



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making 2014

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
9	Friday, October 10, 2014	October 29, 2014
10	Wednesday, October 22, 2014	November 12, 2014
11	Wednesday, November 5, 2014	November 26, 2014

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*****

The Administrative Rules Review Committee will hold its regular, statutory meeting on October 14, 2014, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ARCHITECTURAL EXAMINING BOARD[193B]

Professional Licensing and Regulation Bureau[193]
 COMMERCE DEPARTMENT[181]"umbrella"
 Registration; renewal of certificates of registration, 2.3(4), 2.5(1), 2.6, 2.7, 2.8(1), 2.10 to
 2.12 Filed **ARC 1624C** 9/17/14
 Continuing education; transition provisions, ch 3 Filed **ARC 1625C** 9/17/14

DENTAL BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"
 Administration of sedation and nitrous oxide inhalation analgesia, 29.4, 29.5(12) Notice **ARC 1658C** 10/1/14
 Military service and veteran reciprocity, ch 52 Notice **ARC 1645C** 10/1/14

ECONOMIC DEVELOPMENT AUTHORITY[261]

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 Workforce housing tax incentives program; high quality jobs program; enterprise zone
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Notice **ARC 1628C** 9/17/14

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 Animal feeding operations—NPDES compliance, 64.18, 65.1, 65.3(3), 65.4, 65.5(2), 65.6,
 65.7(1), 65.101(6) Filed **ARC 1627C** 9/17/14

HUMAN SERVICES DEPARTMENT[441]

HCBS brain injury (BI) waiver training, 77.39 Filed **ARC 1638C** 10/1/14
 Adoption—criminal history and child abuse record checks, postplacement reports, home
 studies, amendments to chs 107, 108, 200 Notice **ARC 1657C** 10/1/14
 Child development homes—emergency contact records, 110.5(1)"a" Filed **ARC 1636C** 10/1/14
 Child development homes—compliance checks, 110.6 Filed **ARC 1637C** 10/1/14

INSPECTIONS AND APPEALS DEPARTMENT[481]

Laboratory services; employer verification of employee records, 51.18, 51.41 Notice **ARC 1650C** 10/1/14
 Residential care facilities, ch 57 Notice **ARC 1649C** 10/1/14
 Nursing, residential care and intermediate care facilities— involuntary discharge or transfer,
 58.40, 62.14, 63.34, 64.36, 65.16 Notice **ARC 1648C** 10/1/14

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"
 Boiler and pressure vessel board—schedule for internal inspection of certain objects, 90.6
Filed **ARC 1634C** 10/1/14

MEDICINE BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"
 Military service and veteran reciprocity, ch 18 Notice **ARC 1632C** 9/17/14

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"
 Boating—zoning of Mississippi River adjacent to city of Clayton, 40.60 Filed **ARC 1644C** 10/1/14

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"
 Removal of references to "uncertified pharmacy technician" and to extended deadline for
 national certification, amendments to ch 3 Notice **ARC 1653C** 10/1/14
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 Nonresident pharmacy practice, 19.2, 19.3(3) Notice **ARC 1651C** 10/1/14
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 Military service and veteran reciprocity, ch 14 Notice **ARC 1630C** 9/17/14

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Mediators; arbitrators, 1.8, chs 13, 14 Filed **ARC 1642C** 10/1/14

PUBLIC HEALTH DEPARTMENT[641]

Radiation, amendments to chs 38 to 41, 45 Filed **ARC 1639C** 10/1/14

Medical cannabidiol Act registration card program, ch 154 Filed **ARC 1640C** 10/1/14

Criteria for awards or grants—second review process, public notice of available funds,
appeals, time period for issuance of decision, 176.5, 176.7, 176.8 Notice **ARC 1656C** 10/1/14

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Certificate of need program; uniform reporting requirements, amend 202.1 to 202.5,
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REAL ESTATE APPRAISER EXAMINING BOARD[193F]

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Uniform appraisal standards and appraiser certification requirements, amendments to chs 3
to 6 Notice **ARC 1631C** 9/17/14

Certification and registration renewal, reactivation and reinstatement; continuing education;
supervisory appraiser qualifications, amendments to chs 9, 11, 15 Notice **ARC 1629C** 9/17/14

REVENUE DEPARTMENT[701]

Individual income, corporation income, and franchise tax; workforce housing tax incentives
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Multiresidential property tax classification, 71.1, 71.12, 71.23, 71.24 Amended Notice **ARC 1635C** 10/1/14

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UTILITIES DIVISION[199]

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Competitive natural gas providers; natural gas vehicle fuel providers; method for contacting
duty officer, 2.2, 10.17(4), 19.14, 19.17(2), 20.19(2), 21.9, 25.5(3) Filed **ARC 1623C** 9/17/14

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular, statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

Senator Mark Chelgren
819 Hutchinson
Ottumwa, Iowa 52501

Senator Thomas Courtney
2609 Clearview
Burlington, Iowa 52601

Senator Wally Horn
101 Stoney Point Road, SW
Cedar Rapids, Iowa 52404

Senator Pam Jochum
2368 Jackson Street
Dubuque, Iowa 52001

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Representative Rick Olson
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Des Moines, Iowa 50317

Representative Dawn Pettengill
P.O. Box A
Mt. Auburn, Iowa 52313

Representative Jeff Smith
185 NE Gracewood Drive
Waukee, Iowa 50263

Representative Guy Vander Linden
1610 Carbonado Road
Oskaloosa, Iowa 52577

Brenna Findley
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 18
Des Moines, Iowa 50319
Telephone (515)281-5211

DENTAL BOARD[650]

Administration of sedation and nitrous oxide inhalation analgesia, 29.4, 29.5(12) IAB 10/1/14 ARC 1658C	Board Office, Suite D 400 S.W. 8th St. Des Moines, Iowa	October 21, 2014 2 p.m.
Military service and veteran reciprocity, ch 52 IAB 10/1/14 ARC 1645C	Board Office, Suite D 400 S.W. 8th St. Des Moines, Iowa	October 21, 2014 2 p.m.

INSPECTIONS AND APPEALS DEPARTMENT[481]

Residential care facilities, ch 57 IAB 10/1/14 ARC 1649C	Room 320 Lucas State Office Bldg. Des Moines, Iowa	October 21, 2014 10 a.m.
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MEDICINE BOARD[653]

Military service and veteran reciprocity, ch 18 IAB 9/17/14 ARC 1632C	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	October 7, 2014 11 a.m.
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PROFESSIONAL LICENSING AND REGULATION BUREAU[193]

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REAL ESTATE APPRAISER EXAMINING BOARD[193F]

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Certification and registration renewal, reactivation and reinstatement; continuing education; supervisory appraiser qualifications, amendments to chs 9, 11, 15 IAB 9/17/14 ARC 1629C	Board Office, Suite 350 200 E. Grand Ave. Des Moines, Iowa	October 7, 2014 9 a.m.

REVENUE DEPARTMENT[701]

Multiresidential property tax classification, 71.1, 71.12, 71.23, 71.24 IAB 10/1/14 ARC 1635C (See ARC 1593C , IAB 8/20/14)	Auditorium Wallace State Office Bldg. 502 E. 9th St. Des Moines, Iowa	October 27, 2014 2 to 3 p.m.
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UTILITIES DIVISION[199]

Eligibility, certification, and reporting requirements for eligible telecommunications carriers and related confidentiality provisions, 1.9(5), ch 39 IAB 8/6/14 ARC 1563C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	October 28, 2014 9 a.m.
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The following list will be updated as changes occur.

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

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

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

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ARC 1658C

DENTAL BOARD[650]**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Dental Board hereby gives Notice of Intended Action to amend Chapter 29, “Sedation and Nitrous Oxide Inhalation Analgesia,” Iowa Administrative Code.

The proposed amendments include:

- Requiring all moderate sedation permit holders to use capnography or a pretracheal/precordial stethoscope at all facilities where they provide sedation beginning January 1, 2015.
- Allowing moderate sedation permit holders who sedate pediatric patients to maintain Pediatric Advanced Life Support (PALS) certification in lieu of Advanced Cardiac Life Support (ACLS) certification.

Written comments about the proposed amendments will be accepted through October 21, 2014. Comments should be directed to Phil McCollum, Interim Executive Director, Iowa Dental Board, 400 SW Eighth Street, Suite D, Des Moines, Iowa 50309-4687; or sent by e-mail to IDB@iowa.gov.

A public hearing will be held on October 21, 2014, at 2 p.m. in the Board office located at 400 SW Eighth Street, Suite D, Des Moines, Iowa.

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 person who plans to attend the public hearing and who may have special requirements, such as those related to hearing or mobility impairments, should contact the Board office and advise of specific needs.

These proposed amendments were approved at the July 31, 2014, quarterly meeting of the Dental Board.

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

These amendments are intended to implement Iowa Code sections 153.33 and 153.34.

The following amendments are proposed.

ITEM 1. Amend rule 650—29.4(153) as follows:

650—29.4(153) Requirements for the issuance of moderate sedation permits.

29.4(1) No change.

29.4(2) A dentist utilizing moderate sedation shall maintain a properly equipped facility. The dentist shall maintain and be trained on the following equipment at each facility where sedation is provided: capnography or pretracheal/precordial stethoscope, EKG monitor, positive pressure oxygen, suction, laryngoscope and blades, endotracheal tubes, magill forceps, oral airways, stethoscope, blood pressure monitoring device, pulse oximeter, emergency drugs, defibrillator. A licensee may submit a request to the board for an exemption from any of the provisions of this subrule. Exemption requests will be considered by the board on an individual basis and shall be granted only if the board determines that there is a reasonable basis for the exemption.

29.4(3) No change.

29.4(4) A dentist administering moderate sedation must document and maintain current, successful completion of an Advanced Cardiac Life Support (ACLS) course. A dentist administering moderate sedation to pediatric patients may maintain current certification in Pediatric Advanced Life Support (PALS) in lieu of ACLS.

29.4(5) to 29.4(8) No change.

DENTAL BOARD[650](cont'd)

ITEM 2. Adopt the following **new** subrule 29.5(12):

29.5(12) Use of capnography or pretracheal/precordial stethoscope required for moderate sedation permit holders. Beginning January 1, 2015, all moderate sedation permit holders shall use capnography or a pretracheal/precordial stethoscope at all facilities where they provide sedation.

ARC 1645C

DENTAL BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 147.76 and 272C.2, the Dental Board hereby gives Notice of Intended Action to adopt new Chapter 52, “Military Service and Veteran Reciprocity,” Iowa Administrative Code.

The purpose of Chapter 52 is to establish procedural rules implementing the licensing provisions of the Home Base Iowa Act, 2014 Iowa Acts, chapter 1116, section 34.

The Board approved this Notice of Intended Action on September 11, 2014.

Any interested person may make written comments on the proposed new rules on or before October 21, 2014. Such written materials should be directed to Phil McCollum, Interim Executive Director, Iowa Dental Board, 400 SW Eighth Street, Suite D, Des Moines, Iowa 50309; or sent by e-mail to phil.mccollum@iowa.gov.

There will be a public hearing on October 21, 2014, at 2 p.m. in the Board office, 400 SW Eighth Street, Suite D, Des Moines, Iowa, at which time persons may present their views orally or in writing.

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

After analysis and review of this rule making, it has been determined that these rules could have a positive impact on jobs in Iowa. The new rules could encourage qualified veterans to practice in Iowa.

These rules are intended to implement 2014 Iowa Acts, chapter 1116, division VI.

The following amendment is proposed.

Adopt the following **new** 650—Chapter 52:

CHAPTER 52

MILITARY SERVICE AND VETERAN RECIPROCITY

650—52.1(85GA,ch1116) Definitions.

“*License*” or “*licensure*” means any license, registration, certificate or permit that may be granted by the board.

“*Military service*” means honorably serving on federal active duty, state active duty, or national guard duty, as defined in Iowa Code section 29A.1; in the military services of other states, as provided in 10 U.S.C. Section 101(c); or in the organized reserves of the United States, as provided in 10 U.S.C. Section 10101.

“*Military service applicant*” means an individual who is requesting credit toward licensure for military education, training, or service obtained or completed in military service.

“*Reciprocity*” means the process by which an individual licensed in another jurisdiction becomes licensed in Iowa and may also be referred to in other board rules as “licensure by credentials.”

“*Veteran*” means an individual who meets the definition of “veteran” in Iowa Code section 35.1(2).

DENTAL BOARD[650](cont'd)

650—52.2(85GA,ch1116) Military education, training, and service credit. A military service applicant may apply for credit for verified military education, training, or service toward any experience or educational requirement for licensure by submitting a military service application form to the board office.

52.2(1) The completed military service application may be submitted with an application for licensure or examination or prior to an applicant's applying for licensure or to take an examination. No fee is required with submission of an application for military service credit.

52.2(2) The applicant shall identify the experience or educational licensure requirement to which the credit would be applied if granted. Credit shall not be applied to an examination requirement.

52.2(3) The applicant shall provide documents, military transcripts, a certified affidavit, or forms that verify completion of the relevant military education, training, or service, which may include, when applicable, the applicant's Certificate of Release or Discharge from Active Duty (DD Form 214) or Verification of Military Experience and Training (VMET) (DD Form 2586).

52.2(4) Upon receipt of a completed military service application, the board shall promptly determine whether the verified military education, training, or service will satisfy all or any part of the identified experience or educational licensure requirement.

52.2(5) The board shall grant the application in whole or in part if the board determines that the verified military education, training, or service satisfies all or part of the experience or educational qualifications for licensure.

52.2(6) The board shall inform the military service applicant in writing of the credit, if any, given toward an experience or educational qualification for licensure or explain why no credit was granted. The applicant may request reconsideration upon submission of additional documentation or information.

52.2(7) A military service applicant who is aggrieved by the board's decision may request a contested case (administrative hearing) and may participate in a contested case by telephone. A request for a contested case shall be made within 30 days of issuance of the board's decision. No fees or costs shall be assessed against the military service applicant in connection with a contested case conducted pursuant to this subrule.

52.2(8) The board shall grant or deny the military service application prior to ruling on the application for licensure. The applicant shall not be required to submit any fees in connection with the licensure application unless the board grants the military service application. If the board does not grant the military service application, the applicant may withdraw the licensure application or request that the licensure application be placed in pending status for up to one year or as mutually agreed. The withdrawal of a licensure application shall not preclude subsequent applications supported by additional documentation or information.

650—52.3(85GA,ch1116) Veteran reciprocity.

52.3(1) A veteran with an unrestricted professional license in another jurisdiction may apply for licensure in Iowa through reciprocity. A veteran must pass any examinations required for licensure to be eligible for licensure through reciprocity. A fully completed application for licensure submitted by a veteran under this subrule shall be given priority and shall be expedited.

52.3(2) An application for licensure by reciprocity shall contain all of the information required of all applicants for licensure who hold unrestricted licenses in other jurisdictions and who are applying for licensure by reciprocity including, but not limited to, completion of all required forms, payment of applicable fees, disclosure of criminal or disciplinary history, and, if applicable, a criminal history background check. The applicant shall use the same forms as any other applicant for licensure by reciprocity and shall additionally provide such documentation as is reasonably needed to verify the applicant's status as a veteran under Iowa Code section 35.1(2).

52.3(3) Upon receipt of a fully completed licensure application, the board shall promptly determine if the professional or occupational licensing requirements of the jurisdiction where the veteran is licensed are substantially equivalent to the licensing requirements in Iowa. The board shall make this determination based on information supplied by the applicant and such additional information as the board may acquire from the applicable jurisdiction. The board may consider the following factors in

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determining substantial equivalence: scope of practice, education and coursework, degree requirements, postgraduate experience, and examinations required for licensure.

52.3(4) The board shall promptly grant a license to the veteran if the veteran is licensed in the same or similar profession in another jurisdiction whose licensure requirements are substantially equivalent to those required in Iowa, unless the applicant is ineligible for licensure based on other grounds, for example, the applicant's disciplinary or criminal background.

52.3(5) If the board determines that the licensure requirements in the jurisdiction in which the veteran is licensed are not substantially equivalent to those required in Iowa, the board shall promptly inform the veteran of the additional experience, education, or examinations required for licensure in Iowa. Unless the applicant is ineligible for licensure based on other grounds, such as disciplinary or criminal background, the following shall apply:

a. If a veteran has not passed the required examination(s) for licensure, the veteran may not be issued a provisional license, but may request that the licensure application be placed in pending status for up to one year or as mutually agreed to provide the veteran with the opportunity to satisfy the examination requirements.

b. If additional experience or education is required in order for the applicant's qualifications to be considered substantially equivalent, the applicant may request that the board issue a provisional license for a specified period of time during which the applicant will successfully complete the necessary experience or education. The board shall issue a provisional license for a specified period of time upon such conditions as the board deems reasonably necessary to protect the health, welfare or safety of the public unless the board determines that the deficiency is of a character that the public health, welfare or safety will be adversely affected if a provisional license is granted.

c. If a request for a provisional license is denied, the board shall issue an order fully explaining the decision and shall inform the applicant of the steps the applicant may take in order to receive a provisional license.

d. If a provisional license is issued, the application for full licensure shall be placed in pending status until the necessary experience or education has been successfully completed or the provisional license expires, whichever occurs first. The board may extend a provisional license on a case-by-case basis for good cause.

52.3(6) A veteran who is aggrieved by the board's decision to deny an application for a reciprocal license or a provisional license or is aggrieved by the terms under which a provisional license will be granted may request a contested case (administrative hearing) and may participate in a contested case by telephone. A request for a contested case shall be made within 30 days of issuance of the board's decision. No fees or costs shall be assessed against the veteran in connection with a contested case conducted pursuant to this subrule.

These rules are intended to implement 2014 Iowa Acts, chapter 1116, division VI.

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HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 234.6 and 2014 Iowa Acts, Senate File 2276, the Department of Human Services proposes to amend Chapter 107, "Certification of Adoption Investigators," Chapter 108, "Licensing and Regulation of Child-Placing Agencies," and Chapter 200, "Adoption Services," Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments are necessary to implement 2014 Iowa Acts, Senate File 2276.

These amendments will require additional record checks to be completed for prospective adoptive applicants working with licensed child-placing adoption agencies or certified adoption investigators. Families who apply to adopt through the Department are already subject to these checks. Child-placing adoption agencies will be required to assess and address during postplacement visits any unique needs a child has and how the family is meeting those needs before the agency recommends finalization of the adoption. These amendments will lengthen the approved time for adoption from one year to two years.

These amendments require national criminal history checks on all adoptive applicants; require child abuse record checks in states where the applicants lived five years prior to requesting application for adoption; clarify record checks for international adoptions; address the unique needs of the child in postplacement reports; lengthen the time of an approved home study from one year to two years; and make technical changes to update Chapters 107, 108 and 200.

Any interested person may make written comments on the proposed amendments on or before October 21, 2014. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 5th Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

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

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

These amendments are intended to implement Iowa Code section 234.6 and 2014 Iowa Acts, Senate File 2276.

The following amendments are proposed.

ITEM 1. Amend rule **441—107.2(600)**, definition of “Adoption work experience,” as follows:

“Adoption work experience” means supervised employment in adoption services. ~~Included is, which includes~~ direct provision of adoption services, developing adoption policies, conducting training related to adoption services, oversight and review of adoption documents and activities, and direct supervision of adoption workers. ~~For employment, of which only a portion of time was spent on adoptions, only the percent of time related to provision of adoption services shall be included as adoption work experience. Only the percent of time related to provision of adoption services shall be considered as adoption work experience when job duties involve activities other than adoption services.~~

ITEM 2. Amend rule 441—107.8(600) as follows:

441—107.8(600) Investigative services.

107.8(1) Preplacement investigations. When ~~an~~ a certified adoption investigator provides a preplacement investigation of a prospective adoptive family, the investigation shall meet the requirements of Iowa Code section 600.8(1) “a,” including an assessment of the family’s ability to parent a child.

a. No change.

b. The certified adoption investigator shall have on file a written assessment of the family which shall be used to approve or deny a prospective adoptive family. The written assessment (home study) shall include the date the home study was completed, shall be signed by the investigator and the signature notarized. The assessment shall include the following:

(1) and (2) No change.

(3) The attitude towards adoption of ~~significant~~ other people involved with the family in a significant way;

(4) ~~Emotional stability, marital history and assessment of marital relationship, including verification of marriages and divorces, and compatibility of adoptive parent(s)~~ Emotional maturity; marital history, including verification of marriages and divorces; assessment of marital relationship; and compatibility of the adoptive parents;

(5) No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- (6) Medical, mental, or emotional conditions which would affect the applicant's ability to parent a child;
- (7) Ability to provide for the child's physical and emotional needs and to respect the child's cultural and religious identity;
- (8) Adjustment Description of biological children and previously adopted children, if any, including their attitudes towards adoption, adjustments in the family and in school relationships with others, and school performance;
- (9) No change.
- (10) Statements from at least three references provided by the family and other unsolicited references that the investigator may wish to contact;
- (11) No change.
- (12) Income information, including the family's ability to financially provide for a child;
- (13) No change.
- (14) History of abuse by involving family members and treatment, including how the abuse was addressed and how that history impacts the applicant's ability to be an adoptive parent;
- (15) Assessment of, commitment to, and capacity to maintain other significant relationships;
- (16) Substance use or abuse by family members and of the household, treatment history and current status of treatment; and
- (17) Recommendations for type of child, the number, age, sex, characteristics, and special unique needs of children best served by this family; and
- (18) The family's ability to anticipate and understand the unique needs of an adopted child as the child gets older and how the family will manage those needs.

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

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

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

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

~~(1) If the applicant or any other adult living in the home of the applicant has been convicted of a simple misdemeanor or a serious misdemeanor that occurred five or more years prior to application, the evaluation and decision may be made by the certified adoption investigator. The certified adoption investigator shall notify the applicant of the results of the evaluation using Form 470-2386, Record Check Decision.~~

~~(2) If the applicant or any other adult living in the home of the applicant has a founded child abuse report, has been convicted of an aggravated misdemeanor or felony at any time, or has been convicted~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~of a simple or serious misdemeanor that occurred within five years prior to application, the evaluation shall be initially conducted by the certified adoption investigator.~~

~~1. If the certified adoption investigator determines that the abuse or crime does warrant prohibition of approval, the certified adoption investigator shall notify the applicant of the results of the evaluation using Form 470-2386, Record Check Decision.~~

~~2. If the certified adoption investigator believes that the applicant should be approved despite the abuse or criminal conviction, the certified adoption investigator shall provide copies of the child abuse report or criminal history record, Form 470-2310, Record Check Evaluation, and Form 470-2386, Record Check Decision, to the Department of Human Services, Administrator, Division of Adult, Children and Family Services, Hoover State Office Building, Des Moines, Iowa 50319-0114. Within 30 days the administrator shall determine whether the abuse or crime merits prohibition of approval and shall notify the certified adoption investigator in writing of that decision. The certified adoption investigator shall mail the applicant Form 470-2386, Record Check Decision, when a decision is reached regarding the evaluation of an abuse or crime, or when an applicant fails to complete the evaluation form.~~

~~(3) The child abuse and criminal record checks shall be repeated and any founded abuses or convictions of crimes since the last record check shall be evaluated using the same process during the home study update required by Iowa Code section 600.8.~~

~~c. Record checks. The certified adoption investigator shall perform record checks for each applicant and for the other persons living in the home of the applicant as follows:~~

~~(1) The records of the applicants shall be checked:~~

~~1. On the Iowa central abuse registry using the Request for Child Abuse Information form;~~

~~2. By the Iowa division of criminal investigation, using the DHS Criminal History Record Check Form B;~~

~~3. On the Iowa sex offender registry;~~

~~4. On the child abuse registry of any state where the applicant has lived during the five years prior to the issuance of the investigative report; and~~

~~5. For a national criminal history through fingerprinting or another biometric identification-based process accepted by the federal government.~~

~~(2) The records of persons aged 14 or older living in the home of the applicant shall be checked:~~

~~1. On the Iowa central abuse registry using the Request for Child Abuse Information form;~~

~~2. By the Iowa division of criminal investigation, using the DHS Criminal History Record Check Form B; and~~

~~3. On the Iowa sex offender registry.~~

~~(3) Out-of-state child abuse checks and national criminal history checks may be completed on any adult in the home of the applicant if the certified adoption investigator has reason to do so.~~

~~(4) The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or any other adult living in the home of the applicant has been convicted of a felony offense as set forth in Iowa Code section 600.8(2) "b."~~

~~(5) The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or any other adult living in the home of the applicant has committed a crime in a state other than Iowa that would be a forcible felony if the crime would have been committed in Iowa, as set forth in Iowa Code section 600.8(2) "b."~~

~~d. Home study updates are required if the home study was written more than one year previously, in accordance with Iowa Code section 600.8. The home study update shall consist of completing the following:~~

~~(1) The child abuse and criminal record checks shall be repeated and if there are new founded abuses or conviction of crimes that were not evaluated in the previous home study they shall be evaluated using the process set forth in 107.8(1) "e."~~

~~(2) One face-to-face visit shall be conducted with the approved family.~~

~~(3) The information in the approved home study shall be reassessed.~~

~~(4) An updated report of the reassessment and adoptive home study shall be written, dated, signed and notarized and a copy provided to the family.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

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

(1) The evaluation shall consider the nature and seriousness of the founded child abuse or crime in relation to adoption, the time elapsed since the commission of the founded abuse or crime, the circumstances under which the abuse or crime was committed, the degree of rehabilitation, the likelihood that the person will commit the abuse or crime again, and the number of abuses or crimes committed by the person.

(2) The person with the founded child abuse or criminal conviction report shall complete and return the Record Check Evaluation form within ten calendar days of the date on the form to be used to assist in the evaluation. Failure of the person to complete and return the form within the specified time frame may result in a written denial of approval for adoption.

(3) If the applicant, or any other adult living in the home of the applicant, has been convicted of a simple misdemeanor or a serious misdemeanor that occurred five or more years prior to application, the evaluation and decision may be made by a certified adoption investigator. The certified adoption investigator shall notify the applicant of the results of the evaluation in writing. The notice shall contain information on appeal rights.

(4) If the applicant, or any other person living in the home of the applicant, has a founded child abuse report, has been convicted of an aggravated misdemeanor or felony at any time, or has been convicted of a simple or serious misdemeanor that occurred within five years prior to application, a certified adoption investigator shall initially conduct the evaluation.

1. If the certified adoption investigator determines that the abuse or crime does warrant prohibition of approval, the certified adoption investigator shall notify the applicant of the results of the evaluation in writing.

2. If the certified adoption investigator determines that the applicant should be approved despite the abuse or criminal conviction, the certified adoption investigator shall provide copies of the child abuse report or criminal history record and the Record Check Evaluation form to the Administrator, Division of Adult, Children and Family Services, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114. Within 30 days, the administrator shall determine whether the abuse or crime merits prohibition of approval and shall notify the certified adoption investigator in writing of that decision. The certified adoption investigator shall mail the applicant the department's written decision regarding the evaluation of an abuse or crime.

e. Decision. The certified adoption investigator shall notify the applicant in writing no later than 30 days after completion of the home study of the investigator's decision regarding approval for placement of a child.

(1) If the applicant is denied, the certified adoption investigator shall state the reasons for denial in the written decision.

(2) The certified adoption investigator shall date, sign and notarize the adoptive home study.

(3) The certified adoption investigator shall provide a copy of the home study to the family at the time the written decision is sent.

(4) A home study shall be valid for up to two years from the date signed by the certified adoption investigator.

f. Denial. The certified adoption investigator shall deny approval of an adoption application when:

(1) The applicant or any other person living in the home of the applicant has been convicted of a felony offense as set forth in Iowa Code section 600.8(2) "b."

(2) The standards set forth in these rules are not met and cannot be corrected.

(3) The applicant or any person residing in the home has been convicted of a crime, unless an evaluation of the crime has been made by the department, which concludes that the crime does not merit prohibition of approval of an adoption application.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(4) The applicant or any person residing in the home has a record of founded child abuse, unless an evaluation of the founded child abuse has been made by the department, which concluded that the founded child abuse does not merit prohibition of approval of an adoption application.

(5) The applicant has knowingly made false statements or has knowingly concealed information that is material to the investigation.

g. Updates. An update to the home study shall be completed no later than 24 months from the previous home study or previous home study update in order for the home study to remain valid. The home study update shall consist of completion of the following:

(1) The child abuse and criminal history record checks, except for national criminal history checks, shall be repeated. If there are new founded abuses or convictions of crimes that were not evaluated in the previous home study, they shall be evaluated using the process set forth in paragraph 107.8(1) "d."

(2) One face-to-face visit shall be conducted with the approved family annually.

(3) The information in the approved home study shall be reviewed.

(4) An updated report of the adoptive home study shall be written, dated, signed and notarized and a copy provided to the applicant.

h. Annual visits to the adoptive home. The certified adoption investigator shall complete a minimum of one visit each year in the homes of families approved to adopt by the investigator.

(1) The visit shall include, but not be limited to, assessment of the following areas:

1. Home environment.

2. Persons present at the time of the visit.

3. Changes in the home or household members, or other areas addressed in the home study.

(2) When a person aged 14 or older moves into the home, the investigator shall perform checks on the Iowa central child abuse registry, by the division of criminal investigation, and on the sex offender registry. The record check evaluation process shall be completed if the person has a criminal conviction or founded child abuse report or is on the sex offender registry.

(3) The findings from the visit shall be documented and maintained in the file.

~~107.8(2) Background information investigation. When an adoption investigator completes a background information investigation on the child to be adopted at the request of the placer, the investigation shall include a complete family medical and mental health history and developmental history of the child to be adopted. A personal interview with each parent of the child must be completed unless a parent's identity or whereabouts is unknown.~~

107.8(2) Background information investigation. When a certified adoption investigator is requested to complete a background information investigation on the child to be adopted, the investigation shall include a complete medical, mental health and criminal history of the family and developmental history of the child to be adopted.

a. A personal interview with each parent of the child must be completed unless a parent's identity or whereabouts is unknown.

b. If a parent's identity or whereabouts is unknown, as much information as possible shall be obtained from the other parent or other sources if available.

c. A copy of the background information shall be provided to prospective adoptive families before placement of the child.

~~107.8(3) Postplacement investigation supervision. When an a certified adoption investigator completes postplacement supervision, at least three visits to the adoptive family's home and personal observation of the child are required.~~

a. Postplacement reports are to shall be written after each postplacement visit and copies kept in the permanent family file retained by the investigator.

~~b. Postplacement supervision should assess the placement in the following areas: Postplacement supervision shall address the unique needs of the child, including but not limited to the following areas:~~

~~(1) Integration and interaction of the child with the family.~~

~~(2) Changes in the family functioning which may be due to the child's placement.~~

~~(3) Social, and emotional and school adjustment of the child.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~(4) Changes that have occurred in the family since placement of the child. Child's growth and development since placement with the adoptive family.~~

~~(5) The family's method of dealing with testing behaviors and discipline. Changes and adjustments that have been made in the family since the child's placement.~~

~~(6) Family's method of dealing with testing behaviors and discipline.~~

~~(7) Behavioral evidence of the degree of bonding that is taking place and the degree to which the child is becoming a permanent member of the adoptive family.~~

~~(8) School adjustment of a child who is attending a school.~~

~~(9) The behavioral needs of the child.~~

~~(10) The psychological and mental health needs of the child.~~

~~(11) Services and supports that will assist the family in the future.~~

~~c. Home Postplacement visits shall be completed at a minimum as follows:~~

~~(1) One no later than 30 days after placement.~~

~~(2) One no later than 90 days after placement.~~

~~(3) A final visit prior to requesting a consent to adopt, no later than 180 days after placement. Home visits shall be completed as often as necessary if the adoptive family is experiencing problems.~~

~~(4) Postplacement visits shall be completed as often as necessary if the adoptive family is experiencing problems, and the visits may extend to finalization or beyond 180 days if additional time is needed.~~

~~d. A report based on the postplacement visits with recommendations regarding the finalization of the adoption shall be submitted to the court. The certified adoption investigator shall prepare a written report based on observations made during each home visit. Each report shall address the specific needs of the child and the family's ability to meet those needs. The reports shall be used by the certified adoption investigator in making a written recommendation to the court regarding finalization of the adoption.~~

107.8(4) Reports of investigations. The certified adoption investigator is authorized to provide reports to the courts concerning the above investigations and reports to the guardian or custodian of the child and the attorney for the adoptive family.

107.8(5) Fees for services. Certified adoption investigators may charge a fee for the services described in subrules 107.8(1), 107.8(2), and 107.8(3). The licensor shall review the amount of fees for services charged to families at the time that the investigator's records are reviewed for recertification. Information shall also be retained regarding fees charged to a family by another party and collected by the investigator.

ITEM 3. Renumber rules **441—107.9(600)** to **441—107.11(600)** as **441—107.10(600)** to **441—107.12(600)**.

ITEM 4. Adopt the following **new** rule 441—107.9(600):

441—107.9(600) International adoptions postplacement report.

107.9(1) For an adoption based on a decree issued by a foreign jurisdiction within the United States, the certified adoption investigator shall conduct a postplacement investigation and issue a postplacement report as required in 441—subrule 108.9(5).

107.9(2) For an adoption based on a decree issued by a jurisdiction outside the United States, a certified adoption investigator shall conduct a postplacement investigation that consists of a minimum of three face-to-face visits with the minor person and the adoptive parents during the first year after placement with the first such visit to be conducted within 60 days of the placement of the minor person in the adoptive home. Additional visits shall be conducted if required by the jurisdiction that issued the decree.

107.9(3) The postplacement investigation and report under this rule shall include documentation that any unique needs of the minor person are being met appropriately through the placement.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 5. Adopt the following new definition of “Adoption work experience” in rule **441—108.1(238)**:

“*Adoption work experience*” means supervised employment in adoption services, which includes direct provision of adoption services, development of adoption policies, provision of training related to adoption services, oversight and review of adoption documents and activities, and direct supervision of adoption workers. Only the percent of time related to provision of adoption services shall be considered as adoption work experience when job duties involve activities other than adoption services.

ITEM 6. Amend rule 441—108.9(238) as follows:

441—108.9(238) Adoption services.

108.9(1) Program statement.

a. An agency licensed to place children for adoption shall have a current written program statement which shall include all of the following:

- ~~a.~~ (1) ~~Types Characteristics~~ of children to be placed.
- ~~b.~~ (2) Eligibility requirements for adoptive families.
- ~~c.~~ (3) Services provided during the adoption process.
- ~~d.~~ (4) Services to the birth parents upon relinquishment.
- ~~e.~~ (5) Postadoption services to adoptive families, if offered.
- ~~f.~~ (6) ~~Fees and application costs.~~ Explanation of all fees and any other costs for which the adoptive family is responsible for payment.
- ~~g.~~ (7) A statement that payment of fees does not ensure adoption approval.
- ~~h.~~ (8) A statement informing applicants of the right to appeal the agency’s decision regarding nonapproval of the family for placement of a child for adoption, or other adverse decisions.

b. The program statement shall be made available to referring agencies and to all persons making formal inquiry regarding adoption.

108.9(2) Services to birth families. An agency which offers services to birth parents who are considering relinquishing a child for adoption shall provide ~~a minimum of three hours of counseling, or any additional hours of counseling necessary to assist the parents in making an informed decision regarding their child’s adoption, consistent with the child’s best interest.~~ The counseling of the birth parents shall begin when the birth parents begin the intake process. This shall be documented in the service plan format. the following:

a. Intake process. When an agency agrees to provide services to the birth parents, intake interviews shall be conducted, including provision of information to the birth parents regarding the adoption process and their rights and role.

(1) When an agency completes a background information investigation report on the child to be adopted, a personal interview with each parent of the child must be completed unless a parent’s identity or whereabouts is unknown.

(2) If a parent’s identity or whereabouts is unknown, as much information as possible shall be obtained from the other parent or other sources if available.

~~b.~~ Background information. A collection of information about the birth parents and the child shall include, but need not be limited to:

- ~~(1)~~ The child’s legal status, or due date if unborn.
- ~~(2)~~ The child’s physical description, medical and mental health history, developmental information, and other pertinent information necessary for a child study.
- ~~(3)~~ Identification of any specific needs of the child and the type of family to be considered for adoptive placement.
- ~~(4)~~ The birth parents’ strengths and needs.
- ~~(5)~~ The involvement of the birth parents and significant others in the child’s care.
- ~~(6)~~ The birth family’s physical description, medical and mental health history, educational level, any problematic areas including substance and alcohol abuse.
- ~~(7)~~ An affidavit signed by the birth parents regarding wishes for the court to reveal, or not reveal, their names to the child pursuant to Iowa Code chapter 600.

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~~(8) Any additional information the birth family wishes to have included in the child's adoption record.~~

~~b. Background information on birth parents. The agency shall obtain as much information as possible about birth parents that includes, but is not limited to:~~

~~(1) Birth parents' strengths and needs.~~

~~(2) Birth parents' physical description.~~

~~(3) Birth parents' and extended family members' medical and mental health history.~~

~~(4) Parents' criminal history.~~

~~(5) Birth parents' educational level.~~

~~(6) An affidavit signed by the birth parents instructing the court to reveal, or not reveal, their names to the child pursuant to Iowa Code chapter 600.~~

~~(7) Any additional information the birth parents wish to include in the child's adoption record.~~

~~c. Background information for an infant adoption. Information shall be obtained that includes, but is not limited to, the following:~~

~~(1) The child's due date.~~

~~(2) Prenatal care received by the mother during pregnancy.~~

~~(3) Risk factors that may affect the child's health after birth.~~

~~(4) Birth records following the child's birth, if available.~~

~~d. Background information on an older child. Information shall be obtained that includes, but is not limited to the following:~~

~~(1) The child's legal status.~~

~~(2) The child's physical description, medical and mental health history, developmental information, and other pertinent information necessary for a child study.~~

~~(3) Identification of any specific and unique needs of the child and the type of family to be considered for adoptive placement.~~

~~(4) The involvement of the birth parents and significant others in the child's care.~~

~~e. A copy of the background information of the child and birth parents shall be provided to the prospective family before placement of the child.~~

~~f. Birth parent counseling. If accepted by the birth parents, the counseling shall be provided after the birth of the child and prior to the signing of a release of custody that meets the requirements of Iowa Code chapter 600A or prior to the filing of a petition for termination of parental rights.~~

~~(1) The purpose of the counseling is to:~~

~~1. Provide information about options to assist birth parents in making an informed decision regarding release of custody.~~

~~2. Assist birth parents in resolving emotional issues related to separation and loss.~~

~~(2) Counseling shall be provided to birth parents only by the following persons:~~

~~1. Certified adoption investigators.~~

~~2. Mental health professionals who have the equivalent of two years of adoption work experience in the direct provision of adoption services.~~

~~3. Private agency staff with two years of adoption work experience in the direct provision of adoption services.~~

~~4. Department staff with two years of adoption work experience in the direct provision of adoption services.~~

~~(3) Forms. All forms used to execute a release of custody shall comply with the requirements of Iowa Code chapters 600 and 600A.~~

~~(4) Affidavit and documentation. The person providing the counseling shall complete the Counseling Affidavit to certify that the counselor has provided the birth parent with the requested counseling or that the birth parent has refused counseling. The Counseling Affidavit and documentation that the person providing the counseling is qualified to provide the requested counseling shall be attached to the release of custody. Documentation shall include one of the following:~~

~~1. A copy of a professional license, when applicable.~~

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2. A record of all adoption work experience, including dates and location. In addition, the person providing counseling shall provide the names of the counselor's employers and supervisors to enable the court to verify the counselor's adoption work experience.

108.9(3) No change.

108.9(4) *Services to adoptive applicants.*

a. and b. No change.

c. ~~Adoptive home study.~~ Adoptive home study. The home study consists of a family assessment which shall include at least two face-to-face interviews with the applicant and at least one face-to-face interview with each member of the household. At least one interview shall take place in the applicant's home. The assessment shall include, but need not be limited to, the following:

(1) and (2) No change.

(3) The attitude toward adoption of ~~the significant~~ other people involved with the family in a significant way.

(4) Emotional ~~stability~~ maturity; marital history, including verification of marriages and divorces; assessment of marital relationship; and compatibility of the adoptive parents.

(5) and (6) No change.

(7) Ability to provide for the child's physical and emotional needs and to respect the child's cultural and religious identity.

(8) ~~Adjustment~~ Description of biological and previously adopted children, if any, including their attitudes toward adoption, relationship with others, and school performance.

(9) to (11) No change.

(12) Income information, including the family's ability to financially provide for a child, and a statement as to the need for adoption subsidy for a special needs child, or children.

(13) No change.

(14) History of abuse ~~by involving family members and treatment,~~ including how the abuse was addressed and how that history impacts the applicant's ability to be an adoptive parent.

(15) No change.

(16) Substance use or abuse by members of the family household, and treatment history and current status of treatment.

(17) Recommendations for ~~type of child,~~ the number, age, sex, characteristics, and special unique needs of children best parented by this family.

(18) The family's ability to anticipate and understand the unique needs of an adopted child as the child gets older and how the family will manage those needs.

~~*d. Record checks.* The licensed child-placing agency shall submit record checks for each applicant and for anyone who is 14 years of age or older living in the home of the applicant to determine whether they have any founded child abuse reports or criminal convictions or have been placed on the sex offender registry. The licensed child-placing agency shall use Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check, Form B, for this purpose.~~

~~If there is a record of founded child abuse or a criminal conviction for the applicant, or anyone living in the home of the applicant, the licensed child-placing agency shall not approve the applicant as an adoptive family, unless an evaluation determines that the abuse or criminal conviction does not warrant prohibition of approval.~~

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

~~The evaluation shall consider the nature and seriousness of the abuse or crime, the time elapsed since the commission of the founded abuse or crime, the circumstances under which the abuse or~~

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

(1) If the applicant, or anyone living in the home of the applicant, has been convicted of a simple misdemeanor or a serious misdemeanor that occurred five or more years prior to application, the evaluation and decision may be made by the licensed child-placing agency. The licensed child-placing agency shall notify the applicant of the results of the evaluation.

(2) If the applicant, or anyone living in the home of the applicant, has a founded child abuse report, has been convicted of an aggravated misdemeanor or felony at any time, or has been convicted of a simple or serious misdemeanor that occurred within five years prior to application, the licensed child-placing agency shall initially conduct the evaluation.

1. If the licensed child-placing agency determines that the abuse or crime does warrant prohibition of approval, the licensed child-placing agency shall notify the applicant of the results of the evaluation.

2. If the child-placing agency believes that the applicant should be approved despite the abuse or criminal conviction, the agency shall provide copies of Form 470-2310, Record Check Evaluation, and Form 470-2386, Record Check Decision, to the Department of Human Services, Administrator, Division of Behavioral, Developmental, and Protective Services, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Within 30 days, the administrator shall determine whether the abuse or crime merits prohibition of approval and shall notify the child-placing agency in writing of that decision.

The licensed child-placing agency shall also notify the family in writing no later than 30 days after completion of the home study of the agency's decision regarding approval for placement of a child. If the family is denied, the agency shall state the reasons for denial. The agency worker and supervisor shall date and sign the adoptive home study. The agency shall provide a copy of the home study to the family. An agency shall not place a child in an adoptive home before the family is approved, or before a placement agreement is signed by the family and the agency.

d. Record checks. The licensed child-placing agency shall perform record checks for each applicant and for the other persons living in the home of the applicant as follows:

(1) The records of the applicants shall be checked:

1. On the Iowa central abuse registry using the Request for Child Abuse Information form;

2. By the Iowa division of criminal investigation, using the DHS Criminal History Record Check Form B;

3. On the Iowa sex offender registry;

4. On the child abuse registry of any state where the applicant has lived during the five years prior to the issuance of the investigative report; and

5. For a national criminal history through fingerprinting or another biometric identification-based process accepted by the federal government.

(2) The records of persons aged 14 or older living in the home of the applicant shall be checked:

1. On the Iowa central abuse registry using the Request for Child Abuse Information form;

2. By the Iowa division of criminal investigation, using the DHS Criminal History Record Check Form B; and

3. On the Iowa sex offender registry.

(3) Out-of-state child abuse checks and national criminal history checks may be completed on any adult in the home of the applicant if the certified adoption investigator has reason to do so.

(4) The agency shall not approve a prospective applicant and the department shall not perform an evaluation if the applicant or anyone living in the home of the applicant has been convicted of a felony offense as set forth in Iowa Code section 600.8(2) "b."

(5) The agency shall not approve a prospective applicant and shall not perform an evaluation if the applicant or anyone living in the home of the applicant has committed a crime in a state other than Iowa

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that would be a forcible felony if the crime would have been committed in Iowa, as set forth in Iowa Code section 600.8(2) "b."

~~*e.*— A home study update is required if the adoptive home study was written more than one year previously, in accordance with Iowa Code section 600.8. The preplacement assessment update shall be conducted by completing the following:~~

~~(1) The child abuse and criminal record checks shall be repeated and any abuses or convictions of crimes since the last record check shall be evaluated using the same process.~~

~~(2) A minimum of one home visit shall be conducted with the approved adoptive family.~~

~~(3) The information in the approved adoptive home study shall be reassessed.~~

~~(4) A written report of the assessment and updated adoptive home study shall be completed, dated, signed by the worker and the supervisor, and provided to the adoptive family.~~

e. Evaluation of record. If the applicant or anyone living in the home has record of founded child abuse, a criminal conviction, or placement on the sex offender registry, the applicant shall not be approved to adopt unless an evaluation determines that the abuse or criminal conviction does not warrant prohibition of approval.

(1) The evaluation shall consider the nature and seriousness of the founded abuse or crime in relation to adoption, the time elapsed since the commission of the founded abuse or crime, the circumstances under which the abuse or crime was committed, the degree of rehabilitation, the likelihood that the person will commit the abuse or crime again, and the number of abuses or crimes committed by the person.

(2) The person with the criminal conviction or founded child abuse report shall complete and return the Record Check Evaluation form within 10 calendar days of the date on the form to be used to assist in the evaluation. Failure of the person to complete and return the form within the specified time frame may result in a written denial of approval for adoption.

(3) If the applicant, or anyone living in the home of the applicant, has been convicted of a simple misdemeanor or a serious misdemeanor that occurred five or more years prior to application, the evaluation and decision may be made by the licensed child-placing agency. The licensed child-placing agency shall notify the applicant of the results of the evaluation.

(4) If the applicant, or any person living in the home of the applicant, has a founded child abuse report, has been convicted of an aggravated misdemeanor or felony at any time, or has been convicted of a simple or serious misdemeanor that occurred within five years prior to application, the licensed child-placing agency shall initially conduct the evaluation.

1. If the licensed child-placing agency determines that the abuse or crime does warrant prohibition of approval, the licensed child-placing agency shall notify the applicant of the results of the evaluation in writing. The notice shall contain information on appeal rights.

2. If the child-placing agency determines that the applicant should be approved despite the abuse or criminal conviction, the agency shall provide copies of the Record Check Evaluation form and the written notice to the applicant to the Administrator, Division of Adult, Children and Family Services, Department of Human Services, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Within 30 days, the administrator shall determine whether the abuse or crime merits prohibition of approval and shall notify the child-placing agency in writing of that decision.

f. Agency decision. The licensed child-placing agency shall notify the applicant in writing no later than 30 days after completion of the home study of the agency's decision regarding approval for placement of a child.

(1) If the applicant is denied approval, the agency shall state the reasons for denial in the written decision.

(2) The agency worker and supervisor shall date and sign the adoptive home study.

(3) The agency shall provide a copy of the home study to the family at the time the written notice is sent.

(4) An agency shall not place a child in an adoptive home before the family is approved, or before a placement agreement is signed by the family and the agency.

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(5) A home study shall be valid for up to two years from the date signed by the agency worker and supervisor.

g. Denial. The licensed child-placing agency shall deny approval of an adoption application when:

(1) The applicant or any other person living in the home of the applicant has been convicted of a felony offense as set forth in Iowa Code section 600.8(2) "b."

(2) The minimum standards set forth in these rules are not met and cannot be corrected.

(3) The applicant or any person residing in the home has been convicted of a crime, unless an evaluation of the crime has been made by the department which concludes that the crime does not merit prohibition of approval.

(4) The applicant or any person residing in the home has a record of founded child abuse, unless an evaluation of the founded child abuse has been made by the department which concluded that the founded child abuse does not merit prohibition of approval.

(5) The application is fraudulent, which means the applicant has knowingly made false statements or has knowingly concealed information that is material to the investigation.

h. Updates. To remain valid, an update to the home study shall be completed no later than 24 months from the previous home study or previous home study update. The update shall be conducted by completion of the following:

(1) The child abuse and criminal history record checks, except for the national criminal history check, shall be repeated. Any abuses or convictions of crimes since the last record check shall be evaluated using the same process.

(2) A minimum of one home visit shall be conducted with the approved adoptive family.

(3) The information in the approved adoptive home study shall be reassessed.

(4) A written report of the assessment and updated adoptive home study shall be completed, dated, signed by the agency worker and the agency supervisor, and provided to the adoptive family.

i. Annual visits to the adoptive home. The agency shall complete a minimum of one visit each year in the homes of families approved to adopt by the agency.

(1) The visit shall include, but not be limited to, assessment of the following areas:

1. Home environment.

2. Persons present at the time of the visit.

3. Changes in the home or household members, or other areas addressed in the home study.

(2) When a person aged 14 or older moves into the home, the agency shall perform checks on the Iowa central abuse registry, by the division of criminal investigation, and on the sex offender registry. The record check evaluation process shall be completed if the person has a criminal conviction or founded child abuse report or is on the sex offender registry.

(3) The findings from the visit shall be documented and maintained in the file.

108.9(5) Services to adoptive families.

a. Preparation of the family includes activities designed to prepare the adoptive family for the placement of a particular child. These activities shall assist the adoptive family in expanding its knowledge and understanding of the child and enhance the family's readiness to accept the child into their the family and encourage their the family's commitment. The activities shall include, but not be limited to:

(1) Providing background information on the child and the birth family, including a child study that includes past experiences such as foster and adoptive placements.

(2) Providing information regarding the special unique needs and characteristics of the child.

(3) to (6) No change.

b. No change.

c. Postplacement services include postplacement supervision, support, crisis intervention, and required reports to the court. The postplacement services are provided from the time the child is placed with an approved adoptive family until finalization of the adoption occurs.

(1) A minimum of No fewer than three face-to-face postplacement visits in the family's home are required, or if the family is experiencing problems, as many as are necessary to support the placement. At least two of the visits shall be in the adoptive home.

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(2) At a minimum the first visit shall be completed within 30 days after placement; the second visit within 90 days after placement; and the final visit before granting consent to adopt no later than 180 days after placement.

(3) Postplacement visits shall be completed as often as necessary if the adoptive family is experiencing problems, and may extend to finalization or beyond 180 days if additional time is needed.

Observations made during the home visits shall be recorded in the family's adoption file and used by the agency in making written recommendations to the court regarding finalization of the adoption.

d. Postplacement supervision. should focus on the following: The agency shall provide postplacement supervision to assess the unique needs of the child including, but not limited to, the following areas:

(1) Integration and interaction of the child with the family.
 (2) Changes in the family functioning which may be due to the child's placement.
 (3) Social, and emotional adjustment of the child and school adjustment of a child who is attending a school.

(4) Child's growth and development since placement with the adoptive family.
 (5) Changes and adjustments that have occurred been made in the family since the child's placement.

(6) Family's method of dealing with testing behaviors and discipline.
 (7) Behavioral evidence of the degree of bonding that is taking place and the degree to which the child is becoming a permanent member of the adoptive family.

(8) School adjustment of a child who is attending a school.

(9) The behavioral needs of the child.

(10) The psychological and mental health needs of the child.

(11) Services and supports that will assist the family in the future.

d. e. Postadoption services. The agency shall provide postadoption services to adoptive parents and adoptees, or shall refer adoptive parents and adoptees to other community resources for the services.

f. Postplacement reports. The agency worker shall prepare a written report based on observations made during each home visit. Each report shall address the specific needs of the child and the family's ability to meet those needs. The reports shall be used by the agency in making a written recommendation to the court regarding finalization of the adoption.

~~108.9(6) Placement of siblings. Preference shall be given to placing children from the same family together. If this is not possible, or is not in the best interest of the children, the reasons shall be documented in the record. Efforts shall be made to provide continued contact between siblings after finalized adoptions if the siblings are not placed together.~~

~~108.9(6) International adoptions.~~

~~a. International adoptions preplacement investigation. Preplacement investigations for the purpose of international adoptions shall meet the requirements of the United States Citizen Immigration Service.~~

~~b. International adoptions postplacement report.~~

~~(1) For an adoption based on a decree issued by a foreign jurisdiction within the United States, the agency shall conduct a postplacement investigation and issue a postplacement report as required in subrule 108.9(5).~~

~~(2) For an adoption based on a decree issued by a jurisdiction outside the United States, an investigator shall conduct a postplacement investigation that consists of a minimum of three face-to-face visits with the minor person and the adoptive parents during the first year after placement with the first such visit to be conducted within 60 days of the placement of the minor person in the adoptive home. Additional visits shall be conducted if required by the jurisdiction that issued the decree.~~

~~(3) The postplacement investigation and report under this subrule shall include documentation that any unique needs of the minor person are being met appropriately through the placement.~~

~~108.9(7) Racial and cultural background. Race, color, or national origin may not be routinely considered in placement selections. Placement decisions shall be made consistent with the best interests and special needs of the child.~~

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~~108.9(8)~~ **108.9(7)** *Religious policy.* There shall be a written policy on religious participation for prospective placing parents, adoptive parents, and adoptees. The policy shall be made available to referral sources as well.

~~108.9(9)~~ **108.9(8)** *Adoption records.* The agency shall keep separate records for each prospective, approved, or active adoptive family. Contents of these records shall be as follows:

a. to j. No change.

~~108.9(10)~~ **108.9(9)** *Right to appeal.* An adoptive applicant or an adoptive family may appeal an adverse decision made by a licensed agency. The appeal shall be filed with the department within 30 days of the notice of decision to the applicant or family by the licensed agency.

~~108.9(11)~~ **108.9(10)** *Disposition of records.* When an adoption has occurred, the agency must maintain all records regarding the child, the birth family, and the adoptive family or families, forever. Any subsequent information received following the adoption finalization shall be placed in the adoption record. If the agency closes, all adoption records shall be forwarded to the department.

ITEM 7. Amend rule **441—200.1(600)**, definitions of “Adoption work experience” and “Release of custody services,” as follows:

“*Adoption work experience*” means supervised employment in adoption services, which includes direct provision of adoption services, development of adoption policies, provision of training related to adoption services, oversight and review of adoption documents and activities, and direct supervision of adoption workers. Only the percent of time related to provision of adoption services shall be considered as adoption work experience ~~for employment of which only a portion of time was spent on adoptions when job duties involve activities other than adoption services.~~

“*Release of custody services*” includes providing information regarding options to assist the parents in making permanent plans for their child and counseling regarding ~~resulting~~ personal and emotional issues as described in 441—subrule 108.9(2).

ITEM 8. Amend rule 441—200.2(600) as follows:

441—200.2(600) Release of custody services. This rule applies to all terminations filed under Iowa Code chapter 600A. The parents shall be offered a minimum of three hours of counseling by a person authorized to provide counseling ~~under the provisions of this rule.~~ in accordance with 441—paragraph 108.9(2) “f.” If accepted, the counseling shall be provided after the birth of the child and prior to the signing of a release of custody that meets the requirements of Iowa Code chapter 600A or prior to the filing of a petition for termination of parental rights.

200.2(1) Purpose of counseling. The purpose of the counseling is to:

a. Provide information about options to assist parents in making an informed decision regarding release of custody.

b. Assist parents in resolving emotional issues related to separation and loss.

~~**200.2(2) Requirements for counseling providers.** Counseling to parents shall be provided only by the following persons:~~

~~*a.* Certified adoption investigators.~~

~~*b.* Mental health professionals who have the equivalent of two years of adoption work experience in the direct provision of adoption services.~~

~~*c.* Private agency staff with two years of adoption work experience in the direct provision of adoption services.~~

~~*d.* Department staff with two years of adoption work experience in the direct provision of adoption services.~~

~~**200.2(3) Forms.** A child study shall be completed for all children who are adopted under Iowa Code chapter 600 using the outline RC-0027, Social History Format. All forms used to execute a release of custody shall comply with the requirements of Iowa Code chapters 600 and 600A.~~

~~**200.2(4) Affidavit and documentation.** The person providing the counseling shall complete Form 470-3164 or 470-3164(S), Counseling Affidavit, certifying that the counselor has provided the biological parent with the requested counseling or that the biological parent has refused counseling. The Counseling~~

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Affidavit and documentation that the person providing the counseling is qualified to provide the requested counseling shall be attached to the release of custody. Documentation shall include one of the following:

- a. A copy of a professional license, when applicable.
- b. A record of all adoption work experience including dates and location. In addition, the person providing counseling shall provide the names of employers and supervisors to enable the court to verify the counselor's adoption work experience.

ITEM 9. Amend rule 441—200.3(600) as follows:

441—200.3(600) Application. Persons wishing to apply to adopt a child through the department shall use ~~Form 470-0743 or 470-0743(S)~~, complete an Application for Adoption form. An application for adoption shall only be accepted for children who are under the guardianship of the department.

200.3(1) No change.

200.3(2) Procedures. An application for adoption of a special needs child shall be accepted by any department office or by the department's recruitment and retention contractor. Before a home study is completed, applicants shall:

- a. Complete ~~Form 470-0743 or 470-0743(S)~~, the Application for Adoption form, and
- b. Ensure that ~~Form 470-0720~~, the Physician's Report for Foster and Adoptive Parents, form is completed by the applicant's family physician.

ITEM 10. Amend rule 441—200.4(600) as follows:

441—200.4(600) Adoption services. Adoption services shall include: adoptive home study, preparation of child, selection of family, preparation of family, preplacement visits, placement services, and postplacement services.

200.4(1) Adoptive home study. ~~The~~ For applicants who apply to the department to adopt, the recruitment and retention contractor shall prepare an adoptive home study through the following activities:

a. *Family assessment.* The family assessment shall include a minimum of two face-to-face interviews with the applicants and at least one face-to-face interview with each member of the household. At least one of the interviews shall take place at the applicant's home. The assessment of the prospective adoptive family shall include an evaluation of the family's ability to parent a special needs child or children including the following:

(1) and (2) No change.

(3) The attitude toward adoption of ~~the significant~~ other people involved with the family in a significant way.

(4) ~~Emotional stability, marital history, including verification of marriages and divorces, family relationships and compatibility of the adoptive parents.~~ Emotional maturity; marital history, including verification of marriages and divorces; assessment of marital relationship; and compatibility of the adoptive parents.

(5) and (6) No change.

(7) Willingness to accept a child who has medical problems (such as a child who is at risk ~~of~~, for HIV or is HIV positive), ~~mental retardation~~ intellectual disabilities, or emotional or behavioral problems. Ability to provide for the child's physical, medical and emotional needs and respect the child's ethnic and religious identity.

(8) ~~Adjustment of any children in the home, including their attitudes toward adoption, relationships with others, and school performance.~~ Description of biological children and previously adopted children, if any, including their attitudes toward adoption, relationship with others, and school performance.

(9) ~~Disciplinary practices that will be used.~~ Capacity to give and receive affection.

(10) ~~Capacity to give and receive affection.~~ Statements from three references provided by the family and additional references the worker for the recruitment and retention contractor may wish to contact.

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~~(11) Statements from three references provided by the family and additional references the worker may wish to contact. Attitudes of the adoptive applicants toward the birth parents and the reasons the child is available for adoption.~~

~~(12) Financial information, including the family's ability to provide for a child and whether there is a need for adoption subsidy for a special needs child or children.~~

~~(13) Attitudes of the adoptive applicants toward the birth parents and the reasons the child is available for adoption. Disciplinary practices that will be used.~~

~~(14) Commitment to and capacity to maintain significant relationships. History of abuse involving family members, including how the abuse was addressed and how that history impacts the applicant's ability to be an adoptive parent.~~

~~(15) Substance use or abuse, if any, by family members, or members of the household, treatment history and current status of treatment. Assessment of, commitment to, and capacity to maintain other significant relationships.~~

~~(16) History of abuse, if any, by family members, or members of the household, treatment history, current status of treatment and the evaluation of the abuse. Substance use or abuse by members of the household, treatment history and current status of treatment.~~

~~(17) Criminal convictions, if any, by family members, or adults in the household, and the evaluation of the criminal record. Recommendations for the number, age, sex, characteristics, and special needs of a child or children the family can best parent.~~

~~(18) Recommendations for number, age, sex, characteristics, and special needs of a child or children the family can best parent. The family's ability to anticipate and understand the special needs of an adopted child as the child gets older and how the family will manage those needs.~~

b. Record checks. Record checks are required for each applicant and for anyone who is 14 years of age or older living in the home of the applicant to determine whether ~~they~~ any of those persons have founded child abuse reports or criminal convictions or have been placed on the sex offender registry. The department's contractor for the recruitment and retention of resource families shall assist applicants applying through the department in completing required record checks, including fingerprinting.

~~(1) Iowa records. Each applicant and anyone who is 14 years of age or older living in the home of the applicant shall be checked for records with:~~

~~1. The Iowa central abuse registry, using Form 470-0643, Request for Child Abuse Information;~~

~~2. The Iowa division of criminal investigation, using Form 595-1396, DHS Criminal History Record Check, Form B; and~~

~~3. The Iowa sex offender registry.~~

~~(2) Other states' records. Each applicant and any other adult living in the applicant's home shall be checked for records on the child abuse registry of any state where the person has lived during the past five years.~~

~~(3) Federal records. Each applicant shall be fingerprinted for a national criminal history check. Other adults living in the home may be fingerprinted if the department determines that a national criminal history check is warranted.~~

~~(4) If the applicant, or anyone living in the home of the applicant, has a record of founded child abuse, a criminal conviction, or placement on the sex offender registry, the department shall not approve the applicant as an adoptive family, unless an evaluation determines that the abuse or criminal conviction does not warrant prohibition of approval. The evaluation shall be conducted according to procedures in 441—subrules 113.13(2) and 113.13(3) for applications for adoption through the department or procedures in 441—subrule 108.9(4) for applications for adoption through a child-placing agency.~~

~~(5) The department shall assess fees associated with the record checks to the adoptive applicant unless the family is being studied to adopt a child with special needs.~~

~~(1) The records of the applicants shall be checked:~~

~~1. On the Iowa central abuse registry using the Request for Child Abuse Information form;~~

~~2. By the Iowa division of criminal investigation, using the DHS Criminal History Record Check Form B;~~

~~3. On the Iowa sex offender registry;~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

4. On the child abuse registry of any state where the applicant has lived during the five years prior to the issuance of the investigative report; and

5. For a national criminal history through fingerprinting or another biometric identification-based process accepted by the federal government.

(2) The records of persons aged 14 or older living in the home of the applicant shall be checked:

1. On the Iowa central abuse registry using the Request for Child Abuse Information form;

2. By the Iowa division of criminal investigation, using the DHS Criminal History Record Check Form B; and

3. On the Iowa sex offender registry.

(3) Out-of-state child abuse checks and national criminal history checks may be completed on any adult living in the home of the applicant if the department has reason to do so.

(4) The department shall not approve a prospective applicant and shall not perform an evaluation if the applicant or anyone living in the home of the applicant has been convicted of a felony offense as set forth in Iowa Code section 600.8(2)“b.”

(5) The department shall not approve a prospective applicant and shall not perform an evaluation if the applicant or anyone living in the home of the applicant has committed a crime in a state other than Iowa that would be a forcible felony if the crime would have been committed in Iowa, as set forth in Iowa Code section 600.8(2)“b.”

c. Evaluation of record.

(1) If the applicant or anyone living in the home has a record of founded child abuse, a criminal conviction, or placement on the sex offender registry, the applicant shall not be approved to adopt unless an evaluation determines that the abuse or criminal conviction does not warrant prohibition of approval.

(2) The evaluation shall be conducted according to procedures in 441—subrules 113.13(2) and 113.13(3) for applications for adoption through the department or procedures in 441—paragraph 108.9(4)“e” for applications for adoption through a child-placing agency.

e. d. Written report. The worker for the recruitment and retention contractor shall prepare a written report of the family assessment, known as the adoptive home study, using the PS-MAPP family profile format. The worker for the recruitment and retention contractor shall use the home study to recommend to the department to approve or deny a prospective family as an appropriate placement for a child or children. The ~~department adoption~~ worker and supervisor for the recruitment and retention contractor shall date and sign the adoptive home study.

(1) The ~~worker~~ department shall notify the family of the decision using Form 470-0745, the Adoption Notice of Decision, and, if form.

(2) If the ~~worker~~ department does not approve the home study, shall state the reasons shall be stated on the notice.

(3) The ~~worker~~ department shall provide the family a copy of the adoptive home study with the notification of approval or denial.

d. e. Preplacement assessment and home study update. A preplacement assessment and home study update is required if the adoptive home study was written more than ~~one year~~ two years previously, in accordance with Iowa Code section 600.8, ~~and placement of the child is imminent.~~ The preplacement assessment and home study update shall be conducted by ~~completing~~ completion of the following:

(1) The child abuse and criminal record checks shall be repeated, except for fingerprinting. If there are any founded abuses or convictions of crimes that were not evaluated in the previous home study, they shall be evaluated using the process set forth in 200.4(1)“b.” paragraph 200.4(1)“c.”

(2) One face-to-face visit shall be conducted with the approved adoptive family.

(3) The information in the approved adoptive home study shall be reassessed.

(4) An updated written report of the reassessment and adoptive home study shall be written, dated, signed by the worker and the supervisor for the recruitment and retention contractor, and a copy provided to the adoptive family.

(5) Families who are dually licensed to provide foster family care shall have their adoption approval date align with their foster home licensing date.

HUMAN SERVICES DEPARTMENT[441](cont'd)

e. f. Procedure for foster parent adoptions. When a licensed foster parent applies for approval as an adoptive home, home study activities that have been completed within the previous year as part of a licensing study pursuant to 441—Chapter 113 need not be repeated.

g. Annual visits to the adoptive family home. The recruitment and retention contractor shall complete a minimum of one visit each year in the homes of families approved to adopt.

(1) The visit shall not be waived.

(2) When a person aged 14 or older moves into the home, the agency shall perform checks on the Iowa central abuse registry, by the division of criminal investigation, and on the sex offender registry. The record check evaluation process shall be completed if the person has a criminal conviction or founded abuse report or is on the sex offender registry.

(3) Findings and observations of the visit shall be documented and provided to the department when the update is submitted.

(4) The department shall be notified within 30 days of any deficiencies noted or other concerns discovered that require corrective action.

200.4(2) Preparation of child. The department adoption worker shall conduct specific activities designed to enable a child to make the transition to an adoptive placement or refer the child to the family safety, risk, and permanency services contractor or other professionals. The activities shall include, but are not be limited to:

a. No change.

b. ~~Preparation~~ Assisting in the preparation or update of a life book.

c. and d. No change.

e. HIV testing of a child by the University of Iowa Hospital ~~Hospital~~ Hospitals and Clinics (UIHC) or a local physician when any of the following conditions exist:

(1) to (4) No change.

~~(5) The child received blood products prior to 1986 or the birth parents received blood products prior to 1986, before or during pregnancy.~~

~~(6)~~ (5) There is a lack of medical information regarding the birth parents or the child.

200.4(3) Selection of family. The family that can best meet the needs of the adoptive child shall be selected as follows:

a. Before preplacement visits occur, a conference shall be held to select an approved family. A minimum of two department social workers and a department supervisor shall be included in the conference. The child's special needs, characteristics, and anticipated behaviors shall be reviewed in the conference to determine a family that can best meet the needs of the child. Approved families shall also be reviewed in an effort to match the specific family's parenting strengths with a particular child's needs.

b. No change.

200.4(4) Preparation of family. The recruitment and retention contractor and the department adoption worker shall conduct activities designed to assist the adoptive family in expanding its knowledge and understanding of the child or children. These activities should enhance the family's readiness to accept the child or children into their the family and encourage their strengthen the family's commitment to adopt. A referral may be made for family safety, risk, and permanency services if needed. The activities shall include, but are not be limited to:

a. to h. No change.

200.4(5) and 200.4(6) No change.

200.4(7) Postplacement services. An adoptive family is eligible for postplacement services from the time a child is placed with the family until finalization of the adoption occurs. The department adoption worker shall supervise the placement, provide ongoing support to the child and family, perform crisis intervention, and complete required reports. Assistance with behavioral interventions to strengthen the placement and prevent disruption may be provided through family safety, risk, and permanency services.

a. Postplacement supervision shall focus on the following areas:

(1) No change.

(2) Changes in the family functioning which may be due to the child's placement.

(3) Social and emotional adjustment of the child or children.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(4) ~~School adjustment of the child or children who are attending school.~~ Child's growth and development since placement with the adoptive family.

(5) Changes and adjustments that have been made in the family since the child's placement.

(6) Family's method of dealing with testing behaviors and discipline.

(7) ~~Child's growth and development since placement in the family.~~ Behavioral evidence of the degree of bonding that is taking place and the degree to which the child is becoming a permanent member of the adoptive family.

(8) ~~Behavioral evidence of the degree of bonding that is taking place and the degree to which the child is becoming a permanent member of the adoptive family.~~ School adjustment of a child who is attending a school.

(9) The behavioral needs of the child.

(10) The psychological and mental health needs of the child.

(11) Services and supports that will assist the child and family in the future.

b. At a minimum, the department ~~adoption~~ worker shall make monthly ~~adoptive~~ home visits until the adoption is final. If the family is experiencing problems, the department worker shall make as many visits as are necessary to assess and support the placement.

c. The department ~~adoption~~ worker shall prepare a written report based on the postplacement visits with recommendations regarding the finalization of the adoption and submit the report to the court before the hearing to consider granting a decree of adoption.

200.4(8) No change.

ITEM 11. Amend rule 441—200.8(600) as follows:

441—200.8(600) Interstate placements. Interstate placement of a child into Iowa, or out of Iowa, shall follow interstate placement of child procedures ~~according to~~ in accordance with Iowa Code ~~section 238.33~~ sections 232.158 through 232.166.

ITEM 12. Adopt the following **new** paragraph **200.11(3)“h”**:

h. Other areas that may impact the applicant's ability to meet the needs of a child both at present and in the future.

ITEM 13. Amend rule 441—200.15(600), introductory paragraph, as follows:

441—200.15(600) Requests for information for purposes other than research or treatment. Requests for information from department adoption records for purposes other than research or treatment shall be made to the Department of Human Services, ~~Division of Child and Family Services,~~ Division of Adult, Children and Family Services, Adoption Program, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114.

ARC 1650C

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 135B.7, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 51, “Hospitals,” Iowa Administrative Code.

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

Items 1 and 2 amend rule 481—51.18(135B). The current rule conflicts with federal requirements for laboratory services and is more strict than the federal requirements. The amendments to requirements for laboratory services make those requirements consistent with federal law.

Items 3 to 5 amend rule 481—51.41(135B) to implement legislative changes to Iowa Code section 135B.34 made in 2014 Iowa Acts, House File 2365. The legislation provides employers with additional time to verify the conviction or entry of a record of founded abuse of current employees. The change from 48 hours to seven calendar days was recommended by the Background Check Study Committee that met in 2013 pursuant to 2013 Iowa Acts, Senate File 347. The Committee recommended the change because the information necessary for employers to verify a conviction or founded abuse may take up to seven calendar days to be available on the system used by employers for verification.

The Department does not believe that the proposed amendments impose any financial hardship on any regulated entity, body, or individual.

The Hospital Licensing Board approved the proposed amendments at its August 28, 2014, meeting. The State Board of Health initially reviewed the proposed amendments at its September 10, 2014, meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 21, 2014. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)242-6863; or e-mailed to david.werning@dia.iowa.gov.

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

These amendments are intended to implement Iowa Code sections 135B.7 and 135B.34 and 2014 Iowa Acts, House File 2365.

The following amendments are proposed.

ITEM 1. Amend subrule 51.18(3) as follows:

51.18(3) The hospital must ensure that all laboratory services provided to its patients are performed in a laboratory certified and operating in accordance with the Code of Federal Regulations in 42 CFR Part 493, ~~October 1, 2004~~.

ITEM 2. Rescind subrule **51.18(4)**.

ITEM 3. Amend subparagraph **51.41(2)“e”(3)** as follows:

(3) The person has been convicted of a crime that is a simple misdemeanor offense under Iowa Code section 123.47 ~~or Iowa Code chapter 321~~ or a first offense of operating a motor vehicle while intoxicated under Iowa Code section 321J.2, subsection 1; and

ITEM 4. Amend paragraph **51.41(7)“a”** as follows:

a. The employer shall act to verify the information within ~~48 hours~~ seven calendar days of notification. “Verify,” for purposes of this subrule, means to access the single contact repository (SING) to perform a background check, to request a criminal background check from the department of public safety, to request an abuse record check from the department of human services, to conduct an online search through the Iowa Courts Online Web site, or to contact the county clerk of court office and obtain a copy of relevant court documents.

ITEM 5. Amend paragraph **51.41(8)“a”** as follows:

a. The hospital shall act to verify credible information within ~~48 hours~~ seven calendar days of receipt. “Verify,” for purposes of this subrule, means to access the single contact repository (SING) to perform a background check, to request a criminal background check from the department of public safety, to request an abuse record check from the department of human services, to conduct an online search through the Iowa Courts Online Web site, or to contact the county clerk of court office and obtain a copy of relevant court documents.

ARC 1649C

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 rescind Chapter 57, “Residential Care Facilities,” Iowa Administrative Code, and to adopt a new Chapter 57 with the same title.

The proposed amendment rescinds the current Chapter 57 and replaces it with a new Chapter 57. A full review of the chapter was conducted, with input from various stakeholder groups during the review process. Outdated provisions in the current chapter were omitted or updated in the new chapter, and the rules were reordered.

The Department does not believe that the proposed amendment poses a financial hardship on any regulated entity or individual.

The State Board of Health initially reviewed the proposed amendment at its September 10, 2014, meeting.

Any interested person may make written suggestions or comments on the proposed amendment on or before October 21, 2014. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)242-6863; or e-mailed to david.werning@dia.iowa.gov.

Additionally, there will be a public hearing on October 21, 2014, at 10 a.m. in Room 320 of the Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa, 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 rules.

Any person who intends to attend the public hearing and has special requirements, such as those relating to hearing or mobility impairments, should contact the Department of Inspections and Appeals and advise of special needs.

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

These rules are intended to implement Iowa Code section 135C.14.

The following amendment is proposed.

Rescind 481—Chapter 57 and adopt the following **new** chapter in lieu thereof:

CHAPTER 57
RESIDENTIAL CARE FACILITIES

481—57.1(135C) Definitions. For the purposes of these rules, the following terms shall have the meanings indicated in this rule. The definitions set out in Iowa Code section 135C.1 shall be considered to be incorporated verbatim in these rules.

“*Accommodation*” means the provision of lodging, including sleeping, dining, and living areas.

“*Activities of daily living*” means the following self-care tasks: bathing, dressing, grooming, eating, transferring, toileting and ambulation.

“*Administrator*” means a person approved by the department who administers, manages, supervises, and is in general administrative charge of a residential care facility, whether or not such person has an ownership interest in the facility, and whether or not the functions and duties are shared with one or more other persons.

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

“Ambulatory” means the condition of a person who immediately and without the aid of another person is physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

“Basement” means that part of a building where the finish floor is more than 30 inches below the finish grade of the building.

“Board” means the regular provision of meals.

“Change of ownership” means the purchase, transfer, assignment, or lease of a licensed residential care facility.

“Communicable disease” means a disease caused by the presence within a person’s body of a virus or microbial agent which may be transmitted either directly or indirectly to other persons.

“Department” means the department of inspections and appeals.

“Distinct part” means a clearly identifiable area or section containing contiguous rooms within a health care facility.

“Interdisciplinary team” means the group of persons who develop a single, integrated, individual program plan to meet a resident’s needs for services. The interdisciplinary team consists of, at a minimum, the resident, the resident’s legal guardian if applicable, the resident’s advocate if desired by the resident, a referral agency representative, other appropriate staff members, other providers of services, and other persons relevant to the resident’s needs.

“Legal representative” means the resident’s guardian or conservator if one has been appointed.

“Medication” means any drug, including over-the-counter substances, ordered and administered under the direction of the physician or physician extender.

“Nonambulatory” means the condition of a person who immediately and without the aid of another person is not physically or mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

“Personal care” means assistance with the activities of daily living which the recipient can perform only with difficulty. Examples are help in getting in and out of bed, assistance with personal hygiene and bathing, help with dressing and eating, and supervision over medications which can be self-administered.

“Physician extender” means an advanced registered nurse practitioner, clinical nurse specialist or physician assistant who is working in collaboration with the resident’s physician.

“Program of care” means all services being provided for a resident in a health care facility.

“Qualified intellectual disabilities professional” means a psychologist, physician, registered nurse, educator, social worker, human services professional, physical or occupational therapist, speech therapist or audiologist who meets the educational requirements for the profession, as required in the state of Iowa, and has one year’s experience working with the intellectually disabled.

“Rate” means the daily fee that is charged for all residents equally and that includes the cost of all minimum services required in these rules and regulations.

“Records” includes electronic records.

“Renovation” means the replacement in kind, strengthening, or upgrading of building elements, materials, equipment or fixtures that does not result in a reconfiguration of the building or the spaces within.

“Responsible party” means the person who signs or cosigns the residency agreement required in rule 481—57.15(135C) or the resident’s legal representative. In the event that a resident has neither a legal representative nor a person who signed or cosigned the resident’s residency agreement, the term “responsible party” shall include the resident’s sponsoring agency, e.g., the department of human services, the U.S. Department of Veterans Affairs, a religious group, fraternal organization, or foundation that assumes responsibility and advocates for its client patients and pays for their health care.

“Restraints” means the measures taken to control a resident’s physical activity for the resident’s own protection or for the protection of others.

“Self-administration of medications” means an individual is capable of all aspects of taking medications with no staff supervision. If staff are involved in the process in any way, such as monitoring to ensure that the individual takes the right medications or does not take someone else’s key and

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

access someone else's medication lock box, then the individual is not capable of self-administering medications.

481—57.2(135C,17A) Waiver or variance. A waiver or variance from these rules may be granted by the director of the department in accordance with 481—Chapter 6. A request for waiver or variance will be granted or denied by the director within 120 calendar days of receipt.

481—57.3(135C) Application for licensure.

57.3(1) Application and licensing—new facility or change of ownership. In order to obtain an initial residential care facility license for a facility not currently licensed as a residential care facility or for a residential care facility when a change of ownership is contemplated, the applicant must:

- a. Make application at least 30 days prior to the proposed opening date of the facility. Application shall be made on forms provided by the department.
- b. Meet all of the rules, regulations, and standards contained in 481—Chapters 50, 57 and 60. Exceptions noted in 481—subrule 60.3(2) shall not apply.
- c. Submit a letter of intent and a written résumé of care. The résumé of care shall meet the requirements of subrule 57.3(2).
- d. Submit a floor plan of each floor of the residential care facility. The floor plan of each floor shall be drawn on 8½" × 11" paper, show room areas in proportion, room dimensions, window and door locations, designation of the use of each room, and the room numbers for all rooms, including bathrooms.
- e. Submit a photograph of the front and side of the residential care facility.
- f. Submit the statutory fee for a residential care facility license.
- g. Comply with all other local statutes and ordinances in existence at the time of licensure.
- h. Submit a certificate signed by the state or local fire inspection authority as to compliance with fire safety rules and regulations.

57.3(2) Résumé of care. The résumé of care shall describe the following:

- a. Purpose of the facility;
- b. Criteria for admission to the facility;
- c. Ownership of the facility;
- d. Composition and responsibilities of the governing board;
- e. Qualifications and responsibilities of the administrator;
- f. Medical services provided to residents, to include the availability of emergency medical services in the area and the designation of a physician or physician extender to be responsible for residents in an emergency;
- g. Dental services provided to residents and available in the area;
- h. Nursing services provided to residents, if applicable;
- i. Personal services provided to residents, including supervision of or assistance with activities of daily living;
- j. Activity program;
- k. Dietary services, including qualifications of the person in charge, consultation service (if applicable) and meal service;
- l. Other services available as applicable, including social services, physical therapy, occupational therapy, and recreational therapy;
- m. Housekeeping;
- n. Laundry;
- o. Physical plant; and
- p. Staffing provided to meet residents' needs.

57.3(3) Renewal application. In order to obtain a renewal of the residential care facility license, the applicant must submit the following:

- a. The completed application form 30 days prior to the annual license renewal date of the residential care facility license;
- b. The statutory license fee for a residential care facility;

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- c. An approved current certificate signed by the state or local fire inspection authority as to compliance with fire safety rules and regulations;
- d. Changes to the résumé of care, if any; and
- e. Changes to the current residency agreement, if any.

481—57.4(135C) Issuance of license. Licenses are issued to the person, entity or governmental unit with responsibility for the operation of the facility and for compliance with all applicable statutes, rules and regulations.

481—57.5(135C) Licenses for distinct parts.

57.5(1) Separate licenses may be issued for distinct parts of a health care facility which are clearly identifiable, contain contiguous rooms, and provide separate categories of care and services.

57.5(2) The following requirements shall be met for separate licensing of a distinct part:

- a. The distinct part shall serve only residents who require the category of care and services immediately available to them within that part. (III)
- b. The distinct part shall meet all the standards, rules, and regulations pertaining to the category for which a license is being sought.
- c. The distinct part must be operationally and financially feasible.
- d. Personal care staff with qualifications appropriate to the care and services being rendered must be regularly assigned and working in the distinct part under responsible management. (III)
- e. Separately licensed distinct parts may have certain services such as management, building maintenance, laundry and dietary in common with each other.

This rule is intended to implement Iowa Code sections 135C.6(2) and 135C.14.

481—57.6(135C) Special classification—memory care.

57.6(1) *Designation and application.* A residential care facility may choose to care for residents who require memory care in a distinct part of the facility or designate the entire residential care facility as one that provides memory care. Residents in the memory care unit or facility shall meet the level of care requirements for a residential care facility. “Memory care” in a residential care facility means the care of persons with early Alzheimer’s-type dementia or other disorders causing dementia. (I, II, III)

- a. Application for approval to provide this category of care shall be submitted by the licensee on a form provided by the department. (III)
- b. Plans to modify the physical environment shall be submitted to the department for review based on the requirements of 481—Chapter 60. (III)
- c. If the unit or facility is to be a locked unit or facility, all locking devices shall meet the Life Safety Code and any requirements of the state fire marshal. If the unit or facility is to be unlocked, a system of security monitoring is required. (I, II, III)

57.6(2) *Résumé of care.* A résumé of care shall be submitted to the department for approval at least 30 days before a separate memory care unit or facility is opened. For facilities with a memory care unit, this résumé of care is in addition to the résumé of care required by subrule 57.3(2). A new résumé of care shall be submitted when services are substantially changed. The résumé of care shall:

- a. Describe the population to be served;
- b. State the philosophy and objectives;
- c. List criteria for transfer to and from the memory care unit or facility;
- d. Include a copy of the floor plan;
- e. List the titles of policies and procedures developed for the unit or facility;
- f. Propose a staffing pattern;
- g. Set out a plan for specialized staff training;
- h. State visitor, volunteer, and safety policies;
- i. Describe programs for activities, social services and families; and
- j. Describe the interdisciplinary team and the role of each team member.

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57.6(3) Policies and procedures. Separate written policies and procedures shall be implemented in the memory care unit or facility and shall address the following:

a. Criteria for admission and the preadmission evaluation process. The policy shall require a statement from the attending physician or physician extender approving the placement before a resident may be moved into a memory care unit or facility. (II, III)

b. Safety, including a description of the actions required of staff in the event of a fire, natural disaster, or emergency medical event or catastrophic event. Safety procedures shall also explain steps to be taken when a resident is discovered to be missing from the unit or facility, when hazardous cleaning materials or potentially dangerous mechanical equipment is being used in the unit or facility, and the manner in which the effectiveness of the security system will be monitored. (II, III)

c. Staffing requirements, including the minimum number, types and qualifications of staff in the unit or facility in accordance with resident needs. (II, III)

d. Visitation policies, including suggested times for visitation and ensuring the residents' rights to free access to visitors unless visits are contraindicated by the interdisciplinary team. (II, III)

e. The process and criteria which will be used to monitor and to respond to risks specific to the residents, including but not limited to drug use, restraint use, infections, incidents and acute behavioral events. (II, III)

57.6(4) Assessment prior to transfer or admission. Prior to the transfer or admission of a resident applicant to the memory care unit or facility, a complete assessment of the resident applicant's physical, mental, social and behavioral status shall be completed to determine whether the applicant meets admission criteria. This assessment shall be completed by facility staff and shall become part of the resident's permanent record upon admission. (II, III)

57.6(5) Staff training. All staff working in a memory care unit or facility shall have training appropriate to the needs of the residents. (I, II, III)

a. Upon assignment to the unit or facility, all staff working in the unit or facility shall be oriented to the needs of residents requiring memory care. Staff members shall have at least six hours of special training appropriate to their job descriptions within 30 days of assignment to the unit or facility. (I, II, III)

b. Training shall include the following topics: (II, III)

(1) An explanation of Alzheimer's disease and related disorders, including symptoms, behavior and disease progression;

(2) Skills for communicating with persons with dementia;

(3) Skills for communicating with family and friends of persons with dementia;

(4) An explanation of family issues such as role reversal, grief and loss, guilt, relinquishing the caregiving role, and family dynamics;

(5) The importance of planned and spontaneous activities;

(6) Skills in providing assistance with activities of daily living;

(7) Skills in working with challenging residents;

(8) Techniques for cueing, simplifying, and redirecting;

(9) Staff support and stress reduction;

(10) Medication management and nonpharmacological interventions.

c. Nursing staff, certified medication aides, medication managers, social services personnel, housekeeping and activity personnel shall have a minimum of six hours of in-service training annually. This training shall be related to the needs of memory care residents. The six-hour initial training required in paragraph 57.6(5) "a" shall count toward the required annual in-service training. (II, III)

57.6(6) Staffing. There shall be at least one staff person on a memory care unit at all times. (I, II, III)

57.6(7) Others living in the memory care unit. A resident not requiring memory care services may live in the memory care unit if the resident's spouse requiring memory care services lives in the unit or if no other beds are available in the facility and the resident or the resident's legal representative consents in writing to the placement. (II, III)

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57.6(8) *Revocation, suspension or denial.* The memory care unit license or facility license may be revoked, suspended or denied pursuant to Iowa Code chapter 135C and 481—Chapter 50.

This rule is intended to implement Iowa Code sections 135C.2(3) “b” and 135C.14.

481—57.7(135C) General requirements.

57.7(1) The license shall be displayed in the facility in a conspicuous place which is accessible to the public. (III)

57.7(2) The license shall be valid only in the possession of the licensee to whom it is issued.

57.7(3) The posted license shall accurately reflect the current status of the residential care facility. (III)

57.7(4) The license shall expire one year after the date of issuance or as indicated on the license.

57.7(5) The licensee shall:

- a. Assume the responsibility for the overall operation of the residential care facility. (I, II, III)
- b. Be responsible for compliance with all applicable laws and with the rules of the department. (I, II, III)
- c. Provide an organized continuous 24-hour program of care commensurate with the needs of the residents. (I, II, III)

57.7(6) Each citation or a copy of each citation issued by the department for a class I or class II violation shall be prominently posted by the facility in plain view of the residents, visitors, and persons inquiring about placement in the facility. The citation or copy of the citation shall remain posted until the violation is corrected to the satisfaction of the department. (I, II, III)

481—57.8(135C) Certified volunteer long-term care ombudsman program. A certified volunteer long-term care ombudsman appointed in accordance with Iowa Code section 231.45 shall operate within the scope of the rules for volunteer ombudsmen promulgated by the office of the long-term care ombudsman and the Iowa department on aging.

481—57.9(135C) Required notifications to the department. The department shall be notified:

57.9(1) Thirty days before any proposed change in the residential care facility’s functional operation or addition or deletion of required services; (III)

57.9(2) Thirty days before the beginning of any renovation, addition, functional alteration, change of space utilization, or conversion in the residential care facility or on the premises; (III)

57.9(3) Thirty days before closure of the residential care facility; (III)

57.9(4) Within two weeks of any change in administrator; (III)

57.9(5) Ninety days before a change in the category of license; (III)

57.9(6) Thirty days before a change of ownership, the licensee shall:

- a. Inform the department of the pending change of ownership; (III)
- b. Inform the department of the name and address of the prospective purchaser, transferee, assignee, or lessee; (III)
- c. Submit a written authorization to the department permitting the department to release all information of whatever kind from the department’s files concerning the licensee’s residential care facility to the named prospective purchaser, transferee, assignee, or lessee. (III)

481—57.10(135C) Administrator. Each residential care facility shall have one person in charge, duly approved by the department or acting in a provisional capacity in accordance with these rules. (III)

57.10(1) *Qualifications of an administrator.*

a. The administrator shall be at least 21 years of age and shall have a high school diploma or equivalent. (III) In addition, this person shall meet at least one of the following conditions:

- (1) Have a two-year degree in human services, psychology, sociology, nursing, health care administration, public administration, or a related field and have a minimum of two years’ experience in the field; or (III)

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(2) Have a four-year degree in human services, psychology, sociology, nursing, health care administration, public administration, or a related field and have a minimum of one year experience in the field; or (III)

(3) Have a master's degree in human services, psychology, sociology, nursing, health care administration, public administration, or a related field and have a minimum of one year experience in the field; or (III)

(4) Be a licensed nursing home administrator; or (III)

(5) Have completed a one-year educational training program approved by the department for residential care facility administrators; or (III)

(6) Have passed the National Association of Long Term Care Administrator Boards (NAB) RC/AL administrator licensure examination; or

(7) Have two years of direct care experience and at least six months of administrative experience in a residential care facility. (III)

b. An individual employed as an administrator on [effective date of these rules] will be deemed to meet the requirements of this subrule.

57.10(2) Duties of an administrator. The administrator shall:

a. Select and direct competent personnel who provide services for the residential care program. (III)

b. Arrange for the heads of nursing, social services, dietary and activities to attend a minimum of ten contact hours of educational programs per year to increase skills and knowledge needed for their positions. The ten hours is in addition to the in-service requirements in paragraph 57.10(2) "c." (III)

c. Provide in-service educational programming for all employees with direct resident contact and maintain records of programs and participants. (III) In-service educational programming offered during each calendar year shall include, at minimum, the following topics: (I, II, III)

(1) Infection control.

(2) Emergency preparedness (fire, tornado, flood, 911, etc.).

(3) Meal time procedures/dietary.

(4) Resident activities.

(5) Mental illness/behavior modification/crisis intervention.

(6) Resident safety/supervision.

(7) Resident rights.

(8) Medication education, to include administration, storage and drug interactions.

(9) Resident service plans/programming/goals.

57.10(3) Administrator serving at more than one residential care facility. The administrator may be responsible for no more than 150 beds in total if the administrator is an administrator of more than one facility. (II)

a. An administrator of more than one facility shall designate in writing an administrative staff person in each facility who shall be responsible for directing programs in the facility.

b. The administrative staff person designated by the administrator shall:

(1) Have at least one year of experience in a supervisory or direct care position in a residential care facility or in a facility for the intellectually disabled, mentally ill or developmentally disabled; (II, III)

(2) Be knowledgeable of the operation of the facility; (II, III)

(3) Have access to records concerned with the operation of the facility; (II, III)

(4) Be capable of carrying out administrative duties and of assuming administrative responsibilities; (II, III)

(5) Be at least 21 years of age; (III)

(6) Be empowered to act on behalf of the licensee concerning the health, safety and welfare of the residents; and (II, III)

(7) Have training in emergency response, including how to respond to residents' sudden illnesses. (II, III)

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c. If an administrator serves more than one facility, the administrator must designate in writing regular and specific times during which the administrator will be available to consult with staff and residents to provide direction and supervision of resident care and services. (II, III)

57.10(4) Provisional administrator. A provisional administrator may be appointed on a temporary basis by the residential care facility licensee to assume the administrative responsibilities for a residential care facility for a period not to exceed one year when the facility has lost its administrator and has not been able to replace the administrator, provided that the department has been notified and approved the provisional administrator prior to the date of the provisional administrator's appointment. (III) The provisional administrator must meet the requirements of paragraph 57.10(3) "b."

57.10(5) Temporary absence of administrator.

a. In the temporary absence of the administrator, a responsible person shall be designated in writing to the department to be in charge of the facility. (III) The person designated shall:

- (1) Be knowledgeable of the operation of the facility; (III)
- (2) Have access to records concerned with the operation of the facility; (III)
- (3) Be capable of carrying out administrative duties and of assuming administrative responsibilities; (III)
- (4) Be at least 21 years of age; (III)
- (5) Be empowered to act on behalf of the licensee during the administrator's absence concerning the health, safety, and welfare of the residents; (III)
- (6) Have training in emergency response, including how to respond to residents' sudden illnesses. (II, III)

b. If the administrator is absent for more than six weeks, a provisional administrator must be appointed pursuant to subrule 57.10(4).

481—57.11(135C) Personnel.

57.11(1) Alcohol and drug use prohibited. No person under the influence of intoxicating drugs or alcoholic beverages shall be permitted to provide services in a residential care facility. (I, II)

57.11(2) Job description. There shall be a written job description developed for each category of worker. The job description shall include the job title, responsibilities and qualifications. (III)

57.11(3) Employee criminal record checks, child abuse checks and dependent adult abuse checks and employment of individuals who have committed a crime or have a founded abuse. The facility shall comply with the requirements found in Iowa Code section 135C.33 as amended by 2014 Iowa Acts, chapter 1040, and rule 481—50.9(135C) related to completion of criminal record checks, child abuse checks, and dependent adult abuse checks and to employment of individuals who have committed a crime or have a founded abuse. (I, II, III)

57.11(4) Personnel record. A personnel record shall be kept for each employee and shall include but not be limited to the following information about the employee: name and address, social security number, date of birth, date of employment, position, experience and education, references, results of criminal record checks, child abuse checks and dependent adult abuse checks, and date of discharge or resignation. (III)

57.11(5) Supervision and staffing.

- a. The facility shall provide sufficient staff to meet the needs of the residents served. (I, II, III)
- b. Personnel in a residential care facility shall provide 24-hour coverage for residential care services. Personnel shall be awake at all times while on duty. (I, II, III)
- c. Direct care staff shall be present in the facility unless all residents are involved in activities away from the facility. (I, II, III)
- d. Staff shall be aware of and provide supervision levels based on the present needs of the residents in the staff's care. The facility shall document the supervision of residents who require more than general supervision. (I, II, III)
- e. The facility shall maintain an accurate record of actual hours worked by employees. (III)

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57.11(6) *Physical examination and screening.* Employees shall have a physical examination no longer than 12 months prior to beginning employment and every four years thereafter. Screening and testing for tuberculosis shall be conducted pursuant to 481—Chapter 59. (I, II, III)

481—57.12(135C) *General policies.* The licensee shall establish and implement written policies and procedures as set forth in this rule. The policies and procedures shall be available for review by the department, other agencies designated by Iowa Code section 135C.16(3), staff, residents, residents' families or legal representatives, and the public and shall be reviewed by the licensee annually. (II)

57.12(1) *Facility operation.* The licensee shall establish written policies for the operation of the facility, including, but not limited to the following: (III)

- a. Personnel; (III)
- b. Admission; (III)
- c. Evaluation services; (II, III)
- d. Programming and individual program plans; (II, III)
- e. Registered sex offender management; (II, III)
- f. Crisis intervention; (II, III)
- g. Discharge or transfer; (III)
- h. Medication management, including self-administration of medications and chemical restraints; (III)
- i. Resident property; (II, III)
- j. Resident finances; (II, III)
- k. Records; (III)
- l. Health and safety; (II, III)
- m. Nutrition; (III)
- n. Physical facilities and maintenance; (III)
- o. Resident rights; (II, III)
- p. Investigation and reporting of alleged dependent adult abuse; (II, III)
- q. Investigation and reporting of accidents or incidents; (II, III)
- r. Transportation of residents; (II, III)
- s. Resident supervision; (II, III)
- t. Smoking; (III)
- u. Visitors; (III)
- v. Disaster/emergency planning; (III) and
- w. Infection control. (III)

57.12(2) *Personnel policies.* Written personnel policies shall include the hours of work and attendance at educational programs. (III)

57.12(3) *Infection control.* The facility shall have a written and implemented infection control program, which shall include policies and procedures based on guidelines issued by the Centers for Disease Control and Prevention, U.S. Department of Health and Human Services. The infection control program shall address the following:

- a. Techniques for hand washing; (I, II, III)
- b. Techniques for handling of blood, body fluids, and body wastes; (I, II, III)
- c. Dressings, soaks or packs; (I, II, III)
- d. Infection identification; (I, II, III)
- e. Resident care procedures to be used when there is an infection present; (I, II, III)
- f. Sanitation techniques for resident care equipment; (I, II, III)
- g. Techniques for sanitary use and reuse of feeding syringes and single-resident use and reuse of urine collection bags; (I, II, III) and
- h. Techniques for use and disposal of needles, syringes, and other sharp instruments. (I, II, III)

57.12(4) *Resident care techniques.* The facility shall have written and implemented procedures to be followed if a resident needs any of the following treatment or devices:

- a. Intravenous or central line catheter; (I, II, III)

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- b. Urinary catheter; (I, II, III)
- c. Respiratory suction, oxygen or humidification; (I, II, III)
- d. Decubitus care; (I, II, III)
- e. Tracheostomy; (I, II, III)
- f. Nasogastric or gastrostomy tubes; (I, II, III)
- g. Sanitary use and reuse of feeding syringes and single-resident use and reuse of urine collection bags. (I, II, III)

57.12(5) *Emergency care.* The facility shall establish written policies for the provision of emergency medical care to residents and employees in case of sudden illness or accident. The policies shall include a list of those individuals to be contacted in case of an emergency. (I, II, III)

481—57.13(135C) Admission, transfer and discharge.**57.13(1) *General admission policies.***

a. Residents shall be admitted to a residential care facility only on a written order signed by a physician or physician extender, specifying the level of care, and certifying that the individual being admitted requires no more than personal care and supervision and does not require routine nursing care. (II, III)

b. No residential care facility shall admit or retain a resident who is in need of greater services than the facility can provide. (I, II, III)

c. No residential care facility shall admit more residents than the number of beds for which the facility is licensed. (II, III)

d. A residential care facility is not required to admit an individual through court order, referral or other means without the express prior approval of the administrator. (III)

e. The admission of a resident shall not grant the residential care facility the authority or responsibility to manage the personal affairs of the resident except as may be necessary for the safety of the resident and the safe and orderly management of the residential care facility as required by these rules. (III)

f. Individuals under the age of 18 shall not be admitted to a residential care facility without prior written approval by the department. A distinct part of a residential care facility, segregated from the adult section, may be established based on a résumé of care that is submitted by the licensee or applicant and is commensurate with the needs of the residents of the residential care facility and that has received the department's review and approval. (III)

g. No health care facility and no owner, administrator, employee or representative thereof shall act as guardian, trustee, or conservator for any resident's property unless such resident is related within the third degree of consanguinity to the person acting as guardian. (III)

57.13(2) *Discharge or transfer.*

a. Notification shall be made to the legal representative, attending physician or physician extender, and sponsoring agency, if any, prior to the transfer or discharge of any resident. (III)

b. The licensee shall not refuse to discharge or transfer a resident when the physician, physician extender, family, resident, or legal representative requests such transfer or discharge. (II, III)

c. Advance notification will be made to the receiving facility prior to the transfer of any resident. (III)

d. When a resident is transferred or discharged, the appropriate record will accompany the resident to ensure continuity of care. "Appropriate record" includes the resident's face sheet, service plan, most recent orders of the physician or physician extender and any notifications of upcoming scheduled appointments. (II, III)

e. When a resident is transferred or discharged, the resident's unused prescriptions shall be sent with the resident or with a legal representative only upon the written order of a physician or physician extender. (II, III)

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481—57.14(135C) Involuntary discharge or transfer.

57.14(1) *Involuntary discharge or transfer permitted.* A facility may involuntarily discharge or transfer a resident for only one of the following reasons:

- a. Medical reasons;
- b. The resident's welfare or that of other residents;
- c. Repeated refusal by the resident to participate in the resident's service plan;
- d. Due to action pursuant to Iowa Code chapter 229; or
- e. Nonpayment for the resident's stay, as described in the residency agreement for the resident's stay.

57.14(2) *Medical reasons.* Medical reasons for transfer or discharge shall be based on the resident's needs and shall be determined and documented in the resident's record by the attending physician or physician extender. Transfer or discharge may be required in order to provide a different level of care to the resident. (II)

57.14(3) *Welfare of a resident.* Welfare of a resident or that of other residents refers to a resident's social, emotional, or physical well-being. A resident may be transferred or discharged because the resident's behavior poses a continuing threat to the resident (e.g., suicidal) or to the well-being of other residents or staff (e.g., the resident's behavior is incompatible with other residents' needs and rights). Written documentation that the resident's continued presence in the facility would adversely affect the resident's own welfare or that of other residents shall be made by the administrator or designee and shall include specific information to support this determination. (II)

57.14(4) *Notice.* Involuntary transfer or discharge of a resident from a facility shall be preceded by a written notice to the resident and the responsible party. (II, III)

- a. The notice shall contain all of the following information:
 - (1) The stated reason for the proposed transfer or discharge. (II)
 - (2) The effective date of the proposed transfer or discharge. (II)
 - (3) A statement, in not less than 12-point type, that reads as follows:

You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing, in writing or verbally, with the Iowa department of inspections and appeals (hereinafter referred to as "department") within seven days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after receipt of your request by the department and you will not be transferred prior to a final decision. In emergency circumstances, extension of the 14-day requirement may be permitted upon request to the department's designee. If you lose the hearing, you will not be transferred before the expiration of (1) 30 days following receipt of the original notice of the discharge or transfer, or (2) 5 days following final decision of such hearing, including exhaustion of all appeals, whichever occurs later. To request a hearing or receive further information, call the department at (515)281-4115, or write to the department to the attention of: Administrator, Division of Health Facilities, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. (II)

- b. The notice shall be personally delivered to the resident and a copy placed in the resident's record. A copy shall also be transmitted to the department; the resident's responsible party; the resident's physician or physician extender; the person or agency responsible for the resident's placement, maintenance, and care in the facility; and the department on aging's long-term care ombudsman. The notice shall indicate that a copy has been transmitted to the required parties by using the abbreviation "cc:" and listing the names of all parties to whom copies were sent. (II)

- c. The notice required by paragraph 57.14(4) "a" shall be provided at least 30 days in advance of the proposed transfer or discharge unless one of the following occurs: (II)

- (1) An emergency transfer or discharge is mandated by the resident's health care needs and is in accordance with the written orders and medical justification of the attending physician or physician

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extender. Emergency transfers or discharges may also be mandated in order to protect the health, safety, or well-being of other residents and staff from the resident being transferred. (II)

(2) The transfer or discharge is subsequently agreed to by the resident or the resident's responsible party, and notification is given to the responsible party, the resident's physician or physician extender, and the person or agency responsible for the resident's placement, maintenance, and care in the facility.

d. A hearing requested pursuant to this subrule shall be held in accordance with subrule 57.14(6).

57.14(5) *Emergency transfer or discharge.* In the case of an emergency transfer or discharge, the resident must be given a written notice prior to or within 48 hours following transfer or discharge. (II, III)

a. A copy of this notice must be placed in the resident's file. The notice must contain all of the following information:

- (1) The stated reason for the transfer or discharge. (II)
- (2) The effective date of the transfer or discharge. (II)
- (3) A statement, in not less than 12-point type, that reads:

You have a right to appeal the facility's decision to transfer or discharge you on an emergency basis. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa state department of inspections and appeals within 7 days after receiving this notice. You have the right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after receipt of your request by the department. You may be transferred or discharged before the hearing is held or before a final decision is rendered. If you win the hearing, you have the right to be transferred back into the facility. To request a hearing or receive further information, call the department at (515)281-4115, or write to the department to the attention of: Administrator, Division of Health Facilities, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. (II)

b. The notice shall be personally delivered to the resident and a copy placed in the resident's record. A copy shall also be transmitted to the department; the resident's responsible party; the resident's physician or physician extender; the person or agency responsible for the resident's placement, maintenance, and care in the facility; and the department on aging's long-term care ombudsman. The notice shall indicate that a copy has been transmitted to the required parties by using the abbreviation "cc:" and listing the names of all parties to whom copies were sent. (II)

c. A hearing requested pursuant to this subrule shall be held in accordance with subrule 57.14(6).

57.14(6) *Hearing.*

a. Request for hearing.

- (1) The resident must request a hearing within 7 days of receiving the written notice.
- (2) The request must be made to the department, either in writing or verbally.

b. The hearing shall be held no later than 14 days after receipt of the request by the department unless the resident requests an extension due to emergency circumstances.

c. Except in the case of an emergency discharge or transfer, a request for a hearing shall stay a transfer or discharge pending a final decision, including the exhaustion of all appeals. (II)

d. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and 481—Chapter 10. The hearing shall be public unless the resident or the resident's legal representative requests in writing that the hearing be closed. In a determination as to whether a transfer or discharge is authorized, the burden of proof by a preponderance of evidence rests on the party requesting the transfer or discharge.

e. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the facility, the resident, the responsible party, and the office of the long-term care ombudsman not later than 5 full business days after receipt of the request. The notice shall also inform the facility and the resident or the responsible party that they have a right to appear at the hearing in person or be represented by an attorney or other individual. The appeal 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

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one party present. A representative of the office of the long-term care ombudsman shall have the right to appear at the hearing.

f. The administrative law judge's written decision shall be mailed by certified mail to the licensee, resident, responsible party, and the office of the long-term care ombudsman within 10 working days after the hearing has been concluded.

57.14(7) *Nonpayment.* If nonpayment is the basis for involuntary transfer or discharge, the resident shall have the right to make full payment up to the date that the discharge or transfer is to be made and then shall have the right to remain in the facility. (II)

57.14(8) *Discussion of involuntary transfer or discharge.* Within 48 hours after notice of involuntary transfer or discharge has been received by the resident, the facility shall discuss the involuntary transfer or discharge with the resident, the resident's responsible party, and the person or agency responsible for the resident's placement, maintenance, and care in the facility. (II)

a. The facility administrator or other appropriate facility representative serving as the administrator's designee shall provide an explanation and discussion of the reasons for the resident's involuntary transfer or discharge. (II)

b. The content of the explanation and discussion shall be summarized in writing, shall include the names of the individuals involved in the discussion, and shall be made part of the resident's record. (II)

c. The provisions of this subrule do not apply if the involuntary transfer or discharge has already occurred pursuant to subrule 57.14(5) and emergency notice is provided within 48 hours.

57.14(9) *Transfer or discharge planning.*

a. The facility shall develop a plan to provide for the orderly and safe transfer or discharge of each resident to be transferred or discharged. (II)

b. To minimize the possible adverse effects of the involuntary transfer, the resident shall receive counseling services by the sending facility before the involuntary transfer and by the receiving facility after the involuntary transfer. Counseling shall be documented in the resident's record. (II)

c. The counseling requirement in paragraph 57.14(9) "b" does not apply if the discharge has already occurred pursuant to subrule 57.14(5) and emergency notice is provided within 48 hours.

d. Counseling, if required, shall be provided by a qualified individual who meets one of the following criteria:

(1) Has a bachelor's or master's degree in social work from an accredited college. (II)

(2) Is a graduate of an accredited four-year college and has had at least one year of full-time paid employment in a social work capacity with a public or private agency. (II)

(3) Has been employed in a social work capacity for a minimum of four years in a public or private agency. (II)

(4) Is a licensed psychologist or psychiatrist. (II)

(5) Is any other person of the resident's choice. (II)

e. The receiving health care facility of a resident involuntarily transferred shall immediately formulate and implement a plan of care which takes into account possible adverse effects the transfer may cause. (II)

57.14(10) *Transfer upon revocation of license or voluntary closure.* Residents shall not have the right to a hearing to contest an involuntary discharge or transfer resulting from the revocation of the facility's license by the department of inspections and appeals. In the case of the voluntary closure of a facility, a period of 30 days must be allowed for an orderly transfer of residents to other facilities.

57.14(11) *Intrafacility transfer.*

a. Residents shall not be arbitrarily relocated from room to room within a licensed health care facility. (I, II) Involuntary relocation may occur only in the following situations, which shall be documented in the resident's record: (II)

(1) Incompatibility with or disturbing to other roommates.

(2) For the welfare of the resident or other residents of the facility.

(3) To allow a new admission to the facility that would otherwise not be possible due to separation of roommates by sex.

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(4) In the case of a resident whose source of payment was previously private, but who now is eligible for Title XIX (Medicaid) assistance, the resident may be transferred from a private room to a semiprivate room or from one semiprivate room to another.

(5) Reasonable and necessary administrative decisions regarding the use and functioning of the building.

b. Unreasonable and unjustified reasons for changing a resident's room without the concurrence of the resident or responsible party include:

(1) Change from private pay status to Title XIX, except as outlined in subparagraph 57.14(11)“a”(4). (II)

(2) As punishment or behavior modification, except as specified in subparagraph 57.14(11)“a”(1). (II)

(3) Discrimination on the basis of race or religion. (II)

c. If intrafacility relocation is necessary for reasons outlined in paragraph 57.14(11)“a,” the resident shall be notified at least 48 hours prior to the transfer and the reason therefor shall be explained. The responsible party shall be notified as soon as possible. The notification shall be documented in the resident's record and signed by the resident or responsible party. (II, III)

d. If emergency relocation is required in order to protect the safety or health of the resident or other residents, the notification requirements may be waived. The conditions of the emergency shall be documented. The family or responsible party shall be notified immediately or as soon as possible of the condition that necessitates emergency relocation, and such notification shall be documented. (II, III)

e. A transfer to a part of a facility that has a different license must be handled the same way as a transfer to another facility, and not as an intrafacility transfer. (II, III)

481—57.15(135C) Residency agreement.

57.15(1) Each residency agreement shall:

a. State the base rate or scale per day or per month, the services included, and the method of payment. (III)

b. Contain a complete schedule of all offered services for which a fee may be charged in addition to the base rate. (III) Furthermore, the agreement shall:

(1) Stipulate that no further additional fees shall be charged for items not contained in the complete schedule of services; (III)

(2) State the method of payment for additional charges; (III)

(3) Contain an explanation of the method of assessment of such additional charges and an explanation of the method of periodic reassessment, if any, resulting in changing such additional charges; (III)

(4) State that additional fees may be charged to the resident for nonprescription drugs, other personal supplies, and services provided by a barber, beautician, and such. (III)

c. Contain an itemized list of services to be provided to the resident based on an assessment at the time of the resident's admission and in consultation with the administrator and including the specific fee the resident will be charged for each service and the method of payment. (III)

d. Include the total fee to be charged initially to the resident. (III)

e. State the conditions whereby the facility may make adjustments to its overall fees for resident care as a result of changing costs. (II, III) Furthermore, the agreement shall provide that the facility shall give:

(1) Written notification to the resident, or the responsible party when appropriate, of changes in the overall rates of both base and additional charges at least 30 days prior to the effective date of such changes; (II, III)

(2) Notification to the resident, or the responsible party when appropriate, of changes in additional charges, based on a change in the resident's condition. Notification must occur prior to the date such revised additional charges begin. If notification is given orally, subsequent written notification must also be given within a reasonable time, not to exceed one week, listing specifically the adjustments made. (II, III)

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f. State the terms of agreement in regard to a refund of all advance payments in the event of the transfer, death, or voluntary or involuntary discharge of the resident. (II, III)

g. State the terms of agreement concerning the holding of and charging for a bed when a resident is hospitalized or leaves the facility temporarily for recreational or therapeutic reasons. The terms shall contain a provision that the bed will be held at the request of the resident or the resident's responsible party. (II, III)

(1) The facility shall ask the resident or responsible party whether the resident's bed should be held. This request shall be made before the resident leaves or within 48 hours after the resident leaves. The inquiry and the response shall be documented. (II, III)

(2) The facility shall inform the resident or responsible party that, when requested, the bed may be held beyond the number of days designated by the funding source, as long as payments are made in accordance with the agreement. (II, III)

h. State the conditions under which the involuntary discharge or transfer of a resident would be effected. (II, III)

i. Set forth any other matters deemed appropriate by the parties to the agreement. No agreement or any provision thereof shall be drawn or construed so as to relieve any health care facility of any requirement or obligation imposed upon it by this chapter or any standards or rules in force pursuant to this chapter. (II, III)

57.15(2) Each party to the residency agreement shall receive a copy of the signed agreement. (II, III)

481—57.16(135C) Medical examinations.

57.16(1) Each resident in a residential care facility shall have a designated licensed physician or physician extender who may be contacted when needed. (II, III)

57.16(2) Each resident admitted to a residential care facility shall have a physical examination prior to admission. (II, III)

a. If the resident is admitted directly from a hospital, a copy of the hospital admission physical and discharge summary may be a part of the record in lieu of an additional physical examination. A record of the examination, signed by the physician or physician extender, shall be a part of the resident's record. (II, III)

b. The record of the admission physical examination and medical history shall portray the current medical status of the resident and shall include the resident's name, sex, age, medical history, physical examination, diagnosis, statement of medical concerns, diet, and results of any diagnostic procedures. (II, III)

c. Screening and testing for tuberculosis shall be conducted pursuant to 481—Chapter 59. (I, II, III)

57.16(3) The person in charge shall immediately notify the physician or physician extender of any accident, injury or adverse change in the resident's condition that has the potential for requiring physician intervention. (I, II, III)

57.16(4) Each resident shall be visited by or shall visit the resident's physician or physician extender at least once each year. The one-year period shall be measured from the date of admission and does not include the resident's preadmission physical. (III)

481—57.17(135C) Records.

57.17(1) *Resident record.* The licensee shall keep a permanent record on every resident admitted to the residential care facility, and all entries in the permanent record shall be current, dated, and signed. (III) The record shall include:

a. Name and previous address of resident; (III)

b. Birth date, sex, and marital status of resident; (III)

c. Church affiliation, if designated; (III)

d. Physician's or physician extender's name, telephone number, and address; (III)

e. Dentist's name, telephone number, and address; (III)

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- f.* Name, address, and telephone number of next of kin or legal representative; (III)
- g.* Name, address, and telephone number of person to be notified in case of emergency; (III)
- h.* Pharmacy name, telephone number, and address; (III)
- i.* Mortuary name, telephone number, and address, if designated; (III)
- j.* Physical examination and medical history; (III)
- k.* Physician's or physician extender's orders for the resident's level of care, medication, treatments, and diet. The orders shall be in writing and signed by the physician or physician extender quarterly; (III)
 - l.* A notation of visits to physician or physician extender and other professional services; (III)
 - m.* Documentation regarding services provided by other providers, including but not limited to home health agencies, hospice, day treatment and those providing medical, mental health and Medicaid waiver services; (III)
 - n.* Documentation of any adverse change in the resident's condition; (II, III)
 - o.* A notation describing the resident's condition on admission, transfer and discharge; (III)
 - p.* A copy of instructions given to the resident, legal representative or facility in the event of discharge or transfer; (III)
 - q.* In the event of a resident's death, notations of the date and time of the resident's death, the circumstances of the resident's death, the disposition of the resident's body, and the date and time the resident's family and physician or physician extender were notified of the resident's death; and (III)
 - r.* A notation of disposition of personal property and medications upon the resident's transfer, discharge or death. (III)

57.17(2) Confidentiality of resident records. Each resident shall be ensured confidential treatment of all information contained in the resident's records. The resident's written consent shall be required for the release of information to persons not otherwise authorized under law to receive the information. (II)

- a.* The facility shall limit access to any medical records to staff and professionals providing services to the resident. (II)
- b.* The facility shall limit access to the resident's personal records, e.g., financial records and social services records, to staff and professionals providing the service to the resident. Only those personnel concerned with the financial affairs of the resident may have access to the financial records. (II)
- c.* The resident, or the resident's responsible party, shall be entitled to examine all information contained in the resident's record and shall have the right to secure full copies of the record at reasonable cost upon request, unless the physician or physician extender determines that the disclosure of the record or section thereof is contraindicated, in which case this information will be deleted prior to making the record available to the resident or responsible party. This determination and the reasons for it must be documented in the resident's record. (II)
- d.* This subrule is not meant to preclude access to resident records by representatives of state and federal regulatory agencies.

57.17(3) Incident record.

- a.* Each residential care facility shall maintain an incident record report and shall have available incident report forms. (II, III)
- b.* Report of incidents shall be in detail on a printed incident report form. (III)
- c.* The person in charge at the time of the incident shall oversee the preparation of and sign the incident report. The administrator or designee shall review, sign and date the incident report within 72 hours of the accident, incident or unusual occurrence. (II, III)
- d.* An incident report shall be completed for every accident or incident where there is apparent injury or where an injury of unknown origin may have occurred. (II)
- e.* An incident report shall be completed for every accident, incident or unusual occurrence within the facility or on the premises that affects a resident, visitor, or employee. (II, III)
- f.* A copy of the incident report shall be kept on file in the facility. (II, III)

57.17(4) Retention of records.

- a.* Records shall be retained in the facility for five years following the termination of services to a resident. (III)

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- b. Records shall be retained within the facility upon change of ownership. (III)
- c. When the facility ceases to operate, a copy of the resident's record shall be released to the facility to which the resident is transferred. (III)
- d. When the facility ceases to operate, records shall be maintained for five years in a clean, dry secured storage area. (III)

57.17(5) *Electronic records.* In addition to the access provided in 481—subrule 50.10(2), an authorized representative of the department shall be provided unrestricted access to electronic records pertaining to the care provided to the residents of the facility. (II, III)

a. If access to an electronic record is requested by the authorized representative of the department, the facility may provide a tutorial on how to use its particular electronic system or may designate an individual who will, when requested, access the system, respond to any questions or assist the authorized representative as needed in accessing electronic information in a timely fashion. (II, III)

b. The facility shall provide a terminal where the authorized representative may access records. (II, III)

c. If the facility is unable to provide direct print capability to the authorized representative, the facility shall make available a printout of any record or part of a record on request in a time frame that does not intentionally prevent or interfere with the department's survey or investigation. (II, III)

481—57.18(135C) Resident care and personal services.

57.18(1) A complete change of bed linen shall be provided at least once a week and more often if necessary. (III)

57.18(2) Residents shall receive sufficient supervision to promote personal cleanliness. (II, III)

57.18(3) Residents shall have clean clothing as needed. Clothing shall be appropriate to residents' activities and to the weather. (III)

57.18(4) Residents shall be encouraged to bathe at least twice a week. (II, III)

57.18(5) All nonambulatory residents shall be housed on the grade level floor unless the facility has a suitably sized elevator. (II)

481—57.19(135C) Drugs.

57.19(1) *Drug storage.*

a. Residents who have been certified in writing by their physician or physician extender as capable of taking their own medications may retain these medications in their bedroom, but locked storage must be provided, with staff and the resident having access. Monitoring of the storage, administration and documentation by the resident shall be carried out by a person who meets the requirements of subrule 57.19(3) and is responsible for administering medications. (II, III)

b. Drug storage for residents who are unable to take their own medications and require supervision shall meet the following requirements:

- (1) Locked storage for drugs, solutions, and prescriptions shall be provided. (III)
- (2) A bathroom shall not be used for drug storage. (III)
- (3) The drug storage shall be kept locked when not in use. (III)
- (4) The drug storage key shall be secured and available only to those employees charged with the responsibility of administering medications. (II, III)
- (5) Schedule II drugs, as defined by Iowa Code chapter 124, shall be kept in a locked box within the locked drug storage. (II, III)
- (6) Medications requiring refrigeration shall be kept locked in a refrigerator and separated from food and other items. (II, III)
- (7) Drugs for external use shall be stored separately from drugs for internal use. (II, III)
- (8) All potent, poisonous, or caustic materials shall be stored separately from drugs, shall be plainly labeled and stored in a specific, well-illuminated cabinet, closet, or storeroom, and shall be made accessible only to authorized persons. (I, II)
- (9) Inspection of drug storage shall be made by the administrator or designee and a registered pharmacist not less than once every three months. The inspection shall be verified by a report signed

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by the administrator and the pharmacist and filed with the administrator. The report shall include, but not be limited to, certification of the absence of the following: expired drugs, deteriorated drugs, improper labeling, drugs for which there is no current physician's or physician extender's order, and drugs improperly stored. (III)

(10) Bulk supplies of prescription drugs for multiresident use shall not be kept in a residential care facility. (III)

57.19(2) Drug safeguards.

a. All prescribed medications shall be clearly labeled indicating the resident's full name, physician's or physician extender's name, prescription number, name and strength of drug, dosage, directions for use, date of issue, and name and address and telephone number of pharmacy, physician or physician extender issuing the drug. Where unit dose is used, prescribed medications shall, at a minimum, indicate the resident's full name, physician's or physician extender's name, name and strength of drug, and directions for use. Standard containers shall be utilized for dispensing drugs. (III)

b. Sample medications provided by the resident's physician or physician extender shall clearly identify to whom the medications belong. (III)

c. Medication containers having soiled, damaged, illegible, or makeshift labels shall be returned to the issuing pharmacist, pharmacy, physician or physician extender for relabeling or disposal. (III)

d. The medication for each resident shall be kept or stored in the original containers unless the resident is participating in an individualized medication program. (II, III)

e. Unused prescription drugs shall be destroyed by the person in charge, in the presence of a witness, and with a notation made on the resident's record or shall be returned to the supplying pharmacist. (III)

f. Prescriptions shall be refilled only with the permission of the resident's physician or physician extender. (II, III)

g. No medications prescribed for one resident may be administered to or allowed in the possession of another resident. (I, II)

h. Instructions shall be requested from the Iowa board of pharmacy concerning disposal of unused Schedule II drugs prescribed for a resident who has died or for whom the Schedule II drug was discontinued. (III)

i. Discontinued medications shall be destroyed within a specified time by a responsible person, in the presence of a witness, and with a notation made to that effect or shall be returned to the pharmacist for destruction. Drugs listed under the Schedule II drugs shall be destroyed in accordance with the requirements established by the Iowa board of pharmacy. (II, III)

j. All medication orders which do not specifically indicate the number of doses to be administered or the length of time the drug is to be administered shall be stopped automatically after a given time period. The automatic-stop order may vary for different types of drugs. The resident's physician or physician extender, in conjunction with the pharmacist, shall institute these policies and provide procedures for review and endorsement. (II, III)

k. No resident shall be allowed to possess any medications unless the physician or physician extender has certified in writing on the resident's medical record that the resident is mentally and physically capable of doing so. (II)

l. No medications or prescription drugs shall be administered to a resident without a written order signed by the physician or physician extender. (II)

m. The facility shall establish a policy to govern the distribution of prescribed medications to residents who are on leave from the facility. (II, III)

(1) Medications may be issued to residents who will be on leave from a facility for less than 24 hours. Only those medications needed for the time period the resident will be on leave from the facility may be issued. Non-child-resistant containers may be used. Instructions shall be provided and include the date, the resident's name, the name of the facility, and the name of the medication, its strength, dose and time of administration. (II, III)

(2) Medication for residents on leave from a facility for longer than 24 hours shall be obtained in accordance with requirements established by the Iowa board of pharmacy. (II, III)

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(3) Medication for residents on leave from a facility may be issued only by facility personnel responsible for administering medication. (II, III)

57.19(3) Drug administration—authorized personnel.

a. A properly trained person shall be charged with the responsibility of administering medications as ordered by a physician or physician extender. (II, III)

b. The person shall have knowledge of the purpose of the drugs and their dangers and contraindications. (II, III)

c. The person shall be a licensed nurse, physician or physician extender or shall have successfully completed a department-approved medication aide course or passed a department-approved medication aide challenge examination administered by an area community college. (II, III)

d. Prior to taking a department-approved medication aide course, the person shall:

(1) Successfully complete an approved residential aide course, nurse aide course, nurse aide training and testing program or nurse aide competency examination; (III)

(2) Have a letter of recommendation for admission to the medication aide course from the employing facility. (III)

e. A person who is a nursing student or a graduate nurse may take the challenge examination in place of taking a medication aide course. The person shall do all of the following before taking the medication aide challenge examination:

(1) Complete a clinical or nursing theory course within six months before taking the challenge examination; (III)

(2) Successfully complete a nursing program pharmacology course within one year before taking the challenge examination; (III)

(3) Provide to the community college a written statement from the nursing program's pharmacology or clinical instructor indicating that the person is competent in medication administration. (III)

f. A person who has written documentation of certification as a medication aide in another state may become a medication aide in Iowa by successfully completing a department-approved nurse aide competency examination and a medication aide challenge examination. The requirements of paragraph 57.19(3)“d” do not apply to this person. (III)

g. In a freestanding residential care facility licensed for 15 or fewer beds, a person who has successfully completed a state-approved medication manager course may administer medications.

57.19(4) Drug administration.

a. Unless the unit dose system is used, the person assigned the responsibility of medication administration must complete the procedure by personally preparing the dose, observing the actual act of swallowing the oral medication, and charting the medication. In facilities where the unit dose system is used, the person assigned the responsibility of medication administration must complete the procedure by observing the actual act of swallowing the oral medication and by charting the medication. Medications shall be prepared on the same shift of the same day that they are administered unless the unit dose system is used. (II)

b. Injectable medications shall be administered as permitted by Iowa law by a registered nurse, licensed practical nurse, advanced registered nurse practitioner, physician, physician extender, physician assistant or pharmacist. For purposes of this subrule, “injectable medications” does not include an epinephrine autoinjector, e.g., an EpiPen. (II, III)

c. A resident certified by the resident's physician or physician extender as capable of injecting the resident's own insulin may do so. Insulin may be administered pursuant to paragraph 57.19(4)“b” or as otherwise authorized by the resident's physician or physician extender. (II, III) Authorization shall:

(1) Be in writing,

(2) Be maintained in the resident's record,

(3) Be renewed quarterly,

(4) Include the name of the person authorized to administer the insulin,

(5) Include documentation by the physician or physician extender that the authorized person is qualified to administer insulin to that resident. (II, III)

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- d.* An individual inventory record shall be maintained for each Schedule II drug prescribed for each resident, with an accurate count and authorized signatures at every shift. (II)
- e.* The facility may use a unit dose system.
- f.* Medication aides and medication managers may administer PRN medications without contacting a licensed nurse, physician, or physician extender if all of the following apply: (I, II, III)
- (1) A written order from the resident's physician or physician extender specifies the purpose of the PRN medication and the frequency, dosage and strength of the PRN medication.
 - (2) The resident's physician or physician extender provides in writing specific criteria for administering PRN medications.
 - (3) The pharmacist assesses the resident's use of PRN medications when conducting the inspection of drug storage as required by subparagraph 57.19(1)"b"(9).
- g.* If the physician or physician extender has certified in writing that the resident is capable of self-administering medications and determining the need for PRN medications, the physician or physician extender shall provide in writing specific criteria for the self-administration of the PRN medications. The pharmacist shall assess the resident's use of PRN medications when conducting the inspection of drug storage as required by subparagraph 57.19(1)"b"(9). (I, II, III)
- h.* If the physician or physician extender has certified that the resident is not capable of taking prescribed medication, the medication must be administered by a qualified person of the facility. A "qualified person," for purposes of this subrule, means a registered or licensed practical nurse or an individual who has completed the state-approved training course in medication administration. (I, II, III)
- i.* Medications administered by an employee of the facility shall be recorded on a medication record by the individual who administers the medication. (I, II, III)

481—57.20(135C) Dental services.

57.20(1) The residential care facility personnel shall assist residents in obtaining annual and emergency dental services and shall arrange transportation for such services. (III)

57.20(2) Dental services shall be performed only on the request of the resident, responsible party, legal representative, physician, or physician extender. The resident's physician or physician extender shall be advised of the resident's dental problems. (III)

57.20(3) All dental reports or progress notes shall be included in the resident record as available. The facility shall make reasonable efforts to obtain the records following the provision of services. (III)

57.20(4) Personal care staff shall assist the resident in carrying out the dentist's recommendations. (III)

481—57.21(135C) Dietary.**57.21(1) Dietary staffing.**

a. A minimum of one person directly responsible for food preparation shall successfully complete a course meeting the requirements for a food protection program included in the Food Code adopted pursuant to Iowa Code chapter 137F. Another course may be substituted if the course's curriculum includes substantially similar competencies to a course that meets the requirements of the Food Code and the provider of the course files with the department a statement indicating that the course provides substantially similar instruction as it relates to sanitation and safe food handling. (III)

b. If the person is in the process of completing the food protection program in paragraph 57.21(1)"a," the requirement relating to the completion of a state-approved food protection program shall be considered to have been met.

c. In addition to the requirement of paragraph 57.21(1)"a," personnel who are responsible for food preparation or service, or both food preparation and service, shall have an orientation on sanitation and safe food handling prior to handling food and shall have annual in-service training on food protection. (III)

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57.21(2) Nutrition and menu planning.

- a. Menus shall be planned and followed to meet the nutritional needs of residents in accordance with the physician's or physician extender's orders. Diet orders should be reviewed as necessary, but at least quarterly, by the physician or physician extender. (II, III)
- b. Menus shall be planned and served to include foods and amounts necessary to meet federal dietary guidelines. (II, III)
- c. At least three meals or their equivalent shall be served daily, at regular hours. (II, III)
 - (1) There shall be no more than a 14-hour span between offering a substantial evening meal and breakfast. (II, III)
 - (2) Unless contraindicated, evening snacks shall be offered routinely to all residents. Special nourishments shall be available when ordered by the physician or physician extender. (II, III)
- d. Menus shall include a variety of foods prepared in various ways. (III)
- e. Menus shall be written at least one week in advance. The current menu shall be located in an accessible place for easy use by persons purchasing, preparing, and serving food. (III)
- f. Records of menus as served shall be filed and maintained for 30 days and shall be available for review by departmental personnel. When substitutions are necessary or requested, they shall be of similar nutritive value and recorded on the menu or in a notebook. (III)
- g. The facility shall provide an alternative choice at scheduled meal times. (III)

57.21(3) Dietary storage, food preparation, and service.

- a. All food shall be handled, prepared, served and stored in compliance with the Food Code adopted pursuant to Iowa Code section 137F.2. (I, II, III)
- b. Supplies of staple foods for a minimum of a one-week period and of perishable foods for a minimum of a two-day period shall be maintained on the premises. Minimum food portion requirements for a low-cost plan shall conform to information supplied by the bureau of nutrition and health promotion of the department of public health. (II, III)
- c. Dishes shall be free of cracks, chips, and stains. (III)
- d. If family-style service is used, all leftover prepared food that has been on the table shall be properly handled. (III)

57.21(4) Sanitation in food preparation area.

- a. In facilities licensed for more than 15 beds, the kitchen shall not be used for serving meals to residents, food service personnel, or other staff. (III)
- b. There shall be written procedures established for cleaning all work and serving areas in facilities with more than 15 beds. (III)
- c. A schedule for duties to be performed daily shall be posted in each food area. (III)
- d. All cooking equipment in facilities of 15 or more beds shall be provided with a properly sized exhaust system and hood to eliminate excess heat, moisture, and odors from the kitchen. (II, III)
- e. The food service area shall be located so it will not be used as a passageway by residents, guests, or non-food service staff. (III)
- f. There shall be no washing, ironing, sorting or folding of laundry in the food service area. Dirty linen shall not be carried through the food service area unless the linen is in sealed, leakproof containers. (III)
- g. In facilities with more than 15 beds, a mechanical dishwasher is required. (III)
- h. A three-compartment pot and pan sink with 110°F (43°C) to 115°F (46°C) water for washing, a compartment for rinsing with water at 170°F (76°C) to 180°F (82°C) for sanitizing with space for air drying, or a two-compartment sink with access to a mechanical dishwasher for sanitizing all utensils shall be provided. (III)

481—57.22(135C) Orientation and service plan.

- 57.22(1) Orientation.** Within 24 hours of admission, each resident shall receive orientation to the facility. The orientation program shall be documented in the resident's file and shall include, but shall not be limited to, a review of the resident's rights, the daily schedule, house rules and the facility's evacuation plan. (II, III)

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57.22(2) Initial service plan. Within 48 hours of admission, the administrator or the administrator's designee shall develop an initial service plan to address any immediate health and safety needs. The plan shall be based on information gathered from the resident, family, referring party, physician or physician extender, and other significant persons. The plan shall be followed until the service plan required in subrule 57.22(3) is complete. (I, II, III)

57.22(3) Service plan. Within 30 days of admission, the administrator or the administrator's designee, in conjunction with the resident, the resident's responsible party, the interdisciplinary team, and any organization that works with or serves the resident, shall develop a written, individualized, and integrated service plan for the resident. The service plan shall be developed and implemented to address the resident's priorities and assessed needs, such as activities of daily living, rehabilitation, activity, and social, behavioral, emotional, physical and mental health. (I, II, III)

a. The service plan shall include measurable goals and objectives and the specific service(s) to be provided to achieve the goals. Each goal shall include the date of initiation and anticipated duration of service(s). Any restriction of rights shall be included in the service plan. (I, II, III)

b. The service plan shall include the documentation procedure for each goal and objective. (II, III)

c. The service plan should be modified to add or delete goals and objectives as the resident's needs change. Communications related to service plan changes or changes in the resident's condition shall occur within five working days of the change and shall be conveyed to all individuals inside and outside the residential care facility who work with the resident, as well as to the resident's responsible party. (I, II, III)

d. The service plan shall be reviewed at least quarterly by relevant staff, the resident and appropriate others, such as the resident's family, case manager and responsible party. The review shall include a written report which addresses a summary of the resident's progress toward goals and objectives and the need for continued services. (I, II, III)

481—57.23(135C) Resident activities program.

57.23(1) Each residential care facility shall provide an organized resident activities program for the group and for the individual resident which shall include suitable activities. The facility shall offer at least two organized evening group activities per week and two organized weekend group activities per month. (III)

a. The activities program shall be designed to meet the needs and interests of each resident and to assist residents in continuing normal activities within limitations set by the resident's physician or physician extender. This shall include helping residents continue in their individual interests or hobbies. (III)

b. The activities program shall include measureable goals for each resident. (III)

c. The activities program shall include both group and individual activities. (III)

d. Residents shall be encouraged, but not required, to participate in activities. (III)

57.23(2) Coordination of activities program.

a. Each residential care facility with 15 or fewer beds shall designate a person to oversee the activities program, develop goals and monitor progress. (III)

b. Each residential care facility with more than 15 beds shall employ a person to direct the activities program. (III)

c. Staffing for the activities program shall be provided on the minimum basis of 45 minutes per resident per week. (II, III)

d. The activities coordinator shall have completed the activities coordinator orientation course approved by the department within six months of employment or have comparable training and experience as approved by the department. (III)

e. There shall be a written plan for personnel coverage when the activities coordinator is absent during scheduled working hours. (III)

57.23(3) Duties of activities coordinator. The activities coordinator shall:

a. Have access to all residents' records. (III)

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- b.* Coordinate all activities, including volunteer or auxiliary activities and religious services. (III)
 - c.* Keep all necessary records including:
 - (1) Attendance records; (III)
 - (2) Individual resident progress notes, recorded at least every three months; (III)
 - (3) Monthly calendars, prepared in advance, updated as necessary and maintained for one year.
 (III)
 - d.* Coordinate the activities program with all other services in the facility. (III)
- 57.23(4) *Supplies, equipment, and storage.***
- a.* Each facility shall provide a variety of supplies and equipment of a nature calculated to fit the needs and interests of the residents. (III)
 - b.* Storage shall be provided for recreational equipment and supplies. (III)

481—57.24(135C) Residents' rights.

57.24(1) Each facility shall ensure that policies and procedures are written and implemented which include, at a minimum, the provisions of this rule and which govern all areas of service provided by the facility. These policies and procedures shall be available to staff, residents, residents' families or legal representatives and the public and shall be reviewed annually. (II, III)

57.24(2) Policies and procedures shall include a method for submitting complaints and recommendations by residents or their responsible parties and for ensuring a response and disposition by the facility. (II, III) The written procedures shall:

- a.* Ensure the provision of assistance to residents as necessary to complete and submit complaints and recommendations; (II, III)
- b.* Ensure protection of the resident from any form of reprisal or intimidation; (II, III)
- c.* Include designation of an employee responsible for handling grievances and recommendations; (II, III)
- d.* Include a method of investigating and assessing the validity of a grievance or recommendation; (II, III) and
- e.* Include methods of recording grievances and actions taken. (II, III)

57.24(3) Policies and procedures shall include provisions governing access to, duplication of, and dissemination of information from the residents' records. (II, III)

57.24(4) Policies and procedures shall include a provision that each resident shall be fully informed of the resident's rights and responsibilities as a resident and of all rules governing resident conduct and responsibilities. This information must be provided upon the resident's admission, or in the case of residents already in the facility, upon the facility's adoption or amendment of residents' rights policies. (II, III)

- a.* The facility shall communicate to residents prior to or within five days after admission what residents may expect from the facility and its staff, and what is expected from residents. The communication shall be in writing, e.g., in a separate handout or brochure describing the facility, and interpreted verbally, e.g., as part of a preadmission interview, resident counseling, or in individual or group orientation sessions following the resident's admission. (II, III)

- b.* Residents' rights and responsibilities shall be presented in language understandable to the resident. If the facility serves residents who are non-English-speaking or deaf, steps shall be taken to translate the information into a foreign or sign language. In the case of blind residents, either Braille or a recording shall be provided. Residents shall be encouraged to ask questions about their rights and responsibilities and these questions shall be answered. (II, III)

- c.* A statement shall be signed by the resident, or the resident's responsible party, if applicable, indicating an understanding of these rights and responsibilities and shall be maintained in the resident's record. The statement shall be signed no later than five days after admission, and a copy of the signed statement shall be given to the resident or responsible party. (II, III)

- d.* In order to ensure that residents continue to be aware of these rights and responsibilities during their stay, a written copy shall be prominently posted in a location that is available to all residents. (II, III)

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e. All residents shall be advised within 30 days following changes made in the statement of residents' rights and responsibilities. Appropriate means shall be utilized to inform non-English-speaking, deaf or blind residents of changes. (II, III)

57.24(5) Choice of physician or physician extender. Each resident shall be permitted free choice of a physician or physician extender, and pharmacy, if accessible. The facility may require the selected pharmacy to utilize a drug distribution system compatible with the system currently used by the facility. (II)

57.24(6) Each resident shall be afforded the opportunity to participate in the planning of the resident's total care and treatment, which may include, but shall not be limited to, medical care, nutritional needs, activities, and social work services. Each resident has the right to refuse treatment except as provided by Iowa Code chapter 229. In the case of a resident with impaired decision-making skills, the responsible party shall be afforded the opportunity to participate in the planning of the resident's total care and medical treatment and to be informed of the resident's medical condition. (II, III)

57.24(7) Each resident shall be encouraged and assisted throughout the resident's period of stay to exercise the resident's rights as a resident and as a citizen and may voice grievances and recommend changes in policies and services to administrative staff or to outside representatives of the resident's choice, free from interference, coercion, discrimination, or reprisal. (II)

57.24(8) The facility shall provide ongoing opportunities for residents to be aware of and to exercise their rights as residents. Residents shall be kept informed of changes in policies and services that are more restrictive, and their views shall be solicited prior to action. (II)

57.24(9) The facility shall post in a prominent area the text of Iowa Code section 135C.46 (Retaliation Prohibited) and the name, telephone number, and address of the long-term care ombudsman, the department, and the local law enforcement agency to provide residents a further course of redress. (II)

57.24(10) All rights and responsibilities of the resident devolve to the resident's responsible party or any legal surrogate designated in accordance with state law, to the extent permitted by state law. This subrule is not intended to limit the authority of any individual acting pursuant to Iowa Code chapter 144A. (II, III)

481—57.25(135C) Dignity preserved. The resident shall be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs. (I, II)

57.25(1) Staff shall display respect for residents when speaking with, caring for, or talking about them, as constant affirmation of their individuality and dignity as human beings. (I, II)

57.25(2) Schedules of daily activities shall allow maximum flexibility for residents to exercise choice about what they will do and when they will do it. Residents' individual preferences regarding such things as menus, clothing, religious activities, friendships, activity programs, entertainment, sleeping and eating, also times to retire at night and arise in the morning shall be elicited and considered by the facility. (II)

57.25(3) Residents shall be examined and treated in a manner that maintains the privacy of their bodies. A closed door or a drawn curtain shall shield the resident from passersby. People not involved in the care of the residents shall not be present without the resident's consent while the resident is being examined or treated. (II)

57.25(4) Privacy of a resident's body also shall be maintained during toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance. (II)

57.25(5) Staff shall knock and be acknowledged before entering a resident's room unless the resident is not capable of a response. This shall not apply under emergency conditions. (II)

481—57.26(135C) Communications. Each resident may communicate, associate, and meet privately with persons of the resident's choice, unless to do so would infringe upon the rights of other residents, and may send and receive personal mail unopened. (II)

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57.26(1) Subject to reasonable scheduling restrictions, visiting policies and procedures shall permit residents to receive visits from anyone they wish. Visiting hours shall be posted. (II)

57.26(2) Reasonable, regular visiting hours shall not be less than 12 hours per day and shall take into consideration the special circumstances of each visitor. A particular visitor(s) may be restricted by the facility for one of the following reasons:

- a. The resident refuses to see the visitor(s). (II)
- b. The resident's physician or physician extender documents specific reasons why such a visit would be harmful to the resident's health. (II)
- c. The visitor's behavior is unreasonably disruptive to the functioning of the facility. This judgment must be made by the administrator, and the reasons shall be documented and kept on file. (II)

57.26(3) Decisions to restrict a visitor are reviewed and reevaluated:

- a. Each time the medical orders are reviewed by the physician or physician extender;
- b. At least quarterly by the facility's staff; or
- c. At the resident's request. (II)

57.26(4) Space shall be provided for residents to receive visitors in reasonable comfort and privacy. (II)

57.26(5) Telephones shall be available and accessible for residents to make and receive calls with privacy. Residents who need help shall be assisted in using the telephone. (II)

57.26(6) Arrangements shall be made to provide assistance to residents who require help in reading or sending mail. (II)

57.26(7) Residents, including residents court-ordered to the facility, shall be permitted to leave the facility at reasonable times unless there are justifiable reasons established in writing by court order, the attending physician or physician extender, the interdisciplinary team, or facility administrator for refusing permission. (II)

57.26(8) Residents shall not have their personal lives regulated beyond reasonable adherence to meal schedules, bedtime hours, and other written policies which may be necessary for the orderly management of the facility and as required by these rules. However, residents shall be encouraged to participate in recreational programs. (II)

481—57.27(135C) Resident activities.

57.27(1) Each resident may participate in activities of social, religious, and community groups at the resident's discretion unless contraindicated for reasons documented by the attending physician or physician extender or interdisciplinary team as appropriate in the resident's record. (II)

57.27(2) Residents who wish to meet with or participate in activities of social, religious, or other community groups in or outside of the facility shall be informed, encouraged, and assisted to do so. (II)

481—57.28(135C) Resident property.

57.28(1) Residents shall be permitted to keep reasonable amounts of personal clothing and possessions for their use while in the facility. The facility shall offer the resident the opportunity to have personal property itemized and documented on an inventory sheet upon the resident's admission. The inventory sheet shall be kept in a safe location which is convenient to the resident and shall be updated at least annually. At discharge, residents may sign off on a list of the personal property they are taking with them. (II, III)

57.28(2) The facility shall provide for the safekeeping of personal effects, funds and other property of its residents. The facility may require that items of exceptional value or that would convey unreasonable responsibilities to the licensee be removed from the premises of the facility for safekeeping. (III)

57.28(3) Funds or properties received by the facility, belonging or due a resident, expendable for the resident's account, shall be trust funds. (III)

481—57.29(135C) Financial affairs—management. Each resident who has not been assigned a guardian or conservator by the court may manage the resident's own personal financial affairs. To the

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extent the facility assists in management, under written authorization by the resident, the management shall be carried out in accordance with Iowa Code section 135C.24. (II)

57.29(1) The facility shall maintain a written account of all residents' funds received by or deposited with the facility. (II)

57.29(2) An employee shall be designated in writing to be responsible for resident accounts. (II)

57.29(3) The facility shall keep on deposit personal funds over which the resident has control in accordance with Iowa Code section 135C.24. Should the resident request these funds, they shall be given to the resident on request with receipts maintained by the facility and a copy to the resident. In the case of a resident with impaired decision-making skills, the resident's legal representative shall designate a method of disbursing the resident's funds. (II)

57.29(4) If the facility makes financial transactions on a resident's behalf, the facility must document that it has prepared and sent an itemized accounting of disbursements and current balances at least quarterly. A copy of this statement shall be maintained in the resident's financial or business record. (II)

57.29(5) A resident's personal funds shall not be used without the written consent of the resident or the resident's legal representative. (I, II)

57.29(6) A resident's personal funds shall be returned to the resident when the funds have been used without the written consent of the resident or the resident's legal representative. The department may report findings that resident funds have been used without written consent to the department's investigations division or the local law enforcement agency, as appropriate. (II)

481—57.30(135C) Resident work. No resident may be required to perform services for the facility, except as provided by Iowa Code section 347B.5. (II)

57.30(1) Residents may not be used to provide a source of labor for the facility against their will. Approval by the physician or physician extender is required for all work programs. (I, II)

57.30(2) Residents who perform work for the facility must receive compensation unless the work is part of their approved training program. Persons on the resident census who perform work shall not be used to replace paid employees in fulfilling staffing requirements. (II)

481—57.31(135C) Family—shared rooms. Family members or spouses shall be permitted to share a room, if available, if requested by both parties, unless the attending physician or physician extender of one of the parties documents in the medical record specific reasons why such an agreement would have an adverse effect on the health of the resident. (II)

481—57.32(135C) Resident abuse prohibited. Each resident shall receive kind and considerate care at all times and shall be free from mental, physical, sexual, and verbal abuse, exploitation, neglect, and physical injury. (I, II)

57.32(1) Mental abuse includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation. (I, II)

57.32(2) Physical abuse includes, but is not limited to, corporal punishment and the use of restraints as punishment. (I, II)

57.32(3) Drugs such as tranquilizers shall only be used in accordance with orders of the physician or physician extender. (I, II)

57.32(4) Allegations of dependent adult abuse. Allegations of dependent adult abuse shall be reported and investigated pursuant to Iowa Code chapter 235E and 481—Chapter 52. (I, II, III)

481—57.33(135C) Crisis intervention. If a facility utilizes physical restraints, there shall be written policies that define the uses of physical restraints, designate the administrator or designee as the person who may authorize their use, and establish a mechanism for monitoring and controlling their use. (I, II)

57.33(1) Temporary physical restraint of residents shall be used only under the following conditions: (I, II)

a. An emergency to prevent injury to the resident or to others; or (I, II)

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b. For crisis intervention, but shall not be used for punishment, for the convenience of staff or as a substitution for supervision or programming; (I, II) and

c. No staff person shall use any restraint that obstructs the airway of the resident. (I, II)

57.33(2) Authorization for the use of physical restraints must be prior to or immediately after application of the restraint. (I, II)

57.33(3) Prone restraint is prohibited. Staff persons who find themselves involved in the use of a prone restraint when responding to an emergency must take immediate steps to end the prone restraint. (I, II)

57.33(4) The rationale and authorization for the use of physical restraint and staff action and procedures carried out to protect the resident's rights and to ensure safety shall be clearly set forth in the resident's record by the responsible staff persons. (I, II)

57.33(5) The physician or physician extender, the interdisciplinary team and the resident's responsible party shall be notified of any restraints administered. (I, II, III)

57.33(6) The facility shall provide to the staff a department-approved training program by qualified professionals on physical restraint techniques. (I, II)

a. The facility shall keep a record of training for review by the department and shall include attendance. (II, III)

b. Only staff with documented training in physical restraint and techniques shall be authorized to assist with physical restraint of a resident. (I, II)

c. Under no circumstances shall a resident be allowed to actively or passively assist in the restraint of another resident. (I, II)

57.33(7) Residents shall not be kept behind locked doors. (I, II)

481—57.34(135C) Safety. The licensee of a residential care facility shall be responsible for the provision and maintenance of a safe environment for residents and personnel. (I, II, III)

57.34(1) *Fire safety.*

a. All residential care facilities shall meet the fire safety rules and regulations as promulgated by the state fire marshal. (I, II)

b. The size of the facility and needs of the residents shall be taken into consideration in evaluating safety precautions and practices.

57.34(2) *Safety duties of administrator.* The administrator shall have a written emergency plan to be followed in the event of fire, tornado, explosion, or other emergency. (III)

a. The plan shall be prominently posted in a common area of the building. (III)

b. In-service shall be provided to ensure that all employees are knowledgeable of the emergency plan. (II, III)

57.34(3) *Resident safety.*

a. Smoking shall be prohibited, except as allowed by Iowa Code chapter 142D, the smokefree air Act. (II, III)

b. Whenever full or empty tanks of oxygen are being used or stored, they shall be securely supported in an upright position. (II, III)

c. Residents shall receive adequate supervision to ensure against hazard from themselves, others, or elements in the environment. (I, II, III)

d. Storage areas for cleaning agents, bleaches, insecticides, or any other poisonous, dangerous, or flammable materials shall be locked. Residents permitted to access these materials shall be supervised by staff as identified in the resident's service plan. (I, II, III)

e. Sufficient numbers of noncombustible trash containers with covers shall be available. (III)

f. Residents' personal possessions that may constitute a hazard to residents or others shall be removed and stored. (III)

57.34(4) *First-aid kit.* A first-aid emergency kit shall be available on each floor in every facility. (II, III)

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481—57.35(135C) Housekeeping.

57.35(1) Written procedures shall be established and implemented for daily and weekly cleaning schedules. (III)

57.35(2) Each resident room shall be cleaned on a routine schedule. (III)

57.35(3) All rooms, corridors, storage areas, linen closets, attics, and basements shall be kept in a clean, orderly condition, free of unserviceable furniture and equipment and accumulations of refuse. (II, III)

57.35(4) A hallway or corridor shall not be used for storage of equipment. (II, III)

57.35(5) All odors shall be kept under control by cleanliness and proper ventilation. (III)

57.35(6) Clothing worn by personnel shall be clean and washable. (III)

57.35(7) Housekeeping and maintenance personnel shall be provided with well-constructed and properly maintained equipment appropriate to the function for which it is to be used. (III)

57.35(8) All furniture, bedding, linens, and equipment shall be cleaned periodically and before use by another resident. (II, III)

57.35(9) Polishes used on floors shall provide a nonslip finish. (II, III)

57.35(10) Throw or scatter rugs shall have nonskid backing. (II, III)

57.35(11) Entrances, exits, steps, and outside walkways shall be kept free from ice, snow, and other hazards. (II, III)

481—57.36(135C) Maintenance.

57.36(1) Each facility shall establish a maintenance program to ensure the continued maintenance of the facility, to promote good housekeeping procedures, and to ensure sanitary practices throughout the facility. In facilities with more than 15 beds, the maintenance program shall be established in writing and available for review by the department. (II, III)

57.36(2) The building, grounds, and other buildings shall be maintained in a clean, orderly condition and in good repair. (II, III)

57.36(3) Window treatments and furniture shall be clean and in good repair. (II, III)

57.36(4) Cracks in plaster, peeling wallpaper or paint, and tears or splits in floor coverings shall be promptly repaired or replaced in a professional manner. (II, III)

57.36(5) The electrical systems, including appliances, cords, and switches, shall be maintained to guarantee safe functioning and comply with the National Electric Code. (II, III)

57.36(6) All plumbing fixtures shall function properly and comply with the state plumbing code. (II, III)

57.36(7) Yearly inspections of the heating and cooling systems shall be made to guarantee safe operation. (II, III)

57.36(8) The building, grounds, and other buildings shall be kept free of breeding areas for flies, other insects, and rodents. (II, III)

57.36(9) The facility shall be kept free of flies, other insects, and rodents. (II, III)

57.36(10) Janitor's closet.

a. Facilities shall be provided with storage for cleaning equipment and supplies. (III)

b. Mops, scrub pails, and other cleaning equipment used in the resident areas shall not be stored or used in the dietary area. (III)

c. In facilities licensed for more than 15 beds, a janitor's closet shall be provided. It shall be equipped with water for filling scrub pails and a janitor's sink for emptying scrub pails. (III)

481—57.37(135C) Laundry.

57.37(1) All soiled linens shall be collected and transported to the laundry room in closed, leakproof laundry bags or covered, impermeable containers. (III)

57.37(2) Except for related activities, the laundry room shall not be used for other purposes. (III)

57.37(3) Procedures shall be written for the proper handling of wet, soiled, and contaminated linens. (III)

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57.37(4) Residents' personal laundry shall be marked with an identification if comingled with other residents' personal laundry. (III)

57.37(5) Bed linens, towels, and washcloths shall be clean and stain-free. (III)

57.37(6) If laundry is done in the facility, the following shall be provided:

a. A clean, dry, well-lit area to accommodate a washer and dryer of adequate size to serve the needs of the facility. (III)

b. In facilities with more than 15 beds, the laundry room shall be divided into separate areas, one for sorting soiled linen and one for sorting and folding clean linen. (III)

481—57.38(135C) Garbage and waste disposal.

57.38(1) All garbage shall be gathered, stored, and disposed of in a manner that will not permit transmission of disease, create a nuisance, or provide a breeding or feeding place for vermin or insects. (III)

57.38(2) All containers for refuse shall be watertight and rodent-proof and have tight-fitting covers. (III)

57.38(3) All unlined containers shall be thoroughly cleaned each time the containers are emptied. (III)

57.38(4) All waste shall be properly disposed of in compliance with local ordinances and state codes. (III)

481—57.39(135C) Supplies.

57.39(1) *Linen supplies.*

a. There shall be an adequate supply of linen so that each resident shall have at least three washcloths, hand towels, and bath towels per week. (III)

b. A complete change of bed linens shall be available in the linen storage area for each bed. (III)

c. Sufficient lightweight, clean, serviceable blankets shall be available. All blankets shall be laundered as often as necessary for cleanliness and freedom from odors. (III)

d. Each bed shall be provided with clean, washable bedspreads. There shall be a supply available when changes are necessary. (III)

e. Adequate storage shall be provided for linens, pillows, and bedding. (III)

57.39(2) *Supplies, equipment and storage.*

a. All equipment shall be properly cleaned and sanitized before use by another resident. (III)

b. Clean and sanitary storage shall be provided for equipment and supplies. (III)

c. Each facility shall provide a variety of supplies and equipment of a nature calculated to fit the needs and interests of the residents. (III)

d. Locked storage should be available for potentially dangerous items such as scissors, knives, and toxic materials. (III)

481—57.40(135C) Buildings, furnishings, and equipment.

57.40(1) *Buildings—general requirements.*

a. All windows shall be supplied with window treatments that are kept clean and in good repair. (III)

b. Whenever glass sliding doors or transparent panels are used, they shall be marked conspicuously. (III)

c. The facility shall meet the equivalent requirements of the appropriate group occupancy of the state building code. (III)

57.40(2) *Furnishings and equipment.*

a. All furnishings and equipment shall be durable, cleanable, and appropriate to their function. (III)

b. All resident areas shall be decorated, painted, and furnished to provide a homelike atmosphere. (III)

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c. Upholstery materials shall be moisture- and soil-resistant as needed, except on furniture provided by the resident and the property of the resident. (III)

57.40(3) Dining and living rooms.

a. Every facility shall have a dining room and a living room easily accessible to all residents. (III)

b. Living rooms shall be maintained for the use of residents and their visitors and may be used for recreational activities. Living rooms shall be suitably furnished. (III)

c. Dining rooms shall be furnished with dining tables and chairs appropriate to the size and function of the facility. Dining rooms and furnishings shall be kept clean and sanitary. (III)

57.40(4) Bedrooms.

a. Each resident shall be provided with a standard, single, or twin bed, substantially constructed and in good repair. Rollaway beds, metal cots, or folding beds are not acceptable. (III)

b. Each bed shall be equipped with the following: casters or glides; clean springs in good repair; a clean, comfortable, well-constructed mattress approximately five inches thick and standard in size for the bed; and clean, comfortable pillows of average bed size. (III)

c. Each resident shall have a bedside table with a drawer to accommodate personal possessions. (III)

d. There shall be a comfortable chair, either a rocking chair or armchair, per resident bed. The resident's personal wishes shall be considered. (III)

e. There shall be drawer space for each resident's clothing. In a bedroom in which more than one resident resides, drawer space shall be assigned to each resident. (III)

f. Beds and other furnishings shall not obstruct free passage to and through doorways. (III)

g. Beds shall not be placed in such a manner that the side of the bed is against the radiator or in close proximity to it unless the radiator is covered so as to protect the resident from contact with it or from excessive heat. (III)

h. There shall be no more than four residents per room. (III)

57.40(5) Bath and toilet facilities.

a. All sinks shall have paper towel dispensers and an available supply of soap. (III)

b. Toilet paper shall be readily available to residents. (III)

57.40(6) Heating. A centralized heating system shall be maintained in good working order and capable of maintaining a comfortable temperature for residents of the facility. Portable units or space heaters are prohibited from being used in the facility except in an emergency. (II, III)

57.40(7) Water supply.

a. Private sources of water supply shall be tested annually and the report made available for review by the department upon request. (III)

b. A bacterially unsafe source of water supply shall be grounds for denial, suspension, or revocation of license. (III)

c. The department may require testing of private sources of water supply at its discretion in addition to the annual test. The facility shall supply reports of such tests as directed by the department. (III)

d. Hot and cold running water under pressure shall be available in the facility. (II, III)

e. Prior to construction of a new facility or new water source, private sources of water supply shall be surveyed and shall comply with the requirements of the department. (III)

481—57.41(135C) Family and employee accommodations.

57.41(1) In facilities where the total occupancy of family, employees, and residents is more than five, separate bathing and toilet facilities shall be required for the family or employees distinct from such areas provided for the residents. (III)

57.41(2) In all facilities, if the family or employees live within the facility, separate living quarters and recreation facilities shall be required for the family or employees distinct from such areas provided for the residents. (III)

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481—57.42(135C) Animals. No animals shall be allowed to reside in the facility except with written approval of the department and under controlled conditions. (II, III)

481—57.43(135C) Another business or activity in a facility. A facility is allowed to have another business or activity in a health care facility or in the same physical structure of the facility, if the other business or activity is under the control of and is directly related to and incidental to the operation of the health care facility, or the business or activity is approved by the department and the state fire marshal. (I, II, III)

57.43(1) To obtain the approval of the department and the state fire marshal, the facility must submit to the department a written request for approval which identifies the service(s) to be offered by the business and addresses the factors outlined in paragraphs 57.43(2) “a” through “j.” (I, II, III)

57.43(2) The following factors will be considered by the department in determining whether a business or activity will interfere with the use of the facility by residents, interfere with services provided to residents, or be disturbing to residents:

- a. Health and safety risks for residents;
- b. Compatibility of the proposed business or activity with the facility program;
- c. Noise created by the proposed business or activity;
- d. Odors created by the proposed business or activity;
- e. Use of entrances and exits for the business or activity in regard to safety and disturbance of residents and interference with delivery of services;
- f. Use of the facility’s corridors or rooms as thoroughfares to the business or activity in regard to safety and disturbance of residents and interference with delivery of services;
- g. Proposed staffing for the business or activity;
- h. Sharing of services and staff between the proposed business or activity and the facility;
- i. Facility layout and design; and
- j. Parking area utilized by the business or activity.

57.43(3) Approval of the state fire marshal shall be obtained before approval of the department will be considered.

57.43(4) A business or activity conducted in a health care facility or in the same physical structure as a health care facility shall not reduce space, services or staff available to residents below minimums required in these rules and 481—Chapter 60. (I, II, III)

481—57.44(135C) Respite care services. “Respite care services” means an organized program of temporary supportive care provided for 24 hours or more to a person in order to relieve the usual caregiver of the person from providing continual care to the person. “Respite care services” does not include crisis stabilization services provided pursuant to 2014 Iowa Acts, chapter 1044 (to be codified at Iowa Code section 225C.19A). “Respite care individual” means a person receiving respite care services. A residential care facility which chooses to provide respite care services must meet the following requirements related to respite services and must be licensed as a residential care facility. (II, III)

57.44(1) Length of stay. Respite care may be provided for no more than 30 consecutive days and for a total of no more than 60 days in a consecutive 12-month period. The 12-month period begins on the first day of the respite care individual’s stay at the facility. (II, III)

57.44(2) No separate license. A residential care facility which chooses to provide respite care services is not required to obtain a separate license or pay a license fee.

57.44(3) Involuntary termination of respite services. The facility may terminate the respite services for a respite care individual. Rule 481—57.14(135C) shall not apply. The facility shall make proper arrangements for the welfare of the respite care individual prior to involuntary termination of respite services, including notification of the respite care individual’s family or legal representative. (II, III)

57.44(4) Contract. Pursuant to rule 481—57.15(135C), the facility shall have a contract with each resident in the facility. When an individual is there for respite care services, the contract shall specify the time period during which the individual will be considered to be receiving respite care services. At the end of that period, the contract may be amended to extend that period of time. The contract shall

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specifically state that respite care services may be involuntarily terminated. The contract shall meet other requirements under rule 481—57.15(135C), except the requirements under subrule 57.15(7). (II, III)

57.44(5) Admission as a resident.

a. An individual being cared for under a respite care contract shall not be considered an admission to the facility.

b. A respite care individual shall be included in the facility's census.

c. The facility shall not enter into multiple 30-day contracts with an individual being cared for under a respite care contract in order to lengthen the individual's stay at the facility. (II, III)

d. If an individual being cared for under a respite care contract remains in the facility beyond 30 consecutive days and is eligible for admission, the department shall consider the individual a resident in the facility. The facility shall follow all requirements for the individual's admission to the facility. (II, III)

57.44(6) Level of care. Respite care services shall not be provided by a health care facility to persons requiring a level of care which is higher than the level of care the facility is licensed to provide. (I, II, III)

57.44(7) Reporting requirements. The reporting requirements of rule 481—50.7(135C) shall apply to residents being cared for under a respite care contract. (I, II, III)

These rules are intended to implement Iowa Code section 135C.14.

ARC 1648C**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 58, “Nursing Facilities,” Chapter 62, “Residential Care Facilities for Persons With Mental Illness (RCF/PMI),” Chapter 63, “Residential Care Facilities for the Intellectually Disabled,” Chapter 64, “Intermediate Care Facilities for the Intellectually Disabled,” and Chapter 65, “Intermediate Care Facilities for Persons With Mental Illness (ICF/PMI),” Iowa Administrative Code.

These technical amendments update and clarify provisions related to involuntary discharge or transfer of residents in facilities licensed pursuant to Iowa Code chapter 135C.

The Department does not believe that the proposed amendments impose any financial hardship on any regulated entity, body, or individual.

The State Board of Health initially reviewed the proposed amendments at its September 10, 2014, meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 21, 2014. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)242-6863; or e-mailed to david.werning@dia.iowa.gov.

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

These amendments are intended to implement Iowa Code section 135C.14.

The following amendments are proposed.

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ITEM 1. Rescind rule 481—58.40(135C) and adopt the following **new** rule in lieu thereof:

481—58.40(135C) Involuntary discharge or transfer.

58.40(1) *Involuntary discharge or transfer permitted.* A facility may involuntarily discharge or transfer a resident for only one of the following reasons:

- a. Medical reasons;
- b. The resident's welfare or that of other residents;
- c. Nonpayment for the resident's stay, as described in the contract for the resident's stay;
- d. Due to action pursuant to Iowa Code chapter 229;
- e. By reason of negative action by the Iowa department of human services; or
- f. By reason of negative action by the quality improvement organization (QIO). (I, II, III)

58.40(2) *Medical reasons.* Medical reasons for transfer or discharge shall be based on the resident's needs and shall be determined and documented in the resident's record by the attending physician. Transfer or discharge may be required in order to provide a different level of care to the resident. (II)

58.40(3) *Welfare of a resident.* Welfare of a resident or that of other residents refers to a resident's social, emotional, or physical well-being. A resident may be transferred or discharged because the resident's behavior poses a continuing threat to the resident (e.g., suicidal) or to the well-being of other residents or staff (e.g., the resident's behavior is incompatible with other residents' needs and rights). Written documentation that the resident's continued presence in the facility would adversely affect the resident's own welfare or that of other residents shall be made by the administrator or designee and shall include specific information to support this determination. (II)

58.40(4) *Involuntary discharge or transfer prohibited—payment source.* A resident shall not be transferred or discharged solely because the cost of the resident's care is being paid under Iowa Code chapter 249A or because the resident's source of payment is changing from private support to payment under Iowa Code chapter 249A. (I, II)

58.40(5) *Notice.* Involuntary transfer or discharge of a resident from a facility shall be preceded by a written notice to the resident and the responsible party. (II, III)

- a. The notice shall contain all of the following information:
 - (1) The stated reason for the proposed transfer or discharge. (II)
 - (2) The effective date of the proposed transfer or discharge. (II)
 - (3) A statement, in not less than 12-point type, that reads as follows:

You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing, in writing or verbally, with the Iowa department of inspections and appeals (hereinafter referred to as "department") within 7 days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after the department's receipt of your request and you will not be transferred before a final decision is rendered. Extension of the 14-day requirement may be permitted in emergency circumstances upon request to the department's designee. If you lose the hearing, you will not be transferred before the expiration of either (1) 30 days following your receipt of the original notice of the discharge or transfer, or (2) 5 days following final decision of such hearing, including the exhaustion of all appeals, whichever occurs later. To request a hearing or receive further information, call the department at (515)281-4115, or write to the department to the attention of: Administrator, Division of Health Facilities, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. (II)

- b. The notice shall be personally delivered to the resident and a copy placed in the resident's record. A copy shall also be transmitted to the department; the resident's responsible party; the resident's physician; the person or agency responsible for the resident's placement, maintenance, and care in the facility; and the department on aging's office of the long-term care ombudsman. The notice shall indicate that copies have been transmitted to the required parties by using the abbreviation "cc:" and listing the names of all parties to whom copies were sent.

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c. The notice required by paragraph 58.40(5) “*a*” shall be provided at least 30 days in advance of the proposed transfer or discharge unless one of the following occurs:

(1) An emergency transfer or discharge is mandated by the resident’s health care needs and is in accordance with the written orders and medical justification of the attending physician. Emergency transfers or discharges may also be mandated in order to protect the health, safety, or well-being of other residents and staff from the resident being transferred. (II)

(2) The transfer or discharge is subsequently agreed to by the resident or the resident’s responsible party, and notification is given to the responsible party, the resident’s physician, and the person or agency responsible for the resident’s placement, maintenance, and care in the facility.

(3) The discharge or transfer is the result of a final, nonappealable decision by the department of human services or the QIO.

d. A hearing requested pursuant to this subrule shall be held in accordance with subrule 58.40(7).

58.40(6) *Emergency transfer or discharge.* In the case of an emergency transfer or discharge, the resident must be given a written notice prior to or within 48 hours following the transfer or discharge. (II, III)

a. A copy of this notice shall be placed in the resident’s file. The notice shall contain all of the following information:

(1) The stated reason for the transfer or discharge. (II)

(2) The effective date of the transfer or discharge. (II)

(3) A statement, in not less than 12-point type, that reads as follows:

You have a right to appeal the facility’s decision to transfer or discharge you on an emergency basis. If you think you should not have to leave this facility, you may request a hearing, in writing or verbally, with the Iowa department of inspections and appeals (hereinafter referred to as “department”) within 7 days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after the department’s receipt of your request. You may be transferred or discharged before the hearing is held or before a final decision is rendered. If you win the hearing, you have the right to be transferred back into the facility. To request a hearing or receive further information, call the department at (515)281-4115, or write to the department to the attention of: Administrator, Division of Health Facilities, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. (II)

b. The notice shall be personally delivered to the resident and a copy placed in the resident’s record. A copy shall also be transmitted to the department; the resident’s responsible party; the resident’s physician; the person or agency responsible for the resident’s placement, maintenance, and care in the facility; and the department on aging’s office of the long-term care ombudsman. The notice shall indicate that copies have been transmitted to the required parties by using the abbreviation “cc:” and listing the names of all parties to whom copies were sent.

c. A hearing requested pursuant to this subrule shall be held in accordance with subrule 58.40(7).

58.40(7) *Hearing.*

a. Request for hearing.

(1) The resident must request a hearing within 7 days of receipt of the written notice.

(2) The request must be made to the department, either in writing or verbally.

b. The hearing shall be held no later than 14 days after the department’s receipt of the request unless the resident requests an extension due to emergency circumstances.

c. Except in the case of an emergency discharge or transfer, a request for a hearing shall stay a transfer or discharge pending a final decision, including the exhaustion of all appeals. (II)

d. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and 481—Chapter 10. The hearing shall be public unless the resident or resident’s legal representative requests in writing that the hearing be closed. In a determination as to whether a transfer or discharge is authorized, the burden of proof by a preponderance of the evidence rests on the party requesting the transfer or discharge.

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e. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the facility, the resident, the responsible party, and the office of the long-term care ombudsman not later than 5 full business days after the department's receipt of the request. The notice shall also inform the facility and the resident or the responsible party that they have a right to appear at the hearing in person or be represented by an attorney or other individual. The appeal 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 office of the long-term care ombudsman shall have the right to appear at the hearing.

f. The administrative law judge's written decision shall be mailed by certified mail to the facility, resident, responsible party, and the office of the long-term care ombudsman within 10 working days after the hearing has been concluded.

g. If the basis for an involuntary transfer or discharge is the result of a negative action by the Iowa department of human services or the QIO, an appeal shall be filed with those agencies as appropriate. Continued payment shall be consistent with rules of those agencies.

58.40(8) *Nonpayment.* If nonpayment is the basis for involuntary transfer or discharge, the resident shall have the right to make full payment up to the date that the discharge or transfer is to be made and then shall have the right to remain in the facility. (II)

58.40(9) *Discussion of involuntary transfer or discharge.* Within 48 hours after notice of involuntary transfer or discharge has been received by the resident, the facility shall discuss the involuntary transfer or discharge with the resident, the resident's responsible party, and the person or agency responsible for the resident's placement, maintenance, and care in the facility. (II)

a. The facility administrator or other appropriate facility representative serving as the administrator's designee shall provide an explanation and discussion of the reasons for the resident's involuntary transfer or discharge. (II)

b. The content of the explanation and discussion shall be summarized in writing, shall include the names of the individuals involved in the discussion, and shall be made part of the resident's record. (II)

c. The provisions of this subrule do not apply if the involuntary transfer or discharge has already occurred pursuant to subrule 58.40(6) and emergency notice is provided within 48 hours.

58.40(10) *Transfer or discharge planning.*

a. The facility shall develop a plan to provide for the orderly and safe transfer or discharge of each resident to be transferred or discharged. (II)

b. To minimize the possible adverse effects of the involuntary transfer, the resident shall receive counseling services by the sending facility before the involuntary transfer and by the receiving facility after the involuntary transfer. Counseling shall be documented in the resident's record. (II)

c. The counseling requirement in paragraph 58.40(10) "b" does not apply if the discharge has already occurred pursuant to subrule 58.40(6) and emergency notice is provided within 48 hours.

d. Counseling, if required, shall be provided by a qualified individual who meets one of the following criteria:

(1) Has a bachelor's or master's degree in social work from an accredited college. (II)

(2) Is a graduate of an accredited four-year college and has had at least one year of full-time paid employment in a social work capacity with a public or private agency. (II)

(3) Has been employed in a social work capacity for a minimum of four years in a public or private agency. (II)

(4) Is a licensed psychologist or psychiatrist. (II)

(5) Is any other person of the resident's choice. (II)

e. The health care facility that receives a resident who has been involuntarily transferred shall immediately formulate and implement a plan of care which takes into account possible adverse effects the transfer may cause. (II)

58.40(11) *Transfer upon revocation of license or voluntary closure.* Residents shall not have the right to a hearing to contest an involuntary discharge or transfer resulting from the revocation of the facility's license by the department of inspections and appeals. In the case of the voluntary closure of a facility, a period of 30 days must be allowed for an orderly transfer of residents to other facilities.

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58.40(12) Intrafacility transfer.

a. Residents shall not be arbitrarily relocated from room to room within a licensed health care facility. (I, II) Involuntary relocation may occur only in the following situations, which shall be documented in the resident's record: (II)

- (1) Resident's incompatibility with or disturbance to other roommates.
- (2) For the welfare of the resident or other residents of the facility.
- (3) For medical, nursing or psychosocial reasons, as judged by the attending physician, nurse or social worker in the case of a facility which groups residents by medical, nursing or psychosocial needs.
- (4) To allow a new admission to the facility that would otherwise not be possible due to separation of roommates by sex.
- (5) In the case of a resident whose source of payment was previously private, but who now is eligible for Title XIX (Medicaid) assistance, the resident may be transferred from a private room to a semiprivate room or from one semiprivate room to another.

(6) Reasonable and necessary administrative decisions regarding the use and functioning of the building.

b. Unreasonable and unjustified reasons for changing a resident's room without the concurrence of the resident or responsible party include:

- (1) Change from private pay status to Title XIX, except as outlined in subparagraph 58.40(12)"a"(5). (II)
- (2) As punishment or behavior modification, except as specified in subparagraph 58.40(12)"a"(1). (II)
- (3) Discrimination on the basis of race or religion. (II)

c. If intrafacility relocation is necessary for reasons outlined in paragraph 58.40(12)"a," the resident shall be notified at least 48 hours prior to the transfer and the reason therefor shall be explained. The responsible party shall be notified as soon as possible. The notification shall be documented in the resident's record and signed by the resident or responsible party. (II)

d. If emergency relocation is required in order to protect the safety or health of the resident or other residents, the notification requirements may be waived. The conditions of the emergency shall be documented. The family or responsible party shall be notified immediately or as soon as possible of the condition that necessitates emergency relocation, and such notification shall be documented. (II)

e. A transfer to a part of a facility that has a different license must be handled the same way as a transfer to another facility and not as an intrafacility transfer. (II, III)

ITEM 2. Amend subrule 62.14(1), introductory paragraph, as follows:

62.14(1) Discharge plan. The decision to discharge a person and the plan for doing so shall be established through the participation of the resident, members of the interdisciplinary team and other resource personnel as appropriate for the welfare of the individual. (II, III)

ITEM 3. Amend paragraph **62.14(1)"c"** as follows:

c. Notification shall be made to the ~~next of kin~~ resident's family, the resident's legal ~~representative guardian~~, attending physician, and sponsoring agency, if any, prior to transfer or discharge of any resident. (III)

ITEM 4. Amend paragraph **62.14(1)"d"** as follows:

d. Proper arrangements shall be made for the welfare of the resident prior to the transfer or discharge in the event of an emergency or inability to reach the ~~next of kin~~ resident's family or the resident's legal ~~representative guardian~~. (III)

ITEM 5. Amend paragraph **62.14(1)"e"** as follows:

e. The licensee shall not refuse to discharge or transfer a resident when directed by the physician, resident, legal ~~representative guardian~~, or court. (II, III)

ITEM 6. Adopt the following **new** paragraph **62.14(2)"e"**:

e. A transfer to a part of a facility that has a different license must be handled in the same way as a transfer to another facility and not as an intrafacility transfer. (II, III)

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ITEM 7. Rescind subrule 62.14(3) and adopt the following **new** subrule in lieu thereof:

62.14(3) *Involuntary discharge or transfer permitted.* A facility may involuntarily discharge or transfer a resident for only one of the following reasons:

- a. Medical reasons, based on the resident's needs and determined and documented in the resident's record by the attending physician;
- b. The resident's social, emotional or physical well-being or that of other residents, as documented by the administrator or designee with specific information to support the determination that the resident's continued presence in the facility would adversely affect the resident's own well-being or that of other residents;
- c. Due to action pursuant to Iowa Code chapter 229; or
- d. Nonpayment for the resident's stay, as described in the admission agreement for the resident's stay. (I, II, III)

ITEM 8. Rescind subrule 62.14(4) and adopt the following **new** subrule in lieu thereof:

62.14(4) *Involuntary transfer or discharge—written notice.* Involuntary transfer or discharge of a resident from a facility shall be preceded by a written notice to the resident or the resident's family or resident's legal guardian. (II, III)

- a. The notice shall contain all of the following information:
 - (1) The stated reason for the proposed transfer or discharge. (II)
 - (2) The effective date of the proposed transfer or discharge. (II)
 - (3) A statement, in not less than 12-point type, that reads as follows:

You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa department of inspections and appeals (hereinafter referred to as "department") within 7 days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after the department's receipt of your request and you will not be transferred before a final decision is rendered. In emergency circumstances, provision may be made for extension of the 14-day requirement upon request to the department designee. If you lose the hearing, you will not be transferred before the expiration date of either (1) 30 days following your receipt of the original notice of the discharge or transfer, or (2) no sooner than 5 days following final decision of such hearing, including the exhaustion of all appeals, whichever occurs later. To request a hearing or receive further information, call the department at (515)281-4115, or you may write to the department to the attention of: Administrator, Division of Health Facilities, Iowa Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319. (II)

- b. The notice shall be personally delivered to the resident and a copy placed in the resident's record. A copy shall also be transmitted to the department, the resident's legal guardian, physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility. The notice shall indicate that copies have been transmitted to the required parties by using the abbreviation "cc:" and listing the names of all parties to whom copies were sent. (II)

- c. The notice required by paragraph 62.14(4) "a" shall be provided at least 30 days in advance of the proposed transfer or discharge unless one of the following occurs:

- (1) An emergency transfer or discharge is mandated by the resident's health care needs and is in accordance with the written orders and medical justification of the attending physician. Emergency transfers or discharges may also be mandated in order to protect the health, safety, or well-being of other residents and staff. (II)

- (2) The transfer or discharge is subsequently agreed to by the resident or the resident's legal guardian, and notification is given to the legal guardian, the resident's physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility. (II)

- d. A hearing requested pursuant to this subrule shall be held in accordance with subrule 62.14(6).

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ITEM 9. Adopt the following **new** subrules 62.14(5) to 62.14(10):

62.14(5) *Involuntary transfer or discharge—emergency transfer or discharge.* In the case of an emergency transfer or discharge, the resident must be given a written notice prior to or within 48 hours following the transfer or discharge. (II, III)

a. A copy of this notice must be placed in the resident's file. The notice must contain all of the following information:

- (1) The stated reason for the transfer or discharge. (II)
- (2) The effective date of the transfer or discharge. (II)
- (3) A statement, in not less than 12-point type, that reads:

You have a right to appeal the facility's decision to transfer or discharge you on an emergency basis. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa department of inspections and appeals within 7 days after receiving this notice. You have the right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after the department's receipt of your request. You may be transferred or discharged before the hearing is held or before a final decision is rendered. If you win the hearing, you have the right to be transferred back into the facility. To request a hearing or receive further information, call the department at (515)281-4115, or write to the department to the attention of: Administrator, Division of Health Facilities, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. (II)

b. The notice shall be personally delivered to the resident, and a copy shall be placed in the resident's record. A copy shall also be transmitted to the department, the resident's legal guardian, the resident's physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility. The notice shall indicate that copies have been transmitted to the required parties by using the abbreviation "cc:" and listing the names of all parties to whom copies were sent.

c. A hearing requested pursuant to this subrule shall be held in accordance with subrule 62.14(6).

62.14(6) *Involuntary transfer or discharge—hearing.*

a. Request for hearing.

- (1) The resident must request a hearing within 7 days of receiving written notice.
- (2) The request must be made to the department, either in writing or verbally.

b. The hearing shall be held no later than 14 days after the department's receipt of the request unless the resident requests an extension due to emergency circumstances.

c. Except in the case of an emergency discharge or transfer, a request for a hearing shall stay a transfer or discharge pending a final decision, including the exhaustion of all appeals. (II)

d. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and 481—Chapter 10. The hearing shall be public unless the resident or representative requests in writing that the hearing be closed. In a determination as to whether a transfer or discharge is authorized, the burden of proof by a preponderance of evidence rests on the party requesting the transfer or discharge.

e. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the facility, the resident and the resident's legal guardian not later than 5 full business days after the department's receipt of the request. The notice shall also inform the facility and the resident or the resident's legal guardian that they have a right to appear at the hearing in person or be represented by an attorney or other individual. The appeal 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.

f. The administrative law judge's written decision shall be sent by certified mail to the facility, resident, and resident's legal guardian within 10 working days after the hearing has been concluded.

62.14(7) *Nonpayment.* If nonpayment is the basis for involuntary transfer or discharge, the resident shall have the right to make full payment up to the date that the discharge or transfer is to be made and then shall have the right to remain in the facility. (II)

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62.14(8) *Discussion of involuntary transfer or discharge.* Within 48 hours after notice of involuntary transfer or discharge has been received by the resident, the facility shall discuss the involuntary transfer or discharge with the resident, the resident's legal guardian, and the person or agency responsible for the resident's placement, maintenance, and care in the facility. (II)

a. The facility administrator or other appropriate facility representative serving as the administrator's designee shall provide an explanation and discussion of the reasons for the resident's involuntary transfer or discharge. (II)

b. The content of the explanation and discussion shall be summarized in writing, shall include the names of the individuals involved in the discussion, and shall be made part of the resident's record. (II)

c. The provisions of this subrule do not apply if the involuntary transfer or discharge has already occurred pursuant to subrule 62.14(5) and emergency notice is provided within 48 hours.

62.14(9) *Involuntary discharge or transfer—transfer or discharge planning.*

a. The facility shall develop a plan to provide for the orderly and safe transfer or discharge of each resident to be transferred or discharged. (II)

b. To minimize the possible adverse effects of the involuntary transfer, the resident shall receive counseling services by the sending facility before the involuntary transfer and by the receiving facility after the involuntary transfer. Counseling shall be documented in the resident's record. (II)

c. The counseling requirement in paragraph 62.14(9) "b" does not apply if the discharge has already occurred pursuant to subrule 62.14(5) and emergency notice is provided within 48 hours.

d. Counseling, if required, shall be provided by a qualified individual who meets one of the following criteria:

(1) Has a bachelor's or master's degree in social work from an accredited college. (II)

(2) Is a graduate of an accredited four-year college and has had at least one year of full-time paid employment in a social work capacity with a public or private agency. (II)

(3) Has been employed in a social work capacity for a minimum of four years in a public or private agency. (II)

(4) Is a licensed psychologist or psychiatrist. (II)

(5) Is any other person of the resident's choice. (II)

e. The health care facility that receives a resident who has been involuntarily transferred shall immediately formulate and implement a plan of care which takes into account possible adverse effects the transfer may cause. (II)

62.14(10) *Transfer upon revocation of license or voluntary closure.* Residents shall not have the right to a hearing to contest an involuntary discharge or transfer resulting from the revocation of the facility's license by the department of inspections and appeals. In the case of the voluntary closure of a facility, a period of 30 days must be allowed for an orderly transfer of residents to other facilities.

ITEM 10. Amend rule ~~481—62.14(135C)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~sections section~~ section 135C.14(8), ~~135C.31, 135C.43, and 135C.46.~~

ITEM 11. Rescind rule ~~481—63.34(135C)~~ and adopt the following **new** rule in lieu thereof:

481—63.34(135C) Involuntary discharge or transfer.

63.34(1) *Involuntary discharge or transfer permitted.* A facility may involuntarily discharge or transfer a resident for only one of the following reasons:

a. Medical reasons;

b. The resident's welfare or that of other residents;

c. Nonpayment for the resident's stay, as described in the contract for the resident's stay; or

d. Due to action pursuant to Iowa Code chapter 229. (I, II, III)

63.34(2) *Medical reasons.* Medical reasons for transfer or discharge shall be based on the resident's needs and shall be determined and documented in the resident's record by the attending physician. Transfer or discharge may be required in order to provide a different level of care to the resident. (II)

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63.34(3) *Welfare of a resident.* Welfare of a resident or that of other residents refers to a resident's social, emotional, or physical well-being. A resident may be transferred or discharged because the resident's behavior poses a continuing threat to the resident (e.g., suicidal) or to the well-being of other residents or staff (e.g., the resident's behavior is incompatible with other residents' needs and rights). Written documentation that the resident's continued presence in the facility would adversely affect the resident's own welfare or that of other residents shall be made by the administrator or designee and shall include specific information to support this determination. (II)

63.34(4) *Involuntary discharge or transfer prohibited—payment source.* A resident shall not be transferred or discharged solely because the cost of the resident's care is being paid under Iowa Code chapter 249A or because the resident's source of payment is changing from private support to payment under Iowa Code chapter 249A. (I, II)

63.34(5) *Notice.* Involuntary transfer or discharge of a resident from a facility shall be preceded by a written notice to the resident and the responsible party. (II, III)

a. The notice shall contain all of the following information:

- (1) The stated reason for the proposed transfer or discharge. (II)
- (2) The effective date of the proposed transfer or discharge. (II)
- (3) A statement, in not less than 12-point type, that reads as follows:

You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing, in writing or verbally, with the Iowa department of inspections and appeals (hereinafter referred to as "department") within 7 days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after the department's receipt of your request and you will not be transferred before a final decision is rendered. Extension of the 14-day requirement may be permitted in emergency circumstances upon request to the department's designee. If you lose the hearing, you will not be transferred before the expiration of either (1) 30 days following your receipt of the original notice of the discharge or transfer, or (2) no sooner than 5 days following final decision of such hearing, including the exhaustion of all appeals, whichever occurs later. To request a hearing or receive further information, call the department at (515)281-4115, or write to the department to the attention of: Administrator, Division of Health Facilities, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. (II)

b. The notice shall be personally delivered to the resident, and a copy shall be placed in the resident's record. A copy shall also be transmitted to the department, the resident's responsible party, the resident's physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility. The notice shall indicate that copies have been transmitted to the required parties by using the abbreviation "cc:" and listing the names of all parties to whom copies were sent.

c. The notice required by paragraph 63.34(5) "a" shall be provided at least 30 days in advance of the proposed transfer or discharge unless one of the following occurs:

(1) An emergency transfer or discharge is mandated by the resident's health care needs and is in accordance with the written orders and medical justification of the attending physician. Emergency transfers or discharges may also be mandated in order to protect the health, safety, or well-being of other residents and staff from the resident being transferred. (II)

(2) The transfer or discharge is subsequently agreed to by the resident or the resident's responsible party, and notification is given to the responsible party, the resident's physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility.

d. A hearing requested pursuant to this subrule shall be held in accordance with subrule 63.34(7).

63.34(6) *Emergency transfer or discharge.* In the case of an emergency transfer or discharge, the resident must be given a written notice prior to or within 48 hours following the transfer or discharge. (II, III)

a. A copy of this notice shall be placed in the resident's file. The notice shall contain all of the following information:

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- (1) The stated reason for the transfer or discharge. (II)
- (2) The effective date of the transfer or discharge. (II)
- (3) A statement, in not less than 12-point type, that reads as follows:

You have a right to appeal the facility's decision to transfer or discharge you on an emergency basis. If you think you should not have to leave this facility, you may request a hearing, in writing or verbally, with the Iowa department of inspections and appeals (hereinafter referred to as "department") within 7 days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after the department's receipt of your request. You may be transferred or discharged before the hearing is held or before a final decision is rendered. If you win the hearing, you have the right to be transferred back into the facility. To request a hearing or receive further information, call the department at (515)281-4115, or write to the department to the attention of: Administrator, Division of Health Facilities, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. (II)

b. The notice shall be personally delivered to the resident, and a copy shall be placed in the resident's record. A copy shall also be transmitted to the department; the resident's responsible party; the resident's physician; and the person or agency responsible for the resident's placement, maintenance, and care in the facility. The notice shall indicate that copies have been transmitted to the required parties by using the abbreviation "cc:" and listing the names of all parties to whom copies were sent.

c. A hearing requested pursuant to this subrule shall be held in accordance with subrule 63.34(7).

63.34(7) Hearing.

a. Request for hearing.

- (1) The resident must request a hearing within 7 days of receipt of written notice.
- (2) The request must be made to the department, either in writing or verbally.

b. The hearing shall be held no later than 14 days after the department's receipt of the request unless the resident requests an extension due to emergency circumstances.

c. Except in the case of an emergency discharge or transfer, a request for a hearing shall stay a transfer or discharge pending a final decision, including the exhaustion of all appeals. (II)

d. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and 481—Chapter 10. The hearing shall be public unless the resident or representative requests in writing that the hearing be closed. In a determination as to whether a transfer or discharge is authorized, the burden of proof by a preponderance of the evidence rests on the party requesting the transfer or discharge.

e. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the facility, the resident, and the responsible party not later than 5 full business days after the department's receipt of the request. The notice shall also inform the facility and the resident or the responsible party that they have a right to appear at the hearing in person or be represented by an attorney or other individual. The appeal 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.

f. The administrative law judge's written decision shall be sent by certified mail to the facility, resident, and responsible party within 10 working days after the hearing has been concluded.

63.34(8) Nonpayment. If nonpayment is the basis for involuntary transfer or discharge, the resident shall have the right to make full payment up to the date that the discharge or transfer is to be made and then shall have the right to remain in the facility. (II)

63.34(9) Discussion of involuntary transfer or discharge. Within 48 hours after notice of involuntary transfer or discharge has been received by the resident, the facility shall discuss the involuntary transfer or discharge with the resident, the resident's responsible party, and the person or agency responsible for the resident's placement, maintenance, and care in the facility. (II)

a. The facility administrator or other appropriate facility representative serving as the administrator's designee shall provide an explanation and discussion of the reasons for the resident's involuntary transfer or discharge. (II)

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b. The content of the explanation and discussion shall be summarized in writing, shall include the names of the individuals involved in the discussion, and shall be made part of the resident's record. (II)

c. The provisions of this subrule do not apply if the involuntary transfer or discharge has already occurred pursuant to subrule 63.34(6) and emergency notice is provided within 48 hours.

63.34(10) *Transfer or discharge planning.*

a. The facility shall develop a plan to provide for the orderly and safe transfer or discharge of each resident to be transferred or discharged. (II)

b. To minimize the possible adverse effects of the involuntary transfer, the resident shall receive counseling services by the sending facility before the involuntary transfer and by the receiving facility after the involuntary transfer. Counseling shall be documented in the resident's record. (II)

c. The counseling requirement in paragraph 63.34(10) "b" does not apply if the discharge has already occurred pursuant to subrule 63.34(6) and emergency notice is provided within 48 hours.

d. Counseling, if required, shall be provided by a qualified individual who meets one of the following criteria:

(1) Has a bachelor's or master's degree in social work from an accredited college. (II)

(2) Is a graduate of an accredited four-year college and has had at least one year of full-time paid employment in a social work capacity with a public or private agency. (II)

(3) Has been employed in a social work capacity for a minimum of four years in a public or private agency. (II)

(4) Is a licensed psychologist or psychiatrist. (II)

(5) Is any other person of the resident's choice. (II)

e. The health care facility that receives a resident who has been involuntarily transferred shall immediately formulate and implement a plan of care which takes into account possible adverse effects the transfer may cause. (II)

63.34(11) *Transfer upon revocation of license or voluntary closure.* Residents shall not have the right to a hearing to contest an involuntary discharge or transfer resulting from the revocation of the facility's license by the department of inspections and appeals. In the case of the voluntary closure of a facility, a period of 30 days must be allowed for an orderly transfer of residents to other facilities.

63.34(12) *Intrafacility transfer.*

a. Residents shall not be arbitrarily relocated from room to room within a licensed health care facility. (I, II) Involuntary relocation may occur only in the following situations, which shall be documented in the resident's record: (II)

(1) A resident's incompatibility with or disturbance to other roommates.

(2) For the welfare of the resident or other residents of the facility.

(3) For medical, nursing or psychosocial reasons, as judged by the attending physician, nurse or social worker in the case of a facility which groups residents by medical, nursing or psychosocial needs.

(4) To allow a new admission to the facility that would otherwise not be possible due to separation of roommates by sex.

(5) In the case of a resident whose source of payment was previously private but who now is eligible for Title XIX (Medicaid) assistance, the resident may be transferred from a private room to a semiprivate room or from one semiprivate room to another.

(6) Reasonable and necessary administrative decisions regarding the use and functioning of the building.

b. Unreasonable and unjustified reasons for changing a resident's room without the concurrence of the resident or responsible party include:

(1) Change from private pay status to Title XIX, except as outlined in subparagraph 63.34(12) "a" (5). (II)

(2) As punishment or behavior modification, except as specified in subparagraph 63.34(12) "a" (1). (II)

(3) Discrimination on the basis of race or religion. (II)

c. If intrafacility relocation is necessary for reasons outlined in paragraph 63.34(12) "a," the resident shall be notified at least 48 hours prior to the transfer and the reason therefor shall be explained.

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The responsible party shall be notified as soon as possible. The notification shall be documented in the resident's record and signed by the resident or responsible party. (II)

d. If emergency relocation is required in order to protect the safety or health of the resident or other residents, the notification requirements may be waived. The conditions of the emergency shall be documented. The family or responsible party shall be notified immediately or as soon as possible of the condition that necessitates emergency relocation and such notification shall be documented. (II)

e. A transfer to a part of a facility that has a different license must be handled the same way as a transfer to another facility and not as an intrafacility transfer. (II, III)

ITEM 12. Rescind rule 481—64.36(135C) and adopt the following new rule in lieu thereof:

481—64.36(135C) Involuntary discharge or transfer.

64.36(1) *Involuntary discharge or transfer permitted.* A facility may involuntarily discharge or transfer a resident for only one of the following reasons:

- a.* Medical reasons;
- b.* The resident's welfare or that of other residents;
- c.* Nonpayment for the resident's stay, as described in the contract for the resident's stay;
- d.* Due to action pursuant to Iowa Code chapter 229;
- e.* By reason of negative action by the Iowa department of human services; or
- f.* By reason of negative action by the quality improvement organization (QIO). (I, II, III)

64.36(2) *Medical reasons.* Medical reasons for transfer or discharge shall be based on the resident's needs and shall be determined and documented in the resident's record by the attending physician. Transfer or discharge may be required in order to provide a different level of care to the resident. (II)

64.36(3) *Welfare of a resident.* Welfare of a resident or that of other residents refers to a resident's social, emotional, or physical well-being. A resident may be transferred or discharged because the resident's behavior poses a continuing threat to the resident (e.g., suicidal) or to the well-being of other residents or staff (e.g., the resident's behavior is incompatible with other residents' needs and rights). Written documentation that the resident's continued presence in the facility would adversely affect the resident's own welfare or that of other residents shall be made by the administrator or designee and shall include specific information to support this determination. (II)

64.36(4) *Involuntary discharge or transfer prohibited—payment source.* A resident shall not be transferred or discharged solely because the cost of the resident's care is being paid under Iowa Code chapter 249A or because the resident's source of payment is changing from private support to payment under Iowa Code chapter 249A. (I, II)

64.36(5) *Notice.* Involuntary transfer or discharge of a resident from a facility shall be preceded by a written notice to the resident and the responsible party. (II, III)

- a.* The notice shall contain all of the following information:
 - (1) The stated reason for the proposed transfer or discharge. (II)
 - (2) The effective date of the proposed transfer or discharge. (II)
 - (3) A statement, in not less than 12-point type, that reads as follows:

You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing, in writing or verbally, with the Iowa department of inspections and appeals (hereinafter referred to as "department") within 7 days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after the department's receipt of your request and you will not be transferred before a final decision is rendered. Extension of the 14-day requirement may be permitted in emergency circumstances upon request to the department's designee. If you lose the hearing,

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you will not be transferred before the expiration of either (1) 30 days following your receipt of the original notice of the discharge or transfer, or (2) no sooner than 5 days following final decision of such hearing, including the exhaustion of all appeals, whichever occurs later. To request a hearing or receive further information, call the department at (515)281-4115, or write to the department to the attention of: Administrator, Division of Health Facilities, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. (II)

b. The notice shall be personally delivered to the resident, and a copy shall be placed in the resident's record. A copy shall also be transmitted to the department, the resident's responsible party, the resident's physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility. The notice shall indicate that copies have been transmitted to the required parties by using the abbreviation "cc:" and listing the names of all parties to whom copies were sent.

c. The notice required by paragraph 64.36(5) "a" shall be provided at least 30 days in advance of the proposed transfer or discharge unless one of the following occurs:

(1) An emergency transfer or discharge is mandated by the resident's health care needs and is in accordance with the written orders and medical justification of the attending physician. Emergency transfers or discharges may also be mandated in order to protect the health, safety, or well-being of other residents and staff from the resident being transferred. (II)

(2) The transfer or discharge is subsequently agreed to by the resident or the resident's responsible party, and notification is given to the responsible party, the resident's physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility.

(3) The discharge or transfer is the result of a final, nonappealable decision by the department of human services or the QIO.

d. A hearing requested pursuant to this subrule shall be held in accordance with subrule 64.36(7).

64.36(6) *Emergency transfer or discharge.* In the case of an emergency transfer or discharge, the resident must be given a written notice prior to or within 48 hours following the transfer or discharge. (II, III)

a. A copy of this notice shall be placed in the resident's file. The notice shall contain all of the following information:

(1) The stated reason for the transfer or discharge. (II)

(2) The effective date of the transfer or discharge. (II)

(3) A statement, in not less than 12-point type, that reads as follows:

You have a right to appeal the facility's decision to transfer or discharge you on an emergency basis. If you think you should not have to leave this facility, you may request a hearing, in writing or verbally, with the Iowa department of inspections and appeals (hereinafter referred to as "department") within 7 days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after the department's receipt of your request. You may be transferred or discharged before the hearing is held or before a final decision is rendered. If you win the hearing, you have the right to be transferred back into the facility. To request a hearing or receive further information, call the department at (515)281-4115, or write to the department to the attention of: Administrator, Division of Health Facilities, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. (II)

b. The notice shall be personally delivered to the resident, and a copy shall be placed in the resident's record. A copy shall also be transmitted to the department, the resident's responsible party, the resident's physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility. The notice shall indicate that copies have been transmitted to the required parties by using the abbreviation "cc:" and listing the names of all parties to whom copies were sent.

c. A hearing requested pursuant to this subrule shall be held in accordance with subrule 64.36(7).

64.36(7) *Hearing.*

a. Request for hearing.

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- (1) The resident must request a hearing within 7 days of receipt of written notice.
 - (2) The request must be made to the department, either in writing or verbally.
 - b.* The hearing shall be held no later than 14 days after the department's receipt of the request unless the resident requests an extension due to emergency circumstances.
 - c.* Except in the case of an emergency discharge or transfer, a request for a hearing shall stay a transfer or discharge pending a final decision, including the exhaustion of all appeals. (II)
 - d.* The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and 481—Chapter 10. The hearing shall be public unless the resident or representative requests in writing that the hearing be closed. In a determination as to whether a transfer or discharge is authorized, the burden of proof by a preponderance of the evidence rests on the party requesting the transfer or discharge.
 - e.* Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the facility, the resident, and the responsible party not later than five full business days after the department's receipt of the request. The notice shall also inform the facility and the resident or the responsible party that they have a right to appear at the hearing in person or be represented by an attorney or other individual. The appeal 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.
 - f.* The administrative law judge's written decision shall be sent by certified mail to the facility, resident, and responsible party within 10 working days after the hearing has been concluded.
 - g.* If the basis for an involuntary transfer or discharge is the result of a negative action by the Iowa department of human services or the QIO, an appeal shall be filed with those entities as appropriate. Continued payment shall be consistent with rules of those entities.
- 64.36(8) Nonpayment.** If nonpayment is the basis for involuntary transfer or discharge, the resident shall have the right to make full payment up to the date that the discharge or transfer is to be made and then shall have the right to remain in the facility. (II)
- 64.36(9) Discussion of involuntary transfer or discharge.** Within 48 hours after notice of involuntary transfer or discharge has been received by the resident, the facility shall discuss the involuntary transfer or discharge with the resident, the resident's responsible party, and the person or agency responsible for the resident's placement, maintenance, and care in the facility. (II)
- a.* The facility administrator or other appropriate facility representative serving as the administrator's designee shall provide an explanation and discussion of the reasons for the resident's involuntary transfer or discharge. (II)
 - b.* The content of the explanation and discussion shall be summarized in writing, shall include the names of the individuals involved in the discussion, and shall be made part of the resident's record. (II)
 - c.* The provisions of this subrule do not apply if the involuntary transfer or discharge has already occurred pursuant to subrule 64.36(6) and emergency notice is provided within 48 hours.
- 64.36(10) Transfer or discharge planning.**
- a.* The facility shall develop a plan to provide for the orderly and safe transfer or discharge of each resident to be transferred or discharged. (II)
 - b.* To minimize the possible adverse effects of the involuntary transfer, the resident shall receive counseling services by the sending facility before the involuntary transfer and by the receiving facility after the involuntary transfer. Counseling shall be documented in the resident's record. (II)
 - c.* The counseling requirement in paragraph 64.36(10) "b" does not apply if the discharge has already occurred pursuant to subrule 64.36(6) and emergency notice is provided within 48 hours.
 - d.* Counseling, if required, shall be provided by a qualified individual who meets one of the following criteria:
 - (1) Has a bachelor's or master's degree in social work from an accredited college. (II)
 - (2) Is a graduate of an accredited four-year college and has had at least one year of full-time paid employment in a social work capacity with a public or private agency. (II)
 - (3) Has been employed in a social work capacity for a minimum of four years in a public or private agency. (II)
 - (4) Is a licensed psychologist or psychiatrist. (II)

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(5) Is any other person of the resident's choice. (II)

e. The health care facility that receives a resident who has been involuntarily transferred shall immediately formulate and implement a plan of care which takes into account possible adverse effects the transfer may cause. (II)

64.36(11) *Transfer upon revocation of license or voluntary closure.* Residents shall not have the right to a hearing to contest an involuntary discharge or transfer resulting from the revocation of the facility's license by the department of inspections and appeals. In the case of the voluntary closure of a facility, a period of 30 days must be allowed for an orderly transfer of residents to other facilities.

64.36(12) *Intrafacility transfer.*

a. Residents shall not be arbitrarily relocated from room to room within a licensed health care facility. (I, II) Involuntary relocation may occur only in the following situations, which shall be documented in the resident's record: (II)

(1) A resident's incompatibility with or disturbance to other roommates.

(2) For the welfare of the resident or other residents of the facility.

(3) For medical, nursing or psychosocial reasons, as judged by the attending physician, nurse or social worker in the case of a facility which groups residents by medical, nursing or psychosocial needs.

(4) To allow a new admission to the facility that would otherwise not be possible due to separation of roommates by sex.

(5) In the case of a resident whose source of payment was previously private, but who now is eligible for Title XIX (Medicaid) assistance, the resident may be transferred from a private room to a semiprivate room or from one semiprivate room to another.

(6) Reasonable and necessary administrative decisions regarding the use and functioning of the building.

b. Unreasonable and unjustified reasons for changing a resident's room without the concurrence of the resident or responsible party include:

(1) Change from private pay status to Title XIX, except as outlined in subparagraph 64.36(12) "a"(5). (II)

(2) As punishment or behavior modification, except as specified in subparagraph 64.36(12) "a"(1). (II)

(3) Discrimination on the basis of race or religion. (II)

c. If intrafacility relocation is necessary for reasons outlined in paragraph 64.36(12) "a," the resident shall be notified at least 48 hours prior to the transfer and the reason therefor shall be explained. The responsible party shall be notified as soon as possible. The notification shall be documented in the resident's record and signed by the resident or responsible party. (II)

d. If emergency relocation is required in order to protect the safety or health of the resident or other residents, the notification requirements may be waived. The conditions of the emergency shall be documented. The family or responsible party shall be notified immediately or as soon as possible of the condition that necessitates emergency relocation, and such notification shall be documented. (II)

e. A transfer to a part of a facility that has a different license must be handled the same way as a transfer to another facility and not as an intrafacility transfer. (II, III)

ITEM 13. Adopt the following **new** paragraph **65.16(2)"e"**:

e. A transfer to a part of a facility that has a different license must be handled the same way as a transfer to another facility and not as an intrafacility transfer. (II, III)

ITEM 14. Rescind subrule 65.16(3) and adopt the following **new** subrule in lieu thereof:

65.16(3) *Involuntary discharge or transfer permitted.* A facility may involuntarily discharge or transfer a resident for only one of the following reasons:

a. Medical reasons, based on the resident's needs and determined and documented in the resident's record by the attending physician;

b. The resident's social, emotional or physical well-being or that of other residents, as documented by the administrator or designee with specific information to support the determination that the resident's

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continued presence in the facility would adversely affect the resident's own well-being or that of other residents;

- c. Due to action pursuant to Iowa Code chapter 229; or
- d. Nonpayment for the resident's stay, as described in the admission agreement for the resident's stay. (I, II, III)

ITEM 15. Rescind subrule 65.16(4) and adopt the following **new** subrule in lieu thereof:

65.16(4) *Involuntary transfer or discharge—written notice.* Involuntary transfer or discharge of a resident from a facility shall be preceded by a written notice to the resident or the resident's legal guardian. (II, III)

- a. The notice shall contain all of the following information:
 - (1) The stated reason for the proposed transfer or discharge. (II)
 - (2) The effective date of the proposed transfer or discharge. (II)
 - (3) A statement, in not less than 12-point type, that reads as follows:

You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa department of inspections and appeals (hereinafter referred to as "department") within 7 days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after the department's receipt of your request and you will not be transferred before a final decision is rendered. In emergency circumstances, provision may be made for extension of the 14-day requirement upon request to the department designee. If you lose the hearing, you will not be transferred before the expiration date of either (1) 30 days following your receipt of the original notice of the discharge or transfer, or (2) no sooner than 5 days following final decision of such hearing, including the exhaustion of all appeals, whichever occurs later. To request a hearing or receive further information, call the department at (515)281-4115 or you may write to the department to the attention of: Administrator, Division of Health Facilities, Iowa Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319. (II)

- b. The notice shall be personally delivered to the resident, and a copy shall be placed in the resident's record. A copy shall also be transmitted to the department, the resident's legal guardian, physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility. The notice shall indicate that copies have been transmitted to the required parties by using the abbreviation "cc:" and listing the names of all parties to whom copies were sent. (II)

- c. The notice required by paragraph 65.16(4) "a" shall be provided at least 30 days in advance of the proposed transfer or discharge unless one of the following occurs:

- (1) An emergency transfer or discharge is mandated by the resident's health care needs and is in accordance with the written orders and medical justification of the attending physician. Emergency transfers or discharges may also be mandated in order to protect the health, safety, or well-being of other residents and staff. (II)

- (2) The transfer or discharge is subsequently agreed to by the resident or the resident's legal guardian, and notification is given to the legal guardian, the resident's physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility. (II)

- d. A hearing requested pursuant to this subrule shall be held in accordance with subrule 65.16(6).

ITEM 16. Rescind subrule 65.16(5) and adopt the following **new** subrule in lieu thereof:

65.16(5) *Involuntary transfer or discharge—emergency transfer or discharge.* In the case of an emergency transfer or discharge, the resident must be given a written notice prior to or within 48 hours following the transfer or discharge. (II, III)

- a. A copy of this notice must be placed in the resident's file. The notice must contain all of the following information:

- (1) The stated reason for the transfer or discharge. (II)

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- (2) The effective date of the transfer or discharge. (II)
- (3) A statement, in not less than 12-point type, that reads:

You have a right to appeal the facility's decision to transfer or discharge you on an emergency basis. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa department of inspections and appeals (hereinafter referred to as "department") within 7 days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after the department's receipt of your request. You may be transferred or discharged before the hearing is held or before a final decision is rendered. If you win the hearing, you have the right to be transferred back into the facility. To request a hearing or receive further information, call the department at (515)281-4115, or write to the department to the attention of: Administrator, Division of Health Facilities, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. (II)

b. The notice shall be personally delivered to the resident, and a copy shall be placed in the resident's record. A copy shall also be transmitted to the department, the resident's legal guardian, the resident's physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility. The notice shall indicate that copies have been transmitted to the required parties by using the abbreviation "cc:" and listing the names of all parties to whom copies were sent.

c. A hearing requested pursuant to this subrule shall be held in accordance with subrule 65.16(6).

ITEM 17. Rescind subrule 65.16(6) and adopt the following **new** subrule in lieu thereof:

65.16(6) *Involuntary transfer or discharge—hearing.*

a. Request for hearing.

(1) The resident must request a hearing within 7 days of receiving written notice.

(2) The request must be made to the department, either in writing or verbally.

b. The hearing shall be held no later than 14 days after the department's receipt of the request unless the resident requests an extension due to emergency circumstances.

c. Except in the case of an emergency discharge or transfer, a request for a hearing shall stay a transfer or discharge pending a final decision, including the exhaustion of all appeals. (II)

d. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and 481—Chapter 10. The hearing shall be public unless the resident or representative requests in writing that the hearing be closed. In a determination as to whether a transfer or discharge is authorized, the burden of proof by a preponderance of evidence rests on the party requesting the transfer or discharge.

e. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the facility, the resident and the resident's legal guardian not later than five full business days after the department's receipt of the request. The notice shall also inform the facility and the resident or the resident's legal guardian that they have a right to appear at the hearing in person or be represented by an attorney or other individual. The appeal 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.

f. The administrative law judge's written decision shall be sent by certified mail to the facility, resident, and resident's legal guardian within 10 working days after the hearing has been concluded.

ITEM 18. Adopt the following **new** subrules 65.16(7) to 65.16(10):

65.16(7) *Nonpayment.* If nonpayment is the basis for involuntary transfer or discharge, the resident shall have the right to make full payment up to the date that the discharge or transfer is to be made and then shall have the right to remain in the facility. (II)

65.16(8) *Discussion of involuntary transfer or discharge.* Within 48 hours after notice of involuntary transfer or discharge has been received by the resident, the facility shall discuss the involuntary transfer or discharge with the resident, the resident's legal guardian, and the person or agency responsible for the resident's placement, maintenance, and care in the facility. (II)

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a. The facility administrator or other appropriate facility representative serving as the administrator's designee shall provide an explanation and discussion of the reasons for the resident's involuntary transfer or discharge. (II)

b. The content of the explanation and discussion shall be summarized in writing, shall include the names of the individuals involved in the discussion, and shall be made part of the resident's record. (II)

c. The provisions of this subrule do not apply if the involuntary transfer or discharge has already occurred pursuant to subrule 65.16(6) and emergency notice is provided within 48 hours.

65.16(9) *Involuntary discharge or transfer—transfer or discharge planning.*

a. The facility shall develop a plan to provide for the orderly and safe transfer or discharge of each resident to be transferred or discharged. (II)

b. To minimize the possible adverse effects of the involuntary transfer, the resident shall receive counseling services by the sending facility before the involuntary transfer and by the receiving facility after the involuntary transfer. Counseling shall be documented in the resident's record. (II)

c. The counseling requirement in paragraph 65.16(9) "b" does not apply if the discharge has already occurred pursuant to subrule 65.16(5) and emergency notice is provided within 48 hours.

d. Counseling, if required, shall be provided by a qualified individual who meets one of the following criteria:

- (1) Has a bachelor's or master's degree in social work from an accredited college. (II)
- (2) Is a graduate of an accredited four-year college and has had at least one year of full-time paid employment in a social work capacity with a public or private agency. (II)
- (3) Has been employed in a social work capacity for a minimum of four years in a public or private agency. (II)

(4) Is a licensed psychologist or psychiatrist. (II)

(5) Is any other person of the resident's choice. (II)

e. The health care facility that receives a resident who has been involuntarily transferred shall immediately formulate and implement a plan of care which takes into account possible adverse effects the transfer may cause. (II)

65.16(10) *Transfer upon revocation of license or voluntary closure.* Residents shall not have the right to a hearing to contest an involuntary discharge or transfer resulting from the revocation of the facility's license by the department of inspections and appeals. In the case of the voluntary closure of a facility, a period of 30 days must be allowed for an orderly transfer of residents to other facilities.

ITEM 19. Amend rule **481—65.16(135C)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections section 135C.14(8), ~~135C.31, 135C.43, and 135C.46.~~

ARC 1653C

PHARMACY BOARD[657]

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 Pharmacy hereby gives Notice of Intended Action to amend Chapter 3, "Pharmacy Technicians," Iowa Administrative Code.

The amendments were approved at the August 27, 2014, regular meeting of the Board of Pharmacy.

The proposed amendments provide updated language to remove all references to uncertified pharmacy technicians. Current rules require all pharmacy technicians to obtain national certification, but the rules provide an extended deadline for compliance under certain conditions. As of December 31, 2013, the

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provision for extension of the deadline to attain national certification has expired. These proposed amendments eliminate all references to the extended deadline for national certification and all references to uncertified pharmacy technicians because national certification is required of all pharmacy technicians following one-year registration as a technician trainee.

Requests for waiver or variance of the discretionary provisions of Board rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on October 21, 2014. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by e-mail to terry.witkowski@iowa.gov.

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

These amendments are intended to implement Iowa Code sections 147.72, 147.107, 155A.6A, 155A.23, 155A.33, and 155A.39.

The following amendments are proposed.

ITEM 1. Amend rule **657—3.1(155A)**, definitions of “Certified pharmacy technician,” “Pharmacy technician” and “Supervising pharmacist,” as follows:

“*Certified pharmacy technician*” or “*certified technician*” means an individual who holds a valid current national certification and who has registered with the board as a certified pharmacy technician. ~~The term includes an individual registered with the board who voluntarily acquired certification as provided in subrule 3.5(2).~~

“*Pharmacy technician*” or “*technician*” means a person who is employed in Iowa by a licensed pharmacy under the responsibility of an Iowa-licensed pharmacist to assist in the technical functions of the practice of pharmacy, as provided in rules 657—3.22(155A) through 657—3.24(155A), and includes a certified pharmacy technician, and a pharmacy technician trainee, ~~and an uncertified pharmacy technician.~~

“*Supervising pharmacist*” means an Iowa-licensed pharmacist who is on duty in ~~an Iowa-licensed~~ a licensed pharmacy in Iowa and who is responsible for the actions of a pharmacy technician or other supportive personnel.

ITEM 2. Rescind the definition of “Uncertified pharmacy technician” in rule **657—3.1(155A)**.

ITEM 3. Amend rule 657—3.2(155A) as follows:

657—3.2(155A) Purpose of registration. A registration program for pharmacy technicians is established for the purposes of determining the competency of a pharmacy technician or of an applicant for registration as a certified pharmacy technician, or pharmacy technician trainee, ~~or uncertified pharmacy technician~~ and for the purposes of identification, tracking, and disciplinary action for violations of federal or state pharmacy or drug laws or regulations.

ITEM 4. Amend rule 657—3.3(155A) as follows:

657—3.3(155A) Registration required. Any person employed in Iowa as a pharmacy technician, except a pharmacist-intern whose pharmacist-intern registration is in good standing with the board, shall obtain and maintain during such employment a current registration as a certified pharmacy technician, or pharmacy technician trainee, ~~or uncertified pharmacy technician~~ pursuant to these rules. An individual accepting employment as a pharmacy technician in Iowa who fails to register as a certified pharmacy technician, or pharmacy technician trainee, ~~or uncertified technician~~ as provided by these rules may be subject to disciplinary sanctions. A certified pharmacy technician accepting employment as a certified pharmacy technician in Iowa who fails to register as a certified pharmacy technician or who fails to maintain national certification may be subject to disciplinary sanctions.

3.3(1) Licensed health care provider. Except as provided in this rule, a licensed health care provider whose registration or license is in good standing with and not subject to current disciplinary sanctions or practice restrictions imposed by the licensee’s professional licensing board and who assists in the

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technical functions of the practice of pharmacy shall be required to register as a certified pharmacy technician, or pharmacy technician trainee, ~~or uncertified technician~~ pursuant to these rules.

3.3(2) to 3.3(4) No change.

ITEM 5. Amend rule 657—3.5(155A) as follows:

657—3.5(155A) Certification of pharmacy technicians. Except as provided in rule 657—3.6(155A) ~~or subrule 3.5(3)~~ 3.5(1), effective July 1, 2010, all pharmacy technicians shall be required to be nationally certified as provided by this rule. National certification acquired through successful completion of any NCCA-accredited pharmacy technician certification program and examination fulfills the requirement for national certification. National certification does not replace the need for licensed pharmacist control over the performance of delegated functions, nor does national certification exempt the pharmacy technician from registration pursuant to these rules. A certified pharmacy technician shall maintain the technician's national certification, in addition to the technician's Iowa registration, during any period of employment in an Iowa pharmacy as a certified pharmacy technician.

~~**3.5(1) Certification prior to July 1, 2010.** An individual who holds a valid current national certification from the Institute for the Certification of Pharmacy Technicians (ICPT) or the Pharmacy Technician Certification Board (PTCB) and who acquired such certification prior to July 1, 2010, shall be deemed to have met the requirement for national certification beginning July 1, 2010, provided the certification is maintained in current standing.~~

~~**3.5(2) Required certification effective July 1, 2010.** Beginning July 1, 2010, national certification acquired through successful completion of any NCCA-accredited pharmacy technician certification program and examination fulfills the requirement for national certification.~~

~~**3.5(3) 3.5(1) Pharmacy technician trainee.** Except as provided in rule 657—3.6(155A), effective July 1, 2009, a A person who is in the process of acquiring national certification as a pharmacy technician shall register with the board as a pharmacy technician trainee. The registration shall be issued for a period of one year and shall not be renewed.~~

~~**3.5(4) 3.5(2) Certified pharmacy technician.** Beginning July 1, 2010, all All applicants for a new pharmacy technician registration except as provided by subrule 3.5(3) 3.5(1), and all applicants for renewal of a pharmacy technician registration ~~except as provided in rule 657—3.6(155A)~~, shall provide proof of current national pharmacy technician certification and shall complete the application for certified pharmacy technician registration.~~

ITEM 6. Rescind and reserve rule **657—3.6(155A)**.

ITEM 7. Amend rule 657—3.8(155A) as follows:

657—3.8(155A) Application form.

3.8(1) Required information. The application for a certified pharmacy technician registration, or pharmacy technician trainee registration, ~~or uncertified pharmacy technician registration~~ shall include the following:

a. to *e.* No change.

3.8(2) to 3.8(4) No change.

3.8(5) Additional information. The following additional information shall be required from an applicant for the specified registration.

a. ~~Technician~~ Pharmacy technician trainee. The applicant for pharmacy technician trainee registration shall identify the source of pharmacy technician training, the anticipated date of completion of training, and the anticipated date of national certification.

b. Certified pharmacy technician. The applicant for certified pharmacy technician registration shall provide proof of current national pharmacy technician certification. The applicant shall also identify all current pharmacy employers including pharmacy name, license number, address, and average hours worked per week.

c. Licensed health care provider. In addition to the additional information required by paragraph "a," or "b" ~~or~~ "d" as applicable, a licensed health care provider shall provide evidence that the

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licensee's professional license or registration is current and in good standing and is not subject to current disciplinary sanctions or practice restrictions imposed by the licensee's professional licensing authority.

~~d. *Uncertified pharmacy technician.* The applicant for uncertified pharmacy technician registration shall submit with the application for registration renewal one or more affidavits signed by the pharmacists in charge of one or more Iowa pharmacies where the applicant practiced as a pharmacy technician during the 18 months prior to submission of the application for registration. Affidavits shall be on a form provided by the board office.~~

3.8(6) No change.

ITEM 8. Amend rule 657—3.9(155A) as follows:

657—3.9(155A) Registration term and renewal. A pharmacy technician registration shall expire as provided in this rule for the specified registration. The board shall not require continuing education for renewal of a pharmacy technician registration.

3.9(1) No change.

3.9(2) Pharmacy technician trainee registration. ~~Beginning July 1, 2009, a~~ A registration for a pharmacy technician who is in the process of acquiring national certification (technician trainee) shall expire on the last day of the registration month 12 months following the date of registration or 12 months following the date registration was required pursuant to subrule 3.3(3).

a. *National certification completed.* When the registered pharmacy technician trainee completes national certification, and no later than the date of expiration of the pharmacy technician trainee registration, the pharmacy technician trainee shall complete and submit an application for certified pharmacy technician registration. A successful application shall result in issuance of a new certified pharmacy technician registration as provided in subrule 3.9(1).

b. *Voluntary cancellation of registration.* A registered pharmacy technician trainee who fails to complete national certification prior to expiration of the pharmacy technician trainee registration shall notify the board that the pharmacy technician trainee registration should be canceled and that the individual has ceased practice as a pharmacy technician.

c. *Failure to notify the board.* If a pharmacy technician trainee fails to notify the board prior to the expiration date of the pharmacy technician trainee registration regarding the individual's intentions as provided in paragraph "a" or "b," the pharmacy technician trainee registration shall be canceled and the individual shall cease practice as a pharmacy technician.

~~**3.9(3) Uncertified pharmacy technician registration.** Beginning June 1, 2010, a registration for a pharmacy technician who qualifies for the time extension for certification as provided by rule 657—3.6(155A) shall expire the second last day of the birth month following the latest scheduled registration renewal. In no case shall a registration for an uncertified pharmacy technician expire later than December 31, 2013, unless the pharmacy technician attains national certification as provided in subrule 3.5(2) and is reclassified as a certified pharmacy technician.~~

ITEM 9. Amend subrule 3.10(1) as follows:

3.10(1) Certified ~~or uncertified~~ pharmacy technician registration. The fee for obtaining an initial certified pharmacy technician registration or for biennial renewal of a certified pharmacy technician registration ~~or an uncertified pharmacy technician registration~~ shall be \$40 plus applicable surcharge pursuant to rule 657—30.8(155A).

ITEM 10. Amend rule 657—3.12(155A) as follows:

657—3.12(155A) Registration certificates. The certificate of pharmacy technician registration issued by the board to a certified pharmacy technician, ~~or pharmacy technician trainee, or uncertified pharmacy technician~~ is the property of and shall be maintained by the registered pharmacy technician. The certificate or a copy of the certificate shall be maintained in each pharmacy where the pharmacy technician works. Each pharmacy utilizing pharmacy technicians shall be responsible for verifying that all pharmacy technicians working in the pharmacy are registered, that pharmacy technician registrations

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remain current and active, and that a certified pharmacy technician's national certification remains current and active.

ITEM 11. Amend rule 657—3.17(155A) as follows:

657—3.17(155A) Training and utilization of pharmacy technicians. All Iowa-licensed pharmacies ~~utilizing~~ located in Iowa that utilize pharmacy technicians shall develop, implement, and periodically review written policies and procedures for the training and utilization of pharmacy technicians appropriate to the practice of pharmacy. Pharmacy policies shall specify the frequency of review. ~~Technician~~ Pharmacy technician training shall be documented and maintained by the pharmacy for the duration of employment. Policies and procedures and documentation of pharmacy technician training shall be available for inspection and copying by the board or an agent of the board.

ITEM 12. Amend rule 657—3.22(155A) as follows:

657—3.22(155A) Technical functions. At the discretion of the supervising pharmacist, the following technical functions, in addition to any of the functions authorized for a pharmacy support person pursuant to 657—Chapter 5, may be delegated to a pharmacy technician as specified in the following subrules.

3.22(1) Certified pharmacy technician. Under the supervision of a pharmacist, a certified pharmacy technician may perform technical functions delegated by the supervising pharmacist including, but not limited to, the following:

a. No change.

b. Accept prescription refill authorizations communicated to a pharmacy by a prescriber or by the prescriber's ~~office agent~~.

c. to g. No change.

h. Prepackage or label ~~multidose~~ multi-dose and single-dose packages of drugs, ~~including dose picks for unit dose cart or AMDS fills for hospital or long-term care facility patients as provided in 657—Chapter 22.~~

i. to k. No change.

3.22(2) Pharmacy technician trainee ~~and uncertified pharmacy technician.~~ Under the supervision of a pharmacist, a pharmacy technician trainee ~~or an uncertified pharmacy technician~~ may perform only the following technical functions delegated by the supervising pharmacist:

a. No change.

b. Accept prescription refill authorizations communicated to a pharmacy by a prescriber or by the prescriber's ~~office agent~~.

c. to f. No change.

g. Prepackage or label ~~multidose~~ multi-dose and single-dose packages of drugs, ~~including dose picks for unit dose cart or AMDS fills for hospital or long-term care facility patients as provided in 657—Chapter 22.~~

h. and i. No change.

ITEM 13. Amend rule 657—3.29(155A) as follows:

657—3.29(155A) Denial of registration. The executive director or designee may deny an application for registration as a certified pharmacy technician, or pharmacy technician trainee, ~~or uncertified pharmacy technician~~ for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs or for any violation of Iowa Code chapter 124, 124A, 124B, 126, 147, 155A, or 205 or any rule of the board.

An individual whose application for registration as a certified pharmacy technician, or pharmacy technician trainee, ~~or uncertified pharmacy technician~~ is denied pursuant to this rule may, within 30 days after issuance of the notice of denial, appeal to the board for reconsideration of the application.

ITEM 14. Amend subrule 3.30(2) as follows:

3.30(2) Sanctions. The board may impose the following disciplinary sanctions:

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- a. Revocation of a certified pharmacy technician, or pharmacy technician trainee, ~~or uncertified pharmacy technician~~ registration.
- b. Suspension of a certified pharmacy technician, or pharmacy technician trainee, ~~or uncertified pharmacy technician~~ registration until further order of the board or for a specified period.
- c. Nonrenewal of a certified pharmacy technician ~~or uncertified pharmacy technician~~ registration.
- d. to i. No change.

ITEM 15. Amend **657—Chapter 3**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 147.72, 147.107, 155A.6A, 155A.23, 155A.33, and 155A.39 ~~and Iowa Code section 155A.6A as amended by 2010 Iowa Acts, House File 2531, section 112.~~

ARC 1652C**PHARMACY BOARD[657]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 147.76 and 155A.6, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 4, “Pharmacist-Interns,” and Chapter 8, “Universal Practice Standards,” Iowa Administrative Code.

The amendments were approved at the August 27, 2014, meeting of the Board of Pharmacy.

The proposed amendments provide for the delegation of immunization administration by an authorized pharmacist to an authorized pharmacist-intern under the direct supervision of the authorized pharmacist. The amendments also define “authorized pharmacist-intern” and require continued cardiac life support certification and documentation of such certification beyond initial qualification of the authorized pharmacist or authorized pharmacist-intern. The amendments also require that the prescriber authorizing the administration of immunizations via protocol must identify, by name or classification, any pharmacists or other qualified health professionals that may administer immunizations pursuant to the specific protocol.

Requests for waiver or variance of the discretionary provisions of Board rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on October 21, 2014. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or sent by e-mail to terry.witkowski@iowa.gov.

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

These amendments are intended to implement Iowa Code section 155A.6.

The following amendments are proposed.

ITEM 1. Amend subrule 4.6(2) as follows:

4.6(2) Supervision and authorized functions. A licensed pharmacist shall be on duty in the pharmacy and shall be responsible for the actions of a pharmacist-intern during all periods of internship training. At the discretion of the supervising pharmacist, the following judgmental functions, usually restricted to a pharmacist, may be delegated to pharmacist-interns registered by the board:

- a. and b. No change.
- c. Patient counseling;
- d. Administration of vaccines pursuant to rule 657—8.33(155A).

PHARMACY BOARD[657](cont'd)

ITEM 2. Amend rule 657—8.33(155A) as follows:

657—8.33(155A) Vaccine administration by pharmacists. An authorized pharmacist may administer vaccines pursuant to protocols established by the CDC in compliance with the requirements of this rule. An authorized pharmacist may only delegate the administration of a vaccine to an authorized pharmacist-intern under the direct supervision of the authorized pharmacist.

8.33(1) Definitions. For the purposes of this rule, the following definitions shall apply:

“ACIP” means the CDC Advisory Committee on Immunization Practices.

“ACPE” means the Accreditation Council for Pharmacy Education.

“Authorized pharmacist” means an Iowa-licensed pharmacist who has met the requirements identified in subrule 8.33(2).

“Authorized pharmacist-intern” means an Iowa-registered pharmacist-intern who has met the requirements for an authorized pharmacist identified in paragraphs 8.33(2) “a” and “c.”

“CDC” means the United States Centers for Disease Control and Prevention.

“Immunization” shall have the same meaning as, and shall be interchangeable with, the term “vaccine.”

“Protocol” means a standing order for a vaccine to be administered by an authorized pharmacist.

“Vaccine” means a specially prepared antigen administered to a person for the purpose of providing immunity.

8.33(2) Authorized pharmacist training and continuing education. An authorized pharmacist shall document successful completion of the requirements in paragraph 8.33(2) “a” and shall maintain competency by completing and maintaining documentation of the continuing education requirements in paragraph 8.33(2) “b.”

a. and b. No change.

c. Certification maintained. During any period within which the pharmacist may engage in the administration of vaccines, the pharmacist shall maintain current certification in the American Heart Association or the Red Cross basic cardiac life support protocol for health care providers.

8.33(3) Protocol requirements. A pharmacist may administer vaccines pursuant to CDC protocols. A protocol shall be unique to a pharmacy and The prescriber who signs a protocol shall identify all within the protocol, by name or category, those pharmacists authorized or other qualified health professionals that the prescriber is authorizing to administer vaccines pursuant to the protocol. Links to CDC protocols shall be provided on the board’s Web site at www.iowa.gov/ibpe. A protocol:

a. to d. No change.

e. Shall specifically indicate whether the authorizing prescriber agrees that the administration of vaccines may be delegated by the authorized pharmacist to an authorized pharmacist-intern under the direct supervision of the authorized pharmacist.

8.33(4) to 8.33(7) No change.

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PHARMACY BOARD[657]

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 124.301, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 10, “Controlled Substances,” Iowa Administrative Code.

The amendments were approved at the September 11, 2014, meeting of the Board of Pharmacy.

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The proposed amendments temporarily classify as Schedule IV controlled substances products containing tramadol, alfaxalone, and suvorexant and temporarily remove the classification of hydrocodone combination products from Schedule III, effectively classifying all hydrocodone-containing products in Schedule II of the Controlled Substances Act in conformance with recent control of these same substances by the U.S. Department of Justice, Drug Enforcement Administration.

The proposed amendments also provide clearer direction for the notification process when a registrant has experienced a theft or loss of controlled substances. The amendment regarding the reporting of a theft or loss of controlled substances requires immediate notification to the DEA and, in certain circumstances, to the Board, upon discovery of a theft or loss of a significant quantity of controlled substances, followed by submission to the Board and to the DEA of a formal report within 14 days of discovery of the theft or loss.

Requests for waiver or variance of the discretionary provisions of Board rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on October 21, 2014. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by e-mail to terry.witkowski@iowa.gov.

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

These amendments are intended to implement Iowa Code sections 124.201(4) and 124.301.

The following amendments are proposed.

ITEM 1. Rescind rule 657—10.16(124) and adopt the following **new** rule in lieu thereof:

657—10.16(124) Report of theft or loss. A registrant shall report to the board and the DEA any theft or significant loss of controlled substances when the loss is attributable to other than inadvertent error. Thefts or other losses of controlled substances shall be reported whether or not the controlled substances are subsequently recovered or the responsible parties are identified and action taken against them.

10.16(1) Immediate notice to board. If the theft was committed by a registrant or licensee of the board, or if there is reason to believe that the theft was committed by a registrant or licensee of the board, the registrant from whom the controlled substances were stolen shall notify the board immediately upon discovery of the theft and shall identify to the board the registrant or licensee suspected of the theft.

10.16(2) Immediate notice to DEA. A registrant shall deliver notice, immediately upon discovery of a reportable theft or loss of controlled substances, to the Des Moines DEA field office via telephone, facsimile, or a brief written message explaining the circumstances of the theft or loss.

10.16(3) Timely report submission. Within 14 days of discovery of the theft or loss, a registrant shall submit directly to the DEA a Form 106 or alternate required form via the DEA Web site at <http://www.deadiversion.usdoj.gov/>. A copy of the report that was completed and submitted to the DEA shall be immediately submitted to the board via facsimile, e-mail attachment, or personal or commercial delivery.

10.16(4) Record maintained. A copy of the report shall be maintained in the registrant's files for a minimum of two years following the date the report was completed.

ITEM 2. Rescind rule 657—10.38(124) and adopt the following **new** rule in lieu thereof:

657—10.38(124) Temporary designation of controlled substances.

10.38(1) Amend Iowa Code subsection 124.208(5), paragraph (a), by rescinding subparagraphs (3) and (4) and by renumbering remaining subparagraphs (5) through (8) as subparagraphs (3) through (6).

10.38(2) Amend Iowa Code subsection 124.210(2) by adding the following new paragraph:
c. 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers and salts of these isomers (including tramadol).

10.38(3) Amend Iowa Code subsection 124.210(3) by adding the following new paragraphs:

bb. Alfaxalone.

bc. Suvorexant.

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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 Pharmacy hereby gives Notice of Intended Action to amend Chapter 19, “Nonresident Pharmacy Practice,” Iowa Administrative Code.

The amendments were approved at the August 27, 2014, meeting of the Board of Pharmacy.

The proposed amendments reorganize the provisions of rule 657—19.2(155A) into subrules, require notification to Iowa patients when a nonresident pharmacy intends to cease business in Iowa, and provide that a nonresident pharmacy may not cancel its license as a means of avoiding disciplinary action. The proposed amendments also provide that a nonresident pharmacy that is engaged in the compounding of sterile products must comply with rules in 657—Chapter 13 regulating the compounding of sterile products for Iowa patients.

Requests for waiver or variance of the discretionary provisions of Board rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on October 21, 2014. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or sent by e-mail to terry.witkowski@iowa.gov.

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

These amendments are intended to implement Iowa Code sections 155A.13A and 155A.19.

The following amendments are proposed.

ITEM 1. Amend rule 657—19.2(155A) as follows:

657—19.2(155A) Application and license requirements. A nonresident pharmacy shall apply for and obtain, pursuant to provisions of 657—8.35(155A), a nonresident pharmacy license from the board prior to providing prescription drugs, devices, or pharmacy services to an ultimate user in this state.

19.2(1) Pharmacy license changes. Change of pharmacy name, ownership, location, or pharmacist in charge shall require a new completed application and license fee pursuant to 657—subrule 8.35(6).

19.2(2) Pharmacy discontinuing Iowa operations. A nonresident pharmacy intending to close or discontinue provision of prescription drugs, devices, and pharmacy services to Iowa patients shall notify the board and Iowa patients as provided in 657—subrule 8.35(7). The license of a nonresident pharmacy that provides such notice of intent to close or discontinue provision of services to patients in Iowa and that has returned to the board the nonresident pharmacy’s Iowa pharmacy license certificate shall be administratively cancelled within 30 days of the board’s receipt of the notice and license certificate. A nonresident pharmacy licensee that is under investigation or pending administrative charges shall not be permitted to cancel the nonresident pharmacy license in lieu of discipline.

ITEM 2. Amend subrule 19.3(3) as follows:

19.3(3) Compounding. A nonresident pharmacy engaged in the compounding of drug products as defined in 657—20.2(124,126,155A) shall comply with all requirements of 657—Chapter 20. A nonresident pharmacy engaged in the compounding of sterile drug products as defined in 657—13.2(124,126,155A) shall comply with all requirements of 657—Chapter 13.

ARC 1641C**PHARMACY BOARD[657]****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 Pharmacy hereby gives Notice of Intended Action to adopt new Chapter 33, “Military Service and Veteran Reciprocity,” Iowa Administrative Code.

The amendment was approved at the August 27, 2014, regular meeting of the Board of Pharmacy.

The proposed new chapter fulfills the directive of the 85th General Assembly in 2014 Iowa Acts, chapter 1116, division VI, by enacting rules that provide for priority application status for veterans and the opportunity to receive credit, as appropriate, towards licensing and registration qualifications for education, training, and service obtained by those who have served honorably in the military.

Requests for waiver or variance of the discretionary provisions of Board rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed rules not later than 4:30 p.m. on October 21, 2014. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by e-mail to terry.witkowski@iowa.gov.

After analysis and review of this rule making, there may be a minimal impact on jobs as a result of adoption of these rules. The provisions of these rules include prioritizing an application for license or registration submitted by a veteran or other military service applicant which may result in an applicant’s earlier entry into the Iowa workforce.

These rules are intended to implement 2014 Iowa Acts, chapter 1116, section 34.

The following amendment is proposed.

Adopt the following **new** 657—Chapter 33:

CHAPTER 33

MILITARY SERVICE AND VETERAN RECIPROCITY

657—33.1(85GA,ch1116) Definitions. For the purposes of this chapter, the following definitions shall apply:

“*Military service*” means honorably serving on federal active duty, state active duty, or national guard duty, as defined in Iowa Code section 29A.1; in the military services of other states, as provided in 10 U.S.C. Section 101(c); or in the organized reserves of the United States, as provided in 10 U.S.C. Section 10101.

“*Military service applicant*” means an individual requesting credit toward licensure or registration requirements for education, training, or service obtained or completed in military service.

“*Veteran*” means an individual who meets the definition of “veteran” in Iowa Code section 35.1(2).

657—33.2(85GA,ch1116) Military education, training, and service credit. A military service applicant may apply for credit for verified military education, training, or service toward any experiential or educational requirement for pharmacist licensure, pharmacist-intern registration, or technician registration by submitting a military service credit application form to the board office. The board shall make available an application for military service credit.

PHARMACY BOARD[657](cont'd)

33.2(1) *Military service credit application.* A military service credit application may be submitted with an application for licensure, examination, or registration or may be submitted prior to the submission of an application for licensure, examination, or registration. No fee is required with submission of a military service credit application.

33.2(2) *Credit identified.* The applicant shall identify the experiential or educational licensure or registration requirement to which the credit would be applied if granted. Credit shall not be applied to an examination requirement.

33.2(3) *Submission of verification documentation.* The applicant shall provide documents, military transcripts, a certified affidavit, or forms that verify completion of the relevant military education, training, or service, which may include, when applicable, the applicant's Certificate of Release or Discharge from Active Duty (DD Form 214) or Verification of Military Experience and Training (VMET) (DD Form 2586).

33.2(4) *Credit determination.* Upon receipt of a completed military service credit application, the board shall promptly determine whether the verified military education, training, or service will satisfy all or any part of the identified experiential or educational qualifications for licensure or registration.

33.2(5) *Granting of credit.* The board shall grant credit requested in the application in whole or in part if the board determines that the verified military education, training, or service satisfies all or part of the experiential or educational qualifications for licensure or registration.

33.2(6) *Notification of credit determination.* The board shall inform the military service applicant in writing of the credit, if any, given toward an experiential or educational qualification for licensure or registration or explain why no credit was granted. The applicant may request reconsideration of the board's determination upon submission of additional documentation or information.

33.2(7) *Consideration of applications.* The board shall grant or deny the military service credit application prior to ruling on the application for licensure, examination, or registration. The applicant shall not be required to submit any fees in connection with the license or registration application until the board issues a determination on the military service credit application. If the board does not grant the military service credit application, the applicant may withdraw any license or registration application and application fee, if submitted, or the applicant may request that the application be placed in pending status. The withdrawal of a license or registration application and fee shall not preclude subsequent applications supported by additional documentation or information.

657—33.3(85GA, ch1116) *Veteran licensure or registration.* A veteran with an unrestricted pharmacist license in another jurisdiction may apply for pharmacist licensure in Iowa by license transfer/reciprocity pursuant to rule 657—2.9(147,155A) and this chapter. A veteran must pass any required examinations to be eligible for pharmacist licensure by license transfer/reciprocity. A veteran may submit an application for pharmacist-intern registration pursuant to 657—Chapter 4 and this chapter. A veteran may submit an application for technician registration pursuant to 657—Chapter 3 and this chapter. A veteran may submit an application for pharmacy support person registration pursuant to 657—Chapter 5 and this chapter.

33.3(1) *Priority application status.* A fully completed application for licensure or registration submitted by a veteran under this chapter shall be given priority status and shall be expedited.

33.3(2) *Application requirements.* Such an application shall contain all of the information required of all applicants for licensure or registration who hold unrestricted licenses or registrations in other jurisdictions and who are applying for licensure or registration, including, but not limited to, completion of all required forms, payment of applicable fees, disclosure of criminal or disciplinary history, and, if applicable, a criminal history background check. In addition, the applicant shall provide such documentation as is reasonably needed to verify the applicant's status as a veteran under Iowa Code section 35.1(2).

33.3(3) *Equivalency determination.* Upon receipt of a fully completed application for licensure or registration, the board shall promptly determine if the requirements for licensure or registration of the jurisdiction where the veteran is licensed or registered are substantially equivalent to the requirements for licensure or registration in Iowa. The board may consider the following factors in determining

PHARMACY BOARD[657](cont'd)

substantial equivalence: scope of practice, education and coursework, degree requirements, and post-graduate experiences.

33.3(4) *Licensure or registration approval.* The board shall promptly grant a license or registration, as appropriate, to the veteran if the veteran is licensed or registered in another jurisdiction whose licensure or registration requirements are substantially equivalent to those required in Iowa, unless the applicant is ineligible for licensure or registration based on other grounds, for example, the applicant's disciplinary or criminal background.

33.3(5) *Notification of additional requirements and provisional licensure or registration.* If the board determines that the veteran is licensed or registered in another jurisdiction whose licensure or registration requirements are not substantially equivalent to those required in Iowa, the board shall promptly inform the veteran of the additional experience, education, or examinations required for licensure or registration in Iowa. Unless the applicant is ineligible for licensure or registration based on other grounds, such as disciplinary or criminal background, the following shall apply:

a. If a veteran has not passed the required examination(s) for licensure or registration, the applicant may request that the application be placed in pending status.

b. If additional experience or education is required in order for the applicant's qualifications to be considered substantially equivalent, the applicant may request that the board issue a provisional license or registration for a specified period of time upon such conditions as the board deems reasonably necessary to protect the health, welfare, and safety of the public unless the board determines that the deficiency is of a character that the public health, welfare, or safety will be adversely affected if a provisional license or registration is granted.

c. If a request for a provisional license or registration is denied, the board shall issue an order fully explaining the decision and shall inform the applicant of the steps the applicant may take in order to receive a provisional license or registration.

d. If a provisional license or registration is issued, the application for full licensure or registration shall be placed in pending status until the necessary experience or education has been successfully completed or the provisional license or registration expires, whichever occurs first. The board may extend a provisional license or registration on a case-by-case basis for good cause.

657—33.4(85GA,ch1116) Request for contested case. A military service applicant or a veteran who is aggrieved by the board's decision to deny all or part of the military service credit application, a request for a license transfer/reciprocal license, a request for a registration, or a request for provisional license or registration, or is aggrieved by the terms under which a provisional license or registration will be granted, may request a contested case (administrative hearing) and may participate in a contested case by telephone. A request for a contested case shall be made within 30 days of issuance of the board's decision pursuant to 657—subrule 35.26(1). There shall be no fees or costs assessed against the veteran in connection with a contested case conducted pursuant to this chapter.

These rules are intended to implement 2014 Iowa Acts, chapter 1116, section 34.

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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 135.11(12), the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 176, “Criteria for Awards or Grants,” Iowa Administrative Code.

The rules in Chapter 176 describe the Department’s process for the issuance of awards and grants, for review of competitive selection applications, and for appeals. These proposed amendments provide for a second review, which shall be conducted by two management employees and one nonmanagement employee, of applications for the service delivery area when the applications receive an equal number of points, provide for public notice of available funds in the IowaGrants system Web site and designate the time period for decision and order of the director, which shall be issued within 90 days of the date of the receipt of an appeal.

Any interested person may make written comments or suggestions on the proposed amendments on or before October 21, 2014. Such written comments should be directed to Cheryl Christie, Bureau of Finance, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to cheryl.christie@idph.iowa.gov.

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

These amendments are intended to implement Iowa Code sections 135.11, 17A.3(1) and 17A.15.

The following amendments are proposed.

ITEM 1. Amend rule 641—176.5(135,17A) as follows:

641—176.5(135,17A) Review process (competitive applications only). The review process to be followed in determining the amount of funds to be approved for award of a contract shall be described in the competitive selection application. The review criteria and the point allocation for each criterion shall also be described in the competitive selection application.

The review committee membership shall be determined by the bureau chief, with oversight from the respective division director. The review committee members shall allocate points per review criteria criterion in conducting the review.

In the event applications for the service delivery area receive an equal number of points, a second review may be conducted by two ~~division directors and the respective bureau chief administering the program~~ management employees and one nonmanagement employee as designated by the respective division director.

ITEM 2. Amend rule 641—176.7(135,17A) as follows:

641—176.7(135,17A) Public notice of available funds. ~~The program making funds available through a competitive selection application process~~ department shall post all competitive selection documents on the department of public health’s Web site at <http://www.idph.state.ia.us> ~~management’s IowaGrants Web site at www.IowaGrants.gov~~ management’s IowaGrants Web site at www.IowaGrants.gov for the duration of the application period.

ITEM 3. Amend subrule 176.8(1) as follows:

176.8(1) Appeal. Letters of intent and applications received by the department after the due date and time stated in the competitive selection application will be rejected, ~~returned to the applicant,~~ and will not be reviewed by the department, and a notice will be sent to the applicant. An applicant may appeal the denial of a timely submitted application. The appeal shall be submitted in writing within

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ten business days of receipt of notification of the adverse decision. The appeal shall be addressed to the contract administrator cited in the competitive selection application guidance, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. In the event of an appeal, the department will continue working with the applicant awarded funding pending the outcome of the appeal.

ITEM 4. Amend subrule 176.8(5) as follows:

176.8(5) *Appeal to director.* Any appeal to the director for review of a proposed decision shall be ~~mailed~~ in writing and submitted to the director by electronic mail; delivered by certified mail, return receipt requested;² or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge and the other parties. A request for appeal shall include the specific grounds for appeal.

ITEM 5. Amend subrule 176.8(7) as follows:

176.8(7) *Decision of director.* Upon receipt of a properly filed appeal, the director shall establish a briefing schedule and, at the discretion of the director, an opportunity for oral argument. An appeal to the director shall be based on the record made at the hearing. The director may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding, or may reverse or modify any conclusion of law the director finds to be in error. The decision and order of the director shall be issued within 90 days of the date of the receipt of the appeal and delivered by certified mail, return receipt requested, or by personal service, and becomes the department's final decision upon receipt by the aggrieved party.

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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 2014 Iowa Acts, chapter 1116, section 34, the Department of Public Health hereby gives Notice of Intended Action to adopt new Chapter 196, “Military Service and Veteran Reciprocity,” Iowa Administrative Code.

These rules implement the Home Base Iowa Act, 2014 Iowa Acts, chapter 1116, section 34, which requires all professional and occupational licensing boards, commissions, and other authorities which are subject to Iowa Code chapter 272C to adopt rules by January 1, 2015, on military service and veteran licensure. The rules address the process under which the Department will provide credit toward licensure qualifications for military service, education, and training and the procedures for expediting reciprocal and provisional licensure for veterans who are licensed in other states. The rules will establish the same procedure for all licensing authorities within the Department.

Any interested person may make written comments or suggestions on the proposed rules on or before October 21, 2014. Such written comments should be directed to Barb Nervig, Iowa Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075. Comments may be sent by e-mail to barbara.nervig@idph.iowa.gov.

After analysis and review of this rule making, there will be a positive impact on jobs because the rules will streamline the licensing process for veterans when locating in or coming back to Iowa.

These rules are intended to implement 2014 Iowa Acts, chapter 1116, section 34.

The following amendment is proposed.

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Adopt the following **new** 641—Chapter 196:

CHAPTER 196
MILITARY SERVICE AND VETERAN RECIPROCITY

641—196.1(85GA,ch1116) Definitions.

“Department” means the department of public health.

“License” means a license, certification, registration, permit, approval, renewal, or other similar authorization issued to a person by a licensing authority which evidences the granting of authority to engage in a profession, occupation, or business.

“Licensing authority” means a board, commission, or any other entity of the department which has authority within this state to suspend or revoke a license or deny the renewal or issuance of a license authorizing a person to engage in a business, occupation, or profession.

“Military service” means honorably serving on federal active duty, state active duty, or national guard duty, as defined in Iowa Code section 29A.1; in the military services of other states, as provided in 10 U.S.C. Section 101(c); or in the organized reserves of the United States, as provided in 10 U.S.C. Section 10101.

“Military service applicant” means an individual requesting credit toward licensure for military education, training, or service obtained or completed in military service.

“Veteran” means an individual who meets the definition of “veteran” in Iowa Code section 35.1(2).

641—196.2(85GA,ch1116) Military education, training, and service credit. A military service applicant may apply for credit for verified military education, training, or service toward any experience or educational requirement for licensure by submitting a military service application form to the licensing authority.

196.2(1) The application may be submitted with an application for licensure or examination, or prior to applying for licensure or to take an examination. No fee is required with submission of an application for military service credit.

196.2(2) The applicant shall identify the experience or educational licensure requirement to which the credit would be applied if granted. Credit shall not be applied to an examination requirement.

196.2(3) The applicant shall provide documents, military transcripts, a certified affidavit, or forms that verify completion of the relevant military education, training, or service, which may include, when applicable, the applicant’s Certificate of Release or Discharge from Active Duty (DD Form 214) or Verification of Military Experience and Training (VMET) (DD Form 2586).

196.2(4) Upon receipt of a completed military service application, the licensing authority shall promptly determine whether the verified military education, training, or service will satisfy all or any part of the identified experience or educational qualifications for licensure.

196.2(5) The licensing authority shall grant credit requested in the application in whole or in part if the licensing authority determines that the verified military education, training, or service satisfies all or part of the experience or educational qualifications for licensure.

196.2(6) The licensing authority shall inform the military service applicant in writing of the credit, if any, given toward an experience or educational qualification for licensure or explain why no credit was granted. The applicant may request reconsideration upon submission of additional documentation or information.

196.2(7) A military service applicant who is aggrieved by the licensing authority’s decision may request a contested case (administrative hearing) and may participate in a contested case by telephone. A request for a contested case shall be made within 30 days of issuance of the licensing authority’s decision. The provisions of 641—Chapter 173 shall apply, except that no fees or costs shall be assessed against the military service applicant in connection with a contested case conducted pursuant to this subrule.

196.2(8) The licensing authority shall grant or deny the military service application prior to ruling on the application for licensure. The applicant shall not be required to submit any fees in connection

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with the licensure application unless the licensing authority grants the military service application. If the licensing authority does not grant the military service application, the applicant may withdraw the licensure application or request that the licensure application be placed in pending status for up to one year or as mutually agreed. The withdrawal of a licensure application shall not preclude subsequent applications supported by additional documentation or information.

641—196.3(85GA,ch1116) Veteran reciprocity.

196.3(1) A veteran with an unrestricted license in another jurisdiction may apply for licensure in Iowa through reciprocity. A veteran must pass any examinations required for licensure to be eligible for licensure through reciprocity and will be given credit for examinations previously passed when consistent with the licensing authority's laws and rules on examination requirements. A fully completed application for licensure submitted by a veteran under this subrule shall be given priority and shall be expedited.

196.3(2) Such an application shall contain all of the information required of all applicants for licensure who hold unrestricted licenses in other jurisdictions and who are applying for licensure by reciprocity, including, but not limited to, completion of all required forms, payment of applicable fees, disclosure of criminal or disciplinary history, and, if applicable, a criminal history background check. The applicant shall use the same forms as any other applicant for licensure by reciprocity and shall additionally provide such documentation as is reasonably needed to verify the applicant's status as a veteran under Iowa Code section 35.1(2).

196.3(3) Upon receipt of a fully completed licensure application, the licensing authority shall promptly determine if the professional or occupational licensing requirements of the jurisdiction where the veteran is licensed are substantially equivalent to the licensing requirements in Iowa. The licensing authority shall make this determination based on information supplied by the applicant and such additional information as the licensing authority may acquire from the applicable jurisdiction. As relevant to the license at issue, the licensing authority may consider the following factors in determining substantial equivalence: scope of practice, education and coursework, degree requirements, experience, and examinations required for licensure.

196.3(4) The licensing authority shall promptly grant a license to the veteran if the veteran is licensed in the same or similar profession in another jurisdiction whose licensure requirements are substantially equivalent to those required in Iowa, unless the applicant is ineligible for licensure based on other grounds, for example the applicant's disciplinary or criminal background.

196.3(5) If the licensing authority determines that the licensure requirements in the jurisdiction in which the veteran is licensed are not substantially equivalent to those required in Iowa, the licensing authority shall promptly inform the veteran of the additional experience, education, or examinations required for licensure in Iowa. Unless the applicant is ineligible for licensure based on other grounds, such as disciplinary or criminal background, or the issuance of a provisional license is inconsistent with the licensing authority's enabling statute, the following shall apply:

a. If a veteran has not passed the required examination(s) for licensure, the veteran may not be issued a provisional license but may request that the licensure application be placed in pending status for up to one year or as mutually agreed to provide the veteran with the opportunity to satisfy the examination requirements.

b. If additional experience or education is required for the applicant's qualifications to be considered substantially equivalent, the applicant may request that the licensing authority issue a provisional license for a specified period of time during which the applicant will successfully complete the necessary experience or education. The licensing authority shall issue a provisional license for a specified period of time upon such conditions as the licensing authority deems reasonably necessary to protect the health, welfare or safety of the public unless the licensing authority determines that the deficiency is of a character that the public health, welfare or safety will be adversely affected if a provisional license is granted.

c. If a request for a provisional license is denied, the licensing authority shall issue an order fully explaining the decision and shall inform the applicant of the steps the applicant may take in order to receive a provisional license.

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d. If a provisional license is issued, the application for full licensure shall be placed in pending status until the necessary experience or education has been successfully completed or the provisional license expires, whichever occurs first. The licensing authority may extend a provisional license on a case-by-case basis for good cause.

196.3(6) A veteran who is aggrieved by the licensing authority's decision to deny an application for a reciprocal license or a provisional license, or is aggrieved by the terms under which a provisional license will be granted may request a contested case (administrative hearing) and may participate in a contested case by telephone. A request for a contested case shall be made within 30 days of issuance of the licensing authority's decision. The provisions of 641—Chapter 173 shall apply, except that no fees or costs shall be assessed against the veteran in connection with a contested case conducted pursuant to this subrule.

These rules are intended to implement 2014 Iowa Acts, chapter 1116, section 34.

ARC 1655C**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 135.72, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 202, “Certificate of Need Program,” and to rescind Chapter 204, “Uniform Reporting Requirements,” Iowa Administrative Code.

These proposed amendments were approved by the State Health Facilities Council on July 21, 2014.

The proposed amendments update and clarify the rules for the Certificate of Need (CON) Program. Item 1 rescinds and replaces rule 641—202.1(135), the definition portion of Chapter 202, so that definitions will be listed alphabetically. The following new definitions are added to the new rule: “acute care category of bed usage,” “cardiac catheterization service,” “open heart surgical service,” “physical facility,” and “radiation therapy service applying ionizing radiation for the treatment of malignant disease using megavoltage external beam equipment.” The definitions of “appropriate geographic service area,” “bed capacity” and “organ transplantation service,” which are in the current rule, are included and updated in the new rule. In addition, the definition of “consumer” in the existing rule is omitted from the new rule. Item 4 describes the process for requesting a determination of whether a proposal requires a CON Program review. Item 18 relates to reporting requirements, some of which are currently addressed in outdated Chapter 204, which is rescinded in Item 20. The remaining items amend terminology, encourage electronic submission of material and indicate that forms and notifications are posted on the CON Program Web page.

Any interested person may make written comments or suggestions on the proposed amendments on or before October 21, 2014. Such written comments should be directed to Barb Nervig, Certificate of Need Program, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to barbara.nervig@idph.iowa.gov.

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

These amendments are intended to implement Iowa Code sections 135.61 to 135.79.

The following amendments are proposed.

ITEM 1. Rescind rule 641—202.1(135) and adopt the following **new** rule in lieu thereof:

641—202.1(135) Definitions. For purposes of this chapter, the following definitions apply:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

“Acute care category of bed usage,” as the term applies in Iowa Code section 135.63(2) *“k,”* shall be the same as the acute care categories listed in the state survey section of the American Hospital Association Annual Survey of Hospitals.

“Any expenditure in excess of five hundred thousand dollars,” as defined in Iowa Code section 135.61(18) *“e,”* means new capital expenditures and new personnel necessary to operate the service for a year.

“Any mobile health service with a value in excess of one million five hundred thousand dollars,” as defined in Iowa Code section 135.61(18) *“l,”* means the value of all equipment used to provide the service, including the trailer. The party providing the equipment shall be the applicant regardless of the location of that party.

“Appropriate geographic service area,” as the term applies to defining affected persons in Iowa Code section 135.61(1) *“c,”* shall be defined as follows:

1. For applications regarding hospitals, hospitals located in the same county and in Iowa counties contiguous to the county wherein the applicant hospital’s proposed project will be located.

2. For applications regarding health care facilities, other health care facilities located in the same county and in Iowa counties contiguous to the county wherein the applicant’s proposed health care facility will be located.

3. For applications sponsored by other than the hospitals or health care facilities specified in paragraphs *“1”* and *“2,”* those providers within the same county who offer similar service or might logically be viewed as potential providers of such service.

“Bed capacity” shall be defined as follows:

1. For hospitals, bed capacity is defined as the total facility licensed beds as reported on the state survey section of the American Hospital Association Annual Survey of Hospitals.

2. For health care facilities, bed capacity is defined as a facility’s licensed bed capacity according to the department of inspections and appeals.

“Cardiac catheterization service,” as the term applies to a new or changed institutional health service in Iowa Code section 135.61(18) *“m”*(1), means the initiation or expansion of this service.

“Consumers served by a new institutional health service” means those consumers residing in the service area as determined by the department.

“Long-term (acute) care hospital,” for purposes of these rules, means a hospital that has been approved to participate in the Title XVIII (Medicare) program as a long-term care hospital-prospective payment system hospital (LTCH-PPS) in accordance with 42 CFR Part 412.

“Open heart surgical service,” as the term applies to new or changed institutional health service in Iowa Code section 135.61(18) *“m”*(2), means the initiation or expansion of this service.

“Organized outpatient health facility,” as defined in Iowa Code section 135.61(20), shall include, but not be limited to, the following types of facilities:

1. Community mental health centers; and

2. Comprehensive outpatient rehabilitation facilities (CORFs) certified by Medicare.

“Organ transplantation service,” as the term applies to a new or changed institutional health service in Iowa Code section 135.61(18) *“m”*(3), means the initiation or expansion of this service. Each type of organ transplant shall be considered separately.

“Permanent change in bed capacity of an institutional health facility” means a change which is intended to be effective for one year or more.

1. A conversion of a long-term acute care hospital or a rehabilitation hospital as defined by federal regulations to a general acute care hospital or to a different type of specialty hospital is a permanent change in bed capacity and requires a certificate of need.

2. A hospital which has deleted beds pursuant to Iowa Code section 135.63(2) *“g”* for the purpose of receiving designation as a critical access hospital may reestablish the deleted beds at a later time without obtaining a certificate of need, provided that the number of beds reestablished does not exceed the number of beds maintained prior to the deletion as reported on the bed reduction form.

“Physical facility,” as the term applies in Iowa Code section 135.61(18) *“f,”* means a separately licensed facility.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

“Private offices and private clinics of an individual physician, dentist, or other practitioner or group of health care providers.” The meaning of this term as used in Iowa Code section 135.63(2)“a” shall be determined by looking at factors which include, but are not limited to:

1. The type of health care service delivered;
2. The control and supervision of medical judgment in the care of and treatment of patients;
3. The control and supervision of professional assistants, including nurses, physician assistants, and technicians; and
4. The ownership and maintenance of medical records of patients.

“Radiation therapy service applying ionizing radiation for the treatment of malignant disease using megavoltage external beam equipment,” as the term applies to new or changed institutional health service in Iowa Code section 135.61(18)“m”(4), means the initiation or expansion of this service.

“Rehabilitation hospital,” for the purposes of these rules, means a hospital that has been approved to participate in the Title XVIII (Medicare) program as an inpatient rehabilitation facility-prospective payment system hospital (IRF-PPS) in accordance with 42 CFR Part 412.23(b), 412.25 or 412.29.

“Relocation of an institutional health facility,” as the term applies to new or changed institutional health service in Iowa Code section 135.61(18)“b,” means the replacement of a facility located in one county with a facility located in another county.

“Value in excess of one million five hundred thousand dollars,” as used in Iowa Code section 135.61(18)“g,” “h,” “i” and “j,” means the value of the equipment including any applicable sales tax, delivery charge and installation charge.

ITEM 2. Amend subrule 202.2(1) as follows:

202.2(1) Before applying for a certificate of need, the sponsor of a proposed new institutional health service or changed institutional health service shall submit a letter of intent to the department. The letter of intent shall contain the following:

- 1- a. A brief description of the ~~proposal~~ proposed project;
- 2- b. ~~Project’s~~ The project’s location;
- 3- c. ~~Its~~ The project’s estimated cost (site costs, land improvements, facility costs, movable equipment and financing costs); and
- 4- d. An explanation of how the project will be financed.

ITEM 3. Amend subrule 202.2(3) as follows:

202.2(3) The department shall make available ~~to each applicant any and on the certificate of need~~ Web page located on the department’s Web site, www.idph.state.ia.us, all criteria and standards which are pertinent to a particular an application. This shall be done within 15 calendar days of receipt of a letter of intent or upon request.

ITEM 4. Rescind rule 641—202.3(135) and adopt the following new rule in lieu thereof:

641—202.3(135) Determination of reviewability. A sponsor of a proposed project may submit a written request for a determination of reviewability as to whether the project requires a certificate of need.

202.3(1) The request should include sufficient details of the proposed project and cite the sections of the Iowa Code that the sponsor relies upon to assert the project is not reviewable.

202.3(2) Upon receipt of a written request from the sponsor of a project, the department shall determine if a proposed project requires a certificate of need under Iowa Code sections 135.61 to 135.83. The department may request additional information about the project to make the determination.

a. If it is determined that a certificate of need is required, the sponsor shall be notified by the department and the request for nonreviewability shall be considered the letter of intent for purposes of subrule 202.2(2).

b. If it is determined that a certificate of need is not required, the sponsor shall be notified by the department and the determination of nonreviewability shall be placed on the next agenda of the state health facilities council for consideration.

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c. The notification to the sponsor of the results of the department's review of the request shall include specific Iowa Code citations relied upon to support the determination.

ITEM 5. Amend subrule 202.4(1) as follows:

202.4(1) Application form.

a. ~~The statement of information required by the department for purposes of review shall be the information requested on the department's application form.~~ A sponsor of a proposed project for a new or changed institutional health service shall submit to the department an application for certificate of need by using the appropriate application form found on the certificate of need Web page located on the department's Web site, www.idph.state.ia.us. All information requested in the application form will be required in the absence of a ~~written~~ waiver by the department.

b. An original application and six copies thereof shall be sent to the Certificate of Need Program, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. An electronic copy of the application and all attachments shall also be submitted.

c. No change.

ITEM 6. Amend subrule 202.4(2) as follows:

202.4(2) Application fee.

~~a.~~ The application shall be accompanied by a fee equivalent to three-tenths of 1 percent of the anticipated cost of the project. There shall be a minimum fee of \$600 and a maximum fee of \$21,000.

~~b. a.~~ The fee shall be based on the total cost of the project, which shall include site costs, land improvements, facility costs, movable equipment and financing costs.

~~b.~~ ~~Fee~~ The fee for leased or donated new institutional health services ~~would~~ shall be calculated in the same manner as if the new institutional health services were purchased.

(1) The leased equipment fee shall be based on total value of the lease, plus sales tax, delivery and installation.

(2) The lease of space includes the cost of a one-year-lease payment for the space in addition to other costs associated with the project.

(3) Financing costs shall not be applicable on leases or cash purchases.

c. The fee shall be remitted by check ~~or money order~~ made payable to the Treasurer, State of Iowa, and addressed to Iowa Department of Public Health—Certificate of Need, Lucas State Office Building, Des Moines, Iowa 50319-0075.

d. and e. No change.

f. An applicant for a new or changed institutional health service offered or developed by an intermediate care facility for ~~the mentally retarded or the mentally ill~~ persons with an intellectual disability or for persons with a mental illness is exempt from payment of the application fee.

g. No change.

ITEM 7. Amend subrule 202.4(4) as follows:

202.4(4) Promptly after an application is accepted, the department shall provide written notification to all affected persons defined in Iowa Code section 135.61(1) "c" and "d" which are identified ~~in the department's data banks~~ on the department of inspections and appeals Web site or by the applicant, as provided in Iowa Code section 135.66(2). The department shall notify other affected persons by ~~distribution of pertinent information to the news media~~ posting such notification to the certificate of need Web page located on the department's Web site, www.idph.state.ia.us. The notice and the Web page shall identify deadlines for the submission of written materials as provided in 202.6(2).

ITEM 8. Amend paragraph **202.4(5) "b"** as follows:

b. All reports shall be ~~mailed~~ provided to council members and to the applicant ~~at least ten calendar days~~ prior to the health facilities' council meeting at which the application is to be heard.

ITEM 9. Amend subrule 202.5(4) as follows:

202.5(4) The council shall, at the ~~July~~ first meeting after July 1 of each odd-numbered year, elect a vice-chairperson, who shall perform the duties of the chairperson in the absence of the chairperson, when the chairperson has a conflict of interest or when the chairperson so directs.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 10. Renumber subrule **202.5(5)** as **202.5(6)**.

ITEM 11. Adopt the following **new** subrule 202.5(5):

202.5(5) The department shall notify the public and affected parties of the council meeting agenda utilizing the certificate of need Web page located on the department's Web site, www.idph.state.ia.us.

ITEM 12. Amend subrule 202.6(2) as follows:

202.6(2) The notice of an accepted application issued pursuant to Iowa Code section 135.66(2) shall inform the applicant and affected persons of the deadlines for the submission to the department of written statements or other materials. These deadlines will also be posted on the certificate of need Web page on the department's Web site, www.idph.state.ia.us.

a. Written submissions received by the department after the deadlines established in this notice shall not be considered by the department or the council unless submitted at the public hearing solely to support oral testimony or upon a showing of good cause.

b. Applicants and affected persons shall submit ~~six copies of~~ all written materials electronically. If electronic submission is not possible, then an original and six copies must be submitted.

ITEM 13. Amend subrules 202.7(1) and 202.7(2) as follows:

202.7(1) If an applicant desires to request a summary review of its application for a certificate of need, it shall submit a written request for summary review, an original application and six copies thereof to the Certificate of Need Program, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. An electronic copy of the application and all attachments shall also be submitted. The applicant is not required to submit a letter of intent pursuant to Iowa Code section 135.65 prior to submitting a written request for a summary review.

202.7(2) The eligibility of an application for summary review pursuant to Iowa Code section 135.67 shall not mandate or require such review. The department will make the decision as to whether an application will be reviewed in the summary review process is the department's.

ITEM 14. Rescind paragraph **202.11(1)"a"** and adopt the following **new** paragraph in lieu thereof:

a. A decision by the department pursuant to 641—202.3(135) that a proposed project does not require a certificate of need;

ITEM 15. Amend subrule 202.11(2) as follows:

202.11(2) The following stages of the process are final decisions subject to judicial review as final agency action under Iowa Code section 17A.19:

a. A decision by the department to disallow summary review;

b. A decision by the council that a proposed project does not require a certificate of need;

~~*c.*~~ *c.* A decision by the council to approve or deny an application; ~~and~~

~~*d.*~~ *d.* The council's final ruling on an application for rehearing; and

e. A decision by the council to revoke a certificate of need pursuant to 641—202.13(135).

ITEM 16. Amend subrule 202.12(1) as follows:

202.12(1) ~~Progress reports of all approved projects shall be submitted~~ The sponsor of an approved application shall submit a progress report using the form available on the certificate of need Web page on the department's Web site, www.idph.state.ia.us, to the department six months after approval at hearing.

ITEM 17. Amend subrules 202.13(1) to 202.13(3) as follows:

202.13(1) ~~Requests for extension of a certificate of need must be filed in letter form to the department from the applicant no later than 45 days prior to the expiration of the certification. A request by the applicant for an extension of a certificate of need must be filed with the department using the form available on the certificate of need Web page on the department's Web site, www.idph.state.ia.us, no later than 30 days prior to the expiration of the certificate of need.~~

202.13(2) ~~Request~~ A request for extension shall fully identify the project and indicate the current status of the project in descriptive terms.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

202.13(3) ~~The department shall use the news media to notify the public and affected parties of the council meeting agenda, including extension requests. The news media shall be notified at least ten days before the council meeting.~~

Any affected persons shall have the right to submit to the department in writing, or orally at the council meeting at which the extension request is considered, information which may be relevant to the question of granting an extension.

ITEM 18. Adopt the following new rule 641—202.16(135):

641—202.16(135) Reporting requirements. For the purposes of the annual reports and data compilation required in Iowa Code sections 135.75 and 135.78, the department will utilize the AHA Annual Survey of Hospitals with the state survey addendum for hospitals and the cost reports for health care facilities submitted to the Medicaid enterprise of the department of human services.

ITEM 19. Amend **641—Chapter 202**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter 135~~ sections 135.61 to 135.79 and 135.83.

ITEM 20. Rescind and reserve **641—Chapter 204**.

ARC 1654C

REVENUE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 12, “Filing Returns, Payment of Tax, Penalty and Interest,” Chapter 42, “Adjustments to Computed Tax and Tax Credits,” Chapter 46, “Withholding,” Chapter 52, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” and Chapter 58, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” Iowa Administrative Code.

These amendments are proposed as a result of 2014 Iowa Acts, House Files 2438 and 2448.

Item 1 amends rule 701—12.19(15) to provide that the sales and use tax refund for eligible businesses includes businesses approved under the Workforce Housing Tax Incentives Program.

Item 2 amends paragraph 12.19(3)“b” to provide that the Department of Revenue may request invoices when reviewing sales and use tax refund claims filed by eligible businesses.

Items 3, 4, 7, 28, 33, 36 and 53 amend various rules and subrules for individual income, corporation income and franchise tax to provide that the Enterprise Zone Program is repealed effective July 1, 2014, but any tax credits earned by businesses approved under the Enterprise Zone Program remain valid and can be claimed on tax returns filed after July 1, 2014.

Items 5, 11, 12, 14, 15, 17 through 20, 24, 30, 31, 40, 41, 43, 44, and 46 through 49 amend various rules and subrules for individual income and corporation income tax to provide that tax credit certificates are included with tax return filings, instead of being attached to tax return filings.

Items 6, 8, 13, 16, 29, 34, 37, 42, 45 and 54 amend various rules and subrules for individual income, corporation income and franchise tax to provide a reference to an Economic Development Authority subrule regarding the calculation of repayment of tax incentives if an eligible business does not meet the requirements of a tax credit program. In addition, a reference to a Department of Revenue case on the repayment of tax incentives is provided.

Items 9, 38 and 55 amend subrules 42.17(2), 52.15(2) and 58.8(2) to provide that the excess of the \$3 million limitation of tax credits eligible for transfer in the 2013 and 2014 calendar years for housing

REVENUE DEPARTMENT[701](cont'd)

developments located in brownfield sites or blighted areas cannot be claimed by a transferee prior to January 1, 2016, for individual income, corporation income and franchise tax.

Item 10 amends the implementation sentence for rule 701—42.17(15E).

Items 21 and 50 add new subrules 42.42(3) and 52.40(3) to provide for the repayment of tax incentives if an eligible business does not meet the requirements of the High Quality Jobs Program for individual and corporation income tax.

Item 22 amends rule 701—42.44(422) to update the sequence for the claiming of tax credits for individual income tax.

Items 23 and 51 amend rules 701—42.45(15) and 701—52.41(15) to update the list of economic development programs subject to an aggregate tax credit limit for individual and corporation income tax.

Items 25, 52 and 57 adopt new rules 701—42.53(15), 701—52.46(15) and 701—58.23(15) to provide for the new Workforce Housing Tax Incentives Program for individual income, corporation income and franchise tax. The Economic Development Authority's proposed 261—Chapter 48 (referenced herein), which sets forth the new Workforce Housing Tax Incentives Program, was published under Notice of Intended Action as **ARC 1628C** in the September 17, 2014, Iowa Administrative Bulletin.

Item 26 amends subrule 46.9(1) to update the Iowa Code reference that provides for the supplemental new jobs credit from withholding.

Item 27 updates the implementation sentence for rule 701—46.9(15).

Item 32 amends rule 701—52.12(422) to update the sequence for the claiming of tax credits for corporation income tax.

Items 35, 39 and 56 update the implementation sentence for rules 701—52.14(15E), 701—52.15(15E) and 701—58.8(15E).

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

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

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than November 3, 2014, to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 21, 2014. Such written comments should be directed to the Policy Section, Policy and Communications 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, Policy and Communications Division, Department of Revenue, at (515)281-8450 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 October 21, 2014.

After analysis and review of this rule making, no adverse impact on jobs has been found. The tax credits may positively impact job and economic growth for businesses and individuals in the state of Iowa.

These amendments are intended to implement Iowa Code sections 15.331C, 15E.44, 15E.45, 15E.193B (2014 Iowa Code), 422.11S, 476B.6 and 476B.8 as amended by 2014 Iowa Acts, House File 2438; Iowa Code sections 422.33 and 422.60 as amended by 2014 Iowa Acts, House File 2448; and 2014 Iowa Acts, House File 2448, sections 15 and 19.

The following amendments are proposed.

REVENUE DEPARTMENT[701](cont'd)

ITEM 1. Amend rule 701—12.19(15), introductory paragraph, as follows:

701—12.19(15) Sales and use tax refund for eligible businesses. For eligible businesses approved under the high quality jobs program, enterprise zone program, ~~or housing enterprise zone program,~~ or workforce housing tax incentives program by the Iowa economic development authority, a refund of sales and use tax is available.

ITEM 2. Amend paragraph **12.19(3)“b”** as follows:

b. To request a refund of the sales and use tax paid on goods, wares, or merchandise, or on services rendered ~~to,~~ furnished ~~to,~~ or performed ~~to or~~ for a contractor or subcontractor relating to the construction or equipping of a facility, the eligible business must file the Construction Contract Claim for Refund form, along with the Iowa Contractor's Statement, with the department of revenue. It is not necessary to attach invoices to the Construction Contract Claim for Refund form, but the department reserves the right to request invoices when reviewing the refund claim.

ITEM 3. Amend paragraph **42.11(3)“h,”** introductory paragraph, as follows:

h. Tax years ending on or after July 1, 2009. For eligible businesses approved under the enterprise zone program prior to July 1, 2014, research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities. The enterprise zone program was repealed on July 1, 2014. However, any research activities credit earned by businesses approved under the enterprise zone program prior to July 1, 2014, remains valid and can be claimed on tax returns filed after July 1, 2014.

ITEM 4. Amend subrule 42.14(1), introductory paragraph, as follows:

42.14(1) General rule. An investment tax credit of up to 10 percent of the new investment which is directly related to new jobs created by the location or expansion of an eligible business is available for businesses approved by the ~~Iowa department of economic development authority~~ under the new jobs and income program and the enterprise zone program. The new jobs and income program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rule 701—42.29(15) for information on the investment tax credit under the high quality job creation program. Any investment tax credit earned by businesses approved under the new jobs and income program prior to July 1, 2005, remains valid and can be claimed on tax returns filed after July 1, 2005. The credit is available for machinery and equipment or improvements to real property placed in service after May 1, 1994. The credit shall be taken in the year the qualifying asset is placed in service. The enterprise zone program was repealed on July 1, 2014. Any investment tax credit earned by businesses approved under the enterprise zone program prior to July 1, 2014, remains valid and can be claimed on tax returns filed after July 1, 2014. For business applications received by the ~~Iowa department of economic development authority~~ on or after July 1, 1999, purchases of real property made in conjunction with the location or expansion of an eligible business, the cost of land and any buildings and structures located on the land will be considered to be new investment which is directly related to new jobs for purposes of determining the amount of new investment upon which an investment tax credit may be taken. For projects approved on or after July 1, 2005, under the enterprise zone program, the investment tax credit will be amortized over a five-year period, as described in subrule 42.29(2).

ITEM 5. Amend subrule **42.14(2)**, second and fifth unnumbered paragraphs, as follows:

~~The Iowa department of economic development authority~~ will issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be ~~attached to~~ included with the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol for tax years beginning on or after January 1, 2002, or for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return for tax years beginning on or after July 1, 2003.

REVENUE DEPARTMENT[701](cont'd)

For tax years beginning on or after January 1, 2002, but before July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol may elect to transfer all or a portion of its tax credit to its members. For tax years beginning on or after July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return may elect to transfer all or a portion of its tax credit to its members. The amount of tax credit transferred and claimed by a member shall be based upon the pro-rata share of the member's earnings in the cooperative. The Iowa department of economic development authority will issue a tax credit certificate to each member of the cooperative to whom the credit was transferred provided that tax credit certificates which total no more than \$4 million are issued during a fiscal year. The tax credit certificate must be ~~attached to~~ included with the tax return for the tax year during which the tax credit is claimed.

ITEM 6. Amend subrule 42.14(3), introductory paragraph, as follows:

42.14(3) *Repayment of credits.* If an eligible business fails to maintain the requirements of the new jobs and income program or the enterprise zone program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of the new jobs and income program or the enterprise zone program because this repayment is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

ITEM 7. Amend rule 701—42.17(15E), introductory and first unnumbered paragraphs, as follows:

701—42.17(15E) Eligible housing business tax credit. An individual who qualifies as an eligible housing business may receive a tax credit of up to 10 percent of the new investment which is directly related to the building or rehabilitating of homes in an enterprise zone. The enterprise zone program was repealed on July 1, 2014, and the eligible housing business tax credit has been replaced with the workforce housing tax incentives program. See rule 701—42.53(15) for information on the tax incentives provided under the workforce housing tax incentives program. Any investment tax credit earned by businesses approved under the enterprise zone program prior to July 1, 2014, remains valid and can be claimed on tax returns filed after July 1, 2014. The tax credit may be taken on the tax return for the tax year in which the home is ready for occupancy.

An eligible housing business is one which meets the criteria in 2014 Iowa Code section 15E.193B.

ITEM 8. Amend subrule **42.17(1)**, fourth and sixth unnumbered paragraphs, as follows:

If the eligible housing business fails to maintain the requirements of 2014 Iowa Code section 15E.193B, the taxpayer, in order to be an eligible housing business, may be required to repay all or a part of the tax incentives the taxpayer received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of 2014 Iowa Code section 15E.193B. This repayment is required because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

REVENUE DEPARTMENT[701](cont'd)

Effective for tax periods beginning on or after January 1, 2003, the taxpayer must receive a tax credit certificate from the ~~Iowa department~~ of economic development authority to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.17(2). The tax credit certificate must be ~~attached to~~ included with the income tax return for the tax period in which the home is ready for occupancy. The administrative rules for the eligible housing business tax credit for the ~~Iowa department~~ of economic development authority may be found under 261—Chapter 59.

ITEM 9. Amend subrule 42.17(2) as follows:

42.17(2) *Transfer of the eligible housing business tax credit.* For tax periods beginning on or after January 1, 2003, the eligible housing business tax credit certificates may be transferred to any person or entity if low-income housing tax credits authorized under Section 42 of the Internal Revenue Code are used to assist in the financing of the housing development. In addition, the eligible housing business tax credit certificates may be transferred to any person or entity for projects beginning on or after July 1, 2005, if the housing development is located in a brownfield site as defined in Iowa Code section 15.291, or if the housing development is located in a blighted area as defined in Iowa Code section 403.17. No more than \$3 million of tax credits for housing developments located in brownfield sites or blighted areas may be transferred in a calendar year, with no more than \$1.5 million being transferred for any one eligible housing business in a calendar year.

The excess of the \$3 million limitation of tax credits eligible for transfer in the 2013 and 2014 calendar years for housing developments located in brownfield sites or blighted areas cannot be claimed by a transferee prior to January 1, 2016. The eligible housing business must have notified the economic development authority in writing before July 1, 2014, of the business's intent to transfer any tax credits for housing developments located in brownfield sites or blighted areas. If a tax credit certificate is issued by the economic development authority for a housing development approved prior to July 1, 2014, that is located in a brownfield site or blighted area, the tax credit can still be claimed by the eligible business, but the tax credit cannot be transferred by the eligible business if the economic development authority was not notified prior to July 1, 2014.

EXAMPLE 1: A housing development located in a brownfield site was completed in December 2013 and was issued a tax credit certificate totaling \$250,000. The \$3 million calendar cap for transferred tax credits for brownfield sites and blighted areas has already been reached for the 2013 and 2014 tax years. The \$250,000 tax credit is going to be transferred to Bill Smith, and the economic development authority was notified of the transfer prior to July 1, 2014. Once a replacement tax credit certificate has been issued, Mr. Smith cannot file an amended Iowa individual income tax return for the 2013 tax year until January 1, 2016, to claim the \$250,000 tax credit.

EXAMPLE 2: A housing development located in a blighted area was completed in May 2014 and was issued a tax credit certificate totaling \$150,000. The \$3 million calendar cap for transferred tax credits for brownfield sites and blighted areas has already been reached for the 2014 tax year. The \$150,000 tax credit is going to be transferred to Greg Rogers, and the economic development authority was notified of the transfer prior to July 1, 2014. Once a replacement tax credit certificate has been issued, Mr. Rogers cannot file an amended Iowa individual income tax return for the 2014 tax year until January 1, 2016, to claim the \$150,000 tax credit.

Within 90 days of transfer of the tax credit certificate for transfers prior to July 1, 2006, the transferee must submit the transferred tax credit certificate to the ~~Iowa department~~ of economic development authority, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department of revenue. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee for transfers prior to July 1, 2006, the ~~Iowa department~~ of economic development authority will issue a replacement

REVENUE DEPARTMENT[701](cont'd)

tax credit certificate to the transferee. For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the housing business tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credits shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

ITEM 10. Amend rule **701—42.17(15E)**, implementation sentence, as follows:

This rule is intended to implement 2014 Iowa Code section 15E.193B.

ITEM 11. Amend subrule **42.18(1)**, first unnumbered paragraph, as follows:

The department of revenue will not allow the assistive device credit on a taxpayer's return if the certificate of entitlement or a legible copy of the certificate is not ~~attached to~~ included with the taxpayer's income tax return. If the taxpayer has been granted a certificate of entitlement and the taxpayer is a partnership, limited liability company, S corporation, estate, or trust, where the income of the taxpayer is taxed to the individual owner(s) of the business entity, the taxpayer must provide a copy of the certificate to each of the owners with a statement showing how the credit is to be allocated among the individual owners of the business entity. An individual owner shall ~~attach~~ include a copy of the certificate of entitlement and the statement of allocation of the assistive device credit ~~to~~ with the individual's state income tax return.

ITEM 12. Amend paragraph **42.23(2)“c,”** second unnumbered paragraph, as follows:

~~The Iowa department of economic development authority~~ shall issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be ~~attached to~~ included with the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, as provided in subrule 42.14(2). For value-added agricultural projects involving ethanol, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. ~~The Iowa department of economic development authority~~ shall issue a tax credit certificate to each member on the list.

ITEM 13. Amend paragraph **42.23(2)“d,”** introductory paragraph, as follows:

d. Repayment of benefits. If an eligible business fails to maintain the requirements of the new capital investment program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of the new capital investment program. This repayment is required because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

REVENUE DEPARTMENT[701](cont'd)

ITEM 14. Amend subrule **42.27(2)**, fifth unnumbered paragraph, as follows:

To claim the tax credit, the taxpayer must ~~attach~~ include the tax credit certificate ~~to~~ with the tax return for the tax year set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

ITEM 15. Amend paragraph **42.29(2)“b,”** second unnumbered paragraph, as follows:

The ~~Iowa department~~ of economic development authority shall issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be ~~attached to~~ included with the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, as provided in subrule 42.14(2). For value-added agricultural projects involving ethanol, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The ~~Iowa department~~ of economic development authority shall issue a tax credit certificate to each member on the list.

ITEM 16. Amend paragraph **42.29(2)“c,”** introductory paragraph, as follows:

c. Repayment of benefits. If an eligible business fails to maintain the requirements of the high quality job creation program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure of the eligible business to maintain the requirements of the high quality job creation program because the repayment is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

ITEM 17. Amend subrule 42.32(6), introductory paragraph, as follows:

42.32(6) Claiming the tax credit. The taxpayer must ~~attach~~ include the tax credit certificate ~~to~~ with the tax return for which the credit is claimed. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

ITEM 18. Amend subrule **42.37(2)**, second unnumbered paragraph, as follows:

To claim the tax credit, the taxpayer must ~~attach~~ include the tax credit certificate ~~to~~ with the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for five years or until the tax credit is used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the year in which the taxpayer claimed the tax credit.

ITEM 19. Amend subrule **42.38(1)**, second unnumbered paragraph, as follows:

To claim the tax credit, the taxpayer must ~~attach~~ include the tax credit certificate ~~to~~ with the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for five years or until the tax credit is used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the year in which the taxpayer claimed the tax credit. In addition, a taxpayer cannot claim the film investment tax credit for qualified expenditures for which the film expenditure tax credit set forth in rule 701—42.37(15,422) is claimed.

ITEM 20. Amend subrule 42.40(3), introductory paragraph, as follows:

42.40(3) Claiming the tax credit. The tax credit is claimed on Form IA 148, Tax Credits Schedule. The taxpayer must ~~attach~~ include a copy of federal Form 8283, Noncash Charitable Contributions, which reflects the calculation of the fair market value of the real property interest, ~~to~~ with the Iowa return for the year in which the contribution is made. If a qualified appraisal of the property or other relevant

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information is required to be ~~attached to~~ included with federal Form 8283 for federal tax purposes, the appraisal and other relevant information ~~must also be attached to~~ included with the Iowa return.

ITEM 21. Adopt the following **new** subrule 42.42(3):

42.42(3) *Repayment of benefits.* If an eligible business fails to maintain the requirements of the high quality jobs program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure of the eligible business to maintain the requirements of the high quality jobs program because the repayment is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

ITEM 22. Amend rule 701—42.44(422) as follows:

701—42.44(422) Deduction of credits. The credits against computed tax set forth in Iowa Code sections 422.5, 422.8, 422.10 through 422.12C, and 422.110 shall be claimed in the following sequence:

1. Personal exemption credit.
2. Tuition and textbook credit.
3. Volunteer fire fighter, ~~and~~ volunteer emergency medical services personnel and reserve peace officer tax credit.
4. Nonresident and part-year resident credit.
5. Franchise tax credit.
6. S corporation apportionment credit.
7. ~~Disaster recovery housing project tax credit~~ School tuition organization tax credit.
8. ~~School tuition organization tax credit~~ Venture capital tax credits (excluding redeemed Iowa fund of funds tax credit).
9. ~~Venture capital tax credits (excluding redeemed Iowa fund of funds tax credit)~~ Endow Iowa tax credit.
10. ~~Endow Iowa tax credit~~ Film qualified expenditure tax credit.
11. ~~Agricultural assets transfer tax credit~~ Film investment tax credit.
12. ~~Custom farming contract tax credit~~ Redevelopment tax credit.
13. ~~Film qualified expenditure tax credit~~ From farm to food donation tax credit.
14. ~~Film investment tax credit~~ Workforce housing tax credit.
15. ~~Redevelopment tax credit~~ Investment tax credit.
16. ~~From farm to food donation tax credit~~ Wind energy production tax credit.
17. ~~Investment tax credit~~ Renewable energy tax credit.
18. ~~Wind energy production tax credit~~ Redeemed Iowa fund of funds tax credit.
19. ~~Renewable energy tax credit~~ New jobs tax credit.
20. ~~Redeemed Iowa fund of funds tax credit~~ Economic development region revolving fund tax credit.
21. ~~New jobs tax credit~~ Agricultural assets transfer tax credit.
22. ~~Economic development region revolving fund tax credit~~ Custom farming contract tax credit.
23. Geothermal heat pump tax credit.
24. Solar energy system tax credit.
25. Charitable conservation contribution tax credit.
26. Alternative minimum tax credit.
27. Historic preservation and cultural and entertainment district tax credit.

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28. Ethanol promotion tax credit.
29. Research activities credit.
30. Out-of-state tax credit.
31. Child and dependent care tax credit or early childhood development tax credit.
32. Motor fuel tax credit.
33. Claim of right credit (if elected in accordance with rule 701—38.18(422)).
34. Wage-benefits tax credit.
35. ~~Refundable portion of investment tax credit, as provided in subrule 42.14(2)~~ Adoption tax credit.
36. E-85 gasoline promotion tax credit.
37. Biodiesel blended fuel tax credit.
38. E-15 plus gasoline promotion tax credit.
39. Earned income tax credit.
40. Iowa taxpayers trust fund tax credit.
41. Estimated payments, payment with vouchers, and withholding tax.

This rule is intended to implement Iowa Code sections 422.5, 422.8, 422.10, 422.11, 422.11A, 422.11B, 422.11D, 422.11E, 422.11F, 422.11H, 422.11I, 422.11J, 422.11L, 422.11M, 422.11N, 422.11O, 422.11P, 422.11Q, 422.11R, 422.11S, 422.11V, 422.11W, ~~422.11X~~, 422.11Y, 422.11Z, 422.12, 422.12B, 422.12C and 422.110 and ~~2013~~ 2014 Iowa Acts, House File ~~599~~, and 2013 Iowa Acts, Senate Files ~~295~~ and 452 Files 2448 and 2468.

ITEM 23. Amend rule 701—42.45(15) as follows:

701—42.45(15) Aggregate tax credit limit for certain economic development programs. Effective for the fiscal year beginning July 1, 2009, awards made under certain economic development programs cannot exceed \$185 million during a fiscal year. Effective for fiscal years beginning on or after July 1, 2010, but beginning before July 1, 2012, awards made under these economic development programs cannot exceed \$120 million during a fiscal year. Effective for fiscal years beginning on or after July 1, 2012, awards made under these economic development programs cannot exceed \$170 million. ~~These~~ For fiscal years beginning on or after July 1, 2010, but beginning before July 1, 2014, these programs include the assistive device tax credit program, the enterprise zone program, the housing enterprise zone program, the high quality jobs program, the redevelopment tax credit program, tax credits for investments in qualifying businesses and community-based seed capital funds, and the innovation fund tax credit program. For fiscal years beginning on or after July 1, 2014, these programs include the assistive device tax credit program, the workforce housing tax incentives program, the high quality jobs program, the redevelopment tax credit program, tax credits for investments in qualifying businesses and community-based seed capital funds, and the innovation fund tax credit program. The administrative rules for the aggregate tax credit limit for the Iowa economic development authority may be found at 261—Chapter 76.

This rule is intended to implement Iowa Code section 15.119 as amended by ~~2013~~ 2014 Iowa Acts, House File ~~620~~ 2448.

ITEM 24. Amend subrule 42.47(2) as follows:

42.47(2) Claiming the tax credit. The geothermal heat pump tax credit will be claimed on Form IA 148, Tax Credit Schedule. The taxpayer must ~~attach~~ include federal Form 5695, Residential Energy Credits, ~~to with~~ any Iowa tax return claiming the geothermal heat pump credit. Any tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier.

ITEM 25. Adopt the following new rule 701—42.53(15):

701—42.53(15) Workforce housing tax incentives program Effective July 1, 2014, a business which qualifies under the workforce housing tax incentives program is eligible to receive tax incentives for individual income tax. The workforce housing tax incentives program replaces the eligible housing

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business enterprise zone program. An eligible business under the workforce housing tax incentives program must be approved by the economic development authority and must meet the requirements of 2014 Iowa Acts, House File 2448, section 15. The administrative rules for the workforce housing tax incentives program for the economic development authority may be found at 261—Chapter 48.

42.53(1) Definitions.

“*Costs directly related*” means expenditures that are incurred for construction of a housing project to the extent that they are attributable directly to the improvement of the property or its structures. “Costs directly related” includes expenditures for property acquisition, site preparation work, surveying, construction materials, construction labor, architectural services, engineering services, building permits, building inspection fees, and interest accrued on a construction loan during the time period allowed for project completion under an agreement entered into pursuant to the program. “Costs directly related” does not include expenditures for furnishings, appliances, accounting services, legal services, loan origination and other financing costs, syndication fees and related costs, developer fees, or the costs associated with selling or renting the dwelling units whether incurred before or after completion of the housing project.

“*Qualifying new investment*” means costs that are directly related to the acquisition, repair, rehabilitation, or redevelopment of a housing project in this state. For purposes of this rule, “costs directly related to acquisition” includes the costs associated with the purchase of real property or other structures. “Qualifying new investment” includes costs that are directly related to new construction of dwelling units if the new construction occurs in a distressed workforce housing community. The amount of costs that may be used to compute “qualifying new investment” shall not exceed the costs used for the first \$150,000 of value for each dwelling unit that is part of a housing project.

“Qualifying new investment” does not include the following:

1. The portion of the total cost of a housing project that is financed by federal, state, or local government tax credits, grants, forgivable loans, or other forms of financial assistance that do not require repayment, excluding the tax incentives provided under this program.
2. If a housing project includes the rehabilitation, repair, or redevelopment of an existing multi-use building, the portion of the total acquisition costs of the multi-use building, including a proportionate share of the total acquisition costs of the land upon which the multi-use building is situated, that are attributable to the street-level ground story that is used for a purpose that is other than residential.
3. Any costs, including acquisition costs, incurred before the housing project is approved by the economic development authority.

42.53(2) Workforce housing tax incentives. The economic development authority will allocate no more than \$20 million in tax incentives for this program for any fiscal year. A housing business that has entered into an agreement with the economic development authority is eligible to receive the tax incentives described in the following paragraphs:

a. Sales tax refund. A housing business may claim a refund of the sales and use tax described in rule 701—12.9(15).

b. Investment tax credit. A housing business may claim a tax credit in an amount not to exceed 10 percent of the qualifying new investment in a housing project. An individual may claim a tax credit if the housing business is a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings from the partnership, limited liability company, S corporation, estate, or trust. Any tax credit in excess of the taxpayer’s liability for the tax year is not refundable but may be credited to the tax liability for the following five years or until depleted, whichever is earlier.

42.53(3) Claiming the tax credit. The taxpayer must receive a tax credit certificate from the economic development authority to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer’s name, the taxpayer’s address, the taxpayer’s tax identification number, the date the project was completed, the amount of the eligible housing business tax credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being

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transferred, as provided in subrule 42.53(5). The tax credit certificate must be included with the income tax return for the tax period in which the housing is ready for occupancy.

42.53(4) Basis adjustment. The increase in the basis of the property that would otherwise result from the qualifying new investment shall be reduced by the amount of the investment tax credit. For example, if a new housing project had qualifying new investment of \$1 million which resulted in a \$100,000 investment tax credit for Iowa tax purposes, the basis of the property for Iowa income tax purposes would be \$900,000.

42.53(5) Transfer of the credit. Tax credit certificates issued under an agreement entered into pursuant to subrule 42.53(3) may be transferred to any person. Within 90 days of transfer, the transferee shall submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number, and address, the denomination that each replacement tax credit certificate is to carry, and any other information required by the department of revenue. However, tax credit certificate amounts of less than the minimum amount established in rule by the economic development authority shall not be transferable. Within 30 days of receiving the transferred tax credit certificate and the transferee's statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared on the transferred tax credit certificate. A tax credit shall not be claimed by a transferee under this rule until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income, or franchise tax purposes.

42.53(6) Repayment of benefits. If the housing business fails to maintain the requirements of Iowa Code section 15.353, the taxpayer may be required to repay all or a portion of the tax incentives the taxpayer received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure of the taxpayer to maintain the requirements of 2014 Iowa Acts, House File 2448, section 15. This repayment is required because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

This rule is intended to implement 2014 Iowa Acts, House File 2448.

ITEM 26. Amend subrule 46.9(1) as follows:

46.9(1) Supplemental new jobs credit from withholding. For eligible businesses approved by the ~~Iowa department of economic development authority under the new jobs and income program or the enterprise zone program~~ Iowa Code section ~~15A.7~~, a credit equal to an additional 1.5 percent of the wages paid to employees in new jobs ~~covered under these programs~~ for these eligible businesses can be taken on the Iowa withholding tax return. This supplemental new jobs credit is in addition to the credit described in rule ~~701—46.8(260E)~~. The administrative rules for the ~~new jobs and income program and the enterprise zone program administered by the Iowa department of economic development may be found in 261—Chapters 58 and 59.~~ supplemental new jobs credit from withholding may be found in 261—paragraph 59.6(3)“a.”

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ITEM 27. Amend rule **701—46.9(15)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~15E.196 as amended by 2009 Iowa Acts, Senate File 478, section 104, and section 15E.197~~ 15A.7 and 2014 Iowa Code sections 15E.196 and 15E.197.

ITEM 28. Amend subrule 52.7(6), introductory paragraph, as follows:

52.7(6) *Research activities credit for awards made by the ~~Iowa department of economic development authority on or after July 1, 2010, but before July 1, 2014~~*. For eligible businesses approved under the enterprise zone program prior to July 1, 2014, by the ~~Iowa department of economic development authority~~ when an award is made on or after July 1, 2010, but before July 1, 2014, the taxes imposed for corporate income tax purposes will be reduced by a tax credit for increasing research activities within an area designated as an enterprise zone. The enterprise zone program was repealed on July 1, 2014. Any research activities credit earned by businesses approved under the enterprise zone program prior to July 1, 2014, remains valid and can be claimed on tax returns filed after July 1, 2014. This credit for increasing research activities is in lieu of the research activities credit described in 701—subrule 42.11(3) or the research activities credit described in subrule 52.7(3). The amount of the credit depends upon the gross revenues of the eligible business.

ITEM 29. Amend subrule **52.10(2)**, second unnumbered paragraph, as follows:

If an eligible business fails to maintain the requirements of the new jobs and income program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure of the taxpayer to maintain the requirements of the new jobs and income program because this is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

ITEM 30. Amend subrule 52.10(4) as follows:

52.10(4) *Investment tax credit—value-added agricultural products*. For tax years beginning on or after July 1, 2001, an eligible business whose project primarily involves the production of value-added agricultural products may elect to receive a refund for all or a portion of an unused investment credit. For tax years beginning on or after July 1, 2001, but before July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation tax return, and whose project primarily involves the production of ethanol. For tax years beginning on or after July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation income tax return.

Eligible businesses that elect to receive a refund shall apply to the ~~Iowa department of economic development authority~~ for tax credit certificates between May 1 and May 15 of each fiscal year through the fiscal year ending June 30, 2009. The election to receive a refund of all or a portion of an unused investment tax credit is no longer available beginning with the fiscal year ending June 30, 2010. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The ~~Iowa department of economic development authority~~ will not issue tax credit certificates for more than \$4 million during a fiscal year. If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

The ~~Iowa department of economic development authority~~ will issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be ~~attached to~~ included with the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax

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return and whose project primarily involves the production of ethanol for tax years beginning on or after January 1, 2002, or for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return for tax years beginning on or after July 1, 2003.

For value-added agricultural projects for cooperatives that are not required to file an Iowa income tax return because they are exempt from federal income tax, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The ~~Iowa department of economic development~~ authority will issue a tax credit certificate to each member on the list.

For tax years beginning on or after January 1, 2002, but before July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol may elect to transfer all or a portion of its tax credit to its members. For tax years beginning on or after July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return may elect to transfer all or a portion of its tax credit to its members. The amount of tax credit transferred and claimed by a member shall be based upon the pro-rata share of the member's earnings in the cooperative. The ~~Iowa department of economic development~~ authority will issue a tax credit certificate to each member of the cooperative to whom the credit was transferred provided that tax credit certificates which total no more than \$4 million are issued during a fiscal year.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1. Corporation A completes a value-added agricultural project in October 2001 and has an investment tax credit of \$1 million. Corporation A is required to file an Iowa income tax return but expects no tax liability for the year ending December 31, 2001. Thus, Corporation A applies for a tax credit certificate for the entire unused credit of \$1 million in May 2002. The entire \$1 million is approved by the ~~Iowa department of economic development~~ authority, so the tax credit certificate is ~~attached to~~ included with the tax return for the year ending December 31, 2002. Corporation A will request a refund of \$1 million on this tax return.

EXAMPLE 2. Corporation B completes a value-added agricultural project in October 2001 and has an investment tax credit of \$1 million. Corporation B is required to file an Iowa income tax return but expects no tax liability for the year ending December 31, 2001. Thus, Corporation B applies for a tax credit of \$1 million in May 2002. Due to the proration of available credits, Corporation B is awarded a tax credit certificate for \$400,000. The tax credit certificate is ~~attached to~~ included with the tax return for the year ending December 31, 2002. Corporation B will request a refund of \$400,000 on this tax return. The remaining \$600,000 of unused credit can be carried forward for the following seven tax years or until the credit is depleted, whichever occurs first. If Corporation B expects no tax liability for the tax period ending December 31, 2002, Corporation B may apply for a tax credit certificate in May 2003 for this \$600,000 amount.

EXAMPLE 3. Corporation C completes a value-added agricultural project in March 2002 and has an investment tax credit of \$1 million. Corporation C is required to file an Iowa income tax return and expects a tax liability of \$200,000 for the tax period ending December 31, 2002. Thus, Corporation C applies for a tax credit certificate for the unused credit of \$800,000 in May 2002. A tax credit certificate is awarded for the entire \$800,000. The tax credit certificate for \$800,000 shall be ~~attached to~~ included with the tax return for the period ending December 31, 2003, since the certificate is not valid until the year following the project's completion. The tax return for the period ending December 31, 2002, reports a tax liability of \$150,000. The investment credit is limited to \$150,000 for the period ending December 31, 2002, and the remaining \$50,000 can be carried forward for the following seven tax years.

EXAMPLE 4. Corporation D is a cooperative described in Section 521 of the Internal Revenue Code that completes a project involving ethanol in August 2002. Corporation D has an investment tax credit of \$500,000. Corporation D is not required to file an Iowa income tax return because Corporation D is exempt from federal income tax. When filing for the tax credit certificate in May 2003 for the \$500,000 unused credit, Corporation D must attach a list of its members and the share of each member's interest in the cooperative. The ~~Iowa department of economic development~~ authority will issue tax credit certificates to each member on the list based on each member's interest in the cooperative. The members

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can ~~attach~~ include the tax credit certificate ~~to~~ with their Iowa income tax returns for the year ending December 31, 2003, since the certificate is not valid until the year following project completion.

EXAMPLE 5. Corporation E is a cooperative described in Section 521 of the Internal Revenue Code that completes a project involving ethanol in August 2002. Corporation E has an investment tax credit of \$500,000. Corporation E is required to file an Iowa income tax return because Corporation E is not exempt from federal income tax. Corporation E expects a tax liability of \$100,000 on its Iowa income tax return for the year ending December 31, 2002. Corporation E applies for a tax credit certificate for the unused credit of \$400,000 and elects to transfer the \$400,000 unused credit to its members. When applying for the tax credit certificate in May 2003, Corporation E must provide a list of its members and the pro rata share of each member's earnings in the cooperative. The ~~Iowa department of economic development authority~~ will issue tax credit certificates to each member of the cooperative. The members can ~~attach~~ include the tax credit certificate ~~to~~ with their Iowa income tax returns for the year ending December 31, 2003, since the certificate is not valid until the year following project completion.

EXAMPLE 6. Corporation F is a cooperative described in Section 521 of the Internal Revenue Code that completes a project involving ethanol in August 2002. Corporation F is a limited liability company that files a partnership return for federal income tax purposes. Corporation F is required to file an Iowa partnership return because Corporation F is not exempt from federal income tax. Corporation F has an investment tax credit of \$500,000 which must be claimed by the individual partners of the partnership based on their pro-rata share of individual earnings of the partnership. Corporation F expects a tax liability of \$200,000 for the individual partners. Corporation F may apply for a tax credit certificate in May 2003 for the unused credit of \$300,000. Corporation F must list the names of each partner and the ownership interest of each partner in order to allocate the investment credit for each partner. The tax credit certificate may be claimed on the partner's Iowa income tax return for the period ending December 31, 2003.

ITEM 31. Amend paragraph **52.10(5)“b”** as follows:

b. How to claim the credit. The third-party developer must provide to the ~~Iowa department of economic development authority~~ the amount of Iowa sales and use tax paid as described in paragraph “a.” Beginning on July 1, 2009, this information must be provided to the Iowa department of revenue. The amount of Iowa sales and use tax attributable to racks, shelving, and conveyor equipment must be identified separately.

The ~~Iowa department of economic development authority~~ will issue a tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered to, furnished to or performed for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility. In addition, the ~~Iowa department of economic development authority~~ will also issue a separate tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment to be used in a warehouse or distribution center. Beginning on July 1, 2009, the Iowa department of revenue shall issue these tax credit certificates.

The tax credit certificate shall contain the name, address, and tax identification number of the eligible business, along with the amount of the tax credit and the year in which the tax credit can be claimed. The tax credit certificate must be ~~attached to~~ included with the taxpayer's income tax return for the tax year for which the tax credit is claimed. Any tax credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following seven years or until it is used, whichever is the earlier.

For the tax credit certificate relating to Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment, the aggregate amount of tax credit certificates and tax refunds for Iowa sales and use tax paid for racks, shelving, and conveyor equipment to eligible businesses under the new jobs and income program, high quality job creation program, enterprise zone program, ~~and~~ new capital investment program and high quality jobs program cannot exceed \$500,000 in a fiscal year. The requests for tax credit certificates or refunds will be processed in the order they are received on a

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first-come, first-served basis until the amount of credits authorized for issuance has been exhausted. If applications for tax credit certificates or refunds exceed the \$500,000 limitation for any fiscal year, the applications shall be considered in succeeding fiscal years.

ITEM 32. Amend rule 701—52.12(422) as follows:

701—52.12(422) Deduction of credits. The credits against computed tax set forth in Iowa Code sections 422.33 and 422.110 shall be claimed in the following sequence.

1. Franchise tax credit.
2. ~~Disaster recovery housing project tax credit~~ School tuition organization tax credit.
3. ~~School tuition organization tax credit~~ Venture capital tax credit (excluding redeemed Iowa fund of funds tax credit).
4. ~~Venture capital tax credits (excluding redeemed Iowa fund of funds tax credit)~~ Endow Iowa tax credit.
5. ~~Endow Iowa tax credit~~ Film qualified expenditure tax credit.
6. ~~Agricultural assets transfer tax credit~~ Film investment tax credit.
7. ~~Custom farming contract tax credit~~ Redevelopment tax credit.
8. ~~Film qualified expenditure tax credit~~ From farm to food donation tax credit.
9. ~~Film investment tax credit~~ Workforce housing tax credit.
10. ~~Redevelopment tax credit~~ Investment tax credit.
11. ~~From farm to food donation tax credit~~ Wind energy production tax credit.
12. ~~Investment tax credit~~ Renewable energy tax credit.
13. ~~Wind energy production tax credit~~ Redeemed Iowa fund of funds tax credit.
14. ~~Renewable energy tax credit~~ New jobs tax credit.
15. ~~Redeemed Iowa fund of funds tax credit~~ Economic development region revolving fund tax credit.
16. ~~New jobs tax credit~~ Agricultural assets transfer tax credit.
17. ~~Economic development region revolving fund tax credit~~ Custom farming contract tax credit.
18. Solar energy system tax credit.
19. Charitable conservation contribution tax credit.
20. Alternative minimum tax credit.
21. Historic preservation and cultural and entertainment district tax credit.
22. Corporate tax credit for certain sales tax paid by developer.
23. Ethanol promotion tax credit.
24. Research activities credit.
25. Assistive device tax credit.
26. Motor fuel tax credit.
27. Wage-benefits tax credit.
28. ~~Refundable portion of investment tax credit, as provided in subrule 52.10(4)~~ E-85 gasoline promotion tax credit.
29. ~~E-85 gasoline promotion tax credit~~ Biodiesel blended fuel tax credit.
30. ~~Biodiesel blended fuel tax credit~~ E-15 plus gasoline promotion tax credit.
31. ~~E-15 plus gasoline promotion tax credit~~ Estimated tax and payment with vouchers.
32. ~~Estimated tax and payment with vouchers.~~

This rule is intended to implement Iowa Code sections 422.33, 422.91 and 422.110.

ITEM 33. Amend rule 701—52.14(15E), introductory paragraph, as follows:

701—52.14(15E) Enterprise zone tax credits. For tax years ending after July 1, 1997, for programs approved after July 1, 1997, but before July 1, 2014, a business which qualifies under the enterprise zone program is eligible to receive tax credits. The enterprise zone program was repealed on July 1, 2014. Any tax credits earned by businesses approved under the enterprise zone program prior to July 1, 2014, remain valid and can be claimed on tax returns filed after July 1, 2014. An eligible business

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under the enterprise zone program must be approved by the ~~Iowa department~~ of economic development authority and meet the requirements of 2014 Iowa Code section 15E.193. The administrative rules for the enterprise zone program for the ~~Iowa department~~ of economic development authority may be found at 261—Chapter 59.

ITEM 34. Amend subrule 52.14(4) as follows:

52.14(4) *Repayment of incentives.* Effective July 1, 2003, eligible businesses in an enterprise zone may be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of the enterprise zone program because this is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

ITEM 35. Amend rule **701—52.14(15E)**, implementation sentence, as follows:

This rule is intended to implement 2014 Iowa Code ~~section~~ sections 15E.193 and Supplement section 15E.196.

ITEM 36. Amend rule 701—52.15(15E), introductory and first unnumbered paragraphs, as follows:

701—52.15(15E) Eligible housing business tax credit. A corporation which qualifies as an eligible housing business may receive a tax credit of up to 10 percent of the new investment which is directly related to the building or rehabilitating of homes in an enterprise zone. The enterprise zone program was repealed on July 1, 2014, and the eligible housing business tax credit has been replaced with the workforce housing tax incentives program. See rule 701—52.46(15) for information on the tax incentives provided under the workforce housing tax incentives program. Any investment tax credit earned by businesses approved under the enterprise zone program prior to July 1, 2014, remains valid and can be claimed on tax returns filed after July 1, 2014. The tax credit may be taken on the tax return for the tax year in which the home is ready for occupancy.

An eligible housing business is one which meets the criteria in 2014 Iowa Code section 15E.193B.

ITEM 37. Amend subrule **52.15(1)**, fourth and sixth unnumbered paragraphs, as follows:

If the eligible housing business fails to maintain the requirements of Iowa Code section 15E.193B; to be an eligible housing business, the taxpayer may be required to repay all or a part of the tax incentives the business received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of Iowa Code section 15E.193B. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

Effective for tax periods beginning on or after January 1, 2003, the taxpayer must receive a tax credit certificate from the ~~Iowa department~~ of economic development authority to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address,

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the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.15(2). The tax credit certificate must be ~~attached to~~ included with the income tax return for the tax period in which the home is ready for occupancy. The administrative rules for the eligible housing business tax credit for the ~~Iowa department~~ of economic development authority may be found under 261—Chapter 59.

ITEM 38. Amend subrule 52.15(2) as follows:

52.15(2) *Transfer of the eligible housing business tax credit.* For tax periods beginning on or after January 1, 2003, the eligible housing business tax credit certificates may be transferred to any person or entity if low-income housing tax credits authorized under Section 42 of the Internal Revenue Code are used to assist in the financing of the housing development. In addition, the eligible housing business tax credit certificates may be transferred to any person or entity for projects beginning on or after July 1, 2005, if the housing development is located in a brownfield site as defined in Iowa Code section 15.291, or if the housing development is located in a blighted area as defined in Iowa Code section 403.17. No more than \$3 million of tax credits for housing developments located in brownfield sites or blighted areas may be transferred in a calendar year, with no more than \$1.5 million being transferred for any one eligible housing business in a calendar year.

The excess of the \$3 million limitation of tax credits eligible for transfer in the 2013 and 2014 calendar years for housing developments located in brownfield sites or blighted areas cannot be claimed by a transferee prior to January 1, 2016. The eligible housing business must have notified the economic development authority in writing before July 1, 2014, of the business's intent to transfer any tax credits for housing developments located in brownfield sites or blighted areas. If a tax credit certificate is issued by the economic development authority for a housing development approved prior to July 1, 2014, that is located in a brownfield site or blighted area, the tax credit can still be claimed by the eligible business, but the tax credit cannot be transferred by the eligible business if the economic development authority was not notified prior to July 1, 2014.

EXAMPLE 1: A housing development located in a brownfield site was completed in December 2013 and was issued a tax credit certificate totaling \$250,000. The \$3 million calendar cap for transferred tax credits for brownfield sites and blighted areas has already been reached for the 2013 and 2014 tax years. The \$250,000 tax credit is going to be transferred to ABC Company, and the economic development authority was notified of the transfer prior to July 1, 2014. Once a replacement tax credit certificate has been issued, ABC Company cannot file an amended Iowa corporation income tax return for the 2013 tax year until January 1, 2016, to claim the \$250,000 tax credit.

EXAMPLE 2: A housing development located in a blighted area was completed in May 2014 and was issued a tax credit certificate totaling \$150,000. The \$3 million calendar cap for transferred tax credits for brownfield sites and blighted areas has already been reached for the 2014 tax year. The \$150,000 tax credit is going to be transferred to XYZ Company, and the economic development authority was notified of the transfer prior to July 1, 2014. Once a replacement tax credit certificate has been issued, XYZ Company cannot file an amended Iowa corporation income tax return for the 2014 tax year until January 1, 2016, to claim the \$150,000 tax credit.

Within 90 days of transfer of the tax credit certificate for transfers prior to July 1, 2006, the transferee must submit the transferred tax credit certificate to the ~~Iowa department~~ of economic development authority, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department of revenue. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee for transfers prior to July 1, 2006, the ~~Iowa department~~ of economic development authority will issue a replacement tax credit certificate to the transferee. For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members

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or shareholders and information on how the housing business tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

ITEM 39. Amend rule **701—52.15(15E)**, implementation sentence, as follows:

This rule is intended to implement 2014 Iowa Code Supplement section 15E.193B ~~as amended by 2006 Iowa Acts, chapter 1158.~~

ITEM 40. Amend subrule **52.17(1)**, first unnumbered paragraph, as follows:

The department of revenue will not allow the assistive device credit on a taxpayer's return if the certificate of entitlement or a legible copy of the certificate is not ~~attached to~~ included with the taxpayer's income tax return. If the taxpayer has been granted a certificate of entitlement and the taxpayer is an S corporation, where the income of the taxpayer is taxed to the individual owner(s) of the business entity, the taxpayer must provide a copy of the certificate to each of the shareholders with a statement showing how the credit is to be allocated among the individual owners of the S corporation. An individual owner is to ~~attach~~ include a copy of the certificate of entitlement and the statement of allocation of the assistive device credit ~~to~~ with the individual's state income tax return.

ITEM 41. Amend paragraph **52.22(2)“c,”** second unnumbered paragraph, as follows:

~~The Iowa department of economic development authority~~ shall issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be ~~attached to~~ included with the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, as provided in subrule 52.10(4). For value-added agricultural projects involving ethanol, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. ~~The Iowa department of economic development authority~~ shall issue a tax credit certificate to each member on the list.

ITEM 42. Amend paragraph **52.22(2)“d,”** introductory paragraph, as follows:

d. Repayment of benefits. If an eligible business fails to maintain the requirements of the new capital investment program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure of the taxpayer to maintain the requirements of the new capital investment program. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

ITEM 43. Amend subrule **52.26(2)**, fifth unnumbered paragraph, as follows:

To claim the tax credit, the taxpayer must ~~attach~~ include the tax credit certificate ~~to~~ with the tax return for the tax year set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

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ITEM 44. Amend paragraph **52.28(2)“b,”** second unnumbered paragraph, as follows:

The ~~Iowa department~~ of economic development authority shall issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be ~~attached to~~ included with the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, as provided in subrule 52.10(4). For value-added agricultural projects involving ethanol, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The ~~Iowa department~~ of economic development authority shall issue a tax credit certificate to each member on the list.

ITEM 45. Amend paragraph **52.28(2)“c,”** introductory paragraph, as follows:

c. Repayment of benefits. If an eligible business fails to maintain the requirements of the high quality job creation program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure of the eligible business to maintain the requirements of the high quality job creation program because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

ITEM 46. Amend subrule **52.34(2)**, second unnumbered paragraph, as follows:

To claim the tax credit, the taxpayer must ~~attach~~ include the tax credit certificate ~~to~~ with the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for five years or until the tax credit is used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the year in which the taxpayer claimed the tax credit.

ITEM 47. Amend subrule **52.35(1)**, second unnumbered paragraph, as follows:

To claim the tax credit, the taxpayer must ~~attach~~ include the tax credit certificate ~~to~~ with the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for five years or until the tax credit is used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the year in which the taxpayer claimed the tax credit. In addition, a taxpayer cannot claim the film investment tax credit for qualified expenditures for which the film expenditure tax credit set forth in rule 701—52.34(15,422) is claimed.

ITEM 48. Amend subrule 52.37(3), introductory paragraph, as follows:

52.37(3) Claiming the tax credit. The tax credit is claimed on Form IA 148, Tax Credits Schedule. The taxpayer must ~~attach~~ include a copy of federal Form 8283, Noncash Charitable Contributions, which reflects the calculation of the fair market value of the real property interest, ~~to~~ with the Iowa return for the year in which the contribution is made. If a qualified appraisal of the property or other relevant information is required to be ~~attached to~~ included with federal Form 8283 for federal tax purposes, the appraisal and other relevant information must also be ~~attached to~~ included with the Iowa return.

ITEM 49. Amend subrule 52.38(3) as follows:

52.38(3) Claiming the tax credit. The taxpayer must ~~attach~~ include the tax credit certificate ~~to~~ with the tax return for which the credit is claimed. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The taxpayer may not claim a deduction for charitable contributions for Iowa corporation income tax purposes for the amount of the contribution made to the school tuition organization.

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ITEM 50. Adopt the following **new** subrule 52.40(3):

52.40(3) Repayment of benefits. If an eligible business fails to maintain the requirements of the high quality jobs program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure of the eligible business to maintain the requirements of the high quality jobs program because the repayment is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

ITEM 51. Amend rule 701—52.41(15) as follows:

701—52.41(15) Aggregate tax credit limit for certain economic development programs. Effective for the fiscal year beginning July 1, 2009, awards made under certain economic development programs cannot exceed \$185 million during a fiscal year. Effective for fiscal years beginning on or after July 1, 2010, but beginning before July 1, 2012, awards made under these economic development programs cannot exceed \$120 million during a fiscal year. Effective for fiscal years beginning on or after July 1, 2012, awards made under these economic development programs cannot exceed \$170 million. ~~These~~ For fiscal years beginning on or after July 1, 2010, but beginning before July 1, 2014, these programs include the assistive device tax credit program, the enterprise zone program, the housing enterprise zone program, the high quality jobs program, the redevelopment tax credit program, tax credits for investments in qualifying businesses and community-based seed capital funds, and the innovation fund tax credit program. For fiscal years beginning on or after July 1, 2014, these programs include the assistive device tax credit program, the workforce housing tax incentives program, the high quality jobs program, the redevelopment tax credit program, tax credits for investments in qualifying businesses and community-based seed capital funds, and the innovation fund tax credit program. The administrative rules for the aggregate tax credit limit for the Iowa economic development authority may be found at 261—Chapter 76.

This rule is intended to implement Iowa Code section 15.119 as amended by ~~2013~~ 2014 Iowa Acts, House File ~~620~~ 2448.

ITEM 52. Adopt the following **new** rule 701—52.46(15):

701—52.46(15) Workforce housing tax incentives program. Effective July 1, 2014, a business which qualifies under the workforce housing tax incentives program is eligible to receive tax incentives for corporation income tax. The workforce housing tax incentives program replaces the eligible housing enterprise zone program. An eligible business under the workforce housing tax incentives program must be approved by the economic development authority and must meet the requirements of 2014 Iowa Acts, House File 2448, section 15. The administrative rules for the workforce housing tax incentives program for the economic development authority may be found at 261—Chapter 48.

52.46(1) Definitions.

“Costs directly related” means expenditures that are incurred for construction of a housing project to the extent that they are attributable directly to the improvement of the property or its structures. “Costs directly related” includes expenditures for property acquisition, site preparation work, surveying, construction materials, construction labor, architectural services, engineering services, building permits, building inspection fees, and interest accrued on a construction loan during the time period allowed for project completion under an agreement entered into pursuant to the program. “Costs directly related” does not include expenditures for furnishings, appliances, accounting services, legal services, loan

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origination and other financing costs, syndication fees and related costs, developer fees, or the costs associated with selling or renting the dwelling units whether incurred before or after completion of the housing project.

“*Qualifying new investment*” means costs that are directly related to the acquisition, repair, rehabilitation, or redevelopment of a housing project in this state. For purposes of this rule, “costs directly related to acquisition” includes the costs associated with the purchase of real property or other structures. “*Qualifying new investment*” includes costs that are directly related to new construction of dwelling units if the new construction occurs in a distressed workforce housing community. The amount of costs that may be used to compute “*qualifying new investment*” shall not exceed the costs used for the first \$150,000 of value for each dwelling unit that is part of a housing project.

“*Qualifying new investment*” does not include the following:

1. The portion of the total cost of a housing project that is financed by federal, state, or local government tax credits, grants, forgivable loans, or other forms of financial assistance that do not require repayment, excluding the tax incentives provided under this program.

2. If a housing project includes the rehabilitation, repair, or redevelopment of an existing multi-use building, the portion of the total acquisition costs of the multi-use building, including a proportionate share of the total acquisition costs of the land upon which the multi-use building is situated, that are attributable to the street-level ground story that is used for a purpose that is other than residential.

3. Any costs, including acquisition costs, incurred before the housing project is approved by the economic development authority.

52.46(2) *Workforce housing tax incentives.* The economic development authority will allocate no more than \$20 million in tax incentives for this program for any fiscal year. A housing business that has entered into an agreement with the economic development authority is eligible to receive the tax incentives described in the following paragraphs:

a. Sales tax refund. A housing business may claim a refund of the sales and use tax described in rule 701—12.9(15).

b. Investment tax credit. A housing business may claim a tax credit in an amount not to exceed 10 percent of the qualifying new investment in a housing project. An individual may claim a tax credit if the housing business is a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings from the partnership, limited liability company, S corporation, estate, or trust. Any tax credit in excess of the taxpayer’s liability for the tax year is not refundable but may be credited to the tax liability for the following five years or until depleted, whichever is earlier.

52.46(3) *Claiming the tax credit.* The taxpayer must receive a tax credit certificate from the economic development authority to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer’s name, the taxpayer’s address, the taxpayer’s tax identification number, the date the project was completed, the amount of the eligible housing business tax credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.46(5). The tax credit certificate must be included with the income tax return for the tax period in which the housing is ready for occupancy.

52.46(4) *Basis adjustment.* The increase in the basis of the property that would otherwise result from the qualifying new investment shall be reduced by the amount of the investment tax credit. For example, if a new housing project had qualifying new investment of \$1 million which resulted in a \$100,000 investment tax credit for Iowa tax purposes, the basis of the property for Iowa income tax purposes would be \$900,000.

52.46(5) *Transfer of the credit.* Tax credit certificates issued under an agreement entered into pursuant to subrule 52.46(3) may be transferred to any person. Within 90 days of transfer, the transferee shall submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee’s name, tax identification number, and address, the denomination that each replacement tax credit certificate is to carry, and any other information required by the department

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of revenue. However, tax credit certificate amounts of less than the minimum amount established in rule by the economic development authority shall not be transferable. Within 30 days of receiving the transferred tax credit certificate and the transferee's statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared on the transferred tax credit certificate. A tax credit shall not be claimed by a transferee under this rule until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income, or franchise tax purposes.

52.46(6) *Repayment of benefits.* If the housing business fails to maintain the requirements of Iowa Code section 15.353, the taxpayer may be required to repay all or a portion of the tax incentives the taxpayer received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure of the taxpayer to maintain the requirements of Iowa Code section 15.353. This repayment is required because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in subrule 261—187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

This rule is intended to implement 2014 Iowa Acts, House File 2448.

ITEM 53. Amend rule 701—58.8(15E), introductory paragraph, as follows:

701—58.8(15E) Eligible housing business tax credit. For tax years beginning on or after January 1, 2000, a financial institution may claim on the franchise tax return the pro-rata share of the Iowa eligible housing business tax credit from a partnership, limited liability company, estate or trust which has been approved as an eligible housing business by the ~~Iowa department of economic development authority~~. The enterprise zone program was repealed on July 1, 2014, and the eligible housing business tax credit has been replaced with the workforce housing tax incentives program. See rule 701—58.22(15) for information on the tax incentives provided under the workforce housing tax incentives program. Any investment tax credit earned by businesses approved under the enterprise zone program prior to July 1, 2014, remains valid and can be claimed on tax returns filed after July 1, 2014.

ITEM 54. Amend subrule **58.8(1)**, second and third unnumbered paragraphs, as follows:

If the eligible housing business fails to maintain the requirements of 2014 Iowa Code section 15E.193B, as amended by 2003 Iowa Acts, Senate File 441, to be an eligible housing business, the taxpayer may be required to repay all or a part of the tax incentives the business received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of 2014 Iowa Code section 15E.193B as amended by 2003 Iowa Acts, Senate File 441. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the

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Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

Effective for tax periods beginning on or after January 1, 2003, the taxpayer must receive a tax credit certificate from the ~~Iowa department~~ of economic development authority to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit, and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 58.8(2). The tax credit certificate must be ~~attached to~~ included with the income tax return for the tax period in which the home is ready for occupancy. The administrative rules for the eligible housing business tax credit for the ~~Iowa department~~ of economic development authority may be found under 261—Chapter 59.

ITEM 55. Amend subrule 58.8(2) as follows:

58.8(2) *Transfer of the eligible housing business tax credit.* For tax periods beginning on or after January 1, 2003, the eligible housing business tax credit certificates may be transferred to any person or entity if low-income housing tax credits authorized under Section 42 of the Internal Revenue Code are used to assist in the financing of the housing development. In addition, the eligible housing business tax credit certificates may be transferred to any person or entity for projects beginning on or after July 1, 2005, if the housing development is located in a brownfield site as defined in Iowa Code section 15.291, or if the housing development is located in a blighted area as defined in Iowa Code section 403.17. No more than \$3 million of tax credits for housing developments located in brownfield sites or blighted areas may be transferred in a calendar year, with no more than \$1.5 million being transferred for any one eligible housing business in a calendar year.

The excess of the \$3 million limitation of tax credits eligible for transfer in the 2013 and 2014 calendar years for housing developments located in brownfield sites or blighted areas cannot be claimed by a transferee prior to January 1, 2016. The eligible housing business must have notified the economic development authority in writing before July 1, 2014, of the business's intent to transfer any tax credits for housing developments located in brownfield sites or blighted areas. If a tax credit certificate is issued by the economic development authority for a housing development approved prior to July 1, 2014, that is located in a brownfield site or blighted area, the tax credit can still be claimed by the eligible business, but the tax credit cannot be transferred by the eligible business if the economic development authority was not notified prior to July 1, 2014.

EXAMPLE 1: A housing development located in a brownfield site was completed in December 2013 and was issued a tax credit certificate totaling \$250,000. The \$3 million calendar cap for transferred tax credits for brownfield sites and blighted areas has already been reached for the 2013 and 2014 tax years. The \$250,000 tax credit is going to be transferred to ABC Bank, and the economic development authority was notified of the transfer prior to July 1, 2014. Once a replacement tax credit certificate has been issued, ABC Bank cannot file an amended Iowa franchise tax return for the 2013 tax year until January 1, 2016, to claim the \$250,000 tax credit.

EXAMPLE 2: A housing development located in a blighted area was completed in May 2014 and was issued a tax credit certificate totaling \$150,000. The \$3 million calendar cap for transferred tax credits for brownfield sites and blighted areas has already been reached for the 2014 tax year. The \$150,000 tax credit is going to be transferred to XYZ Bank and the economic development authority was notified of the transfer prior to July 1, 2014. Once a replacement tax credit certificate has been issued, XYZ Bank cannot file an amended Iowa franchise tax return for the 2014 tax year until January 1, 2016, to claim the \$150,000 tax credit.

Within 90 days of transfer of the tax credit certificate for transfers prior to July 1, 2006, the transferee must submit the transferred tax credit certificate to the ~~Iowa department~~ of economic development authority, along with a statement which contains the transferee's name, address and tax identification number, and the amount of the tax credit being transferred. For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department of revenue. Within 30

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days of receiving the transferred tax credit certificate and the statement from the transferee for transfers prior to July 1, 2006, the ~~Iowa department of economic development~~ authority will issue a replacement tax credit certificate to the transferee. For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the housing business tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

ITEM 56. Amend rule **701—58.8(15E)**, implementation sentence, as follows:

This rule is intended to implement 2014 Iowa Code Supplement section 15E.193B ~~as amended by 2006 Iowa Acts, chapter 1158.~~

ITEM 57. Adopt the following new rule 701—58.23(15):

701—58.23(15) Workforce housing tax incentives program. Effective July 1, 2014, a business which qualifies under the workforce housing tax incentives program is eligible to receive tax incentives for franchise tax. The workforce housing tax incentives program replaces the eligible housing enterprise zone program. An eligible business under the workforce housing tax incentives program must be approved by the economic development authority and must meet the requirements of 2014 Iowa Acts, House File 2448, section 15. For information on how the workforce housing tax incentives can be claimed, how the investment tax credit can be transferred and other details about the workforce housing tax incentives, see rule 701—52.46(15). The administrative rules for the workforce housing tax incentives program for the economic development authority may be found at 261—Chapter 48.

This rule is intended to implement 2014 Iowa Acts, House File 2448.

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REVENUE DEPARTMENT[701]

Amended Notice of Intended Action

Pursuant to the authority of Iowa Code section 421.14, the Department of Revenue hereby gives notice that a public hearing will be held on October 27, 2014, from 2 to 3 p.m. in the Wallace Building Auditorium, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319, at which time persons may present their views, either orally or in writing, on proposed amendments to rules 701—71.1(405,427A,428,441,499B) and 701—71.12(441) and new rules 701—71.23(421,428,441) and 701—71.24(421,428,441), regarding the new classification of property for property taxation purposes called “multiresidential.” The amendments and new rules were published under Notice of Intended Action in the Iowa Administrative Bulletin on August 20, 2014, as **ARC 1593C**.

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

ARC 1643C

SECRETARY OF STATE[721]

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 47.1 and 17A.4, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 22, “Voting Systems,” Iowa Administrative Code.

These proposed amendments are necessary to revise the configuration settings for the Unisyn OpenElect voting system which is currently certified for use in the state of Iowa. These amendments update the configuration settings based on the newest version of the certified Unisyn election management software. In addition, this rule making authorizes county commissioners who have purchased the Unisyn OpenElect voting system to use ballot alerts if the commissioners so choose and adds references to newly certified Election Systems & Software and Dominion voting systems to an existing rule. Because this is a Notice of Intended Action, this rule making will not be effective before the November 4, 2014, general election.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 21, 2014, by contacting Sarah Reisetter, Director of Elections, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Secretary of State’s office by telephone at (515)281-0145 or in person at the Secretary of State’s office on the first floor of the Lucas State Office Building.

Requests for a public hearing must be received by October 21, 2014.

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

These amendments are intended to implement Iowa Code section 52.5.

The following amendments are proposed.

ITEM 1. Amend paragraph **22.50(2)“c”** as follows:

c. Hardened operating system. For security purposes, users of Election Systems & Software, Unity 3.4.0.1 ~~and~~, Election Systems & Software EVS 5.3.0.0, Democracy Suite 4.6 ~~and~~ Democracy Suite 4.14B shall harden the operating system on the computer on which the election management system is housed according to the specifications of the vendor and the recommendations of the county information technology department (if any).

ITEM 2. Amend subrule 22.264(2) as follows:

22.264(2) Configuration choices. The following selections are mandatory for all elections:

a. *Access, messaging and tabulating selections.* In the Election Manager, “Election Options” menu, the following selections shall be made:

(1) “Allow Add Precinct” shall be checked.

(2) “Full Voter Ballot Review” shall not be checked. The commissioner may select either “Alert Print Only” or “Alert on-screen.”

(3) ~~“Consolidate Splits”~~ “Show Precinct Split Totals” shall ~~not~~ be checked.

(4) ~~“Overvote by Voter”~~ “Overvote by Vote For” shall ~~not~~ be checked.

(5) “No Undervote Check” shall be selected in the Undervote Checking dropdown menu.

b. *Printing selections.* In the Election Manager, “Printing Options” menu, the following ~~selection~~ selections shall be made:

(1) “Auto Print Alerts” ~~shall not~~ may be checked.

(2) “Voter Receipts” shall not be checked.

(3) ~~“Display Contest Results on Summary”~~ “Show Contest Results on Election Day” shall be checked.

SECRETARY OF STATE[721](cont'd)

c. and *d.* No change.

ARC 1638C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Iowa Administrative Code.

This amendment clarifies the training requirements for home- and community-based services (HCBS) brain injury (BI) waiver service providers and direct service staff.

The effect of this amendment is that any provider or direct service worker providing BI waiver services on or before December 31, 2014, will be presumed to be in compliance with the training requirement in effect when the provider or direct service worker began providing services and is not required to complete the Department’s BI waiver training modules. After January 1, 2015, direct service workers will have 60 days to complete the Department’s BI waiver training modules.

This amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin as **ARC 1553C** on July 23, 2014. The Department received comment from one respondent during the comment period.

The respondent’s comment is summarized as follows: Iowa’s brain injury training remains mandatory for direct care staff, but creates an exemption for self-directed personal care service workers and some other types of direct service workers under the current rule. The discrepancy in regulation between agencies and individuals will still be the same—agencies will be required to fulfill mandatory training while individuals transferred into the consumer choices option (CCO) will fall under the exemption. As an unintended consequence, the unbalanced application of this rule may create more barriers to agency service providers in Iowa who are held to the requirement. It was suggested that voluntary training for direct care staff be patterned after states like Michigan and North Carolina, which currently have voluntary training provisions. As an alternate suggestion, the exemption provisions could be eliminated so that all direct care workers are required to complete the training.

The Department’s response to the comment is that the discrepancy described in the comment is comparing enrolled Medicaid providers to private individuals employed by Medicaid members through the BI waiver consumer choices option to provide identified services, including self-directed personal care services, self-directed community supports and employment, and individual-directed goods and services. To clarify, there is no relationship between Medicaid and an employee hired by the member to provide the self-directed services. The individual employee does not enroll in Medicaid, nor does Medicaid have oversight of the services delivered by the employee. It is at the sole discretion of the member to hire and supervise employees who the member feels are most qualified to provide needed services.

In conclusion, the Department may suggest voluntary training of employees providing services under the CCO but will not supersede the member’s employer authority by requiring training. Anyone who wishes to complete the Department’s BI training may do so at any time, and the members who utilize CCO may choose to require their employees to complete the training. Therefore, the Department did not modify the amendment as published in the Notice of Intended Action as requested by the respondent.

This amendment is identical to the one published under Notice of Intended Action.

The Council on Human Services adopted this amendment on September 10, 2014.

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

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

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

This amendment will become effective November 5, 2014.

The following amendment is adopted.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Amend rule 441—77.39(249A), introductory paragraph, as follows:

441—77.39(249A) HCBS brain injury waiver service providers. Providers shall be eligible to participate in the Medicaid brain injury waiver program if they meet the requirements in this rule and the subrules applicable to the individual service. Beginning January 1, 2015, providers initially enrolling to deliver BI waiver services and each of their staff members involved in direct consumer service must have completed the department's ~~online~~ brain injury training ~~course prior to~~ modules one and two within 60 days from the beginning date of service provision, with the exception of staff members who are certified through the Academy of Certified Brain Injury Specialists (ACBIS) as a certified brain injury specialist (CBIS) or certified brain injury specialist trainer (CBIST), providers of home and vehicle modification, specialized medical equipment, transportation, personal emergency response, financial management, independent support brokerage, self-directed personal care, individual-directed goods and services, and self-directed community supports and employment. Providers enrolled to provide BI waiver services and each of their staff members involved in direct consumer service on or before December 31, 2014, shall be deemed to have completed the required training.

[Filed 9/10/14, effective 11/5/14]

[Published 10/1/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/1/14.

ARC 1636C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 237A.12, the Department of Human Services amends Chapter 110, "Child Development Homes," Iowa Administrative Code.

This amendment requires that child development home providers have readily accessible accurate emergency contact information regarding the children in care. Presently, there are no administrative rules that require providers to have a paper copy of emergency contact information, nor is there a clear requirement in the case of information saved into a mobile device. In the instance of information saved into a mobile device, the emergency contact information may not be appropriately accessible to those who need it.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1556C** on July 23, 2014. The Department received no comments during the comment period. This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on September 10, 2014.

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

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

This amendment is intended to implement Iowa Code section 237A.12.

This amendment will become effective January 1, 2015.

The following amendment is adopted.

Amend paragraph **110.5(1)"a"** as follows:

a. The home shall have a non-pay, working telephone with emergency numbers posted for police, fire, ambulance, and the poison information center. ~~If the working telephone is a mobile telephone, these numbers must be programmed and saved into the telephone.~~ The number for each child's parent, for a responsible person who can be reached when the parent cannot, and for the child's physician shall be written on paper and readily accessible by the telephone. The home must prominently display all emergency information, and a paper copy of emergency parent contact information must be kept in all

HUMAN SERVICES DEPARTMENT[441](cont'd)

travel vehicles. If the working telephone is a mobile telephone, ~~these~~ all emergency numbers must also be programmed and saved into the telephone.

[Filed 9/10/14, effective 1/1/15]

[Published 10/1/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/1/14.

ARC 1637C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 237A.4A, the Department of Human Services amends Chapter 110, "Child Development Homes," Iowa Administrative Code.

This amendment updates administrative rules to be in compliance with Iowa Code section 237A.4A, which provides that the Department shall complete annual inspections of child development homes and shall seek to meet a target percentage of annual inspections of 100 percent in the fiscal year that began July 1, 2013, and in succeeding years. Current administrative rules for the Department date from 2009 and reflect the requirement for the Department to check 20 percent of child development homes annually.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1555C** on July 23, 2014. The Department received no comments during the comment period. This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on September 10, 2014.

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

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

This amendment is intended to implement Iowa Code section 237A.4A.

This amendment will become effective January 1, 2015.

The following amendment is adopted.

Amend rule 441—110.6(237A) as follows:

441—110.6(237A) Compliance checks. During a calendar year, the department shall seek to check 20 100 percent or more of all child development homes in each county for compliance with registration requirements. Completed evaluation checklists shall be placed in the registration files.

[Filed 9/10/14, effective 1/1/15]

[Published 10/1/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/1/14.

ARC 1634C

LABOR SERVICES DIVISION[875]

Adopted and Filed

Pursuant to the authority of Iowa Code section 89.14, the Boiler and Pressure Vessel Board hereby amends Chapter 90, "Administration of the Boiler and Pressure Vessel Program," Iowa Administrative Code.

2013 Iowa Acts, House File 484, authorized the Boiler and Pressure Vessel Board to establish by rule an internal inspection schedule of up to four years for certain utility boilers. These amendments adopt a new subrule consistent with that authority, make conforming amendments, and update obsolete language.

LABOR SERVICES DIVISION[875](cont'd)

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

Notice of Intended Action was published in the July 23, 2014, Iowa Administrative Bulletin as **ARC 1550C**. No public comment was received on the proposed amendments. These amendments are identical to those published under Notice of Intended Action.

By reducing inspection costs for utility companies, this rule making may have a beneficial impact on jobs.

These amendments are intended to implement Iowa Code chapter 89.

These amendments shall become effective on November 5, 2014.

The following amendments are adopted.

ITEM 1. Amend paragraph **90.6(2)“a”** as follows:

a. All required inspections must be performed according to the schedule set forth in Iowa Code section 89.3, unless an exception is set forth in this rule.

ITEM 2. Amend subrule 90.6(8) as follows:

90.6(8) *Internal inspections on a four-year cycle based on process safety management compliance.* The owner shall demonstrate compliance with the requirements set forth in ~~2012 Iowa Acts, Senate File 2280, Iowa Code section 89.3(5)“a”(4)(b)~~ by annually submitting to the labor commissioner a notarized affidavit. The affidavit shall be in a format approved by the labor commissioner and shall be signed by the owner or an officer of the company.

ITEM 3. Adopt the following new subrule 90.6(9):

90.6(9) *Internal inspection on a four-year cycle for utility objects.* An object that meets the criteria of this subrule shall be inspected internally at least once every four years and externally every year. If at any time the object or the owner no longer meets the criteria of this subrule, internal inspections shall be performed on a two-year cycle.

a. The object is owned and operated by an electric public utility subject to rate regulation under Iowa Code chapter 476.

b. The object and the owner meet all the requirements for a two-year internal inspection interval as set forth in Iowa Code section 89.3, subsection 4.

c. If the object is shut down for a period sufficient to allow safe entry, and more than two years have passed since the last internal inspection, the owner shall notify the labor commissioner of the outage and shall schedule an internal inspection.

d. If the labor commissioner determines that an earlier inspection is necessary, the owner shall prepare the object for inspection pursuant to rule 875—90.5(89).

[Filed 9/3/14, effective 11/5/14]

[Published 10/1/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/1/14.

ARC 1644C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 462A.32(2) and 455A.5(6)“a,” the Natural Resource Commission hereby amends Chapter 40, “Boating Speed and Distance Zoning,” Iowa Administrative Code.

The amendment adds a “no wake” zone (speed no greater than 5 miles per hour) on the Mississippi River adjacent to the City of Clayton within a zone extending 150 feet from shore and beginning at a point 1,012 feet north of Mississippi River Day Marker 624.7R and extending south to a point 1,012 feet south of the same marker (624.7R). This reduction in speed along the city's waterfront will reduce the

NATURAL RESOURCE COMMISSION[571](cont'd)

risk of high-wave damage to public access docks, private business and personal docks, reduce erosion of the city's river banks, and avoid personal injuries of citizens and tourists enjoying the waterside area.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 9, 2014, as **ARC 1530C**. A public hearing was held on July 31, 2014. No one attended the hearing, and no comments were received. One inquiry was received requesting further information about the rule, and the Department of Natural Resources provided responses to that individual. No changes from the Notice of Intended Action were made.

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

This rule is intended to implement Iowa Code section 462A.32(2).

This rule will become effective November 5, 2014.

The following amendment is adopted.

Adopt the following **new** rule 571—40.60(462A):

571—40.60(462A) Zoning of the Mississippi River, Clayton, Clayton County.

40.60(1) All vessels, except commercial barge traffic, shall be operated at a speed no greater than 5 miles per hour within an area extending 150 feet from shore and beginning at a point 1,012 feet north of Mississippi River Day Marker 624.7R and extending south to a point 1,012 feet south of the same marker (624.7R).

40.60(2) The city of Clayton shall designate and maintain the 5-mile-per-hour speed zone with buoys approved by the natural resource commission.

[Filed 9/12/14, effective 11/5/14]

[Published 10/1/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/1/14.

ARC 1642C

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Adopted and Filed

Pursuant to the authority of Iowa Code section 20.6(5), the Public Employment Relations Board hereby amends Chapter 1, "General Provisions," and adopts new Chapter 13, "Mediators," and Chapter 14, "Arbitrators," Iowa Administrative Code.

New Chapters 13 and 14 fulfill, in a more formal and available manner than in the past, the Board's responsibility pursuant to Iowa Code section 20.6(3) to "[e]stablish minimum qualifications for arbitrators and mediators, [and] establish procedures for appointing, maintaining, and removing from a list persons representative of the public to be available to serve as arbitrators and mediators." While the Board has long maintained publicly available policies and procedures compliant with this statutory directive, those policies and procedures have not heretofore been reflected in Board rules. In addition, Item 1 of this rule making rescinds existing rule 621—1.8(20,279). The content of that rule, which relates to fees of arbitrators, is updated and included as rule 621—14.4(20) in new Chapter 14. There is no increase in fee in the new rule.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1570C** on August 6, 2014, with written and oral comments, and requests for a public hearing, accepted through August 26, 2014. No request for public hearing was received, and no written or oral questions, comments or suggestions were submitted. These amendments are identical to those published under Notice of Intended Action.

Neither new Chapter 13 nor new Chapter 14 provides for a waiver of the terms of the chapter, but both of the chapters are instead subject to the Board's general waiver provisions found at rule 621—1.9(17A,20).

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

These amendments are intended to implement Iowa Code chapter 20 and Iowa Code section 279.17.

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

These amendments will become effective November 5, 2014.

The following amendments are adopted.

ITEM 1. Rescind and reserve rule **621—1.8(20,279)**.

ITEM 2. Adopt the following **new** 621—Chapter 13:

CHAPTER 13
MEDIATORS

621—13.1(20) Scope and authority. This chapter applies to all mediators listed on the agency's mediator list and to all persons applying for inclusion on the list.

621—13.2(20) Definitions.

"Ad hoc mediator" means a person included on the list who enters into an independent contractor agreement with the agency to provide mediation to parties requesting impasse services pursuant to Iowa Code section 20.20.

"Advocate" means a person who represents employers, employee organizations, or individuals or entities in labor relations or employment relations matters, including but not limited to the subjects of union representation and recognition matters, negotiations, mediation, arbitration, unfair or prohibited labor practices, equal employment opportunity, and other areas generally recognized as constituting labor or employment relations. "Advocate" includes representatives of employers or employees in individual cases or controversies involving workers' compensation, occupational health or safety, minimum wage, or other labor standards matters. "Advocate" also includes persons directly or indirectly associated with an advocate in a business or professional relationship as, for example, partners or employees of a law firm.

"FMCS" means the Federal Mediation and Conciliation Service.

"Qualified-mediator list" or "list" means the agency-maintained list of mediators who have met the criteria set forth in this chapter.

621—13.3(20) List and status of members.

13.3(1) *The list.* The agency shall maintain a list of mediators who meet the criteria for listing contained in rule 621—13.4(20) and who remain in good standing.

13.3(2) *Adherence to standards and requirements.* Persons included on the list shall comply with the agency's administrative rules pertaining to mediation. Mediators shall conform to the ethical standards and procedures set forth in the current Code of Professional Conduct for Labor Mediators, as approved and published by the Association of Labor Relations Agencies, and chapter 11 of the Iowa Court Rules. When in conflict, the Code of Professional Conduct for Labor Mediators shall take precedence over the Iowa Court Rules.

13.3(3) *Status of FMCS and ad hoc mediators.* Ad hoc mediators and mediators employed by FMCS are not employees of the state of Iowa.

13.3(4) *Rights of persons on the list.* Placement on the list shall be at the sole discretion of the board.

13.3(5) *Assignments.* The agency has sole discretion to make and modify mediation assignments.

621—13.4(20) Mediator listing.

13.4(1) *Categories of mediators.* The list shall consist of three categories of mediators:

- a. The agency's professional staff;
- b. Mediators employed by FMCS; and
- c. Ad hoc mediators.

13.4(2) *Application procedures for ad hoc mediators.* Persons seeking to be included on the list must complete and submit an application to the agency. Applicants shall submit at least two professional references, preferably one reference from management and one reference from labor. The board will review the application under the criteria set forth in this rule and shall make a final decision as to whether

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

an applicant may be placed on the list. Satisfactorily meeting all criteria does not entitle an applicant to inclusion on the list. Each applicant shall be notified in writing of the board's decision.

13.4(3) Knowledge and abilities. Applicants must establish requisite knowledge and abilities as follows:

- a. Good verbal and written communication skills;
- b. The ability and willingness to travel throughout Iowa and to work prolonged and unusual hours;
- c. Knowledge of Iowa Code chapter 20, the agency's administrative rules, and principles and practices of contracts, public finance, and labor relations; and
- d. The ability and willingness to conduct a mediation in a fair and impartial manner.

13.4(4) Experience. Applicants must demonstrate requisite experience in labor relations or mediation in one of the following ways:

- a. At least three years of collective bargaining experience in the public or private sector;
- b. At least three years of actual mediation experience;
- c. At least five years of other relevant experience in labor-related fields including but not limited to human resource management, industrial relations, and labor unionism;
- d. A law degree or a master's or equivalent degree in industrial or labor relations or alternative dispute resolution; or
- e. Experience that is a combination of that described in paragraphs "a" through "d" of this subrule.

13.4(5) Geographical location. Preference will be given to applicants residing in or near areas of the state where few other listed mediators reside.

13.4(6) Training.

- a. Prior to inclusion on the list, an applicant must complete the following training:
 - (1) Formal training provided by the agency; and
 - (2) Mentorship in at least two disputes with an experienced, listed mediator. The board may require additional mentoring if deemed necessary.
- b. Training requirements may be waived by the board for applicants with prior public sector mediation experience.

13.4(7) Conflict of interest. Prior to inclusion on the list, all applicants must disclose potential conflicts of interest as described in subrule 13.6(1).

13.4(8) Exemption. Persons on the agency's professional staff and mediators employed by FMCS shall not be required to submit an application for listing and shall be deemed as meeting all criteria set forth in subrules 13.4(3) through 13.4(6) throughout the duration of their employment with the agency or FMCS.

13.4(9) Grandfather clause. Any person listed prior to November 5, 2014, shall be deemed as meeting all criteria set forth in subrules 13.4(3), 13.4(4) and 13.4(6).

621—13.5(20) Independent contractor agreement. An ad hoc mediator must enter into an independent contractor agreement with the agency prior to receiving mediation assignments. The independent contractor agreement between the ad hoc mediator and the agency shall establish the hourly rate, reimbursable fees and expenses, duration, and other terms and conditions.

621—13.6(20) Conflict of interest.

13.6(1) Conflict of interest. The board shall determine whether a person has a conflict of interest which may require denial of an application or removal from the list or from individual assignments. A conflict of interest arises where:

- a. A mediator is or has been an employee or advocate for a party to the mediation within the prior two years; or
- b. A mediator's immediate family member, or any other person with whom the mediator has close, personal ties, is an interested party in the outcome of the mediation; or
- c. Any other matter that may create an appearance of bias, lack of impartiality, or interest in the proceedings to which the mediator may be or has been assigned.

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

13.6(2) *Duty to disclose.* A person applying for inclusion on the list or a person included on the list has a continuing duty to disclose to the board in writing any potential or actual conflicts of interest as described in subrule 13.6(1).

13.6(3) *Disclosure.* The board may require a mediator to disclose certain matters to the parties of a mediation prior to its commencement. If either party objects to proceeding to mediation with that mediator, the board may assign a different mediator.

621—13.7(20) Confidentiality.

13.7(1) *Exemption from open meetings law.* In accordance with Iowa Code section 20.17(3), communications between the parties and the mediator during the course of a mediation shall be exempt from the provisions of Iowa Code chapter 21.

13.7(2) *Mediator privilege.* In accordance with Iowa Code section 20.31(2), a mediator shall not testify in judicial, administrative, or grievance proceedings regarding any matters occurring in the course of a mediation, including any verbal or written communication or behavior, other than facts relating exclusively to the timing or scheduling of mediation. A mediator shall not produce or disclose any documents, including notes, memoranda, or other work product, relating to mediation, other than documents relating exclusively to the timing or scheduling of mediation.

13.7(3) *Exception.* Subrule 13.7(2) shall not apply in any of the following circumstances:

- a. The testimony, production, or disclosure is required by statute;
- b. The testimony, production, or disclosure provides evidence of an ongoing or future criminal activity; or
- c. The testimony, production, or disclosure provides evidence of child abuse as defined in Iowa Code section 232.68(2).

621—13.8(20) Complaints. Any affected person or party shall direct a complaint against a mediator who is on the list to the board. The board will consider the complaint and other relevant information and take such action it deems appropriate.

621—13.9(20) Inactive status. A member of the list who continues to meet the criteria for inclusion on the list shall inform the agency if the member is unavailable for assignment on a temporary basis because of illness, vacation, schedule, or other reasons. That member will not receive assignments during the period in which the member is unavailable.

These rules are intended to implement Iowa Code sections 20.1, 20.6 and 20.20.

ITEM 3. Adopt the following new 621—Chapter 14:

CHAPTER 14
ARBITRATORS

621—14.1(20) Scope. This chapter applies to all arbitrators listed on the agency's qualified-arbitrator roster and to all applicants for listing on the roster.

621—14.2(20) Definitions.

“Advocate” means a person who represents employers, employee organizations, or individuals or entities in labor relations or employment relations matters, including but not limited to the subjects of union representation and recognition matters, negotiations, mediation, arbitration, unfair or prohibited labor practices, equal employment opportunity, and other areas generally recognized as constituting labor or employment relations. *“Advocate”* includes representatives of employers or employees in individual cases or controversies involving workers' compensation, occupational health or safety, minimum wage, or other labor standards matters. *“Advocate”* also includes persons directly or indirectly associated with an advocate in a business or professional relationship as, for example, partners or employees of a law firm.

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

“*Arbitrator*” means a person serving as a neutral decision-maker in interest arbitrations, grievance arbitrations, or teacher termination adjudications.

“*Grievance arbitration*” means the proceedings on an alleged contract violation as provided in a collective bargaining agreement entered into pursuant to Iowa Code chapter 20.

“*Grievance arbitrator*” means a person serving as a neutral decision-maker in a grievance arbitration.

“*Interest arbitration*” means the binding arbitration contemplated by Iowa Code section 20.22 or by an impasse agreement entered into pursuant to Iowa Code section 20.19.

“*Interest arbitrator*” means a person serving as a neutral decision-maker in an interest arbitration.

“*Qualified-arbitrator roster*” or “*roster*” means the agency-maintained list of arbitrators who have met the criteria set forth in this chapter.

“*Teacher termination adjudication*” means the proceedings contemplated by Iowa Code section 279.17.

“*Teacher termination adjudicator*” means a person serving as a neutral decision-maker in a teacher termination adjudication.

621—14.3(20) Roster and status of members.

14.3(1) *The roster.* The agency shall maintain a roster of arbitrators who meet the criteria for listing contained in rule 621—14.5(20) and who remain in good standing.

14.3(2) *Adherence to standards and requirements.* Persons listed on the roster shall comply with the agency’s administrative rules pertaining to arbitrators. Arbitrators shall conform to the ethical standards and procedures set forth in the current Code of Professional Responsibility for Arbitrators of Labor Management Disputes, as approved and published by the National Academy of Arbitrators, Federal Mediation and Conciliation Service, and the American Arbitration Association.

14.3(3) *Status of arbitrators.* Persons who are listed on the roster are not employees of the state of Iowa. A selected arbitrator’s contractual relationship is solely with the parties to the dispute.

14.3(4) *Roster listing fee.* An annual listing fee of \$150 for each roster member is established to maintain the roster. Roster members shall remit payment to the agency by November 1 each year. This fee shall be considered a repayment receipt as defined in Iowa Code section 8.2.

621—14.4(20) Fees of arbitrators. Qualified arbitrators selected from the roster may be compensated by a sum not to exceed \$1,200 per day of service, plus their necessary expenses incurred.

621—14.5(20) Arbitrator roster.

14.5(1) *Categories of arbitrators.* The roster shall consist of three categories of arbitrators:

- a. Interest arbitrators;
- b. Grievance arbitrators; and
- c. Teacher termination adjudicators.

Persons may be listed on the roster in each category in which they meet the criteria.

14.5(2) *Initial application procedures.* Persons seeking to be listed on the roster in one or more categories must complete and submit an application to the board. Applicants shall submit at least one reference from management, one reference from labor, and applicable writing samples. The board will review the application under the criteria, as set forth in subrules 14.5(3), 14.5(4), 14.5(5), and 14.5(6), and shall make a final decision concerning whether an applicant will be listed on the roster and under which category or categories the applicant qualifies. Each applicant shall be notified in writing of the board’s decision.

14.5(3) *Knowledge and abilities.* Applicants must establish requisite knowledge and abilities as follows:

- a. For listing on the roster as an interest arbitrator:
 - (1) Good verbal and written communication skills;
 - (2) The ability and willingness to travel throughout Iowa and to work prolonged and unusual hours;

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(3) Knowledge of Iowa Code chapter 20, the agency's rules, and principles and practices of contracts, public finance, and labor relations; and

(4) The ability to conduct evidentiary hearings in a fair and impartial manner, develop an accurate record, and prepare and issue clear, reasoned and timely awards. For purposes of this subparagraph, "timely" means within 15 days after the interest arbitration hearing pursuant to Iowa Code section 20.22(9) or in a time frame established by an impasse agreement entered into pursuant to Iowa Code section 20.19.

b. For listing on the roster as a grievance arbitrator:

(1) Good verbal and written communication skills;

(2) The ability and willingness to travel throughout Iowa and to work prolonged and unusual hours;

(3) Knowledge of arbitral principles and practices, contracts, and labor relations; and

(4) The ability to conduct evidentiary hearings in a fair and impartial manner, develop an accurate record, and prepare and issue clear, reasoned and timely awards. For purposes of this subparagraph, "timely" means within the time frame established by the parties' collective bargaining agreement entered into pursuant to Iowa Code chapter 20.

c. For listing on the roster as a teacher termination adjudicator:

(1) Good verbal and written communication skills;

(2) The ability and willingness to travel throughout Iowa and to work prolonged and unusual hours;

(3) Knowledge of Iowa Code section 279.17; and

(4) The ability to review adjudicatory records developed by another body, hear legal arguments in a fair and impartial manner, and prepare and issue clear, reasoned and timely decisions. For purposes of this subparagraph, "timely" means within 15 days after the teacher termination adjudication hearing pursuant to Iowa Code section 279.17(7).

14.5(4) Experience.

a. Applicants must demonstrate requisite experience in labor relations or arbitration in the category in which the applicant seeks listing on the roster in one of the following ways:

(1) For listing on the roster as an interest arbitrator:

1. Issuance of at least four fact-finding or interest arbitration decisions or a combination thereof;

2. At least three years' experience as a mediator in collective bargaining interest disputes, with training and experience in conducting hearings and issuing reasoned awards; or

3. At least five years' experience in labor relations or labor law, with training and experience in conducting hearings and issuing reasoned awards.

(2) For listing on the roster as a grievance arbitrator:

1. Issuance of at least four grievance awards; or

2. At least five years' experience in labor relations or labor law, with training and experience in conducting hearings and issuing reasoned awards.

(3) For listing on the roster as a teacher termination adjudicator:

1. Issuance of at least four decisions rendered in an appellate capacity; or

2. At least five years' experience in the field of education, with training and experience in reviewing adjudicatory records and issuing reasoned decisions.

b. The board may give credit against the years of experience requirement to a candidate who has received a master's or equivalent degree in a related area or who has adjudicatory experience in a field or fields other than labor relations.

14.5(5) Conflict of interest. Prior to inclusion on the roster, all applicants must disclose potential conflicts of interest as described in subrule 14.8(1).

14.5(6) Training. Prior to inclusion on the roster as an interest arbitrator, applicants must complete formal training provided by the agency.

14.5(7) Exemption. Applicants who qualify for and complete the agency's interest arbitrator mentorship program, as outlined in rule 621—14.6(20), shall be exempt from the criteria set forth in subparagraph 14.5(4) "a"(1) and subrule 14.5(6).

14.5(8) Duration of listing. Listing on the roster shall be for a term of three years.

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14.5(9) *Renewal application.*

a. The board shall notify a roster member not less than 120 days before the expiration of the member's three-year term of the procedures necessary to continue inclusion on the roster.

b. A roster member desiring to renew the member's listing must submit a written application to the board not less than 60 days before the expiration of the member's three-year term.

c. When reviewing a renewal application, the board shall consider the following criteria, plus any other relevant information, in determining whether to renew the person's listing:

(1) Demonstration of the requisite knowledge and abilities as listed in subrule 14.5(3);

(2) Acceptability, which may be based on the agency's records that show the number of times the arbitrator's name has been proposed to the parties and the number of times the arbitrator has been selected. Such cases will be reviewed for extenuating circumstances, such as the arbitrator's length of time on the roster or prior history;

(3) Timeliness of decisions;

(4) Feedback from the parties; and

(5) Attendance at agency-sponsored events, including conferences and trainings.

d. Within 60 days of receipt of the completed application, the board shall issue and serve in accordance with 621—subrule 2.15(2) a written decision granting or denying the renewal application.

(1) If renewal is granted, the roster member shall remit payment of the annual listing fee in accordance with subrule 14.3(4).

(2) If renewal is denied, the renewal applicant may request reconsideration of the denial within 14 days of issuance of the denial. The board shall hold a hearing conducted in accordance with 621—Chapter 2 within 60 days of the request for reconsideration and shall issue its final ruling within 30 days of the hearing. Absent a timely request for reconsideration, the board's denial of the renewal application becomes final, and the arbitrator shall be removed from the roster.

14.5(10) *Grandfather clause.* Any arbitrator listed on the roster prior to November 5, 2014, shall be deemed to meet all criteria set forth in subrules 14.5(3), 14.5(4), and 14.5(6) for up to three years following November 5, 2014. For purposes of renewal, the agency shall divide arbitrators listed on the roster on November 5, 2014, into three groups with staggered renewal dates and will notify the members of each group when their renewal applications are due.

621—14.6(20) Interest arbitrator mentorship program.

14.6(1) *Goal.* It is a goal of the board to increase the number of Iowa residents qualified to be on the roster. Such increase should provide constituents additional options for hiring arbitrators whose reimbursable expenses, such as for mileage and accommodations, are lower and who are more familiar with situations facing the parties. The board may suspend the interest arbitrator mentorship program at any time.

14.6(2) *Application procedures.* Persons seeking to participate in the program must complete and submit an application on a form prescribed by the board. The board will review the application and make a final decision whether an applicant qualifies for the program in accordance with subrule 14.6(3). Each applicant shall be notified in writing of the board's decision.

14.6(3) *Qualifications.* To be eligible to participate in the program, an applicant must meet the following qualifications:

a. Be a resident of the state of Iowa at the time of application and throughout the duration of the mentorship program and maintain the residency for the first year of listing;

b. Have at least five years of collective bargaining experience in the public or private sector as an advocate, mediator, or combination of both;

c. Possess good verbal and written communication skills;

d. Have the ability and willingness to travel throughout Iowa and to work prolonged and unusual hours; and

e. Not have a conflict of interest as described in subrule 14.8(1).

14.6(4) *The program.*

a. The program shall consist of the following steps:

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- (1) Formal training by the agency regarding Iowa Code chapter 20, the agency's administrative rules, and how to conduct hearings and write awards;
- (2) Shadowing an experienced arbitrator listed on the roster in at least two interest arbitrations; and
- (3) Submission of at least two mock interest arbitration awards that comply with statutory and regulatory requirements. The board may require additional mock awards if deemed necessary.

b. Successful completion of the program will result in the participant's inclusion on the roster as an interest arbitrator. Participants must satisfy the criteria for grievance arbitrators and teacher termination adjudicators outlined in subrules 14.5(3) and 14.5(4) prior to inclusion on the roster under those categories.

621—14.7(20) Biography. Each roster member shall maintain a biography in a form prescribed by the board. The roster member is responsible for ensuring that the biography is accurate and current. The agency bears no responsibility for inaccurate, incomplete, or outdated information in biographies. The member's biography shall contain the following:

1. Name, address, telephone number, and e-mail address;
2. Current and past employment, including the member's representative client base if not readily identifiable;
3. Education history;
4. Per diem rate and other applicable charges or fees;
5. Relevant experience, including but not limited to listing on other arbitrator rosters or memberships/associations; and
6. Potential or actual conflicts of interest as described in subrule 14.8(1).

621—14.8(20) Conflict of interest.

14.8(1) *Conflict of interest.* The board shall determine whether a person has a conflict of interest which may require denial of an initial or renewal application or removal from the roster or from individual selections. A conflict of interest arises where:

- a.* An arbitrator is or has been an employee or advocate for a party to the arbitration within the prior two years;
- b.* An arbitrator's immediate family member, or any other person with whom the arbitrator has close, personal ties, is an interested party in the outcome of the arbitration; or
- c.* Any other matter that may create an appearance of bias, lack of impartiality, or interest in the proceedings to which the arbitrator may be or has been selected.

14.8(2) *Duty to disclose.* A person applying for inclusion on the roster or a person listed on the roster has a continuing duty to disclose to the board in writing any potential or actual conflicts of interest as described in subrule 14.8(1).

14.8(3) *Disclosure.* The board may require an arbitrator to disclose certain matters to the parties of an arbitration prior to its commencement. If either party objects to proceeding to arbitration with that arbitrator, the board may require the parties to make an alternate selection.

621—14.9(20) Procedures for discipline and removal.

14.9(1) *Grounds.* Probation, suspension, or removal from the roster may be based upon one or a combination of any of the following, including but not limited to:

- a.* Failure to comply with statutory provisions, the agency's administrative rules, and agency guidelines and policies;
- b.* Delinquency in submitting awards;
- c.* Existence of a conflict of interest as described in subrule 14.8(1) that requires exclusion from the roster;
- d.* Failure to disclose to the board or the parties any conflict of interest as described in subrule 14.8(1);
- e.* Failure to demonstrate the requisite knowledge and abilities listed in subrule 14.5(3);

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f. Any other reason for which the board deems discipline or removal to be in the best interest of the agency, its constituents, or the public at large.

14.9(2) Automatic removal. Any roster member who fails to pay the annual listing fee pursuant to subrule 14.3(4) shall be removed from the roster, absent good cause shown for why removal is inappropriate. Any member who fails to submit a renewal application pursuant to paragraph 14.5(9) “b” shall be removed from the roster 30 days after the expiration of the member’s term, absent good cause shown for why removal is inappropriate.

14.9(3) Filing of a complaint.

a. Any affected person or party may file with the board a complaint against an arbitrator listed on the roster. The board may also file a complaint pursuant to this subrule. Such complaint shall be in writing and shall contain:

- (1) The name, address, telephone number, and e-mail address of the complaining party;
- (2) The dispute(s) in which the complaining party has interacted with the arbitrator;
- (3) The specific allegations on which the complaint is based;
- (4) The requested discipline;
- (5) The signature of the complaining party; and
- (6) The date on which the complaint was prepared.

b. The board shall serve on the arbitrator written notice of the complaint within 14 days of receipt of the complaint and in accordance with rule 621—2.15(20).

14.9(4) Preliminary investigation. Upon receipt of a complaint from an affected person or party, the board shall conduct a preliminary investigation into the allegations. In conducting the investigation, the board may require the production of evidence, including affidavits and documents. If the investigation reveals the complaint has no basis in fact or if the complaint is informally resolved with the approval of the board, the complaint shall be dismissed and the parties notified in accordance with rule 621—2.15(20).

14.9(5) Procedures. If the complaint is not dismissed following the preliminary investigation, the board shall schedule the complaint for hearing and notify the parties in accordance with rule 621—2.2(20). The hearing shall be held within 60 days of the completion of the preliminary investigation or the filing of a board-initiated complaint. The hearing and all subsequent proceedings and filings shall be in accordance with 621—Chapter 2.

14.9(6) Timely resolution of complaints. Complaints filed with the board shall be resolved within 180 days unless good cause is shown for an extension. The board will notify the parties prior to taking action to extend this time limitation upon its own motion.

621—14.10(20) Inactive status. A roster member who continues to meet the criteria for listing on the roster shall inform the agency if the member is unavailable for selection on a temporary basis because of illness, vacation, schedule, or other reasons. That member’s name will not be included on a list of arbitrators sent to parties during the period in which the member is unavailable.

These rules are intended to implement Iowa Code sections 20.1, 20.6, 20.22 and 279.17.

[Filed 9/11/14, effective 11/5/14]

[Published 10/1/14]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/1/14.

ARC 1639C

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,” Chapter 39, “Registration of Radiation Machine Facilities, Licensure of Radioactive Materials and

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Transportation of Radioactive Materials,” Chapter 40, “Standards for Protection Against Radiation,” Chapter 41, “Safety Requirements for the Use of Radiation Machines and Certain Uses of Radioactive Materials,” and Chapter 45, “Radiation Safety Requirements for Industrial Radiographic Operations,” Iowa Administrative Code.

The following paragraphs summarize the changes:

Items 1, 33, 43, 45 and 59 amend rules to reflect current federal regulations.

Items 42, 46, 52, 56, 57 and 61 amend rules to correct errors discovered by staff.

Items 47, 48, 49, 50, 51, 53, 54, 55 and 58 amend rules to reduce the regulatory burden on licensees.

The remaining items amend rules to meet United States Nuclear Regulatory Commission (USNRC) compatibility requirements pursuant to the stipulations of the state of Iowa’s status as a USNRC agreement state.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 28, 2014, as **ARC 1470C**. Comments were received from two members of the regulated community. One individual commented in support of Items 28, 46, 49, 50, 51, 52 and 53. This individual also provided comment concerning the intent of the term “intervals not to exceed” as used in Item 48. After Bureau of Radiological Health staff provided clarification, the individual commented in support of Item 48. Based on the other individual’s comments, language in Item 58, subparagraph 41.3(18)“f”(6), was changed from stating “performed at intervals recommended by the manufacturer” to “performed at intervals not to exceed one week or at longer intervals as recommended by the manufacturer.” Subparagraph 41.3(18)“f”(6) now reads as follows:

“(6) Therapeutic radiation machines subject to 41.3(18) shall have safety quality assurance checks of each external beam radiation therapy machine performed at intervals not to exceed one week or at longer intervals as recommended by the manufacturer;”

In addition, the effective date of these amendments has been inserted throughout the amendments, where appropriate.

These amendments were adopted by the State Board of Health on September 10, 2014.

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

These amendments are intended to implement Iowa Code chapter 136C.

These amendments will become effective on November 5, 2014.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 38 to 41, 45] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 1470C**, IAB 5/28/14.

[Filed 9/10/14, effective 11/5/14]

[Published 10/1/14]

[For replacement pages for IAC, see IAC Supplement 10/1/14.]

ARC 1640C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of 2014 Iowa Acts, Senate File 2360, section 6, the Department of Public Health hereby adopts new Chapter 154, “Medical Cannabidiol Act Registration Card Program,” Iowa Administrative Code.

These rules implement the Medical Cannabidiol Act, 2014 Iowa Acts, Senate File 2360, which permits the possession and use of cannabidiol as defined in the legislation. The rules add the definitions of “cannabidiol,” “department,” “intractable epilepsy,” “neurologist,” and “primary caregiver” as provided for in Senate File 2360, as well as definitions for “date of expiration,” “date of issuance,” “department of transportation,” “patient,” “permanent resident,” and “state.” The rules provide for the receipt by the Department of a written recommendation from a neurologist and the process for the issuance of a

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cannabidiol registration card to a patient or primary caregiver. The rules further provide for the protection of confidential patient and primary caregiver information.

Notice of Intended Action was published in the August 6, 2014, Iowa Administrative Bulletin as **ARC 1571C**. A total of 41 written and oral comments were received from 31 individuals. The majority of comments recommended changes to the legislation and therefore fell outside the scope of the administrative rules. Examples include, but are not limited to, expression of support for implementation of medical marijuana laws that cover additional medical conditions, concerns over the ease with which cannabidiol oil can be accessed, and encouragement for the development of an electronic application system.

Several comments did pertain to the rules published under Notice. The comments:

- Recommended changes to the definition of “permanent resident,”
- Requested inclusion of additional options for acceptable forms of valid photo identification in the application process,
 - Requested an expedited renewal process,
 - Suggested inclusion of the recommending neurologist’s contact information on the Medical Cannabidiol Act Registration Card,
 - Expressed concerns about having to go to a physical location (e.g., a local Department of Transportation driver’s license issuance site),
 - Recommended removal of the requirement that a patient must be physically examined by the recommending neurologist before a written recommendation is issued,
 - Suggested language to ensure that access to public information about the program is appropriate to provide upon request.

Changes to the rules published under Notice include a revised definition of “permanent resident” and inclusion of an additional option for valid photo identification in the application process. These revisions were based on review of similar requirements by the Department of Transportation as well as examples from other states. Language relating to the renewal process was revised to allow for increased flexibility. To better align the rules with 2014 Iowa Acts, Senate File 2360, the Department removed the requirement that the recommending neurologist physically examine a patient before issuing a written recommendation. Language was added to clarify that aggregate and statistical information that does not provide any patient identifiers can be made available to the public upon request.

The State Board of Health adopted these amendments on September 10, 2014.

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

These rules are intended to implement 2014 Iowa Acts, Senate File 2360.

These rules will become effective on January 30, 2015.

The following amendment is adopted.

Adopt the following **new** 641—Chapter 154:

CHAPTER 154 MEDICAL CANNABIDIOL ACT REGISTRATION CARD PROGRAM

641—154.1(85GA,SF2360) Definitions. For the purposes of these rules, the following definitions shall apply:

“*Cannabidiol*” means a nonpsychoactive cannabinoid found in the plant *Cannabis sativa L.* or *Cannabis indica* or any other preparation thereof that is essentially free from plant material, and has a tetrahydrocannabinol level of no more than 3 percent.

“*Date of expiration*” means one year from the date of issuance of the cannabidiol registration card by the department of transportation.

“*Date of issuance*” means the date of issuance of the cannabidiol registration card by the department of transportation.

“*Department*” means the Iowa department of public health.

“*Department of transportation*” means the Iowa department of transportation.

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“Intractable epilepsy” means an epileptic seizure disorder for which standard medical treatment does not prevent or significantly ameliorate recurring, uncontrolled seizures or for which standard medical treatment results in harmful side effects.

“Neurologist” means an allopathic or osteopathic physician board-certified in neurology in good standing and licensed under Iowa Code chapter 148.

“Patient” means a person who is a permanent resident of the state of Iowa who suffers from intractable epilepsy and has received a recommendation from a neurologist for the medical use of cannabidiol pursuant to 2014 Iowa Acts, Senate File 2360.

“Permanent resident” means a natural person who physically resides in Iowa as the person’s principal and primary residence and who establishes evidence of such residency by providing the department with one of the following:

1. A valid Iowa driver’s license,
2. A valid Iowa nonoperator’s identification card,
3. A valid Iowa voter registration card,
4. A current Iowa vehicle registration certificate,
5. A utility bill,
6. A statement from a financial institution,
7. A residential lease agreement,
8. A check or pay stub from an employer,
9. A child’s school or child care enrollment documents,
10. Valid documentation establishing a filing for homestead or military tax exemption on property located in Iowa, or
11. Other valid documentation as deemed acceptable by the department to establish residency.

“Primary caregiver” means a person, at least 18 years of age, who has been designated by a patient’s neurologist or a person having custody of a patient, as being necessary to take responsibility for managing the well-being of the patient with respect to the medical use of cannabidiol pursuant to the provisions of 2014 Iowa Acts, Senate File 2360.

“State” means a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

641—154.2(85GA,SF2360) Neurologist recommendation—medical use of cannabidiol.

154.2(1) A neurologist who has examined and treated a patient suffering from intractable epilepsy may provide, but has no duty to provide, a written recommendation for the patient’s medical use of cannabidiol to treat or alleviate symptoms of intractable epilepsy if no other satisfactory treatment options exist for the patient and all of the following conditions apply:

- a. The patient is a permanent resident of Iowa.
- b. A neurologist has treated the patient for intractable epilepsy for at least six months. For purposes of this treatment period, and notwithstanding 2014 Iowa Acts, Senate File 2360, section 3, subsection 4, treatment provided by a neurologist may include treatment by a neurologist licensed in another state and in good standing.
- c. The neurologist has tried and documented alternative treatment options that have not alleviated the patient’s symptoms.
- d. The neurologist determines the risks of recommending the medical use of cannabidiol are reasonable in light of the potential benefit for the patient and has documented a discussion of the risks and benefits with the patient or the patient’s parent or legal guardian.
- e. The neurologist maintains a patient treatment plan. The neurologist shall have the sole, exclusive authority to recommend the use and amount of cannabidiol, if any, in the treatment plan, and shall recommend in the treatment plan only the oral or transdermal administration of cannabidiol.
- f. The neurologist shall be available to provide follow-up care and treatment to the patient, including but not limited to patient examinations; however, this rule shall not restrict the authority of a neurologist to terminate the physician-patient relationship, provided that such termination is effectuated in accordance with rule 653—13.7(147,148,272C).

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154.2(2) The neurologist is required to use the written recommendation section of the application form provided for this purpose on the department's Web site (www.idph.state.ia.us).

154.2(3) The neurologist, or authorized persons in the neurologist's office or clinic, is required to complete the written recommendation section of the application form and send the application to the department's address as provided on the application form.

154.2(4) A neurologist who provides a written recommendation pursuant to this chapter shall maintain a record-keeping system for all patients for whom the neurologist has recommended the medical use of cannabidiol to treat or alleviate symptoms of intractable epilepsy.

154.2(5) A neurologist who provides a written recommendation pursuant to this chapter is required to participate in any survey that will be conducted by the department on the implementation of the medical cannabidiol Act. Any such survey will adhere to the federal Health Insurance Portability and Accountability Act of 1996.

641—154.3(85GA,SF2360) Cannabidiol registration card—application and issuance to patient.

154.3(1) The department may approve the issuance of a cannabidiol registration card by the department of transportation to a patient who:

- a. Is at least 18 years of age.
- b. Is a permanent resident of Iowa.
- c. Requests the patient's neurologist to submit to the department, pursuant to rule 641—154.2(85GA,SF2360), a written recommendation signed by the neurologist that the patient may benefit from the medical use of cannabidiol.
- d. Is listed as the patient on the application form submitted to the department, on a form created by the department in consultation with the department of transportation and available at the department's Web site (www.idph.state.ia.us) that contains all of the following:

(1) The patient's full legal name, Iowa residence address, mailing address (if different from the patient's residence address), telephone number, date of birth, and sex designation. The patient shall not provide as a mailing address an address for which a forwarding order is in place.

(2) A copy of the patient's valid photo identification. Acceptable photo identification includes:

1. A valid Iowa driver's license,
2. A valid Iowa nonoperator's identification card, or
3. An alternative form of valid photo identification. A patient who possesses or is eligible for an Iowa driver's license or an Iowa nonoperator's identification card shall present such document as valid photo identification. A patient who is ineligible to obtain an Iowa driver's license or an Iowa nonoperator's identification card may apply for an exemption and request submission of an alternative form of valid photo identification. A patient who applies for an exemption is subject to verification of the patient's identity through a process established by the department and the department of transportation to ensure the genuineness, regularity, and legality of the alternative form of valid photo identification.

(3) Full name, address, and telephone number of the patient's neurologist.

(4) Full legal name, residence address, date of birth, and telephone number of each primary caregiver of the patient, if any.

(5) An attestation as to the truthfulness and accuracy of the information provided by the patient on the application.

154.3(2) Upon the completion, verification, and approval of the patient's application, the department shall notify the department of transportation that the patient may be issued a cannabidiol registration card.

154.3(3) A cannabidiol registration card issued to a patient by the department of transportation shall contain all of the following:

a. The patient's full legal name, Iowa residence address, date of birth, and sex designation, as shown on the patient's Iowa driver's license, nonoperator's identification card, or alternative form of valid photo identification provided pursuant to paragraph 154.3(1)"d"(2)"3." If the patient's name, Iowa residence address, date of birth, or sex designation has changed since the issuance of the patient's Iowa driver's license, nonoperator's identification card, or alternative form of valid photo identification, the patient shall first update the patient's Iowa driver's license or nonoperator's identification card to reflect

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the current information, according to the procedures set forth in 761—subrule 605.11(2), 761—subrule 605.25(4), or rule 761—630.3(321), or shall update the alternative form of valid photo identification in accordance with the process of the issuing agency.

b. The date of issuance and the date of expiration.

c. A distinguishing registration number that is not the patient's social security number.

d. The patient's signature. The signature shall be without qualification and shall contain only the patient's usual signature without any other titles, characters, or symbols. The patient's signature certifies, under penalty of perjury and pursuant to the laws of the state of Iowa, that the statements made and information provided in the patient's application for a cannabidiol registration card are true and correct. The patient's signature shall be captured electronically.

e. A color photograph of the patient.

f. A statement that the cannabidiol registration card is not valid for identification purposes.

154.3(4) A patient in possession of a valid cannabidiol registration card issued pursuant to this rule shall not possess a quantity of cannabidiol oil in excess of 32 ounces.

154.3(5) An authorization to use cannabidiol or marijuana for medicinal purposes issued by another state, territory, or jurisdiction does not satisfy the requirements of 2014 Iowa Acts, Senate File 2360, or these rules for the issuance of a cannabidiol registration card.

641—154.4(85GA,SF2360) Cannabidiol registration card—application and issuance to primary caregiver.

154.4(1) For a patient in a primary caregiver's care, the department may approve the issuance of a cannabidiol registration card by the department of transportation to a primary caregiver who:

a. Is at least 18 years of age.

b. Requests the patient's neurologist to submit to the department, pursuant to rule 641—154.2(85GA,SF2360), a written recommendation signed by the neurologist that the patient may benefit from the medical use of cannabidiol pursuant to 2014 Iowa Acts, Senate File 2360, section 4.

c. Is listed as a primary caregiver on the application form submitted to the department, on a form created by the department in consultation with the department of transportation and available at the department's Web site (www.idph.state.ia.us) that contains all of the following:

(1) The primary caregiver's full legal name, residence address, mailing address (if different from the primary caregiver's residence address), telephone number, date of birth, and sex designation. The primary caregiver shall not provide as a mailing address an address for which a forwarding order is in place.

(2) The patient's full legal name.

(3) A copy of the primary caregiver's valid photo identification. Acceptable photo identification includes:

1. A valid Iowa driver's license,

2. A valid Iowa nonoperator's identification card,

3. If the primary caregiver is not a resident of the state of Iowa, a valid state-issued driver's license or nonoperator's identification card issued by a state other than Iowa, or

4. An alternative form of valid photo identification. A primary caregiver who possesses or is eligible for a driver's license or a nonoperator's identification card shall present such document as valid photo identification. A primary caregiver who is ineligible to obtain a driver's license or a nonoperator's identification card may apply for an exemption and request submission of an alternative form of valid photo identification. A primary caregiver who applies for an exemption is subject to verification of the primary caregiver's identity through a process established by the department and the department of transportation to ensure the genuineness, regularity, and legality of the alternative form of valid photo identification.

(4) Full name, address, and telephone number of the patient's neurologist.

(5) An attestation as to the truthfulness and accuracy of the information provided by the primary caregiver on the application.

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154.4(2) Upon the completion, verification, and approval of the primary caregiver's application, the department shall notify the department of transportation that the primary caregiver may be issued a cannabidiol registration card.

154.4(3) A cannabidiol registration card issued to a primary caregiver by the department of transportation shall contain all of the following:

a. The primary caregiver's full legal name, current residence address, date of birth, and sex designation, as shown on the primary caregiver's state-issued driver's license, nonoperator's identification card, or alternative form of valid photo identification provided pursuant to paragraph 154.4(1) "c"(3)"4." If the primary caregiver's name, current residence address, date of birth, or sex designation has changed since issuance of the primary caregiver's Iowa-issued driver's license, nonoperator's identification card, or other form of valid photo identification, the primary caregiver shall first update the primary caregiver's Iowa-issued driver's license or nonoperator's identification card according to the procedures set forth in 761—subrule 605.11(2), 761—subrule 605.25(4), or rule 761—630.3(321) or update the alternative form of valid photo identification in accordance with the process of the issuing agency.

b. The date of issuance and the date of expiration.

c. A distinguishing registration number that is not the primary caregiver's social security number.

d. The primary caregiver's signature. The signature shall be without qualification and shall contain only the primary caregiver's usual signature without any other titles, characters, or symbols. The primary caregiver's signature certifies, under penalty of perjury and pursuant to the laws of the state of Iowa, that the statements made and information provided in the primary caregiver's application for a cannabidiol registration card are true and correct. The primary caregiver's signature shall be captured electronically.

e. A color photograph of the primary caregiver.

f. A statement that the cannabidiol registration card is not valid for identification purposes.

g. A statement distinguishing the cannabidiol registration cardholder as a primary caregiver.

h. The full name of each patient in the primary caregiver's care, as approved by the department in its notice to the department of transportation.

154.4(4) A primary caregiver in possession of a valid cannabidiol registration card issued pursuant to this rule shall not possess a quantity of cannabidiol oil in excess of 32 ounces per patient.

154.4(5) An authorization to use, or to act as a primary caregiver for a patient authorized to use, cannabidiol or marijuana for medicinal purposes issued by another state, territory, or jurisdiction does not satisfy the requirements of 2014 Iowa Acts, Senate File 2360, or these rules for the issuance of a cannabidiol registration card.

641—154.5(85GA,SF2360) Tamperproofing. The department of transportation shall issue a cannabidiol registration card by a method or process which prevents as nearly as possible the alteration, reproduction, or superimposition of a photograph on the cannabidiol registration card without ready detection.

641—154.6(85GA,SF2360) Denial and cancellation. The department may deny an application for a cannabidiol registration card, or may cancel or direct the department of transportation to cancel a cannabidiol registration card, for any of the following reasons:

1. Information contained in the application is illegible, incomplete, falsified, misleading, deceptive, or untrue.

2. The department or the department of transportation is unable to verify the identity of the applicant from the photo identification or other documentation presented pursuant to paragraph 154.3(1) "d"(2)"3" or 154.4(1) "c"(3)"4."

3. The applicant violates or fails to satisfy any of the provisions of 2014 Iowa Acts, Senate File 2360, or these rules.

641—154.7(85GA,SF2360) Appeal. If the department denies an application for or cancels a cannabidiol registration card, the department shall inform the applicant or cardholder of the denial or cancellation

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and state the reasons for the denial or cancellation in writing. An applicant or cardholder may appeal the denial or cancellation of a cannabidiol registration card by submitting a request for appeal to the department by certified mail, return receipt requested, within 20 days of receipt of the notice of denial or cancellation. The department's address is Iowa Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075. Upon receipt of a request for appeal, the department shall forward the request within five working days to the department of inspections and appeals. A contested case hearing shall be conducted in accordance with 641—Chapter 173.

641—154.8(85GA,SF2360) Duplicate card.

154.8(1) *Lost, stolen, or destroyed card.* To replace a cannabidiol registration card that is lost, stolen, or destroyed, a cardholder shall present to the department of transportation the cardholder's valid state-issued driver's license, nonoperator's identification card, or alternative form of valid photo identification provided pursuant to paragraph 154.3(1) "d"(2)"3" or 154.4(1) "c"(3)"4."

154.8(2) *Change in card information and voluntary replacement.*

a. To replace a cannabidiol registration card that is damaged, the cardholder shall surrender to the department of transportation the card to be replaced and present the cardholder's valid state-issued driver's license, nonoperator's identification card, or alternative form of valid photo identification provided pursuant to paragraph 154.3(1) "d"(2)"3" or 154.4(1) "c"(3)"4."

b. A patient or primary caregiver to whom a cannabidiol registration card is issued shall notify the department of a change in current residence address, name, or sex designation listed on the card, within ten calendar days of the change. To replace a cannabidiol registration card to change the current residence address, name, or sex designation listed on the card, the cardholder shall surrender to the department of transportation the card to be replaced and present a valid state-issued driver's license, nonoperator's identification card, or alternative form of valid photo identification provided pursuant to paragraph 154.3(1) "d"(2)"3" or 154.4(1) "c"(3)"4" that has been updated according to the procedures established by the state or agency of issuance to reflect the requested residence address, name, or sex designation.

c. To replace a cannabidiol registration card held by a primary caregiver to change the patient or patients listed on the primary caregiver's card, the primary caregiver shall submit a new application to the department pursuant to rule 641—154.4(85GA,SF2360). A cannabidiol registration card issued pursuant to this paragraph shall not be considered a duplicate card.

154.8(3) *Expiration date.* A duplicate cannabidiol registration card shall have the same expiration date as the cannabidiol registration card being replaced, changed, or amended.

641—154.9(85GA,SF2360) Renewal. A cannabidiol registration card shall be valid for one year from the date of issuance unless canceled pursuant to rule 641—154.6(85GA,SF2360).

154.9(1) A cardholder seeking renewal of a cannabidiol registration card shall submit a renewal application to the department at least 60 days prior to the date of expiration.

a. A patient applying for renewal of a cannabidiol registration card shall submit a renewal application to the department on a form approved by the department.

b. A primary caregiver applying for a renewal of a cannabidiol registration card shall submit a renewal application to the department on a form approved by the department.

154.9(2) A cardholder who fails to renew the cannabidiol registration card may not lawfully possess cannabidiol pursuant to this chapter.

641—154.10(85GA,SF2360) Confidentiality. The department shall maintain a confidential file of the names of each patient to or for whom the department approves the issuance of a cannabidiol registration card and the name of each primary caregiver to whom the department issues a cannabidiol registration card under 2014 Iowa Acts, Senate File 2360, section 5.

154.10(1) Personally identifiable information of patients and primary caregivers shall be maintained as confidential and is not accessible to the public. The department and the department of transportation

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shall release aggregate and statistical information regarding the medical cannabidiol act registration card program in a manner which prevents the identification of any patient or primary caregiver.

154.10(2) Personally identifiable information of patients and primary caregivers may be disclosed under the following limited circumstances:

a. To authorized employees or agents of the department and the department of transportation as necessary to perform the duties of the department and the department of transportation pursuant to this chapter.

b. To authorized employees of state or local law enforcement agencies located in Iowa, solely for the purpose of verifying that a person is lawfully in possession of a cannabidiol registration card issued pursuant to this chapter.

c. To a patient, primary caregiver, or neurologist, upon written authorization of the patient or primary caregiver.

641—154.11(85GA,SF2360) Agreement with department of transportation. The department may enter into a chapter 28E agreement with the department of transportation to facilitate the issuance of cannabidiol registration cards. The agreement may include provisions which govern the issuance, denial, and cancellation of cannabidiol registration cards and the sharing of information between the department and the department of transportation.

These rules are intended to implement 2014 Iowa Acts, Senate File 2360.

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