated to use the services of the tenant advocate.

k. Any appeal filed under this subrule shall stay the regulatory insufficiency related to the occupancy and transfer decision and shall be heard within 30 days of receipt of the appeal.

l. Actions regarding any regulatory insufficiency, other than the occupancy and transfer decision, shall follow procedures as provided in Iowa Code chapter 231C as amended by 2003 Iowa Acts, chapter 166, this chapter and 321—Chapter 26.

m. An appeal under this subrule shall automatically extend the expiration date of the assisted living program's certification until such time as the administrative case is resolved.

n. In lieu of or in addition to the provisions of this subrule, the assisted living program may request a waiver from DIA within 10 working days of the receipt of the report to allow a tenant to remain in the program. DIA may grant a waiver for a period not to exceed 90 calendar days.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

321—25.28(231C) Tenant service plan documents.

25.28(1) A file for each tenant shall be maintained at the assisted living program and shall contain:

- a. An occupancy record including the tenant's name, birth date, and home address; identification numbers; date of occupancy; name, address and telephone number of health professional(s); diagnosis; and names, addresses and telephone numbers of family members, friends or other designated people to contact in the event of illness or an emergency;
- b. Application forms;
- c. Initial evaluation and updates;
- d. Nutritional assessment as necessary;
- e. Initial individual service plan and updates;
- f. Signed authorizations for permission to release medical information, photos, or other media information as necessary;
- g. Signed authorization for the tenant to receive emergency medical care if necessary;
- h. When appropriate, medical information sheet, documentation of health professionals' order, treatment, therapy, medication and service notes;
 - i. Advance health care directives as applicable;
 - j. A complete copy of the tenant's occupancy agreement including any updates;
 - k. Written acknowledgement that the tenant or the tenant's legal representative, if applicable, has been fully informed of the tenant's rights;
 - l. A copy of guardianship, power of attorney, or conservatorship or other documentation of a legal representative as necessary.

25.28(2) The assisted living program records relating to a tenant shall be retained for a minimum of three years after the transfer of the tenant before the records are destroyed.

25.28(3) All records shall be protected from loss, damage and unauthorized use.

321—25.29(231C) Service plan.

25.29(1) A service plan shall be developed for each tenant based on the evaluations conducted in accordance with 25.24(1) and 25.24(2), and shall be designed to meet the specific service needs of the individual tenant.

25.29(2) Prior to occupancy by the tenant, a preliminary service plan shall be developed by a health care professional or human service professional in consultation with the tenant and, at the tenant's request, with the tenant's family, and, if applicable, with the tenant's legal representative. All persons who develop the plan and the tenant or the tenant's legal representative shall sign the plan. The service plan shall subsequently be updated at least annually and whenever changes are needed.

25.29(3) When a tenant needs personal care or health-related care, the service plan shall be updated within 30 days of occupancy and as needed, but not less than annually, in consultation with a multidisciplinary team that consists of no fewer than three individuals, including a human service professional and either a health care professional or an allied health care professional as appropriate.

25.29(4) The service plan shall be individualized and shall indicate, at a minimum:

- a. The tenant's identified needs and the tenant's requests for assistance and expected outcomes;
- b. Any services and care to be provided pursuant to the agreement with the tenant;
- c. The service provider(s) if other than the assisted living program; and

d. For tenants who are unable to plan their own activities, including tenants with dementia, planned and spontaneous activities based on the tenant's abilities and personal interests.

321—25.30(231C) Medications.

25.30(1) Each assisted living program shall follow a written medication policy that includes the following:

- a. Tenants shall self-administer medications unless:
 - (1) The prescription states that the tenant is not to self-administer the medication; or
 - (2) The tenant or the tenant's legal representative delegates administration of the medication to the assisted living program in the occupancy agreement or signed service plan.

The program shall not determine a tenant's ability to self-administer medications.
- b. Tenants shall keep their own medications in their possession unless:
 - (1) The prescription states that the medication is to be stored by the assisted living program; or
 - (2) The tenant or the tenant's legal representative, if applicable, delegates partial or complete control of medications to the assisted living program in the occupancy agreement or signed service plan.
- c. The program shall list in the tenant's record any medications to be stored or administered by the program.
- d. When partial or complete control of medication is delegated to the program by the tenant, appropriate staff may transfer medications from the original prescription containers into medication reminder boxes or medication cups within the tenant's unit or in the tenant's presence.

25.30(2) When medications are administered or stored by, or tenants' self-administration of medications is supervised by, the program, the following requirements shall apply:

- a. Supervision of self-administration and the administration of medications shall be provided by an Iowa-licensed registered nurse or advanced registered nurse practitioner registered in Iowa or the authorized agent in accordance with 655—subrule 6.2(5) and Iowa Code chapter 155A.
- b. The program shall document any medication the program has agreed to administer or supervise.
- c. Only a licensed nurse, certified medication manager or certified medication aide shall supervise or administer medication.
- d. Medication shall be kept in a locked place or container that is not accessible to persons other than employees responsible for the supervision of such medications.
- e. The medications shall be labeled and maintained in compliance with label instructions and state and federal laws.
- f. No person other than the dispensing pharmacist shall alter a prescription label.
- g. Each tenant's medication shall be stored in its originally received container.
- h. When partial or complete control of medication is delegated to the program by the tenant, appropriate staff may transfer medications from the original prescription containers into medication reminder boxes or medication cups within the tenant's unit.
- i. Each program shall follow written policies and procedures for narcotic medications in accordance with Iowa Code chapter 155A.

321—25.31(231C) Nurse review. An assisted living program that administers prescription medications or provides health care professional-directed or health-related care shall provide for a registered nurse to:

ELDER AFFAIRS DEPARTMENT[321](cont'd)

25.31(1) Monitor, at least every 90 days, or after a change in condition, each tenant receiving program-administered prescription medications for adverse reactions to program-administered medications and make appropriate interventions or referral, and ensure that the prescription medication orders are current and that the prescription medications are administered consistent with such orders; and

25.31(2) Ensure that health care professionals' orders for tenants receiving health care professional-directed care from the assisted living program are current; and

25.31(3) Assess and document the health status of each tenant, make recommendations and referrals as appropriate, and monitor progress on previous recommendations at least every 90 days or if there are changes in health status; and

25.31(4) Provide the assisted living program with written documentation of the above activities, showing the time, date and signature.

321—25.32(231C) Nursing assistant work credit.

25.32(1) A person certified as a nursing assistant who is supervised by a licensed nurse may submit information to DIA to obtain credit toward maintaining certification for working in an assisted living program.

25.32(2) An assisted living program shall complete and submit to DIA a Nurse Aide Registry Application for each nursing assistant working in the program. A licensed nurse working in the program shall supervise the nursing assistant. The application may be obtained by telephone at (515)281-4077 or via the Health Facilities Division Web site at <http://www.dia-hfd.state.ia.us/nurseaides> under the "Resource" tab.

25.32(3) An assisted living program shall complete and submit to DIA an Iowa Nurse Aide Registry Quarterly Employment Report whenever a change in employment for a certified nursing assistant occurs. The report may be obtained by telephone at (515)281-4077 or via the Health Facilities Division Web site at <http://www.dia-hfd.state.ia.us/nurseaides> under the "Resource" tab.

321—25.33(231C) Food service.

25.33(1) The assisted living program shall provide or coordinate with other community providers to provide hot or other appropriate meals at least once a day or make arrangement for the availability of meals.

25.33(2) Meals and snacks provided by the assisted living program but not prepared on site shall be obtained from or provided by an entity that meets the standards of state and local health laws and ordinances concerning the preparation and serving of food.

25.33(3) Menus shall be planned with 33 1/3 percent of the Daily Recommended Dietary Allowances/Adequate Intake as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences.

25.33(4) Therapeutic diets are not required but may be provided by an assisted living program. If therapeutic diets are provided, they shall be prescribed by a health care professional. A current copy of the Iowa Simplified Diet Manual published by Iowa State Press shall be available and used in the planning and serving of therapeutic diets. A licensed dietitian shall be responsible for writing and approving the therapeutic menu and for reviewing procedures for preparation and service of food for therapeutic diets.

25.33(5) Personnel who are employed by or contracting with the program and who are responsible for preparing or serving food, or both preparing and serving food, shall have an orientation on sanitation and safe food handling prior to

handling food and shall have annual in-service training on food protection. At a minimum, one person directly responsible for food preparation shall have successfully completed a state-approved food protection program.

25.33(6) Programs engaged in the preparation and serving of meals and snacks shall meet the standards of state and local health laws and ordinances pertaining to the preparation and serving of food, including the requirements imposed under Iowa Code chapter 137F.

321—25.34(231C) Staffing.

25.34(1) Sufficient trained staff shall be available at all times to fully meet tenants' identified needs.

25.34(2) A dementia-specific assisted living program shall have one or more staff persons who monitor tenants as indicated in each tenant's service plan. The staff shall be awake and on duty 24 hours a day in the proximate area, and check on tenants as indicated in the tenants' service plans.

25.34(3) Each tenant shall have access to a 24-hour personal emergency response system that automatically identifies the tenant in distress and can be activated with one touch.

25.34(4) An assisted living program serving one or more tenants with cognitive disorder or dementia shall follow a system, a program or written staff procedures in lieu of a personal emergency response system that address how the program will respond to the emergency needs of the tenant(s).

25.34(5) The owner or management corporation of the assisted living program is responsible for ensuring that all personnel employed by or contracting with the program receive training appropriate to assigned tasks and target population.

25.34(6) Any nursing services shall be available in accordance with Iowa Code chapter 152 and 655—Chapter 6.

25.34(7) The assisted living program shall have training and staffing plans on file, and shall maintain documentation of training received by program personnel.

25.34(8) All personnel of an assisted living program shall be able to implement the assisted living program's accident, fire safety and emergency procedures.

321—25.35(231C) Dementia-specific education for program personnel.

25.35(1) All personnel employed by or contracting with a dementia-specific program shall receive a minimum of six hours of dementia-specific education and training prior to or within 90 days of employment or the beginning date of the contract.

25.35(2) The dementia-specific education or training shall include, at a minimum, the following:

- a. An explanation of Alzheimer's disease and related disorders;
- b. The assisted living program's specialized dementia care philosophy and program;
- c. Skills for communicating with persons with dementia;
- d. Skills for communicating with family and friends of persons with dementia;
- e. An explanation of family issues such as role reversal, grief and loss, guilt, relinquishing the care-giving role, and family dynamics;
- f. The importance of planned and spontaneous activities;
- g. Skills in providing assistance with activities of daily living;
- h. The importance of the care plan and social history information;
- i. Skills in working with challenging tenants;
- j. Techniques for simplifying, cueing, and redirecting; and

ELDER AFFAIRS DEPARTMENT[321](cont'd)

k. Staff support and stress reduction.

25.35(3) All personnel employed by or contracting with a dementia-specific program shall receive a minimum of two hours of dementia-specific continuing education annually. Direct-contact personnel shall receive a minimum of six hours of dementia-specific continuing education annually.

25.35(4) An employee who provides documentation of completion of a dementia-specific education or training program within the past 12 months shall be exempt from the education and training requirement of subrule 25.35(1).

321—25.36(231C) Another business or activity in an assisted living program.

25.36(1) A business or activity serving nonrecipients of an assisted living program is allowed in a designated part of the physical structure in which the assisted living program is provided, if the other business or activity meets the requirements of applicable state and federal codes, administrative rules, and federal regulations.

25.36(2) A business or activity conducted in the designated part of the physical structure in which the assisted living program is provided shall not interfere with the use of the program by tenants, interfere with services provided to tenants, or be disturbing to tenants.

25.36(3) A business or activity conducted in the designated part of the physical structure in which the assisted living program is provided shall not reduce space, services or staff available to tenants or necessary to meet the needs of the tenants.

321—25.37(231C) Managed risk statement. The assisted living program shall have a managed risk statement which includes the tenant's or, if applicable, the legal representative's signed acknowledgment of the shared responsibility for identifying and meeting the needs of the tenant and the process for managing risk and upholding tenant autonomy when tenant decision making may result in poor outcomes for the tenant or others.

321—25.38(231C) Life safety-emergency policies and procedures and structural safety requirements.

25.38(1) The assisted living program shall follow written emergency policies and procedures, which include the following elements:

- a. Emergency plan (identify where located for easy reference),
- b. Fire safety procedures,
- c. Other general or personal emergency procedures,
- d. Provisions for amending or revising the emergency plan,
- e. Provisions for periodic training of all employees,
- f. Procedures for fire drills,
- g. Regulations about smoking,
- h. Monitoring and testing of smoke-control systems,
- i. Evacuation of tenants,
- j. Procedures for reporting and documentation.

25.38(2) An assisted living program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall also include written procedures regarding appropriate staff response if a tenant with cognitive impairment or dementia is missing.

25.38(3) The assisted living program's structure and procedures shall meet the life safety standards as designated for this category in 661—Chapter 5.

25.38(4) Visual and audible fire alarms shall be installed in exit corridors, in tenant dwelling units and common spaces, and as required by the Americans with Disabilities Act.

25.38(5) In cases where the visual or audible alarm located in a fully accessible dwelling unit of a dementia-specific assisted living program has been proven to be disruptive to the evacuation of the dwelling unit's tenant, the visual or audible alarm may be disabled. Disabling an alarm shall require documentation indicating why the tenant does not need the alarm in the dwelling unit and how the tenant will be safely evacuated. The documentation shall be maintained in the record of the tenant occupying the accessible dwelling unit.

25.38(6) The assisted living program's structure and procedures shall meet all federal, state and local code, ordinances and regulations regarding life safety, the Americans with Disabilities Act, and the National Fire Protection Association Standards for fire alarm/smoke detection, heating, ventilating and air conditioning.

25.38(7) The assisted living program shall have the means to control the maximum temperature of water at sources accessible by a tenant to prevent scalding, and shall do so for tenants with cognitive impairment or dementia or at tenant request.

321—25.39(231C) Transportation. When transportation services are provided directly or under contract with the assisted living program:

1. The vehicle shall be accessible and appropriate to the tenants using it, with consideration for any physical disabilities and impairments.
2. Every tenant shall have a seat in the vehicle, except those tenants who remain in their wheelchairs.
3. Wheelchairs shall be secured when the vehicle is in motion.
4. Vehicles shall have adequate seat belts and securement devices for ambulatory and wheelchair-bound passengers.
5. During loading and unloading of a tenant, the driver shall be in the proximate area of the tenants in a vehicle.
6. The driver shall have a valid and appropriate Iowa driver's license. The driver shall meet any state requirements for licensure or certification for the vehicle operated.
7. Each vehicle shall have a first-aid kit, fire extinguisher, safety triangles and a device for two-way communication.

321—25.40(231C) Activities.

25.40(1) The assisted living program shall provide appropriate programming for each tenant. Programming shall reflect individual differences in age, health status, sensory deficits, lifestyle, ethnic and cultural beliefs, religious beliefs, values, experiences, needs, interests, abilities and skills by providing opportunities for a variety of types and levels of involvement.

25.40(2) Activities shall be planned to support the tenant's service plan and shall be consistent with the program statement and occupancy policies.

25.40(3) A written schedule of activities shall be developed at least monthly and made available to tenants and their legal representatives.

25.40(4) Tenants shall be given the opportunity to choose their levels of participation in all activities offered in the program.

321—25.41(231C) Structural requirements.

25.41(1) General requirements.

- a. The structure of the assisted living program shall be designed and operated to meet the needs of the tenants.
- b. The buildings and grounds shall be well-maintained, clean, safe and sanitary.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

c. Assisted living programs shall have private dwelling units with a single-action lockable entrance door.

d. An assisted living program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or remove the lock on an entrance door, and shall do so if the presence of the lock presents a danger to the health and safety of the tenant.

e. The structure in which a dementia-specific assisted living program is housed shall be built at a minimum of Type V (111) construction.

f. Assisted living programs may have individual cooking facilities within the private dwelling units. Any assisted living program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or easily remove appliances, and shall do so if the presence of cooking appliances presents a danger to the health and safety of the tenant.

25.41(2) Assisted living programs certified prior to July 4, 2001. Facilities for programs certified prior to July 4, 2001, shall meet the following requirements:

a. Each dwelling unit shall have at least two rooms, one of which shall have not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.

b. Each dwelling unit for single occupancy shall have not less than 190 square feet of floor area, excluding bathrooms.

c. A dwelling unit used for double occupancy shall have not less than 290 square feet of floor area, excluding bathrooms.

d. The assisted living program shall have a minimum common area of 15 square feet per tenant.

25.41(3) New construction built on or after July 4, 2001. Programs operated in new construction built on or after July 4, 2001, shall meet the following requirements:

a. Each dwelling unit shall have at least one room that shall have not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.

b. Each dwelling unit used for single occupancy shall have a total square footage of not less than 240 square feet of floor area, excluding bathrooms and door swing.

c. A dwelling unit used for double occupancy shall have a total square footage of not less than 340 square feet of floor area, excluding bathrooms and door swing.

d. Each dwelling unit shall contain a bathroom, including but not limited to a toilet, sink and bathing facilities. An assisted living program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or remove the water control, and shall do so if the presence of the water control presents a danger to the health and safety of the tenant.

e. The assisted living program shall have a minimum of 25 square feet of common space per tenant.

25.41(4) Structure being converted to or rehabilitated for use for an assisted living program on or after July 4, 2001. A program operating in a structure that was converted or rehabilitated for use for an assisted living program on or after July 4, 2001, shall meet the following requirements:

a. Each dwelling unit shall have at least one room that has not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.

b. Each dwelling unit used for single occupancy shall have a total square footage of not less than 190 square feet of floor area, excluding bathrooms and door swing.

c. A dwelling unit used for double occupancy shall have a total square footage of not less than 290 square feet of floor area, excluding bathrooms and door swing.

d. The assisted living program shall have a minimum common area of 15 square feet per tenant dedicated for use by assisted living program tenants.

e. Each dwelling unit shall have a bathroom, including but not limited to a toilet, sink and bathing facilities.

f. Each sleeping room shall have a minimum of 5.7 square feet of operable window in accordance with NFPA 101, 2000 edition, Chapter 7. Waiver of this requirement must be granted by the state fire marshal or designee.

321—25.42(231C) Dwelling units in dementia-specific assisted living programs. Dementia-specific assisted living programs are exempt from subrules 25.41(2) to 25.41(4) as follows:

25.42(1) For an assisted living program built in a family or neighborhood design:

a. Each dwelling unit used for single occupancy shall have total square footage of not less than 150 square feet of floor area, excluding a bathroom;

b. Each dwelling unit used for double occupancy shall have total square footage of not less than 250 square feet of floor area, excluding a bathroom; and

c. The common areas shall be increased by the equivalent of the waived square footage.

25.42(2) Self-closing doors are not required for individual dwelling units or bathrooms.

25.42(3) Dementia-specific assisted living programs may choose not to provide bathing facilities in the living units.

321—25.43(231C) Quality improvement. Each assisted living program shall develop, implement, and document an ongoing quality improvement program that includes at a minimum:

1. An internal monitoring process that tracks performance measures;

2. A review of actions taken to address identified issues;

3. A process to monitor the satisfaction of tenants and other program stakeholders.

321—25.44(231C) Landlord and tenant Act. Iowa Code chapter 562A, the uniform residential landlord and tenant Act, shall apply to assisted living programs under this chapter.

321—25.45(231C) Interpretive guidelines. The department shall develop interpretive guidelines as situations arise requiring them.

These rules are intended to implement Iowa Code chapter 231C as amended by 2003 Iowa Acts, chapter 166.

ARC 300B**ELDER AFFAIRS
DEPARTMENT[321]****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 231.23(10), the Elder Affairs Department hereby gives No-

ELDER AFFAIRS DEPARTMENT[321](cont'd)

tice of Intended Action to renumber Chapter 26, "Elder Group Homes," as Chapter 29, "Elder Group Homes"; to adopt a new Chapter 26, "Monitoring, Civil Penalties, Complaints and Investigation for Adult Day Services and Assisted Living Programs"; and to rescind Chapter 27, "Assisted Living Programs," and adopt a new Chapter 27, "Fees for Adult Day Services and Assisted Living Programs," Iowa Administrative Code.

These amendments establish procedures for the filing and investigation of complaints related to adult day services and assisted living programs and establish fees applicable to and penalties for noncompliance with Chapter 24, "Adult Day Services," and Chapter 25, "Assisted Living Programs." In addition, procedures are established for emergency removal of tenants of assisted living programs and participants of adult day services programs.

Any interested person may make written suggestions or comments on these proposed amendments prior to January 7, 2004. Such written comments should be directed to the Department of Elder Affairs, 200 10th Street, Des Moines, Iowa 50309, or may be sent by E-mail to joel.wulf@iowa.gov or by fax to (515)242-3300.

There will be a public hearing on January 7, 2004, from 9 to 11 a.m. over the Iowa Communications Network, at which time persons may present their views either orally or in writing. Access to the public hearing will be available through the following locations:

Third Floor Conference Room
Wallace State Office Building
East Ninth and Grand
Des Moines

Department of Human Services
411 3rd Street SE, Room 550
Cedar Rapids

Southwestern Iowa Community College
1501 West Townline Road, Room 211
Creston

Public Library
529 Pierce Street
Sioux City

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 intend to attend a public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Elder Affairs Department and advise of specific needs.

These amendments are intended to implement 2003 Iowa Acts, chapter 165, and Iowa Code chapters 17A, 21, and 231C as amended by 2003 Iowa Acts, chapter 166.

The following amendments are proposed.

ITEM 1. Renumber **321—Chapter 26** as **321—Chapter 29**.

ITEM 2. Adopt the following new chapter:

CHAPTER 26

MONITORING, CIVIL PENALTIES, COMPLAINTS
AND INVESTIGATION FOR ADULT DAY SERVICES
AND ASSISTED LIVING PROGRAMS

**321—26.1(17A,231C,80GA,ch165) Adult day services/
assisted living program monitoring.**

26.1(1) The department of inspections and appeals (DIA) shall monitor a certified program at least once during the program's certification period.

26.1(2) All records and areas of the program deemed necessary to determine compliance with the requirements for certification under 321—Chapters 24 to 27 shall be accessible to DIA for purposes of monitoring.

321—26.2(17A,231C,80GA,ch165) Complaint procedure.

26.2(1) Any person with concerns regarding the operations and service delivery of a program may file a complaint with the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083.

26.2(2) Upon receipt of a complaint made in accordance with this rule, DIA shall make a preliminary review of the complaint to determine if a potential violation of 321—Chapter 24 for adult day services programs or 321—Chapter 25 for assisted living programs, as applicable, exists. If a potential violation exists, DIA shall make or cause to be made an on-site investigation of the program within 20 working days unless there is the possibility of immediate harm.

26.2(3) For any credible report of alleged improper or inappropriate conduct or conditions within an accredited program, DIA shall:

a. Promptly investigate the allegation.

b. Take certification enforcement action, as appropriate, in accordance with this chapter.

c. Notify the accrediting entity by the most expeditious means possible of any actions taken by DIA with respect to certification enforcement.

26.2(4) DIA shall apply a preponderance-of-the-evidence standard in determining whether or not a complaint is substantiated.

26.2(5) DIA shall notify the department, the program, and, if known, the complainant, and, for assisted living programs, the tenant advocate of the results of the complaint investigation as follows:

a. If regulatory insufficiencies are identified as a result of the complaint investigation, DIA shall issue a report of the findings to the program by certified mail within 20 working days following the complaint investigation. The program shall be required to submit a plan of correction to DIA within 10 working days following receipt of the report. DIA shall determine the program's compliance with applicable requirements contained in Iowa Code chapter 231C as amended by 2003 Iowa Acts, chapter 166, or 2003 Iowa Acts, chapter 165, and 321—Chapter 24 or 321—Chapter 25, whichever is applicable, within 10 working days of receiving an acceptable plan of correction and shall determine whether any enforcement action related to continued certification is necessary.

b. If no regulatory insufficiencies are identified as a result of the complaint investigation, DIA shall issue a report of the findings within 15 days following the on-site investigation.

321—26.3(17A,231C,80GA,ch165) Enforcement action. DIA may take the following actions as a result of noncompliance with Iowa Code chapter 231C as amended by 2003 Iowa Acts, chapter 166, for assisted living programs and 2003 Iowa Acts, chapter 165, for adult day services programs.

26.3(1) In lieu of denial, suspension or revocation, DIA may issue a conditional certification for a period of up to one year. In the issuance of a conditional certification, DIA shall specify the issues of noncompliance and the period of time

ELDER AFFAIRS DEPARTMENT[321](cont'd)

required to comply with each issue. At any time up to 10 working days following the required compliance period, the program shall provide written notification to DIA of the program's compliance with requirements. Following receipt of the program notification, DIA shall make a final certification decision and may conduct an on-site monitoring evaluation to verify compliance prior to making the final decision. Failure by the program to submit timely notification of compliance to DIA shall result in suspension or revocation of the conditional certification and may result in further enforcement action as available under Iowa Code chapter 231C as amended by 2003 Iowa Acts, chapter 166, or 2003 Iowa Acts, chapter 165, and 321—Chapter 24 or 321—Chapter 25, whichever is applicable. DIA shall notify the program of a final certification decision within 15 working days following receipt of the program notification or on-site monitoring evaluation, whichever is later, or following the program's failure to timely notify DIA of compliance.

26.3(2) Civil penalty. DIA may assess a civil penalty, which shall be paid to DIA within ten working days following assessment, as follows:

a. A program in noncompliance with Iowa Code chapter 231C as amended by 2003 Iowa Acts, chapter 166, or 2003 Iowa Acts, chapter 165, and 321—Chapter 24 or 321—Chapter 25, whichever is applicable, that results in imminent danger or a substantial probability of resultant death or physical harm to a participant or tenant, up to but not to exceed \$10,000.

b. Following receipt of notice from DIA, a program which fails or refuses to comply with Iowa Code chapter 231C as amended by 2003 Iowa Acts, chapter 166, or 2003 Iowa Acts, chapter 165, and 321—Chapter 24 or 321—Chapter 25, whichever is applicable, within prescribed time frames set out by DIA when such noncompliance has a direct relationship to the health, safety, or security of program participants or tenants, up to but not to exceed \$5,000.

321—26.4(17A,231C,80GA,ch165) Notice—hearings.

26.4(1) The denial, suspension, or revocation of a certificate shall be effected by delivering to the applicant or certificate holder by restricted certified mail, return receipt requested, or by personal service, a notice setting forth the particular reasons for such action. Such denial, suspension, or revocation shall become effective 30 days after the mailing or service of the notice, unless the applicant or certificate holder, within such 30-day period, gives written notice to DIA requesting a hearing, in which case the notice shall be deemed to be suspended.

26.4(2) The hearing shall be conducted by the administrative hearings division of DIA pursuant to 481—Chapter 10.

26.4(3) At any time at or prior to the hearing, DIA may rescind the notice of the denial, suspension, or revocation upon receipt of satisfactory evidence that the reasons for the denial, suspension, or revocation have been or will be removed.

321—26.5(17A,231C,80GA,ch165) Appeals. All appeals authorized under 2003 Iowa Acts, chapter 166, section 18, or 2003 Iowa Acts, chapter 165, section 6, shall be conducted pursuant to 481—Chapter 10.

321—26.6(17A,231C,80GA,ch165) Judicial review. Procedures for judicial review shall be conducted pursuant to 481—Chapter 10.

321—26.7(17A,21,231C,80GA,ch165) Public disclosure of findings. Copies of the final report resulting from a monitoring evaluation or a complaint investigation shall be posted

in a prominent public location in the facility until the next re-certification occurs. Copies shall be readily available upon request from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083, telephone: (515)281-6325.

321—26.8(17A,231C,80GA,ch165) Discrimination or retaliation. A tenant of an assisted living program or a participant of an adult day services program, or a legal representative or family member of a tenant or participant, if applicable, or an employee of the program may file a complaint with DIA if a person has been the subject of discrimination or retaliation as prohibited by 2003 Iowa Acts, chapter 166, section 20, or 2003 Iowa Acts, chapter 165, section 12. DIA shall follow the complaint procedures outlined in 26.2(17A,231C,80GA,ch165). A program found in violation of 2003 Iowa Acts, chapter 166, section 20, or 2003 Iowa Acts, chapter 165, section 12, shall be assessed a civil penalty of \$1,000, which shall be paid to DIA within ten working days following assessment.

321—26.9(231C,80GA,ch165) Emergency removal of participants or tenants. If DIA determines the health or safety of participants in an adult day services program or tenants in an assisted living program is in immediate danger and the tenants or participants need to be removed from the program, DIA shall use the following procedures to ensure a safe and orderly transfer.

26.9(1) DIA shall notify the local area agency on aging; the department; the departments of human services, public health, and transportation; law enforcement agencies; and the tenant advocate, as necessary and appropriate, to alert them to the need to transfer participants or tenants from a program and to request assistance in identifying alternative programs or other appropriate settings and in contacting the participants or tenants, legal representatives and family members of participants or tenants, if applicable, and others as appropriate, including health care professionals.

26.9(2) DIA shall notify the program on site of the immediate need to transfer participants or tenants and of assistance available, in coordination with the appropriate parties under 26.9(2).

26.9(3) DIA shall proceed with the transfer of participants or tenants.

26.9(4) DIA may suspend a program's certificate prior to a hearing.

321—26.10(231C,80GA,ch165) Notification of casualties. DIA shall be notified by telephone within 24 hours, and may request a written report following notification, in the following situations:

26.10(1) Any accident or incident causing substantial injury to or death of a participant or tenant, visitor or program personnel.

26.10(2) When damage to the program as a result of fire, natural or other disaster impairs the program's ability to function.

These rules are intended to implement Iowa Code chapters 17A, 21, and 231C as amended by 2003 Iowa Acts, chapter 166; and 2003 Iowa Acts, chapter 165.

ITEM 3. Rescind 321—Chapter 27 and adopt the following new chapter in lieu thereof:

CHAPTER 27
FEES FOR ADULT DAY SERVICES AND
ASSISTED LIVING PROGRAMS

ELDER AFFAIRS DEPARTMENT[321](cont'd)

321—27.1(80GA, ch165) Adult day services fees.

1. Two-year initial certification of a nonaccredited program is \$750.
2. Two-year recertification of a nonaccredited program is \$1,000.
3. Blueprint review is \$900.
4. Optional preliminary plan review is \$500.

321—27.2(231C) Assisted living program fees.

1. Two-year initial certification of a nonaccredited program is \$750.
2. Two-year recertification of a nonaccredited program is \$1,000.
3. Administrative fee for an accredited program is \$125.
4. Blueprint review is \$900.
5. Optional preliminary plan review is \$500.

These rules are intended to implement 2003 Iowa Acts, chapter 165, and Iowa Code chapter 231C as amended by 2003 Iowa Acts, chapter 166.

ARC 3005B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 23, “Emission Standards for Contaminants,” Iowa Administrative Code.

The purpose of this rule making is to adopt by reference Subpart III of 40 CFR Part 62. Subpart III establishes emission requirements and compliance schedules for the control of emissions from existing commercial and industrial solid waste incineration (CISWI) units not covered under an approved state plan. Existing CISWI units are units that commenced construction on or before November 30, 1999.

Section 129 of the Clean Air Act (CAA) requires the EPA to develop performance standards pursuant to Sections 111 and 129 of the CAA for each category of solid waste incineration units. The performance standards are to include emission guidelines and compliance schedules applicable to existing CISWI units. A CISWI unit means any combustion device that combusts commercial and industrial waste as defined in Subpart III. The Monsanto Company facility in Muscatine, Iowa, is an affected facility that operates a CISWI unit that is subject to the emission guidelines.

The EPA proposed emission guidelines and compliance schedules for CISWI units on November 30, 1999, and promulgated them on December 1, 2000 (40 CFR Part 60, Subpart DDDD). Subpart DDDD provided model emission guidelines and compliance schedules for states to use in the development of state plans to implement and enforce the emission guidelines. On November 25, 2002, EPA proposed a federal plan for use in states with no approved state plan. Iowa does not have an approved state plan. The federal plan was promulgated on October 3, 2003, as Subpart III of 40 CFR Part 62.

Subpart III contains 11 major components that address the regulatory requirements applicable to existing CISWI units. When adopted by reference, these components will constitute a state plan. These components include increments of progress toward compliance, waste management plans, operator training and qualification, emission limitations and operating limits, performance testing, initial compliance requirements, continuous compliance requirements, monitoring, record keeping and reporting, definitions, and associated tables.

Any person may make written suggestions or comments on the proposed amendment on or before January 16, 2004. Written comments should be directed to Jim McGraw, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, by fax (515) 242-5167, or by electronic mail to jim.mcgraw@dnr.state.ia.us.

A public hearing will be held on January 16, 2004, at 1 p.m. at the Musser Public Library, 304 Iowa Avenue, Muscatine, Iowa, at which time comments may be submitted orally or in writing. All comments must be received no later than January 16, 2004.

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility, should contact Jim McGraw at (515)242-5167 to advise of any specific needs.

This amendment is intended to implement Iowa Code section 455B.133.

The following amendment is proposed.

Amend subrule **23.1(5)** by adopting the following **new** paragraph “**c**”:

c. Emission guidelines and compliance schedules for commercial and industrial solid waste incineration units that commenced construction on or before November 30, 1999. Emission guidelines and compliance schedules for the control of designated pollutants from affected commercial and industrial solid waste incinerators that commenced construction on or before November 30, 1999, shall be in accordance with federal plan requirements established in Subpart III of 40 CFR Part 62.

ARC 3022B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4 and 2003 Iowa Acts, chapter 112, section 4, the Department of Human Services proposes to amend Chapter 36, “Assessment Fee for Intermediate Care Facilities for the Mentally Retarded,” and Chapter 81, “Nursing Facilities,” Iowa Administrative Code.

These amendments rename Chapter 36 and create a new division to implement 2003 Iowa Acts, chapter 112, section 4, and 2003 Iowa Acts, chapter 179, section 162, which authorize the Department to collect a quality assurance assess-

HUMAN SERVICES DEPARTMENT[441](cont'd)

ment for nursing facilities and direct the Department to provide additional reimbursement to nursing facilities in connection with the assessment.

The assessment shall not exceed 6 percent of the facility's total annual nursing facility services revenue, as submitted on the facility's fiscal year end Form 470-0030, Financial and Statistical Report, for the preceding calendar year. When the assessment is implemented, the Department will adjust nursing facility payment rates to reflect the cost of the assessment for Iowa Medicaid patients. To provide additional reimbursement, the Department will also add a quality assurance payment to nursing facility per diem rates in the amount of \$5.90 per patient day.

With the adjustment of rates to reflect the cost of the assessment for Iowa Medicaid patients and the quality assurance payment, some facilities with Medicaid utilization of 42.5 percent or greater and fewer than 22,000 Medicaid patient days (projected to be 7 facilities) will experience a net loss of revenue. The majority of facilities (429) are projected to experience a net gain. Other facilities (31) are projected to see no net impact.

In the aggregate, the Department estimates that the assessment will generate approximately \$26.6 million annually in state funds. The adjustment of rates to reflect the cost of the assessment for Iowa Medicaid patients and the quality assurance payment will increase aggregate annual payments to nursing facilities in the amount of approximately \$45.2 million (state and federal funds). The state share of those increased costs is \$16.4 million. Thus, the state will receive approximately \$26.6 million in new assessment revenue and pay approximately \$16.4 million in new Medicaid reimbursement. The remaining \$10.2 million (\$26.6 less \$16.4) shall be credited to the Senior Living Trust Fund, as directed by 2003 Iowa Acts, chapter 112.

Certain nursing facilities are exempt from paying the assessment: facilities that are operated by the state, non-state-government-owned or non-state-government-operated facilities, hospital-based facilities licensed under Iowa Code chapter 135B, and any facilities with an Iowa Medicaid utilization rate of less than 10 percent. These amendments do not provide for waivers in other situations because all facilities should be subject to the same collection and reimbursement methodology, as a matter of fairness.

Any interested person may make written comments on the proposed amendments on or before December 31, 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.

The Department has scheduled a public hearing for the purpose of receiving comments on these amendments. The hearing will be held on January 5, 2004, from 9 to 10 a.m. in the Fifth Floor Southwest Conference Room, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114.

Anyone who intends to attend the hearing and has special requirements, such as hearing or vision impairments, should contact the Office of Policy Analysis at (515)281-8440 and advise of special needs.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 3021B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement 2003 Iowa Acts, chapter 112, section 4, and 2003 Iowa Acts, chapter 179, section 162.

ARC 3024B**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 sections 234.6 and 249A.4 and 2003 Iowa Acts, chapter 175, section 8, subsection 7, and section 14, the Department of Human Services proposes to amend Chapter 51, "Eligibility," Chapter 52, "Payment," and Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

These amendments make annual adjustments to the State Supplementary Assistance and Medicaid programs based on annual Supplemental Security Income cost-of-living adjustments and consumer price index figures by:

- Increasing the payment amount and income level for State Supplementary Assistance dependent person and family life home benefits. The Department is directed by 2003 Iowa Acts, chapter 175, section 14, to "pass along" the 2003 cost-of-living increase to recipients of State Supplementary Assistance and to meet federal maintenance of effort requirements. The dependent person payment increases \$6 per month per household, from a maximum of \$279 to \$285. The family life home payment is increased \$10 from \$635 to \$645. The family life home increase is offset by the increase in the clients' Supplemental Security Income. Payment levels for other categories of State Supplementary Assistance remain adequate to meet federal maintenance of effort requirements.
- Increasing the personal needs allowance for residents of a family life home or residential care facility by the same percentage as the federal Supplemental Security Income benefits are increased (2.1 percent), as directed by 2003 Iowa Acts, chapter 175, section 14. The personal needs allowance is increased by \$2 per month, from \$79 to \$81. (The portion allocated for the average Medicaid copayment remains the same, rounded to \$7.)
- Increasing the amounts used in determining the Medicaid eligibility of an institutionalized spouse. The maximum amount of resources to be attributed to a community spouse is increased from \$90,660 to \$92,760. The maintenance needs allowance for the community spouse is increased from \$2,266.50 per month to \$2319 per month. The Medicare Catastrophic Coverage Act requires these figures to be updated annually based on the consumer price index. The Department has received notice of these increases from the U.S. Department of Health and Human Services.

These amendments do not provide for waivers in specified situations because they confer a benefit on recipients.

Any interested person may make written comments on the proposed amendments on or before December 31, 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 were also Adopted and Filed Emergency and are published herein as **ARC 3023B**. The purpose

HUMAN SERVICES DEPARTMENT[441](cont'd)

of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement Iowa Code sections 249.3 and 249A.3 and 2003 Iowa Acts, chapter 175, section 14.

ARC 2987B

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 sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 57, “Residential Care Facilities,” Chapter 58, “Nursing Facilities,” Chapter 62, “Residential Care Facilities for Persons with Mental Illness,” Chapter 63, “Residential Care Facilities for the Mentally Retarded,” Chapter 64, “Intermediate Care Facilities for the Mentally Retarded,” and Chapter 65, “Intermediate Care Facilities for Persons with Mental Illness,” Iowa Administrative Code.

The proposed amendments clarify the process used to appeal the involuntary discharge or transfer of a resident from a long-term care facility, making it consistent with the Department’s administrative rules found at 481—Chapter 10, “Contested Case Hearings,” and Iowa Code chapter 17A. Additionally, the proposed amendments stipulate that the administrative law judge will set the date, time and place for the hearing on an involuntary discharge, rather than requiring all hearings to be held in the facility. This change is technical in nature and conforms the rules to current practice of the Administrative Hearings Division. Also, the proposed amendments change the number of days in which the Department may respond to a request for a waiver from 45 days to 120 days, which is consistent with the Department’s uniform waiver and variance rules.

As the proposed amendments are administrative in nature, the Department does not believe their adoption will financially impact the agency, regulated entities, or any other individual.

The proposed amendments were presented to the State Board of Health for initial review at the Board’s November 12, 2003, meeting.

Any interested person may make written suggestions or comments on these proposed amendments on or before December 30, 2003. Such written materials should be directed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; or faxed to (515)242-6863. E-mail may be sent to david.werning@dia.state.ia.us.

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135C.14.

The following amendments are proposed.

ITEM 1. Amend subrule 57.2(3) as follows:

57.2(3) Based upon these studies, approval of the variance will be either granted or denied within 45 120 days of receipt.

ITEM 2. Amend paragraph **57.36(1)“f”** as follows:

f. The *type of hearing shall be held in the facility and the date and time of the hearing shall be determined by a representative of the department.* Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident, responsible party, and Iowa department of elder affairs long-term care ombudsman of record, not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident, or responsible party, that they have a right to appear at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. The Iowa department of elder affairs long-term care ombudsman shall have the right to appear at the hearing.

ITEM 3. Rescind paragraph **57.36(1)“h”** and adopt the following **new** paragraph:

h. Based upon all testimony and material submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, responsible party, and department of elder affairs long-term care ombudsman within 10 working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

A request for review of a proposed decision in which the department is the final decision maker shall be made within 15 days of issuance of the proposed decision, unless otherwise provided by statute. Requests shall be mailed or delivered by either party to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. Failure to request review will preclude judicial review unless the department reviews a proposed decision upon its own motion within 15 days of its issuance.

ITEM 4. Amend subrule 58.2(3) as follows:

58.2(3) Based upon these studies, approval of the variance will be either granted or denied within 45 120 days of receipt.

ITEM 5. Amend paragraph **58.40(1)“f”** as follows:

f. The *type of hearing shall be held in the facility and the date and time of the hearing shall be determined by a representative of the department.* Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident, responsible party, and Iowa department of elder affairs long-term care ombudsman of record not later than five full business days after receipt of request. This notice shall also inform the licensee, resident or responsible party, that they have a right to appear at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. The Iowa department of elder affairs long-term care ombudsman shall have the right to appear at the hearing.

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

ITEM 6. Rescind paragraph **58.40(1)“h”** and adopt the following **new** paragraph:

h. Based upon all testimony and material submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, responsible party, and department of elder affairs long-term care ombudsman within 10 working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

A request for review of a proposed decision in which the department is the final decision maker shall be made within 15 days of issuance of the proposed decision, unless otherwise provided by statute. Requests shall be mailed or delivered by either party to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. Failure to request review will preclude judicial review unless the department reviews a proposed decision upon its own motion within 15 days of its issuance.

ITEM 7. Amend subrule 62.4(3) as follows:

62.4(3) Based upon this information, approval of the variance will be either granted or denied within 45 120 days of receipt.

ITEM 8. Amend subparagraph **62.14(4)“b”(3)** as follows:

(3) The *type of hearing* shall be ~~held in the facility and the date and time of the hearing shall be determined~~ by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident, legal guardian, and Iowa department of elder affairs long-term care resident's advocate/ombudsman of record, not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident, or legal guardian that they have a right to appear at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present ~~nor~~ or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. The Iowa department of elder affairs' long-term care resident's advocate/ombudsman shall have the right to appear at the hearing. (II)

ITEM 9. Rescind subparagraph **62.14(4)“b”(5)** and adopt the following **new** subparagraph:

(5) Based upon all testimony and material submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by regular mail to the licensee, resident, responsible party, and department of elder affairs long-term care ombudsman within 10 working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

A request for review of a proposed decision in which the department is the final decision maker shall be made within 15 days of issuance of the proposed decision, unless otherwise provided by statute. Requests shall be mailed or delivered by either party to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. Failure to request review will preclude ju-

dicial review unless the department reviews a proposed decision upon its own motion within 15 days of its issuance.

ITEM 10. Amend subrule 63.2(3) as follows:

63.2(3) Based upon these studies, approval of the variance will be either granted or denied within 45 120 days of receipt.

ITEM 11. Amend paragraph **63.34(1)“P”** as follows:

f. The *type of hearing* shall be ~~held in the facility and the date and time of the hearing shall be determined~~ by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident, responsible party, and the Iowa department of elder affairs long-term care ombudsman of record not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident or responsible party, that they have a right to appear at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present ~~nor~~ or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. The Iowa department of elder affairs long-term care ombudsman shall have the right to appear at the hearing.

ITEM 12. Rescind paragraph **63.34(1)“h”** and adopt the following **new** paragraph:

h. Based upon all testimony and material submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, responsible party, and department of elder affairs long-term care ombudsman within 10 working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

A request for review of a proposed decision in which the department is the final decision maker shall be made within 15 days of issuance of the proposed decision, unless otherwise provided by statute. Requests shall be mailed or delivered by either party to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. Failure to request review will preclude judicial review unless the department reviews a proposed decision upon its own motion within 15 days of its issuance.

ITEM 13. Amend subrule 64.2(3) as follows:

64.2(3) Based upon these studies, approval of the variance will be either granted or denied within 45 120 days of receipt.

ITEM 14. Amend paragraph **64.36(1)“P”** as follows:

f. The *type of hearing* shall be ~~held in the facility and the hearing shall be determined~~ by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident, responsible party, and Iowa department of elder affairs long-term care ombudsman of record not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident or responsible party that they have a right to appear at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. The

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

Iowa department of elder affairs long-term care ombudsman shall have the right to appear at the hearing.

ITEM 15. Rescind paragraph **64.36(1)“h”** and adopt the following **new** paragraph:

h. Based upon all testimony and material submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, responsible party, and department of elder affairs long-term care ombudsman within 10 working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

A request for review of a proposed decision in which the department is the final decision maker shall be made within 15 days of issuance of the proposed decision, unless otherwise provided by statute. Requests shall be mailed or delivered by either party to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. Failure to request review will preclude judicial review unless the department reviews a proposed decision upon its own motion within 15 days of its issuance.

ITEM 16. Amend subrule 65.4(3) as follows:

65.4(3) Based upon this information, approval of the variance will be either granted or denied within 45 120 days of receipt.

ITEM 17. Amend paragraph **65.16(6)“a”** as follows:

a. The *type of hearing* shall be held in the facility and the date and time of the hearing shall be determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by United States mail or delivered in person to the licensee, resident, legal guardian, and Iowa department of elder affairs' long-term care resident's advocate/ombudsman of record not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident, and legal guardian, that they have a right to appear at the hearing in person or be represented by their attorneys or other individuals. The hearing shall be dismissed if neither party is present ~~nor~~ or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. The Iowa department of elder affairs' long-term care resident's advocate/ombudsman shall have the right to appear at the hearing. (II)

ITEM 18. Rescind paragraph **65.16(6)“d”** and adopt the following **new** paragraph:

d. Based upon all testimony and material submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, responsible party, and department of elder affairs long-term care ombudsman within 10 working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

A request for review of a proposed decision in which the department is the final decision maker shall be made within 15 days of issuance of the proposed decision, unless otherwise provided by statute. Requests shall be mailed or delivered by either party to the Director, Department of Inspec-

tions and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. Failure to request review will preclude judicial review unless the department reviews a proposed decision upon its own motion within 15 days of its issuance.

ARC 3009B**NATURAL RESOURCE
COMMISSION[571]****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 subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 94, “Nonresident Deer Hunting,” Iowa Administrative Code.

Chapter 94 gives the regulations for hunting deer and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of taking, and transportation tag requirements. These amendments add a minimum arrow length for bow hunting and expand the procedures for obtaining licenses to include Internet sales.

Any interested person may make written suggestions or comments on the proposed amendments on or before December 30, 2003. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Bureau at (515)281-6156 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on December 30, 2003, at 2 p.m. in the Fourth 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 intend to 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 amendments are intended to implement Iowa Code sections 481A.38, 481A.39 and 481A.48.

The following amendments are proposed.

ITEM 1. Rescind subrule 94.7(1) and adopt the following **new** subrule in lieu thereof:

94.7(1) Bow season. Except for crossbows for persons with certain afflictions of the upper body, as provided in 571—15.5(481A), only longbow, compound or recurve bows shooting broadhead arrows are permitted. Arrows must be at least 18 inches long. No explosive or chemical devices may be attached to the arrow or broadhead.

ITEM 2. Amend rule 571—94.8(483A), introductory paragraph, as follows:

NATURAL RESOURCE COMMISSION[571](cont'd)

571—94.8(483A) Application procedure. Applications for nonresident deer hunting licenses must be made through the electronic licensing system for Iowa (ELSI) telephone order system or the *ELSI Internet license sales Web site*.

ITEM 3. Amend subrule 94.8(1) and subrule 94.8(2), introductory paragraph, as follows:

94.8(1) Any-sex deer licenses. Applications for any-sex licenses will be accepted from the first Saturday in May through the first Sunday in June. No one may submit more than one application during the application period. Hunters may apply as individuals or as a group of up to 15 applicants. All members of a group will be accepted or rejected together in the drawing. If applications have been sold in excess of the license quota for any zone or season, a drawing will be held to determine which applicants receive licenses. Licenses or refunds of license fees will be mailed to applicants after the drawing is completed. License agent writing fees, department administrative fees and telephone order charges will not be refunded. If any zone's license quota for any-sex licenses has not been filled, the excess any-sex licenses will be sold on a first-come, first-served basis through the telephone ordering system or the *Internet license sales Web site*. *Excess any-sex licenses will be sold* beginning the fourth Saturday after the close of the application period until the quota has been filled; or the last day of the hunting period for which the license is valid, or ~~December 14~~, whichever occurs first. Members of a group that is rejected may purchase licenses individually if excess any-sex licenses or antlerless-only licenses are available.

94.8(2) Antlerless-only deer licenses. *Antlerless-only deer licenses must be purchased through the ELSI telephone ordering system or the ELSI Internet license sales Web site*. Licenses for taking antlerless-only deer will be available on the same date as excess any-sex licenses are sold as explained in 94.8(1). Antlerless-only licenses will be sold first-come, first-served until the statewide quota is filled, or until the last day of the season for which a license is valid. If antlerless-only licenses are still available on December 15, they may be purchased by nonresidents to hunt during the period from December 24 through January 2. These licenses will be available to nonresidents who have not purchased a nonresident deer license during one of the current deer seasons. The cost will be \$50, and the hunter must have in possession a valid nonresident small game hunting license and proof of having paid the current year's wildlife habitat fee. Antlerless-only licenses will be issued by season and zone and will be valid only in the season and zone designated on the license.

ITEM 4. Amend subrule 94.10(7) as follows:

94.10(7) Application procedures. Persons meeting the requirements for this season must apply following the procedures described in 571—94.8(483A). A person who does not have a form on file to verify a disability will not be entered into the drawing or be allowed to purchase a license and will have the license fee refunded, less a \$10 administrative fee to cover the cost of handling the application as provided in 571—subrule 15.11(1). License agent writing fees, department administrative fees, *Internet sales charges* and telephone order charges will not be refunded.

ARC 2990B

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 Speech Pathology and Audiology Examiners hereby gives Notice of Intended Action to amend Chapter 300, “Licensure of Speech Pathologists and Audiologists,” and Chapter 305, “Fees,” Iowa Administrative Code.

These proposed amendments adopt criteria for obtaining a duplicate or reissued license, adopt requirements for renewal of a license to practice speech pathology and audiology, and define services subject to regulation.

Any interested person may make written comments on the proposed amendments no later than January 6, 2004, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50309-0075, E-mail pwilson@idph.state.ia.us.

A public hearing will be held on January 6, 2004, 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, and 272C.

The following amendments are proposed.

ITEM 1. Renumber existing rules **645—300.2(147)** through **645—300.13(147)** as **645—300.3(147)** through **645—300.14(147)**, renumber existing rule **645—300.14(17A,147,272C)** as **645—300.16(17A,147,272C)** and adopt the following **new** rule:

645—300.2(147) Speech pathology and audiology services subject to regulation. The provision of speech pathology or audiology services in Iowa through telephonic, electronic, or other means, regardless of the location of the speech/language pathologist or audiologist, shall constitute the practice of speech pathology or audiology and shall require Iowa licensure.

ITEM 2. Rescind renumbered rule 645—300.11(147) and adopt the following **new** rule in lieu thereof:

645—300.11(147) License renewal.

300.11(1) The biennial license renewal period for a license to practice speech pathology or audiology shall begin on January 1 of an even-numbered year and end on December 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.

300.11(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 date two years later.

300.11(3) A licensee shall:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

a. Meet the continuing education requirements of rule 645—303.2(147) and the mandatory reporting requirements of subrule 300.11(4); and

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

300.11(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.

(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 303.

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

300.11(5) When all requirements for license renewal are met, the licensee shall be sent a wallet card by regular mail.

300.11(6) A person licensed to practice as a speech pathologist or audiologist shall keep the person’s license certificate and wallet card displayed in a conspicuous public place at the primary site of practice.

300.11(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 305.1(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 3. Adopt the following **new** rule:

645—300.15(147) Reissued certificate or wallet card. The board shall reissue a certificate or current wallet card upon re-

ceipt of a written request from the licensee, return of the original document and payment of the fee as specified in rule 645—305.1(147).

ITEM 4. Amend subrule 305.1(5) as follows:

305.1(5) Duplicate or reissued license certificate fee is \$10.

ITEM 5. Renumber subrules **305.1(6)** to **305.1(10)** as **305.1(7)** to **305.1(11)** and adopt the following **new** subrule:

305.1(6) Duplicate or reissued wallet card fee is \$10.

ARC 2979B**PUBLIC HEALTH
DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 139A.4 and 2003 Iowa Acts, chapter 33, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 1, “Notification and Surveillance of Reportable Communicable and Infectious Diseases, Poisonings and Conditions,” Iowa Administrative Code.

The proposed amendments clarify and establish the following:

1. The process for reporting to the Department confirmed or suspected cases of quarantinable diseases, other diseases that carry serious consequences or spread rapidly, and common source epidemic or disease outbreaks of unusual numbers or under unusual circumstances.

2. The necessary assistance from health care providers and public, private, or hospital clinical laboratories in gathering information to conduct investigations and surveys of reportable diseases.

3. The provision for examination, testing, and treatment of an individual or contact with a suspected or active quarantinable disease.

4. The provisions, conditions and principles for quarantine or isolation of individuals or groups of individuals with suspected or active quarantinable disease.

Any interested party may make written comments on these proposed amendments on or before December 30, 2003. Such written comments should be directed to the Department of Public Health, Division of Epidemiology, Emergency Medical Services and Disaster Operations (DEED), Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075.

A public hearing will be held over the Iowa Communications Network (ICN) on December 30, 2003, from 10 to 11 a.m. in the ICN Room, Sixth Floor, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa.

Additional sites include the following:

Kirkwood Community College, 6301 Kirkwood Blvd., Cedar Rapids

Glenwood Resource Center, 711 South Vine Street, Glenwood

Indian Hills Community College, 651 Indian Hills Drive, Ottumwa

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Buena Vista University, 610 West 4th Street, Storm Lake
Newman Catholic High School, 2445 19th Street SW,
Mason City

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

These amendments are intended to implement Iowa Code chapter 139A and section 135.11(4) and 2003 Iowa Acts, chapter 33.

The following amendments are proposed.

ITEM 1. Amend rule **641—1.1(139A)** by adding the following **new** definitions in alphabetical order:

“Investigation” means an inquiry conducted to determine the specific source, mode of transmission, and cause of a disease or suspected disease occurrence and to determine the specific incidence, prevalence, and extent of the disease in the affected population. “Investigation” may also include the application of scientific methods and analysis to institute appropriate control measures.

“Isolation” means the separation of persons or animals presumably or actually infected with a communicable disease, or that are disease carriers, for the usual period of communicability of that disease. Isolation shall be in such places, marked by placards if necessary, and under such conditions to prevent the direct or indirect conveyance of the infectious agent or contagion to susceptible individuals.

“Local board of health” means a county, city, or district board of health.

“Public health disaster” means an incident as defined in 2003 Iowa Acts, chapter 33, section 1.

“Quarantinable disease” means any communicable disease which presents a risk of serious harm to public health and which may require isolation or quarantine to prevent its spread. “Quarantinable disease” includes but is not limited to cholera; diphtheria; infectious tuberculosis; plague; smallpox; yellow fever; viral hemorrhagic fevers, including Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named; and severe acute respiratory syndrome (SARS).

“Quarantine” means the limitation of freedom of movement of persons or animals that have been exposed to a communicable disease, within specified limits marked by placards, for a period of time equal to the longest usual incubation period of the disease. The limitation of movement shall be in such manner as to prevent the spread of a communicable disease.

“Survey” means the systematic collection, evaluation, analysis, and monitoring of data related to the occurrence and spread of disease. “Survey” includes but is not limited to the systematic collection and evaluation of investigation reports, reports and records related to morbidity and mortality, reports and records related to disease epidemics and individual cases of reportable disease, laboratory reports, and other relevant epidemiological data.

ITEM 2. Rescind rule **641—1.4(139A)** and adopt the following **new** rule in lieu thereof:

641—1.4(135,139A) Reporting, investigation, and surveys.

1.4(1) Reporting by telephone.

a. Quarantinable diseases. A health care provider and a public, private, or hospital clinical laboratory shall immediately report any confirmed or suspected case of quarantinable disease by telephone to the department’s disease notification hotline at 1-800-362-2736. The report shall include all infor-

mation required by Iowa Code section 139A.3 and the following:

- (1) The stage of the disease process.
- (2) Clinical status.
- (3) Any treatment provided for the disease.
- (4) All household and other known contacts.
- (5) Whether household and other known contacts have been examined and the results of such examinations.

b. Other diseases that carry serious consequences or spread rapidly. Any common source epidemic or disease outbreak of unusual numbers or under unusual circumstances shall be reported to the department immediately by telephone at 1-800-362-2736.

1.4(2) Reporting by mail. Cases of other reportable diseases and conditions shall be reported to the department by mail at least weekly. If reporting by mail hinders the application of organized control measures to protect the public health, or if the department so requests, the disease or condition shall be reported by telephone.

1.4(3) Investigation and surveys of reportable diseases. A health care provider and a public, private, or hospital clinical laboratory shall assist in a disease investigation or survey conducted by the department, a local board, or local department. A health care provider and a public, private, or hospital clinical laboratory shall provide the department, local board, or local department with all information necessary to conduct the investigation or survey, including but not limited to medical records; exposure histories; medical histories; contact information; and test results necessary to the investigation or survey, including positive, pending, and negative test results.

ITEM 3. Rescind rule **641—1.9(139A)** and adopt the following **new** rule in lieu thereof:

641—1.9(135,139A) Quarantine and isolation.

1.9(1) Examination, testing and treatment of quarantinable diseases.

a. A health care provider who attends an individual with a suspected or active quarantinable disease shall make all reasonable efforts to examine or cause all household and other known contacts of the individual to be examined by a physician. The physician shall promptly report to the department the results of such examination. If the individual refuses or is unable to undergo examination, the health care provider shall promptly report such information to the department. An examination required by this rule shall include such tests as may be necessary to diagnose the presence of a quarantinable disease including, but not limited to, tests to identify specific signs, laboratory examinations, or other diagnostic processes.

b. When required by the department, all contacts not examined by a physician, including all adult and minor contacts, shall submit to a diagnostic test or tests. If any suspicious abnormality is found, steps satisfactory to the department shall be taken to refer the individual promptly to a physician or appropriate medical facility for further evaluation and, if necessary, treatment. When requested by the department, a physician shall report the results of any examination of a contact to the case or suspected case or incident.

c. An individual with a suspected or active quarantinable disease shall be excluded from attendance at the workplace or school and shall not be present at other public places until the individual receives the approval of the department or a local board of health to engage in such activity. Such individual may also be excluded from such premises or facilities as the department or a local board of health determines cannot

PUBLIC HEALTH DEPARTMENT[641](cont'd)

be maintained in a manner adequate to protect others against the spread of the disease.

1.9(2) General provisions.

a. Voluntary confinement. Prior to instituting mandatory isolation or quarantine pursuant to this rule, the department or a local board of health may request that an individual or group of individuals voluntarily confine themselves to a private home or other facility.

b. Quarantine and isolation. The department and local boards of health are authorized to impose and enforce quarantine and isolation restrictions. Quarantine and isolation shall rarely be imposed by the department or by local boards of health. If a quarantinable disease occurs in Iowa, individuals with a suspected or active quarantinable disease and contacts to the case may be quarantined or isolated as the particular situation requires. Any quarantine or isolation imposed by the department or a local board of health shall be established and enforced in accordance with this rule.

1.9(3) Conditions and principles. The department and local boards of health shall adhere to all of the following conditions and principles when isolating or quarantining individuals or a group of individuals:

a. The isolation or quarantine shall be by the least restrictive means necessary to prevent the spread of a communicable or possibly communicable disease to others and may include, but not be limited to, confinement to private homes, other private premises, or public premises.

b. Isolated individuals shall be confined separately from quarantined individuals.

c. The health status of isolated or quarantined individuals shall be monitored regularly to determine if the individuals require further or continued isolation or quarantine.

d. If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a communicable or possibly communicable disease, the individual shall be promptly removed to isolation.

e. Isolated or quarantined individuals shall be immediately released when the department or local board of health determines that the individuals pose no substantial risk of transmitting a communicable or possibly communicable disease.

f. The needs of isolated or quarantined individuals shall be addressed in a systemic and competent fashion including, but not limited to, providing adequate food; clothing; shelter; means of communicating with those in and outside of isolation or quarantine; medication; and competent medical care.

g. The premises used for isolation or quarantine shall be maintained in a safe and hygienic manner and shall be designed to minimize the likelihood of further transmission of infection or other harm to isolated or quarantined individuals.

h. To the extent possible, cultural and religious beliefs shall be considered in addressing the needs of individuals in isolation or quarantine premises and in establishing and maintaining the premises.

1.9(4) Isolation or quarantine premises.

a. Sites of isolation or quarantine shall be prominently placarded with isolation or quarantine signs prescribed and furnished by the department and posted on all sides of the building wherever access is possible.

b. An individual subject to isolation or quarantine shall obey the rules and orders of the department or the local board of health and shall not go beyond the isolation or quarantine premises.

c. The department or a local board of health may authorize physicians, health care workers, or others access to indi-

viduals in isolation or quarantine as necessary to meet the needs of isolated or quarantined individuals.

d. No individual, other than an individual authorized by the department or a local board of health, shall enter isolation or quarantine premises. If the department has requested the assistance of law enforcement in enforcing the isolation or quarantine, the department shall provide law enforcement personnel with a list of individuals authorized to enter the isolation or quarantine premises.

e. Any individual entering an isolation or quarantine premises with or without authorization of the department or a local board of health may be isolated or quarantined pursuant to this rule.

1.9(5) Isolation and quarantine by local boards of health.

a. A local board of health may:

(1) Isolate individuals who are presumably or actually infected with a quarantinable disease;

(2) Quarantine individuals who have been exposed to a quarantinable disease;

(3) Establish and maintain places of isolation and quarantine; and

(4) Adopt emergency rules and issue orders as necessary to establish, maintain, and enforce isolation or quarantine.

b. Isolation and quarantine undertaken by a local board of health shall be accomplished according to the rules and regulations of the local board of health so long as such rules are not inconsistent with this chapter.

1.9(6) Isolation and quarantine by the Iowa department of public health.

a. Authority.

(1) The department, through the director, the department's medical director, or the director or medical director's designee, may:

1. Isolate individuals or groups of individuals who are presumably or actually infected with a quarantinable disease; and

2. Quarantine individuals or groups of individuals who have been exposed to a quarantinable disease, including individuals who are unable or unwilling to undergo examination, testing, vaccination, or treatment, pursuant to 2003 Iowa Acts, chapter 33.

(2) The department may:

1. Establish and maintain places of isolation and quarantine; and

2. Adopt emergency rules and issue orders as necessary to establish, maintain, and enforce isolation or quarantine.

(3) Isolation and quarantine undertaken by the department, including isolation and quarantine undertaken by the department in the event of a public health disaster, shall be established pursuant to paragraphs 1.9(6)"b" or "c."

b. Temporary isolation and quarantine without notice. The department may temporarily isolate or quarantine an individual or groups of individuals through an oral order, without notice, only if delay in imposing the isolation or quarantine would significantly jeopardize the department's ability to prevent or limit the transmission of a communicable or possibly communicable disease to others. If the department imposes temporary isolation or quarantine of an individual or groups of individuals through an oral order, the department shall issue a written order as soon as is reasonably possible and in all cases within 24 hours of issuance of the oral order if continued isolation or quarantine is necessary to prevent or limit the transmission of a communicable or possibly communicable disease.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

c. Written order. The department may isolate or quarantine an individual or groups of individuals through a written order issued pursuant to this rule.

(1) The written order shall include all of the following:

1. The identity of the individual, individuals, or groups of individuals subject to isolation or quarantine.
2. The premises subject to isolation or quarantine.
3. The date and time at which isolation or quarantine commences.
4. The suspected communicable disease.
5. A description of the less restrictive alternatives that were attempted and were unsuccessful, or the less restrictive alternatives that were considered and rejected, and the reasons such alternatives were rejected.
6. A statement of compliance with the conditions and principles for isolation and quarantine specified in subrule 1.9(3).
7. The legal authority under which the order is requested.
8. The medical basis upon which isolation or quarantine is justified.
9. A statement advising the individual, individuals, or groups of individuals of the right to appeal the written order pursuant to subrule 1.9(7) and the rights of individuals and groups of individuals subject to quarantine and isolation as listed in subrule 1.9(8).
10. A copy of this chapter and the relevant definitions of this rule.

(2) A copy of the written order shall be provided to the individual to be isolated or quarantined within 24 hours of issuance of the order in accordance with any applicable process authorized by the Iowa Rules of Civil Procedure. If the order applies to a group or groups of individuals and it is impractical to provide individual copies, the order may be posted in a conspicuous place in the isolation or quarantine premises.

1.9(7) Appeal from order imposing isolation or quarantine.

a. Contested case. The subject of a department order imposing isolation or quarantine may appeal a written order and has the right to a contested case hearing regarding such appeal. The subject of a department order imposing isolation or quarantine may appeal the order by submitting a written appeal within ten days of receipt of the written order. The appeal shall be addressed to the Department of Public Health, Division of Epidemiology, Emergency Medical Services, and Disaster Operations, Lucas State Office Building, Des Moines, Iowa 50319-0075. Unless stayed by order of the director or a district court, the written order for quarantine or isolation shall remain in force and effect until the appeal is finally determined and disposed of upon its merits.

b. Presiding officer. The presiding officer in a contested case shall be the director or the director's designee. The director or the director's designee may be assisted by an administrative law judge in conducting the contested case hearing. The decision of the director or the director's designee shall be the department's final decision and is subject to judicial review in accordance with the provisions of Iowa Code chapter 17A.

c. Proceeding. The contested case hearing shall be conducted in accordance with the provisions contained at 641—Chapter 173. The hearing shall be held as soon as is practicable, and in no case later than ten days from the date of receipt of the appeal. The hearing may be held by telephonic or other electronic means if necessary to prevent additional exposure to the communicable or possibly communicable disease. In

extraordinary circumstances and for good cause shown, the department may apply to continue the hearing date for up to ten additional days on a petition filed pursuant to this rule. The presiding officer may use discretion in granting a continuance giving due regard to the rights of the affected individuals, the protection of the public's health, and the availability of necessary witnesses and evidence.

d. Judicial review. The aggrieved party to the final decision of the department may petition for judicial review of that action pursuant to Iowa Code chapter 17A. Petitions for judicial review shall be filed within 30 days after the decision becomes final.

e. Immediate judicial review of department order. The department acknowledges that in certain circumstances the subject or subjects of a department order may desire immediate judicial review of a department order in lieu of proceeding with the contested case process. The department recognizes that the procedural step of pursuing exhaustion of administrative remedies may be inadequate for purposes of Iowa Code section 17A.19, and the department may consent to immediate jurisdiction of the district court when requested by the subject or subjects of a department order and justice so requires. Unless stayed by order of the director or a district court, the written order for quarantine or isolation shall remain in force and effect until the judicial review is finally determined and disposed of upon its merits.

1.9(8) Rights of individuals and groups of individuals subject to isolation or quarantine. Any individual or group of individuals subject to isolation or quarantine shall have the following rights:

- a. The right to be represented by legal counsel.
- b. The right to be provided with prior notice of the date, time, and location of any hearing.
- c. The right to participate in any hearing. The hearing may be held by telephonic or other electronic means if necessary to prevent additional exposure to the communicable or possibly communicable disease.
- d. The right to respond and present evidence and argument on the individual's own behalf in any hearing.
- e. The right to cross-examine witnesses who testify against the individual.
- f. The right to view and copy all records in the possession of the department which relate to the subject of the written order.

1.9(9) Consolidation of claims. In any proceeding brought pursuant to this rule, to promote the fair and efficient operation of justice and having given due regard to the rights of the affected individuals, the protection of the public's health, and the availability of necessary witnesses and evidence, the department or a court may order the consolidation of individual claims into group claims, if all of the following conditions exist:

- a. The number of individuals involved or to be affected is so large that individual participation is impractical.
- b. There are questions of law or fact common to the individual claims or rights to be determined.
- c. The group claims or rights to be determined are typical of the affected individuals' claims or rights.
- d. The entire group will be adequately represented in the consolidation.

1.9(10) Implementation and enforcement of isolation and quarantine.

a. Jurisdictional issues. The department has primary jurisdiction to isolate or quarantine individuals or groups of individuals if the communicable disease outbreak has affected more than one county or has multicounty, statewide, or inter-

PUBLIC HEALTH DEPARTMENT[641](cont'd)

state public health implications. If isolation or quarantine is imposed by the department, a local board of health or local health department may not alter, amend, modify, or rescind the isolation or quarantine order.

b. Assistance of local boards of health and local health departments. If isolation or quarantine is imposed by the department, the local boards of health and the local health departments in the affected areas shall assist in the implementation of the isolation or quarantine order.

c. Assistance of law enforcement. Pursuant to Iowa Code section 135.35, all peace officers of the state shall enforce and execute a lawful department order for isolation or quarantine within their respective jurisdictions. The department shall take all reasonable measures to minimize the risk of exposure to peace officers and others assisting with enforcement of an isolation or quarantine order.

d. Penalty. Pursuant to Iowa Code section 135.38, any individual who knowingly violates a lawful department order for isolation or quarantine, whether written or oral, shall be guilty of a simple misdemeanor. The court-ordered sentence may include a fine of up to \$500 and imprisonment not to exceed 30 days.

e. Enforcement action. The department may file a civil action in Polk County district court to enforce a department order for isolation or quarantine. Such action shall be filed in accordance with Iowa Rules of Civil Procedure.

ITEM 4. Amend **641—Chapter 1**, implementation clause, as follows:

These rules are intended to implement Iowa Code sections 135.100 to 135.103, 139A.2, 139A.3, 139A.21, 139A.31, 139A.37, 141A.1, 141A.2 and 141A.5 and 2003 Iowa Acts, chapter 33.

ARC 2983B**PUBLIC SAFETY
DEPARTMENT[661]****Notice of Intended Action**

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

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

Pursuant to the authority of 2003 Iowa Acts, chapter 165, section 15, the Department of Public Safety gives Notice of Intended Action to amend Chapter 5, “Fire Marshal,” Iowa Administrative Code.

Iowa Code section 100.1, subsection 5, assigns to the State Fire Marshal the exclusive authority to adopt fire safety rules in Iowa. 2003 Iowa Acts, chapter 165, section 15, requires the State Fire Marshal, in coordination with the Department of Elder Affairs and the Department of Inspections and Appeals, to establish fire safety standards for adult day services programs. Compliance with these standards will be required for operation of adult day services programs in Iowa.

The proposed amendments would adopt by reference those chapters of the Life Safety Code that are intended to apply to day care occupancies. The Life Safety Code, which is a standard issued by the National Fire Protection Association (NFPA), is a nationally accepted code. Its use complies with

a provision of the Code of Iowa that requires the State Fire Marshal generally to adopt NFPA standards.

A public hearing on these proposed amendments will be held on January 7, 2004, at 11 a.m. over the Iowa Communications Network. Access to the public hearings will be available through the following locations:

Third Floor Conference Room
Wallace State Office Building
East Ninth and Grand
Des Moines

Department of Human Services
411 3rd Street SE, Room 550
Cedar Rapids

Southwestern Iowa Community College
1501 West Townline Road, Room 211
Creston

Public Library
529 Pierce Street
Sioux City

Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail, by telephone at (515)281-5524, or by electronic mail to admrule@dps.state.ia.us, at least one day prior to the public hearing.

Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated at least one day prior to the public hearing, or submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department office at least one day prior to the public hearing.

These amendments are intended to implement 2003 Iowa Acts, chapter 165.

The following amendments are proposed.

ITEM 1. Amend subrule **5.5(2)** by relettering paragraphs “c” through “e” as “d” through “f” and adopting the following **new** paragraph “c”:

c. The inspection fee for an adult day services program certified or seeking certification pursuant to 2003 Iowa Acts, chapter 165, is \$50 per facility.

ITEM 2. Amend rule 661—5.500(100), introductory paragraph, as follows:

661—5.500(100) Definitions. The following definitions apply to rules 661—5.500(100) to 661—5.549 661—5.509.

ITEM 3. Adopt the following **new** caption and rule:

ADULT DAY SERVICES PROGRAMS

661—5.510(80GA,ch165) Adult day services.

5.510(1) Definitions. The following definitions apply to rule 661—5.510(80GA,ch165).

“Existing adult day services program” means an adult day service program certified or seeking certification from the department of inspections and appeals pursuant to the provisions of 2003 Iowa Acts, chapter 165, and which has been in continual operation in the same facility since [effective date of rule to be inserted] or before and which has operated continuously since [effective date of rule to be inserted] in a fa-

PUBLIC SAFETY DEPARTMENT[661](cont'd)

cility which has not undergone major renovation or remodeling since [effective date of rule to be inserted].

“New adult day services program” means an adult day services program certified or seeking certification from the department of inspections and appeals pursuant to the provisions of 2003 Iowa Acts, chapter 165, which has not been in continual operation since [effective date of rule to be inserted] and which has not undergone major renovation or remodeling since [effective date of rule to be inserted].

“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.

5.510(2) Fire safety requirements for existing adult day services programs. NFPA 101, Life Safety Code, 2003 edition, Chapter 17, “Existing Day Care Occupancies,” is adopted by reference as the rules establishing fire safety requirements for existing adult day services programs. Any existing adult day services program shall comply with the provisions of NFPA 101, Life Safety Code, 2003 edition, Chapter 17, “Existing Day Care Occupancies,” by [date one year after effective date of rules to be inserted].

EXCEPTION: If the fire marshal finds that a violation of any provision of NFPA 101, Life Safety Code, 2003 edition, Chapter 17, “Existing Day Care Occupancies,” presents an imminent threat to the safety of clients or staff, the fire marshal may require correction of the condition or conditions which are in violation as a condition of approval of the facility for use by an adult day services program.

5.510(3) Fire safety requirements for new adult day services programs. NFPA 101, Life Safety Code, 2003 edition, Chapter 16, “New Day Care Occupancies,” is adopted by reference as the rules establishing fire safety requirements for new adult day services programs.

Rule 661—5.510(80GA, ch165) is intended to implement 2003 Iowa Acts, chapter 165, section 15.

ARC 2984B**PUBLIC SAFETY
DEPARTMENT[661]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3, 231C.4 and 321.4, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 5, “Fire Marshal,” Iowa Administrative Code.

Iowa Code section 231C.4 as amended by 2003 Iowa Acts, chapter 166, section 11, requires the State Fire Marshal, in coordination with the Department of Elder Affairs and the Department of Inspections and Appeals, to adopt rules establishing fire safety standards for assisted living facilities certified to operate in Iowa. When regulation of assisted living facilities in Iowa was first established in 1997, the Fire Marshal adopted rules related to the fire safety of these facilities. Those rules require compliance with the provisions of the 1994 edition of the Life Safety Code which apply to “residential board and care occupancies.” The Life Safety Code is a

standard adopted and published by the National Fire Protection Association, and three subsequent editions of it have been published since the original adoption of fire safety standards for assisted living facilities in Iowa.

One change has been made in the rule regarding fire safety requirements for assisted living facilities in Iowa since its original adoption. Earlier in 2003, these facilities were given an option of complying with the provisions of the 2000 edition of the Life Safety Code which apply to residential board and care occupancies, rather than the parallel provisions of the 1994 edition. This alternative was offered primarily to accommodate facilities which are colocated with and operated in conjunction with licensed health care facilities. Licensed health care facilities in Iowa which require certification for eligibility for Medicaid and Medicare reimbursement are required to comply with applicable provisions of the 2000 edition of the Life Safety Code.

2003 Iowa Acts, chapter 166, calls for the restructuring of the general regulatory structure applied to assisted living facilities in Iowa. While the amended language of Iowa Code section 231C.4 does not require the rewriting of the Fire Marshal rules for these facilities, updating these rules is timely. The new fire safety standards for assisted living facilities in Iowa will be based upon the residential board and care occupancy requirements established in the latest edition (2003) of the Life Safety Code. There are three exceptions to these general requirements: (1) assisted living facilities which were initially approved under the requirements of the 1994 edition of the Life Safety Code will be allowed to continue to operate under those requirements, provided that the facilities have been in continuous operation since July 1, 1997, and have not undergone major renovation or remodeling since that time; (2) assisted living facilities which were approved to operate under the 2000 edition of the Life Safety Code and have been in continuous operation since they initially began operation pursuant to that approval, or which are located in the same structure as or adjacent to a health care facility which is required to comply with provisions of the 2000 edition of the Life Safety Code, may comply with the requirements of the 2000 edition of the Life Safety Code rather than the requirements of the 2003 edition; and (3) facilities which are in compliance with provisions of the Life Safety Code which are contingent upon the facility’s residents and staff having evacuation capability ratings of “prompt” or “slow,” rather than more stringent requirements which apply to facilities with residents or staff whose evacuation ratings are “impractical,” will be required to have evacuation capability ratings performed by qualified health care professionals at the expense of the facility, to have evacuation ratings updated for each new resident or staff member or for any resident or staff member whose health status or mobility capability changes, and to make any records which support evacuation capability ratings of “slow” or “prompt” available to fire inspectors or to health care facility surveyors of the department of inspections and appeals on request.

A public hearing on these proposed amendments will be held on January 7, 2004, at 11:30 a.m. over the Iowa Communications Network. Access to the public hearings will be available through the following locations:

Third Floor Conference Room
Wallace State Office Building
East Ninth and Grand
Des Moines

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Department of Human Services
411 3rd Street SE, Room 550
Cedar Rapids

Southwestern Iowa Community College
1501 West Townline Road, Room 211
Creston

Public Library
529 Pierce Street
Sioux City

Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail, by telephone at (515)281-5524, or by electronic mail to admrule@dps.state.ia.us, at least one day prior to the public hearing.

Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated above at least one day prior to the public hearing, or submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department office at least one day prior to the public hearing.

These amendments are intended to implement Iowa Code section 231C.4 as amended by 2003 Iowa Acts, chapter 166, section 11.

The following amendments are proposed.

Amend rule 661—5.626(231C) as follows:

661—5.626(231C) Assisted living housing.

5.626(1) Definitions. The following definitions apply to rule 661—5.626(231C):

“Assisted living facility” means ~~provisions of housing with services which may include but are not limited to health-related care, personal care and assistance with instrumental activities of daily living to six or more tenants a facility that houses a program that are is certified or seeking certification by the department of elder affairs or voluntarily accredited pursuant to the provisions of Iowa Code section 231C.3 as amended by 2003 Iowa Acts, chapter 166, section 10, or that has been identified by the department of inspections and appeals as a facility housing a program which requires certification pursuant to Iowa Code section 231C.3 as amended by 2003 Iowa Acts, chapter 166, section 10, and is not currently certified.~~

“Existing assisted living facility” is *means* an assisted living facility ~~operating which has been in continual operation since on or before June 30, 1997, or which was in use on or before June 30, 1997, in another category or categories of state-licensed, long-term residential care facilities and was converted after that date to use as an assisted living facility [insert effective date of amendments] or before.~~

“New assisted living facility” is *means* an assisted living facility which begins operation on or after July 1, 1997, and was not in operation prior to July 1, 1997, in any category of state-licensed, long-term care facility *[insert effective date of amendment]*.

“NFPA” means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References of the form “NFPA xx,” where “xx” is a number, refer to the NFPA standard or pamphlet of the corresponding number.

5.626(2) New assisted living facilities. The standard “NFPA 101, *Life Safety Code, 2003 edition*, Chapter 22 32, “New Residential Board and Care Occupancies,” 1994 edition, as published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, is hereby adopted by reference as the rules governing new assisted living facilities. ~~, with the following deletion:~~

~~Delete the definition of “Residential board and care occupancy” from Section 22-1.3.~~

5.626(3) Existing assisted living facilities. The standard “NFPA 101, *Life Safety Code, 2003 edition*, Chapter 23 33, “Existing Residential Board and Care Occupancies,” 1994 edition, as published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, is hereby adopted by reference as the rules governing *existing* assisted living facilities. ~~in existing apartments and in those buildings that are converted from other classifications of state-licensed, long-term residential care facilities with the following deletion:~~

~~Delete the definition of “Residential board and care occupancy” from Section 23-1.3.~~

5.626(4) Alternative requirements. In lieu of complying with the requirements established in subrule 5.626(2) or 5.626(3), assisted living facilities may alternatively comply with the requirements established in this subrule.

a. An assisted living facility that ~~begins operation on or after September 11, 2003, or that received plan approval for initial construction or for its most recent addition or renovation or remodeling project on or after March 11, 2003, was initially approved by the fire marshal on the basis of compliance with the requirements of the 2000 edition of the Life Safety Code or that is located within or adjacent to a licensed health care facility required to comply with applicable provisions of the 2000 edition of the Life Safety Code may comply with the requirements established in NFPA 101, Life Safety Code, 2000 edition, Chapter 32, in lieu of compliance with the requirements established in subrule 5.626(2). If the facility was initially approved on the basis of compliance with Chapter 32, “New Residential Board and Care Occupancies,” the facility shall continue to comply with the provisions of that chapter. A facility that was initially approved by the fire marshal on the basis of compliance with Chapter 33, “Existing Residential Board and Care Occupancies,” may continue to comply with that chapter as long it is in continuous operation and does not undergo major renovation or remodeling. A facility that was initially approved on the basis of compliance with Chapter 33 and whose operation is not continuous or that undergoes major renovation or remodeling shall comply with Chapter 32.~~

b. ~~An assisted living facility that begins operation prior to September 11, 2003, or that received plan approval for initial construction or for its most recent addition or renovation or remodeling project prior to March 11, 2003, may comply with the requirements established in NFPA 101, Life Safety Code, 2000 edition, Chapter 33, in lieu of compliance with the requirements established in subrule 5.626(3).~~

b. An assisted living facility that was certified prior to July 1, 1997, and that has continuously operated under that certification since July 1, 1997, may comply with the requirements of NFPA 101, *Life Safety Code, 1994 edition*, Chapter 23, “Existing Residential Board and Care Occupancies.”

c. An assisted living facility that was certified on or after July 1, 1997, and before *[insert effective date of amendment]*, and that has continuously operated under that certification since before *[insert effective date of amendment]* may comply with the requirements of NFPA 101, *Life Safety Code, 1994*

PUBLIC SAFETY DEPARTMENT[661](cont'd)

edition, Chapter 22, "New Residential Board and Care Occupancies."

5.626(5) Evacuation capability. For any provision of subrules 5.626(1) through 5.626(4) which is contingent upon evacuation capability, facilities may:

a. Comply with requirements for an evacuation capability rating of "impractical."

b. Comply with requirements which are contingent upon evacuation ratings of "slow" or "prompt," provided that the residents and staff of the facility have undergone evacuation rating evaluations performed by a health care professional and that all residents and staff are rated capable of "slow" or "prompt" evacuation, respectively. The evacuation capability ratings shall be updated each time a new resident arrives at the facility, a new staff person is assigned to the facility, or the physical condition or capacity for mobility of a resident or staff member changes significantly. Evacuation capability ratings shall be performed at the expense of the facility and any records supporting the ratings shall be made available to a fire inspector or health care facility surveyor from the department of inspections and appeals upon request.

This rule is intended to implement Iowa Code chapter ~~231C~~ section 231C.4 as amended by 2003 Iowa Acts, chapter 166, section 11.

ARC 2991B

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 section 421.14, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," Iowa Administrative Code.

Iowa Code section 421.7 requires the Director of the Department of Revenue to determine the interest rate for each calendar year. The Director has determined that the rate of interest on interest-bearing taxes arising under Title XVI shall be 6 percent for the calendar year 2004 (0.5 percent per month). The Department will also pay interest at the 6 percent rate on refunds.

The proposed amendment 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 this amendment 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 this proposed amendment 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 January 12, 2004, 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 this proposed amendment on or before December 30, 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 December 30, 2003.

This amendment is intended to implement Iowa Code section 421.7.

The following amendment is proposed.

Amend rule 701—10.2(421) by adding the following **new** subrule:

10.2(23) Calendar year 2004. The interest rate upon all unpaid taxes which are due as of January 1, 2004, will be 6 percent per annum (0.5% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2004. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2004. This interest rate of 6 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2004.

ARC 2985B

CREDIT UNION DIVISION[189]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 533.34, the Credit Union Division hereby adopts Chapter 3, "Conversion of an Iowa-Chartered Credit Union to Another Charter Type," Iowa Administrative Code.

The rules establish the requirements for the conversion of an Iowa-chartered credit union to another charter type. The rules apply to all state of Iowa-regulated credit unions.

In compliance with Iowa Code section 17A.4(2), the Division finds that notice and public participation are impracticable and contrary to the public interest due to the fact that the rules are to go into effect on November 19, 2003, and the rules confer a benefit on the public immediately. The Credit Union Division was untimely in commencing rule making in regard to Iowa Code section 533.34 and has been receiving requests for clarification of procedures. On November 18, 2003, the Division met with the Credit Union Division Review Board to discuss the rules and their implementation. The Board approved the following rules.

The Division finds that, pursuant to Iowa Code section 17A.5(2)"b"(2), the normal effective date of the rules, 35 days after publication, should be waived and the rules be made effective November 19, 2003, upon filing. The rules confer a benefit upon the public because they provide the guidelines necessary for the conversion of an Iowa-chartered credit union to another charter type. The Division is receiving requests for the procedures, and these rules seek to establish the procedure for the conversion process and to accomplish full disclosure to credit union members of the intentions of the credit union board of directors in converting to another charter type. Specifically, the credit union will have to disclose its long-term objective in converting, and any economic benefit a director or senior management official of the converting credit union may receive in connection with the conversion.

The Iowa Credit Union Division Review Board adopted these rules on November 18, 2003.

These rules are intended to implement Iowa Code section 533.34.

These rules became effective on November 19, 2003.

The following amendment is adopted.

Adopt the following new chapter:

CHAPTER 3

CONVERSION OF AN IOWA-CHARTERED CREDIT UNION TO ANOTHER CHARTER TYPE

189—3.1(533) Definitions. As used in this chapter:

"Credit union" means credit union as defined in the Iowa Credit Union Act, Iowa Code section 533.1.

"Federal banking agencies" means federal banking agencies as defined in Section 3 of the Federal Deposit Insurance Act.

"Federal credit union" means credit union as defined in Section 101 of the Federal Credit Union Act, 12 U.S.C. 1752(1).

"Mutual savings bank" and "savings association" have the same meaning as defined in Section 3 of the Federal Deposit Insurance Act.

"Senior management official" means a chief executive officer, an assistant chief executive officer, a chief financial of-

ficer, and any other senior executive officer as defined by the appropriate federal banking agency pursuant to Section 32(f) of the Federal Deposit Insurance Act, 12 U.S.C. 1831i(f).

"Superintendent" means the superintendent of credit unions of the Iowa credit union division of the department of commerce.

189—3.2(533) Authority to convert.

3.2(1) An Iowa-chartered credit union, with the approval of its members, may convert to a federal credit union, subject to applicable law, regulation and procedures of the governing recipient chartering authority, the National Credit Union Administration, and the requirements of this chapter.

3.2(2) An Iowa-chartered credit union shall remain responsible for the entire annual fee pursuant to Iowa Code section 533.62 during the year in which the credit union converts.

3.2(3) No credit union shall convert to a federal credit union without full disclosure to its members of the intents and purposes of conversion. If the intent to undertake a second conversion to a mutual savings bank or a savings association is among the purposes for conversion to a federal credit union, those facts and all related information shall be fully disclosed to members. If a further conversion to a stock institution is among the possible outcomes from the conversion, the converting Iowa-chartered credit union must fully and accurately disclose this possibility to its members.

189—3.3(533) Board of directors and membership approval.

3.3(1) Any conversion proposal may be approved by the board of directors only upon the affirmative vote of a majority of the board. The board must then set a date for a vote on the proposal by the members of the credit union.

3.3(2) The membership must approve the proposal to convert by the affirmative vote of a majority of those members who vote on such proposal. Each eligible member shall have one vote regarding the conversion proposal.

3.3(3) The vote of the members to convert must be at a special meeting called for that purpose, must be in the manner prescribed in the bylaws and this chapter, and must satisfy the number of members necessary to constitute a quorum to convene a meeting of the members as prescribed in the bylaws.

3.3(4) The board of directors must notify the superintendent of any proposed conversion and of any abandonment or disapproval of the conversion by the members or by the recipient chartering authority, the National Credit Union Administration, or applicable federal deposit insurer.

3.3(5) Prior to completion of any conversion, the board shall supply the superintendent a certified affidavit of compliance with these rules.

189—3.4(533) Notice to members and voting procedures.

3.4(1) A credit union that proposes to convert must submit written notice of its intent to convert by first-class mail, postage prepaid, to each member who is eligible to vote on the conversion, and the board of directors must cause a copy of the notice to be posted in a conspicuous location in each credit union office from the date of the mailings until the date of the meeting. The notice to members must be submitted and posted 90 calendar days, 60 calendar days, and 30 calendar days before the date of the membership meeting to vote on the conversion and a ballot must be submitted not less than 30 calendar days before the date of the vote. A member who joins the credit union subsequent to the 30-calendar-day notice and prior to the date and time of the special meeting and

CREDIT UNION DIVISION[189](cont'd)

who is eligible to vote on the conversion shall be provided a copy of the 30-calendar-day notice and a ballot.

3.4(2) The notice to members must adequately describe the purpose and subject matter of the vote to be taken at the special meeting or by submission of the written ballot. The notice must provide an accurate disclosure of the reasons for the conversion stated in specific terms and not as generalities. The notice shall specify the costs of the conversion, such as changing the credit union name, examination and operating fees, attorney and consulting fees, tax liability. The notice must clearly inform the member that each eligible member may vote in person at the special meeting or by submitting the written ballot by mail or personal delivery to the credit union so it is received on or before the date and time of the special meeting. A member other than a natural person may cast a single vote through a delegated agent as provided by law. There shall be no voting by proxy. The notice must state in boldface type that the conversion will be decided by a majority of credit union members who vote on the issue.

3.4(3) In addition to the ballot provided to all eligible voting members under this rule, a return envelope preaddressed to the election committee, marked "ballot," must be provided with the ballot. A location on the outside of the envelope must be provided for the voting member to print the member's name and address. The voting process used for casting ballots in person at the special meeting shall be the same as that used for submitting the ballot by mail or personal delivery, by submission using an envelope preaddressed to the election committee, marked "ballot," with a location on the outside of the envelope for the voting member to print the member's name and address.

3.4(4) The board of directors shall appoint an election committee of no fewer than seven credit union members to be in charge of counting the ballots and verifying that no eligible member voted more than once. No board member or employee, or member of a board member's or employee's immediate family, may be a member of the election committee. No director, employee, agent or member of the election committee shall reveal the manner in which any member voted on the proposed conversion. The election committee shall see that all ballot envelopes are delivered to the committee unopened and that the counting of the ballots does not commence until after the close of the special meeting held in connection with the conversion proposal. The election committee shall be responsible for certifying the results of the election to the board of directors, including the actual number of eligible members who voted on the proposal and the number of those who voted in favor of and the number of those opposed to the conversion proposal.

3.4(5) The notice to members must state the date, time, and place of the meeting. The members may not vote on the proposal until the credit union has received preliminary approval from the superintendent given under 189—3.5(533) and preliminary determination from the National Credit Union Administration on the proposition for conversion.

3.4(6) If a purpose of conversion is to become a mutual savings bank, a savings association that is in mutual form or a stock institution, the notice must clearly inform the member that the conversion, if approved, could lead to members losing their ownership interest in the credit union. The notice must disclose that a credit union member has no more than one vote regardless of the number of shares held; whereas, in a mutual savings bank or savings association, voting may be based upon the amount in the member's deposit accounts, commonly one vote granted for each \$100 on deposit. The notice must further disclose that, if the mutual savings bank or savings association converts to a stock institution, mem-

bers will lose their ownership interests and voting rights automatically received as a member.

3.4(7) In connection with the notices required by this rule, the converting credit union must include an affirmative statement that, at the time of conversion to a federal credit union and for a period of five years thereafter, the credit union does or does not intend to:

a. Convert to a mutual savings bank or savings association, or a stock institution;

b. Provide any compensation to previously uncompensated members of the board of directors, or increase compensation or other conversion-related economic benefit, including stock options, special prices on stock, or first rights of refusal, to directors, senior management officials, or their agents, brokers, family members or other closely related parties;

c. Base member voting rights on account balances.

3.4(8) In addition, if the purpose of conversion is to become a mutual savings bank or savings association, or a stock institution, the notice must describe a method that will be used to provide for a pro-rata distribution of all unencumbered credit union retained and undivided earnings in excess of regulatory required reserves, as calculated pursuant to Iowa Code section 533.17, or in excess of a well capitalized net worth level, calculated pursuant to the Federal Credit Union Act, 12 U.S.C. Section 1790d, whichever amount is greater. The pro-rata distribution shall occur on all shares of record as of the date of first notice to members under this rule, and must be based upon the member's share balance less any amount pledged to share-secured loans.

3.4(9) At any time prior to completion of a conversion to a federal credit union, the board or the members by written request as provided in the bylaws may call for a special meeting of the members to be held to terminate the conversion proceedings. The membership must approve the proposal to terminate the conversion proceedings by the affirmative vote of a majority of those members who vote on such proposal as provided in this chapter.

189—3.5(533) Notice to the superintendent.

3.5(1) The credit union must provide the superintendent with notice of its intent to convert and a plan of conversion no less than 30 calendar days prior to the 90-calendar-day period preceding the date of the membership vote on the conversion under 189—3.4(533).

3.5(2) The credit union must give notice to the superintendent and provide a plan of conversion describing the material features of the conversion, along with a copy of the filing the credit union has made with the federal regulatory agency by which the credit union seeks that agency's approval of the conversion. The credit union must include with the notice to the superintendent a copy of the notice the credit union provides to members under 189—3.4(533), as well as the ballot form and all written materials the credit union has distributed or intends to distribute to its members, a copy of the return envelope addressed to the election committee marked "ballot" provided with the ballot form, and the procedures the election committee will follow in its receipt and counting of the ballots.

3.5(3) The superintendent will make a preliminary determination regarding the methods and procedures applicable to the membership vote. The superintendent will notify the credit union within 30 calendar days of receipt of the credit union's notice of intent to convert if the superintendent disapproves of the proposed methods and procedures applicable to the membership vote. The credit union's submission of the notice of intent and plan of conversion does not relieve the

CREDIT UNION DIVISION[189](cont'd)

credit union of its obligation to certify the results of the membership vote required by 189—3.6(533) or certify compliance with these rules required by 189—3.3(533) or eliminate the right of the superintendent to disapprove the actual methods and procedures applicable to the membership vote if the credit union fails to conduct the membership vote in a fair and legal manner.

3.5(4) The superintendent may disapprove a plan of conversion submitted by the board of directors of a credit union based upon any of the following determinations:

- a. The plan is inconsistent with applicable statutes and regulations.
- b. The plan does not contain all required information.
- c. The plan fails to fully and fairly disclose the effect of the proposal on members of the credit union.
- d. The plan does not fairly compensate members for their ownership interests in the credit union.

189—3.6(533) Certification of vote on conversion proposal. The board of directors of the converting credit union must certify the results of the membership vote to the superintendent within ten calendar days after the vote is taken. The board of directors must also certify at the same time that the notice, ballot and other written materials provided to members were identical to those submitted pursuant to 189—3.5(533) or provide copies of any new or revised materials and an explanation of the reasons for the changes.

189—3.7(533) Superintendent oversight of methods and procedures of membership vote.

3.7(1) The superintendent will issue a determination that the methods and procedures applicable to the membership vote are approved or disapproved within ten calendar days of receipt from the credit union of the certification of the result of the membership vote required under 189—3.6(533).

3.7(2) If the superintendent disapproves of the methods by which the membership vote was taken or the procedures applicable to the membership vote, the superintendent may direct that a new vote be taken at a time and place acceptable to the board of directors and the superintendent.

3.7(3) The superintendent's review of the methods by which the membership vote was taken and the procedures applicable to the membership vote includes determining that the notice to members is accurate and not misleading, that all notices required by these rules were timely, and that the membership vote was conducted in a fair and legal manner.

189—3.8(533) Other regulatory oversight of methods and procedures of membership vote. The federal agency that will have jurisdiction over the financial institution after conversion may subject the membership vote to verification and may direct that a new vote be taken if it disapproves of the methods by which the membership vote was taken or of the procedures applicable to the membership vote.

189—3.9(533) Completion of conversion.

3.9(1) Upon receipt of approvals under 189—3.7(533) and 189—3.8(533), the credit union may complete the conversion transaction.

3.9(2) The board of directors of the credit union must file with the superintendent appropriate evidence of approval of the conversion by the appropriate federal agency having jurisdiction over the financial institution after conversion and from the federal agency providing deposit insurance to the converted financial institution, and, if applicable, a copy of the notice from the National Credit Union Administration canceling the credit union insurance certificate. The board of directors of the credit union must also notify the superinten-

dent of the actual date on which the conversion is to be effective.

3.9(3) Upon receipt of satisfactory proof that the Iowa-chartered credit union has complied with all applicable laws and regulations of this state and of the United States, the superintendent will cancel the charter of the credit union and issue a certificate of conversion which must be filed and recorded in the county in which the credit union has its principal place of business and in the county in which its original articles of incorporation or certification of organization were filed and recorded, if different.

3.9(4) In the event it is subsequently determined the conversion was accomplished contrary to applicable law, regulation or the requirements of this chapter, in whole or in part, with the intent to deceive or mislead the members of the credit union or the superintendent, the superintendent will take immediate action to cause the conversion to be declared null and void, and to request from the appropriate regulatory authority that the converted institution be ordered to surrender its charter and be thereupon returned to the authority of the superintendent for reinstatement as a state charter or other action. The provisions of Iowa Code chapter 533 shall apply in the event it is determined that any director, officer, agent, employee or clerk of the credit union knowingly submitted, made or exhibited false statements, papers or reports to the superintendent or committed any acts which might result in that person's being found to have engaged in a fraudulent practice.

3.9(5) If the superintendent finds a material deviation from the provisions of this chapter, or from Iowa Code chapter 533, that would invalidate any steps taken in the conversion, the superintendent will promptly notify the credit union and the National Credit Union Administration of the nature of the adverse findings.

3.9(6) The conversion of the Iowa credit union to a federal credit union will not be effective and completed until final approval is given by the superintendent, any improper actions are cured, and corrective steps have been accomplished, if applicable.

189—3.10(533) Limit on compensation of officials.

3.10(1) No director or senior management official of an Iowa credit union may receive any economic benefit in connection with a plan of conversion or the actual conversion of the credit union, other than regular compensation and other usual benefits paid to directors or senior management officials in the ordinary course of business.

3.10(2) In connection with the notices to members required by this chapter, the converting credit union must disclose to the members the cost of the conversion, including any change or increase in compensation or economic benefit to directors or senior management officials of the credit union in the event the conversion process is accomplished.

These rules are intended to implement Iowa Code section 533.34.

[Filed Emergency 11/19/03, effective 11/19/03]

[Published 12/10/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/10/03.

ARC 3021B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2003 Iowa Acts, chapter 112, section 4, the Department of Human Services hereby amends Chapter 36, "Assessment Fee for Intermediate Care Facilities for the Mentally Retarded," and Chapter 81, "Nursing Facilities," Iowa Administrative Code.

These amendments rename Chapter 36 and create a new division to implement 2003 Iowa Acts, chapter 112, section 4, and 2003 Iowa Acts, chapter 179, section 162, which authorize the Department to collect a quality assurance assessment for nursing facilities and direct the Department to provide additional reimbursement to nursing facilities in connection with the assessment.

The assessment shall not exceed 6 percent of the facility's total annual nursing facility services revenue, as submitted on the facility's fiscal year end Form 470-0030, Financial and Statistical Report, for the preceding calendar year. When the assessment is implemented, the Department will adjust nursing facility payment rates to reflect the cost of the assessment for Iowa Medicaid patients. To provide additional reimbursement, the Department will also add a quality assurance payment to nursing facility per diem rates in the amount of \$5.90 per patient day.

With the adjustment of rates to reflect the cost of the assessment for Iowa Medicaid patients and the quality assurance payment, some facilities with Medicaid utilization of 42.5 percent or greater and fewer than 22,000 Medicaid patient days (projected to be 7 facilities) will experience a net loss of revenue. The majority of facilities (429) are projected to experience a net gain. Other facilities (31) are projected to see no net impact.

In the aggregate, the Department estimates that the assessment will generate approximately \$26.6 million annually in state funds. The adjustment of rates to reflect the cost of the assessment for Iowa Medicaid patients and the quality assurance payment will increase aggregate annual payments to nursing facilities in the amount of approximately \$45.2 million (state and federal funds). The state share of those increased costs is \$16.4 million. Thus, the state will receive approximately \$26.6 million in new assessment revenue and pay approximately \$16.4 million in new Medicaid reimbursement. The remaining \$10.2 million (\$26.6 less \$16.4) shall be credited to the Senior Living Trust Fund, as directed by 2003 Iowa Acts, chapter 112.

Certain nursing facilities are exempt from paying the assessment: facilities that are operated by the state, non-state-government-owned or non-state-government-operated facilities, hospital-based facilities licensed under Iowa Code chapter 135B, and any facilities with an Iowa Medicaid utilization rate of less than 10 percent. These amendments do not provide for waivers in other situations because all facilities should be subject to the same collection and reimbursement methodology, as a matter of fairness.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because 2003 Iowa Acts, chapter 112, section 4, subsection 9, authorizes the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived, as authorized by 2003 Iowa Acts, chapter 112, section 4, subsection 9.

The Council on Human Services adopted these amendments on November 19, 2003.

These amendments are also published herein under Notice of Intended Action as **ARC 3022B** to allow for public comment.

These amendments are intended to implement 2003 Iowa Acts, chapter 112, section 4, and 2003 Iowa Acts, chapter 179, section 162.

These amendments became effective December 1, 2003.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 36**, chapter title and preamble, as follows:

CHAPTER 36
~~ASSESSMENT FEE FOR INTERMEDIATE CARE
FACILITIES FOR THE MENTALLY RETARDED~~
FACILITY ASSESSMENTS

DIVISION I
~~ASSESSMENT FEE FOR INTERMEDIATE CARE FACILITIES
FOR THE MENTALLY RETARDED~~

These rules describe the assessment of the fee authorized by ~~the Seventy-ninth General Assembly in 2002 Iowa Acts, House File 2625 Iowa Code section 249A.21~~. The rules explain how the fee is determined and paid, and under what conditions collection of the fee will be terminated.

ITEM 2. Amend rules **441—36.1(79GA, HF2625)** through **441—36.4(79GA, HF2625)**, parenthetical implementation, as follows:
(~~79GA, HF2625 249A~~)

ITEM 3. Reserve rule **441—36.5** and amend the implementation clause for Division I as follows:

These rules are intended to implement ~~2002 Iowa Acts, House File 2625, Code section 36 249A.21~~.

ITEM 4. Adopt **new** Division II as follows:

DIVISION II
QUALITY ASSURANCE ASSESSMENT
FOR NURSING FACILITIES

These rules describe the nursing facility quality assurance assessment authorized by the Eightieth General Assembly in 2003 Iowa Acts, chapter 112, section 4. The rules explain how the assessment is determined and paid.

441—36.6(80GA, ch112) Assessment.

36.6(1) Applicability. All nursing facilities that are licensed in Iowa under Iowa Code chapter 135C and department of inspections and appeals rules in 481—Chapter 58 shall pay a monthly assessment to the department, as determined under this division, with the exception of:

- a. Nursing facilities operated by the state.
- b. Non-state-government-owned or non-state government-operated nursing facilities.

36.6(2) Definition. For the purposes of this division, the Iowa Medicaid utilization rate is defined as the number of Iowa Medicaid patient days divided by the total number of patient days, as reported by each facility on Form 470-0030, Financial and Statistical Report.

HUMAN SERVICES DEPARTMENT[441](cont'd)

36.6(3) Assessment level.

a. Facilities that have an Iowa Medicaid utilization rate of less than 10 percent are required to pay no assessment.

b. Facilities that have an Iowa Medicaid utilization rate greater than or equal to 10 percent and less than 42.5 percent or that have an Iowa Medicaid utilization rate greater than or equal to 10 percent and annual Iowa Medicaid patient days of 22,000 or more are required to pay a quality assurance assessment of \$0.50 per non-Medicare patient day.

c. Facilities that have an Iowa Medicaid utilization rate of 42.5 percent or greater and fewer than 22,000 annual Iowa Medicaid patient days are required to pay a quality assurance assessment of \$4.70 per non-Medicare patient day.

36.6(4) Limit. Notwithstanding subrule 36.6(3), the quality assurance assessment shall not exceed 6 percent of the facility's total revenue from nursing facility services.

441—36.7(80GA,ch112) Determination and payment of assessment for facilities certified to participate in the Medicaid program. For facilities that are certified to participate in the Medicaid program, the assessment shall be determined and paid as follows:

36.7(1) During each state fiscal year, the assessment shall be based on Form 470-0030, Financial and Statistical Report, submitted pursuant to rule 441—81.6(249A) for the facility's fiscal year ending in the preceding calendar year, as adjusted during the determination of the facility's Medicaid reimbursement rate. Nursing facilities that are newly licensed under 481—Chapter 58 shall not be required to pay an assessment until the effective date of a Medicaid rate calculated pursuant to 441—81.6(249A) based on Form 470-0030, Financial and Statistical Report.

36.7(2) The department shall calculate the monthly assessment amount due by:

a. Multiplying the facility's total non-Medicare patient days by the applicable assessment level, as determined in subrule 36.6(3); and

b. Dividing the result by the number of months covered by the Financial and Statistical Report.

36.7(3) The department shall notify each facility of the amount of the assessment due following the facility's submission of Form 470-0030, Financial and Statistical Report. The assessment is subject to adjustment based on adjustments to the Financial and Statistical Report.

36.7(4) The department shall deduct the monthly amount due from the Medicaid payments to the facility. The department shall also deduct from the Medicaid payments any additional amount due for past months as a result of an adjustment to the assessment.

441—36.8(80GA,ch112) Determination and payment of assessment for facilities not certified to participate in the Medicaid program. For facilities that are not certified to participate in the Medicaid program, the assessment shall be determined and paid as follows:

36.8(1) Any nursing facility subject to assessment under subrule 36.6(1) that is not certified to participate in the Medicaid program shall, upon request, submit Form 470-0030, Financial and Statistical Report, as required for participating facilities, for purposes of determining the amount of the assessment. The department may adjust the reports submitted in the same manner as used in the determination of the Medicaid reimbursement rate for participating facilities under rule 441—81.6(249A).

36.8(2) During each state fiscal year, the assessment shall be based on the facility's Form 470-0030, Financial and Statistical Report, as submitted and adjusted pursuant to subrule

36.8(1), for the facility's fiscal year ending in the preceding calendar year.

36.8(3) The department shall calculate the monthly assessment amount due by:

a. Multiplying the facility's total non-Medicare patient days by the applicable assessment level, as determined in subrule 36.6(3); and

b. Dividing the result by the number of months covered by the Financial and Statistical Report.

36.8(4) The department shall notify each facility of the amount of the assessment due for each fiscal year following the facility's submission of Form 470-0030, Financial and Statistical Report. The assessment is subject to adjustment based on adjustments to the Financial and Statistical Report.

36.8(5) The facility shall pay the monthly assessment to the department on or before the fifteenth day of each month. Any additional amount due for past months as the result of an adjustment to the initial assessment is due 30 days after the department notifies the facility of the additional amount.

These rules are intended to implement 2003 Iowa Acts, chapter 112, section 4.

ITEM 5. Adopt new subrule 81.6(21) as follows:

81.6(21) Nursing facility quality assurance assessment and quality assurance payment. The nursing facility quality assurance assessment paid pursuant to 441—Chapter 36, Division II, shall be an allowable cost for cost reporting and audit purposes, to be reimbursed as provided in paragraph 81.6(21)“a.”

a. The per diem rates otherwise determined pursuant to this rule without regard to the nursing facility quality assurance assessment shall be increased each state fiscal year by an amount determined as follows:

(1) Multiplying the number of non-Medicare patient days from the Financial and Statistical Report for the facility's fiscal year ending in the previous calendar year by the applicable assessment level as determined in subrule 36.6(3); and

(2) Dividing the product by the total number of patient days from the Financial and Statistical Report for the facility's fiscal year ending in the previous calendar year.

b. Effective with the implementation of the quality assurance assessment, a quality assurance payment of \$5.90 per patient day shall be added to Medicaid reimbursement rates as otherwise calculated pursuant to this rule, except that nursing facilities that are newly licensed under 481—Chapter 58 shall not be entitled to a quality assurance payment until the effective date of a Medicaid rate calculated based on a Financial and Statistical Report. The quality assurance payment of \$5.90 may be modified each state fiscal year.

c. Until federal financial participation to match moneys collected from the quality assurance assessment pursuant to 441—Chapter 36, Division II, has been approved by the federal Centers for Medicare and Medicaid Services, none of the nursing facility rate-setting methodologies of this subrule shall become effective.

d. If the federal Centers for Medicare and Medicaid Services determines that federal financial participation to match moneys collected from the quality assurance assessment pursuant to 441—Chapter 36, Division II, is unavailable for any period, or the department no longer has the authority to collect the assessment, then beginning on the effective date that such federal financial participation is not available or authority to collect the assessment is rescinded, none of the nursing facility rate-setting methodologies of this subrule shall be effective. If the period for which federal match moneys are

HUMAN SERVICES DEPARTMENT[441](cont'd)

unavailable or the authority to collect the assessment is rescinded includes a retroactive period, the department shall:

- (1) Recalculate Medicaid rates in effect during that period without the rate-setting methodologies of this subrule;
- (2) Recompute Medicaid payments due based on the recalculated Medicaid rates;
- (3) Recoup any previous overpayments; and
- (4) Determine for each nursing facility the amount of quality assurance assessment collected during that period and refund that amount to the facility.

[Filed Emergency 11/19/03, effective 12/1/03]

[Published 12/10/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/10/03.

ARC 3017B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 239B.4, the Department of Human Services amends Chapter 47, "Pilot Diversion Initiatives," Iowa Administrative Code.

These amendments:

- Expand the Family Investment Program (FIP) diversion pilot program to be a statewide program. The pilot projects have demonstrated that diversion assistance given to selected families before they receive FIP assistance is effective in reducing FIP participation. These amendments will allow all low-income Iowans access to this program.
- Rescind rules for the pilot community self-sufficiency grants program and the pilot post-FIP diversion program. These programs have not proven to be cost-effective due to limited participation and high administrative costs.

The FIP diversion program provides short-term assistance to remedy an immediate need, which permits the family to maintain self-sufficiency without ongoing cash assistance. FIP diversion payments are less than long-term cash assistance. A condition of receiving diversion assistance is a period of ineligibility for FIP proportionate to the amount of assistance received.

The amendments clarify and simplify existing diversion rules to provide for fair and equitable treatment of participants across localities. Requirements for local plans and provisions for local variations in eligibility limits are removed. Operating individual county projects is administratively burdensome and is not a practical use of local resources.

These amendments do not provide for waivers in specified situations because participation in this program is voluntary. Applicants and participants may appeal any decision and may request a waiver of these rules under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on October 1, 2003, as **ARC 2816B**. The Department held eight public hearings on the Notice of Intended Action. No one attended the hearings or submitted comments on the Notice of Intended Action.

The Department has made the following changes to proposed rule 441—47.3(239B) to meet the requirements that

administrative rules set forth the procedures and forms to be used by the public:

- Inserted the catchwords "target population" into subrule 47.3(1) and changed the reference "county staff" to read "department staff."
- Did not adopt proposed subrule 47.3(3) as it was duplicative of existing subrule 47.5(3).
- Renumbered proposed subrule 47.3(2) as 47.3(3), added the catchword "approval," and added a reference to signing Form 470-3539, Agreement for FIP Ineligibility, as evidence of the family's informed decision to accept diversion assistance.
- Adopted a new subrule 47.3(2) with the catchwords "application processing."

Rule 441—47.3(239B) now reads as follows:

"441—47.3(239B) General provisions.

"47.3(1) Target population. FIP diversion assistance shall be offered to those families determined to be likely candidates for success in the program, as determined by department staff. FIP diversion program candidates:

"a. Shall be otherwise eligible for FIP, as set forth at subrule 47.5(1).

"b. Must have identifiable barriers to obtaining or retaining employment that can be substantially addressed through the immediate, short-term assistance offered by this division.

"47.3(2) Application processing.

"a. Application form. Families may apply for diversion assistance by submitting Form 470-3534, FIP Diversion Application, to a department local office.

"(1) Department staff may refer for diversion assistance potential candidates who have applied for family investment program assistance, food assistance, or medical assistance. For these candidates, the application filed under rule 441—40.22(239B), 441—65.2(234), or 441—76.1(249A), respectively, shall be accepted as an application for diversion assistance.

"(2) The application must contain a legible name and address and must be signed by the applicant. When two parents or a parent and stepparent are in the home, both must sign the application.

"b. Interview. The department shall conduct at least one face-to-face interview before approval of the application. The face-to-face interview may be held in the local office, at a department-designated site, or in the applicant's home.

"(1) The applicant may appoint an authorized representative to attend the interview if the applicant is unable to attend. The authorized representative must be a person knowledgeable of the family's circumstances.

"(2) If the applicant or authorized representative fails to attend the required interview, the application shall be denied.

"c. Verification. The department shall accept the family's declaration except when verification is required by these rules or information appears questionable. The decision with respect to eligibility shall be based largely on information provided by the family.

"47.3(3) Approval. Participation in the FIP diversion program is voluntary and shall be based on an informed decision by the family, as evidenced by signature on Form 470-3529, Agreement for FIP Ineligibility."

These requirements were previously addressed in local plans, but now need to be standardized for statewide implementation.

The Council on Human Services adopted these amendments on November 19, 2003.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The Department finds that these amendments confer a benefit on the public by expanding the availability of the FIP diversion program statewide. 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 Iowa Code section 239B.11.

These amendments shall become effective on January 1, 2004.

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 [47.1 to 47.11, 47.21; rescind Ch 47, div III and IV] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 2816B**, IAB 10/1/03.

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[Published 12/10/03]

[For replacement pages for IAC, see IAC Supplement 12/10/03.]

ARC 3023B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 234.6 and 249A.4 and 2003 Iowa Acts, chapter 175, section 8, subsection 7, and section 14, the Department of Human Services amends Chapter 51, “Eligibility,” Chapter 52, “Payment,” and Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

These amendments make annual adjustments to the State Supplementary Assistance and Medicaid programs based on annual Supplemental Security Income cost-of-living adjustments and consumer price index figures by:

- Increasing the payment amount and income level for State Supplementary Assistance dependent person and family life home benefits. The Department is directed by 2003 Iowa Acts, chapter 175, section 14, to “pass along” the 2003 cost-of-living increase to recipients of State Supplementary Assistance and to meet federal maintenance of effort requirements. The dependent person payment increases \$6 per month per household, from a maximum of \$279 to \$285. The family life home payment is increased \$10 from \$635 to \$645. The family life home increase is offset by the increase in the clients’ Supplemental Security Income. Payment levels for other categories of State Supplementary Assistance remain adequate to meet federal maintenance of effort requirements.
- Increasing the personal needs allowance for residents of a family life home or residential care facility by the same percentage as the federal Supplemental Security Income benefits are increased (2.1 percent), as directed by 2003 Iowa Acts, chapter 175, section 14. The personal needs allowance is increased by \$2 per month, from \$79 to \$81. (The portion allocated for the average Medicaid copayment remains the same, rounded to \$7.)
- Increasing the amounts used in determining the Medicaid eligibility of an institutionalized spouse. The maximum amount of resources to be attributed to a community spouse is increased from \$90,660 to \$92,760. The mainte-

nance needs allowance for the community spouse is increased from \$2,266.50 per month to \$2319 per month. The Medicare Catastrophic Coverage Act requires these figures to be updated annually based on the consumer price index. The Department has received notice of these increases from the U.S. Department of Health and Human Services.

These amendments do not provide for waivers in specified situations because they confer a benefit on recipients.

The Department finds that notice and public participation are unnecessary and impracticable. The methods applied to calculate these amounts are set by statute. If the Department were to follow regular rule-making procedures to make cost-of-living increases, it would be several months before the public would realize the benefits of these amendments. Also, 2003 Iowa Acts, chapter 175, section 14, authorizes emergency rule making to make the State Supplementary Assistance changes, and 2003 Iowa Acts, chapter 175, section 8, subsection 7, authorizes the Department to adopt emergency rules to comply with federal Medicaid requirements. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these amendments confer a benefit on the public by making cost-of-living adjustments. Emergency rule making for State Supplementary Assistance changes is authorized by 2003 Iowa Acts, chapter 175, section 14, and for Medicaid is authorized by 2003 Iowa Acts, chapter 175, section 8, subsection 7. Therefore, the Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(1) and 17A.5(2)“b”(2), that the normal effective date of these amendments should be waived.

The Council on Human Services adopted these amendments on November 19, 2003.

These amendments are also published herein under Notice of Intended Action as **ARC 3024B** to allow for public comment, as required by 2003 Iowa Acts, chapter 175, section 44.

These amendments are intended to implement Iowa Code sections 249.3 and 249A.3 and 2003 Iowa Acts, chapter 175, section 14.

These amendments shall become effective on January 1, 2004.

The following amendments are adopted.

ITEM 1. Amend subrule 51.4(1) as follows:

51.4(1) Income. Income of a dependent relative shall be less than \$279 \$285. When the dependent’s income is from earnings, an exemption of \$65 shall be allowed to cover work expense.

ITEM 2. Amend rule 441—51.7(249) as follows:

441—51.7(249) Income from providing room and board. In determining profit from furnishing room and board or providing family life home care, \$279 \$285 per month shall be deducted to cover the cost, and the remaining amount treated as earned income.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

ITEM 3. Amend rule 441—52.1(249) as follows:

Amend subrules 52.1(1) and 52.1(2) as follows:

52.1(1) Protective living arrangement. The following assistance standards have been established for state supplementary assistance for persons living in a family life home certified under rules in 441—Chapter 111, effective January 1, 2003.

\$635.00	\$645	Care allowance
79.00	\$81	Personal allowance
\$714.00	\$726	Total

HUMAN SERVICES DEPARTMENT[441](cont'd)

52.1(2) Dependent relative. The following assistance standards have been established for state supplementary assistance for dependent relatives residing in a recipient's home.

- a. Aged or disabled client and a dependent relative \$831 \$849
- b. Aged or disabled client, eligible spouse, and a dependent relative . . . \$1108 \$1131
- c. Blind client and a dependent relative . . . \$853 \$871
- d. Blind client, aged or disabled spouse, and a dependent relative \$1130 \$1153
- e. Blind client, blind spouse, and a dependent relative \$1152 \$1175

Amend subrule 52.1(3), paragraph "a," subparagraph (2), as follows:

(2) ~~Effective January 1, 2003, a \$79 An \$81~~ allowance to meet personal expenses and Medicaid copayment expenses.

ITEM 4. Amend subrule 75.5(3), paragraph "d," introductory paragraph, as follows:

d. Method of attribution. The resources attributed to the institutionalized spouse shall be one-half of the documented resources of both the institutionalized and community spouse as of the first moment of the first day of the month of the spouse's first entry to a medical facility. However, if one-half of the resources is less than \$24,000, then \$24,000 shall be protected for the community spouse. Also, when one-half of the resources attributed to the community spouse exceeds ~~\$90,660~~ \$92,760, the amount over ~~\$90,660~~ \$92,760 shall be attributed to the institutionalized spouse. (The maximum limit shall be indexed annually by the consumer price index.)

ITEM 5. Amend subrule 75.16(2), paragraph "d," subparagraph (3), introductory paragraph and first unnumbered paragraph, as follows:

(3) Needs of spouse. The maintenance needs of the spouse shall be determined by subtracting the spouse's gross income from ~~\$2,266.50~~ \$2319. (This amount shall be indexed for inflation annually according to the consumer price index.)

However, if either spouse established through the appeal process that the community spouse needs income above ~~\$2,266.50~~ \$2319, due to exceptional circumstances resulting in significant financial duress, an amount adequate to provide additional income as is necessary shall be substituted.

[Filed Emergency 11/19/03, effective 1/1/04]
[Published 12/10/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/10/03.

ARC 3018B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 65, "Administration," Iowa Administrative Code.

These amendments:

- Change the name "Food Stamp Program" to "Food Assistance Program," in recognition of the transition from printed coupons to electronic issuance of benefits.

- Implement simplified reporting requirements for most applicants and recipients.

- Update names, addresses, and form numbers and make format changes to increase readability.

Under these amendments, Iowa will have two reporting methods for food assistance households. No households will be required to submit monthly reports. Households with the following characteristics must report certain changes within ten days of the change:

- All adult household members are elderly or disabled and have no earned income; or
- The household contains one or more non-disabled persons 18 to 49 years old who are required to register for work and are not pregnant and contains no children under age 18; or
- Household members are migrant or seasonal farm workers; or
- All household members are homeless.

All other households will be subject to simplified reporting. These households will be certified for 12 months. The Department will require an interim report from these households in the sixth month of the certification. Other than this report, these households will be required to report only when their income exceeds 130 percent of the federal poverty level (the upper limit for food assistance eligibility). The Department will act on all changes that are reported or otherwise come to the attention of the Department.

Retrospective budgeting will end at the end of December 2003 for households now subject to change reporting and at the end of January 2004 for households now subject to monthly reporting. Income for all food assistance households will be budgeted prospectively beginning with the month of February 2004.

The Food Assistance Program will use the same methods for converting weekly or biweekly income to a projected monthly figure as are used in the Family Investment Program and Family Medical Assistance Program. Income will be projected by adding all income expected to be received in the period, dividing the result by the number of instances income will be received in the period, and multiplying the result by four if the income is received weekly or by two if the income is received biweekly.

These amendments do not provide for waivers in specified situations because the Department does not have the authority to waive federal law or regulation.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on October 1, 2003, as **ARC 2818B**. The Department received no comments on the Notice of Intended Action. The Department has made changes to paragraph 65.5(1)"b" to identify more specifically the "able-bodied adults without dependents" who are excluded from simplified reporting. These households are subject to the change reporting requirements in rule 441—65.10(234). The amended paragraph reads as follows:

"b. Households that include an able-bodied adult without dependents, as provided in 7 CFR 273.24, as amended to April 29, 2003."

The Council on Human Services adopted these amendments on November 19, 2003.

The Department finds that these amendments confer a benefit on affected clients by reducing paperwork. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date shall be waived.

These amendments are intended to implement Iowa Code section 234.6, subsection 7.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments became effective 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 Ch 65] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 2818B**, IAB 10/1/03.

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[For replacement pages for IAC, see IAC Supplement 12/10/03.]

ARC 3020B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4 and 2003 Iowa Acts, chapter 112, section 3, the Department of Human Services amends Chapter 78, "Amount, Duration, and Scope of Medical and Remedial Services," Iowa Administrative Code.

These amendments change Medicaid coverage limitations for drugs by expanding prior authorization requirements and implementing a preferred drug list. The preferred drug list will be developed and recommended to the Department by the Governor-appointed Pharmaceutical and Therapeutics Committee. The Department will publish the approved list to all Medicaid providers.

The preferred drug list will be a comprehensive list of all Iowa Medicaid-payable drugs, considering clinical efficacy, safety, and cost-effectiveness. Within therapeutic categories of medications where there is little therapeutic variation within the class, the list will designate the most cost-effective drug as the "preferred" drug for Iowa Medicaid. Nonpreferred drugs will require prior authorization for Medicaid payment. The list will specify the conditions for prior authorization of all nonpreferred drugs and any conditions for coverage of preferred drugs. Existing criteria for drug prior authorization will remain in effect until that category of drugs is phased into the preferred drug list.

Pursuant to 2003 Iowa Acts, chapter 112, section 3, subsection 4, the following drug categories are exempt from prior authorization:

- Drugs prescribed for treatment of human immunodeficiency virus or acquired immune deficiency syndrome, transplantation, or cancer; and
- Drugs prescribed for mental illness, with the exception of drugs and drug compounds that do not have a significant variation in therapeutic profile or side effect profile within a therapeutic class.

Further exceptions may be pursued under the Department's general rule on exceptions at 441—1.8(17A,217).

The Department may negotiate supplemental rebates from drug manufacturers and labelers for the Medicaid program over and above those required under federal regulations, which would affect the determination of cost-effectiveness. Coverage of nonprescription drugs may also be expanded if nonprescription drugs are found to be preferred.

In compliance with Iowa Code section 17A.4(2), the Department of Human Services finds that notice and public participation are unnecessary because these amendments implement 2003 Iowa Acts, chapter 112, section 3, subsection 10, which authorizes the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived and these amendments made effective January 1, 2004, as authorized by 2003 Iowa Acts, chapter 112, section 3, subsection 10.

These amendments were also published in the Iowa Administrative Bulletin under Notice of Intended Action on September 17, 2003, as **ARC 2789B** to allow for public comment. In addition, an Amended Notice of Intended Action was published in the October 29, 2003, Iowa Administrative Bulletin as **ARC 2906B** to allow for a public hearing, which was held on November 24, 2003.

The Council on Human Services adopted these amendments on November 19, 2003.

These amendments are intended to implement 2003 Iowa Acts, chapter 112, section 3.

These amendments shall become effective January 1, 2004.

The following amendments are adopted.

ITEM 1. Amend subrule **78.1(2)** as follows:

Amend paragraph "**a**," subparagraph **(3)**, introductory paragraph, as follows:

(3) *Prior authorization is required as specified in the preferred drug list published by the department pursuant to 2003 Iowa Acts, chapter 112, section 3. Until the implementation date designated in the preferred drug list, Payment payment will be made for certain the drugs listed below only when prior approval is obtained from the fiscal agent and when prescribed for treatment of specified conditions as follows. Prior authorization will be granted for 12-month periods per recipient as needed unless otherwise specified.*

Amend paragraph "**f**" as follows:

f. *Nonprescription drugs.*

(1) *The following nonprescription drugs are payable, and may be subject to the prior authorization requirements stated below and as specified in the preferred drug list published by the department pursuant to 2003 Iowa Acts, chapter 112, section 3:*

Acetaminophen tablets 325 mg, 500 mg
Acetaminophen elixir 120 mg/5 ml
Acetaminophen elixir 160 mg/5 ml
Acetaminophen solution 100 mg/ml
Acetaminophen suppositories 120 mg
Aspirin tablets 325 mg, 650 mg, 81 mg (chewable)
Aspirin tablets, enteric coated 325 mg, 650 mg, 81 mg
Aspirin tablets, buffered 325 mg
Bacitracin ointment 500 units/gm
Benzoyl peroxide 5%, cleanser, lotion, cream, gel
Benzoyl peroxide 10%, cleanser, lotion, cream, gel
Chlorpheniramine maleate tablets 4 mg
Diphenhydramine hydrochloride capsules 25 mg
Diphenhydramine hydrochloride liquid 6.25 mg/5 ml,
12.5 mg/5 ml
Ferrous sulfate tablets 300 mg, 325 mg
Ferrous sulfate elixir 220 mg/5 ml
Ferrous sulfate drops 75 mg/0.6 ml
Ferrous gluconate tablets 300 mg, 325 mg
Ferrous gluconate elixir 300 mg/5 ml
Ferrous fumarate tablets 300 mg, 325 mg
Guaifenesin 100 mg/5 ml with dextromethorphan 10 mg/
5 ml liquid
Insulin

HUMAN SERVICES DEPARTMENT[441](cont'd)

Meclizine hydrochloride tablets 12.5 mg, 25 mg
 Miconazole nitrate cream 2% topical and vaginal
 Miconazole nitrate vaginal suppositories, 100 mg
Multiple vitamin and mineral products specifically formulated and recommended for use as a dietary supplement during pregnancy and lactation

Multiple vitamin and mineral products with prior authorization under the conditions specified in subparagraph 78.1(2)“a”(3)

Niacin (nicotinic acid) tablets 25 mg, 50 mg, 100 mg, 250 mg, 500 mg

Pediatric oral electrolyte solutions

Permethrin liquid 1%

Pseudoephedrine hydrochloride tablets 30 mg, 60 mg

Pseudoephedrine hydrochloride liquid 30 mg/5 ml

Salicylic acid liquid 17%

Senokot granules, 326 mg/tsp for children aged 20 and under

Senokot tablets, 187 mg for children aged 20 and under

Sodium chloride solution 0.9% for inhalation with metered dispensing valve 90 ml, 240 ml

Tolnaftate 1% cream, solution, powder

~~Nonprescription multiple vitamin and mineral products specifically formulated and recommended for use as a dietary supplement during pregnancy and lactation.~~

~~With prior authorization, nonprescription multiple vitamins and minerals under the conditions specified in subparagraph 78.1(2)“a”(3).~~

~~Insulin.~~

Other nonprescription drugs listed as preferred in the preferred drug list published by the department pursuant to 2003 Iowa Acts, chapter 112, section 3.

(2) Oral solid forms of the above-covered items shall be prescribed and dispensed in a minimum quantity of 100 units per prescription or the currently available consumer package size except when dispensed via a unit dose system. When used for maintenance therapy, all of the above-listed covered items may be prescribed and dispensed in 90-day quantities.

ITEM 2. Amend subrule 78.28(1), introductory paragraph, as follows:

78.28(1) Services, procedures, and medications prescribed by a physician (M.D. or D.O.) which are subject to prior approval or preprocedure review are as follows *or as specified in the preferred drug list published by the department pursuant to 2003 Iowa Acts, chapter 112, section 3:*

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/10/03.

ARC 2981B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby adopts new Chapter 3, "Early Hearing Detection and Intervention," Iowa Administrative Code.

The purpose of adopting Chapter 3 is to establish administrative rules relative to the universal hearing screening of all newborns and infants in Iowa. In addition, the rules facilitate the transfer of data to the Department to enhance the capacity of agencies and practitioners to provide services to children and their families. The goal of universal hearing screening of all newborns and infants in Iowa is early detection of hearing loss to allow children and their families the earliest possible opportunity to obtain early intervention services.

Notice of Intended Action regarding this chapter was published in the October 1, 2003, Iowa Administrative Bulletin as **ARC 2820B**.

A public hearing was held on October 21, 2003. Written and oral comments were received and are noted below. The Department received 13 responses to its request for public comment on Chapter 3 from audiologists, parents, the Early ACCESS State Coordinator, and the Iowa Medical Society. Comments included:

- Suggestions to strengthen follow-up procedures;
- Suggestions to clarify or change reporting requirements;
- Support for reporting requirements as written;
- Requests that wording throughout the rules be changed to include audiologists certified by the Iowa board of educational examiners;
- Suggestions to change technical audiology language;
- Support for a universal newborn hearing screening system in Iowa.

The following changes have been made to the Notice of Intended Action:

- Throughout the rules, "licensed audiologist" was changed to "audiologist."
- In rule 641—3.4(80GA,ch102), numbered paragraph "1," "diagnostic" was changed to "screening," and the paragraph now reads as follows:
 - "1. Automated or screening auditory brainstem response, or"
 - The word "appropriate" was added in rule 641—3.3(80GA,ch102). The rule now reads as follows:

"641—3.3(80GA,ch102) Goal and outcomes. The goal of universal hearing screening of all newborns and infants in Iowa is early detection of hearing loss to allow children and their families the earliest possible opportunity to obtain appropriate early intervention services."

- A statement was added to subrule 3.7(3) regarding how to document a parent's failure to attend the arranged appointment. The subrule now reads as follows:

"3.7(3) The person who completes the newborn hearing screening shall report screening results to the department in the manner prescribed in 3.8(80GA,ch102). If the parent fails to attend the appointment, the facility shall document such failure in the medical or educational record and shall report such failure to the department."

- The introductory paragraph of rule 641—3.9(80GA, ch102) was changed to clarify that the rule applies to audiologists in AEAs and other facilities. The introductory paragraph now reads as follows:

"641—3.9(80GA,ch102) Conducting and reporting diagnostic audiologic assessments to the department. Beginning January 1, 2004, any facility, including AEAs, conducting diagnostic audiologic assessments shall report the results of the assessments for any child under three years of age to the department. The facility shall conduct the assessment in accordance with the Pediatric Audiologic Diagnostic Protocol

PUBLIC HEALTH DEPARTMENT[641](cont'd)

contained at Appendix A. Results shall be reported as follows.”

- The choice “undetermined” for degree and type of hearing loss was added to subrule 3.9(4), and the subrule now reads as follows:

“**3.9(4)** Reported results shall include a statement of the severity (mild, moderate, moderately severe, severe, profound, or undetermined) and type (sensorineural, conductive, mixed, or undetermined) of hearing loss.”

The Department finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of this chapter should be waived and this chapter should be made effective on January 1, 2004, as it confers a benefit to the public and because this chapter implements 2003 Iowa Acts, chapter 102, which becomes effective on January 1, 2004.

These rules are intended to implement 2003 Iowa Acts, chapter 102.

These rules will become effective January 1, 2004.

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 3] is being omitted. With the exception of the changes noted above, these rules are identical to those published under Notice as **ARC 2820B**, IAB 10/1/03.

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[For replacement pages for IAC, see IAC Supplement 12/10/03.]

ARC 2994B

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 21, "Community Colleges," Iowa Administrative Code.

The amendments update the rule governing court-ordered drinking drivers' school attendance in accordance with 2003 Iowa Acts, chapter 180, section 60. The amendments allow the Department to charge an administrative fee for the review and approval of such courses at a slightly higher rate when the courses that are offered outside Iowa are reviewed.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 17, 2003, as **ARC 2741B**. A public hearing was held on October 7, 2003, and no written or oral comments were received. These amendments are identical to those published under Notice.

These amendments are intended to implement 2003 Iowa Acts, chapter 180, section 60.

These amendments will become effective January 14, 2004.

The following amendments are adopted.

ITEM 1. Amend rule 281—21.33(321J) as follows:

281—21.33(321J) Administrative fee established.

21.33(1) Students enrolled in Iowa. Beginning January 1, 2003, each person enrolled in Iowa in an instructional course for drinking drivers under this chapter shall be charged an administrative fee of \$10. This fee is in addition to tuition and shall be collected by the provider of the instructional course in conjunction with the tuition fee established under 281—21.32(321J). The administrative fee shall be forwarded to the department of education on a quarterly basis as prescribed by the department. If a student has been declared by the court as indigent, no administrative fee will be charged to that student.

21.33(2) Students enrolled in another state. Beginning January 1, 2004, each person enrolled outside the state of Iowa in an instructional course for drinking drivers under this chapter shall be charged an administrative fee of \$25. This fee is in addition to tuition and shall be paid directly to the department of education by the student. Upon payment of the fee, the department of education shall review the educational component of the course taken by the student and shall inform the department of transportation whether the educational component is approved by the department of education.

ITEM 2. Amend **281—Chapter 21**, Division III, implementation clause, as follows:

~~These~~ *The rules in this division* are intended to implement Iowa Code section 321J.22 and 2000 Iowa Acts, House File 2544 as amended by 2003 Iowa Acts, chapter 180, section 60.

[Filed 11/19/03, effective 1/14/04]

[Published 12/10/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/10/03.

ARC 2995B

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby adopts Chapter 34, "Funding for Children Residing in State Institutions or Mental Health Institutes," Iowa Administrative Code.

This chapter establishes procedures for funding the provision of appropriate educational services for children residing in the Mental Health Institutes at Cherokee and Independence, the Iowa Juvenile Home at Toledo, and the State Training School at Eldora.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 1, 2003, as **ARC 2835B**. A public hearing was held on October 23, 2003, and no written or oral comments were received. Two written comments were received subsequent to the public hearing, and no changes were made due to the comments. These rules are identical to those published under Notice.

These rules are intended to implement 2003 Iowa Acts, chapter 178, section 58.

These rules will become effective January 14, 2004.

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 34] is being omitted. These rules are identical to those published under Notice as **ARC 2835B**, IAB 10/1/03.

[Filed 11/19/03, effective 1/14/04]

[Published 12/10/03]

[For replacement pages for IAC, see IAC Supplement 12/10/03.]

ARC 2996B

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby rescinds Chapter 47, "Vocational Education Council," and adopts new Chapter 47, "Career Academies," Iowa Administrative Code.

The new chapter updates the rules in conformity with 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 76.

A public hearing was held on October 22, 2003, and no written or oral comments were received. This chapter is identical to that published under Notice of Intended Action in the Iowa Administrative Bulletin on October 1, 2003, as **ARC 2807B**, with the minor exception of adding "and the method to assess effectiveness in achieving results" to paragraph 47.2(4)"c."

These rules are intended to implement 2003 Iowa Acts, First Extraordinary Session, chapter 2, sections 76 to 80.

These rules will become effective January 14, 2004.

The following amendment is adopted.

EDUCATION DEPARTMENT[281](cont'd)

Rescind 281—Chapter 47 and adopt the following **new** chapter in lieu thereof:

CHAPTER 47
CAREER ACADEMIES

281—47.1(260C) Definitions. For purposes of these rules, the following definitions shall apply:

“Articulation” means a process of curriculum alignment, linking the secondary and postsecondary levels; the process identifies competencies required at each level, which are consistent with specific occupational levels. The process requires signed agreements between the secondary and postsecondary levels in order to facilitate student transition to the postsecondary level and reduce curricular duplication. Articulation is an ongoing process that requires regular review and renewal.

“Associate degree,” “diploma” and “certificate” in a vocational, career and technical education program are as defined in 281—subrule 21.2(10).

“Career academy” means a program of study that combines a minimum of two years of secondary education with an associate degree in a career preparatory program. A diploma or certificate may be provided as options within the associate degree program. The career academy is a program of study that is nonduplicative, sequential, and ensures that the course of study is skill standards-based, integrates academic and technical instruction, utilizes work-based and work site learning where appropriate and available, utilizes an individual career planning process with parent involvement, and prepares an individual for entry and advancement in a high-skill and rewarding career field as specified in 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 76. A career academy may include articulation of the community college associate degree to a baccalaureate degree. “Nonduplicative” means that the postsecondary component of the career academy is not currently offered at a participating secondary school.

The career academy should strengthen the academic component of career and technical education through the integration of academic and career and technical education; build student competence in mathematics, science, and communications in a coherent sequence of courses; and lead to an associate degree that prepares an individual for entry and advancement in a high-skill and rewarding career field that may include further education.

“Community college” means a community college established under Iowa Code chapter 260C or a consortium of two or more community colleges.

“Skill standard” means a description of the work to be performed, how well the work must be performed and the level of knowledge and skill required to perform that work. Skill standards are developed by industry, which includes businesses, labor unions, and employee and employer organizations, in cooperation with educators.

“Work-based learning” is defined as planned and supervised connections of classroom, laboratory and work experiences that prepare students for current and future careers in a highly technical workplace. Work-based learning experiences provide students the opportunity to develop and apply knowledge, technical skills, and employability behaviors through structured classroom and laboratory experiences.

“Work site learning” means a planned and supervised work experience for students. Work site learning may include industry tours, “job shadowing,” paid and unpaid cooperative work experience programs and apprenticeship programs.

A work site component that is part of a career academy program must be in compliance with workplace laws and regulations, including the minimum wage requirements prescribed by Iowa law or the federal Fair Labor Standards Act. The program of study must also comply with state and federal laws pertaining to the workplace, including equal employment opportunity and accident and liability insurance requirements as described in 261—subrule 11.3(7).

281—47.2(260C) Career academy program of study.

47.2(1) Minimum requirements. A career academy must have operational policies related to a defined curriculum, credit provisions, sequence and locations of courses, and enrollment procedures. A career academy shall meet the following minimum requirements:

- a. Articulate two years of secondary education with an associate degree program, which may include a diploma or certificate;
- b. Ensure that the secondary and postsecondary components of the career preparatory program are nonduplicative;
- c. Identify a sequential course of study;
- d. Delineate skill standards specific to the industry;
- e. Integrate academic and technical instruction;
- f. Utilize work-based learning;
- g. Utilize work site learning where appropriate and available;
- h. Lead to an associate degree in a high-skill and rewarding career field;
- i. Provide for an individual career planning process, with parent or guardian involvement; and
- j. Include articulation of a community college associate degree or, if possible, a baccalaureate degree.

47.2(2) Career academy funding. Funding for a career academy is as specified in 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 76. The individual courses offered by a community college in a career academy may be funded additionally through a variety of state and federal sources. Nothing in these rules relieves secondary and postsecondary institutions of their obligations to meet other funding requirements.

47.2(3) Vocational, career and technical program approval. The career academy program of study shall include both secondary and postsecondary curricula. A career academy program must meet requirements of the department of education as specified in Iowa Code sections 256.11(5)“h,” 258.3A, 258.4, and 260C.14. The career academy must be an articulated program of study between secondary and postsecondary institutions.

47.2(4) Contract or agreement. The career academy program of study must receive school district board and community college board approval. A contract or 28E agreement between the boards of a school district and a community college must be signed by participating parties and be in effect prior to initiation of a career academy. The contract or 28E agreement between the boards of the school district(s) and the community college must set forth the purposes, powers, rights, objectives, and responsibilities of the contracting parties and must specify assurances that the career academy program of study is as defined in 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 76. The contract or 28E agreement shall include, but is not limited to, the following:

- a. The duration of the joint or cooperative undertaking;
- b. The precise organization, composition and nature of any separate legal or administrative entity created thereby, together with the powers delegated thereto, provided such entity may be legally created. However, if the agreement establishes a separate legal or administrative entity, the entity

EDUCATION DEPARTMENT[281](cont'd)

shall, when investing funds, comply with the provisions of Iowa Code sections 12B.10 through 12B.10C and other applicable law;

c. The purpose or purposes of the joint or cooperative undertaking and the method to assess effectiveness in achieving results;

d. The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget;

e. The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

f. The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking;

g. Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking; and

h. Any other necessary and proper matters for the joint or cooperative undertaking.

The school district board and community college board must approve the contract or 28E agreement. An assurance form, as defined by the department of education, which specifies that the career academy includes all the components required under subrule 47.2(1) shall be sent to the director of the department of education.

47.2(5) Faculty requirements. Faculty providing college credit instruction in a career academy program of study must meet community college faculty minimum standards as specified in rule 281—21.3(260C) and the requirements of the quality faculty plan as approved by the community college board pursuant to Iowa Code section 260C.36. Faculty teaching courses that provide only secondary level credit must have appropriate secondary licensure pursuant to Iowa Code chapter 272.

47.2(6) Credit options. School districts may elect to offer high school credit for college credit courses within a career academy program. The career academy program of study shall be designed so that a student who utilizes the program will graduate from high school with the class in which the student was enrolled.

47.2(7) Data collection. Data collection and enrollment reporting must follow specified requirements as determined by the department of education.

These rules are intended to implement 2003 Iowa Acts, First Extraordinary Session, chapter 2, sections 76 to 80.

[Filed 11/19/03, effective 1/14/04]

[Published 12/10/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/10/03.

ARC 2998B

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby adopts Chapter 68, "Iowa Public Charter Schools," Iowa Administrative Code.

This chapter establishes the criteria and point weighting system for those criteria for State Board of Education consideration of applicants for charter schools in the state. Public charter schools were mandated in 2002 Iowa Acts, chapter

1124, section 4, but funding was not received. 2003 Iowa Acts, chapter 79, section 1, amended the 2002 Iowa Acts, and funding has been received to establish charter schools.

A public hearing was held on October 10, 2003. No oral or written comments were received. This chapter is identical to the Notice of Intended Action published in the Iowa Administrative Bulletin on September 17, 2003, as **ARC 2740B**. This chapter was Adopted and Filed Emergency on September 12, 2003, and was published in the Iowa Administrative Bulletin on October 1, 2003, as **ARC 2808B**.

These rules shall become effective on January 14, 2004, at which time the Adopted and Filed Emergency rules are hereby rescinded.

These rules are intended to implement 2002 Iowa Acts, chapter 1124, as amended by 2003 Iowa Acts, chapter 79.

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 68] is being omitted. These rules are identical to those published under Notice as **ARC 2740B**, IAB 9/17/03.

[Filed 11/19/03, effective 1/14/04]

[Published 12/10/03]

[For replacement pages for IAC, see IAC Supplement 12/10/03.]

ARC 2997B

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 256.7(5), the State Board of Education hereby adopts amendments to Chapter 97, "Supplementary Weighting," Iowa Administrative Code.

These amendments make minor wording changes, establish the procedures for school districts to generate minimum funding for students in an in-district regional academy, and set maximum funding for all districts hosting a regional academy. 2003 Iowa Acts, chapter 179, adds a minimum weighting provision for hosting a regional academy and establishes maximum funding.

A public hearing was held on October 22, 2003, and no oral or written comments were received. These amendments are identical to those published in the Iowa Administrative Bulletin on October 1, 2003, as **ARC 2809B**.

These amendments are intended to implement Iowa Code section 257.11 as amended by 2003 Iowa Acts, chapter 179.

These amendments will become effective on January 14, 2004.

The following amendments are adopted.

ITEM 1. Amend rule **281—97.1(257)**, definition of "regional academy," as follows:

"Regional academy" shall mean an educational program established by a school district to which multiple school districts send students in grades ~~seven~~ *nine* through twelve. The curriculum shall include advanced-level courses and, in addition, may include vocational-technical ~~programs~~ *courses* and a virtual academy.

ITEM 2. Amend subrule **97.4(1)**, paragraph "c," as follows:

c. The grade levels include one or more grades ~~seven~~ *nine* through twelve.

EDUCATION DEPARTMENT[281](cont'd)

ITEM 3. Renumber subrule **97.4(4)** as **97.4(5)** and add the following **new** subrule:

97.4(4) Minimum weighting. The minimum amount of additional weighting for which a school district establishing a regional academy shall be eligible is an amount corresponding to ten additional pupils if the academy provides both advanced-level courses and vocational-technical courses.

ITEM 4. Amend rule 281—97.4(257) by adding the following **new** subrule:

97.4(6) Maximum funding. If the sum of the funding amount calculated for all districts operating regional academies under this rule exceeds \$1 million for the school year beginning July 1, 2004, and each succeeding fiscal year, the director of the department of management shall prorate the amount calculated for each district. The proration shall be based upon the amount calculated for each district when compared to the sum of the amount for all districts.

[Filed 11/19/03, effective 1/14/04]

[Published 12/10/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/10/03.

ARC 3006B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 22, "Controlling Pollution," Iowa Administrative Code.

The purpose of this rule making is to establish a new exemption for emission units that can be classified as small units. It is important to note that the facility retains the obligation to determine whether other air permitting requirements still apply to those sources and, if such requirements exist, to meet those requirements.

This rule making is the result of a cooperative negotiated rule-making process between the Department and representatives of the Iowa Association of Business and Industry (ABI) and the U.S. Environmental Protection Agency. This rule making is part of an ongoing effort to reduce the regulatory burden on industry where the actual emissions of air contaminant sources are likely to have little or no environmental or human health consequences.

This amendment adds a new paragraph 22.1(2)"w" establishing an exemption for emission units that can be classified as small units. "Small units" are defined as emission units and associated control equipment (if applicable) that emit less than 40 pounds per year of lead and lead compounds expressed as lead, 5 tons per year of sulfur dioxide, 5 tons per year of nitrogen oxides, 5 tons per year of volatile organic compounds, 5 tons per year of carbon monoxide, 5 tons per year of particulate matter, 2.5 tons per year of PM10, and 5 tons per year of hazardous air pollutants (as defined in rule 567—22.100(455B)). An emission unit that emits hazardous air pollutants (as defined in rule 567—22.100(455B)) is eligible for this exemption provided that the emission unit is not required to be reviewed for compliance with 567—subrule 23.1(3), emission standards for hazardous air pollutants (40

CFR 61, NESHAP), or 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR 63, NESHAP). An emission unit that emits air pollutants that are not regulated air pollutants as defined in rule 567—22.100(455B) shall not be eligible to use this exemption. This exemption applies to both existing and new or modified small units.

An owner or operator that utilizes the small unit exemption must maintain on site an "exemption justification document." The exemption justification document must document conformance and compliance with the emission rate limits contained in the definition of "small unit" for the particular emission unit or group of similar emission units for which the exemption applies. The controls described in the exemption justification document establish a limit on the potential emissions.

Concerns that the operation of many of these small units may together lead to negative environmental impacts is addressed through additional requirements for a subcategory of small units. This subcategory is referred to as a "substantial small unit," which is defined as those units that emit 75 percent of the small unit thresholds. The owner or operator of the facility must notify the Department within 90 days of the end of a calendar year for which the aggregate emissions from substantial small units at the facility exceed any of the "cumulative notice thresholds" defined in the exemption. Once a cumulative notice threshold is exceeded, the owner or operator must apply for air construction permits for all substantial small units for which the cumulative notice threshold for the pollutant(s) in question has been exceeded.

The Department will seek an amendment to the Delegation Agreement with the U.S. EPA to include both of these exemptions in the State Implementation Plan.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 17, 2003, as **ARC 2775B**. A public hearing was held on October 7, 2003. No comments were received at the public hearing or during the public comment period.

This amendment has not been modified from that published under the Notice of Intended Action.

This amendment is intended to implement Iowa Code section 455B.133.

This amendment shall become effective January 14, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [22.1(2)"w"] is being omitted. This amendment is identical to that published under Notice as **ARC 2775B**, IAB 9/17/03.

[Filed 11/19/03, effective 1/14/04]

[Published 12/10/03]

[For replacement pages for IAC, see IAC Supplement 12/10/03.]

ARC 3007B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Chapter 23, "Emission Standards for Contaminants," Iowa Administrative Code.

These amendments include implementation of Iowa Code section 455B.133(10).

Subrule 23.2(2) in Item 1 pertains to the process for requesting a waiver from the state open burning regulations. The rules in Chapter 23 already identify the process in 567—Chapter 21 for requesting a waiver from the Department. However, the amendment emphasizes that additional information may be required when a variance from the open burning rules is requested and stresses the Department's obligation to ensure that the national ambient air quality standards (NAAQS) are not adversely affected by the open burning.

The amendment in Item 2 clarifies the fact that disaster debris burning of structures or structural debris has never been exempted from the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP).

In Item 3, existing paragraph 23.2(3)"g," which pertains only to training fires, is rescinded and a new paragraph "g" that contains two categories of open burning is adopted, one category for training fires and another category for controlled burning of a demolished building. These two types of activities, because of their similarity, are kept together under the same paragraph. Nonetheless, there are clear distinctions between the two types of burning.

The open burning requirements for training fires in new paragraph "g" are the same as those in the existing paragraph, with the exception of the following: definitions for "training fire" and "bona fide training" are added, a requirement that the building must be structurally intact is added, the specific form to be used in the notification process is identified, and an explanation is added that controlled burning of a demolished building is now included in the existing limit for burning asphalt roofing. Paragraph "g" also details the conditions and requirements for the "new" exemption provided to a city for "controlled burning of a demolished building" in accordance with the provisions of Iowa Code section 455B.133(10). The requirements for conducting "controlled burning of a demolished building" are:

- Notification to the Department,
- Compliance with the federal asbestos NESHAP,
- A maximum of two burns in which asbestos-free asphalt roofing on the structure can be burned without removal,
- A maximum size limit on buildings to be burned,
- Restrictions limiting the time of day for open burning,
- Restrictions on the burning of nonstructural materials,
- Record-keeping requirements, and
- A limit on the number of controlled burns of a demolished building that can be conducted in a given area.

The Department conducted ambient air quality modeling and determined that, if the requirements listed above are met, the ambient air quality standards for PM10 are predicted to be maintained throughout the state. Because of potential impacts to the public health from the controlled burning of demolished buildings, the amendments contain a limit of three controlled burns of demolished buildings in any three-year period in any overlapping 0.6-mile-radius circle. If a city wishes to conduct additional controlled burns, the city, in accordance with the variance provisions in 567—subrules 21.2(1) and 23.2(2), may request that the Department conduct a special review of the ambient air impacts. Upon conducting this review, the Department may approve or deny the city's request for any additional controlled burns. The city is required to maintain records of each controlled burn of a demolished building.

The amendment in Item 4 adds clarification to the existing open burning rules covering agricultural structures that any

burning of such structures must be conducted in accordance with 40 CFR Section 61.145, the federal asbestos NESHAP.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 9, 2003, as **ARC 2597B**. A public hearing was held on August 7, 2003. No comments were received at the public hearing. Written comments were received from the U.S. Environmental Protection Agency during the public comment period. The submitted comments and the Department's response to the comments were summarized and submitted to the Commission on November 17, 2003. A copy of the responsiveness summary is available from the Department upon request. These amendments have not been modified from those published under the Notice of Intended Action as a result of the comments. However, the following changes from the Notice have been made:

1. To ensure consistent use of terminology, the words "asphalt shingles" were changed to "asphalt roofing" and the words "demolition debris" were changed to "a demolished building."

2. Form numbers and names were inserted as appropriate.

3. The phrase "if the training fire is to be conducted on a building" was added to numbered paragraph "3" of subparagraph 23.2(3)"g"(1) for clarification. Numbered paragraph "3" now reads as follows:

"3. If the training fire is to be conducted on a building, written notification must be provided to the department on DNR Form 542-8010, 'Notification of an Iowa Training Fire-Demolition or a Controlled Burn of a Demolished Building,' and must be postmarked or delivered to the director at least ten working days before such action commences."

4. The last sentence of the second paragraph of 23.2(3)"i" was reworded for clarification. The second paragraph now reads as follows: "For the purposes of this subrule, 'agricultural structures' means barns, machine sheds, storage cribs, animal confinement buildings, and homes located on the premises and used in conjunction with crop production, livestock or poultry raising and feeding operations. 'Agricultural structures,' for asbestos NESHAP purposes, includes all of the above, with the exception of a single residential structure on the premises having four or fewer dwelling units, which has been used only for residential purposes."

These amendments are intended to implement Iowa Code section 455B.133.

These amendments shall become effective January 14, 2004.

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 [23.2(2), 23.2(3)"a," "g" and "i"] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 2597B**, IAB 7/9/03.

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[Published 12/10/03]

[For replacement pages for IAC, see IAC Supplement 12/10/03.]

ARC 3008B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 64, "Wastewater Construction and Operation Permits," and Chapter 69, "Onsite Wastewater Treatment and Disposal Systems," Iowa Administrative Code.

The amendments reauthorize NPDES General Permit No. 4 for an additional five-year period, from January 1, 2004, through December 31, 2008. General Permit No. 4 authorizes discharges from private onsite wastewater systems. In addition to renewing the General Permit, other changes relevant to this permit are summarized below:

- Definitions for "carbonaceous biochemical oxygen demand (CBOD5)," "Class 'A1' water," "Class 'A2' water," "Class 'A3' water," "Class 'C' water," and "qualified sampler" are added to Chapter 69.

- A "qualified sampler" must conduct effluent sampling for onsite systems, effective January 1, 2005. Anyone, including a homeowner or maintenance contractor, may become a qualified sampler upon successful completion of DNR-approved training.

- The effluent sampling frequency for free access sand filters is increased from once a year to twice a year at six-month intervals.

- The requirement for monitoring effluent for fecal coliform bacteria is replaced with an effluent standard and monitoring requirement for *E. coli* for systems that discharge to or within one mile up gradient of a Class "A1," "A2," "A3," or "C" water.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 11, 2003, as **ARC 2526B**. The primary change from the Notice is that the adopted amendments will allow homeowners and maintenance contractors to become qualified samplers to conduct effluent sampling for compliance monitoring of the systems they maintain. This issue was originally presented to the Commission as part of the Notice with the recommendation that homeowners and maintenance contractors not be allowed to conduct effluent sampling for compliance monitoring, to eliminate a potential conflict of interest. There was strong opposition to this restriction at the public hearings. Therefore, the restriction was eliminated for homeowners and maintenance contractors who complete DNR-approved training to become qualified samplers. Implementation of the requirement regarding qualified samplers will also be delayed until January 1, 2005, to allow time for the Department to develop and implement a training program for qualified samplers.

Comments were requested regarding the need for effluent sampling for TSS (total suspended solids). Comments were received in support of and in opposition to retaining TSS sampling. The Department believes the benefits of the TSS testing outweigh the costs and therefore retained the TSS sampling requirement in the renewed permit.

Department staff have made additional wording changes to General Permit No. 4 since the public hearings, for clarity and consistency.

Copies of relevant rules may be obtained from Brent Parker or viewed at the following Web site: <http://www.legis.state.ia.us/Rules/2002/iac/gnac/gna1.pdf>.

These amendments may have an impact on small business. These amendments will become effective January 14, 2004.

These amendments are intended to implement Iowa Code section 17A.3(1)"b" and chapter 455B, division III, part 1.

The following amendments are adopted.

ITEM 1. Amend subrule 64.15(4) as follows:

64.15(4) "Discharge from Onsite Wastewater Treatment and Disposal Systems," NPDES General Permit No. 4, effective ~~July 1, 1998, to July 1, 2003~~ *January 1, 2004, to December 31, 2008*.

ITEM 2. Amend subrule **69.1(2)** by adopting the following new definitions in alphabetical order:

"Carbonaceous biochemical oxygen demand (CBOD5)" means a five-day measurement of the amount of oxygen used by microorganisms in the biochemical oxidation of organic matter.

"Class 'A1' water," also referred to as a primary contact recreational use water, means waters in which recreational or other uses may result in prolonged and direct contact with the water, involving considerable risk of ingesting water in quantities sufficient to pose a health hazard. Such activities would include, but not be limited to, swimming, diving, water skiing, and water contact recreational canoeing.

"Class 'A2' water," also referred to as a secondary contact recreational use water, means waters in which recreational or other uses may result in contact with the water that is either incidental or accidental. Class A2 uses include fishing, commercial and recreational boating, any limited contact incidental to shoreline activities and activities in which users do not swim or float in the water body while on a boating activity.

"Class 'A3' water," also referred to as a children's recreational use water, means waters in which recreational uses by children are common. Class A3 waters are water bodies having definite banks and bed with visible evidence of the flow or occurrence of water. This type of use would primarily occur in urban or residential areas.

"Class 'C' water" means a "drinking water supply" river or lake, designated by the department for protection as a raw water source for a drinking water supply system.

"Qualified sampler," for the purposes of collecting compliance effluent samples required under NPDES General Permit No. 4, means one of the following persons: a DNR staff person, a county environmental health staff person, an Iowa-certified wastewater treatment operator, or an individual who has received training approved by the department to conduct effluent sampling.

ITEM 3. Amend rule 567—69.2(455B) as follows:

567—69.2(455B) Requirements when effluent is discharged into surface water. All discharges from onsite wastewater treatment and disposal systems which are discharged into any surface water, *to the surface of the ground, or into a subsurface drainage tile that discharges to a surface water* shall be treated in a manner that will conform with the requirements of NPDES General Permit No. 4 issued by the department of natural resources, as referenced in 567—Chapter 64. Prior to the installation of any system discharging to waters of the state, a notice of intent to be covered by NPDES General Permit No. 4 shall be submitted to the department. Systems covered by this permit must meet all applicable requirements listed in the NPDES permit, *including effluent sampling and monitoring*.

ITEM 4. Amend paragraph **69.9(1)"c"** as follows:

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ARC 3019B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

c. Sampling. A sampling port shall be available at the discharge point of the filter or shall be installed in the discharge line. Monitoring and effluent sampling of intermittent sand filters must meet the requirements of the NPDES permit as specified in rule 69.2(455B). Such sampling shall be performed annually ~~or as directed by the administrative authority for a subsurface sand filter as described in 69.9(3) and twice a year, at six-month intervals, for free access sand filters as described in 69.9(4).~~ (Beginning January 1, 2005, such sampling shall be done by a qualified sampler.) Tests shall be run on all samples for carbonaceous biochemical oxygen demand (CBOD5) and *Escherichia coli* (*E. coli*) (testing for *E. coli* is limited to locations noted in the following sentence), and once a year in the spring for total suspended solids (TSS). The maximum carbonaceous BOD5 CBOD5, total suspended solids TSS, and fecal coliform *E. coli* count requirements limits are as follows: (Fecal coliform *E. coli* tests shall only be required where waste discharge is effluent is discharged into a watershed within one mile upstream of (directly or within one mile upgradient of the shoreline of) a "Class A" Class "A1," Class "A2," Class "A3" or Class "C" water).

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 52, "Payment," and Chapter 177, "In-Home Health-Related Care," Iowa Administrative Code.

These amendments decrease the maximum State Supplementary Assistance reimbursement rates for in-home health-related care and residential care facility care. The amendments will lower rate limits by 6 percent effective February 1, 2004, after allowing for the Social Security cost-of-living increase in January 2004. These changes are necessary to keep the State Supplementary Assistance expenditures within the state appropriation, while still meeting the federal maintenance of effort requirements.

The amount of State Supplementary Assistance benefits a client receives is calculated by subtracting the client's countable income (after disregards) from the cost of the client's care. The effect of these changes is to lower income limits for these two living arrangements, potentially making some clients ineligible, and to lower supplementation for clients whose income and cost of care remain below the new limits. Providers are prohibited from making additional charges to the client over the maximum payment limit set by the program.

These amendments do not provide for waivers in specified situations because the maximum payment rates must be reduced to control expenditures.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin on October 1, 2003, as **ARC 2817B**. The Department received four comments protesting the rate decreases. However, the Department has insufficient funds to continue operating the program at the current rates. Therefore, these amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on November 19, 2003.

These amendments are intended to implement Iowa Code section 249.3 and 2003 Iowa Acts, chapter 175, section 14, subsection 2, and section 31, subsections 2 and 3.

These amendments shall become effective on February 1, 2004.

The following amendments are adopted.

ITEM 1. Amend subrule 52.1(3), introductory paragraph, as follows:

52.1(3) Residential care. Payment to a recipient in a residential care facility shall be made on a flat per diem rate of ~~\$18.72~~ \$17.86 or on a cost-related reimbursement system with a maximum per diem rate of ~~\$26.20~~ \$25. The department shall establish a cost-related per diem rate for each facility choosing this method of payment according to rule 441—54.3(249).

ITEM 2. Amend rule 441—177.4(249) as follows:

Amend subrule 177.4(3) as follows:

177.4(3) Maximum costs. The maximum cost of service shall be ~~\$503.67~~ \$480.55. The provider shall accept the payment made and shall make no additional charges to the recipient or others.

Amend subrule 177.4(7), introductory paragraph, as follows:

Effluents Discharging To	Fecal Coliform <i>E. coli</i> cfu/100 ml mL	CBOD5 mg/L	TSS mg/L
Class "A" Class "A1," "A2," "A3" and "C" waters* :	235	25	25
Primary contact water use*	200	25	25
All other water use classifications	no limit	25	25

*A separation distance of 750 feet shall be maintained between any point of discharge and the shoreline of a Class "A1," "A2," or "A3" water. ~~a primary recreational area as specified in the "Recommended Standards for Bathing Beaches" of the Great Lakes Upper Mississippi River Board of State Public Health and Environmental Managers.~~

ITEM 5. Amend subrule 69.10(6) as follows:

69.10(6) Effluent sampling. Any open discharge from systems involving mechanical aeration shall have the effluent sampled at each inspection ~~twice a year at six-month intervals.~~ (Beginning January 1, 2005, such sampling shall be done by a qualified sampler.) Tests shall be run ~~twice a year on all samples for CBOD5, TSS and coliform bacteria and E. coli, and once a year in the spring for TSS,~~ as ~~noted prescribed~~ in 69.9(1).

ITEM 6. Amend subrule **69.11(1)**, paragraph "c," as follows:

c. Effluent sampling. Effluent sampling of constructed wetlands shall be performed twice a year ~~or as directed by the administrative authority at six-month intervals.~~ (Beginning January 1, 2005, such sampling shall be done by a qualified sampler.) Tests shall be run on all parameters as required in 69.9(1).

[Filed 11/19/03, effective 1/14/04]

[Published 12/10/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/10/03.

HUMAN SERVICES DEPARTMENT[441](cont'd)

177.4(7) Income for adults. The ~~gross~~ *countable* income of the individual and spouse, living in the home, shall be limited to ~~\$498.29~~ \$480.55 per month if one needs care or ~~\$996.58~~ \$961.10 if both need care, ~~with~~ *after* the following disregards *from gross income*:

Amend subrule **177.4(8)**, paragraph “b,” introductory paragraph, as follows:

b. The *countable* income of the child shall be limited to ~~\$498.29~~ \$480.55 per month ~~with~~ *after* the following disregards *from gross income*:

[Filed 11/19/03, effective 2/1/04]

[Published 12/10/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/10/03.

ARC 2986B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code section 10A.104(5), the Department of Inspections and Appeals hereby amends Chapter 103, “Bingo,” Iowa Administrative Code.

This amendment provides an exception to licensing requirements for certain bingo occasions conducted by non-profit organizations. The amendment specifies the organizations exempt from the Department's bingo licensing requirements, as well as the requirements to be met by the organizations.

Notice of Intended Action was published in the October 15, 2003, Iowa Administrative Bulletin as **ARC 2862B**. The adopted amendment is identical to that published under Notice.

The Department received no public comments on this amendment.

This amendment will become effective on January 14, 2004.

This amendment is intended to implement 2003 Iowa Acts, chapter 77, and Iowa Code chapter 99B.

The following amendment is adopted.

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:

- Participants in the bingo occasion are not charged to enter the premises where bingo is conducted.
- Participants in the bingo occasion are not charged to play.
- Any prize awarded at the bingo occasion shall be donated.

d. The bingo occasion is conducted as an activity and not for fundraising purposes.

[Filed 11/19/03, effective 1/14/04]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/10/03.

ARC 2992B

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of 2003 Iowa Acts, chapter 119, the Insurance Division hereby amends Chapter 20, “Property and Casualty Insurance Rate and Form Filing Procedures,” Iowa Administrative Code.

The rules implement the provisions of 2003 Iowa Acts, chapter 119, known as the Iowa FAIR Plan, which applies retroactively to October 7, 1968, to validate action taken under the Iowa basic property insurance inspection program adopted by the Commissioner. The rules establish procedures and requirements for a mandatory risk-sharing facility for basic property insurance coverage, as well as encourage the improvement of and reasonable loss prevention measures for properties located in Iowa. The rules formalize the operations and procedures of the Iowa FAIR Plan and its Governing Committee to ensure the availability of basic property insurance for property located in this state.

Notice of Intended Action was published in the October 1, 2003, Iowa Administrative Bulletin as **ARC 2801B**. A public hearing was held October 23, 2003.

The adopted rules are identical to those published under Notice.

These rules will become effective on January 14, 2004.

These rules are intended to implement 2003 Iowa Acts, chapter 119.

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 [20.41 to 20.60] is being omitted. These rules are identical to those published under Notice as **ARC 2801B**, IAB 10/1/03.

[Filed 11/19/03, effective 1/14/04]

[Published 12/10/03]

[For replacement pages for IAC, see IAC Supplement 12/10/03.]

ARC 3013B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 456A.24(14) and 481A.134, the Natural Resource Commission hereby amends Chapter 15, “General License Restrictions,” Iowa Administrative Code.

This amendment provides definitions for the licensing terms “wholesale” and “retail.” These definitions are neces-

NATURAL RESOURCE COMMISSION[571](cont'd)

sary to clearly define the newly created retail and wholesale bait dealers' licenses as listed in Iowa Code section 483A.1 as amended by 2003 Iowa Acts, chapter 120.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 3, 2003, as **ARC 2728B**. No comments were received during the comment period or at the public hearing held September 23, 2003. There are no changes from the Notice of Intended Action.

This amendment is intended to implement Iowa Code section 456A.24(14).

This amendment will become effective January 14, 2004. The following amendment is adopted.

Amend subrule **15.1(1)** by adopting the following **new** definitions in alphabetical order:

Retail. Retail means the sale of goods or commodities to the ultimate consumer, as opposed to the sale of goods or commodities for further distribution or processing.

Wholesale. Wholesale means the sale of goods or commodities for resale by a retailer, as opposed to the sale of goods or commodities to the ultimate consumer.

[Filed 11/19/03, effective 1/14/04]

[Published 12/10/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/10/03.

ARC 3015B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 61, "State Parks and Recreation Areas," Iowa Administrative Code.

These amendments accomplish the following:

1. Increase the fee for day use lodge rental at Lake Keomah State Park.
2. Add a reduced day use rental fee for all lodges rented Monday through Thursday.
3. Increase the fee for group camp dining hall rental at Lake Keomah State Park and establish a new day use only dining hall rental fee.
4. Clarify current language regarding day use only classroom and library rental fees at the conservation education center.
5. Add a day use attendance fee for day use groups/persons who utilize the entire conservation education facility and staff services. This fee was inadvertently left out of the last rule making.
6. Establish opening and closing times for beach access at Brushy Creek State Recreation Area.
7. Add Elk Rock State Park, Marion County, to the after-hours fishing list.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 1, 2003, as **ARC 2819B**. A public hearing was held on October 21, 2003. No public comments were received. There were no changes made to the Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 461A.3, 461A.44, 461A.46, 461A.47, and 461A.57.

These amendments will become effective on January 14, 2004.

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 [61.4(1), 61.6, 61.9] is being omitted. These amendments are identical to those published under Notice as **ARC 2819B**, IAB 10/1/03.

[Filed 11/19/03, effective 1/14/04]

[Published 12/10/03]

[For replacement pages for IAC, see IAC Supplement 12/10/03.]

ARC 3014B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby amends Chapter 77, "Endangered and Threatened Plant and Animal Species," Iowa Administrative Code.

Chapter 77 lists plant and animal species whose continued existence within Iowa has been found to be endangered, threatened or of special concern. The amendment removes the bobcat from the list of threatened species.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 3, 2003, as **ARC 2733B**. No comments on the proposed change were received during the public comment period. A public hearing was held on September 25, 2003, and three persons attended. Two comments were received; both wanted to delay de-listing the bobcat until more scientific information on the bobcat's status had been collected. There are no changes from the Notice of Intended Action.

This amendment is intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.7.

This amendment shall become effective January 14, 2004. The following amendment is adopted.

Amend subrule **77.2(2)**, species category "Mammals," as follows:

Mammals	
Least Shrew	Cryptotis parva
Southern Bog Lemming	Synaptomys cooperi
Bobcat	Lynx rufus

[Filed 11/19/03, effective 1/14/04]

[Published 12/10/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/10/03.

ARC 3011B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby

NATURAL RESOURCE COMMISSION[571](cont'd)

amends Chapter 81, "Fishing Regulations," Iowa Administrative Code.

The amendments establish panfish bag limits, special walleye/sauger regulations, and three seasonally closed areas on the Mississippi River as well as a 15-inch minimum size limit on walleye at Viking Lake.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 3, 2003, as **ARC 2730B**. Public hearings were held on September 25, September 30, and October 1, 2003. There are no changes from the Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.67 and 481A.76.

These amendments will become effective January 14, 2004.

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 [81.1, 81.2(1), 81.2(3), 81.2(12)"b"] is being omitted. These amendments are identical to those published under Notice as **ARC 2730B**, IAB 9/3/03.

[Filed 11/19/03, effective 1/14/04]
[Published 12/10/03]

[For replacement pages for IAC, see IAC Supplement 12/10/03.]

ARC 3010B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 82, "Commercial Fishing," Iowa Administrative Code.

The amendment removes shovelnose sturgeon from the permissive catch list on the Missouri River and adds silver carp to the list.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 3, 2003, as **ARC 2731B**. A public hearing was held on October 7, 2003. There are no changes from the Notice of Intended Action.

This amendment is intended to implement Iowa Code sections 481A.38, 481A.39 and 482.1.

This amendment will become effective January 14, 2004. The following amendment is adopted.

Amend subrule 82.2(1) as follows:

82.2(1) Permissive catch. Except for channel catfish, and flathead catfish and shovelnose sturgeon which may not be taken from the Missouri River, it shall be lawful to take with licensed commercial fishing gear the following species: carp, smallmouth buffalo, largemouth buffalo, black buffalo, channel catfish, flathead catfish, black bullhead, yellow bullhead, brown bullhead, freshwater drum, northern redbreast, silver redbreast, spotted sucker, white sucker, river carpsucker, quillback, highfin carpsucker, white amur, bighead carp,

silver carp, shovelnose sturgeon, longnose gar, shortnose gar, bowfin, gizzard shad, goldeye, and mooneye.

[Filed 11/19/03, effective 1/14/04]
[Published 12/10/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/10/03.

ARC 3012B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 87, "Mussel Regulations," Iowa Administrative Code.

The amendment establishes limits for taking mussels with a sport fishing license.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 3, 2003, as **ARC 2729B**. A public hearing was held on October 7, 2003. There are no changes from the Notice of Intended Action.

This amendment is intended to implement Iowa Code sections 481A.38 and 481A.39 and 2003 Iowa Acts, chapter 38.

This amendment will become effective January 14, 2004. The following amendment is adopted.

Amend 571—Chapter 87 by adding the following **new** rule:

571—87.2(80GA,ch38) Sport regulations. The taking and possession of mussels for sport purposes from public waters of the state shall be subject to the following regulations.

87.2(1) Seasons. There shall be an open season for taking mussels throughout the year. The taking of mussels is restricted to the hours between sunrise and sunset.

87.2(2) Methods. Licensed anglers and children younger than 16 years of age may take mussels by hand or pole and line.

87.2(3) Species. Species other than those listed as threatened or endangered may be lawfully taken and possessed. Zebra mussels shall not be taken and possessed.

87.2(4) Limits. Live mussels may be harvested only from the Mississippi River and connected backwaters. Dead mussels only may be harvested from the remaining waters of the state. The possession limit is 24 whole mussels or 48 shell halves. The sale of mussels or shells is not permitted with a sport fishing license.

[Filed 11/19/03, effective 1/14/04]
[Published 12/10/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/10/03.

ARC 3016B
NATURAL RESOURCE
COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission hereby amends Chapter 98, "Wild Turkey Spring Hunting," Iowa Administrative Code.

Chapter 98 sets forth rules for hunting wild turkeys during the spring and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and method of take and transportation tag requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 3, 2003, as **ARC 2734B**. No comments on the proposed change were received during the public comment period. A public hearing was held on September 25, 2003. No one attended.

There were three changes from the Notice of Intended Action. Paragraph 98.2(1)"b" now specifies a minimum arrow length of 18 inches, at the request of the Commission. The methods of obtaining licenses were expanded to include Internet sales. The requirement to report through the ELSI harvest reporting system turkeys taken was deleted.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.7.

These amendments shall become effective January 14, 2004.

The following amendments are adopted.

ITEM 1. Amend subrule **98.2(1)** by rescinding paragraph "**b**" and adopting the following **new** paragraph "**b**" in lieu thereof:

b. Archery-only license. Except for crossbows for persons with certain afflictions of the upper body, as provided in 571—15.5(481A), only longbow, compound or recurve bows shooting broadhead arrows are permitted. Blunthead arrows with a minimum diameter of 9/16 inch may also be used. Arrows must be at least 18 inches long. No explosive or chemical devices may be attached to the arrow, broadhead, or blunthead.

ITEM 2. Amend rule 571—98.3(481A), introductory paragraph, as follows:

571—98.3(481A) Procedures to obtain licenses. All spring wild turkey hunting licenses will be sold or may be applied for using the electronic licensing system for Iowa (ELSI). Licenses and license applications may be purchased through ELSI license agents, or by calling the ELSI telephone ordering system, or through the ELSI Internet license sales Web site.

ITEM 3. Rescind and reserve rule **571—98.5(481A)**.

ITEM 4. Amend subrule 98.13(1) as follows:

98.13(1) Permitted weapons. Wild turkey may be taken only with shotguns and muzzleloading shotguns not smaller than 20-gauge and shooting shot sizes 4, 5, 6, 7½, and 8 ~~only~~; ~~or with recurve, compound or longbows with broadhead or blunthead (minimum diameter 9/16 inch) arrows only.~~ No person may have shot shells containing shot of any size other than 4, 5, 6, 7½, or 8 on their person while hunting wild turkey. *Except for crossbows for persons with certain afflictions of the upper body, as provided in 571—15.5(481A), only longbow, compound or recurve bows shooting broad-*

head arrows are permitted. Blunthead arrows with a minimum diameter of 9/16 inch may also be used. Arrows must be at least 18 inches long. No explosive or chemical devices may be attached to the arrow, broadhead, or blunthead.

ITEM 5. Amend rule 571—98.14(483A), introductory paragraph, as follows:

571—98.14(483A) Application procedure. Applications for nonresident spring wild turkey hunting licenses must be made through the electronic licensing system for Iowa (ELSI) telephone ~~order~~ *ordering system or the ELSI Internet license sales Web site.* Applications will be accepted from December 15 through the last Sunday in January. No one may submit more than one application during the application period. If applications have been sold in excess of the license quota for any license type, zone, or hunting period, a drawing will be held to determine which applicants receive licenses. Licenses or refunds of license fees will be mailed to applicants after the drawing is completed. License agent writing fees, department administrative fees, *Internet sales charges* and telephone order charges will not be refunded. If any license has not been filled, the excess licenses will be sold on a first-come, first-served basis through the telephone ordering system *or the Internet license sales Web site* beginning the second Saturday after the close of the application period and lasting until the quota has been filled or the last day of the hunting period for which the license is valid, whichever occurs first. No one may obtain more than one nonresident spring wild turkey hunting license. Hunters may apply individually or as a group of up to 15 applicants. All members of a group will be accepted or rejected as a group in the drawing. If a group is rejected, members of that group may purchase licenses individually if excess licenses are available.

ITEM 6. Rescind and reserve rule **571—98.16(481A)**.

[Filed 11/19/03, effective 1/14/04]

[Published 12/10/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/10/03.

ARC 3003B

PERSONNEL DEPARTMENT[581]

Adopted and Filed

Pursuant to the authority of Iowa Code section 97B.15, the Iowa Public Employees' Retirement System hereby amends Chapter 21, "Iowa Public Employees' Retirement System," Iowa Administrative Code.

These amendments limit the preretirement 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

PERSONNEL DEPARTMENT[581](cont'd)

quotes; eliminate special procedures for refund buy-backs; and make minor changes as prescribed by the legislature.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 15, 2003, as **ARC 2875B**.

A public hearing was held on November 4, 2003, at 9 a.m. at IPERS, 7401 Register Drive, Des Moines, Iowa. No parties attended the public hearing. Based on review by IPERS legal unit, the scope of the proposed amendment to 581—subrule 21.10(12), which defined the 100 times the Option 2 benefit for deaths occurring after January 14, 2004, has been limited as follows:

“21.10(12) Death benefits *A death benefit payable under Iowa Code sections 97B.52(1) and 97B.52(2) shall not exceed the maximum amount possible under the Internal Revenue Code. To ensure the limit is not exceeded, a member's combined lump sum death benefit under Iowa Code sections 97B.52(1) and 97B.52(2) 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. 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 payable under Iowa Code section 97B.52(1). The “100 times” limit shall apply to active and inactive members who die on or after January 14, 2004. A retired reemployed member who dies during the period of re-employment shall be subject to the limits described in this subrule.”*

This modification was presented to the Administrative Rules Review Committee at their November 10, 2003, meeting. The other amendments are identical to those published under Notice.

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

There are no waiver provisions because the amendments provide a benefit to members or are required by statute.

These amendments are intended to implement Iowa Code chapter 97B.

These amendments will become effective January 14, 2004.

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 21] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 2875B**, IAB 10/15/03.

[Filed 11/19/03, effective 1/14/04]
[Published 12/10/03]

[For replacement pages for IAC, see IAC Supplement 12/10/03.]

ARC 2980B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 136C.3, the Department of Public Health hereby amends Chapter 38,

“General Provisions for Radiation Machines and Radioactive Materials,” Iowa Administrative Code.

The changes are as follows:

Item 1 changes the fee from \$50 to \$100. After one year of administering the program, the Department finds that the current fee schedule is not sufficient to cover the costs.

Item 2 changes the words “hazardous material” to “radioactive material.” This change clarifies the content of shipments to be covered under subrule 38.8(11).

Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on October 1, 2003, as **ARC 2821B**. A public hearing was held on October 21, 2003. No one attended the hearing. No written comments were received. These amendments are identical to the amendments published under Notice of Intended Action.

The State Board of Health adopted these amendments on November 12, 2003.

These amendments will become effective January 14, 2004.

These amendments are intended to implement Iowa Code chapter 136C.

The following amendments are adopted.

ITEM 1. Amend subrule **38.8(11)**, paragraph “a,” subparagraph (3), as follows:

(3) ~~50~~ \$100 for each shipment by truck or by rail paid by the shipper for low-level radioactive waste shipped in or across Iowa. The department may accept an annual shipment fee as negotiated with a shipper or accept payment per shipment. This fee applies to waste shipped to a site authorized by a government agency to receive low-level radioactive waste or shipped to a storage site to be held for future disposal.

ITEM 2. Amend subrule **38.8(11)**, paragraph “c,” as follows:

c. All fees received pursuant to this subrule shall be used for purposes related to transporting hazardous radioactive material, including enforcement and planning, developing, and maintaining a capability for emergency response.

[Filed 11/17/03, effective 1/14/04]
[Published 12/10/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/10/03.

ARC 2982B

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Adopted and Filed

Pursuant to the authority of Iowa Code section 8D.3, the Iowa Telecommunications and Technology Commission hereby amends Chapter 5, “Purchasing,” Iowa Administrative Code.

These amendments are designed to make the Iowa Telecommunications and Technology Commission's purchasing rules more consistent with Department of Administrative Services' rules that establish standards for state agencies to use when purchasing services. Competitive bidding thresholds are increased so that the Commission's rules are in accordance with the rules governing other state agencies. These amendments allow the Commission to take advantage

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

of a new electronic purchasing system that will be available to state agencies in the near future. The electronic purchasing system is designed to streamline agency processes, reduce paperwork, and provide a means for vendors to conduct business with the state electronically. The amendments also delete some items that are unnecessary for administrative rules.

Notice of Intended Action was published in the August 20, 2003, Iowa Administrative Bulletin as **ARC 2697B**. No comments were received regarding the proposed amendments. However, one change from the Notice has been made. The word "if" was deleted from paragraphs "f" through "h" of subrule 5.1(2). Subrule 5.1(2) now reads as follows:

"**5.1(2)** The commission shall avoid sole-source procurements unless clearly necessary and justifiable. The commission may purchase goods or services using a sole-source procurement under the following circumstances:

"a. The executive director or commission's designee determines that one vendor is the only one qualified or eligible or is quite obviously the most qualified or eligible to provide the goods or perform the services; or

"b. The goods or services being purchased involve work that is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, proximity to the project, or ownership of intellectual property rights, could most satisfactorily provide the service; or

"c. The commission is hiring the services of experts, advisors, counsel, or consultants to assist in any type of legal proceeding including but not limited to testifying or assisting in the preparation of quasi-judicial or judicial proceedings; or

"d. The federal government or other provider of funds for the services being purchased, other than the state of Iowa, has imposed clear and specific restrictions on the commission's use of the funds in a way that restricts the commission to only one service provider; or

"e. Applicable law requires, provides for, or permits the use of a sole-source procurement; or

"f. There is an immediate or emergency need for the item;

or

"g. The item is maintenance services for the network for which the vendor supplies remote maintenance service for network components or software or the vendor supplies software upgrades, patches, modifications or the like electronically or for which the service will preserve equipment or software warranties; or

"h. The executive director or the commission's designee determines that the best interests of the commission will be served by exemption from the bidding process."

These amendments are intended to implement Iowa Code chapter 8D.

These amendments will become effective January 14, 2004.

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 [5.1 to 5.4, 5.12, 5.13, 5.15, 5.17 to 5.19] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 2697B**, IAB 8/20/03.

[Filed 11/17/03, effective 1/14/04]
[Published 12/10/03]

[For replacement pages for IAC, see IAC Supplement 12/10/03.]

ARC 2989B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.4, 476.1, 476.1A, 476.1B, 476.2, 476.3, and 476.20, the Utilities Board (Board) issued an order adopting amendments on November 18, 2003, in Docket No. RMU-03-3, In re: Customer Service Rules Revisions; Executive Orders 8 and 9 [199 IAC 6, 19.4(476), 20.4(476), and 21.4(476)], "Order Adopting Amendments." The order adopted amendments with certain revisions to Chapter 6 and rules 19.4(476), 20.4(476), and 21.4(476) that had been published in IAB Vol. XXV, No. 20 (4/2/03) pp. 1324-34, **ARC 2378B**. The amendments were proposed based upon a review of the Board's rules required by Executive Orders 8 and 9 and a continuing review of the Board customer service rules. After the review, no amendments were proposed for 199 IAC 21.4(476).

Comments addressing the proposed amendments were filed by Iowa Legal Aid (Legal Aid), Aquila, Inc., d/b/a Aquila Networks, MidAmerican Energy Company (Mid-American), the Iowa Association of Electric Cooperatives, Interstate Power and Light Company (IPL), and the Consumer Advocate Division of the Department of Justice (Consumer Advocate). An oral presentation to receive additional comments on the proposed amendments was held on May 28, 2003. Oral comments were made by MidAmerican, IPL, Consumer Advocate, and Legal Aid.

The Board reviewed the written comments and the oral comments made at the oral presentation and is adopting the amendments with some revisions based upon those comments. The Board's order provides detailed analysis of the amendments and the public comments received. It is available on the Board's Web site at www.state.ia.us/iub or on paper from the Board's Records Center at 350 Maple Street, Des Moines, Iowa 50319.

The amendments are intended to implement Iowa Code sections 17A.4, 476.1, 476.1B, 476.2, 476.3, and 476.20.

The amendments will become effective on January 14, 2004.

The following amendments are adopted.

ITEM 1. Amend subrule 6.2(1) as follows:

6.2(1) Information to be filed: Any person may, by ~~mailing filing a written~~ complaint letter, request the board to determine whether the utility's charges, practices, facilities or ~~service services~~ are in compliance with applicable statutes and rules established by the board, or by the utility in its tariff, and lawfully issued board orders. *A written complaint may be filed by facsimile or electronic mail. If there is any question about the authenticity of the complaint, the complainant may be required to file a letter verifying the written complaint.* The board may initiate a complaint on its own motion. ~~The complaint letter must be signed and dated by the complainant or by the complainant's representative and addressed to Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. The letter should include:~~

a. to e. No change.

ITEM 2. Amend subrule 6.2(2) as follows:

6.2(2) Request for additional information. If the staff determines that additional information is needed in order to resolve the complaint, the complainant will be notified that specified additional information should be filed. ~~Action on~~

UTILITIES DIVISION[199](cont'd)

the complaint will be held in abeyance until receipt of the requested information. ~~If the requested additional information is not provided within 20 days, the complaint may be dismissed. Dismissal of the complaint on this basis does not prevent the complainant from filing in the future a complaint that includes the requested information.~~

ITEM 3. Amend subrule 6.3(3) as follows:

6.3(3) The utility shall, within 20 days of the date on which the complaint is mailed forwarded to the utility by the board, file a response to the complaint with the board and shall mail at the same time send a copy of its response to the complainant and the consumer advocate. The utility shall specifically address each allegation made by the complainant and recite any supporting facts, statutes, rules, or tariff provisions supporting its response. The utility shall enclose copies of all related letters, records, or other documents not supplied by the complainant, and all records concerning the complainant that are not confidential or privileged. In those cases involving confidential or privileged records, the response shall advise of the records' existence.

ITEM 4. Amend subrule 6.5(2) as follows:

6.5(2) The request for formal complaint proceedings shall be filed within 14 days after issuance of the proposed resolution or the specified date of utility action, whichever is later. The request shall be considered as filed on the date of the United States Postal Service postmark, or the date personal service is made, or the date received in the board's records center. The request shall be in writing and must be delivered by United States Postal Service, other delivery service, or personal service. The request shall include the file number (C-XX-XXX) marked on the proposed resolution. It shall explain why the proposed resolution should be modified or rejected and propose an alternate resolution, including any temporary relief desired. Copies of the request shall be mailed to the consumer advocate and the parties.

ITEM 5. Amend paragraph 19.4(1)"d" as follows:

d. Post a notice in a conspicuous place in each office of the utility where applications for service are received, informing the public that copies of the rate schedules and rules relating to the service of the utility, as filed with the board, are available for public inspection. *If the utility provides access to its rate schedules and rules for service on its Web site, the notice should include the Web site address.*

ITEM 6. Amend subrule 19.4(10) as follows:

19.4(10) Payment agreements.

a. Availability—customer of agreement.

(1) When a residential customer cannot pay in full a delinquent bill for utility service and will be disconnected or has an outstanding debt to the utility for residential utility service and is not in default of a payment agreement with the utility, a utility shall offer the customer an opportunity to enter into a reasonable payment agreement to pay that bill unless the customer is in default on a payment agreement.

(2) When a disconnected or potential customer for residential service has an outstanding debt to the utility for utility service, cannot pay the debt in full, and is not in default on a payment agreement, the utility must consider a request for a payment agreement.

b. No change.

c. Terms of payment agreements.

(1) The agreement may require the customer to bring the account to a current status by paying specific amounts at scheduled times. The utility shall offer customers or disconnected customers who have received a disconnection notice

or have been disconnected for 120 days or less the option of spreading payments evenly over at least 12 months by paying specific amounts at scheduled times. The utility shall offer customers who have been disconnected for more than 120 days the option of spreading payments evenly over at least six months by paying specific amounts at scheduled times. ~~Payments for potential customer agreements may be spread evenly over at least 6 months.~~

(2) The agreement shall also include provision for payment of the current account. The agreement negotiations and periodic payment terms shall comply with tariff provisions which are consistent with these rules.

(3) When the customer makes the agreement in person, a signed copy of the agreement shall be provided to the customer, disconnected customer or potential customer.

(4) The utility may offer the customer the option of making the agreement over the telephone or through electronic transmission. When the customer makes the agreement over the telephone or through electronic transmission, the utility will render to the customer a written document reflecting the terms and conditions of the agreement within three days of the date the parties entered into the oral agreement or electronic agreement. The document will be considered rendered to the customer when addressed to the customer's last-known address and deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the document shall be considered rendered to the customer when delivered to the last-known address of the person responsible for payment for the service. The document shall state that unless the customer notifies the utility within ten days from the date the document is rendered, it will be deemed that the customer accepts the terms as reflected in the written document. The document stating the terms and agreements shall include the address and a toll-free or collect telephone number where a qualified representative can be reached. By making the first payment, the customer confirms acceptance of the terms of the oral agreement or electronic agreement.

(5) Second agreement. If a customer has retained service from November 1 through April 1 but is in default of a payment agreement, the utility may offer the customer a second payment agreement that will divide the past-due amount into equal monthly payments with the final payment due by the fifteenth day of the next October. The utility may also require the customer to enter into a level payment plan to pay the current bill.

The customer who has been in default of a payment agreement from November 1 to April 1 may be required to pay current bills based on a budget estimate of the customer's actual usage, weather-normalized, during the prior 12-month period or based on projected usage if historical use data is not available.

d. Refusal by utility. If the utility intends to refuse a payment agreement offered by a customer, it must provide a written refusal to the customer. That refusal, with explanation, must be made within 30 days of mailing of the initial disconnection notice. A customer may protest the utility's refusal by filing a written complaint, including a copy of the utility's refusal, with the board within 10 days after receipt of the written refusal. If the utility intends to refuse a payment agreement to a disconnected or potential customer, it must provide a written refusal within 10 days of the application for payment agreement. A customer may offer the utility a proposed payment agreement. If the utility and the customer do not reach an agreement, the utility may refuse the offer orally, but the utility must render a written refusal of the customer's final offer, stating the reason for the refusal, within three days

UTILITIES DIVISION[199](cont'd)

of the oral notification. The written refusal shall be considered rendered to the customer when addressed to the customer's last-known address and deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the written refusal shall be considered rendered to the customer when handed to the customer or when delivered to the last-known address of the person responsible for the payment for the service.

A customer may ask the board for assistance in working out a reasonable payment agreement. The request for assistance must be made to the board within ten days after the rendering of the written refusal. During the review of this request, the utility shall not disconnect the service.

ITEM 7. Amend subrule 19.4(11) as follows:

19.4(11) Bill payment terms. The bill shall be considered rendered to the customer when deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the bill shall be considered rendered when delivered to the last-known address of the party responsible for payment. There shall be not less than 20 days between the rendering of a bill and the date by which the account becomes delinquent. Bills for customers on more frequent billing intervals under subrule 19.3(7) may not be considered delinquent less than 5 days from the date of rendering. However, late payment charge may not be assessed if payment is received within 20 days of the date the bill is rendered.

a. The date of delinquency for all residential customers or other customers whose consumption is less than 250 ccf per month shall be changeable for cause in writing; such as, but not limited to, 15 days from approximate date each month upon which income is received by the person responsible for payment. In no case, however, shall the utility be required to delay the date of delinquency more than 30 days beyond the date of preparation of the previous bill.

b. In any case where net and gross amounts are billed to customers, the difference between net and gross is a late payment charge and is valid only when part of a delinquent bill payment. A utility's late payment charge shall not exceed 1.5 percent per month of the past due amount. No collection fee may be levied in addition to this late payment charge. This rule does not prohibit cost-justified charges for disconnection and reconnection of service.

c. If the customer makes partial payment in a timely manner, and does not designate the service or product for which payment is made, the payment shall be credited pro rata between the bill for utility services and related taxes.

d. Each account shall be granted not less than one complete forgiveness of a late payment charge each calendar year. The utility's rules shall be definitive that on one monthly bill in each period of eligibility, the utility will accept the net amount of such bill as full payment for such month after expiration of the net payment period. The rules shall state how the customer is notified that the eligibility has been used. Complete forgiveness prohibits any effect upon the credit rating of the customer or collection of late payment charge.

e. Level payment plan. All residential customers or other customers whose consumption is less than 250 ccf per month may select a plan of level payments. These The rules for such plan shall include at least the following:

a- (1) Be offered when the customer initially requests service.

b- (2) Have a date of delinquency changeable for cause in writing; such as, but not limited to, 15 days from approximate date each month upon which income is received by the person responsible for payment. The utility's rules may provide

that the delinquency date may not be changed to a date later than 30 days after the date of preparation of the previous bill.

e- (3) Provide for entry into the level payment plan anytime during the calendar year. The month of entry shall be that customer's anniversary month.

d- (4) The billing period level payment to be the sum of estimated charges divided by the number of standard billing intervals, all for the next 12 consecutive months.

e- (5) A customer may request termination of the plan (or withdrawal from the plan) at any time. If the customer's account is in arrears, the customer may be required to bring the account to a current balance before termination or withdrawal. If there is a credit balance, the customer shall be allowed the option of obtaining a refund or applying the credit to charges for subsequent months' service.

f- (6) The level payment plan account balance on the anniversary date shall be carried forward and added to the estimated charges for service during the next year, and this total will be the basis for computing the next year's periodic billing interval level payment amount. The customer shall be given the option of applying any credit to payments of subsequent months' level payment amounts due or obtaining a refund of any credit in excess of \$10 \$25. For purposes of this paragraph the anniversary date account balance shall not carry forward on an unpaid level payment bill. For delinquency on a level payment plan amount, see 19.4(11) "i" sub-paragraph 19.4(11) "e" (9).

g- (7) The amount to be paid in each billing interval by a customer on a level payment plan shall be computed at the time of entry into the plan. It may be recomputed on each anniversary date, when requested by the customer, or whenever price, or consumption, alone or in combination result, results in a new estimate differing by 10 percent or more from that in use.

When a customer's payment level is recomputed, the customer shall be notified of the revised payment amount and the reason for the change. The notice shall be served not less than 30 days prior to the date of delinquency for the first revised payment. The notice may accompany the bill prior to the bill that is affected by the revised payment amount.

h- (8) The account shall be balanced upon termination of service or withdrawal in accordance with the utility's tariff.

i- (9) Irrespective of the account balance, a delinquency in payment shall be subject to the same procedures as other accounts on for late payment charge on the level payment amount. If the account balance is a debit, a delinquency in payment shall be subject to the same procedures as other accounts for collection or cut-off disconnection. If the account balance is a credit, the level payment plan shall terminate after not less than 30 days nor more than 60 days of delinquency.

ITEM 8. Amend subrule 19.4(15) as follows:

19.4(15) Refusal or disconnection of service. A utility shall refuse service or disconnect service to a customer, as defined in subrule 19.1(3), in accordance with tariffs that are consistent with these rules. Notice of pending disconnection shall be rendered and gas service refused or disconnected as set forth in the tariff.

a. The utility shall give written notice of pending disconnection except as specified in paragraph 19.4(15) "b." The notice of pending disconnection required by these rules shall be a written notice setting set forth the reason for the notice, and final date by which the account is to be settled or specific action taken. The notice shall be considered rendered to the customer when addressed to the customer's last-known ad-

UTILITIES DIVISION[199](cont'd)

dress and deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the notice shall be considered rendered when delivered to the last-known address of the person responsible for payment for the service. The date for refusal or disconnection of service shall be not less than 12 days after the notice is rendered. The date for refusal or disconnection of service for customers on shorter billing intervals under subrule 19.3(7) shall not be less than 24 hours after the notice is posted at the service premises.

One written notice, including all reasons for the notice, shall be given where more than one cause exists for refusal or disconnection of service. ~~The notice shall also state the final date by which the account is to be settled or other specific action taken.~~ In determining the final date *by which the account is to be settled or other specific action taken*, the days of notice for the causes shall be concurrent.

~~Service may be refused or disconnected for any of the reasons listed below. Unless otherwise stated, the customer shall be provided notice of the pending disconnection and the rule violation which necessitates disconnection. Furthermore, unless otherwise stated, the customer shall be allowed a reasonable time in which to comply with the rule before service is disconnected. Except as provided in paragraphs 19.4(15) "a," "b," "c," and "d," no service shall be disconnected on the day preceding or day on which the utility's local business office or local authorized agent is closed.~~

~~b. Service may be refused or disconnected without notice:~~

~~a. (1) Without notice in~~ In the event of a condition determined by the utility to be hazardous.

~~b. (2) Without notice in~~ In the event of customer use of equipment in a manner which adversely affects the utility's equipment or the utility's service to others.

~~c. (3) Without notice in~~ In the event of tampering with the equipment furnished and owned by the utility. For the purposes of this subrule, a broken or absent meter seal alone shall not constitute tampering.

~~d. (4) Without notice in~~ In the event of unauthorized use.

~~c. Service may be disconnected or refused after proper notice:~~

~~e. (1) For violation of or noncompliance with the utility's rules on file with the utilities division board.~~

~~f. (2) For failure of the customer or prospective customer to furnish the service equipment, permits, certificates, or rights-of-way which are specified to be furnished, in the utility's rules filed with the utilities division board, as conditions of obtaining service, or for the withdrawal of that same equipment, or for the termination of those same permissions or rights, or for the failure of the customer or prospective customer to fulfill the contractual obligations imposed as conditions of obtaining service by any contract filed with and subject to the regulatory authority of the utilities board.~~

~~g. (3) For failure of the customer to permit the utility reasonable access to its the utility's equipment.~~

~~h. d. For Service may be refused or disconnected after proper notice for nonpayment of a bill or deposit, except as restricted by subrules 19.4(16) and 19.4(17), provided that the utility has complied with the following provisions when applicable:~~

~~(1) Made a reasonable attempt to effect collection~~ *Given the customer a reasonable opportunity to dispute the reason for the disconnection or refusal;*

~~(2) Given the customer, and any other person or agency designated by the customer, written notice that the customer has at least 12 days in which to make settlement of the account, together with to avoid disconnection and a written~~

~~summary of the rights and remedies available to avoid disconnection.~~ Customers billed more frequently than monthly pursuant to subrule 19.3(7) shall be given posted written notice that they have 24 hours to make settlement of the account, ~~together with to avoid disconnection and~~ a written summary of the rights and remedies available to avoid disconnection. All written notices shall include a toll-free or collect telephone number where a utility representative qualified to provide additional information about the disconnection can be reached. Each utility representative must provide ~~their the representative's name to the caller,~~ and have immediate access to current, detailed information concerning the customer's account and previous contacts with the utility.

~~(3) and (4) No change.~~

~~(5) Given the customer a reasonable opportunity to dispute the reason for the disconnection and, if to the extent applicable, complied with each of the following:~~

~~Disputed bill. In the event there is a~~ *If the customer has received notice of disconnection and has a dispute concerning a bill for natural gas service, the utility may require the customer to pay a sum of money equal to the amount of the undisputed portion of the bill pending settlement and thereby avoid discontinuance disconnection of service. A utility shall delay disconnection for nonpayment of the disputed bill for up to 45 days after the rendering of the bill if the customer pays the undisputed amount. The 45 days shall be extended by up to 60 days if requested of the utility by the board in the event the customer files a written complaint with the board in compliance with 199—Chapter 6.*

~~(6) Special circumstances. Disconnection of a residential customer may take place only between the hours of 6 a.m. and 2 p.m. on a weekday and not on weekends or holidays. If a disconnected customer makes payment or other arrangements during normal business hours, or by 7 p.m. for utilities permitting such payment or other arrangements after normal business hours, all reasonable efforts shall be made to reconnect the customer that day. If a disconnected customer makes payment or other arrangements after 7 p.m., all reasonable efforts shall be made to reconnect the customer not later than 11 a.m. the next day.~~

~~(7) Severe cold weather. A disconnection may not take place where gas is used as the only source of space heating or to control or operate the only space heating equipment at the residence, or on any day when the National Weather Service forecast for the following 24 hours covering the area in which the residence is located includes a forecast that the temperature will go below 20 degrees Fahrenheit. In any case where the utility has posted a disconnect notice in compliance with subparagraph 19.4(15) "h d"(4) but is precluded from disconnecting service because of a National Weather Service forecast, the utility may immediately proceed with appropriate disconnection procedures, without further notice, when the temperature in the area where the residence is located rises to above 20 degrees Fahrenheit and is forecasted to be above 20 degrees Fahrenheit for at least 24 hours, unless the customer has paid in full the past due amount or is entitled to postponement of disconnection under some other provisions of this rule. paragraph 19.4(15) "d."~~

~~(8) Health of a resident. Disconnection of a residential customer shall be postponed if the discontinuance disconnection of service would present an especial danger to the health of any permanent resident of the premises. An especial danger to health is indicated if one a person appears to be seriously impaired and may, because of mental or physical problems, be unable to manage their the person's own resources, to carry out activities of daily living or protect oneself to be~~

UTILITIES DIVISION[199](cont'd)

protected from neglect or hazardous situations without assistance from others. Indicators of an especial danger to health include but are not limited to: age, infirmity, or mental incapacitation; serious illness; physical disability, including blindness and limited mobility; and any other factual circumstances which indicate a severe or hazardous health situation.

The utility may require written verification of the especial danger to health by a physician or public health official, including the name of the person endangered; a statement that the person is a resident of the premises in question; the name, business address, and telephone number of the certifying party; the nature of the health danger; and approximately how long the danger will continue. Initial verification by the verifying party may be by telephone if written verification is forwarded to the utility within five days.

Verification shall postpone disconnection for 30 days; however, the postponement may be extended by a renewal of the verification. In the event service is terminated within 14 days prior to verification of illness by or for a qualifying resident, service shall be restored to that residence if a proper verification is thereafter made in accordance with the foregoing provisions. ~~The~~ *If the customer must does not* enter into a reasonable *payment* agreement for the retirement of the unpaid balance of the account within the first 30 days and *does not* keep the current account paid during the period that the unpaid balance is to be retired, *the customer is subject to disconnection pursuant to paragraph 19.4(15)“f.”*

~~Reasonable payment agreement. If financial difficulty of a residential customer is confirmed, disconnection may not take place until after the utility has offered the customer an opportunity to enter into a reasonable payment agreement as required by 19.4(10). Disconnection shall be delayed 30 days for the making of a reasonable payment agreement and the 30 days shall be extended to 60 days if requested of the utility by the board upon receipt of a complaint that the utility has arbitrarily refused a payment agreement offered by the customer and upon a finding the customer has made payment as provided for in the offered agreement.~~

(9) Winter energy assistance (November 1 through April 1). If the utility is informed that the customer's household may qualify for winter energy assistance or weatherization funds, there shall be no disconnection of service for 30 days from the date of application *the utility is notified* to allow the customer time to obtain assistance. Disconnection shall not take place from November 1 through April 1 for a resident who is a head of household and who has been certified to the public utility by the community action agency as eligible for either the low-income home energy assistance program or weatherization assistance program. ~~In addition to the notification procedure required herein, the utility shall, prior to November 1, mail customers a notice describing the availability of winter energy assistance funds and the application process. The notice must be of a type size that is easily legible and conspicuous and must contain the information set out by the state agency administering the assistance program. A utility serving fewer than 6,000 customers may publish notice in an advertisement in a local newspaper of general circulation or shopper's guide. A utility serving fewer than 25,000 customers may publish the notice in a customer newsletter in lieu of mailing.~~

e. Abnormal gas consumption. A customer who is subject to disconnection for nonpayment of bill, and who has gas consumption which appears to the customer to be abnormally high, may request the utility to provide assistance in identifying the factors contributing to this usage pattern and to suggest remedial measures. The utility shall provide assistance

by discussing patterns of gas usage which may be readily identifiable, suggesting that an energy audit be conducted, and identifying sources of energy conservation information and financial assistance which may be available to the customer.

~~*i.f.* Without~~ *A utility may disconnect gas service without the written 12-day notice, for failure of the customer to comply with the terms of a payment agreement, provided that:*

(1) In the case of a customer owning or occupying a residential unit that will be affected by disconnection, the utility has made a diligent attempt, at least one day prior to disconnection, to contact the customer by telephone or in person to inform the customer of the pending disconnection and *their the customer's* rights and remedies; ~~if.~~ *If* an attempt at personal or telephone contact of a customer occupying a unit which a utility knows or should know is a rental unit has been unsuccessful, the landlord of the rental unit, if known, shall be contacted to determine if the customer is still in occupancy and, if so, ~~their the customer's~~ present location. The landlord shall also be informed of the date when service may be disconnected.

(2) During the period November 1 through April 1, if the attempt at customer contact fails, the premises must be posted with a notice informing the customer of the pending disconnection and rights or remedies available to avoid disconnection at least one day prior to disconnection; ~~if.~~ *If* the disconnection will affect occupants of residential units leased from the customer, the premises of any building known by the utility to contain residential units affected by disconnection must be posted, at least two days prior to disconnection, with a notice informing any occupants of the date when service will be disconnected and the reasons therefor. *Disconnection is subject to the provisions of paragraph 19.4(15)“d.”*

(2) ~~The disconnection of a residential customer may take place only between the hours of 6 a.m. and 2 p.m. on a week-day and not on weekends or holidays. If a disconnected customer makes a payment or other arrangements after normal business hours, or by 7 p.m. for utilities permitting such payment or other arrangements after normal business hours, all reasonable efforts shall be made to reconnect the customer that day. If a disconnected customer makes payment or other arrangements after 7 p.m., all reasonable efforts shall be made to reconnect the customer not later than 11 a.m. the next day. A disconnection may not take place where gas is used as the only source of space heating or to control or operate the only space heating equipment at the residence, on any day when the National Weather Service forecast for the following 24 hours covering the area in which the residence is located includes a forecast that the temperature will go below 20 degrees Fahrenheit. In any case where the utility has posted a disconnect notice in compliance with 19.4(15)“h”(3) but is precluded from disconnecting service because of a National Weather Service forecast, the utility may immediately proceed with appropriate disconnection procedures, without further notice, when the temperature in the area where the residence is located rises to above 20 degrees, unless the customer has paid in full the past due amount or is entitled to postponement of disconnection under some other provisions of this rule.~~

(3) ~~Disconnection of a residential customer shall be postponed if the disconnection of service would present an especial danger to the health of any permanent resident of the premises. An especial danger to health is indicated if one appears to be seriously impaired and may, because of mental or physical problems, be unable to manage their own resources,~~

UTILITIES DIVISION[199](cont'd)

carry out activities of daily living or protect oneself from neglect or hazardous situations without assistance from others. Indicators of an especial danger to health include but are not limited to: age, infirmity, or mental incapacitation; serious illness; physical disability, including blindness and limited mobility; and any other factual circumstances which indicate a severe or hazardous health situation. The utility may require written verification of the especial danger to health by a physician or public health official, including the name of the person endangered, a statement that the person is a resident of the premises in question, the name, business address, and telephone number of the certifying party, the nature of the health danger and approximately how long the danger will continue. Initial verification by the verifying party may be by telephone if written verification is forwarded to the utility within five days.

Verification shall postpone disconnection for 30 days; however, the postponement may be extended by a renewal of the verification. In the event service is terminated within 14 days prior to verification of illness by or for a qualifying resident, service shall be restored to that residence if a proper verification is thereafter made in accordance with the foregoing provisions. The customer must pay the unpaid balance under the payment agreement within the first 30 days and keep the current account paid during the period that disconnection is postponed.

j. For failure of the customer to furnish such service equipment, permits, certificates, or rights of way necessary to serve said customer as shall have been specified by the utility as a condition to obtaining service, or in the event such equipment or permissions are withdrawn or terminated.

g. The utility shall, prior to November 1, mail customers a notice describing the availability of winter energy assistance funds and the application process. The notice must be of a type size that is easily legible and conspicuous and must contain the information set out by the state agency administering the assistance program. A utility serving fewer than 25,000 customers may publish the notice in a customer newsletter in lieu of mailing. A utility serving fewer than 6,000 customers may publish the notice in an advertisement in a local newspaper of general circulation or shopper's guide.

ITEM 9. Amend subrule 19.4(16) as follows:

19.4(16) Insufficient reasons for denying service. The following shall not constitute sufficient cause for refusal of service to a present or prospective customer:

- a. Delinquency in payment for service by a previous occupant of the premises to be served.
- b. Failure to pay for merchandise purchased from the utility.
- c. Failure to pay for a different type or class of public utility service.
- d. Failure to pay the bill of another customer as guarantor thereof.
- e. Failure to pay the back bill rendered in accordance with paragraph 19.4(13)“b” (Slow slow meters).
- f. Failure to pay adjusted bills based on the undercharges set forth in paragraph 19.4(13)“e.”
- g. Failure of a residential customer to pay a deposit during the period November 1 through April 1 for the location at which he or she the customer has been receiving service.
- h. No change.

ITEM 10. Amend subrule 19.4(17) as follows:

19.4(17) When disconnection prohibited. No disconnection may take place from November 1 through April 1 for a resident who is a head of household and who has been certi-

fied to the public utility by the local community action agency as being eligible for either the low-income home energy assistance program or weatherization assistance program. No disconnection shall take place from April 1, 2001, through May 1, 2001, for eligible residents.

ITEM 11. Amend paragraph 19.4(19)“a” as follows:

a. Each utility shall provide in its filed tariff a concise, fully informative procedure for the resolution of all customer complaints.

ITEM 12. Amend paragraph 20.4(1)“d” as follows:

d. Post a notice in a conspicuous place in each office of the utility where applications for service are received, informing the public that copies of the rate schedules and rules relating to the service of the utility, as filed with the board, are available for public inspection. *If the utility has provided access to its rate schedules and rules for service on its Web site, the notice should include the Web site address.*

ITEM 13. Amend subrule 20.4(11) as follows:

20.4(11) Payment agreements.

a. Availability—customer of agreement.

(4) When a residential customer cannot pay in full a delinquent bill for utility service and will be disconnected or has an outstanding debt to the utility for residential utility service and is not in default of a payment agreement with the utility, a utility shall offer the customer an opportunity to enter into a reasonable payment agreement to pay that bill unless the customer is in default on a payment agreement.

(2) When a disconnected or potential customer for residential service has an outstanding debt to the utility for utility service, cannot pay the debt in full, and is not in default on a payment agreement, the utility must consider a request for a payment agreement.

b. No change.

c. Terms of payment agreements.

(1) ~~The agreement may require the customer to bring the account to a current status by paying specific amounts at scheduled times. The utility shall offer customers or disconnected customers who have received a disconnection notice or have been disconnected for 120 days or less the option of spreading payments evenly over at least 12 months by paying specific amounts at scheduled times. The utility shall offer customers who have been disconnected for more than 120 days the option of spreading payments evenly over at least 6 months by paying specific amounts at scheduled times. Payments for potential customer agreements may be spread evenly over at least 6 months.~~

(2) The agreement shall also include provision for payment of the current account. The agreement negotiations and periodic payment terms shall comply with tariff provisions which are consistent with these rules.

(3) When the customer makes the agreement in person, a signed copy of the agreement shall be provided to the customer, disconnected customer or potential customer.

(4) The utility may offer the customer the option of making the agreement over the telephone or through electronic transmission. When the customer makes the agreement over the telephone or through electronic transmission, the utility will render to the customer a written document reflecting the terms and conditions of the agreement within three days of the date the parties entered into the oral agreement or electronic agreement. The document will be considered rendered to the customer when addressed to the customer's last-known address and deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the document shall be considered rendered to the customer when delivered to the

UTILITIES DIVISION[199](cont'd)

last-known address of the person responsible for payment for the service. The document shall state that unless the customer notifies the utility within ten days from the date the document is rendered, it will be deemed that the customer accepts the terms as reflected in the written document. The document stating the terms and agreements shall include the address and a toll-free *or collect telephone* number where a qualified representative can be reached. By making the first payment, the customer confirms acceptance of the terms of the oral agreement *or electronic agreement*.

(5) Second agreement. If a customer has retained service from November 1 through April 1 but is in default of a payment agreement, the utility may offer the customer a second payment agreement that will divide the past-due amount into equal monthly payments with the final payment due by the fifteenth day of the next October. The utility may also require the customer to enter into a level payment plan to pay the current bill.

~~The customer who has been in default of a payment agreement from November 1 to April 1 may be required to pay current bills based on a budget estimate of the customer's actual usage, weather-normalized, during the prior 12-month period or based on projected usage if historical use data is not available.~~

~~d. Refusal by utility. If the utility intends to refuse a payment agreement offered by a customer, it must provide a written refusal to the customer. That refusal, with explanation, must be made within 30 days of mailing of the initial disconnection notice. A customer may protest the utility's refusal by filing a written complaint, including a copy of the utility's refusal, with the board within 10 days after receipt of the written refusal. If the utility intends to refuse a payment agreement to a disconnected or potential customer, it must provide a written refusal within 10 days of the application for payment agreement. A customer may offer the utility a proposed payment agreement. If the utility and the customer do not reach an agreement, the utility may refuse the offer orally, but the utility must render a written refusal to the customer, stating the reason for the refusal, within three days of the oral notification. The written refusal shall be considered rendered to the customer when addressed to the customer's last-known address and deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the written refusal shall be considered rendered to the customer when handed to the customer or when delivered to the last-known address of the person responsible for the payment for the service.~~

~~A customer may ask the board for assistance in working out a reasonable payment agreement. The request for assistance must be made to the board within ten days after the rendering of the written refusal. During the review of this request, the utility shall not disconnect the service.~~

ITEM 14. Amend subrule 20.4(12) as follows:

20.4(12) Bill payment terms. The bill shall be considered rendered to the customer when deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the bill shall be considered rendered when delivered to the last-known address of the party responsible for payment. There shall not be less than 20 days between the rendering of a bill and the date by which the account becomes delinquent. Bills for customers on more frequent billing intervals under subrule 20.3(6) may not be considered delinquent less than 5 days from the date of rendering. However, a late payment charge may not be assessed if payment is received within 20 days of the date the bill is rendered.

a. The date of delinquency for all residential customers or other customers whose consumption is less than 3,000 kWh per month, shall be changeable for cause in writing; such as, but not limited to, 15 days from approximate date each month upon which income is received by the person responsible for payment. *In no case, however, shall the utility be required to delay the date of delinquency more than 30 days beyond the date of preparation of the previous bill.*

b. In any case where net and gross amounts are billed to customers, the difference between net and gross is a late payment charge and is valid only when part of a delinquent bill payment. A utility's late payment charge shall not exceed 1.5 percent per month of the past-due amount. No collection fee may be levied in addition to this late payment charge. This rule does not prohibit cost-justified charges for disconnection and reconnection of service.

c. If the customer makes partial payment in a timely manner, and does not designate the service or product for which payment is made, the payment shall be credited pro rata between the bill for utility services and related taxes.

d. Each account shall be granted not less than one complete forgiveness of a late payment charge each calendar year. The utility's rules shall be definitive that on one monthly bill in each period of eligibility, the utility will accept the net amount of such bill as full payment for such month after expiration of the net payment period. The rules shall state how the customer is notified *that* the eligibility has been used. Complete forgiveness prohibits any effect upon the credit rating of the customer or collection of late payment charge.

e. *Level payment plan.* All residential customers or other customers whose consumption is less than 3,000 kWh per month may select a plan of level payments. The rules for such plan shall include at least the following:

a. (1) Be offered when the customer initially requests service.

b. (2) Have a date of delinquency changeable for cause in writing; such as, but not limited to, 15 days from approximate date each month upon which income is received by the person responsible for payment. *The utility's rules may provide that the delinquency date may not be changed to a date later than 30 days after the date of preparation of the previous bill.*

c. (3) Provide for entry into the level payment plan anytime during the calendar year. The month of entry shall be that customer's anniversary month.

d. (4) The billing period level payment to be the sum of estimated charges divided by the number of standard billing intervals, all for the next 12 consecutive months.

~~e. (5) Except for termination of service, a~~ A customer on a level payment plan may not request termination of the plan (or withdrawal from the plan) until the first anniversary date following entry at any time. *If the customer's account is in arrears, the customer may be required to bring the account to a current balance before termination or withdrawal. If there is a credit balance, the customer shall be allowed the option of obtaining a refund or applying the credit to charges for subsequent months' service.*

f. (6) The level payment plan account balance on the anniversary date shall be carried forward and added to the estimated charges for service during the next year, and ~~This~~ *this* total will be the basis for computing the next year's periodic billing interval level payment amount. *The customer shall be given the option of applying any credit to payments of subsequent months' level payment amounts due or obtaining a refund of any credit in excess of \$25. For purposes of this paragraph the* The anniversary date account balance shall not carry forward on an unpaid level payment bill. For delin-

UTILITIES DIVISION[199](cont'd)

quency on a level payment plan amount see 20.4(12)“i” *sub-paragraph 20.4(12)“e”*(9).

g. (7) The amount to be paid in each billing interval by a customer on a level payment plan shall be computed at the time of entry into the plan. It may be recomputed on each anniversary date, when requested by the customer, or whenever price, consumption, alone or in combination result in a new estimate differing by 10 percent or more from that in use.

When a customer's payment level is recomputed, the customer shall be notified of the revised payment amount and the reason for the change. The notice shall be served not less than 30 days prior to the date of delinquency for the first revised payment. The notice may accompany the bill prior to the bill *that is* affected by the revised payment amount.

h. (8) The account shall be balanced upon termination of service or withdrawal in ~~accord~~ *accordance* with the utility's tariff.

i. (9) Irrespective of the account balance, a delinquency in payment shall be subject to the same procedures as other accounts on late payment charge ~~on~~ *for* the level payment amount, collection, or cutoff. *If the account balance is a debit, a delinquency in payment shall be subject to the same procedures as other accounts for collection or disconnection. If the account balance is a credit, the level payment plan shall terminate after 30 days of delinquency.*

ITEM 15. Adopt **new** paragraph **20.4(14)“g”** as follows:

g. Credits and explanations. Credits due a customer because of meter inaccuracies, errors in billing, or misapplication of rates shall be separately identified.

ITEM 16. Amend subrule 20.4(15) as follows:

20.4(15) Refusal or disconnection of service. *A utility shall refuse service or disconnect service to a customer, as defined in subrule 20.1(3), in accordance with tariffs that are consistent with these rules. Notice of pending disconnection shall be rendered and electric service refused or disconnected as set forth in the tariff.*

a. *The utility shall give written notice of pending disconnection except as specified in paragraph 20.4(15)“b.”* The notice of pending disconnection required by these rules shall be a written notice setting *set* forth the reason for the notice, and final date by which the account is to be settled or specific action taken. The notice shall be considered rendered to the customer when *addressed to the customer's last-known address and* deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the notice shall be considered rendered when delivered to the last-known address of the person responsible for payment for the service. The date for ~~refusal or~~ disconnection of service shall be not less than 12 days after the notice is rendered. The date for ~~refusal or~~ disconnection of service for customers on shorter billing intervals under subrule 20.3(6) shall not be less than 24 hours after the notice is posted at the service premises.

One written notice, including all reasons for the notice, shall be given where more than one cause exists for ~~refusal or~~ disconnection of service. ~~The notice shall also state the final date by which the account is to be settled or other specific action taken.~~ In determining the final date *by which the account is to be settled or other specific action taken*, the days of notice for the causes shall be concurrent.

~~Service may be refused or disconnected for any of the reasons listed below. Unless otherwise stated, the customer shall be provided notice of the pending disconnection and the rule violation which necessitates disconnection. Furthermore, unless otherwise stated, the customer shall be allowed a reasonable time in which to comply with the rule before ser-~~

~~vice is disconnected. Except as provided in paragraphs 20.4(15)“a,” “b,” “c,” and “d,” no service shall be disconnected on the day preceding or day on which the utility's local business office or local authorized agent is closed.~~

b. ~~Service may be refused or disconnected without notice:~~

a. (1) ~~Without notice in~~ In the event of a condition determined by the utility to be hazardous.

b. (2) ~~Without notice in~~ In the event of customer use of equipment in a manner which adversely affects the utility's equipment or the utility's service to others.

c. (3) ~~Without notice in~~ In the event of tampering with the equipment furnished and owned by the utility. For the purposes of this subrule, a broken or absent meter seal alone shall not constitute tampering.

d. (4) ~~Without notice in~~ In the event of unauthorized use. *Service may be disconnected or refused after proper notice:*

e. (1) For violation of or noncompliance with the utility's rules on file with the ~~utilities division board~~.

f. (2) For failure of the customer ~~or prospective customer~~ to furnish the service equipment, permits, certificates, or rights-of-way which are specified to be furnished, in the utility's rules filed with the ~~utilities division board~~, as conditions of obtaining service, or for the withdrawal of that same equipment, or for the termination of those same permissions or rights, or for the failure of the customer ~~or prospective customer~~ to fulfill the contractual obligations imposed as conditions of obtaining service by any contract filed with and subject to the regulatory authority of the ~~utilities division board~~.

g. (3) For failure of the customer to permit the utility reasonable access to ~~its~~ *the utility's* equipment.

~~h d. For~~ *Service may be refused or disconnected after proper notice for nonpayment of a bill or deposit, except as restricted by subrules 20.4(16) and 20.4(17), provided that the utility has complied with the following provisions when applicable:*

(1) ~~Made a reasonable attempt to effect collection~~ *Given the customer a reasonable opportunity to dispute the reason for the disconnection or refusal;*

(2) Given the customer, and any other person or agency designated by the customer, written notice that the customer has at least 12 days in which to make settlement of the account, ~~together with to avoid disconnection and~~ a written summary of the rights and remedies available ~~to avoid disconnection~~. Customers billed more frequently than monthly pursuant to subrule 20.3(6) shall be given posted written notice that they have 24 hours to make settlement of the account, ~~together with to avoid disconnection and~~ a written summary of the rights and remedies available ~~to avoid disconnection~~. All written notices shall include a toll-free or collect telephone number where a utility representative qualified to provide additional information about the disconnection can be reached. Each utility representative must provide ~~their~~ *the representative's* name ~~to the caller~~, and have immediate access to current, detailed information concerning the customer's account and previous contacts with the utility.

(3) No change.

(4) If the utility has adopted a service limitation policy pursuant to subrule 20.4(23), the following paragraph shall be appended to the end of the standard form for the summary of rights and remedies, as set forth in subparagraph 20.4(15)“h d” (3).

Service limitation: We have adopted a policy of service limitation before disconnection. You may be qualified for

UTILITIES DIVISION[199](cont'd)

service limitation rather than disconnection. To see if you qualify, contact our business office.

(5) No change.

(6) ~~Given the customer a reasonable opportunity to dispute the reason for the disconnection and, if to the extent applicable, complied with each of the following:~~

~~Disputed bill. In the event there is a~~ *If the customer has received notice of disconnection and has a dispute concerning a bill for electric utility service, the utility may require the customer to pay a sum of money equal to the amount of the undisputed portion of the bill pending settlement and thereby avoid ~~discontinuance~~ disconnection of service. A utility shall delay disconnection for nonpayment of the disputed bill for up to 45 days after the rendering of the bill if the customer pays the undisputed amount.* The 45 days shall be extended by up to 60 days if requested of the utility by the board in the event the customer files a written complaint with the board *in compliance with 199—Chapter 6.*

(7) Special circumstances. Disconnection of a residential customer may take place only between the hours of 6 a.m. and 2 p.m. on a weekday and not on weekends or holidays. If a disconnected customer makes payment or other arrangements during normal business hours, or by 7 p.m. for utilities permitting such payment or other arrangements after normal business hours, all reasonable efforts shall be made to reconnect the customer that day. If a disconnected customer makes payment or other arrangements after 7 p.m., all reasonable efforts shall be made to reconnect the customer not later than 11 a.m. the next day.

(8) *Severe cold weather.* A disconnection may not take place where electricity is used as the only source of space heating or to control or operate the only space heating equipment at the residence; on any day when the National Weather Service forecast for the following 24 hours covering the area in which the residence is located includes a forecast that the temperature will go below 20 degrees Fahrenheit. In any case where the utility has posted a disconnect notice in compliance with *subparagraph 20.4(15)“h d”*(5) but is precluded from disconnecting service because of a National Weather Service forecast, the utility may immediately proceed with appropriate disconnection procedures, without further notice, when the temperature in the area where the residence is located rises to above 20 degrees Fahrenheit and is forecasted to be above 20 degrees Fahrenheit for at least 24 hours, unless the customer has paid in full the past-due amount or is entitled to postponement of disconnection under some other provisions of ~~this rule, paragraph 20.4(15)“d.”~~

(9) Health of a resident. Disconnection of a residential customer shall be postponed if the ~~discontinuance~~ *disconnection* of service would present an especial danger to the health of any permanent resident of the premises. An especial danger to health is indicated if ~~one a person~~ appears to be seriously impaired and may, because of mental or physical problems, be unable to manage ~~their~~ *the person's* own resources, to carry out activities of daily living or ~~protect oneself to be protected~~ from neglect or hazardous situations without assistance from others. Indicators of an especial danger to health include but are not limited to: age, infirmity, or mental incapacity; serious illness; physical disability, including blindness and limited mobility; and any other factual circumstances which indicate a severe or hazardous health situation.

The utility may require written verification of the especial danger to health by a physician or public health official, including the name of the person endangered; a statement that the person is a resident of the premises in question; the name, business address, and telephone number of the certify-

ing party; the nature of the health danger; and approximately how long the danger will continue. Initial verification by the verifying party may be by telephone if written verification is forwarded to the utility within five days.

Verification shall postpone disconnection for 30 days; however, the postponement may be extended by a renewal of the verification. In the event service is terminated within 14 days prior to verification of illness by or for a qualifying resident, service shall be restored to that residence if a proper verification is thereafter made in accordance with the foregoing provisions. ~~The~~ *If the customer must does not* enter into a reasonable *payment* agreement for the retirement of the unpaid balance of the account within the first 30 days and *does not* keep the current account paid during the period that the unpaid balance is to be retired., *the customer is subject to disconnection pursuant to paragraph 20.4(15)“f.”*

~~Reasonable payment agreement. If financial difficulty of a residential customer is confirmed, disconnection may not take place until after the utility has offered the customer an opportunity to enter into a reasonable payment agreement as required by 20.4(11). Disconnection shall be delayed 30 days for the making of a reasonable payment agreement and the 30 days shall be extended to 60 days if requested of the utility by the board upon receipt of a complaint that the utility has arbitrarily refused a payment agreement offered by the customer and upon a finding the customer has made payment as provided for in the offered agreement.~~

(10) Winter energy assistance (November 1 through April 1). If the utility is informed that the customer's household may qualify for winter energy assistance or weatherization funds, there shall be no disconnection of service for 30 days from the date of ~~application~~ *the utility is notified* to allow the customer time to obtain assistance. Disconnection shall not take place from November 1 through April 1 for a resident who is a head of household and who has been certified to the public utility by the community action agency as eligible for either the low-income home energy assistance program or weatherization assistance program. ~~In addition to the notification procedure required herein, the utility shall, prior to November 1, mail customers a notice describing the availability of winter energy assistance funds and the application process. The notice must be of a type size that is easily legible and conspicuous and must contain the information set out by the state agency administering the assistance program. A utility serving fewer than 6,000 customers may publish notice in an advertisement in a local newspaper of general circulation or shopper's guide. A utility serving fewer than 25,000 customers may publish the notice in a customer newsletter in lieu of mailing.~~

e. Abnormal electric consumption. A customer who is subject to disconnection for nonpayment of bill, and who has electric consumption which appears to the customer to be abnormally high, may request the utility to provide assistance in identifying the factors contributing to this usage pattern and to suggest remedial measures. The utility shall provide assistance by discussing patterns of electric usage which may be readily identifiable, suggesting that an energy audit be conducted, and identifying sources of energy conservation information and financial assistance which may be available to the customer.

i.f. ~~Without~~ *A utility may disconnect electric service without* the written 12-day notice, for failure of the customer to comply with the terms of a payment agreement, provided that:

(1) In the case of a customer owning or occupying a residential unit that will be affected by disconnection, the utility

UTILITIES DIVISION[199](cont'd)

has made a diligent attempt, at least one day prior to disconnection, to contact the customer by telephone or in person to inform the customer of the pending disconnection and the customer's rights and remedies; ~~if. If an attempt at personal or telephone contact of a customer occupying a unit which a utility knows or should know is a rental unit has been unsuccessful, the landlord of the rental unit, if known, shall be contacted to determine if the customer is still in occupancy and, if so, the customer's present location. The landlord shall also be informed of the date when service may be disconnected.~~

(2) During the period November 1 through April 1, if the attempt at customer contact fails, the premises must be posted with a notice informing the customer of the pending disconnection and rights or remedies available to avoid disconnection at least one day prior to disconnection; ~~if. If the disconnection will affect occupants of residential units leased from the customer, the premises of any building known by the utility to contain residential units affected by disconnection must be posted, at least two days prior to disconnection, with a notice informing any occupants of the date when service will be disconnected and the reasons therefor. Disconnection is subject to the provisions of paragraph 20.4(15)"d."~~

~~(2) The disconnection of a residential customer may take place only between the hours of 6 a.m. and 2 p.m. on a weekday and not on weekends or holidays. If a disconnected customer makes a payment or other arrangements after normal business hours, or by 7 p.m. for utilities permitting such payment or other arrangements after normal business hours, all reasonable efforts shall be made to reconnect the customer that day. If a disconnected customer makes payment or other arrangements after 7 p.m., all reasonable efforts shall be made to reconnect the customer not later than 11 a.m. the next day. A disconnection may not take place where electricity is used as the only source of space heating or to control or operate the only space heating equipment at the residence, on any day when the National Weather Service forecast for the following 24 hours covering the area in which the residence is located includes a forecast that the temperature will go below 20 degrees Fahrenheit. In any case where the utility has posted a disconnect notice in compliance with 20.4(15)"h"(5) but is precluded from disconnecting service because of a National Weather Service forecast, the utility may immediately proceed with appropriate disconnection procedures, without further notice, when the temperature in the area where the residence is located rises to above 20 degrees, unless the customer has paid in full the past due amount or is entitled to postponement of disconnection under some other provisions of this rule.~~

~~(3) Disconnection of a residential customer shall be postponed if the disconnection of service would present an especial danger to the health of any permanent resident of the premises. An especial danger to health is indicated if one appears to be seriously impaired and may, because of mental or physical problems, be unable to manage their own resources, carry out activities of daily living or protect oneself from neglect or hazardous situations without assistance from others. Indicators of an especial danger to health include but are not limited to: age, infirmity, or mental incapacitation; serious illness; physical disability, including blindness and limited mobility; and any other factual circumstances which indicate a severe or hazardous health situation. The utility may require written verification of the especial danger to health by a physician or public health official, including the name of the person endangered, a statement that the person is a resident of the premises in question, the name, business address, and telephone number of the certifying party, the nature of the~~

~~health danger and approximately how long the danger will continue. Initial verification by the verifying party may be by telephone if written verification is forwarded to the utility within five days.~~

~~Verification shall postpone disconnection for 30 days; however, the postponement may be extended by a renewal of the verification. In the event service is terminated within 14 days prior to verification of illness by or for a qualifying resident, service shall be restored to that residence if a proper verification is thereafter made in accordance with the foregoing provisions. The customer must pay the unpaid balance under the payment agreement within the first 30 days and keep the current account paid during the period that disconnection is postponed.~~

~~g. The utility shall, prior to November 1, mail customers a notice describing the availability of winter energy assistance funds and the application process. The notice must be of a type size that is easily legible and conspicuous and must contain the information set out by the state agency administering the assistance program. A utility serving fewer than 25,000 customers may publish the notice in a customer newsletter in lieu of mailing. A utility serving fewer than 6,000 customers may publish the notice in an advertisement in a local newspaper of general circulation or shopper's guide.~~

~~j.h. Without A utility may disconnect electric service without the written 12-day notice, for failure of a residential customer who has had service limited in accordance with subrule 20.4(23) to pay the full amount due for past service or to enter into a reasonable payment agreement, provided that:~~

~~(1) The minimum time period, as specified in the utility's tariff, for the service limiter to remain in place prior to initiation of the disconnection procedure has elapsed;~~

~~(2) The requirements of paragraph 20.4(15)"i" f(4), relating to in-person, telephone or posted notice, have been satisfied;~~

~~(3) The requirements of 20.4(15)"i"(2) subparagraphs 20.4(15)"d"(7) and (8), relating to time and temperature restrictions on disconnection are satisfied, to the extent applicable; and~~

~~(4) The requirements of 20.4(15)"i"(3) subparagraph 20.4(15)"d"(9), relating to health restrictions on disconnection are satisfied, to the extent applicable.~~

ITEM 17. Amend subrule 20.4(16) as follows:

20.4(16) Insufficient reasons for denying service. The following shall not constitute sufficient cause for refusal of service to a present or prospective customer:

a. Delinquency in payment for service by a previous occupant of the premises to be served.

b. Failure to pay for merchandise purchased from the utility.

c. Failure to pay for a different type or class of public utility service.

d. Failure to pay the bill of another customer as guarantor thereof.

e. Failure to pay the back bill rendered in accordance with paragraph 20.4(14)"d." (slow meters).

f. Failure to pay a bill rendered in accordance with paragraph 20.4(14)"f."

g. Failure of a residential customer to pay a deposit during the period November 1 through April 1 for the location at which he or she the customer has been receiving service.

h. No change.

ITEM 18. Amend subrule 20.4(17) as follows:

20.4(17) When disconnection prohibited. No disconnection may take place from November 1 through April 1 for a

UTILITIES DIVISION[199](cont'd)

resident who is a head of household and who has been certified to the public utility by the local community action agency as being eligible for either the low-income home energy assistance program or weatherization assistance program. ~~No disconnection shall take place from April 1, 2001, through May 1, 2001, for eligible residents.~~

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[Published 12/10/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/10/03.



State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

*** EXECUTIVE ORDER NUMBER THIRTY-TWO**

- WHEREAS,** thousands of brave Iowans have served our country in the armed forces, with honor and distinction, to preserve our heritage and freedom; and
- WHEREAS,** the people of Iowa are immensely proud of these men and women, and will be indebted to them forever for their heroic sacrifices in the service and defense of this great nation; and
- WHEREAS,** we are especially mindful today of the sacrifices made by our Iowa veterans, as we receive reports regarding Iowans in uniform who have lost their lives, have been injured, or remain in harm's way in the war in Iraq; and
- WHEREAS,** the fighting spirit of this state's men and women, who have made unimaginable sacrifices to protect our freedoms, are reflected by the five Sullivan brothers from Waterloo, Iowa (Joseph, Frank, Albert, Madison, and George), and the entire Sullivan family; and
- WHEREAS,** on November 13, 1942, a Japanese torpedo struck the Sullivan brothers' ship, the U.S.S. Juneau, off the island of Guadalcanal, killing all five brothers, and etching their memory forever into the conscience and soul of this nation; and
- WHEREAS,** it is our unyielding duty to honor the brave men and women in our armed forces, and pay tribute to the sacrifices of all Iowa veterans; and
- WHEREAS,** the state of Iowa is one of only 13 states in the nation without a state veteran's cemetery to provide veterans with a final resting place and a lasting monument to their memory of service and sacrifice; and
- WHEREAS,** the Iowa Commission of Veteran's Affairs has long recognized the need for a state veterans cemetery; and
- WHEREAS,** a 2001 study commissioned by the U.S. Department of Veteran's Affairs National Cemetery Administration identified central Iowa as a region in need of additional veteran burial grounds:

NOW, THEREFORE, I, Thomas J. Vilsack, by the power vested in me by the Constitution and laws of the State of Iowa, do hereby establish through the Iowa Veteran's Affairs Commission, in a manner consistent with existing law, a Commemorative Iowa Medallion, featuring the profile of the five Sullivan brothers on one side, and an image of the Iowa State Capitol on the other, for purchase by the general public. All proceeds generated from the sale of each medallion shall be used to fund the establishment and maintenance of an Iowa Veteran's Cemetery in central Iowa. The Iowa Veteran's Affairs Commission shall oversee the implementation of this initiative, and partner with all necessary agencies to effectuate its purposes. If the funds collected are not utilized for the establishment of an Iowa Veteran's Cemetery by December 31, 2008, all funds shall revert to the Iowa Veteran's Affairs Commission to be used by the commission to support and promote veterans services.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 11th day of November, in the year of our Lord two thousand three.

Thomas J. Vilsack
 THOMAS J. VILSACK
 GOVERNOR

ATTEST:

Chester J. Culver
 CHESTER J. CULVER
 SECRETARY OF STATE

IOWA ADMINISTRATIVE BULLETIN
Customer Service Center
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Des Moines, Iowa 50319

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