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CHAPTER 1
ADMINISTRATION

MISSION STATEMENT

The department's mission is to assure state and federal program integrity by adjudicating, examining, and enforcing compliance to protect the health, safety and welfare of Iowans.

481—1.1(10A) Organization.

1.1(1) *Overview of the department.* The Iowa department of inspections and appeals was established by Iowa Code sections 10A.101 to 10A.801. The chief executive officer of the department is the director of the department of inspections and appeals who shall be appointed by the governor to serve at the pleasure of the governor subject to confirmation by the senate no less frequently than every four years.

1.1(2) *Appointment of deputy.* The director is assisted by a deputy director who is appointed by the director of inspections and appeals.

1.1(3) *Organization of department.* The department is organized into divisions which are further divided into bureaus and units.

1.1(4) *Director's duties.* The director has general supervision over the administration and operation of all divisions. The director also develops statewide programs in compliance with the goals of the department.

1.1(5) *Deputy director's duties.* The deputy director serves as the principal deputy to the director. The deputy director represents the director in various capacities as directed.

1.1(6) *Issuance of subpoenas.* The director, or designee of the director, shall have the authority to issue subpoenas in accordance with the provisions of Iowa Code sections 10A.104(6) and 17A.13. In connection with audits, appeals, investigations, inspections, hearings, and any other permissible matters conducted by the department, the director, or designee of the director, may, upon the written request of a department employee or on the director's own initiative:

a. Issue subpoena duces tecum for the production and delivery of books, papers, records and other real evidence; and

b. Issue subpoenas for the appearance of persons to provide statements, statements under oath and depositions.

1.1(7) *Contents of subpoenas.* Each subpoena shall contain the following:

a. The name and address of the person to whom the subpoena is directed;

b. The date, time and location for the appearance of the person;

c. A description of the books, papers, records or other real evidence requested;

d. The date, time and location for production, inspections, or copying of the books, papers, records or other real evidence;

e. The signature and address of the director or designee;

f. The name, address and telephone number of a department employee who can be contacted for purposes of providing clarification or assistance in compliance with the subpoena;

g. The date of issuance; and

h. A return of service.

1.1(8) *Motions to quash or modify subpoena.* A person who desires to challenge a subpoena directed to that person must, within ten days after service of the subpoena, or before the time specified for compliance, if such time is less than ten days, file with the director a motion to quash or modify the subpoena. Upon receipt of a timely motion to quash or modify a subpoena, the director or the director's designee may issue a decision or request an administrative law judge to issue a decision. Oral argument may be scheduled and conducted at the discretion of the director or the director's designee or the administrative law judge. The director or the director's designee or the administrative law judge may quash or modify the subpoena, deny the motion, or issue other appropriate orders. A person aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the director by serving the director, either in person or by certified mail, a notice of

appeal within ten days after service of the decision of the administrative law judge. The director's or the director's designee's decision is final for purposes of judicial review.

1.1(9) *Failure to comply with subpoena.* If the person to whom the subpoena is directed refuses or fails to obey the subpoena, the director, or the director's designee, may cause a petition to be filed in the Iowa district court seeking an order for the person's compliance. Failure to obey orders of that court shall render the person in contempt of the court and subject to penalties provided for that offense.
[**ARC 8431B**, IAB 12/30/09, effective 2/3/10]

481—1.2(10A) Definitions. For rules of the department of inspections and appeals[481], the following definitions apply:

"Department" means the department of inspections and appeals.

"Director" means the director of the department.
[**ARC 8431B**, IAB 12/30/09, effective 2/3/10]

481—1.3(10A) Administration division. This division provides administrative support to the department, including fiscal, policy and planning, information technology, and public information. This division negotiates and provides oversight for compacts entered into between the state of Iowa and Indian tribes located in the state. The division certifies targeted small businesses. The division also inspects and licenses the following entities:

1. Social and charitable gambling pursuant to Iowa Code chapter 99B;
2. Food establishments, including but not limited to restaurants, vending establishments, and mobile food units;
3. Hotels, home food establishments, and egg handlers;
4. Inspections for sanitation in any locality of the state upon written petition of five or more residents of the locality.

[**ARC 8431B**, IAB 12/30/09, effective 2/3/10]

481—1.4(10A) Investigations division. This division conducts audits and investigations, including but not limited to the following:

1. Investigations relative to the practice of regulated professions and occupations, except those within the jurisdiction of the board of medicine, the board of pharmacy, the dental board, and the board of nursing.
2. Audits relative to the administration of hospitals and health care facilities.
3. Audits relative to administration and disbursement of funding under the state supplementary assistance program.
4. Investigations and collections relative to the liquidation of overpayment debts owed to the department of human services.
5. Investigations relative to the operations of the department on aging.
6. Investigations relative to the administration of the state supplemental assistance program, the state medical assistance program, the food assistance program, the family investment program, and any other state or federal benefit assistance program.
7. Investigations relative to the internal affairs and operations of agencies and departments within the executive branch of state government, except for institutions governed by the state board of regents.
8. Investigations relative to Medicaid fraud and dependent adult abuse.

[**ARC 8431B**, IAB 12/30/09, effective 2/3/10]

481—1.5(10A) Health facilities division. This division conducts inspections and investigations, including but not limited to the following:

1. Investigations relative to the standards and practices of hospitals, hospice programs, and health care facilities.
2. Inspections and other licensing procedures relative to hospice programs, hospitals, and health care facilities. The division shall be the sole designated licensing authority for these programs and facilities.

3. Inspections relative to hospital and health care facility construction projects.

4. Inspections of child foster care facilities and private institutions for the care of dependent, neglected, and delinquent children.

5. Inspections and certification of elder group homes, assisted living programs, and adult day services programs.

6. Registration of boarding homes.

7. Investigation of dependent adult abuse in facilities and programs.

[**ARC 8431B**, IAB 12/30/09, effective 2/3/10]

481—1.6(10A) Administrative hearings division. The division conducts contested case hearings for state agencies, departments, boards, and commissions. In addition, the division conducts contested case hearings for some counties and municipalities.

1.6(1) All hearings are governed by Iowa Code chapter 17A, other applicable statutes, including the transmitting agency's enabling statute and the statute authorizing the action taken, applicable agency rules, and the department's administrative rules found at 481—Chapter 10.

1.6(2) The administrator shall coordinate the division's conduct of all hearings.

[**ARC 8431B**, IAB 12/30/09, effective 2/3/10]

481—1.7(10A) Administering discretion. Nothing in the aforesaid allocation of duties shall be interpreted to prevent flexibility in interdepartmental operations or to forbid other divisional allocations of duties in the discretion of the director.

[**ARC 8431B**, IAB 12/30/09, effective 2/3/10]

481—1.8(10A) Employment appeal board. The employment appeal board consists of three members appointed by the governor, subject to confirmation by the senate, to staggered six-year terms. One member shall be qualified by experience and affiliation to represent employers, one member shall be qualified by experience and affiliation to represent employees, and one member shall represent the general public. This board hears and decides contested cases under Iowa Code chapters 8A, subchapter IV, 80, 88, 96, and 97B in accordance with administrative rules promulgated by the employment appeal board.

[**ARC 8431B**, IAB 12/30/09, effective 2/3/10]

481—1.9(10A,237) Child advocacy board. The child advocacy board consists of nine members appointed by the governor, subject to confirmation by the senate. This board administers foster care review and the court appointed special advocate programs, as defined in Iowa Code section 237.18, in accordance with administrative rules promulgated by the board.

[**ARC 8431B**, IAB 12/30/09, effective 2/3/10]

481—1.10(10A,13B) State public defender. The governor shall appoint the state public defender, who shall serve at the pleasure of the governor, subject to confirmation by the senate. The state public defender shall coordinate the provision of legal representation of all indigents under arrest or charged with a crime, seeking postconviction relief, against whom a contempt action is pending, in proceedings under Iowa Code section 811.1A or Iowa Code chapter 229A or 812, in juvenile proceedings, on appeal in criminal cases, and on appeal in proceedings to obtain postconviction relief when ordered to do so by the district court in which the judgment or order was issued, and may provide for the representation of indigents in proceedings instituted pursuant to Iowa Code chapter 908.

[**ARC 8431B**, IAB 12/30/09, effective 2/3/10]

481—1.11(10A,99D,99F) Racing and gaming commission. The Iowa racing and gaming commission regulates pari-mutuel dog and horse racing, gambling structures, and excursion gambling boats in Iowa. The commission, whose five members are appointed by the governor, seeks to preserve the integrity of these industries and to maintain confidence in the industries by protecting the public. In performing its duties, the commission investigates the eligibility of applicants for licensure and selects those that can best serve the citizens of Iowa. The commission adopts standards for the licensing of racing industry

occupations, as well as standards for the operation of all race meetings and facilities. The commission also adopts standards for the operation and licensing of gambling structures and excursion gambling boats.
[**ARC 8431B**, IAB 12/30/09, effective 2/3/10]

481—1.12(10A) Health facilities division. Rescinded IAB 12/30/09, effective 2/3/10.

These rules are intended to implement Iowa Code chapters 10A, 13B, 99D, 99F, and 237.

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CHAPTER 2
PETITIONS FOR RULE MAKING

481—2.1(17A) Petition for rule making. Any person or agency may file a petition for rule making with the agency at the Lucas State Office Building, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The agency must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS

Petition by (Name of Original Petitioner) for (the adoption, amendment, or repeal) of rules relating to (state subject matter).	PETITION FOR RULE MAKING

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the agency's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by 2.4(17A).

2.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

2.1(2) The agency may deny a petition because it does not substantially conform to the required form.

481—2.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The agency may request a brief from the petitioner or from any other person concerning the substance of the petition.

481—2.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the director of the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319.

481—2.4(17A) Agency consideration.

2.4(1) Within 14 days after the filing of a petition, the agency must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the agency must schedule a brief and informal meeting between the petitioner and the agency, a member of the agency, or a member of the staff of the agency, to discuss the petition. The agency may request the petitioner to submit additional information or argument concerning the petition. The agency may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the agency by any person.

2.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the agency must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making

proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the agency mails or delivers the required notification to petitioner.

2.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the agency's rejection of the petition.

These rules are intended to implement Iowa Code section 17A.7 as amended by 1998 Iowa Acts, chapter 1202, section 11.

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CHAPTER 3
DECLARATORY ORDERS

The department of inspections and appeals adopts the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code with the following amendments.

481—3.1(17A) Petition for declaratory order. In lieu of the words "(designate agency)", insert "department". In lieu of the words "(designate office)", insert "the Director's Office, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083". In lieu of the words "(AGENCY NAME)", the heading on the petition form should read:

BEFORE THE DEPARTMENT OF INSPECTIONS AND APPEALS

481—3.2(17A) Notice of petition. In lieu of the words "___ days (15 or less)", insert "15 days". In lieu of the words "(designate agency)", insert "department".

481—3.3(17A) Intervention.

3.3(1) In lieu of the words "within ___ days", insert "within 15 days". Strike the words "(after time for notice under X.2(17A))". In lieu of the number "X.8(17A)", insert "3.8(17A)".

3.3(2) In lieu of the words "(designate agency)", insert "the department".

3.3(3) In lieu of the words "(designate office)", insert "the Director's Office, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083". In lieu of the words "(designate agency)", insert "department". In lieu of the words "(AGENCY NAME)", the heading on the petition form should read:

BEFORE THE DEPARTMENT OF INSPECTIONS AND APPEALS

481—3.4(17A) Briefs. In lieu of the words "(designate agency)", insert "department".

481—3.5(17A) Inquiries. In lieu of the words "(designate official by full title and address)", insert "the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083".

481—3.6(17A) Service and filing of petitions and other papers.

3.6(2) In lieu of the words "(specify office and address)", insert "the Director's Office, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083". In lieu of the words "(agency name)", insert "department".

3.6(3) In lieu of the words "(uniform rule on contested cases X.12(17A))", insert "rule 481—10.12(17A)".

481—3.7(17A) Consideration. In lieu of the words "(designate agency)", insert "department".

481—3.8(17A) Action on petition.

3.8(1) In lieu of the words "(designate agency head)", insert "director".

3.8(2) In lieu of the words "(contested case uniform rule X.2(17A))", insert "rule 481—10.1(10A)".

481—3.9(17A) Refusal to issue order.

3.9(1) In lieu of the words "(designate agency)", insert "department".

481—3.12(17A) Effect of a declaratory order. In lieu of the words "(designate agency)", insert "department".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, section 13.

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CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING

[481—Chapter 4 renumbered as 481—Chapter 10, effective 3/16/88.]

The department of inspections and appeals adopts the agency procedure for rule making segment of the Uniform Administrative Rules printed in the first Volume of the Iowa Administrative Code with the following amendments.

481—4.3(17A) Public rule-making docket.

4.3(2) *Anticipated rule making.* In lieu of the words "(commission, board, council, director)" insert "director".

481—4.4(17A) Notice of proposed rule making.

4.4(3) *Notices mailed.* In lieu of the words "(specify time period)" insert "one calendar year".

481—4.5(17A) Public participation.

4.5(1) *Written comments.* Strike the words "(identify office and address) or".

4.5(5) *Accessibility.* In lieu of the words "(designate office and telephone number)", insert "the administrative services bureau at (515)281-6407".

481—4.6(17A) Regulatory analysis.

4.6(2) *Mailing list.* In lieu of the words "(designate office)", insert "Director's Office, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319".

481—4.10(17A) Exemptions from public rule-making procedures.

4.10(2) *Categories exempt.* In lieu of the words "(List here narrowly drawn classes of rules where such an exemption is justified and a brief statement of the reasons for exempting each of them)", insert the following:

"*a.* Rules which are mandated by federal law or regulation in any situation where the department has no option but to adopt specified rules or where federal funding is contingent upon the adoption of the rules;

"*b.* Rules which implement recent legislation when a statute provides for an effective date which does not allow for the usual notice and public participation requirements;

"*c.* Rules which confer a benefit or remove a restriction on licensees, the public or some segment of the public;

"*d.* Rules which are necessary because of imminent peril to the public health, safety or welfare; and

"*e.* Nonsubstantive rules intended to correct typographical errors, incorrect citations, or other errors in existing rules."

481—4.11(17A) Concise statement of reasons.

4.11(1) *General.* In lieu of the words "(specify the office and address)" insert "Director's Office, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319".

481—4.13(17A) Agency rule-making record.

4.13(2) *Contents.* Amend paragraph *"c"* by inserting "director" in lieu of "(agency head)".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 25B.6.

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CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

[481—Chapter 5 renumbered as 481—Chapter 11, IAB 2/10/88, effective 3/16/88]

The department of inspections and appeals adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices printed in the first volume of the Iowa Administrative Code.

481—5.1(17A,22) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "department of inspections and appeals".

"Custodian" means an agency, which owns and exercises control over public records. The originating agency, if any, is the custodian of records which are used to perform work or a service for the originating agency.

"Originating agency" means any government agency which has requested the department to perform work or a service on its behalf. An originating agency retains custody of all records provided by the originating agency to the department.

481—5.3(17A,22) Requests for access to records.

5.3(1) *Location of record.* In lieu of the words "(insert agency head)", insert "director". In lieu of the words "(insert agency name and address)", insert "Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319".

5.3(2) *Office hours.* In lieu of the words "(insert customary office hours, and if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m. Monday through Friday except legal holidays."

5.3(7) *Fees.*

c. *Supervisory fee.* In lieu of "(specify time period)" insert "one hour".

481—5.6(17A,22) Procedure by which a subject may have additions, dissents, or objections entered into the record. In lieu of the words "(designate office)" insert "the originating agency, or to the director's office".

481—5.9(17A,22) Disclosures without the consent of the subject.

5.9(1) Open records are routinely disclosed without the consent of the subject.

5.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 5.10(17A,22) or in the notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency under Iowa Code section 2A.3.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

481—5.10(17A,22) Routine use. "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was

collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

To the extent allowed by law, the following uses are considered routine uses of all agency records:

1. Disclosure to those officers, employees, and agents of the department or the originating agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

2. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

3. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

4. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

5. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

6. Information transferred to any originating agency when inspections and appeals department has completed the authorized audit, investigation, or inspection.

481—5.11(17A,22) Consensual disclosure of confidential records.

5.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 5.7(17A,22).

5.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

5.11(3) *Obtaining information from a third party.* The department of inspections and appeals occasionally requests personally identifiable information from third parties during the course of its authorized audits, investigations, hearings or inspections. Requests to third parties for this information involve the release of confidential identifying information. These requests shall be made according to the following rules:

481—21.3(10A) indicates when the department may review trust account records.

481—72.3(10A) describes investigation procedures including forms used by food stamp investigators.

481—73.6(10A) explains audit investigative procedures used in Medicaid provider audits or investigations.

481—74.3(10A) describes procedures used to investigate possible public assistance fraud.

5.11(4) *Child support recovery unit.* Under the provision of Iowa Code Supplement section 252J.2(4), the department may share information with the child support recovery unit of the department of human services through manual or automated means for the sole purpose of identifying licensees or license applicants subject to enforcement under Iowa Code Supplement chapter 252J or 598.

481—5.12(17A,22) Release to subject.

5.12(1) A written request to review confidential records may be filed by the subject of the record as provided in rule 5.6(17A,22). The department need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney, or a hearing officer's personal notations to be used by the hearing officer and not intended for public dissemination; or they are otherwise privileged.

c. Investigative reports may be withheld from the subject, except as required by the Iowa Code. (Iowa Code section 22.7(5).)

d. Others authorized by law.

5.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the department may take reasonable steps to protect confidential information relating to another subject.

The list below indicates rules prohibiting release.

1. 481—21.5(10A). Real estate broker trust account information is governed by Iowa Code section 272C.6(4).
2. 481—22.2(10A). Health care facility audits are confidential under Iowa Code section 217.30.
3. 481—40.4(10A). DHS determines accessibility of foster care inspection records.
4. 481—50.8(22,135B,135C). Survey information is confidential pursuant to Iowa Code sections 135B.12 and 135C.19.
5. 481—71.9(10A). Recoupment records and appeals and hearing records are governed by Human Services rules and Iowa Code section 217.30.
6. 481—72.4(10A). Food stamp investigation records are released only to DHS when an investigation is complete.
7. 481—73.8(10A). Iowa Code sections 10A.105, 17A.2(7)*"f,"* and 22.7(18) describe some of the investigation records as confidential.
8. 481—74.3(1)*"e."* Economic assistance fraud bureau investigative material is not released pursuant to Iowa Code sections 10A.105, 17A.2(7)*"f,"* and 22.7(18).

In all cases, the originating agency shall determine whether records may be released.

481—5.13(17A,22) Availability of records. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

5.13(1) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)

b. Tax records made available to the agency.

c. Exempt records under Iowa Code section 22.7.

d. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))

e. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)*"d."*

f. Those portions of department staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by department staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2, 17A.3)

g. Confidential records are also described in the rules of each division as follows:

(1) Inspection records—Chapters 50 to 69.

(2) Investigation records—Chapters 70 to 74.

(3) Audit records—Chapters 21 and 22.

(4) Hearing records—Chapters 10 and 11.

h. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

i. Any other records made confidential by law.

Iowa Code sections 10A.105, 22.7, 135B.12, 135C.19, 217.30, and 272C.6 contain specific authority.

5.13(2) Reserved.

481—5.14(17A,22) Authority to release confidential records. The department may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 5.4(17A,22). If the department initially determines that it will release these records, the department may notify interested parties and withhold the records from inspection as provided in subrule 5.4(3).

481—5.15(17A,22) Personnel files. The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

481—5.16(17A,22) Personally identifiable information. The department maintains systems of records which contain personally identifiable information.

5.16(1) *Rule making.* Rule-making records may contain information about people who make written or oral comments about proposed rules. Iowa Code section 17A.4 requires collection and retention of this information. It cannot be retrieved by an individual identifier. It is not stored in a computer system.

During the rule-writing process, committees are occasionally used to gather basic information. Minutes of committee meetings are available for public inspection. The minutes are retained. Minutes of meetings are not retrievable by personal identifier. Minutes collected and stored in the health facilities division are available from the Health Facilities Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319, in compliance with Iowa Code section 135C.14.

5.16(2) *Appeals and fair hearings division.* Contested case records are maintained in paper and computer files and contain names and identifying numbers of people involved. Evidence and documents submitted as a result of a hearing are contained in the contested case records.

Records are collected by authority of Iowa Code section 10A.202. None of the information stored in a data processing system is compared with information in any other data processing system.

Records of hearings are recorded on magnetic cassette tapes or in written transcripts.

5.16(3) *Appellate defender.* By authority of Iowa Code chapter 13B, the appellate defender maintains information and records relating to criminal and postconviction relief cases that are being appealed. Records contain names and identifying numbers of persons involved in these cases, and are maintained in paper files. Case information is not stored in a data processing system and cannot be compared with information in any data processing system. By authority of Iowa Code section 910A.13, the appellate defender shall not disclose the names of child victims. Presentence investigation reports in the possession of the appellate defender are confidential records pursuant to Iowa Code section 901.4.

Litigation files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney's notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain material which is confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain them from the clerk of the appropriate court which maintains the official copy.

5.16(4) *Audits division.* Paper files stored according to a person's or company's name are collected for purposes of auditing gaming, beer, wine, liquor, or real estate licenses. In each case the name of the

licensee is part of the record. The list below shows Iowa Code authority for collection of information about those who hold:

Gaming licenses, 99B.2(2)

Beer permits, 123.138

Liquor control licenses, 123.33

Wine permits, 123.185

Real estate broker licenses, 543B.46

The audits division can also access computer records about real estate brokers or sales people by name. The data processing system is owned by the department of commerce. Historical information regarding licensure, audits, and disciplinary action is stored in this system.

All of these records are used to conduct audits according to Iowa Code section 10A.302.

5.16(5) *Investigations division.* Paper and data processing files are stored and are retrievable using a name, social security number, or state identification number. Computer records are also kept on microfiche. Personal computer floppy disks are used to monitor referral information and civil or small claims actions.

All records are collected and stored by the investigations division pursuant to Iowa Code section 10A.402. All records are collected to decrease mispayments in human services programs or to help collect funds paid in error.

Comparisons between record systems are explained in rule 481—71.8(10A).

5.16(6) *Inspections division.*

a. By authority of Iowa Code chapters 232 and 217, child protective investigation records are collected in paper files and may contain names and social security numbers of people involved in child protective investigations. The division does not compare these records with information on a data processing system.

b. Names or social security numbers collected during license processing are stored in paper and computer files pursuant to Iowa Code section 10A.501(2).

c. The records in health facilities are not retrievable by personal identifier. A list of records considered confidential is available in rule 481—50.8(10A).

These rules are intended to implement Iowa Code sections 10A.105, 22.7, 22.11, 135B.12, 135C.19, 217.30 and 272C.6.

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CHAPTER 6
UNIFORM WAIVER AND VARIANCE RULES

481—6.1(10A,17A,ExecOrd11) Applicability. This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the department. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the department.

481—6.2(10A,17A,ExecOrd11) Definitions.

"Attached units" means units attached to the department and includes the employment appeal board, hospital licensing board, state citizen foster care review board, racing and gaming commission, and state public defender's office.

"Department" means the department of inspections and appeals authorized by Iowa Code chapter 10A, which is comprised of the administrative division, administrative hearings division, audits division, health facilities division, inspections division and investigations division. Pursuant to Iowa Code section 7E.2(5), five attached units are included in the department.

"Director" means the director of the department of inspections and appeals or the director's designee.

"Director/board" means the director, board, commission or state public defender depending on which one has the decision-making authority pursuant to Iowa Code chapter 10A or 7E.

"Person" means an individual, corporation, limited liability company, government or governmental subdivision or association, or any legal entity.

481—6.3(10A,17A,ExecOrd11) Interpretive rules. This chapter shall not apply to rules that merely define the meaning of a statute or other provision of law or precedent if the department does not possess delegated authority to bind the courts to any extent with its definition.

481—6.4(10A,17A,ExecOrd11) Compliance with statute. The department shall not grant a petition for waiver or a variance from a rule unless a statute or other provision of law has delegated authority to the department sufficient to justify that action and the waiver or variance is consistent with the statute or other provision of law. No waiver or variance may be granted from a requirement that is imposed by statute, unless the statute itself specifically authorizes that action. Any waiver or variance must be consistent with statute.

481—6.5(10A,17A,ExecOrd11) Criteria for waiver or variance. At the sole discretion of the director/board, the director/board may issue an order, in response to a completed petition or on the department's own motion, granting a waiver or variance from a rule adopted by the department, in whole or in part, as applied to the circumstances of a specified person or a specific and narrowly drawn class of persons if the director/board finds based on clear and convincing evidence that:

1. The application of the rule to the petitioner would pose an undue hardship on the person or class of persons for whom the waiver or variance is requested;
2. The waiver or variance from the requirements of a rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of a rule subject to a petition for a waiver or variance are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

481—6.6(10A,17A,ExecOrd11) Filing of petition. A petition for a waiver or variance must be submitted in writing to the Department of Inspections and Appeals, Office of the Director, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319. If the petition relates to a pending contested case, the petition shall also be filed in the contested case proceeding.

481—6.7(10A,17A,ExecOrd11) Content of petition. A petition for waiver or variance shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver or variance is being requested and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver or variance is requested.
3. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.
4. The relevant facts that the petitioner believes would justify a waiver or variance. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver or variance.
5. A history of any prior contacts between the department and the petitioner relating to the regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department that would be affected by the proposed waiver or variance, including a description of each regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department within the last five years.
6. Any information known to the requester regarding the department's treatment of similar cases.
7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver or variance.
8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance.
10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver or variance.

481—6.8(10A,17A,ExecOrd11) Additional information. Prior to issuing an order granting or denying a waiver or variance, the department may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the department may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the department or department's designee.

481—6.9(10A,17A,ExecOrd11) Notice. The department shall acknowledge a petition upon receipt. The department shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the department may give notice to other persons. To accomplish this notice provision, the department may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the department attesting that notice has been provided.

481—6.10(10A,17A,ExecOrd11) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver or variance of rule filed within a contested case and shall otherwise apply to agency proceedings for a waiver or variance only when the department so provides by rule or order or is required to do so by statute.

481—6.11(10A,17A,ExecOrd11) Ruling. An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

6.11(1) *Director/board discretion.* The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the director upon consideration of all relevant factors, except for the below-listed programs, for which the applicable board, commission or state public defender shall make the decision, upon consideration of all relevant factors:

a. Employment appeal board, 486—Chapter 1.

b. Hospital licensing board, 481—Chapter 51.

c. State citizen foster care review board, 489—Chapter 1.

d. Racing and gaming commission, 491—Chapter 1.

e. State public defender's office, 493—Chapter 1.

6.11(2) *Burden of persuasion.* The petitioner has the burden of persuasion when a petition is filed for a waiver or variance from a department rule. The standard of proof is clear and convincing evidence.

6.11(3) *Special waiver or variance rules not precluded.* This chapter shall not preclude the department from granting waivers or variances in other contexts or on the basis of other standards if a statute authorizes the department to do so and the department deems it appropriate to do so.

6.11(4) *Administrative deadlines.* When the rule from which a waiver or variance is sought establishes administrative deadlines, the director/board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all persons similarly situated.

6.11(5) *Conditions.* The director/board may condition the granting of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means and in compliance with the following provisions:

a. Each petition for a waiver or variance shall be evaluated by the department based on the unique, individual circumstances set out in the petition;

b. A waiver or variance, if granted, shall be drafted by the department so as to provide the narrowest exception possible to the provisions of the rule;

c. The department may place on a waiver or variance a condition that the department finds desirable to protect the public health, safety, and welfare;

d. A waiver or variance shall not be permanent, unless the petitioner can show that a temporary waiver or variance would be impracticable; and

e. If a temporary waiver or variance is granted, there is no automatic right to renewal. At the sole discretion of the department, a waiver or variance may be renewed if the department finds that all of the factors set out in rule 6.5(10A,17A,ExecOrd11) remain valid.

6.11(6) *Time for ruling.* The director/board shall grant or deny a petition for a waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the director/board has the discretion to wait until the contested case is resolved before entering an order on the petition for waiver or variance.

6.11(7) *When deemed denied.* Failure of the director/board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the director/board.

6.11(8) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

481—6.12(10A,17A,ExecOrd11) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)*"e,"* the department shall maintain a record of all orders granting or denying waivers and variances under this chapter. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the director's office.

Twice each year the department must prepare a report that:

1. Identifies the rules for which a waiver or variance has been granted or denied;
2. The number of times a waiver or variance was granted or denied for each rule;
3. A citation to the statutory provisions implemented by these rules; and
4. A general summary of the reasons justifying the department's actions.

481—6.13(10A,17A,ExecOrd11) Voiding or cancellation. A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The director/board may at any time cancel a waiver or variance upon appropriate notice and hearing if the director/board finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

481—6.14(10A,17A,ExecOrd11) Violations. Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

481—6.15(10A,17A,ExecOrd11) Defense. After the director/board issues an order granting a waiver or variance, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

481—6.16(10A,17A,ExecOrd11) Appeals. Any request for an appeal from a decision granting or denying a waiver or variance shall be in accordance with the procedures provided in Iowa Code chapter 17A and departmental rules. An appeal shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

481—6.17(10A,17A,ExecOrd11) Sample petition for waiver or variance.

BEFORE THE DEPARTMENT OF INSPECTIONS AND APPEALS

Petition by (insert the name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter).	PETITION FOR WAIVER

Include the following information in the petition for waiver where applicable and known:

1. Provide the petitioner's (the person that is asking for the waiver or variance) name, address and telephone number.
2. Describe and cite the specific rule from which a waiver or variance is requested.
3. Describe the specific waiver or variance requested. Include the exact scope and time period that the waiver or variance will extend.
4. Explain the important facts that the petitioner believes justify the waiver or variance. Include in your explanation (a) why application of the rule would pose an undo hardship to the petitioner; (b) why granting the waiver or variance would not prejudice the substantial legal rights of any person; (c) state whether the provisions of a rule subject to this petition are specifically mandated by statute or another provision of law; and (d) state whether public health, safety and welfare will be affected if the requested waiver or variance is granted.
5. Provide history of prior contacts between the department and the petitioner relating to the regulated activity, license, audit, investigation, inspection or representation that would be affected by the waiver or variance. In that history, include a description of each affected regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department within the last five years.
6. Provide information known to the petitioner regarding the department's treatment of similar cases.
7. Provide the name, address and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver or variance.
8. Provide the name, address and telephone number of any person or entity that would be adversely affected or disadvantaged by the granting of the waiver or variance.

9. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver or variance.

I hereby attest to the accuracy and truthfulness of the above information.

_____ _____

Petitioner's signature Date

These rules are intended to implement Iowa Code section 17A.9A and Executive Order Number 11.

[Filed 4/12/01, Notice 1/24/01—published 5/2/01, effective 6/6/01]

CHAPTER 7
CONSENT FOR THE SALE OF GOODS AND SERVICES

481—7.1(68B) General prohibition. An official of the department shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations subject to the regulatory authority of the department without obtaining written consent as provided in these rules.

481—7.2(68B) Definitions.

"Compensation" means remuneration for the sale of goods and services, including cash or other forms of payment.

"Department" means the department of inspections and appeals.

"Official" means an officer of the state of Iowa receiving a salary or per diem whether elected or appointed or whether serving full-time or part-time. Official includes, but is not limited to, supervisory personnel and members of state agencies and does not include members of the general assembly or legislative employees.

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

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

481—7.3(68B) Conditions of consent for officials. Consent to sell goods or services shall not be given to an official unless all of the following conditions are met:

1. The official's job duties or functions are not related to the department's regulatory authority over the individual, association, or corporation.
2. The selling of the goods or services does not affect the official's job duties or functions.
3. The selling of the goods or services does not include acting as an advocate on behalf of the individual, association, or corporation to the department.
4. The selling of the goods or services does not result in the official selling goods or services to the department on behalf of the individual, association, or corporation.

481—7.4(68B) Application for consent. A written application for consent shall be signed by the official and filed with the department in advance of the proposed sale of goods or services. An application shall be considered filed when all the information specified in subrule 7.4(1) is received by the department.

7.4(1) The written application shall include the following information:

a. The name and address of the prospective employer or recipient of the goods or services;

b. The direct or indirect relationship of the department to the regulated entity;

c. The anticipated date(s) of employment or delivery of the goods or services;

d. A description or list of the goods or services to be supplied, detailing the duties or functions to be performed;

e. The amount and form of compensation; and

f. An explanation of why the proposed sale of goods or services will not create a conflict of interest or provide financial gain by virtue of the official's position within the department.

7.4(2) Consent or denial of consent shall be given in writing by the department in a timely manner. If the consent is denied, the department shall state the reason(s) for the denial.

481—7.5(68B) Effect of consent. The consent is valid only in relation to the specific facts, dates, and circumstances described in the application. Consent can be revoked at any time by reasonable prior written notice to the official.

481—7.6(22,68B) Public information. The application and consent are public records and are available for public examination, except where the record is exempt from disclosure under Iowa law.

481—7.7(68B) Appeal. An official may grieve the decision in accordance with 581—Chapter 12 of the Iowa department of personnel rules.

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

[Filed 5/6/92, Notice 4/1/92—published 5/27/92, effective 7/1/92]

CHAPTER 8
LICENSING ACTIONS FOR NONPAYMENT OF CHILD SUPPORT AND STUDENT LOAN DEFAULT/NONCOMPLIANCE WITH AGREEMENT FOR PAYMENT OF OBLIGATION

481—8.1(252J) Certificates of noncompliance. The department shall suspend, revoke, or deny the issuance or renewal of a license upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in Iowa Code chapter 252J, the rules in this chapter shall apply.

8.1(1) The notice required by Iowa Code section 252J.8 shall be served upon the applicant or licensee by restricted certified mail, return receipt requested, or personal service in accordance with R.C.P. 56.1. Alternatively, the applicant or licensee may accept service personally or through authorized counsel.

8.1(2) The effective date of the revocation or suspension of a license, or denial of the issuance or renewal of a license as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant or licensee.

8.1(3) The department director or designee of the director is authorized to prepare and serve the notice as required by Iowa Code section 252J.8 upon the applicant or licensee.

8.1(4) Licensees and license applicants shall keep the department informed of all court actions, and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J, and shall provide the department copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

8.1(5) All department fees for license applications, license renewal or reinstatement must be paid by licensees or applicants before a license will be issued, renewed or reinstated after the department has denied the issuance or renewal of a license, or has suspended or revoked a license pursuant to Iowa Code chapter 252J.

8.1(6) A licensee or applicant may file an application with the district court within 30 days of service of a department notice pursuant to Iowa Code sections 252J.8 and 252J.9.

a. The filing of the application shall stay the department action until the department receives a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed.

b. For purposes of determining the effective date of the revocation or suspension, or denial of the issuance or renewal of a license, the department shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

8.1(7) The department shall notify the applicant or licensee in writing through regular first-class mail, or such other means as the department deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license or the denial of the issuance or renewal of a license, and shall similarly notify the applicant or licensee when the license is issued, renewed, or reinstated following the department's receipt of a withdrawal of the certificate of noncompliance.

These rules are intended to implement Iowa Code chapter 252J.

481—8.2(261) Student loan default/noncompliance with agreement for payment of obligation.

8.2(1) *Definitions.* For the purposes of these rules, the following definitions shall apply.

"Certificate of noncompliance" means written certification from the college student aid commission to the licensing authority certifying that the licensee has defaulted on an obligation owed to or collected by the commission.

"Commission" means the college student aid commission.

"Department" means department of inspections and appeals.

"Licensing authority" means the department of inspections and appeals.

8.2(2) *Denial of issuance or renewal of a license.* The department shall deny the issuance or renewal of a license upon receipt of a certificate of noncompliance from the college student aid commission

according to the procedures set forth in Iowa Code sections 261.121 to 261.127. In addition to the procedures contained in those sections, the following shall apply:

a. In order to process the certificate of noncompliance received by the department, the department will maintain records of licensees by name, current known address and social security number.

b. Upon receipt of a certificate of noncompliance duly issued by the commission, the department shall initiate procedures for denial of issuance or renewal of a license.

c. The notice required by Iowa Code section 261.126(4) shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or licensee may accept service personally or through authorized counsel.

d. The department's notice referred to in Iowa Code section 261.126(4) shall state all of the following:

(1) The licensing authority intends to deny issuance or renewal of an applicant's/licensee's license due to the receipt of a certificate of noncompliance from the commission.

(2) The applicant/licensee must contact the commission to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance.

(3) Unless the commission furnishes a withdrawal of a certificate of noncompliance to the licensing authority within 30 days of the issuance of the notice under 8.2(2)*"c,"* the applicant's/licensee's license or application shall be denied.

e. The applicant or licensee served with a notice under 8.2(2)*"c"* shall not have a right to a hearing before the department but may request a court hearing pursuant to Iowa Code section 261.127. Such court hearing must be requested within 30 days of providing notice.

f. The effective date of the denial of the issuance or renewal of a license, as specified in the notice under 8.2(2)*"c"* and required by Iowa Code section 261.126(4), shall be 60 days following service of the notice upon the applicant or licensee.

g. The department is authorized to prepare and serve the notice required by Iowa Code section 261.126(4) upon the applicant or licensee.

h. All department fees required for application, license renewal, or license reinstatement must be paid by an applicant or licensee and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the department has denied the issuance or renewal of a license pursuant to Iowa Code sections 261.121 to 261.127.

i. In the event an applicant or licensee timely files a district court action following service of a department notice pursuant to Iowa Code section 261.126(4), the department shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed.

j. Upon the filing of a district court action, the applicant or licensee shall promptly file with the department a copy of the petition filed with the district court. In addition, the applicant or licensee shall provide the department with copies of all court orders and rulings entered in such action, including copies of any order entered dismissing the action, and shall provide such copies to the department within seven days of the action taken by the district court.

k. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the department shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

481—8.3(261) Suspension or revocation of a license. The department shall suspend or revoke a license upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code sections 261.121 to 261.127. In addition to the provisions contained in those sections, the following shall apply:

8.3(1) In order to process the certificate of noncompliance received by the department, the department will maintain records of licensees by name, current known address and social security number.

8.3(2) Upon receipt of a certificate of noncompliance duly issued by the commission, the department shall initiate procedures for suspension or revocation of a license.

8.3(3) The notice required by Iowa Code section 261.126(4) shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rules of Civil Procedure. Alternatively, the applicant or licensee may accept service personally or through authorized counsel.

8.3(4) The department's notice referred to in Iowa Code section 261.126(4) shall state all of the following:

a. The licensing authority intends to suspend or revoke an applicant's/licensee's license due to the receipt of a certificate of noncompliance from the commission.

b. The applicant/licensee must contact the commission to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance.

c. Unless the commission furnishes a withdrawal of a certificate of noncompliance to the licensing authority within 30 days of the issuance of the notice under subrule 8.3(3), the applicant's/licensee's license shall be revoked or suspended.

8.3(5) The applicant or licensee served with a notice under subrule 8.3(3) shall not have a right to a hearing before the department but may request a court hearing pursuant to Iowa Code section 261.127. Such court hearing must be requested within 30 days of providing notice.

8.3(6) The effective date of suspension or revocation of the license, as specified in the notice required under subrule 8.3(3) and required by Iowa Code section 261.126(4), shall be 60 days following service of the notice upon the applicant or licensee.

8.3(7) The department is authorized to prepare and serve the notice required by Iowa Code section 261.126(4) upon the licensee.

8.3(8) All department fees required for application, license renewal, or license reinstatement must be paid by the applicant or licensee and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the department has revoked or suspended a license pursuant to Iowa Code sections 261.121 to 261.127.

8.3(9) In the event an applicant or licensee timely files a district court action following service of a department notice pursuant to Iowa Code section 261.126(4), the department shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed.

8.3(10) Upon the filing of a district court action, the applicant or licensee shall promptly file with the department a copy of the petition filed with the district court. In addition, the applicant or licensee shall provide the department with copies of all court orders and rulings entered in such action, including copies of any order entered dismissing the action, and shall provide such copies to the department within seven days of the action taken by the district court.

8.3(11) For purposes of determining the effective date of the denial of the issuance or renewal of a license, the department shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

These rules are intended to implement Iowa Code chapter 252J and Iowa Code sections 261.121 to 261.127.

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CHAPTER 9
INDIGENT DEFENSE CLAIMS PROCESSING

481—9.1(232,815) Definitions. As used in these rules, unless the context otherwise requires, the following definitions apply:

"Attorney" means an individual licensed to practice law by the Iowa supreme court.

"Claim" means an application or request for payment.

"Claimant" means a person, firm, association, partnership, corporation, or other business entity authorized by law to apply to the indigent defense fund, pursuant to Iowa Code section 815.11, for payments for services provided to, or made on behalf of, an indigent. In juvenile cases, "claimant" may also include a county.

"County base" means the amount of private attorney, witness and mileage fees in juvenile cases for which the county remains liable pursuant to Iowa Code section 232.141.

"Court-appointed attorney" means an attorney appointed by the court to represent an indigent person whether the attorney is a public defender or private attorney.

"Date of service" means "date of service" as defined by the state public defender in rule 493—7.1(13B,815).

"Department" means the department of inspections and appeals.

"Expert witness" means a person who is retained to render an opinion regarding an issue relevant to a case, whether or not the person actually testifies in court.

"Indigent" means a person entitled to legal representation as defined in Iowa Code section 815.9.

"Private attorney" means an attorney who is not a public defender.

"Public defender" means an attorney who is the state public defender, an assistant state public defender, the state appellate defender, an assistant state appellate defender, a local public defender, or an assistant local public defender.

"State public defender" means the state public defender appointed pursuant to Iowa Code chapter 13B and those other persons authorized to act on behalf of the state public defender.

"Timely claims" means claims processed prior to the close of the state's fiscal year accounting books for the fiscal year of the date of service.

481—9.2(815) Claims submitted by a public defender. The department shall process and forward for payment claims submitted by a public defender that are approved by the state public defender and comply with requirements of the department of revenue.

The department will notify the state public defender prior to modifying a claim, except for modifications resulting from a mathematical calculation error.

Timely claims will be submitted to the department of revenue for processing and payment. Claims that are not timely claims will be submitted to the state appeal board for processing and payment.

481—9.3(815) Claims submitted by a private attorney. The department shall process and forward for payment claims submitted by a private attorney for court-appointed attorney fees and costs for legal representation of an indigent if the following conditions are met:

1. The claim has been approved for payment by the state public defender.
2. The claim complies with requirements of the department of revenue.

Claims that do not comply with this rule will be returned by the department to the state public defender.

The department will submit timely claims to the department of revenue for processing and payment. Claims that are not timely claims will be submitted to the state appeal board for processing and payment.

481—9.4(815) Claims submitted by a county. The department shall process and forward for reimbursement claims submitted by a county pursuant to Iowa Code section 232.141(3) if the following conditions are met:

1. The county submits a properly completed Report of Expenditures for Juvenile Justice Program form provided by the department.

2. The report form contains the original signature of the county auditor or another authorized designee.

3. The county submits one original and one copy of the payment order/payment voucher form.

4. The county submits an itemization detailing the amounts for which reimbursement is sought and the manner in which each amount was calculated.

5. The amounts for which reimbursement is sought are statutorily chargeable to the indigent defense fund.

6. The county has timely paid its county base for the current fiscal year to the indigent defense fund.

7. The report form and other required documents are submitted to the Department of Inspections and Appeals, Indigent Defense Unit, Lucas State Office Building, Des Moines, Iowa 50319-0083.

8. The claim has been approved for payment by the state public defender.

Claims that do not comply with this rule will be returned to the state public defender.

481—9.5(815) Claims for other professional services. The department shall process claims for necessary and reasonable expenses for investigators, foreign language interpreters, expert witnesses, certified shorthand reporters, and medical/psychological evaluations if the claimant has an IRS form W-9 on file with the department and the claim conforms to the requirements of this rule.

9.5(1) *Claims for investigative services.* The department shall process and forward for payment claims for necessary and reasonable expenses for investigators if the following conditions are met:

a. The investigator submits a signed original and one copy of a claim containing the following information:

(1) The case name, case number and county in which the action is pending.

(2) The name of the attorney for whom the services were provided.

(3) The date on which services commenced.

(4) The date on which services ended.

(5) The total number of hours claimed.

(6) The total amount of the claim.

(7) The claimant's name, address, social security number or federal tax identification number, and telephone number.

b. Court approval to hire the investigator was obtained before any expenses for the investigator were incurred.

c. One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to hire the investigator.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for the necessary investigation.

(3) An itemization of the investigator's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) A court order approving the dollar amount of the claim. For purposes of this subrule, if the court order authorizing hiring the investigator sets a limit for the claim, the court order approving the amount of the claim is unnecessary.

d. The claim is approved for payment by the state public defender.

The department will return claims that do not comply with this subrule to the state public defender.

9.5(2) *Claims for foreign language interpreters.* The department shall process and forward for payment claims for necessary and reasonable expenses for foreign language interpreters if the following conditions are met:

a. The interpreter submits a signed original and one copy of a claim containing the following information:

(1) The case name, case number and county in which the action is pending.

(2) The name of the attorney for whom the services were provided.

(3) The date on which services commenced.

(4) The date on which services ended.

(5) The total number of hours claimed.

(6) The total amount of the claim.

(7) The claimant's name, address, social security number or federal tax identification number, and telephone number.

b. Court approval to hire the interpreter was obtained before any expenses for the interpreter were incurred.

c. One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to hire the interpreter.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, makes one of the following specific findings:

1. The client is indigent, or

2. Although the client is able to employ counsel, funds are not available to the client to pay for necessary interpreter services.

(3) An itemization of the interpreter's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date including the time services began and ended on each day, and the manner in which the amount of the claim for services was calculated.

(4) A court order approving the dollar amount of the claim. For purposes of this subrule, if the court order authorizing hiring the interpreter sets a limit for the claim, the court order approving the dollar amount of the claim is unnecessary.

(5) If the interpreter charges a "minimum" amount for services based on a specific time, a certification by the interpreter that no other services have been performed or charges made by the interpreter for any portion of that specific time.

d. The claim is approved by the state public defender.

The department will return claims that do not comply with this subrule to the state public defender.

9.5(3) *Claims for expert witnesses.* The department shall process and forward for payment claims for necessary and reasonable expenses for expert witnesses if the following conditions are met:

a. The expert witness submits an original and one copy of a signed claim containing the following information:

(1) The case name, case number and county in which the action is pending.

(2) The name of the attorney for whom the services were provided.

(3) The date on which services commenced.

(4) The date on which services ended.

(5) The total number of hours claimed.

(6) The total amount of the claim.

(7) The claimant's name, address, social security number or federal tax identification number, and telephone number.

b. Court approval to hire the expert witness was obtained before any expenses for the expert witness were incurred.

c. One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to hire the expert witness.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for necessary expert witness services.

(3) An itemization of the expert witness's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) A court order approving the dollar amount of the claim. For purposes of this subrule, if the court order authorizing hiring the expert witness sets a limit for the claim, the court order approving the amount of the claim is unnecessary.

(5) If the expert charges a "minimum" amount for services based on a specific time, a certification by the expert that no other services have been performed or charges made by the expert for any portion of that specific time.

d. The claim is approved by the state public defender.

The department will return claims that do not comply with this subrule to the state public defender.

9.5(4) *Claims for certified shorthand reporters.* The department shall process and forward for payment claims for necessary and reasonable expenses for depositions and transcripts provided by certified shorthand reporters if the following conditions are met:

a. The certified shorthand reporter submits a signed original and one copy of a claim containing the following information:

(1) The case name, case number and county in which the action is pending.

(2) The name of the attorney for whom the services were provided.

(3) The date on which the deposition/court proceeding commenced.

(4) The date on which the transcript was ordered.

(5) The date on which the transcript was delivered.

(6) The number of pages and cost per page.

(7) The total amount of the claim.

(8) The claimant's name, address, social security number or federal tax identification number, and telephone number.

b. Court approval to hire the certified shorthand reporter was obtained before any expenses for the certified shorthand reporter were incurred.

c. One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to hire the certified shorthand reporter.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for necessary certified shorthand reporter services.

(3) An itemization of any additional services or charges based on some criterion other than cost per page.

(4) If the certified shorthand reporter charges a "sitting fee" or "minimum" amount for services based on a specific time, a certification by the certified shorthand reporter that no other services have been performed or charges made by the certified shorthand reporter for any portion of that specific time.

(5) If the certified shorthand reporter is a state employee, a certification by the certified shorthand reporter that none of the time for which the claim is being submitted is time for which the certified shorthand reporter was being paid by the state.

d. Unless the certified shorthand reporter has a contract with the state providing for a different rate or manner of payment, claims for certified shorthand reporter services will be limited to the rate approved by the Iowa supreme court for preparation of transcripts and other certified shorthand reporter services.

e. The claim is approved by the state public defender.

The department will return claims that do not comply with this subrule to the state public defender.

9.5(5) *Claims for court-ordered evaluations.* The department shall process and forward for payment claims for necessary and reasonable evaluations to establish a defense or to determine whether an indigent is competent to stand trial if the following conditions are met:

a. The person performing the evaluation submits a signed original and one copy of a claim containing the following information:

(1) The case name, case number and county in which the action is pending.

(2) The name of the attorney for whom the services were provided.

(3) The date on which services commenced.

(4) The date on which services ended.

(5) The total number of hours claimed.

(6) The total amount of the claim.

(7) The claimant's name, address, social security number or federal tax identification number, and telephone number.

b. Court approval to conduct the evaluation was obtained before any expenses for the evaluation were incurred.

c. One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to conduct the evaluation. This order must specify that the purpose of the evaluation is either to establish a defense to a pending charge or to determine whether an indigent is competent to stand trial.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for the evaluation.

(3) An itemization of the evaluator's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) A court order approving the dollar amount of the claim. For purposes of this subrule, if the court order authorizing the evaluation sets a limit for the claim, the court order approving the amount of the claim is unnecessary.

(5) If the evaluator charges a "minimum" amount for services based on a specific time, a certification by the evaluator that no other services have been performed or charges made by the evaluator for any portion of that specific time.

d. The claim is approved by the state public defender.

The department will return claims that do not comply with this subrule to the state public defender.

9.5(6) *Submission of claims.* Claims for payment for professional services provided to a public defender must be submitted to the public defender for whom the services were provided. Other claims for payment for professional services must be submitted to the state public defender at the following address: State Public Defender, Claims, Lucas State Office Building, Des Moines, Iowa 50319.

9.5(7) *Claims from state employees.* Claims submitted by state of Iowa employees must be submitted on a state travel voucher form.

9.5(8) *Claim form for other professional services.* Claimants other than state of Iowa employees shall use the following form in filing claims for investigative services, foreign language interpreters, expert witnesses, certified shorthand reporters and court-ordered evaluations.

INDIGENT DEFENSE MISCELLANEOUS CLAIM FORM			
1. CHECK THE BOX INDICATING THE TYPE OF CLAIM:			
□ CERTIFIED SHORTHAND REPORTER □ INVESTIGATOR □ EVALUATION □ EXPERT WITNESS □ INTERPRETER _____ (LANGUAGE) □ OTHER (EXPLAIN):			
2. CASE INFORMATION:			
COUNTY:	COURT NUMBER:		
COURT-APPOINTED ATTORNEY:			
TITLE OF CASE:			
CLIENT'S FULL NAME:			
3. CLAIM INFORMATION:			
CERTIFIED SHORTHAND REPORTER:	DATE ORDERED _____/_____/_____ DATE DELIVERED _____/_____/_____		
ALL OTHER CLAIM TYPES:	DATE SERVICES BEGAN _____/_____/_____ DATE SERVICES ENDED _____/_____/_____		
CLAIM TOTAL: $			
4. APPROVAL:_____ **CLAIM TOTAL: $** **STATE PUBLIC DEFENDER**			
5. CLAIMANT INFORMATION:			**□ Change of Information**
NAME:			E-MAIL:
ADDRESS:			PHONE:
CITY:	STATE:	ZIP:	FAX:
SS # OR FEDERAL ID #		ARE YOU A STATE EMPLOYEE? □ YES □ NO	
6. CERTIFICATION: **I, THE UNDERSIGNED, CERTIFY THAT THE ABOVE INFORMATION IS TRUE AND CORRECT.**			
DATE: _____/_____/_____	**CLAIMANT SIGNATURE:**		

481—9.6(10A) Processing and payment. The department will submit timely claims to the department of revenue for processing and payment. The department will submit claims that are not timely to the state appeal board for processing and payment.

481—9.7(10A) Payment errors. If an error resulting in an overpayment or double payment of a claim is discovered by the claimant, by the department, or otherwise, the claimant shall reimburse the indigent defense fund for the amount of the overpayment. An overpayment or double payment shall be repaid by check. The check, made payable to "Treasurer, State of Iowa," together with a copy of the payment voucher containing the overpayment or double payment, shall be mailed to the Department of Inspections and Appeals, Indigent Defense Unit, Lucas State Office Building, Des Moines, Iowa 50319-0083. The claimant shall notify the clerk of court of the overpayment or double payment.

481—9.8(10A) Availability of records. Information collected by the state public defender or the department is available for public inspection and copying, unless otherwise prohibited by rule or

law. Information will be provided when requested in writing from the Department of Inspections and Appeals, Fiscal Services Bureau, Lucas State Office Building, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code section 232.141 and chapters 10A and 815.

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CHAPTER 10
CONTESTED CASE HEARINGS

[Prior to 2/10/88, see Inspections and Appeals Department[481],Ch 4]

481—10.1(10A) Definitions.

"Administrative law judge (ALJ)" means the person who presides over contested cases and other proceedings.

"Agency" means the agency as defined in Iowa Code subsection 17A.2(1) which has original subject matter jurisdiction in the contested case.

"Appointing authority" means the appointed or elected chief administrative head of a department, commission, board, independent agency, or statutory office or that person's designee or in the case of gubernatorial appointees, the governor.

"Board" means a licensing board as defined in Iowa Code chapter 272C.

"Department" means the department of inspections and appeals (DIA).

"Division" means the division of administrative hearings in the department of inspections and appeals.

"Ex parte" means a communication, oral or written, to an ALJ or other decision maker in a contested case without notice and an opportunity for all parties to be heard.

"Filing" is defined in subrule 10.12(3) except where otherwise specifically defined by law.

"Issuance" means the date of mailing of a decision or order or date of delivery if service is by other means.

"Party" means a party as defined in Iowa Code subsection 17A.2(5).

"Personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case.

"Presiding officer" means, as used in the code of administrative judicial conduct, all persons who preside in contested case proceedings under Iowa Code section 17A.11(1) as amended by 1998 Iowa Acts, chapter 1202, section 15.

"Proposed decision" means the administrative law judge's recommended findings of fact, conclusions of law, and decision and order in contested cases where the agency did not preside.

481—10.2(10A,17A) Time requirements. Time shall be computed as provided in Iowa Code subsection 4.1(22). For good cause, the administrative law judge may extend or shorten the time to take any action, except as provided otherwise by rule or law.

This rule is intended to implement Iowa Code sections 10A.202(1) and 17A.22.

481—10.3(10A) Requests for a contested case hearing. Requests for a contested case hearing are made to the agency with subject matter jurisdiction. That agency shall determine whether to initiate a contested case proceeding.

This rule is intended to implement Iowa Code section 10A.202(1).

481—10.4(10A) Transmission of contested cases.

10.4(1) In every proceeding filed with the division, the agency shall complete a transmittal form. The following information is required:

a. The name of the transmitting agency;

b. The name, address and telephone number of the contact person in the transmitting agency;

c. The name or title of the proceeding, which may include a file number;

d. Any agency docket or reference number;

e. A citation to the jurisdictional authority of the agency regarding the matter in controversy;

f. Any anticipated special features or requirements which may affect the hearing;
g. Whether the hearing should be held in person or by telephone conference call;
h. Any special legal or technical expertise needed to resolve the issues in the case;
i. The names and addresses of all parties and their attorneys or other representatives;
j. The date the request for a contested case hearing was received by the agency;
k. A statement of the issues involved and a reference to statutes and rules involved;
l. Any mandatory time limits that apply to the processing of the case;
m. Earliest appropriate hearing date; and
n. Whether a petition or answer is required.

10.4(2) The agency and the department determine by agreement whether the agency or the department shall issue the notice of hearing.

a. If agreed by the agency and the department, the agency shall attach a notice of hearing to the transmittal form.

b. If the division by agreement issues the notice of hearing, the agency must provide the information required by Iowa Code section 17A.12(2) (except for the date, time and place of the hearing) for inclusion in the notice.

c. The agency, and not the division, shall prepare:
(1) The citation to the jurisdictional authority of the agency regarding the matter in controversy;
(2) A statement of the issues involved;
(3) A reference to statutes and rules involved; and
(4) The remaining information required by the transmittal form as stated in subrule 10.4(1).

10.4(3) The following documents shall be attached to the completed transmittal form when it is sent to the division:
a. A copy of the document showing the agency action in controversy; and
b. A copy of any document requesting a contested case hearing.

10.4(4) When a properly transmitted case is received, it is marked with the date of receipt by the division. An identifying number shall be assigned to each contested case upon receipt.

This rule is intended to implement Iowa Code section 10A.202(1).

481—10.5(17A) Notices of hearing.

10.5(1) Responsibility for issuance of notice of hearing and the manner of service shall be resolved by agreement between the division and the transmitting agency.

10.5(2) Notices of hearing shall contain the information required by Iowa Code subsection 17A.12(2) and any additional information required by statute or rule. Notices shall be served by first-class mail, unless otherwise required by statute or rule, or agreed pursuant to subrule 10.5(1).

This rule is intended to implement Iowa Code sections 17A.12(1) and 17A.12(2).

481—10.6(10A) Waiver of procedures. Unless otherwise precluded, the parties in a contested case may waive any provision of this chapter pursuant to Iowa Code section 17A.10.

This rule is intended to implement Iowa Code section 10A.202(2).

481—10.7(10A,17A) Telephone proceedings. A prehearing conference or a hearing may be held by telephone conference call pursuant to a notice of hearing or an order of the ALJ. The division shall determine the location of the parties and witnesses in telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, shall be considered when location is chosen.

481—10.8(10A,17A) Scheduling. Contested case hearings are scheduled according to the following criteria:

10.8(1) *Agency hearings.* The division shall promptly schedule hearings. The availability of an administrative law judge and any special circumstances shall be considered.

10.8(2) *Board hearings.* Boards are requested to consult with the division prior to scheduling hearings to determine the availability of an administrative law judge. The board shall determine the time and place of hearing.

481—10.9(17A) Disqualification.

10.9(1) An administrative law judge shall withdraw from contested cases for lack of impartiality or other legally sufficient cause including, but not limited to, cases where:

a. The ALJ has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the case;

b. The ALJ has prosecuted or advocated in connection with the case, the specific controversy underlying the case, or another pending factually related contested case or pending factually related controversy that may culminate in a contested case involving the same parties;

c. A private party is a client or has been a client of the ALJ within the past two years;

d. The ALJ has a financial interest in the case or any other interest that could be substantially affected by the outcome of the case; or

e. The ALJ, the ALJ's spouse, or relative within the third degree of relationship:

(1) Is a party to the case or an officer, director or trustee of a party;

(2) Is a lawyer in the case;

(3) Is known by the ALJ to have an interest that could be substantially affected by the outcome of the case; or

(4) Is to the ALJ's knowledge likely to be a material witness in the case.

10.9(2) If an ALJ does not withdraw, the ALJ shall disclose on the record any information relevant to the grounds listed in subrule 10.9(1).

10.9(3) If a party asserts disqualification on any appropriate ground, including those listed in subrule 10.9(1), the party shall file an affidavit pursuant to Iowa Code subsection 17A.17(4). The affidavit must be filed with the division within 15 days of the date of the notice of hearing, or as soon as the reason alleged in the affidavit becomes known to the party, but in any case shall be filed prior to the hearing.

This rule is intended to implement Iowa Code section 17A.17.

481—10.10(10A,17A) Consolidation—severance.

10.10(1) *Consolidation.* The administrative law judge may, upon motion by any party or the ALJ's own motion, consolidate any or all matters at issue in two or more proceedings docketed under these rules where:

a. There exist common parties or common questions of fact or law;

b. Consolidation would expedite and simplify consideration of the issues; and

c. Consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings.

At any time prior to the hearing, any party may on motion request that the matters not be consolidated, and the motion shall be granted for good cause shown.

10.10(2) *Severance.* The administrative law judge may, upon motion by any party or upon the ALJ's own motion, for good cause shown, order any proceeding or portion thereof severed.

This rule is intended to implement Iowa Code sections 10A.202(1) and 17A.22.

481—10.11(10A,17A) Pleadings. Pleadings may be required by the notice of hearing or by order of the administrative law judge. If pleadings are required, they shall be filed as follows:

10.11(1) *Petition.* When an action of the agency is appealed and pleadings are required under subrule 10.10(1), the aggrieved party shall file the petition.

a. Any required petition shall be filed within 20 days of delivery of the notice of hearing, unless otherwise ordered.

b. The petition shall state in separately numbered paragraphs the following:

(1) The relief demanded and the facts and law relied upon for relief;

(2) The particular provisions of the statutes and rules involved;

(3) On whose behalf the petition is filed; and

(4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

10.11(2) *Answer.* If pleadings are required, the answer shall be filed within 20 days of service of the petition or notice of hearing, unless otherwise ordered.

a. Any party may move to dismiss or apply for a more definite, detailed statement when appropriate.

b. The answer shall show on whose behalf it is filed and specifically admit, deny or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and may contain as many defenses as the pleader may claim.

c. The answer shall state the name, address and telephone number of the person filing the answer and of the attorney representing that person, if any.

d. Any allegation in the petition not denied in the answer is considered admitted. Any defense not raised which could have been raised on the basis of facts known when the answer was written may be waived unless manifest injustice would result.

10.11(3) *Amendment.* Any petition, notice of hearing or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed may be allowed at the discretion of the ALJ or board if applicable. The presiding ALJ or board may impose terms or grant a continuance without terms, as a condition of allowing late amendments.

This rule is intended to implement Iowa Code sections 10A.202(1) and 17A.12(6)*"a."*

481—10.12(17A) Service and filing of pleadings and other papers.

10.12(1) *When service is required.* Except where otherwise specifically authorized by law, every pleading, motion, document or other paper filed in the contested case proceeding and every paper relating to discovery in the proceeding shall be served upon each of the parties to the proceeding, including the originating agency. Except for the notice of the hearing and an application for rehearing as provided in Iowa Code subsection 17A.16(2), the party filing a document is responsible for service on all parties.

10.12(2) *Methods of performing service.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by first-class mail is rebuttably presumed to be complete upon mailing, except where otherwise specifically provided by statute, rule or order.

10.12(3) *Filing.* After a matter has been assigned to the division, and until a proposed decision is issued, documents shall be filed with the division, rather than the originating agency. All papers filed after the notice is issued that are required to be served upon a party shall be filed simultaneously with the division.

a. Except where otherwise provided by law, a document is deemed filed at the time it is:

(1) Delivered to the division of appeals and fair hearings, department of inspections and appeals and date-stamped received;

(2) Delivered to an established courier service for immediate delivery;

(3) Mailed by first-class mail or by state interoffice mail so long as there is adequate proof of mailing; or

(4) Sent by facsimile transmission (fax) as provided in subrule 10.12(3), paragraph *"b."*

b. All documents filed with the division pursuant to these rules, except a person's request or demand for a contested case proceeding, (see Iowa Code subsection 17A.12(9)) may be filed by facsimile transmission (fax). A copy shall be filed for each case involved. A document filed by fax is presumed to be an accurate reproduction of the original. If a document filed by fax is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received. The date of filing by fax shall be the date the document is received by the division. The division will not provide a mailed file-stamped copy of documents filed by fax.

10.12(4) *Proof of mailing.* Adequate proof of mailing includes the following:

a. A legible United States postal service postmark on the envelope;

b. A certificate of service;

c. A notarized affidavit; or

d. A certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Department of Inspections and Appeals, Appeals Division, Lucas State Office Building, 2nd Floor, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed) or (state interoffice mail).

(date) (signature)

481—10.13(17A) Discovery.

10.13(1) Pursuant to Iowa Code section 17A.13, discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by rules of the agency or by a ruling by the ALJ, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

10.13(2) Any motion relating to discovery shall allege that the moving party has made a good faith attempt to resolve the issues raised by the motion with the opposing party. Motions in regard to discovery shall be ruled on by the ALJ. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 10.13(1). The ALJ may rule on the basis of the written motion and any response or may order argument on the motion.

This rule is intended to implement Iowa Code section 17A.13.

481—10.14(10A,17A) Subpoenas.

10.14(1) *Issuance.*

a. Pursuant to Iowa Code subsection 17A.13(1), the division shall issue an agency subpoena to a party on request unless otherwise excluded pursuant to this rule. A request for a subpoena shall be in writing. The request may be made in person, or by mail, fax, or electronic mail. The request shall include the names of the parties, the case number, the name and address of the requested witness, and a description or list of any documents or other items requested. A request for a subpoena shall be received by the division at least seven calendar days before the scheduled hearing. The request shall include the name, address and telephone number of the requesting party.

b. The division shall provide the subpoena to the requesting party by regular mail, fax, or electronic mail or allow for pickup during the department's regular business hours. Parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

c. When authorized by law, an administrative law judge (ALJ) may issue a subpoena on the ALJ's own motion.

d. When there is reasonable ground to believe a subpoena is requested for the purpose of harassment, or that the subpoena requests irrelevant evidence or is untimely, the ALJ may refuse to issue the subpoena. The ALJ may require the requesting party to provide a statement of testimony expected to be elicited from the subpoenaed witness and a showing of relevancy. If the ALJ refuses to issue a subpoena, the ALJ shall provide a written statement of the ground for refusal. A party to whom a refusal is issued may obtain a prompt hearing regarding the refusal by filing a written request with the division.

10.14(2) *Motion to quash or modify.*

a. A subpoena may be quashed or modified upon motion for any lawful ground in accordance with the Iowa Rules of Civil Procedure.

b. A motion to quash or modify a subpoena shall be served on all parties of record.

c. The motion may be set for argument at the discretion of the ALJ.

This rule is intended to implement Iowa Code sections 10A.104(6) and 17A.13.

[**ARC 9616B**, IAB 7/13/11, effective 8/17/11]

481—10.15(10A,17A) Motions.

10.15(1) No technical form is required for motions. Prehearing motions, however, must be written, state the grounds for relief and state the relief sought. Any motion for summary judgment shall be filed in compliance with the requirements of Iowa Rules of Civil Procedure.

10.15(2) Any party may file a written resistance or response to a motion within 14 days after the motion is served, unless the time period is extended or shortened by rules of the agency or the administrative law judge. The ALJ may consider a failure to respond within the required time period in ruling on a motion.

10.15(3) The administrative law judge may schedule oral argument on any motion on the request of any party or the ALJ's own motion.

10.15(4) Except for good cause, all motions pertaining to the hearing must be filed and served at least ten days prior to the hearing date unless the time period is shortened or lengthened by rules of the agency or the administrative law judge.

481—10.16(17A) Prehearing conference.

10.16(1) Any party may request a prehearing conference. A request for prehearing conference or an order for prehearing conference on the ALJ's own motion shall be filed in writing and served on all parties of record not less than ten days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Notice of the prehearing conference shall be given by the division to all parties. For good cause the ALJ may permit variances from this rule.

10.16(2) Each party shall bring to the prehearing conference:

a. A final list of witnesses who the party reasonably anticipates will testify at the hearing. Witnesses not listed may be excluded from testifying.

b. A final list of exhibits which the party reasonably anticipates will be introduced at the hearing. Exhibits not listed, except rebuttal exhibits, may be excluded from admission into evidence.

10.16(3) In addition to the requirements of subrule 10.16(2), the parties at a prehearing conference may:

a. Enter into stipulations of law;

b. Enter into stipulations of fact;

c. Enter into stipulations on the admissibility of exhibits;

d. Identify matters which the parties intend to request be officially noticed;

e. Unless precluded by statute, enter into stipulations for waiver of the provisions of Iowa Code chapter 17A allowed by Iowa Code section 17A.10(2) or waiver of agency rules; and

f. Consider any additional matters which will expedite the hearing.

10.16(4) A prehearing conference shall be conducted by telephone conference call unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists prior to a telephone prehearing conference.

This rule is intended to implement Iowa Code section 17A.10.

481—10.17(10A) Continuances. Unless otherwise provided, application for continuance shall be made to the ALJ or to the division if an ALJ has not been assigned.

10.17(1) A written application for continuance shall:

a. Be made before the hearing;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or their representative.

10.17(2) If the ALJ waives the requirement for a written motion, an oral application for continuance may be made. A written application shall be submitted no later than five days after the oral request. The ALJ may waive this requirement. No application for continuance will be made or granted ex parte without notice except in an emergency where notice is not feasible. The agency may waive notice of requests for a case or a class of cases.

10.17(3) Except where otherwise provided, a continuance may be granted at the discretion of the ALJ. The administrative law judge shall consider, in addition to the grounds stated in the motion:

a. Any prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. Existence of emergency;
e. Objection to the continuance;
f. Any applicable state or federal statutes or regulations;
g. The existence of a conflict in the schedules of counsel or parties or witnesses; and
h. The timeliness of the request.

The ALJ may require documentation of any ground for continuance.

This rule is intended to implement Iowa Code section 10A.202(1).

481—10.18(10A,17A) Withdrawals. The party which requested an evidentiary hearing regarding agency action may withdraw prior to the hearing only in accordance with agency rules. Requests for withdrawal may be oral or written. If oral, the ALJ may require the party to submit a written request after the oral request. Unless otherwise provided, a withdrawal shall be with prejudice.

This rule is intended to implement Iowa Code sections 10A.202(1) and 17A.22.

481—10.19(10A,17A) Intervention.

10.19(1) *Motion.* A motion for leave to intervene shall be served on all parties and shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within ten days of service of the motion to intervene unless the time period is extended or shortened by the ALJ.

10.19(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the disposition of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if one is held, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. The intervenor shall be bound by any agreement, arrangement or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the hearing will be denied.

10.19(3) *Grounds for intervention.* The movant shall demonstrate that:

a. Intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties;

b. The movant will be aggrieved or adversely affected by a final order; and

c. The interests of the movant are not being adequately represented by existing parties; or that it is otherwise entitled to intervene.

10.19(4) *Effect of intervention.* If appropriate, the ALJ may order consolidation of petitions and briefs and limit the number of representatives allowed to participate in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues to be raised or otherwise condition the intervenor's participation in the proceeding.

This rule is intended to implement Iowa Code sections 10A.202(1) and 17A.22.

481—10.20(17A) Hearing procedures.

10.20(1) When an ALJ has been appointed as the presiding officer in a contested case, the ALJ may:

a. Rule on motions;
b. Preside at the hearing;
c. Require the parties to submit briefs;
d. Issue a proposed decision; and
e. Issue orders and rulings to ensure the orderly conduct of the proceedings.

10.20(2) All objections to procedures, admission of evidence or any other matter shall be timely made and stated on the record.

10.20(3) Parties in a contested case have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations or associations may be represented by any member, officer, director or duly authorized agent. Any party may be represented by an attorney or as otherwise authorized by law.

10.20(4) Parties in a contested case have the right to introduce evidence on points at issue, to cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, to present evidence in rebuttal and to submit briefs.

10.20(5) The ALJ shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly or disruptive.

10.20(6) Witnesses may be sequestered during the hearing.

10.20(7) The ALJ shall conduct the hearing in the following manner:

a. The ALJ shall give an opening statement briefly describing the nature of the proceeding;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the ALJ;

d. Each witness shall be sworn or affirmed by the ALJ or the court reporter, and be subject to examination. The ALJ may limit questioning consistent with Iowa Code section 17A.14;

e. The ALJ has the authority to fully and fairly develop the record and may inquire into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material; and

f. When all parties and witnesses have been heard, parties shall be given the opportunity to present final arguments.

This rule is intended to implement Iowa Code sections 17A.11 to 17A.14.

481—10.21(17A) Evidence.

10.21(1) The ALJ shall rule on admissibility of evidence in accordance with Iowa Code section 17A.14 and may take official notice of facts pursuant to Iowa Code subsection 17A.14(4).

10.21(2) Stipulation of facts is encouraged. The ALJ may make a decision based on stipulated facts.

10.21(3) Evidence shall be confined to the issues on which there has been fair notice prior to the hearing. The ALJ may take testimony on a new issue if the parties waive the right to notice and no other objection is made. If there is objection, the ALJ may refuse to hear the new issue and may make a decision on the original issue in the notice, or may grant a continuance to allow the parties adequate time to amend pleadings and prepare their cases on the additional issue.

10.21(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

10.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. The party objecting shall briefly state the grounds for the objection. The objection, the ruling on the objection and the reasons for the ruling shall be noted in the record. The ALJ may rule on the objection at the time it is made or may reserve a ruling until the written decision.

10.21(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony. If the evidence excluded consists of a document or exhibits, it shall be marked as part of an offer of proof and inserted in the record.

This rule is intended to implement Iowa Code sections 17A.11 to 17A.14.

481—10.22(17A) Default.

10.22(1) If a party fails to appear in a contested case proceeding after proper service of notice, the ALJ may, if no adjournment is granted, proceed with the hearing and make a decision in the absence of the party.

10.22(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested an evidentiary hearing to contest adverse agency action which has already occurred, but has failed to file a required pleading or has failed to appear after proper service.

10.22(3) Where authorized by law, an ALJ may issue a default order.

481—10.23(17A) Ex parte communication.

10.23(1) Ex parte communication is prohibited as provided in Iowa Code section 17A.17. Parties or their representatives and ALJs shall not communicate directly or indirectly in connection with any issue of fact or law in a contested case except upon notice and an opportunity for all parties to participate. The ALJ may communicate with persons who are not parties as provided in subrule 10.23(2).

10.23(2) However, the ALJ may communicate with members of the agency and may have the aid and advice of persons other than those with a personal interest in, or those prosecuting or advocating in the case under consideration or a factually related case involving the same parties.

10.23(3) Any party or ALJ who receives prohibited communication shall submit the written communication or a summary of the oral communication for inclusion in the record. Copies shall be sent to all parties. There shall be opportunity to respond.

10.23(4) Prohibited communications may result in sanctions as provided in agency rule. In addition, the department, through the ALJ, may censure the person or may prohibit further appearance before the department.

This rule is intended to implement Iowa Code sections 17A.14 and 17A.17.

481—10.24(10A,17A) Decisions.

10.24(1) *Proposed decisions.* The ALJ shall issue a proposed decision which includes findings of fact and conclusions of law stated separately. The decision shall be based on the record of the contested case.

The record in a contested case shall include all materials specified in Iowa Code subsection 17A.12(6). This shall include any request for a contested case hearing and other relevant procedural documents regardless of their form.

A ruling dismissing all of a party's claims or a voluntary dismissal is a proposed decision under Iowa Code section 17A.15.

10.24(2) *Review of proposed decisions.* Request for review of a proposed decision shall be made to the agency in which the contested case originated in the manner and within the time specified by that agency's rules. In contested cases in which the director of DIA has final decision-making authority, request for review shall be made as provided in rule 481—10.25(10A,17A).

10.24(3) *Final decisions.* If there is no appeal from or review of the proposed decision, the ALJ's proposed decision becomes the final decision of the agency.

10.24(4) *Agency reports.* The agency shall send a copy of any request for review of a proposed decision to the division. The agency shall notify the division of the results of the review, the final decision and any judicial decision issued.

481—10.25(10A,17A) DIA appeals.

10.25(1) A request for review of a proposed decision in which DIA is the final decision maker shall be made within 15 days of issuing the proposed decision, unless otherwise provided by statute. Requests shall be mailed or delivered by either party to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. Failure to request review will preclude judicial review unless the department reviews on its own motion as follows. The department may review a proposed decision upon its own motion within 15 days of its issuance.

10.25(2) A review shall be based on the record and limited to issues raised in the hearing. The issues shall be specified in the party's request for review.

10.25(3) Each party shall have opportunity to file exceptions and present briefs. The director or a designee may set a deadline for submission of briefs. When the director or designee consents, oral arguments may be presented. A party wishing to make an oral argument shall specifically request it. All parties shall be notified in advance of the scheduled time and place.

10.25(4) The director or designee shall not take any further evidence with respect to issues of fact heard in the hearing except as set forth below. Application may be filed for leave to present evidence in addition to that found in the record of the case. If it is shown to the satisfaction of the director or designee that the additional evidence is material and that there were good reasons for failure to present it in the

hearing, the director or designee may order the additional evidence taken upon conditions determined by the director or designee.

10.25(5) Final decisions shall be issued by the director or the director's designee.

10.25(6) Requests for rehearing shall be made to the director of the department within 20 days of issuing a final decision. A rehearing may be granted when new legal issues are raised, new evidence is available, an obvious mistake is corrected, or when the decision failed to include adequate findings or conclusions on all issues.

A request for rehearing is not necessary to exhaust administrative remedies.

10.25(7) Judicial review of department final decisions may be sought in accordance with Iowa Code section 17A.19.

This rule is intended to implement Iowa Code sections 17A.15 and 17A.19.

481—10.26(10A,17A,272C) Board hearings. In scheduling hearings, boards should consult with the division to determine the availability of an ALJ. The board shall determine the time and place of hearing. At the request of the board, an ALJ shall assist in the conduct of a contested case.

10.26(1) The ALJ may rule on preliminary matters, including motions, and conduct prehearing conferences referred by the board.

10.26(2) The ALJ may conduct the hearing for the board, and may, when delegated by the board, perform duties including, but not limited to, the following:

a. Open the record and receive appearances;
b. Administer oaths and issue subpoenas;
c. Enter the notice of hearing into the record;
d. Enter the statement of charges into the record;
e. Receive testimony and exhibits presented by the parties;
f. Rule on objections and motions;
g. Close the hearing; and
h. Prepare findings of fact, conclusions of law and decision and order.

This rule is intended to implement Iowa Code sections 10A.202, 17A.11 and 272C.6.

[1]**481—10.27(10A) Transportation hearing fees.** Any hearing on an application required by Iowa Code Supplement chapter 325A shall require:

10.27(1) The applicant and any persons objecting to the granting of a certificate to submit a hearing fee of $350 to be shared equally to cover payment of all costs and expenses of the hearing. The department may require additional amounts as necessary and shall provide a written itemized account of all additional expenses to the parties. The hearing fee shall be made by check payable to the Iowa Department of Inspections and Appeals.

10.27(2) The hearing fee to be received no later than 14 days after the notice of hearing, unless otherwise ordered. Failure to timely submit the hearing fee may result in cancellation of the hearing and denial of the application.

10.27(3) If a scheduled hearing is canceled, that the hearing fee, less expenses incurred by the department, be refunded to the payers. This shall not be interpreted to authorize a refund to an applicant who fails to appear at a scheduled hearing.

10.27(4) The applicant and any persons objecting to the granting of a certificate to submit a hearing fee of $150 to be shared equally if the hearing is held by a summary proceeding conducted without a personal appearance before the ALJ and where pleadings, affidavits, records, or other documents are submitted to the division for a decision by an ALJ.

[1] Hearing fees under jurisdiction of Department of Transportation [761] prior to 5/16/90. See IAB 6/26/91 for rescission of 761—525.5(3) and 528.4(3).

481—10.28(10A) Recording costs. The department may provide a copy of the tape-recorded hearing or a printed transcript of the hearing when a record of the hearing is requested. The cost of preparing the tape or transcript shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters shall bear the cost, unless otherwise provided by law.

481—10.29(10A) Code of administrative judicial conduct. The code of administrative judicial conduct is designed to govern the conduct, in relation to their adjudicative functions in contested cases, of all persons who act as presiding officers under the authority of Iowa Code section 17A.11(1). The canons are rules of reason. The canons shall be applied consistent with constitutional requirements, statutes, administrative rules, and decisional law and in the context of all relevant circumstances. The canons must be harmonized with the dictates of the administrative process as established by the legislature. While Canons 1, 2, and 3 are generally applicable to both administrative law judges and agency heads or members of multimember agency heads when these persons act as presiding officers, these canons shall be applied to agency heads and members of multimember agency heads only as expressly mandated by statute and as reasonably practicable when taking into account the fact that agency heads and members of multimember agency heads, unlike administrative law judges, have multiple duties imposed upon them by law. The provisions of Canon 4 concerning the regulation of extrajudicial activities are not applicable to agency heads or members of multimember agency heads. This code is to be construed so as to promote the essential independence of presiding officers in making judicial decisions.

Whether disciplinary action is appropriate, and the degree of discipline to be imposed, shall be determined by the appointing authority through a reasonable and reasoned application of the text and shall depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of improper activity on others or on the administrative system. This code is not designed or intended as a basis for civil liability or criminal prosecution.

10.29(1) *Canon 1.* A presiding officer shall uphold the integrity and independence of the administrative judiciary.

a. An independent and honorable administrative judiciary is indispensable to justice in society.

b. A presiding officer shall participate in establishing, maintaining, and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the administrative judiciary will be preserved.

c. The provisions of this code are to be construed and applied to further that objective.

10.29(2) *Canon 2.* A presiding officer shall avoid impropriety and the appearance of impropriety in all adjudicative functions in contested cases.

a. A presiding officer shall respect and comply with the law and at all times shall act in a manner that promotes public confidence in the integrity and impartiality of the administrative judiciary.

b. A presiding officer shall not allow family, social, political, or other relationships to influence the presiding officer's judicial conduct or judgment. This provision shall not be construed as prohibiting the development of public policy by contested case adjudication. A presiding officer shall not lend the prestige of the office to advance the private interests of the presiding officer or others; nor shall a presiding officer convey or permit others to convey the impression that they are in a special position to influence the presiding officer.

c. A presiding officer shall not hold membership in any organization that the presiding officer knows practices invidious discrimination on the basis of race, sex, religion or national origin.

10.29(3) *Canon 3.* A presiding officer shall perform the duties of the office impartially and diligently.

a. *Adjudicative responsibilities.* A presiding officer in the performance of adjudicative duties in contested case proceedings shall follow these standards:

(1) A presiding officer shall be faithful to the law, unswayed by partisan interests, public clamor, or fear of criticism.

(2) A presiding officer shall maintain order and decorum in proceedings before the presiding officer.

(3) A presiding officer shall be patient, dignified, and courteous to litigants, witnesses, attorneys, representatives, and others with whom the presiding officer deals in an official capacity, and shall require similar conduct of attorneys, representatives, staff members and others subject to the presiding officer's direction and control.

(4) A presiding officer shall not, in the performance of adjudicative duties by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon sex, race, national origin or ethnicity and shall not permit staff and others subject to the presiding officer's direction and control to do so.

(5) A presiding officer shall accord to all persons who are legally interested in a proceeding, or their representatives, full right to be heard according to law, and neither initiate nor consider ex parte communications prohibited by Iowa Code section 17A.17.

(6) A presiding officer shall dispose of all adjudicative matters promptly, efficiently and fairly.

(7) A presiding officer shall abstain from public comment about a pending or impending contested case proceeding that might reasonably be expected to affect the outcome or impair the fairness of the proceeding, and shall require similar abstention by agency personnel subject to the presiding officer's direction and control. This subparagraph does not prohibit a presiding officer from making public statements in the course of official duties or from explaining for public information the hearing procedures of agencies.

(8) A presiding officer shall not disclose or use, for any purpose unrelated to adjudicative duties, nonpublic information acquired in an adjudicative capacity except as lawfully permissible in the performance of official duties by an agency head or member of a multimember agency head.

(9) A presiding officer shall report any violation of this code to the appropriate authority for any disciplinary proceedings provided by law.

b. Disqualification. A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

(1) Has a personal bias or prejudice concerning a party or a representative of a party;

(2) Has personally investigated, prosecuted or advocated, in connection with that case, the specific controversy underlying that case, or another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

(3) Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

(4) Has acted as counsel to any person who is a private party to that proceeding within the past two years;

(5) Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

(6) Has a spouse or relative within the third degree of relationship that:

1. Is a party to the case, or an officer, director or trustee of a party;
2. Is an attorney in the case;
3. Is known to have an interest that could be substantially affected by the outcome of the case; or
4. Is likely to be a material witness in the case; or

(7) Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

c. Disclosure on record. In a situation where a presiding officer knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, the presiding officer shall disclose the relevant information on the record and shall state reasons why voluntary withdrawal is unnecessary.

10.29(4) *Canon 4.* An administrative law judge shall regulate extrajudicial activities to minimize the risk of conflict with judicial duties.

In general, an administrative law judge shall conduct all of the administrative law judge's extrajudicial activities so that the administrative law judge does not:

1. Cast reasonable doubt on the administrative law judge's capacity to act impartially as a judge;
2. Create the appearance of impropriety or demean the adjudicative office; or
3. Interfere with the proper performance of adjudicative duties.

These rules are intended to implement Iowa Code sections 10A.104, 10A.202, 17A.10 to 17A.17, 17A.19, 17A.22, 272C.1 and 272C.6.

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[1] Effective date of first unnumbered paragraph of Ch 10, Scope and applicability, delayed 70 days by the Administrative Rules Review Committee at its 6/13/90 meeting; this paragraph rescinded IAB 8/22/90, effective 8/1/90.

CHAPTER 11
PROCEDURE FOR CONTESTED CASES INVOLVING PERMITS TO CARRY WEAPONS AND ACQUIRE FIREARMS

481—11.1(17A,724) Definitions.

"Agency" means the commissioner of public safety or the sheriff of the county in which the aggrieved party resides.

"Applicant" means a person who has applied for a permit to carry weapons or acquire firearms.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5).

"Division" means the division of administrative hearings of the Iowa department of inspections and appeals.

"Party" means each person or agency named or admitted as a party.

"Permittee" means a person who has received a permit to carry weapons or acquire firearms.

[**ARC 9299B**, IAB 12/29/10, effective 1/1/11; **ARC 9400B**, IAB 3/9/11, effective 4/13/11]

481—11.2(724) Appeals. An applicant or permittee may appeal a decision by an agency to deny an application for a permit to carry weapons or acquire firearms or to suspend or revoke a permit to carry weapons or acquire firearms.

11.2(1) *Written appeal.* The appeal shall be in writing and should state the reasons for rebutting the denial, suspension, or revocation.

11.2(2) *Filing of appeal.* Within 30 days of the applicant's or permittee's receipt of the agency's decision, the applicant or permittee shall file the appeal, a copy of the agency's written decision, and a fee of $10 with the Iowa Department of Inspections and Appeals, Division of Administrative Hearings, 502 East 9th Street, Des Moines, Iowa 50319.

11.2(3) *Service on the agency.* The applicant or permittee shall serve a copy of the appeal on the agency at the time the appeal is filed with the division.

11.2(4) *Denial of appeal.* The division may deny any appeal that does not meet each of the requirements in subrules 11.2(1) to 11.2(3).

[**ARC 9299B**, IAB 12/29/10, effective 1/1/11; **ARC 9400B**, IAB 3/9/11, effective 4/13/11]

481—11.3(17A,724) Notice of hearing. The division shall prepare and serve the notice of hearing.

11.3(1) The notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the agency decision on appeal;

d. Identification of the parties;

e. Reference to the procedural rules governing the contested case proceeding;

f. Identification of the administrative law judge, including the judge's address and telephone number; and

g. Notification that failure to appear and participate in the contested case proceeding may result in the entry of a default judgment.

11.3(2) Service of the notice of hearing shall be accomplished by first-class mail.

[**ARC 9299B**, IAB 12/29/10, effective 1/1/11; **ARC 9400B**, IAB 3/9/11, effective 4/13/11]

481—11.4(17A,724) Agency record.

11.4(1) Upon receipt of a copy of the notice of hearing, the agency shall file with the division:

a. A copy of all documents used by the agency in reaching the decision; and

b. A form identifying the name, address, and telephone number of the agency's contact person or attorney representative.

11.4(2) The agency shall provide to the applicant or permittee a copy of all documents used by the agency in reaching the decision.

[**ARC 9299B**, IAB 12/29/10, effective 1/1/11; **ARC 9400B**, IAB 3/9/11, effective 4/13/11]

481—11.5(17A) Contested case hearing. The hearing shall be conducted pursuant to the standards established in Iowa Code chapter 17A for contested case hearings. The hearing shall be held by telephone conference call, unless a party to the proceeding requests an in-person hearing from the administrative law judge no later than five days before the hearing. All in-person hearings shall be held at the division's headquarters in Des Moines, Iowa. If the administrative law judge grants an in-person hearing, the administrative law judge may allow one party to appear by telephone.
[**ARC 9299B**, IAB 12/29/10, effective 1/1/11; **ARC 9400B**, IAB 3/9/11, effective 4/13/11]

481—11.6(17A) Service and filing of documents.

11.6(1) *When service is required.* Every document filed in a contested case proceeding shall be served on each party of record. Service shall be made by delivering or mailing a copy to the party's last-known address.

11.6(2) *Filing.* All documents in the contested case proceeding shall be filed with the administrative law judge. A document is deemed filed at the time it is received by the division. A document is deemed to be served when mailed by first-class mail, so long as there is proof of mailing.

11.6(3) *Proof of mailing.* Proof of mailing includes a legible United States Postal Service postmark on the envelope and a certificate of service, a notarized affidavit, or certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of the state of Iowa, that on (date of mailing or hand-delivery), I mailed or hand-delivered copies (describe document(s)) addressed to (opposing party) by depositing the same in a United States post office mailbox with correct postage properly affixed, or I hand-delivered copies.
>
> (Date) (Signature)

11.6(4) *Filing by electronic means.* The administrative law judge may permit service or filing of particular documents by facsimile, electronic mail, or similar electronic means. When permitted, service by facsimile, electronic mail, or similar electronic means is complete upon transmission.
[**ARC 9299B**, IAB 12/29/10, effective 1/1/11; **ARC 9400B**, IAB 3/9/11, effective 4/13/11]

481—11.7(17A) Witness lists and exhibits. No later than five days before the hearing, a party shall serve on all parties and the administrative law judge a witness list and a copy of any exhibit(s) the party intends to introduce into evidence during the contested case proceeding. If a party fails to serve on all parties and the administrative law judge a witness list or any exhibit five days before the hearing, the party may be precluded from calling the witness at hearing or introducing the exhibit(s) into the record at hearing.
[**ARC 9299B**, IAB 12/29/10, effective 1/1/11; **ARC 9400B**, IAB 3/9/11, effective 4/13/11]

481—11.8(17A) Evidence. The administrative law judge shall rule on the admissibility of evidence and may take official notice of facts in accordance with applicable requirements of law. Evidence in the proceeding shall be confined to the issues for which the parties received notice prior to the hearing.
[**ARC 9299B**, IAB 12/29/10, effective 1/1/11; **ARC 9400B**, IAB 3/9/11, effective 4/13/11]

481—11.9(17A) Withdrawals and dismissals. A request for withdrawal or dismissal of the appeal may be made with the division prior to the hearing. Either request must be in writing or secured on the record.

11.9(1) *Withdrawals.* An applicant or permittee who requested a contested case proceeding may request a withdrawal of the appeal. Upon receipt of a request for withdrawal of the appeal, the administrative law judge shall issue an order dismissing the appeal and closing the case.

11.9(2) *Dismissals.* An agency may request a dismissal of the appeal by agreeing to grant the entire relief sought by the applicant or permittee. The administrative law judge shall review a request for dismissal to determine whether it grants all relief requested in the appeal. If the request grants all relief requested in the appeal, the administrative law judge shall issue an order dismissing the appeal, ordering the agency to grant the relief requested, and closing the case.
[**ARC 9299B**, IAB 12/29/10, effective 1/1/11; **ARC 9400B**, IAB 3/9/11, effective 4/13/11]

481—11.10(17A) Default. If a party fails to appear after proper service of notice, the administrative law judge may enter a default order against the party or may proceed with the hearing and make a decision in the absence of the party.
[**ARC 9299B**, IAB 12/29/10, effective 1/1/11; **ARC 9400B**, IAB 3/9/11, effective 4/13/11]

481—11.11(10A) Costs. Costs of the contested case hearing shall be paid by the agency.
[**ARC 9299B**, IAB 12/29/10, effective 1/1/11; **ARC 9400B**, IAB 3/9/11, effective 4/13/11]

481—11.12(724) Probable cause. Probable cause to deny an initial or renewal application for a permit to carry weapons or acquire firearms or to suspend or revoke a permit to carry weapons or acquire firearms means a reasonable ground exists for supposing that the basis for the denial, suspension or revocation is well-founded.
[**ARC 9299B**, IAB 12/29/10, effective 1/1/11; **ARC 9400B**, IAB 3/9/11, effective 4/13/11]

481—11.13(724) Clear and convincing evidence. Clear and convincing evidence means there is no serious or substantial doubt about the correctness of the conclusion drawn from the evidence.
[**ARC 9299B**, IAB 12/29/10, effective 1/1/11; **ARC 9400B**, IAB 3/9/11, effective 4/13/11]

These rules are intended to implement Iowa Code section 724.21A.

[Filed Emergency ARC 9299B, IAB 12/29/10, effective 1/1/11]

[Filed ARC 9400B (Notice ARC 9298B, IAB 12/29/10), IAB 3/9/11, effective 4/13/11]

AUDITS DIVISION

CHAPTERS 12 to 21
Reserved

CHAPTER 22
HEALTH CARE FACILITY AUDITS

[Rules in 481—Chapter 22 transferred to 481—Chapter 31, 8/26/87]

481—22.1(10A) Audit occurrence. The department audits financial records of intermediate care facilities, residential care facilities, and intermediate care facilities for the intellectually disabled on a rotating basis or upon request of the department of human services (DHS). Audits are intended to ensure compliance with the following Iowa Administrative Code chapters:

1. 441—Chapter 52, Payment, specifically subrule 52.1(3).
2. 441—Chapter 54, Facility Participation, specifically rule 441—54.5(249) and subrule 54.8(2).
3. 441—Chapter 81, Nursing Facilities, specifically subrule 81.4(3), rule 441—81.10(249A) and subrule 81.14(2).
4. 441—Chapter 82, Intermediate Care Facilities for Persons With an Intellectual Disability, specifically subrules 82.9(3) and 82.17(2).

If a rule not listed is used in an audit, the auditor will notify the facility.

The department acts as an agent for DHS when conducting the above audits.

[**ARC 0766C**, IAB 5/29/13, effective 7/3/13]

481—22.2(10A) Confidentiality. All information compiled during an audit is confidential according to Iowa Code sections 10A.105 and 217.30. All inquiries to release information which is confidential under Iowa Code section 217.30 must be addressed to the DHS.

22.2(1) Information may be added to an audit file by the subject of the audit when the subject notifies the Audits Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319.

22.2(2) At the conclusion of the audit, when material is returned to DHS, DHS rules regarding fair information practices prevail.

These rules are intended to implement Iowa Code sections 10A.302 and 22.11.

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CHAPTER 23
Reserved

CHAPTER 24
Reserved

[Rules in 481—Chapters 23 and 24 transferred to 481—Chapters 32 and 33, 8/26/87]

CHAPTER 25
IOWA TARGETED SMALL BUSINESS CERTIFICATION PROGRAM

The purpose of the Iowa targeted small business certification program is to certify small businesses that meet the criteria of the targeted small business program.

481—25.1(73) Definitions.

"Certification" means the process which identifies small businesses as targeted and eligible for financial and technical assistance.

"Conditional certification" means a temporary certification identifying targeted group persons-owned companies before the business is operational in order for the applicant to apply for financial and technical assistance.

"Contractor" means the person who contracts to perform work for the state.

"Cottage industry" means a business where the principal place of business is the owner's residence.

"Department" means the department of inspections and appeals.

"Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual. "Disability" does not include any of the following:

1. Homosexuality or bisexuality.
2. Transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders.
3. Compulsive gambling, kleptomania, or pyromania.
4. Psychoactive substance abuse disorders resulting from current illegal use of drugs.

"Experience or expertise" means the targeted group owner's or owners' experience or expertise must be:

1. In the areas critical to the operation of the business; and
2. Specific to the type of work the business performs.

"Family" means a group of people who are related as follows: father, mother, son, daughter, brother, sister, husband, wife, grandmother, grandfather, grandchildren, stepfather, stepmother, stepdaughter, stepson, stepbrother, stepsister, half-sister, or half-brother.

"Family-owned business" means a business owned by more than one member of one family. Characteristics of a family-owned business include, but are not limited to:

1. Ownership is shared by family members;
2. Profits are disbursed among family members;
3. Business tax return is filed in the name of the company with the family members listed as officers.

"Gross income" means the total sales less the cost of goods sold plus any income from investments and from incidentals or outside operations or sources.

"Intention" means an attempt has been made to perform the work.

"Lending institution" means any bank, savings and loan or credit union.

"Major life activity" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.

"Minority" means an individual who is a Black, Latino, Asian, Pacific Islander, American Indian or Alaskan Native American.

"Owner's residence" means the owner's legal residence.

"Person" means individual, corporation, government or governmental subdivision or agency, estate, trust, partnership or association, or any other legal entity.

"Single management" means a business which is not a subsidiary of any other business.

"Targeted group persons (TGP)" means minorities, women, and persons with disabilities. In order to be considered a person with a disability for the purpose of the TSB program, the person must qualify

and receive certification as having a disability from a licensed medical physician or must have been found eligible for vocational rehabilitation services by the Department of Education, Division of Vocational Rehabilitation services, or by the department for the blind.

"Targeted small business (TSB)" means a small business which is 51 percent or more owned, operated, and actively managed by one or more targeted group persons provided the business meets all of the following requirements:

1. Is located in this state;
2. Is operated for profit;
3. Has an annual gross income of less than $4 million, computed as an average of the three preceding fiscal years.

"Targeted small business owner" means one or more women, minorities, persons with disabilities, or a combination thereof, owning at least 51 percent of a business.

"Uniform small business vendor application" means the application developed by the Iowa department of economic development which can be adopted by all agencies and departments of state government to identify small businesses and targeted small businesses. The form contains information which can be used to determine certification as a targeted small business for participation in the Iowa targeted small business procurement program.

"Woman" means any female 18 years of age or older.

481—25.2(10A) Certification. The department is responsible for ascertaining that a small business is owned, operated, and actively managed by a targeted group person.

25.2(1) Regular certification. Before a small business can participate in the Iowa targeted small business program, it must be certified by the department.

a. The department shall review applications from small businesses to determine whether they are eligible to participate in the program.

b. Certification means the department has determined that the business meets eligibility standards.

c. Applications for targeted small business certification are available from the Audits Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

d. Applicants shall receive written notification of the decision.

e. An application processing fee will be charged for each new application. This processing fee must accompany the application for certification. The application processing fee will not be refunded if the business is denied certification.

25.2(2) Conditional certification. Some businesses are temporarily certified as targeted group person-owned before the business has been purchased or has become operational.

a. Conditional certification may be in effect for six months and may be used for the purpose of applying for financial and technical assistance available to a TSB. The department may grant an extension of conditional certification if progress toward operational status is being made.

b. The business name will not be placed in the Iowa targeted small business directory until the business is operational.

c. The business will not be contacted by state purchasing authorities for a bid until open for business.

d. It shall be the responsibility of the targeted small business to notify the department when the business has become operational.

e. Additional documents may be required of new businesses, such as proof of experience or a business plan. Businesses may be requested to provide documentation of continued eligibility at any time during and after conditional certification.

f. An application processing fee will be charged for each new application. This processing fee must accompany the application for conditional certification. The application processing fee will not be refunded if the business is denied conditional certification. An additional application processing fee will be charged when the business notifies the department that the business is operational.

25.2(3) Recertification. Certified businesses shall submit verification of continued eligibility to the department at least every two years.

a. The form for recertification will be provided by the department.

b. Other documents will be requested to verify the continuing eligibility of the business.

c. An application processing fee will be charged for each renewal application. This processing fee must accompany the application for recertification. The application processing fee will not be refunded if the business is denied recertification.

25.2(4) Various and specific documentation may be required by the department during the certification process. Each business shall provide relevant information upon the department's request in order to be considered for certification.

Applications shall be signed by an authorized representative of the business. An authorization to release information is part of each application and shall be signed by the applicant. This signature shall be notarized.

25.2(5) A business may reapply upon proof of compliance with TSB certification standards. Any company that is denied certification or decertified for any reason bears the burden of proving that all deficiencies previously cited have been corrected. Corrections shall be in accordance with requirements governing the targeted small business program. The burden of proof to recertify a business is the responsibility of the owner of that business. Applications may be requested from Targeted Small Business Certification, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

25.2(6) The department shall be notified within 30 days following a change in ownership or control of a certified business. A new application shall be filed showing the change and must be accompanied by sufficient documentation to determine whether the business continues to be eligible to participate in the TSB program.

25.2(7) An applicant for certification as an Iowa targeted small business may indicate in writing that a similar application is pending with an agency other than the department. When the department considers another certification process equal to or more stringent than the process described in these rules, an applicant may submit the information required for the other process.

The department may certify a business as a TSB based on copies of the information provided to another agency. The Iowa application for certification as a TSB may still be required. Certification as a targeted small business in Iowa is granted only by the department of inspections and appeals. Certification by any other entity does not ensure certification as a targeted small business in Iowa.

481—25.3(17A) Description of application. The TSB application requires information about the people who own, control, and manage the applicant business. Names, current addresses, verification of targeted group status and the employer's federal identification number, if applicable, are required. The proportion of ownership of the business and the names of stockholders or owners must be included. Documents which establish financial responsibility may be required.

Specific questions are asked regarding the applicant's contracts, credit, income, inventory, loans, personnel, payroll, taxes, and volume of business.

25.3(1) The information contained in the application may be reviewed by the applicant upon request to the Audits Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. Material to be added to a file may be sent to the department.

25.3(2) Information collected by the department is considered investigative and is confidential pursuant to Iowa Code sections 10A.105, 22.7(6) and 22.7(18). State and federal tax returns are confidential and will be released only at a hearing or to the applicant or the applicant's designee.

25.3(3) Information about targeted small businesses and their owners is stored in a data processing system. This information is not matched with any other data processing system. Paper files are stored by the department in the audits division in alphabetical order by business name.

This rule is intended to implement Iowa Code sections 17A.3(1), 22.11, and 422.20.

481—25.4(10A) Eligibility standards. Pursuant to the authority of Iowa Code section 10A.104(8), the department has established standards to certify targeted small businesses. These standards are intended to indicate whether a business is owned, operated and actively managed by targeted group persons.

25.4(1) The applicant shall be an independent business. The following list describes elements of a business which indicate independent status.

a. The targeted group person owner(s) shall enjoy the customary incidents and profits of ownership and shall share in the risks commensurate with their ownership interest. This shall be demonstrated by the substance rather than the form of the arrangements. Title and authority shall be commensurate with ownership and control.

b. The business shall be owned, operated and actively managed by the same people, a single management.

c. A board of directors and stockholders shall each have a membership comprised of at least 51 percent targeted group persons.

d. The applicant business shall be compensated for facilities, inventory, equipment, labor, or other items which it owns and shares with any other business. Compensation shall not vary from common industry practice.

e. The targeted group person owner(s) shall have independent authority and ability to incur liability and to decide financial and policy questions. The business arrangements of owners, directors, officers or key employees with businesses which are not minority-, woman-, or persons with disabilities-owned shall not vary from common industry practice. Each industry has practices which differ from other industries.

f. Independent authority and ability to hire and to fire all personnel shall be vested in the targeted group person owner(s).

g. Recognition of the business as a separate entity for tax or corporate purposes is not solely sufficient for certification as a targeted small business.

25.4(2) The targeted group person owner(s) shall make the business decisions for the business without any restrictions, either formal or informal. This includes, but is not limited to, bylaw provisions, partnership agreements, charter requirements for cumulative voting rights, or employment agreements.

25.4(3) The targeted group person owner(s) shall direct or cause the direction of the business. The owner(s) shall make day-to-day decisions as well as major decisions on management policy and operation of the business.

The department will consider particular positions to determine who has major responsibility in a company. These people include, but are not limited to, those who:

a. Hold any applicable license;

b. Devote substantial time to the business;

c. Supervise management and field operations;

d. Manage financial affairs;

e. Prepare or approve bids or estimates;

f. Participate in price and bidding negotiations;

g. Make final decisions about staff and personnel;

h. Sign contracts and checks or authorize their signature.

25.4(4) Any relationship between a TSB and a business which is not a TSB, but which has an interest in the TSB, shall be carefully reviewed to determine if the interest of the non-TSB conflicts with the ownership and control requirements of this rule.

25.4(5) The contributions of capital and expertise by the targeted group person owner(s) to acquire interest in the business shall be real and substantial. The following list includes acceptable elements of ownership.

a. Company documents, such as stock certificates, articles of incorporation, minutes of board meetings, partnership agreements or income tax returns reflect targeted group person ownership;

b. Independent contributions of capital are made by the targeted group person owner(s). Proof of this independent contribution of capital made by the targeted group person owner(s) to acquire interest in the business must accompany the certification application;

c. Independent contributions of expertise are made by the targeted group person owner(s). The targeted group person owner(s) must have an overall understanding of, managerial and technical competence in, and expertise directly related to the type of business in which the firm is engaged

and in the firm's operations. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the activities of the business is insufficient to demonstrate control of the business;

d. Independent risk of loss and share of profit by the targeted group person owner(s) are commensurate with their proportion of ownership.

Fifty-one percent or more of securities which constitute ownership or control of a corporation for purposes of establishing it as a TSB shall be held directly by targeted group persons.

An inherited business may be eligible for targeted small business status. Capital contribution, expertise and experience in the inherited business are not required. All other standards apply.

Documentation may be required to prove compliance with all standards.

481—25.5(10A) Special consideration. In addition to the above standards, the department may give consideration to other circumstances to determine eligibility. These are to ensure that only bona fide targeted group person-owned businesses are certified.

25.5(1) A previous or continuing employer-employee relationship between present owners will be carefully reviewed to ensure that the employee-owner has substantial management and decision-making responsibilities.

25.5(2) At the discretion of the department, on-site audits may be conducted to determine eligibility.

481—25.6(10A) Family-owned business. Businesses which are owned and operated by one or more members of the same family will be closely scrutinized to determine whether the targeted group person identified as the owner of 51 percent or more of the business does in fact set policy and make day-today and long-term decisions for the operation and management of the business.

25.6(1) Any characteristic listed below may be cause to deny targeted small business status. This list is not to be construed as complete.

a. If a nontargeted group person family member:

(1) Is chief executive officer or president;

(2) Provides the expertise to conduct the business;

(3) Transfers ownership to the targeted group person owner for less than fair market value;

(4) Receives compensation equal to or greater than the targeted group person owner, not commensurate with their ownership;

(5) Provides occupational services for the business for less than fair market value;

(6) Possesses powers equal to or greater than the targeted group person owner to direct management and operations.

b. If the targeted group person owner:

(1) Is represented to those outside the business as not possessing the final authority to direct the operations and management of the business;

(2) Cannot document the date upon which the nontargeted group person family member was hired.

c. A recent transfer of ownership by a nontargeted group person family member to a targeted group person will be reviewed to determine if the previous owner is still the principal decision maker on policy or actually manages the existing business. Transfers in the past two years are considered recent, and these businesses shall not be certified, unless evidence substantiating the transfer is received and approved.

If any of the above circumstances prevail, the business shall be considered a family-owned business. Nontargeted group person family-owned businesses are not eligible for certification as targeted small businesses in Iowa.

25.6(2) If a lending institution requires a signature other than the TSB owner's, another person may sign. When this happens, the owner must have the experience and expertise to own and operate the business. If a nontargeted group person family member has the expertise and has cosigned for business loans, the business is not eligible.

481—25.7(10A) Cottage industry. A cottage industry may be eligible for certification as a TSB. Characteristics of these businesses include, but are not limited to:

1. At least 51 percent of business equipment shall be owned by targeted group persons.
2. Business risks and profits shall be borne by the targeted group person owner(s) proportionate to their ownership.

The intent of targeting some small businesses is to identify those businesses which have been traditionally excluded from economic growth. Therefore, the following exception is made for cottage industries:

EXCEPTION: The residence and any adjacent outbuildings used by the cottage industry may be owned jointly with other family members.

All other TSB eligibility standards apply.

481—25.8(10A) Decertification. A business shall be decertified by the department if it is determined the business no longer complies with the requirements of the TSB program or its owners cannot be located by the department.

25.8(1) Written notice of the intent to revoke certification shall be provided when the department determines there is reasonable cause to believe a business does not comply. Notice shall be sent by United States mail at least 20 days before decertification is effective.

25.8(2) If the department sends a letter by first-class mail to the last-known address provided to the department by the TSB and it is returned as undeliverable, this is considered to be grounds for decertification.

25.8(3) Decertification procedures may be initiated by the department or after the investigation of a complaint filed by the general public. A request for an investigation from the public must be written and shall specify the reason(s) why the certified targeted small business no longer complies with these rules. Supporting documentation may be attached to the request. The identity of a complainant is confidential pursuant to Iowa Code section 22.7(18).

25.8(4) Eligibility to participate in the TSB program continues until the final decision is issued by the department.

481—25.9(12) Request for bond waiver. A targeted small business seeking a performance, surety, or bid bond waiver shall submit a sworn statement that it is unable to secure a performance, surety, or bid bond because of lack of experience, lack of net worth, or lack of capital.

Documentation will be requested from surety companies that the TSB is unable to obtain performance, surety, or bid bonding because of the lack of experience, lack of net worth, or lack of capital.

25.9(1) A waiver shall be applied only to a prime contract where the project or individual transaction does not exceed $50,000, notwithstanding Iowa Code section 573.2.

25.9(2) Granting a waiver shall not relieve any business from its contractual obligations. The state agency or department may pursue any remedy under law upon default or breach of contract.

25.9(3) The department reviews all bond waiver documents. Information to assist the review process may be requested from the state department or agency involved.

An applicant for a performance, surety, or bid bond waiver and the department or agency involved will be notified of the decision by United States mail.

25.9(4) Bond waivers will be reviewed and renewed at the time of TSB recertification.

481—25.10(714) Fraudulent practices in connection with targeted small business programs. A violation under this rule is grounds for decertification of the TSB connected with the violation. Decertification shall be in addition to any penalty otherwise authorized by this chapter.

A person is considered to be guilty of a fraudulent practice if the person:

1. Knowingly transfers or assigns assets, ownership, or equitable interest in property of a business to a targeted group person primarily for the purpose of obtaining benefits under TSB programs if the transferor would otherwise not be qualified for such programs.

2. Solicits and is awarded a state contract on behalf of a TSB for the purpose of transferring the contract to another for a percentage if the person transferring or intending to transfer the work had no intention of performing the work.

3. Knowingly falsifies information on an application for the purpose of obtaining benefits under TSB programs.

The department may investigate allegations or complaints of fraudulent practices and will take action to decertify a TSB upon concluding that a violation has occurred. A decertification by this action may be appealed.

481—25.11(17A) Appeal procedure. Department decisions regarding targeted small businesses may be contested by an adversely affected party. Requests for a hearing must be made in writing to the department within 30 days of mailing or serving a decision. Appeals and hearings are controlled by 481—Chapter 10, "Contested Case Hearings," Iowa Administrative Code.

25.11(1) The proposed decision of the administrative law judge becomes final ten days after it is mailed.

25.11(2) Any request for administrative review of a proposed decision must:

a. Be made in writing;

b. Be filed with the director within ten days after the proposed decision was mailed to the aggrieved party; and

c. State the reason(s) for the request.

Date of receipt by personal service or the postmarked date is the time of filing.

25.11(3) The decision of the director shall be based upon the record and become final agency action upon mailing.

These rules are intended to implement Iowa Code sections 10A.104, 10A.105, 12.44, 15.102(5), 17A.3, 17A.12, 73.15 to 73.21, and 714.8.

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CHAPTERS 26 to 29
Reserved

INSPECTIONS DIVISION

CHAPTER 30
FOOD AND CONSUMER SAFETY

481—30.1(10A,137C,137D,137F) Food and consumer safety bureau. The food and consumer safety bureau inspects food establishments and food processing plants including food storage facilities (warehouses), home food establishments, food and beverage vending machines, and hotels and motels. The food and consumer safety bureau is also responsible for targeted small business certification, social and charitable gambling, and amusement devices. Separate chapters have been established for the administration of targeted small business certification (481—Chapter 25), social and charitable gambling (481—Chapters 100 to 103, 106, and 107), and amusement devices (481—Chapters 104 and 105).

This rule is intended to implement Iowa Code sections 10A.104 and 22.11 and Iowa Code chapters 137C, 137D and 137F.

[**ARC 1190C**, IAB 11/27/13, effective 1/1/14]

481—30.2(10A,137C,137D,137F) Definitions. If both the 2009 Food and Drug Administration Food Code with Supplement and rule 481—30.2(10A,137C,137D,137F) define a term, the definition in rule 481—30.2(10A,137C,137D,137F) shall apply.

"Baked goods" means breads, cakes, doughnuts, pastries, buns, rolls, cookies, biscuits and pies (except meat pies).

"Bed and breakfast home" means a private residence which provides lodging and meals for guests, in which the host or hostess resides, and in which no more than four guest families are lodged at the same time. The facility may advertise as a bed and breakfast home but not as a hotel, motel or restaurant. The facility is exempt from licensing and inspection as a hotel or as a food establishment. A bed and breakfast home may serve food only to overnight guests, unless a food establishment license is secured.

"Bed and breakfast inn" means a hotel which has nine or fewer guest rooms.

"Commissary" means a food establishment used for preparing, fabricating, packaging and storage of food or food products for distribution and sale through the food establishment's own outlets.

"Contractor" means a municipal corporation, county or other political subdivision that contracts with the department to license and inspect under Iowa Code chapter 137C, 137D or 137F. A list of contractors is maintained on the department's Web site.

"Criminal offense" means a public offense, as defined in Iowa Code section 701.2, that is prohibited by statute and is punishable by fine or imprisonment.

"Critical violation" means a foodborne illness risk factor and public health intervention and the violations defined as such by the Food Code adopted in rule 481—31.1(137F) and pursuant to Iowa Code section 137F.2.

"Department" means the department of inspections and appeals.

"Farmers market" means a marketplace which operates seasonally, principally as a common market for Iowa-produced farm products on a retail basis for consumption elsewhere.

"Farmers market potentially hazardous food license" means a license for a temporary food establishment that sells potentially hazardous foods at farmers markets. A separate annual farmers market potentially hazardous food license is required for each county in which the licensee sells potentially hazardous foods at farmers markets. The license is only applicable at farmers markets and is not required in order to sell wholesome, fresh shell eggs to consumer customers.

"Food establishment" means an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption and includes a salvage or distressed food operation, nutrition program operated pursuant to Title III-C of the Older Americans Act, school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, the state training school and the Iowa juvenile home. Assisted living programs and adult day services are included in the definition of food establishment to

the extent required by 481—subrules 69.28(6) and 70.28(6). "Food establishment" does not include the following:

1. A food processing plant.
2. An establishment that offers only prepackaged foods that are not potentially hazardous.
3. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.
4. Premises which are a home food establishment pursuant to Iowa Code chapter 137D.
5. Premises which operate as a farmers market.
6. Premises of a residence in which food that is not potentially hazardous is sold for consumption off the premises to a consumer customer, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food. This exception does not apply to resale goods. This exception applies only to sales made from the residence in person and does not include mail order or Internet sales.
7. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.
8. A private home that receives catered or home-delivered food.
9. Child day care facilities and other food establishments located in hospitals or health care facilities that serve only patients and staff and are subject to inspection by other state agencies or divisions of the department.
10. Supply vehicles or vending machine locations.
11. Establishments exclusively engaged in the processing of meat and poultry which are licensed pursuant to Iowa Code section 189A.3.
12. The following premises, provided they are exclusively engaged in the sale of alcoholic beverages in a prepackaged form:
    - Premises covered by a current Class "A" beer permit, including a Class "A" native beer permit as provided in Iowa Code chapter 123;
    - Premises covered by a current Class "A" wine permit, including a Class "A" native wine permit as provided in Iowa Code chapter 123; and
    - Premises of a manufacturer of distilled spirits under Iowa Code chapter 123.
13. Premises covered or regulated by Iowa Code section 192.107 with a milk or milk products permit issued by the department of agriculture and land stewardship.
14. Premises or operations which are regulated by or subject to Iowa Code section 196.3 and which have an egg handler's license.
15. The premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; or labeled or from which honey is distributed.
16. Premises regularly used by a nonprofit organization which engages in the serving of food on the premises as long as the nonprofit organization does not exceed the following restrictions:
    - The nonprofit organization serves food no more than one day per calendar week and not on two or more consecutive days;
    - Twice per year, the nonprofit organization may serve food to the public for up to three consecutive days; and
    - The nonprofit organization may use the premises of another nonprofit organization not more than twice per year for one day to serve food.

"Food processing plant" means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer. "Food processing plant" does not include any of the following:

1. The following premises, provided they are exclusively engaged in the sale of alcoholic beverages in a prepackaged form:
    - Premises covered by a current Class "A" beer permit, including a Class "A" native beer permit as provided in Iowa Code chapter 123;
    - Premises covered by a current Class "A" wine permit, including a Class "A" native wine permit as provided in Iowa Code chapter 123; and
    - Premises of a manufacturer of distilled spirits under Iowa Code chapter 123.

2. The premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; or labeled or from which honey is distributed.

"Food service establishment" means a food establishment where food is prepared or served for individual portion service intended for consumption on the premises or is subject to Iowa sales tax as provided in Iowa Code section 423.3.

"Home food establishment" means a business on the premises of a residence that is operating as a home-based bakery where potentially hazardous bakery goods are prepared for consumption elsewhere. Annual gross sales of these products cannot exceed $20,000. "Home food establishment" does not include a residence where food is prepared to be used or sold by churches, fraternal societies, or charitable, civic or nonprofit organizations. Residences which prepare or distribute honey, shell eggs or nonhazardous baked goods are not required to be licensed as home food establishments.

"Hotel" means any building equipped, used or advertised to the public as a place where sleeping accommodations are rented to temporary or transient guests.

"License holder" means an individual, corporation, partnership, governmental unit, association or any other entity to whom a license was issued under Iowa Code chapter 137C, 137D or 137F.

"Mobile food unit" means a food establishment that is self-contained, with the exception of grills and smokers, and readily movable, which either operates up to three consecutive days at one location or returns to a home base of operation at the end of each day.

"Pushcart" means a non-self-propelled vehicle food establishment limited to serving nonpotentially hazardous foods or commissary-wrapped foods maintained at proper temperatures or precooked foods that require limited assembly, such as frankfurters.

"Retail food establishment" means a food establishment that sells to consumer customers food or food products intended for preparation or consumption off the premises.

"Revoke" means to void or annul by recalling or withdrawing a license issued under Iowa Code chapter 137C, 137D or 137F. The entire application process, including the payment of applicable license fees, must be repeated to regain a valid license following a revocation.

"Suspend" means to render a license issued under Iowa Code chapter 137C, 137D, or 137F invalid for a period of time, with the intent of resuming the validity of a license at the end of that period.

"Temporary food establishment" means a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration. An "event or celebration" is a significant occurrence or happening sponsored by a civic, business, educational, government, community, or veterans' organization and may include athletic contests. For example, an event does not include a single store's grand opening or sale.

"Transient guest" means an overnight lodging guest who does not intend to stay for any permanent length of time. Any guest who rents a room for more than 31 consecutive days is not classified as a transient guest.

"Vending machine" means a food establishment which is a self-service device that, upon insertion of a coin, paper currency, token, card or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation. Vending machines that dispense only prepackaged, nonpotentially hazardous foods, panned candies, gumballs or nuts are exempt from licensing but may be inspected by the department upon receipt of a written complaint. "Panned candies" are those with a fine, hard coating on the outside and a soft candy filling on the inside. Panned candies are easily dispensed by a gumball-type machine.

This rule is intended to implement Iowa Code sections 10A.104, 137C.8, and 137D.2 and chapter 137F.

[**ARC 1190C**, IAB 11/27/13, effective 1/1/14]

481—30.3(137C,137D,137F) Licensing and postings. A license to operate any food establishment or food processing plant defined in rule 481—30.2(10A,137C,137D,137F) must be granted by the department of inspections and appeals. Application for a license is made on a form furnished by the department which contains the names of the business, owner, and manager; locations of buildings; and other data relative to the license requested. Applications are available from the Department

of Inspections and Appeals, Food and Consumer Safety Bureau, Lucas State Office Building, Des Moines, Iowa 50319-0083, or from contractors. An application for licensure shall be submitted 30 days in advance of the opening of the food establishment or food processing plant. Temporary food establishment license applications shall be submitted a minimum of 3 business days prior to opening.

30.3(1) *Transferability.* A license is not transferable to a new owner or location. Any change in business ownership or business location requires a new license. Vending machines, mobile food units and pushcarts may be moved without obtaining a new license. A farmers market potentially hazardous food license may be used in the same county at different individual locations without obtaining a new license. However, if the different individual locations are operated simultaneously, a separate license is required for each location. Nutrition sites for the elderly licensed under Iowa Code chapter 137F may change locations in the same city without obtaining a new license.

30.3(2) *Refunds.* License fees are refundable only if the license is surrendered to the department prior to the effective date of the license and only as follows:

a. License fees of $67.50 or less are an application processing fee and are not refundable.

b. If an on-site visit has not occurred, license fees of more than $67.50 will be refunded less the $67.50.

c. If an on-site visit has occurred, the entire license fee is nonrefundable.

30.3(3) *License expiration.* A license is renewable and expires after one year, with the exception of a temporary food establishment license, which is event- and location-specific and is valid for a period not to exceed 14 consecutive days.

30.3(4) *Posting of inspection reports, licenses, and registration tags.* A valid license and the most recent inspection report, along with any current complaint or reinspection reports, shall be posted no higher than eye level where the public can see them. The report shall not be posted in such a manner that the public cannot reasonably read the report. For example, the posting of a report behind a service area where the report can be seen but not easily read is not allowed. Vending machines shall bear a tag to affirm the license. For the purpose of this subrule, only founded complaint reports shall be considered complaints. Founded complaints shall be posted until either the mail-in recheck form has been submitted to the regulatory authority or a recheck inspection has been conducted to verify that the violations have been corrected.

30.3(5) *Documentation of gross sales.* The regulatory authority shall require from a license holder documentation of the annual gross sales of food and drink sold by a licensed food establishment or a licensed food processing plant unless the establishment is paying the highest license fee required by rule 481—30.4(137C,137D,137F). The documentation submitted by the license holder will be kept confidential and will be used to verify that the license holder is paying the appropriate license fee based on annual gross sales of food and drink. For food processing plants that are food storage facilities and food establishments whose sales are included in a single rate with lodging or other services, the value of the food handled should be used. Documentation shall include at least one of the following:

a. A copy of the firm's business tax return;

b. Quarterly sales tax data;

c. A letter from an independent tax preparer;

d. Other appropriate records.

30.3(6) *License eligibility for renewal limited to 60 days after expiration.* A delinquent license shall only be renewed if application for renewal is made within 60 days of expiration of the license. If a delinquent license is not renewed within 60 days, an establishment must apply for a new license and meet all the requirements for licensure. Establishments that have not renewed the license within 60 days of the expiration of the license shall be closed by the department or a contractor. The establishment shall not be reopened until a new license application has been submitted and approved.

This rule is intended to implement Iowa Code sections 10A.104, 137C.8, and 137D.2 and chapter 137F.

[**ARC 1190C**, IAB 11/27/13, effective 1/1/14]

481—30.4(137C,137D,137F) License fees. The license fee is the same for an initial license and a renewal license. License applications are available from the Department of Inspections and Appeals, Food and Consumer Safety Bureau, Lucas State Office Building, Des Moines, Iowa 50319-0083, or from a contractor. License fees are set by the Iowa Code sections listed below and are charged as follows:

30.4(1) *Retail food establishments.* License fees for retail food establishments are based on annual gross sales of food or food products to consumer customers and intended for preparation or consumption off the premises (Iowa Code section 137F.6) as follows:

a. For annual gross sales of less than $10,000—$40.50.

b. For annual gross sales of $10,000 to $250,000—$101.25.

c. For annual gross sales of $250,000 to $500,000—$155.25.

d. For annual gross sales of $500,000 to $750,000—$202.50.

e. For annual gross sales of $750,000 or more—$303.75.

30.4(2) *Food service establishments.* License fees for food service establishments are based on annual gross sales of food and drink for individual portion service intended for consumption on the premises (Iowa Code section 137F.6) or subject to Iowa sales tax as provided in Iowa Code section 423.3 as follows:

a. For annual gross sales of less than $50,000—$67.50.

b. For annual gross sales of $50,000 to $100,000—$114.50.

c. For annual gross sales of $100,000 to $250,000—$236.25.

d. For annual gross sales of $250,000 to $500,000—$275.00.

e. For annual gross sales of $500,000 or more—$303.75.

30.4(3) *Vending machines.* License fees for food and beverage vending machines are $20 for the first machine and $5 for each additional machine (Iowa Code section 137F.6).

30.4(4) *Home food establishments.* The license fee for home food establishments is $33.75 (Iowa Code section 137D.2(1)).

30.4(5) *Hotels.* License fees for hotels are based on the number of rooms provided to transient guests (Iowa Code section 137C.9) as follows:

a. For 1 to 15 guest rooms—$27.00.

b. For 16 to 30 guest rooms—$40.50.

c. For 31 to 75 guest rooms—$54.00.

d. For 76 to 149 guest rooms—$57.50.

e. For 150 or more guest rooms—$101.25.

30.4(6) *Mobile food units or pushcarts.* The license fee for a mobile food unit or a pushcart is $27 (Iowa Code section 137F.6).

30.4(7) *Temporary food service establishments.* The fee for a temporary food service establishment license issued for up to 14 consecutive days in conjunction with a single event or celebration is $33.50 (Iowa Code section 137F.6).

30.4(8) *Food processing plants including food storage facilities (warehouses).* For food processing plants, the annual license fee is based on the annual gross sales of food and food products handled at that plant or food storage facility (warehouse) (Iowa Code section 137F.6) as follows:

a. Annual gross sales of less than $50,000—$67.50.

b. Annual gross sales of $50,000 to $250,000—$135.00.

c. Annual gross sales of $250,000 to $500,000—$202.50.

d. Annual gross sales of $500,000 or more—$337.50.

30.4(9) *Farmers market.* A person selling potentially hazardous food at a farmers market must pay an annual license fee of $100 for each county of operation. Persons who operate simultaneously at more than one location within a county are required to have a separate license for each location.

30.4(10) *Discount.* If an establishment renews its license as a retail food establishment or food service establishment and has had a person in charge for the entire previous 12-month period who holds an active certified food protection manager certificate from a program approved by the Conference on Food Protection and the establishment has not been issued a critical violation during the previous

12-month period, the establishment's license fee for the current renewal period shall be reduced by $50 but no more than the establishment's total license fee(s).

30.4(11) *Voluntary inspection fee.* The department shall charge a voluntary inspection fee of $100 when a premises that is not a food establishment requests a voluntary inspection.

This rule is intended to implement Iowa Code sections 137C.9, 137D.2(1), and 137F.6.

[**ARC 1190C**, IAB 11/27/13, effective 1/1/14]

481—30.5(137F) Penalty and delinquent fees.

30.5(1) *Late penalty.* Food establishment licenses and food processing plant licenses that are renewed by the licensee after the license expiration date shall be subject to a penalty of 10 percent of the license fee per month. A license shall be renewed only if the license holder has provided documentation pursuant to subrule 30.3(5).

30.5(2) *Penalty for opening or operating without a license.* A person who opens or operates a food establishment or food processing plant without a license is subject to a penalty of up to twice the amount of the annual license fee.

30.5(3) *Civil penalty for violations.* A person who violates Iowa Code chapter 137F or these rules shall be subject to a civil penalty of $100 for each violation. Prior to assessment of the penalty, the license holder shall have an opportunity for a hearing using the process outlined in rule 481—30.11(10A,137C,137D,137F).

This rule is intended to implement Iowa Code sections 137F.4, 137F.9 and 137F.17.

[**ARC 1190C**, IAB 11/27/13, effective 1/1/14]

481—30.6(137C,137D,137F) Returned checks. If a check intended to pay for any license provided for under Iowa Code chapter 137C, 137D, or 137F is not honored for payment by the bank on which it is drafted, the department will attempt to redeem the check. The department will notify the applicant of the need to provide sufficient payment. An additional fee of $25 shall be assessed for each dishonored check. If the department does not receive cash to replace the check, the establishment will be operating without a valid license. Furthermore, any late penalties assessed pursuant to rule 481—30.5(137F) will accrue and must be paid.

This rule is intended to implement Iowa Code sections 137C.9, 137D.2(1), and 137F.6.

[**ARC 1190C**, IAB 11/27/13, effective 1/1/14]

481—30.7(137F) Double licenses.

30.7(1) Any establishment which holds a food service establishment license and has gross sales over $20,000 annually in packaged food items intended for consumption off the premises shall also be required to obtain a retail food establishment license. The license holder shall keep a record of these food sales and make it available to the department upon request.

30.7(2) A retail food establishment and a food service establishment which occupy the same premises must be licensed separately, and the applicable fees must be paid for each. The license fee for each is based on only the annual gross sales of food and drink covered under the scope of that particular type of license.

30.7(3) A food establishment that is licensed both with a food service establishment license and a retail food establishment license shall pay 75 percent of the license fees required in subrules 30.4(1) and 30.4(2).

30.7(4) Licensed retail food establishments serving only coffee, soft drinks, popcorn, prepackaged sandwiches or other food items manufactured and packaged by a licensed establishment need only obtain a retail food establishment license.

30.7(5) A temporary food establishment license is not required when the temporary food establishment is owned and operated on the premises of a licensed food establishment.

30.7(6) The dominant form of business in annual gross sales shall determine the type of license for establishments which engage in operations covered under the definitions of both a food establishment and a food processing plant. Sale of products at wholesale to outlets not owned by a commissary owner requires a food processing plant license. Food establishments that process low-acid food in hermetically

sealed containers or process acidified foods are required to have a food processing plant license. Regardless of the license, food processing facilities shall be inspected pursuant to food processing inspection standards and food establishments shall be inspected pursuant to the Food Code.

30.7(7) A licensed mobile food unit that operates as a licensed mobile food unit at a farmers market is not required to obtain a separate farmers market potentially hazardous food license.

This rule is intended to implement Iowa Code sections 10A.104 and 137F.6.

[**ARC 1190C**, IAB 11/27/13, effective 1/1/14]

481—30.8(137C,137D,137F) Inspection frequency.

30.8(1) *Food establishments.* Food establishments shall be inspected based upon risk assessment and shall have routine inspections at least once every 24 months and no more than once every 3 months.

30.8(2) *Food processing plants.* Food processing plants that process foods shall be inspected based upon risk assessment and shall have routine inspections at least once every 24 months and no more than once every 6 months.

30.8(3) *Food processing plants that store foods.* Food processing plants that store foods shall be inspected based upon risk assessment and shall be inspected at least once every 36 months.

30.8(4) *Hotels.* Hotels shall be inspected at least once biennially.

30.8(5) *Home food establishments and vending machines.* Home food establishments and vending machines shall be inspected at least once every 24 months.

30.8(6) *Farmers market potentially hazardous food.* Farmers market potentially hazardous food licensees shall be inspected at least once annually.

This rule is intended to implement Iowa Code sections 137C.11, 137D.2, and 137F.10.

[**ARC 1190C**, IAB 11/27/13, effective 1/1/14]

481—30.9(22) Examination of records.

30.9(1) *Public information.* Generally, information collected by the food and consumer safety bureau and contractors is considered public information. Records are stored in computer files and are not matched with any other data system. Information is available for public review and will be provided when requested from the office of the director. Inspection reports are available for public viewing at http://www.food.dia.iowa.gov.

30.9(2) *Confidential records.* The following are examples of confidential records:

a. Trade secrets and proprietary information including items such as formulations, processes, policies and procedures, and customer lists;

b. Health information related to foodborne illness complaints and outbreaks; and

c. Other state or federal agencies' records.

For records of other federal or state agencies, the department shall refer the requester of such information to the appropriate agency.

This rule is intended to implement Iowa Code chapters 137C, 137D, 137F and 22.

[**ARC 1190C**, IAB 11/27/13, effective 1/1/14]

481—30.10(17A,137C,137D,137F) Denial, suspension, or revocation of a license to operate. Notice of denial, suspension or revocation of a license will be provided by the department and shall be effective 30 days after mailing or personal service of the notice.

30.10(1) *Immediate suspension of license.* To the extent not inconsistent with Iowa Code chapters 17A, 137C, 137D, and 137F and rules adopted pursuant to those chapters, chapter 8 of the Food Code shall be adopted for food establishments and home food establishments. The department or contractor may immediately suspend a license in cases of an imminent health hazard. The procedures of Iowa Code section 17A.18A and Food Code chapter 8 shall be followed in cases of an imminent health hazard. The appeal process in rule 481—30.11(10A,137C,137D,137F) is available following an immediate suspension. The department may immediately suspend the license of a food processing plant or hotel if an imminent health hazard finding is made and the procedures of Iowa Code section 17A.18A are followed.

30.10(2) *Criminal offense—conviction of license holder.*

a. The department may revoke the license of a license holder who:

(1) Conducts an activity constituting a criminal offense in the licensed food establishment; and

(2) Is convicted of a felony as a result.

b. The department may suspend or revoke the license of a license holder who:

(1) Conducts an activity constituting a criminal offense in the licensed food establishment; and

(2) Is convicted of a serious misdemeanor or aggravated misdemeanor as a result.

c. A certified copy of the final order or judgment of conviction or plea of guilty shall be conclusive evidence of the conviction of the license holder.

d. The department's decision to revoke or suspend a license may be contested by the adversely affected party pursuant to the provisions of rule 481—30.11(10A,137C,137D,137F).

This rule is intended to implement Iowa Code chapters 17A, 137C, 137D and 137F.

[**ARC 1190C**, IAB 11/27/13, effective 1/1/14]

481—30.11(10A,137C,137D,137F) Formal hearing. All decisions of the food and consumer safety bureau may be contested by an adversely affected party. A request for a hearing must be made in writing to the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319, within 30 days of the mailing or service of a decision. Appeals and hearings are controlled by 481—Chapter 10, "Contested Case Hearings."

For contractors, license holders shall have the opportunity for a hearing before the local board of health. If the hearing is conducted before the local board of health, the license holder may appeal to the department and shall follow the process for review in rule 481—10.25(10A,17A).

This rule is intended to implement Iowa Code section 10A.104 and Iowa Code chapters 137C, 137D, and 137F.

[**ARC 1190C**, IAB 11/27/13, effective 1/1/14]

481—30.12(137F) Primary servicing laboratory. The primary servicing laboratory for the food and consumer safety bureau is the State Hygienic Laboratory at the University of Iowa created under Iowa Code section 263.7. If the laboratory is unable to perform laboratory services, the laboratory will assist in finding another laboratory with a preference toward laboratories that are in the FERN (Food Emergency Response Network) and have achieved ISO 17025 accreditation.

This rule is intended to implement Iowa Code sections 10A.104 and 22.11 and Iowa Code chapters 137C, 137D, and 137F.

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CHAPTER 31
FOOD ESTABLISHMENT AND FOOD PROCESSING PLANT INSPECTIONS

[Prior to 8/26/87, see Inspections and Appeals Department[481]—Chs 21 and 22]

481—31.1(137F) Inspection standards for food establishments. The department adopts, with the following exceptions, the 2009 Food Code with Supplement of the Food and Drug Administration as the state's "food code," which is the inspection standard for food establishments other than food processing plants.

31.1(1) *Certified food protection manager required.* For purposes of section 2-102.12 of the 2009 Food Code with Supplement, establishments that sell only prepackaged foods are not required to employ an individual who has completed a certified food protection manager course. Temporary food establishments are not required to employ an individual who has completed a certified food protection manager course. For all other establishments, the following time frames apply for employment of an individual who has completed a certified food protection manager course:

a. For establishments newly licensed after January 1, 2014, the requirement of section 2-102.12 must be met within six months of licensure.

b. Establishments in existence as of January 1, 2014, that do not receive a foodborne illness risk factor or public health intervention violation on or before July 1, 2017, shall meet the requirement of section 2-102.12 by January 1, 2018.

c. Establishments in existence as of January 1, 2014, that receive a foodborne illness risk factor or public health intervention violation on or before July 1, 2017, shall meet the requirement of section 2-102.12 within six months of the violation.

d. If the individual meeting the requirement of section 2-102.12 leaves employment with an establishment required to meet section 2-102.12, the establishment shall meet the requirement of section 2-102.12 within six months.

31.1(2) *Honey prepared in a residence.* Section 3-201.11 is amended to allow honey which is stored; prepared, including by placement in a container; or labeled at or distributed from the premises of a residence to be sold in a food establishment.

31.1(3) *Morel mushrooms.* Section 3-201.16, paragraph (A), is amended by adding the following:

"A food establishment or farmers market potentially hazardous food licensee may serve or sell morel mushrooms if procured from an individual who has completed a morel mushroom identification expert course. Every morel mushroom shall be identified and found to be safe by a certified morel mushroom identification expert whose competence has been verified and approved by the department through the expert's successful completion of a morel mushroom identification expert course provided by either an accredited college or university or a mycological society. The certified morel mushroom identification expert shall personally inspect each mushroom and determine it to be a morel mushroom. A morel mushroom identification expert course shall be at least three hours in length. To maintain status as a morel mushroom identification expert, the individual shall have successfully completed a morel mushroom identification expert course described above within the past three years. A person who wishes to offer a morel mushroom identification expert course must submit the course curriculum to the department for review and approval. Food establishments or farmers market potentially hazardous food licensees offering morel mushrooms shall maintain the following information for a period of 90 days from the date the morel mushrooms were obtained:

"1. The name, address, and telephone number of the morel mushroom identification expert;

"2. A copy of the morel mushroom identification expert's certificate of successful completion of the course, containing the date of completion; and

"3. The quantity of morel mushrooms purchased and the date(s) purchased.

"Furthermore, a consumer advisory shall inform consumers by brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means that wild mushrooms should be thoroughly cooked and may cause allergic reactions or other effects."

31.1(4) *Field-dressed wild game prohibition.* Subparagraph 3-201.17(A)(4) is amended to state that field-dressed wild game shall not be permitted in food establishments unless:

a. The food establishment is also licensed and inspected by the Iowa department of agriculture and land stewardship, meat and poultry inspection bureau, pursuant to Iowa Code section 189A.3;

b. All field-dressed wild game is adequately separated from food, equipment, utensils, clean linens, and single-service and single-use articles; and

c. Any equipment used in the processing of field-dressed wild game is adequately cleaned and sanitized before use with other foods.

31.1(5) *Preventing contamination from hands.* Section 3-301.11, paragraph (D), is amended to incorporate the changes to this section adopted in the 2013 Food Code, which provides as follows:

"(D) Paragraph (B) of this section does not apply to a food employee that contacts exposed, ready-to-eat food with bare hands at the time the ready-to-eat food is being added as an ingredient to a food that:

"(1) Contains a raw animal food and is to be cooked in the food establishment to heat all parts of the food to the minimum temperatures specified in ¶3-401.11(A)-(B) or §3-401.12; or

"(2) Does not contain a raw animal food but is to be cooked in the food establishment to heat all parts of the food to a temperature of at least 63ºC (145ºF)."

31.1(6) *Noncontinuous cooking of raw animal foods.* Section 3-401.14, paragraph (D), is amended as follows to incorporate the changes in this section adopted in the 2013 Food Code:

(D) Prior to sale or service, cooked using a process that heats all parts of the FOOD to a temperature and for a time as specified under ¶¶ 3-401.11(A)-(C); P

31.1(7) *Reduced oxygen packaging in meat and poultry processing plants.* Meat and poultry processing plants that are licensed and inspected by the Iowa department of agriculture and land stewardship (IDALS) meat and poultry inspection bureau pursuant to Iowa Code section 189A.3 and that are also licensed as a food establishment are exempt from section 3-502.11, paragraphs (A), (B), (D) and (F), and section 3-502.12 if all of the following criteria are met:

a. Each food product formulation has been approved by the Iowa department of agriculture and land stewardship, meat and poultry inspection bureau;

b. A copy of the approved formulation (T40/45) is maintained on file at the establishment and made available to the regulatory authority upon request;

c. Cooked products that do not include a curing agent or an antimicrobial agent that will control Clostridium botulinum and Listeria monocytogenes that are in a reduced oxygen package are stored and sold frozen and are labeled "Keep Frozen"; and

d. The food products are properly labeled.

31.1(8) *Reduced oxygen packaging.* Section 3-502.12 is amended to incorporate the changes in this section adopted in the 2013 Food Code, which provides as follows:

3-502.12 Reduced Oxygen Packaging Without a Variance, Criteria.

(A) Except for a FOOD ESTABLISHMENT that obtains a VARIANCE as specified under § 3-502.11, a FOOD ESTABLISHMENT that PACKAGES TIME/TEMPERATURE CONTROL FOR SAFETY FOOD using a REDUCED OXYGEN PACKAGING method shall control the growth and toxin formation of *Clostridium botulinum* and the growth of *Listeria monocytogenes*. P

(B) Except as specified under ¶ (F) of this section, a FOOD ESTABLISHMENT that PACKAGES TIME/TEMPERATURE CONTROL FOR SAFETY FOOD using a REDUCED OXYGEN PACKAGING method shall implement a HACCP PLAN that contains the information specified under ¶¶ 8-201.14(B) and (D) and that: Pf

(1) Identifies the FOOD to be PACKAGED; Pf

(2) Except as specified under ¶¶ (C) - (E) of this section, requires that the PACKAGED FOOD shall be maintained at 5°C (41°F) or less and meet at least one of the following criteria: Pf

(a) Has an A_W of 0.91 or less, Pf

(b) Has a pH of 4.6 or less, Pf

(c) Is a MEAT or POULTRY product cured at a FOOD PROCESSING PLANT regulated by the USDA using substances specified in 9 CFR 424.21, Use of food ingredients and sources of radiation, and is received in an intact PACKAGE, Pf or

(d) Is a FOOD with a high level of competing organisms such as raw MEAT, raw POULTRY, or raw vegetables; Pf

(3) Describes how the PACKAGE shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to: Pf

(a) Maintain the FOOD at 5°C (41°F) or below, Pf and

(b) Discard the FOOD if, within 30 calendar days of its PACKAGING, it is not served for on-PREMISES consumption, or consumed if served or sold for off-PREMISES consumption; Pf

(4) Limits the refrigerated shelf life to no more than 30 calendar days from PACKAGING to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first; P

(5) Includes operational procedures that:

(a) Prohibit contacting READY-TO-EAT FOOD with bare hands as specified under ¶ 3-301.11(B), Pf

(b) Identify a designated work area and the method by which: Pf

(i) Physical barriers or methods of separation of raw FOODS and READY-TO-EAT FOODS minimize cross contamination, Pf and

(ii) Access to the processing EQUIPMENT is limited to responsible trained personnel familiar with the potential HAZARDS of the operation, Pf and

(c) Delineate cleaning and SANITIZATION procedures for FOOD-CONTACT SURFACES; Pf and

(6) Describes the training program that ensures that the individual responsible for the REDUCED OXYGEN PACKAGING operation understands the: Pf

(a) Concepts required for a safe operation, Pf

(b) EQUIPMENT and facilities, Pf and

(c) Procedures specified under Subparagraph (B)(5) of this section and ¶¶ 8-201.14(B) and (D). Pf

(7) Is provided to the REGULATORY AUTHORITY prior to implementation as specified under ¶ 8-201.13(B).

(C) Except for FISH that is frozen before, during, and after PACKAGING, a FOOD ESTABLISHMENT may not PACKAGE FISH using a REDUCED OXYGEN PACKAGING method. P

(D) Except as specified under ¶ (C) and ¶ (F) of this section, a FOOD ESTABLISHMENT that PACKAGES TIME/TEMPERATURE CONTROL FOR SAFETY FOOD using a cook-chill or sous vide process shall:

(1) Provide to the REGULATORY AUTHORITY prior to implementation, a HACCP PLAN that contains the information as specified under ¶¶ 8-201.14(B) and (D); Pf

(2) Ensure the FOOD is:

(a) Prepared and consumed on the PREMISES, or prepared and consumed off the PREMISES but within the same business entity with no distribution or sale of the PACKAGED product to another business entity or the CONSUMER, Pf

(b) Cooked to heat all parts of the FOOD to a temperature and for a time as specified under ¶¶ 3-401.11(A), (B), and (C), P

(c) Protected from contamination before and after cooking as specified under Parts 3-3 and 3-4, P

(d) Placed in a PACKAGE with an oxygen barrier and sealed before cooking, or placed in a PACKAGE and sealed immediately after cooking and before reaching a temperature below 57°C (135°F), P

(e) Cooled to 5°C (41°F) in the sealed PACKAGE or bag as specified under § 3-501.14 and: P

(i) Cooled to 1°C (34°F) within 48 hours of reaching 5°C (41°F) and held at that temperature until consumed or discarded within 30 days after the date of PACKAGING; P

(ii) Held at 5°C (41°F) or less for no more than 7 days, at which time the FOOD must be consumed or discarded; P or

(iii) Held frozen with no shelf life restriction while frozen until consumed or used. P

(f) Held in a refrigeration unit that is equipped with an electronic system that continuously monitors time and temperature and is visually examined for proper operation twice daily, Pf

(g) If transported off-site to a satellite location of the same business entity, equipped with verifiable electronic monitoring devices to ensure that times and temperatures are monitored during transportation, Pf and

(h) Labeled with the product name and the date PACKAGED; Pf and

(3) Maintain the records required to confirm that cooling and cold holding refrigeration time/temperature parameters are required as part of the HACCP PLAN and:

(a) Make such records available to the REGULATORY AUTHORITY upon request, Pf and

(b) Hold such records for at least 6 months; Pf and

(4) Implement written operational procedures as specified under subparagraph (B)(5) of this section and a training program as specified under subparagraph (B)(6) of this section. Pf

(E) Except as specified under ¶ (F) of this section, a FOOD ESTABLISHMENT that PACKAGES cheese using a REDUCED OXYGEN PACKAGING method shall:

(1) Limit the cheeses PACKAGED to those that are commercially manufactured in a FOOD PROCESSING PLANT with no ingredients added in the FOOD ESTABLISHMENT and that meet the Standards of Identity as specified in 21 CFR 133.150 Hard cheeses, 21 CFR 133.169 Pasteurized process cheese or 21 CFR 133.187 Semisoft cheeses; P

(2) Have a HACCP PLAN that contains the information specified under ¶¶ 8-201.14(B) and (D) and as specified under ¶¶ (B)(1), (B)(3)(a), (B)(5) and (B)(6) of this section; Pf

(3) Label the PACKAGE on the principal display panel with a "use by" date that does not exceed 30 days from its packaging or the original manufacturer's "sell by" or "use by" date, whichever occurs first; Pf and

(4) Discard the REDUCED OXYGEN PACKAGED cheese if it is not sold for off-PREMISES consumption or consumed within 30 calendar days of its PACKAGING. Pf

(F) A HACCP PLAN is not required when a FOOD ESTABLISHMENT uses a REDUCED OXYGEN PACKAGING method to PACKAGE TIME/TEMPERATURE CONTROL FOR SAFETY FOOD that is always:

(1) Labeled with the production time and date,

(2) Held at 5°C (41°F) or less during refrigerated storage, and

(3) Removed from its PACKAGE in the FOOD ESTABLISHMENT within 48 hours after PACKAGING.

31.1(9) *Warewashing sinks in establishments serving alcoholic beverages.* Section 4-301.12 is amended by adding the following: "When alcoholic beverages are served in a food service establishment, a sink with not fewer than three compartments shall be used in the bar area for manual washing, rinsing and sanitizing of bar utensils and glasses. When food is served in a bar, a separate three-compartment sink for washing, rinsing and sanitizing food-related dishes shall be used in the kitchen area, unless a dishwasher is used to wash utensils."

31.1(10) *Allowance for two-compartment sinks in certain circumstances.* Paragraph 4-301.12(C) is amended by adding the following: "Establishments need not have a three-compartment sink when each of the following conditions is met:

"1. Three or fewer utensils are used for food preparation;

"2. Utensils are limited to tongs, spatulas, and scoops; and

"3. The department has approved after verification that the establishment can adequately wash and sanitize these utensils."

31.1(11) *Chemical treated towelettes.* Paragraph 5-203.11(C) is deleted.

31.1(12) *Service sink.* For existing establishments, if waste water is being appropriately disposed of, section 5-203.13 for existing establishments shall go into effect upon the establishment's renovation or sale.

31.1(13) *Toilets and lavatories.* Section 5-203.12 is amended by adding the following requirement: "Separate toilet facilities for men and women shall be provided in establishments which seat 50 or more people or in establishments which serve beer or alcoholic beverages."

31.1(14) *Backflow protection.* Section 5-203.14 is amended by adding the following: "Water outlets with hose attachments, except for water heater drains and clothes washer connections, shall be protected by a non-removable hose bibb backflow preventer or by a listed atmospheric vacuum breaker installed at least six inches above the highest point of usage and located on the discharge side of the last valve."

31.1(15) *Backflow prevention.* Paragraph 5-402.11(D) is amended by adding the following: "A culinary sink or sink used for food preparation shall not have a direct connection between the sewage system and a drain originating from that sink. Culinary sinks or sinks used in food preparation shall be separated by an air break."

31.1(16) *Inspection standards for elder group homes.* Elder group homes as defined by Iowa Code section 231B.1 shall be inspected by the department, but chapters 4 and 6 of the Food Code shall not apply. Elder group homes shall pay the lowest license fee set forth in 481—subrule 30.4(2).

31.1(17) *Nonprofit exception for temporary events.* Nonprofit organizations that are licensed as temporary food establishments may serve nonpotentially hazardous food from an unapproved source for the duration of the event.

31.1(18) *Variance approval by department and submission of HACCP plans.* Any variances or HACCP plans that require approval by the "regulatory authority" must be approved by the department. HACCP plans pursuant to paragraphs 3-502.12(B) and 8-201.13(B) shall be filed with the department prior to implementation, regardless of whether or not the plan requires approval.

31.1(19) *Trichinae control for pork products prepared at retail.* Pork products prepared at retail shall comply with the Code of Federal Regulations found in 9 CFR, Section 318.10, January 1, 2013, publication, regarding the destruction of possible live trichinae in pork and pork products. Examples of pork products that require trichinae control include raw sausages containing pork and other meat products, raw breaded pork products, bacon used to wrap around steaks and patties, and uncooked mixtures of pork and other meat products contained in meat loaves and similar types of products. The use of "certified pork" as authorized by the Iowa department of agriculture and land stewardship or the United States Department of Agriculture, Food Safety and Inspection Service, shall meet the requirements of this subrule.

This rule is intended to implement Iowa Code section 137F.2.

[**ARC 1191C**, IAB 11/27/13, effective 1/1/14]

481—31.2(137F) Inspection standards for food processing plants. The following are the inspection standards for food processing plants including food storage facilities.

31.2(1) *Definitions.* For the purposes of this rule, the following definitions shall apply. The definitions of "food," "label," "labeling," and "dietary supplement" are as defined in 21 U.S.C. Section 321 (2012).

31.2(2) *Prohibited acts.* The prohibited acts identified in 21 U.S.C. Section 331(a) to (f), (k), and (v) (2012) shall also be prohibited acts in Iowa.

31.2(3) *Stop sale.* Any article of food that is adulterated or misbranded when introduced into commerce may be embargoed until such a time as the adulteration of misbranding is remedied or the product is destroyed. The action is immediate, but the licensee may appeal the decision following the process outlined in rule 481—30.11(10A,137C,137D,137F).

31.2(4) *Standards for food.* If a standard that has been adopted for a food is adopted pursuant to 21 U.S.C. Section 341 (2012), the standard shall be met.

31.2(5) *Adulterated food.* See rule 481—31.3(137D,137F).

31.2(6) *Misbranded food.* A food shall be misbranded if it is found in violation of 21 U.S.C. Section 343 (2012).

31.2(7) *New dietary ingredients.* New dietary ingredients shall comply with the process in 21 U.S.C. Section 350(b) (2012) or shall be deemed adulterated.

31.2(8) *Records.* Records shall be made available at minimum to the extent required under 21 U.S.C. Section 373 (2012) for all interstate and intrastate food.

31.2(9) *Adoption of Code of Federal Regulations.* The following parts of the Code of Federal Regulations (April 1, 2013) are adopted:

a. 21 CFR Part 1, Sections 1.20 to 1.24 (labeling).

b. 21 CFR Part 7, Sections 7.1 to 7.13 and 7.40 to 7.59 (guaranty and recalls).

c. 21 CFR Part 70, Sections 70.20 to 70.25 (labeling requirements for colors).

d. 21 CFR Part 73, Sections 73.1 to 73.615 (color additives exempt from certification).

e. 21 CFR Part 81, general specifications and general restrictions for provisional color additives for use in foods, drugs, and cosmetics.

f. 21 CFR Part 82, Sections 82.3 to 82.706 (certified provisionally listed colors and specifications).

g. 21 CFR Part 100, Section 100.155 (specific provisions for salt and iodized salt).

h. 21 CFR Part 101, except Sections 101.69 and 101.108 (food labeling).

i. 21 CFR Part 102, except Section 102.19 (common or usual name for nonstandard food).

j. 21 CFR Part 104, nutritional quality guidelines for foods.

k. 21 CFR Part 105, food for special dietary use.

l. 21 CFR Part 106, except Section 106.120 (infant formula quality control procedures).

m. 21 CFR Part 107, except Sections 107.200 to 107.280 (infant formula labeling).

n. 21 CFR Part 108, Sections 108.25 to 108.35 (exceptions for when a permit is not required, acidified and thermal processing of low-acid foods packaged in hermetically sealed containers).

o. 21 CFR Part 109, unavoidable contaminants in food for human consumption and food-packaging material.

p. 21 CFR Part 110, current good manufacturing practice in manufacturing, packing or holding human food.

q. 21 CFR Part 111, current good manufacturing practice in manufacturing, packaging, labeling, or holding operations for dietary supplements.

r. 21 CFR Part 113, thermally processed low-acid food packaged in hermetically sealed containers.

s. 21 CFR Part 114, acidified foods.

t. 21 CFR Part 115, shell eggs.

u. 21 CFR Part 120, hazard analysis and critical control point (HACCP) systems (juice).

v. 21 CFR Part 123, fish and fisheries products (seafood).

w. 21 CFR Part 129, processing and bottling of bottled drinking water.

x. 21 CFR Part 130, except Sections 130.5, 130.6 and 130.17, food standards: general.

y. 21 CFR Part 131, milk and cream.

z. 21 CFR Part 133, cheeses and related cheese products.

aa. 21 CFR Part 135, frozen desserts.

ab. 21 CFR Part 136, bakery products.

ac. 21 CFR Part 137, cereal flours and related products.

ad. 21 CFR Part 139, macaroni and noodle products.

ae. 21 CFR Part 145, canned fruits.

af. 21 CFR Part 146, canned fruit juices.

ag. 21 CFR Part 150, fruit butters, jellies, preserves, and related products.

ah. 21 CFR Part 152, fruit pies.

ai. 21 CFR Part 156, vegetable juices.

aj. 21 CFR Part 158, frozen vegetables.

ak. 21 CFR Part 160, egg and egg products.

al. 21 CFR Part 161, fish and shellfish.

am. 21 CFR Part 163, cacao products.

an. 21 CFR Part 164, tree nut and peanut products.

ao. 21 CFR Part 165, beverages.

ap. 21 CFR Part 166, margarine.

aq. 21 CFR Part 168, sweeteners and table syrups.

ar. 21 CFR Part 169, food dressings and flavorings.

as. 21 CFR Part 170, except Sections 170.6, 170.15, and 170.17, food additives.

at. 21 CFR Part 172, food additives permitted for direct addition to food for human consumption.

au. 21 CFR Part 173, secondary direct food additives permitted in food for human consumption.

av. 21 CFR Part 174, indirect food additives: general.

aw. 21 CFR Part 175, indirect food additives: adhesives and components of coatings.

ax. 21 CFR Part 176, indirect food additives: paper and paperboard components.

ay. 21 CFR Part 177, indirect food additives: polymers.

az. 21 CFR Part 178, indirect food additives: adjuvants, production aids, and sanitizers.

ba. 21 CFR Part 180, food additives permitted in food or in contact with food on an interim basis pending additional study.

bb. 21 CFR Part 181, prior-sanctioned food ingredients.

bc. 21 CFR Part 182, substances generally recognized as safe.

bd. 21 CFR Part 184, direct food substances affirmed as generally recognized as safe.

be. 21 CFR Part 186, indirect food substances affirmed as generally recognized as safe.

bf. 21 CFR Part 189, substances prohibited from use in human food.

bg. 21 CFR Part 190, dietary supplements.

31.2(10) *Egg products processing plants.* The department shall generally use the good manufacturing practices adopted in paragraph 31.2(9)*"b,"* unless such practices are inconsistent with standards set by the United States Department of Agriculture, Food Safety Inspection Service, in 9 CFR Parts 590-592, January 1, 2013. If the standards are inconsistent, the standards adopted in 9 CFR Parts 590-592, January 1, 2013, apply.

31.2(11) *Specific requirements for the manufacture of packaged ice.* In addition to compliance with subrules 31.2(1) through 31.2(9), manufacturers of packaged ice must comply with the following:

a. Equipment must be cleaned on a schedule of frequency that prevents the accumulation of mold, fungus and bacteria. A formal cleaning program and schedule which include the use of sanitizers to eliminate microorganisms must be developed and used.

b. Packaged ice must be tested every 120 days for the presence of bacteria.

c. Plants that use a nonpublic water system must sample the water supply monthly for the presence of bacteria and annually for chemical and pesticide contamination as required by law.

This rule is intended to implement Iowa Code section 137F.2.

[**ARC 1191C**, IAB 11/27/13, effective 1/1/14]

481—31.3(137D,137F) Adulterated food and disposal. No one may produce, distribute, offer for sale or sell adulterated food. "Adulterated" is defined in the federal Food, Drug and Cosmetic Act, Section 402. Adulterated food shall be disposed of in a reasonable manner as determined by the department. The destruction of adulterated food shall be watched by a person approved by the department.

This rule is intended to implement Iowa Code section 137F.2.

[**ARC 1191C**, IAB 11/27/13, effective 1/1/14]

481—31.4(137D,137F) False label or defacement. No person shall use any label required by Iowa Code chapter 137C or 137F which is deceptive as to the true nature of the article or place of production, or which has been carelessly printed or marked, nor shall any person erase or deface any label required by this chapter.

This rule is intended to implement Iowa Code sections 137D.2 and 137F.2.

[**ARC 1191C**, IAB 11/27/13, effective 1/1/14]

481—31.5(137F) Temporary food establishments and farmers market potentially hazardous food licensees. While the retail food code adopted in rule 481—31.1(137F) applies to temporary food establishments, the following subrules provide a simplified version of requirements for temporary food establishments. If the two rules are inconsistent, the standards in this rule apply.

31.5(1) *Personnel.* For the purposes of this rule, employees include volunteers.

a. Employees shall keep their hands and exposed portions of their arms clean.

b. Employees shall have clean garments and aprons and effective hair restraints. Smoking, eating or drinking in food booths is not allowed. All nonworking, unauthorized persons are to be kept out of the food booth.

c. All employees, including volunteers, shall be under the direction of the person in charge. The person in charge shall ensure that the workers are effectively cleaning their hands, that potentially hazardous food is adequately cooked, held or cooled, and that all multiuse equipment or utensils are adequately washed, rinsed and sanitized.

d. Employees and volunteers shall not work at a temporary food establishment or farmers market potentially hazardous food establishment if the employees and volunteers have open cuts, sores or communicable diseases. The person in charge shall take appropriate action to ensure that employees and volunteers who have a disease or medical condition transmissible by food are excluded from the food operation.

e. Every employee and volunteer must sign a logbook with the employee's or volunteer's name, address, and telephone number and the date and hours worked. The logbook must be maintained for 30 days by the person in charge and be made available to the department upon request.

31.5(2) *Food handling and service.*

a. *Dry storage.* All food, equipment, utensils and single-service items shall be stored off the ground and above the floor on pallets, tables or shelving.

b. *Cold storage.* Refrigeration units shall be provided to keep potentially hazardous foods at 41°F or below. The inspector may approve an effectively insulated, hard-sided container with sufficient coolant for storage of less hazardous food or the use of such a container at events of short duration if the container maintains the temperature at 41°F or below.

c. *Hot storage.* Hot food storage units shall be used to keep potentially hazardous food at 135°F or above. Electrical equipment is required for hot holding, unless the use of propane stoves and grills capable of holding the temperature at 135°F or above is approved by the department. Sterno cans are allowed for hot holding if adequate temperatures can be maintained. Steam tables or other hot holding devices are not allowed to heat foods and are to be used only for hot holding after foods have been adequately cooked.

d. *Cooking temperatures.* As specified in the following chart, the minimum cooking temperatures for food products are:

165°F	• Poultry and game animals that are not commercially raised • Products stuffed or in a stuffing that contains fish, meat, pasta, poultry or ratite • All products cooked in a microwave oven
155°F	• Rabbits, ratite and game meats that are commercially raised • Ground or comminuted (such as hamburgers) meat/fish products • Raw shell eggs not prepared for immediate consumption
145°F	• Pork and raw shell eggs prepared for immediate consumption • Fish and other meat products not requiring a 155°F or 165°F cooking temperature as listed above

e. *Consumer advisory requirement.* If raw or undercooked animal food such as beef, eggs, fish, lamb, poultry or shellfish is offered in ready-to-eat form, the license holder (person in charge) shall post the consumer advisory as required by the food code.

f. *Thermometers.* Each refrigeration unit shall have a numerically scaled thermometer to measure the air temperature of the unit accurately. An appropriate thermometer shall be provided where necessary to check the internal temperature of both hot and cold food. Thermometers must be accurate and have a range from 0°F to 220°F.

g. *Food display.* Foods on display must be covered. The public is not allowed to serve itself from opened containers of food or uncovered food items. Condiments such as ketchup, mustard, coffee creamer and sugar shall be served in individual packets or from squeeze containers or pump bottles. Milk shall be dispensed from the original container or from an approved dispenser. All fruits and vegetables must be washed before being used or sold. Food must be stored at least six inches off the ground. All cooking and serving areas shall be adequately protected from contamination. Barbeque areas shall be roped off or otherwise protected from the public. All food shall be protected from customer handling, coughing or sneezing by wrapping, sneeze guards or other effective means.

h. *Food preparation.* Unless otherwise approved by a variance from the department, no bare-hand contact of ready-to-eat food shall occur.

i. *Approved food source.* All food supplies shall come from a commercial manufacturer or an approved source. The use of food in hermetically sealed containers that is not prepared in an approved food processing plant is prohibited. Transport vehicles used to supply food products are subject to inspection and shall protect food from physical, chemical and microbial contamination.

j. *Leftovers.* Hot-held foods that are not used by the end of the day must be discarded.

31.5(3) *Utensil storage and warewashing.*

a. *Single-service utensils.* The use of single-service plates, cups and tableware is required.

b. *Dishwashing.* If approved, an adequate means to heat the water and a minimum of three basins large enough for complete immersion of the utensils are required to wash, rinse and sanitize utensils or food-contact equipment.

c. *Sanitizers.* Chlorine bleach or another approved sanitizer shall be provided for warewashing sanitization and wiping cloths. An appropriate test kit shall be provided to check the concentration of the sanitizer used. The person in charge shall demonstrate knowledge in the determination of the correct concentration of sanitizer to be used.

d. *Wiping cloths.* Wiping cloths shall be stored in a clean, 100 ppm chlorine sanitizing solution or equivalent. Sanitizing solution shall be changed as needed to maintain the solution in a clean condition.

31.5(4) *Water.*

a. *Water supply.* An adequate supply of clean water shall be provided from an approved source. Water storage units and hoses shall be food grade and approved for use in storage of water. If not permanently attached, hoses used to convey drinking water shall be clearly and indelibly identified as to their use. Water supply systems shall be protected against backflow or contamination of the water supply. Backflow prevention devices, if required, shall be maintained and adequate for their intended purpose.

b. *Wastewater disposal.* Wastewater shall be disposed of in an approved wastewater disposal system sized, constructed, maintained and operated according to law.

31.5(5) *Premises.*

a. *Hand-washing container.* An insulated container with at least a two-gallon capacity with a spigot, basin, soap and dispensed paper towels shall be provided for hand washing. The container shall be filled with hot water.

b. *Floors, walls and ceilings.* If required, walls and ceilings shall be of tight design and weather-resistant materials to protect against the elements and flying insects. If required, floors shall be constructed of tight wood, asphalt, rubber or plastic matting or other cleanable material to control dust or mud.

c. *Lighting.* Adequate lighting shall be provided. Lights above exposed food preparation areas shall be shielded.

d. *Food preparation surfaces.* All food preparation or food contact surfaces shall be of a safe design, smooth, easily cleanable and durable.

e. *Garbage containers.* An adequate number of cleanable containers with tight-fitting covers shall be provided both inside and outside the establishment.

f. *Toilet rooms.* An adequate number of approved toilet and hand-washing facilities shall be provided at each event.

g. *Clothing.* Personal clothing and belongings shall be stored at a designated place in the establishment, adequately separated from food preparation, food service and dishwashing areas.

This rule is intended to implement Iowa Code sections 137D.2 and 137F.2.

[**ARC 1191C**, IAB 11/27/13, effective 1/1/14]

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[1] NOTE: Rules 30—33.1(159) to 30—33.4(159) and 30—34.1(159) to 30—34.4(159) transferred to Inspections and Appeals Department[481] and rescinded.

[Prior to 8/26/87, see Inspections and Appeals Department[481]—Ch 23]

CHAPTER 32
FOOD PROTECTION CERTIFICATION PROGRAMS

[Prior to 8/26/87, see Inspections and Appeals Department[481]—Ch 23]

Rescinded IAB 4/9/08, effective 7/1/08

CHAPTER 33
FOOD AND BEVERAGE VENDING MACHINES INSPECTIONS

[Prior to 8/26/87, see Inspections and Appeals Department[481]—Ch 24]

Rescinded IAB 2/10/99, effective 3/17/99

CHAPTER 34
HOME FOOD ESTABLISHMENTS

481—34.1(137D) Inspection standards.

34.1(1) All ingredients must come from a licensed or approved source except for fresh fruits and vegetables, nonhazardous baked goods and honey or eggs. The use of food in hermetically sealed containers not prepared in a licensed food processing plant is prohibited.

34.1(2) All food products and ingredients shall be stored in original containers. If removed from the original container, food and ingredients must be stored in labeled and closed containers. Container must be of a material that will not cause the food to become adulterated.

34.1(3) All food shall be in sound condition, free from spoilage, filth or other contamination and shall be safe for human consumption. Food products shall not be stored on the floor.

34.1(4) All potentially hazardous food must be refrigerated at 41°F or less, or held at 135°F or higher, to control bacterial growth. Potentially hazardous foods that have been cooked and then refrigerated shall be reheated rapidly to an internal temperature of 165°F or higher before being placed in hot food storage holding units. Food warmers and other hot food holding units shall not be used for the reheating of potentially hazardous foods.

34.1(5) Food storage facilities must be kept clean and located to protect food from unsanitary conditions or contamination from any source at all times.

34.1(6) The floors, walls, ceilings, utensils, machinery, equipment and supplies in the food preparation area and all vehicles used in the transportation of food must be kept thoroughly clean. All food contact surfaces shall be easy to clean, smooth, nonabsorbent, and free of cracks or open seams.

34.1(7) All food must be protected against insects and rodents at all times. Outside doors, windows, and other openings must be fitted with screens and self-closing doors, if not otherwise protected. No dogs, cats, or other pets are allowed in the room where food is prepared or stored.

34.1(8) All garbage and refuse must be kept in containers and removed from the premises regularly to eliminate insects and rodents, offensive odors, or health or fire hazards. Garbage and refuse containers must be durable, easy to clean, insect- and rodent-resistant and of material that neither leaks, nor absorbs liquid.

34.1(9) All food handlers must be free from contagious or communicable diseases, sores or infected wounds, and must keep their hair covered and restrained.

34.1(10) All food handlers must keep themselves and their clothing clean. Hands must be washed as frequently as necessary to maintain good sanitation.

34.1(11) Smoking is not permitted while handling or preparing food or in food preparation or storage areas.

34.1(12) All establishments must have an adequate supply of hot and cold potable water under pressure from an approved source. Facilities must ensure that equipment, utensils, and containers used in the preparation of food shall be washed, rinsed and sanitized. If the residence is not served by a public water system, the water must be tested annually for nitrites and coliform. Records of water tests must be maintained by license holders who are not served by a public system. These records must be available to the regulatory authority upon request.

34.1(13) All establishments must have proper toilet facilities, equipped with a hand-washing lavatory, complete with hot and cold potable water under pressure and hand soap. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near the hand-washing facility.

34.1(14) Rescinded IAB 9/22/99, effective 10/27/99.

481—34.2(137D) Enforcement.

34.2(1) All critical violations shall be corrected within 10 days. Within 15 days, the license holder shall make a written report to the regulatory authority, stating the action taken to correct the critical violation. All noncritical violations shall be corrected within the time period required by the inspection, but in all cases the violation shall be corrected within 90 days of the routine inspection.

34.2(2) Violation of these rules or any provision of Iowa Code chapter 137D is a simple misdemeanor. The department may employ various remedies if violations are discovered.

a. A license may be revoked.

b. An injunction may be sought.

c. A case may be referred to a county attorney for criminal prosecution.

481—34.3(137D) Labeling requirement. All labels shall contain the following information in legible English:

1. Name and address of the person(s) preparing the food,
2. Common name of the food,
3. The names of all ingredients in the food, beginning with the one present in the largest proportion and continuing in descending order of predominance, and
4. The quantity of the contents in terms of weight, measure or numerical count.

481—34.4(137D) Annual gross sales. Annual gross sales shall not exceed $20,000. The license holder shall maintain a record of sales of food licensed under Iowa Code section 137D.1(3). The record shall be available to the regulatory authority when requested.

481—34.5(137D) Criminal offense—conviction of license holder.

34.5(1) The department may revoke the license of a license holder who:

a. Conducts an activity constituting a criminal offense in the licensed home food establishment; and

b. Is convicted of a felony as a result.

34.5(2) The department may suspend or revoke the license of a license holder who:

a. Conducts an activity constituting a criminal offense in the licensed home food establishment; and

b. Is convicted of a serious misdemeanor or aggravated misdemeanor as a result.

34.5(3) A certified copy of the final order or judgment of conviction or plea of guilty shall be conclusive evidence of the conviction of the license holder.

34.5(4) The department's decision to revoke or suspend a license may be contested by the adversely affected party pursuant to the provisions of 481—30.13(10A).

This rule is intended to implement Iowa Code section 137D.8(3).

These rules are intended to implement Iowa Code chapter 137D.

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CHAPTER 35
CONTRACTOR REQUIREMENTS

481—35.1(137C,137D,137F) Definitions. The definitions in 481—30.2(10A) and Iowa Code sections 137C.2 and 137D.1 and Iowa Code Supplement section 137F.1 are hereby incorporated by reference as part of this chapter.

481—35.2(137C,137D,137F) Contracts. A municipal corporation or county may enter into an agreement with the department to license, inspect and enforce under Iowa Code chapters 137C, 137D and 137F.

35.2(1) The department will investigate the municipal corporation or county to determine if it possesses adequate resources to fulfill the requirements of the contract.

35.2(2) A copy of the contract is available from the Department of Inspections and Appeals, Food and Consumer Safety Bureau, Lucas State Office Building, Des Moines, Iowa 50319-0083.

481—35.3(137C,137D,137F) Contractor. To enter into an agreement with the department, the contractor must comply with the requirements of this chapter and the applicable sections of the Iowa Code.

35.3(1) The contractor shall furnish the personnel, materials, services and facilities necessary to perform the required functions of the contract.

35.3(2) The contractor is not an authorized agent of the state of Iowa.

35.3(3) Rescinded IAB 4/9/08, effective 7/1/08.

35.3(4) The contractor shall cooperate with the department's monitoring activities in areas under the scope of this agreement.

35.3(5) In addition to the above, the contractor shall:

a. Provide 24-hour-a-day, 7-day-per-week continuous coverage of the facilities under contract;

b. Ensure that personnel are available at all times to respond to complaints, investigations, emergencies and other situations;

c. Furnish appropriate backup personnel to maintain continuous coverage regardless of vacations, illnesses, vacant positions or other inspection staff absences;

d. Supply trained personnel who are prepared and have the capability to perform inspections; and

e. Provide other information as requested by the department in regard to inspections and licenses issued under the contract.

481—35.4(137C,137D,137F) Contractor inspection personnel. Contractor inspection personnel should possess the knowledge, skills and training necessary to perform the requirements of the contract.

35.4(1) Contractor inspection personnel must possess experience and education qualifications equal to those required for state food inspectors. Additionally, this experience must include application of the food code.

Municipal corporations or counties that wish to contract with the department to perform food inspections under Iowa Code chapters 137C, 137D and 137F, but who do not have trained personnel to perform these services, shall reimburse the department for the cost of providing the required training.

35.4(2) The salary received by contractor inspection personnel should be comparable to state inspection personnel.

35.4(3) Contractor inspection personnel shall participate in state-sponsored training activities.

481—35.5(137C,137D,137F) Investigation. The contractor shall investigate all alleged food-borne illnesses in areas licensed and inspected under this agreement. The contractor shall notify the department immediately of the existence of any food-borne or other illness caused by, or suspected to have been caused by, unsanitary conditions existing within the jurisdiction of the contractor.

481—35.6(137C,137D,137F) Inspection standards. Inspections shall be completed using forms prescribed by the department for those inspections. The contractor shall follow applicable standards

for inspections found in Iowa Code chapters 137C, 137D and 137F as amended by 2007 Iowa Acts, chapter 215. Inspections shall be conducted pursuant to 481—Chapters 30, 31, 34, 35, and 37.

Copies of inspection standards are available from the Department of Inspections and Appeals, Food and Consumer Safety Bureau, Lucas State Office Building, Des Moines, Iowa 50319-0083.

481—35.7(137C,137D,137F) Enforcement. The contractor shall enforce state laws and rules, including regulations adopted by reference. These regulations are the legal basis of authority in licensing and inspection of establishments under this contract.

481—35.8(137C,137D,137F) Licensing. The contractor shall issue licenses and collect license fees.

481—35.9(137C,137D,137F) Records. The contractor shall maintain records of all inspections, license applications and fees for a minimum of three years. Records shall be provided to the department upon its request.

481—35.10(137C,137D,137F) Reporting requirements. Inspection reports shall be uploaded to the department's food inspection database system at least monthly. The contractor shall ensure that the information uploaded to the department is accurate and complete. The contractor shall complete and submit to the department reports required by Iowa Code Supplement section 137F.3(4).

481—35.11(137C,137D,137F) Contract rescinded. If the department determines that Iowa Code chapters 137C, 137D and 137F as amended by 2007 Iowa Acts, chapter 215, are not being enforced by the contractor, the department may rescind the agreement. Notification of the department's action will be provided to the contractor at least 30 days in advance of the action. The contractor has the right to request a hearing with the department to contest the action.

These rules are intended to implement Iowa Code chapters 137C, 137D and 137F as amended by 2007 Iowa Acts, chapter 215.

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CHAPTER 36
EGG HANDLERS

Rescinded **ARC 0989C**, IAB 9/4/13, effective 10/9/13; see 21—Chapter 36

CHAPTER 37
HOTEL AND MOTEL INSPECTIONS

481—37.1(137C) Building and grounds. Owners or managers are expected to keep hotels clean. This means there shall be no litter nor accumulation of refuse anywhere on the premises.

The floors, walls, and ceilings shall be kept clean and in good repair.

37.1(1) Screens or self-closing doors shall be used to keep flies, mosquitoes and other pests out of hotel lobbies, kitchens, or any other indoor area. Other effective methods are acceptable.

37.1(2) All garbage must be kept in metal or plastic containers with tight-fitting lids. Garbage must be removed regularly so it does not create offensive odors, a problem with insects or rodents, or health or fire hazards.

37.1(3) Any room or article which becomes infested with insects or vermin shall be cleaned or chemically treated until there are no more insects or vermin.

481—37.2(137C) Guest rooms. Hotels built or extensively remodeled as determined by the department, after January 1, 1979, shall provide ventilation in guest rooms with windows or mechanical devices. The furniture, drapes and accessories shall be kept clean and in good repair.

481—37.3(137C) Bedding. All materials used on a bed or any sleeping place shall be kept clean and in good repair.

37.3(1) There shall be an under sheet and top sheet for every bed. Pillows shall have pillow slips. The sheets shall be large enough to completely cover the mattress.

37.3(2) Each guest shall be furnished clean sheets and pillow slips.

37.3(3) All other bedding shall be aired between guests and shall be kept clean.

481—37.4(137C) Lavatory facilities. Hotels built or remodeled after January 1, 1979, shall have lavatory facilities in each guest room, except for bed and breakfast inns.

37.4(1) Each guest room shall be equipped with hot and cold running water. The fixtures must be easy to clean. The floors shall be nonabsorbent and impermeable so they can be washed with water.

37.4(2) Lavatory rooms shall be well-lighted and shall be vented to the outside of the building. This may be done with electric units.

37.4(3) Each guest shall have a clean towel each day.

37.4(4) Bed and breakfast inns shall provide at least one restroom which is available to overnight guests. The restroom must be equipped as provided in subrules 37.4(1) to 37.4(3).

481—37.5(137C) Glasses and ice.

37.5(1) Each guest shall have clean glasses to use. All cups, glasses or utensils usable more than once shall be sanitized by:

a. Immersion for at least one-half minute in clean, hot water at a temperature of at least 170°F; or

b. Immersion for at least one minute in a clean solution containing at least 50 parts per million of available chlorine as a hypochlorite and at a temperature of at least 75°F; or

c. Immersion for at least one minute in a clean solution containing at least 12.5 parts per million of available iodine and having a pH not higher than 5.0 and at a temperature of at least 75°F; or

d. Immersion in a clean solution containing any other chemical sanitizing agent allowed under 21 CFR 178.1010 that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as a hypochlorite at a temperature of a least 75°F for one minute.

37.5(2) When hot water is used for sanitizing, the following equipment shall be used:

a. An integral heating or fixture installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170°F; and

b. A numerically scaled indicating thermometer, accurate to ± 3°F, convenient to the sink for frequent checks of water temperature.

37.5(3) Ice kept for guests to use shall be protected from contamination. Lids on ice machines or storage bins shall be tight. Containers used to store ice shall be continuously drained and there shall be

an air gap in addition to the drain. Ice containers and utensils shall be designed so that the surfaces are made of a material that is safe for use as a food contact surface and so that the surface can be adequately cleaned.

481—37.6(137C) Employees. No employer shall allow a person who has a communicable disease, as defined in Iowa Code chapter 139, to work in a hotel.

481—37.7(137C) Room rates. A list visible to the public posted near the office shall indicate room numbers and floor and the cost per day per person. The cost per day per person shall also be posted in each room.

481—37.8(137C) Inspections. Hotels shall be inspected at least once biennially. An inspector may enter a hotel at any reasonable hour and shall be given free access to every part of the premises for each inspection. The inspector shall receive any help needed to make a thorough and complete inspection.

481—37.9(137C) Enforcement. Violation of these rules or any provision of Iowa Code chapter 137C is a simple misdemeanor. The department may employ various remedies if violations are discovered.

A license may be revoked.

An injunction may be sought.

A case may be referred to a county attorney for criminal prosecution.

481—37.10(137C) Criminal offense—conviction of license holder.

37.10(1) The department may revoke the license of a license holder who:

a. Conducts an activity constituting a criminal offense in the licensed hotel or motel establishment; and

b. Is convicted of a felony as a result.

37.10(2) The department may suspend or revoke the license of a license holder who:

a. Conducts an activity constituting a criminal offense in the licensed hotel or motel establishment; and

b. Is convicted of a serious misdemeanor or aggravated misdemeanor as a result.

37.10(3) A certified copy of the final order or judgment of conviction or plea of guilty shall be conclusive evidence of the conviction of the license holder.

37.10(4) The department's decision to revoke or suspend a license may be contested by the adversely affected party pursuant to the provisions of 481—30.13(10A).

This rule is intended to implement Iowa Code section 137C.10(3).

These rules are intended to implement Iowa Code chapter 137C.

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CHAPTERS 38 and 39
Reserved

CHAPTER 40
FOSTER CARE FACILITY INSPECTIONS

481—40.1(10A) License surveys. The department of human services (DHS) will notify the department of inspections and appeals when someone has applied for approval, certification or license under Iowa Code chapter 232, 237, 238 or 600. A copy of the application is sent to the department of inspections and appeals and an inspection occurs to ensure compliance with the following Iowa Administrative Code chapters.

441—105	County and Multicounty Juvenile Detention Homes and County and Multicounty Juvenile Shelter Care Homes
441—107	Certification of Adoption Investigators
441—108	Child-Placing Agencies
441—112	Licensing and Regulation of Child Foster Care Facilities
441—114	Licensing and Regulation of All Group Living Foster Care Facilities for Children
441—115	Licensing and Regulation of Comprehensive Residential Facilities for Children
441—116	Licensing and Regulation of Residential Facilities for Mentally Retarded Children

481—40.2(10A) Unannounced inspections. The department of inspections and appeals staff will make unannounced inspections of licensed facilities.

This rule is intended to implement Iowa Code section 237.7.

481—40.3(10A) Results. The results of all inspections and recommendations are submitted to DHS.

481—40.4(10A) Ownership of records. All information concerning these inspections is the property of DHS and is governed by DHS rules of confidentiality. Public access relative to the Iowa fair information practices Act must be through DHS.

These rules are intended to implement Iowa Code sections 10A.502(5), 17A.3(1)*"b,"* and 22.11.

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CHAPTER 41
PSYCHIATRIC MEDICAL INSTITUTIONS FOR CHILDREN (PMIC)

481—41.1(135H) Definitions.

"Nurse practitioner" means a registered professional nurse who is currently licensed to practice in the state, who meets state requirements and is currently licensed to practice nursing under the nursing board[655] rules in the Iowa Administrative Code.

"Physician" means a person licensed to practice medicine and surgery, osteopathic medicine and surgery or osteopathy under Iowa Code chapter 148, 150 or 150A.

"Physician assistant" means a person licensed to practice under Iowa Code chapter 148C.

"Psychiatric services" means services provided under the direction of a physician which address mental, emotional, medical or behavioral problems.

"Resident" means a person who is less than 21 years of age and has been admitted by a physician to a psychiatric medical institution for children.

481—41.2(135H) Application for license. In order to obtain an initial license for a PMIC, the applicant must comply with Iowa Code chapter 135H and the rules in this chapter. Each applicant must submit the following documents to the department:

1. A completed Psychiatric Medical Institutions for Children application;
2. A copy of a department of human services license as a comprehensive residential care facility issued pursuant to Iowa Code section 237.3(2)*"a,"* or a copy of a license granted by the department of public health pursuant to Iowa Code section 125.13, as a facility which provides substance abuse treatment;
3. A floor plan of each floor of the facility on 8½″ by 11″ paper showing:

Room areas in proportion,
Room dimensions,
Numbers for all rooms including bathrooms,
A designation of use for each room, and
Window and door locations;

4. A photograph of the front and side elevation of the facility;
5. The PMIC license fee; and
6. Evidence of:

Accreditation by the joint commission on accreditation of health care organizations (JCAHO);
Department of public health certificate of need;
Department of human services determination of approval; and
Three years under the direction of an agency which has operated a facility:

- Licensed under Iowa Code section 237.3(2)*"a,"* or
- Providing services exclusively to children or adolescents and the facility meets or exceeds the requirements for licensure under Iowa Code section 237.3(2)*"a."*

This rule is intended to implement Iowa Code sections 135H.4 and 135H.5.

481—41.3(135H) Renewal application or change of ownership. In order to renew a license or change ownership of the psychiatric medical institution for children, the applicant must submit to the department:

1. A completed application form 30 days before the renewal date or before the date of the ownership change;
2. The PMIC license fee; and
3. A copy of any revisions to the department of human services application for a comprehensive care residential facility license.

41.3(1) *Denial, suspension or revocation of a license.* The department may deny, suspend or revoke a PMIC license for any of the following reasons:

a. The applicant or licensee failed to comply with the rules in this chapter;

b. A resident is a victim of cruelty or neglect because of the acts or omissions of the licensee;

c. The licensee permitted, aided or abetted in the commission of an illegal act in the institution; or

d. The applicant or licensee attempted to obtain or retain a license by fraudulent means, misrepresentation, or by submitting false information.

The department will issue notice of denial, suspension or revocation by certified mail or by personal service.

41.3(2) *Appeal process.* When a license is denied, revoked or suspended, a hearing may be requested pursuant to 481—subrule 50.5(2) and shall be conducted pursuant to rule 481—50.6(10A). During the appeal process, the status of a license shall remain as it was on the date the hearing was requested. The status shall not change until a final decision is rendered by the department.

This rule is intended to implement Iowa Code sections 135H.8 and 135H.9.

481—41.4(135H) Licenses for distinct parts. Separate licenses may be issued for clearly identifiable parts of a health care facility as defined in Iowa Code section 135C.1 or a hospital as defined in Iowa Code section 135B.1. A distinct part must contain contiguous rooms in a separate wing or building or be on a separate floor of the facility. Distinct parts shall provide care and services of separate categories. The following requirements shall be met for licensing a distinct part:

41.4(1) The distinct part shall serve only children who require the category of care and services immediately available within that part.

41.4(2) The distinct part shall meet all the standards, rules and regulations which pertain to the category for which a license is sought.

41.4(3) The distinct part must be operationally and financially feasible.

41.4(4) A separate personal care staff with qualifications appropriate to the care and services offered must be regularly assigned and working in the distinct part under responsible management.

41.4(5) Separately licensed distinct parts may have some services such as management, building maintenance, laundry and dietary in common with each other.

481—41.5(135H) Variances. Variances from these rules may be granted by the director of the department:

1. When the need for a variance has been established; and
2. When there is no danger to the health, safety, welfare or rights of any child.

The variance will apply only to a specific PMIC.

Variances shall be reviewed at the time of each licensure survey by the department to determine continuing need.

41.5(1) To request a variance, the licensee must:

a. Apply in writing on a form provided by the department;

b. Cite the rule or rules from which a variance is desired;

c. State why compliance with the rule or rules cannot be accomplished;

d. Explain how the variance is consistent with the individual program plans; and

e. Demonstrate that the requested variance will not endanger the health, safety, welfare or rights of any child.

41.5(2) Upon receipt of a request for variance, the director shall:

a. Examine the rule from which the variance is requested;

b. Evaluate the requested variance against the requirement of the rule to determine whether the request is necessary to meet the needs of the children; and

c. Examine the effect of the requested variance on the health, safety or welfare of the children.

481—41.6(135H) Notice to the department.

41.6(1) The department shall be notified at the times stated when the following events are expected to occur:

a. Thirty days before addition, alteration or new construction is begun in the PMIC or on the premises;

b. Thirty days in advance of closure of the PMIC;

c. Within two weeks of any change of administrator; and

d. Within 30 days when a change in the category of license is sought.

41.6(2) Prior to the purchase, transfer, assignment or lease of a PMIC the licensee shall:

a. Inform the department in writing of the pending sale, transfer, assignment or lease of the facility;

b. Inform the department in writing of the name and address of the prospective purchaser, transferee, assignee or lessee at least 30 days before the sale, transfer, assignment or lease is complete;

c. Submit written authorization to the department permitting the department to release information of whatever kind from department files concerning the licensee's PMIC to the named prospective purchaser, transferee, assignee or lessee.

481—41.7(135H) Inspection of complaints. The department shall conduct a preliminary review of all complaints filed against a PMIC. Unless a complaint is determined to be intended as harassment or to be without reasonable basis, the department shall inspect the PMIC within 20 working days of receipt of the complaint.

This rule is intended to implement Iowa Code section 135H.12.

481—41.8(135H) General requirement. Inpatient psychiatric services for recipients under age 21 must be provided under the direction of a physician.

When a resident has received services immediately before reaching age 21, services must be complete before the earlier of the following:

1. The date the recipient no longer requires services; or
2. The date the recipient reaches age 22.

481—41.9(135H) Certification of need for services. All recipients of services shall have written certification which ensures the following:

1. Ambulatory care resources available in the community do not meet the treatment needs of the recipient;
2. Proper treatment of the recipient's psychiatric condition requires services on an inpatient basis under the direction of a physician; and
3. The services can reasonably be expected to improve the recipient's condition or prevent further regression so services will no longer be needed.

Certification of need shall be completed by the team described in subrules 41.13(2) and 41.13(3). Certification must be made at the time of admission by an independent team for Medicaid recipients. For emergency admissions, the certification must be made by the team described in 41.13(135H) within 14 days after admission. If an individual applies for Medicaid while in a PMIC, certification of need must be made by the team described in 41.13(135H) before a Medicaid agency authorizes payment.

481—41.10(135H) Active treatment. Inpatient psychiatric services must involve "active treatment," which means implementation of a professionally developed and supervised individual plan of care as described in rule 41.12(135H). The plan of care shall be:

1. Developed and implemented no later than 14 days after admission; and
2. Designed to achieve discharge from inpatient status at the earliest possible time.

481—41.11(135H) Individual plan of care. "Individual plan of care" means a written plan developed for each child. The plan of care shall be designed to improve the condition of each child to the extent that inpatient care is no longer necessary.

41.11(1) The plan of care must be based on a diagnostic evaluation that includes examination of the:

a. Medical,

b. Psychological,

c. Social,

d. Behavioral, and

e. Developmental aspects of the child's situation.

The plan of care shall reflect the need for inpatient psychiatric care.

41.11(2) The plan of care shall be developed by the team of professionals specified in rule 41.13(135H) in consultation with the recipient, the parents, legal guardian or other person into whose care the child will be released after discharge. The plan of care shall include:

a. Diagnoses, symptoms, complaints and complications indicating the need for admission;

b. Treatment objectives;

c. An integrated program of therapies, activities and experiences designed to meet the objectives;

d. A description of the functional level of the individual;

e. Any orders for:

(1) Medications,

(2) Treatments,

(3) Restorative and rehabilitative services,

(4) Activities,

(5) Therapies,

(6) Social services,

(7) Diet, and

(8) Special procedures recommended for the health and safety of the patient; and

f. At an appropriate time, postdischarge plans and coordination of inpatient services with partial discharge plans and related community services to ensure continuity of care with the recipient's family, school and community upon discharge.

41.11(3) The plan of care shall be reviewed every 30 days by the team referred to in rule 41.13(135H) to:

a. Determine that services being provided are or were required on an inpatient basis; and

b. Recommend changes in the plan as indicated by the recipient's overall adjustment as an inpatient.

This rule is intended to implement Iowa Code section 135H.3.

481—41.12(135H) Individual written plan of care. Before admission to a PMIC and before authorization for payment, the attending physician or staff physician must establish written plans for continuing care including review and modification of the plan of care.

481—41.13(135H) Plan of care team. The individual plan of care shall be developed by an interdisciplinary team of physicians and other personnel who are employed by the facility or provide services to patients.

41.13(1) Based on education and experience, the team must be capable of:

a. Assessing the recipient's immediate and long-range therapeutic needs, developmental priorities, and personal strengths and liabilities;

b. Assessing the potential resources of the recipient's family;

c. Setting treatment objectives; and

d. Prescribing therapeutic modalities to achieve the plan's objectives.

41.13(2) The team shall include at least one member who is experienced in child psychiatry or child psychology and must include, as a minimum, either:

a. A board-eligible or board-certified psychiatrist; or

b. A clinical psychologist who has a doctoral degree and a physician licensed to practice medicine or osteopathy; or

c. A physician licensed to practice medicine or osteopathy with specialized training and experience in the diagnoses and treatment of mental diseases, and a psychologist who has a master's degree in clinical psychology or who has been certified by the state psychological association.

41.13(3) The team must also include one of the following:

a. A psychiatric social worker;

b. A registered nurse with specialized training or one year of experience in treating mentally ill individuals;

c. A licensed occupational therapist who has specialized training in treating mentally ill individuals; or

d. A psychologist who has a master's degree in clinical psychology or who has been certified by the state psychological association.

This rule is intended to implement Iowa Code section 135H.3.

481—41.14(135H) Required discharge. The licensee shall not refuse to discharge a child when directed by the physician, parent or legal guardian unless so directed by the court.

481—41.15(135H) Criminal behavior involving children. A person who has a record of a criminal conviction or a founded child abuse or dependent adult abuse shall not be licensed to operate, be employed by, or reside in a PMIC unless an evaluation of the crime or founded child or dependent adult abuse has been made by the department of human services which concludes that the crime or founded child or dependent adult abuse does not merit prohibition of employment.

41.15(1) A PMIC shall request that the department of human services (DHS) conduct a criminal and child abuse record check, when a person is being considered for licensure or for employment if the person will:

a. Have direct responsibility for a child;

b. Have access to a child when the child is alone; or

c. Reside in the facility.

41.15(2) A PMIC shall inform all new applicants for employment of the requirement for the criminal and child abuse record checks and the possibility of a dependent adult abuse record check. The PMIC shall obtain, from the applicant, a signed acknowledgment of the receipt of this information.

41.15(3) A PMIC shall include the following inquiry in an application for employment: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?"

41.15(4) DHS will inform the PMIC of the results of the criminal, child abuse, and dependent adult abuse record checks. If a record of a criminal conviction or founded child or dependent adult abuse exists, the PMIC will be informed on Form 470-2310, "Record Check Evaluation." The subject of the report shall complete that form and it shall be returned to DHS to request evaluation of the record to determine whether prohibition of the person's licensure, employment, or residence is warranted.

41.15(5) If the evaluation is not requested or if the DHS determines that the person has committed a crime or has a record of founded child abuse or dependent adult abuse which warrants prohibition of licensure, employment, or residence, the person shall not be licensed to operate, be employed by, or reside in a PMIC.

This rule is intended to implement Iowa Code section 135H.7.

481—41.16(22,135H) Confidential or open information. The department maintains files for psychiatric medical institutions for children. These files are organized by facility name and contain both open and confidential information.

41.16(1) Open information includes:

a. License application and status;

b. Variance requests and responses;

c. Final findings of state license survey investigations;

d. Records of complaints;

e. Plans of correction submitted by the facility;

f. Medicaid status; and

g. Official notices of license sanctions.

41.16(2) Confidential information includes:

a. Inspection or investigation information which does not comprise a final finding. This information may be made public in a proceeding concerning the denial, suspension or revocation of a license, under Iowa Code section 135H.8;

b. Names of all complainants; and

c. Names of children in all facilities, identifying information and the address of anyone other than an owner.

This rule is intended to implement Iowa Code sections 22.11, 135H.11 and 135H.13.

481—41.17(135H) Additional provisions concerning physical restraint. If a PMIC uses a physical restraint, the following provisions shall apply:

41.17(1) No employee shall use any prone restraints. For the purposes of this rule, "prone restraints" means those in which an individual is held face down on the floor. Employees who find themselves involved in the use of a prone restraint as the result of responding to an emergency must take immediate steps to end the prone restraint.

41.17(2) No employee shall use any restraint that obstructs the airway of any resident.

41.17(3) If an employee physically restrains a resident who uses sign language or an augmentative mode of communication as the resident's primary mode of communication, the resident shall be permitted to have the resident's hands free of restraint for brief periods, unless an employee determines that such freedom appears likely to result in harm to self or others.

This rule is intended to implement Iowa Code sections 135H.4 and 135H.5.

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CHAPTERS 42 to 49
Reserved

CHAPTER 50
HEALTH CARE FACILITIES ADMINISTRATION

481—50.1(10A) Inspections. The health facilities division inspects health care facilities, hospitals, and providers and suppliers of medical services in Iowa. Standards to obtain a license are explained in this chapter.

481—50.2(10A) Definitions.

"Administrator" means the person coordinating the administration of the division.

"Department" means the department of inspections and appeals.

"Director" means the director of inspections and appeals.

"Division" means the health facilities division.

481—50.3(135B,135C) Licensing. All hospitals and health care facilities shall be licensed by the department. Applications are available from the Health Facilities Division, Lucas State Office Building, Des Moines, Iowa 50319-0083. Completed applications are returned to the division with the fee.

50.3(1) Initial fees for hospitals are:

a. Fifty beds or less, $15;

b. More than 50 and not more than 100 beds, $25;

c. Any greater number of beds, $50.

A fee of $10 is charged to renew a hospital license each year.

50.3(2) Initial and renewal fees for health care facilities are:

a. Ten beds or less, $20;

b. More than 10 and not more than 25 beds, $40;

c. More than 26 and not more than 75 beds, $60;

d. More than 76 and not more than 150 beds, $80;

e. Any greater number of beds, $100.

50.3(3) Standards used to determine whether a license is granted or retained are found in the rules of the department of inspections and appeals in the Iowa Administrative Code as follows:

a. Hospitals, 481—Chapter 51;

b. Hospices, 481—Chapter 53;

c. Residential care facilities, 481—Chapters 57 and 60;

d. Nursing facilities, 481—Chapters 58 and 61;

e. Residential care facilities for persons with mental illness, 481—Chapters 60 and 62;

f. Residential care facilities for the intellectually disabled, 481—Chapters 60 and 63;

g. Intermediate care facilities for the intellectually disabled, 481—Chapter 64; and

h. Intermediate care facilities for persons with mental illness, 481—Chapter 65.

50.3(4) Posting of license. The license shall be posted in each facility so the public can see it easily.

[**ARC 0766C**, IAB 5/29/13, effective 7/3/13]

481—50.4(135C) Fines and citations. A fine or citation will be issued and may be contested according to the rules in 481—Chapter 56.

481—50.5(135C) Denial, suspension or revocation.

50.5(1) A denial, suspension or revocation shall be effective 30 days after certified mailing or personal service of the notice.

50.5(2) A hearing may be requested and the request must be made in writing to the department within 30 days of the mailing or service.

481—50.6(10A) Formal hearing. All decisions of the division may be contested. Appeals and hearings are controlled by 481—Chapter 10, "Contested Case Hearings."

50.6(1) The proposed decision of the hearing officer becomes final ten days after it is mailed.

50.6(2) Any request for administrative review of a proposed decision must:

1. Be made in writing,

2. Be mailed by certified mail to the director, within ten days after the proposed decision was mailed to the aggrieved party,

3. State the reason(s) for the request.

A copy shall also be sent to the hearing officer at the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319.

50.6(3) The decision of the director shall be based upon the record and becomes final agency action upon mailing by certified mail.

50.6(4) The fees of witnesses for attendance and travel shall be the same as the fees for witnesses before the district court and shall be paid by the party to the proceeding at whose request the subpoena is issued.

481—50.7(10A,135C) Additional notification. The director or the director's designee shall be notified within 24 hours, or the next business day, by the most expeditious means available (I,II,III):

50.7(1) Of any accident causing major injury.

a. "Major injury" shall be defined as any injury which:

(1) Results in death; or

(2) Requires admission to a higher level of care for treatment, other than for observation; or

(3) Requires consultation with the attending physician, designee of the physician, or physician extender who determines, in writing on a form designated by the department, that an injury is a "major injury" based upon the circumstances of the accident, the previous functional ability of the resident, and the resident's prognosis.

b. The following are not reportable accidents:

(1) An ambulatory resident, as defined in rules 481—57.1(135C), 481—58.1(135C), and 481—63.1(135C), who falls when neither the facility nor its employees have culpability related to the fall, even if the resident sustains a major injury; or

(2) Spontaneous fractures; or

(3) Hairline fractures.

50.7(2) When damage to the facility is caused by a natural or other disaster.

50.7(3) When there is an act that causes major injury to a resident or when a facility has knowledge of a pattern of acts committed by the same resident on another resident that results in any physical injury. For the purposes of this subrule, "pattern" means two or more times within a 30-day period.

50.7(4) When a resident elopes from a facility. For the purposes of this subrule, "elopes" means when a resident who has impaired decision-making ability leaves the facility without the knowledge or authorization of staff.

50.7(5) When a resident attempts suicide, regardless of injury.

50.7(6) When a fire occurs in a facility and the fire requires the notification of emergency services, require full or partial evacuation of the facility, or causes physical injury to a resident.

50.7(7) When a defect or failure occurs in the fire sprinkler or fire alarm system for more than 4 hours in a 24-hour period. (This reporting requirement is in addition to the requirement to notify the state fire marshal.)

NOTE: Additional reporting requirements are created by other rules and statutes, including but not limited to Iowa Code chapter 235B and 2008 Iowa Acts, House File 2591, which require reporting of dependent adult abuse.

481—50.8(22,135B,135C) Records. The division collects and stores a variety of records in the course of licensing and inspecting health care facilities. Some information stored may be personally identifiable. None is retrievable by personal identifier with the exception of a business which uses an individual's name in the title. All records stored by the health facilities division are kept in files under the name of a facility. Computer files are retrieved by facility name also.

50.8(1) The department maintains information about long-term care facilities in files which are organized by facility name, city, and county. No information is retrievable by personal identifier. Each long-term care facility record contains both open and confidential information.

a. Open information includes:

(1) License application and status,

(2) Variance requests and responses,

(3) Final findings of state and Medicaid survey investigations,

(4) Records of complaints,

(5) Reports from the fire marshal,

(6) Plans of correction submitted by the facility,

(7) Medicaid status,

(8) Official notices of license and Medicaid sanctions.

b. Confidential information includes:

(1) Survey or investigation information which does not comprise a final finding. Survey information which does not comprise a final finding may be made public in a proceeding concerning the citation of a facility, denial, suspension or revocation of a license, Iowa Code section 135C.19(1),

(2) Names of all complainants, Iowa Code sections 135C.19(1) and 135C.37,

(3) Names of patients in all facilities, identifying medical information and the address of anyone other than an owner, Section 1106 of the Social Security Act as amended, 42 CFR Part 401, Subpart B (October 1, 1986) and Iowa Code sections 22.9 and 135C.19(1).

50.8(2) The department maintains records about hospitals. The records are organized by facility name, city, and county. The records are not retrievable by personal identifier. The Joint Commission on the Accreditation of Healthcare Organizations is referred to as JCAHO, and the American Osteopathic Association is referred to as AOA in this rule. These records may contain both open and confidential information.

a. Open information includes:

(1) License status,

(2) Medicare certification status,

(3) Medicare survey reports,

(4) Plans of correction submitted by a hospital,

(5) Official notices of involuntary provider termination or license sanctions,

(6) For hospitals not certified by JCAHO or AOA, reports of the fire marshal,

(7) Final survey findings of the JCAHO and the AOA with respect to compliance by a hospital with the requirements for licensure or accreditation.

b. Confidential information includes:

(1) Names of patients and identifying medical information,

(2) Identity of any complainant, and

(3) The address of anyone other than the owner, Iowa Code section 135B.12 and Section 1106 of the Social Security Act, 42 CFR Part 401, Subpart B (October 1, 1986) and Iowa Code section 22.9.

(4) Rescinded IAB 2/19/92, effective 3/25/92.

(5) No information may be disclosed in a manner which will identify individuals or hospitals except in a proceeding concerning the question of license or the denial, suspension or revocation of a license, Iowa Code section 135B.12.

50.8(3) The department maintains files for all other Medicare-certified facilities. These files are organized by facility or agency name, city, and county. None is retrievable by personal identifier except when a business uses an individual's name in its title. These files contain both open and confidential information.

a. Open information includes:

(1) Certification status,

(2) Survey reports,

(3) Plans of correction,

(4) Official notices of involuntary provider termination,

(5) Proficiency test results for non-JCAHO or AOA accredited hospitals, Medicare laboratories and laboratories licensed under the clinical Laboratory Improvement Act.

b. Confidential information includes:

(1) Name of any patient,

(2) Medical information about any identifiable patient,

(3) The identity of any complainant, and

(4) The address of anyone other than an owner of the facility, Section 1106 of the Social Security Act, 43 CFR, Part 401, Subpart B (October 1, 1986), and Iowa Code section 22.9.

50.8(4) Rescinded IAB 3/31/04, effective 5/5/04.

50.8(5) Following a written request and payment of a fee in the amount determined by the department, one or more of the following lists may be obtained by the public.

a. Corporations which own more than one facility and the list of facilities owned by each corporation.

b. All the facilities in the state with the owner of the real estate property identified.

c. All corporations that lease facilities and the facilities they lease.

d. All corporations which manage facilities for other owners and the facilities they manage.

Requests are sent to Health Facilities Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319.

481—50.9(135C) Criminal, dependent adult abuse, and child abuse record checks.

50.9(1) *Definitions.* The following definitions apply for the purposes of this rule.

"Background check" or *"record check"* means criminal history, child abuse and dependent adult abuse record checks.

"Certified nurse aide training program" means a program approved in accordance with the rules for such programs adopted by the department of human services for the training of persons seeking to be a certified nurse aide for employment in a facility as defined by this rule or in a hospital as defined in Iowa Code section 135B.1.

"Direct services" means services provided through person-to-person contact. "Direct services" excludes services provided by individuals such as building contractors, repair workers, or others who are in a facility for a very limited purpose, are not in the facility on a regular basis, and who do not provide any treatment or services for residents, patients, tenants, or participants of the provider.

"Employed in a facility" or *"employment within a facility"* means all of the following if the provider is regulated by the state or receives any federal or state funding:

1. An employee of a health care facility licensed under Iowa Code chapter 135C if the employee provides direct or indirect services to residents;

2. An employee of a home health agency if the employee provides direct services to consumers;

3. An employee of a hospice if the employee provides direct services to consumers.

"Employee" means any individual who is paid either by the facility or any other entity (i.e., temporary agency, private duty, Medicare/Medicaid or independent contractors).

"Evaluation" means review by the department of human services to determine whether a founded child abuse, dependent adult abuse or criminal conviction warrants prohibition of the person's employment in a facility; or whether a founded child abuse, dependent adult abuse or criminal conviction warrants prohibition of a student's involvement in a clinical education component of the certified nurse aide training program involving children or dependent adults.

"Facility," for purposes of this rule, means all of the following if the provider is regulated by the state or receives any federal or state funding:

1. A health care facility licensed under Iowa Code chapter 135C;

2. A home health agency;

3. A hospice.

"Indirect services" means services provided without person-to-person contact such as those provided by administration, dietary, laundry, and maintenance.

"Student" means a person applying for, enrolled in, or returning to a certified nurse aide training program.

50.9(2) *Explanation of "crime."* For purposes of this rule, the term "crime" does not include offenses under Iowa Code chapter 321 classified as simple misdemeanor or equivalent simple misdemeanor offenses from another jurisdiction.

50.9(3) *Requirements for employer prior to employing an individual.* Prior to employment of a person in a facility, the facility shall request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks of the person in this state.

a. Informing the prospective employee. A facility shall ask each person seeking employment by the facility, "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime other than a simple misdemeanor offense relating to motor vehicles and laws of the road under Iowa Code chapter 321 or equivalent provisions, in this state or any other state?" In addition, the person shall be informed that a background check will be conducted. The person shall indicate, by signature, that the person has been informed that the background check will be conducted. (I, II, III)

b. Conducting a background check. The facility may access the single contact repository (SING) to perform the required background check. If the SING is used, the facility shall submit the person's maiden name, if applicable, with the background check request. If the SING is not used, the facility must obtain a criminal history check from the department of public safety and a check of the child and dependent adult abuse registries from the department of human services. (I, II, III)

c. If a person being considered for employment has been convicted of a crime. If a person being considered for employment in a facility has been convicted of a crime under a law of any state, the department of public safety shall notify the facility that upon the request of the facility the department of human services will perform an evaluation to determine whether the crime warrants prohibition of the person's employment in the facility. (I, II, III)

d. If a person being considered for employment has a record of founded child or dependent adult abuse. If a department of human services child or dependent adult abuse record check shows that a person being considered for employment in a facility has a record of founded child or dependent adult abuse, the department of human services shall notify the facility that upon the request of the facility the department of human services will perform an evaluation to determine whether the founded child or dependent adult abuse warrants prohibition of the person's employment in the facility. (I, II, III)

e. Employment pending evaluation. The facility may employ a person for not more than 60 calendar days pending the completion of the evaluation by the department of human services if all of the following apply. The 60-day period begins on the first day of the person's employment.

(1) The person is being considered for employment other than employment involving the operation of a motor vehicle;

(2) The person does not have a record of founded child or dependent adult abuse;

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

(4) The facility has requested that the department of human services perform an evaluation to determine whether the crime warrants prohibition of the person's employment. (I, II, III)

50.9(4) *Validity of background check results.* The results of a background check conducted pursuant to this rule shall be valid for a period of 30 calendar days from the date the results of the background check are received by the facility. (I, II, III)

50.9(5) *Employment prohibition.* A person who has committed a crime or has a record of founded child or dependent adult abuse shall not be employed in a facility unless an evaluation has been performed by the department of human services. (I, II, III)

50.9(6) *Transfer of an employee to another facility owned or operated by the same person.* If an employee transfers from one facility to another facility owned or operated by the same person, without a lapse in employment, the facility is not required to request additional criminal and child and dependent adult abuse record checks of that employee. (I, II, III)

50.9(7) *Transfer of ownership of a facility.* If the ownership of a facility is transferred, at the time of transfer the background check required by this rule shall be performed for each employee for whom there is no documentation that such background check has been performed. The facility may continue to employ such employee pending the performance of the background check and any related evaluation. (I, II, III)

50.9(8) *Change of employment—person with criminal or abuse record—exception to record check evaluation requirements.* A person with a criminal or abuse record who is or was employed by a facility and is hired by another facility shall be subject to the background check.

a. A reevaluation of the latest record check is not required, and the person may commence employment with the other facility if the following requirements are met:

(1) The department of human services previously performed an evaluation concerning the person's criminal or abuse record and concluded the record did not warrant prohibition of the person's employment;

(2) The latest background check does not indicate a crime was committed or founded abuse record was entered subsequent to the previous evaluation;

(3) The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed;

(4) Any restrictions placed on the person's employment in the previous evaluation by the department of human services and still applicable shall remain applicable in the person's subsequent employment; and

(5) The person subject to the background check has maintained a copy of the previous evaluation and provided it to the subsequent employer, or the previous employer provides the previous evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, a current record check evaluation shall be performed. (I, II, III)

b. For purposes of this subrule, a position is "substantially the same or has the same job responsibilities" if the position requires the same certification, licensure, or advanced training. For example, a licensed nurse has substantially the same or the same job responsibilities as a director of nursing; a certified nurse aide does not have substantially the same or the same job responsibilities as a licensed nurse.

c. The subsequent employer must maintain the previous evaluation in the employee's personnel file for verification of the exception to the requirement for a record check evaluation. (I, II, III)

d. The subsequent employer may request a reevaluation of the background check and may employ the person while the reevaluation is being performed, even though an exemption under paragraph 50.9(8)*"a"* may be authorized.

50.9(9) *Employee notification of criminal conviction or founded abuse after employment.* If a person employed by a facility employer that is subject to this rule is convicted of a crime or has a record of founded child or dependent adult abuse entered in the abuse registry after the person's employment application date, the person shall inform the employer of such information within 48 hours of the criminal conviction or entry of the record of founded child or dependent adult abuse.

a. The employer shall act to verify the information within 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.

b. If the information is verified, the facility shall follow the requirements of paragraphs 50.9(3)*"c"* and *"d."* (I, II, III)

c. The employer may continue to employ the person pending the performance of an evaluation by the department of human services.

d. A person who is required by this subrule to inform the person's employer of a conviction or entry of an abuse record and fails to do so within the required period commits a serious misdemeanor under Iowa Code section 135C.33.

e. The employer may notify the county attorney for the county where the employer is located of any violation or failure by an employee to notify the employer of a criminal conviction or entry of an abuse record within the period required under this subrule.

50.9(10) *Facility receipt of credible information that an employee has been convicted of a crime or has a record of founded abuse.* If the facility receives credible information, as determined by the facility, from someone other than the employee, that the employee has been convicted of a crime or a record of founded child or dependent adult abuse has been entered in the abuse registry after employment, and the employee has not informed the employer of the information within the time required by subrule 50.9(9), the facility shall take the following actions:

a. The facility shall act to verify credible information within 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.

b. If the information is verified, the facility shall follow the requirements of paragraphs 50.9(3)*"c"* and *"d."* (I, II, III)

50.9(11) *Proof of background checks for temporary employment agencies and contractors.* Proof of background checks may be kept in the files maintained by temporary employment agencies and contractors. Facilities may require temporary employment agencies and contractors to provide a copy of the result of the background checks. Copies of such results shall be made available to the department upon request. (I, II, III)

50.9(12) *Certified nurse aide training program students.* Prior to a student's beginning or returning to a certified nurse aide training program, the program shall request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks, in this state, of the student.

a. Prohibition of involvement in clinical education. If a student has a criminal record or a record of founded child or dependent adult abuse, the student shall not be involved in a clinical education component of the certified nurse aide training program involving children or dependent adults unless an evaluation has been performed by the department of human services. The evaluation shall be performed upon request of the certified nurse aide training program.

b. Involvement in clinical education component pending evaluation. The training program may allow the student's participation in the clinical education component for not more than 60 calendar days pending the completion of the evaluation by the department of human services if all of the following apply. The 60-day period begins on the first day of the student's participation in the clinical education component.

(1) The student's clinical education component of the training program involves children or dependent adults but does not involve the operation of a motor vehicle;

(2) The student does not have a record of founded child or dependent adult abuse;

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

(4) The training program has requested that the department of human services perform an evaluation to determine whether the crime warrants prohibition of the student's involvement in the clinical education component.

c. Student notification of criminal conviction or founded abuse after performance of record checks and evaluation. If a student is convicted of a crime or has a record of founded child or dependent adult abuse entered in the abuse registry after the record checks and any evaluation have been performed, the

student shall inform the certified nurse aide training program of such information within 48 hours of the criminal conviction or entry of the record of founded child or dependent adult abuse.

(1) The program shall act to verify the information within seven calendar days of notification. "Verify," for purposes of this paragraph, 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. If the information is verified, the program shall follow the requirements of paragraph 50.9(12)*"a"* to determine whether or not the student's involvement in a clinical education component may continue.

(2) The program may allow the student involvement to continue pending the performance of an evaluation by the department of human services.

(3) A student who is required to inform the program of a conviction or entry of an abuse record and fails to do so within the required period commits a serious misdemeanor under Iowa Code section 135C.33.

(4) The program may notify the county attorney for the county where the program is located of any violation or failure by a student to notify the program of a criminal conviction or entry of an abuse record within the period required by this paragraph.

d. Program receipt of credible information that a student has been convicted of a crime or has a record of founded abuse. If a program receives credible information, as determined by the program, that a student has been convicted of a crime or a record of founded child or dependent adult abuse has been entered in the abuse registry after the record checks and any evaluation have been performed, from a person other than the student, and the student has not informed the program of such information within 48 hours, the program shall act to verify the credible information within seven calendar days of receipt of the credible information. "Verify," for purposes of this paragraph, 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. If the information is verified, the requirements of paragraph 50.9(12)*"a"* shall be applied to determine whether or not the student's involvement in a clinical education component may continue.

e. Completion of a certified nurse aide training program conducted by the health care facility. If a certified nurse aide training program is conducted by the facility and a student of that program accepts and begins employment with the facility within 30 days of completing the program, the background check of the student performed prior to beginning the training program shall fulfill the criminal and abuse background check requirements. The facility shall maintain the proof required in subrule 50.9(11). (I, II, III)

This rule is intended to implement Iowa Code section 135C.14 and section 135C.33 as amended by 2013 Iowa Acts, Senate File 347.

[**ARC 0903C**, IAB 8/7/13, effective 9/11/13; **ARC 1566C**, IAB 8/6/14, effective 9/10/14]

481—50.10(135C) Inspections, exit interviews, plans of correction, and revisits.

50.10(1) *Frequency of inspection.* The department shall inspect a licensed health care facility at least once within a 30-month period. Facilities participating in the Medicare or Medicaid programs may be inspected more frequently as a part of a joint state and federal inspection.

50.10(2) *Accessibility of records, the facility, and persons.* An inspector of the department may enter any licensed health care facility without a warrant and may examine all records pertaining to the care provided to residents of the facility. An inspector of the department may contact or interview any resident, employee, or any other person who might have knowledge about the operation of a health care facility. The inspector may duplicate records and take photographs as part of the inspection.

50.10(3) *Exit interviews.* The health care facility shall be provided an exit interview at the conclusion of an inspection, and the facility representative shall be informed of all issues and areas of concern related to the deficiencies.

a. Methods of conducting exit interview. The department may conduct the exit interview either in person or by telephone.

b. Second exit interviews. The department shall conduct a second exit interview if any additional areas of concern are identified.

50.10(4) *Submission of additional or rebuttal information.* The facility shall be provided two working days from the date of the exit interview to submit additional or rebuttal information to the department.

a. Receipt of additional information. Additional or rebuttal information must be received by the department within two working days in order to be considered.

b. Methods to submit additional information. The additional or rebuttal information may be submitted via E-mail, facsimile, or overnight courier to the department.

c. Inform of the opportunity to submit additional or rebuttal information. During the inspection, the facility shall be informed of the opportunity to submit additional or rebuttal information and of the contact information for the department.

50.10(5) *Standards for determining whether a deficiency exists.* The department shall use a preponderance of the evidence standard when determining whether a regulatory deficiency exists. For purposes of this rule and rule 481—50.11(135C), "preponderance of the evidence standard" means that the evidence, considered and compared with the evidence opposed to it, produces the belief in a reasonable mind that the allegations or deficiency is more likely true than not true. This standard does not require that the inspector personally witnessed the alleged violation.

50.10(6) *Statement of deficiencies.* When one or more deficiencies are found, a statement of deficiencies detailing each deficiency shall be sent by the department to the health care facility within ten working days of the exit interview.

50.10(7) *Plan of correction.* Within ten calendar days following receipt of the statement of deficiencies, the health care facility shall submit a plan of correction to the department.

a. Contents of plan. The plan of correction shall contain the following information:

(1) How the facility will correct the deficient practice;

(2) How the facility will act to protect residents;

(3) The measures the facility will take or the systems it will alter to ensure that the problem does not recur;

(4) How the facility plans to monitor its performance to make sure that solutions are sustained; and

(5) Date(s) when corrective action will be completed.

b. Review of plan. The department shall review the plan of correction within ten working days of receipt. The department may request additional information or revisions to the plan, which shall be provided as requested.

50.10(8) *Revisits.* If a facility licensed under this chapter is subject to or will be subject to denial of payment including payment for Medicare or medical assistance (Medicaid) under Iowa Code chapter 249A, or denial of payment for all new admissions pursuant to 42 CFR Section 488.417, and submits a plan of correction relating to the deficiencies or a response to a citation issued under 481—Chapter 56 and the department elects to conduct an on-site revisit inspection, the department shall commence the revisit inspection within the shortest time feasible of the date that the plan of correction is received or the date specified within the plan of correction alleging compliance, whichever is later.

50.10(9) *Appeals of statement of deficiencies.* The facility may appeal the statement of deficiencies by filing an appeal request with the department within 20 working days after receipt of the statement of deficiencies. The procedures defined in rule 481—50.6(10A) shall be followed for the appeal.

[**ARC 8433B**, IAB 12/30/09, effective 2/3/10; **ARC 1566C**, IAB 8/6/14, effective 9/10/14]

481—50.11(135C) Complaint and self-reported incident investigation procedure.

50.11(1) *Complaint.* The process for filing a complaint is as follows:

a. Any person with concerns regarding a facility may file a complaint with the Department of Inspections and Appeals, Complaint/Incident Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; by use of the complaint hotline, 1-877-686-0027; by facsimile sent to (515)281-7106; or through the Web site address https://dia-hfd.iowa.gov/DIA_HFD/Home.do.

b. When the nature of the complaint is outside the department's authority, the department shall forward the complaint or refer the complainant to the appropriate investigatory entity.

c. The complainant shall include as much of the following information as possible in the complaint: the complainant's name, address and telephone number; the complainant's relationship to the facility or resident; and the reason for the complaint.

d. The complainant's name shall be confidential information and shall not be released by the department.

e. The department shall act on anonymous complaints unless the department determines that the complaint is intended to harass the facility.

f. If the department, upon preliminary review, determines that the complaint is intended as harassment or is without a reasonable basis, the department may dismiss the complaint.

50.11(2) *Self-reported incident.* When the facility is required pursuant to rule 481—50.7(10A,135C) or other requirements to report an incident, the facility shall make the report to the department via:

a. The Web-based reporting tool accessible from the following Internet site, https://dia-hfd.iowa.gov/DIA_HFD/Home.do, under the "Login" tab and then access "Add self report";

b. Mail by sending the self-report to the Department of Inspections and Appeals, Complaint/Incident Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083;

c. The complaint/incident hotline, 1-877-686-0027; or

d. Facsimile sent to (515)281-7106.

50.11(3) *Time frames for investigation of complaint or self-reported incident.* The following guidelines shall be used for determining the time frame in which an on-site inspection of the facility shall be initiated:

a. *Immediate jeopardy situation.* Within 2 working days for a complaint or self-reported incident determined by the department to be an alleged immediate jeopardy situation. For purposes of this rule, "immediate jeopardy situation" means a situation in which the facility's alleged noncompliance with Iowa Code chapter 135C, or rules adopted pursuant thereto, has caused or is likely to cause, serious injury, harm, impairment, or death to a resident.

b. *High-level nonimmediate jeopardy situation.* Within 10 days for nursing facilities and within 20 working days for intermediate care facilities and residential care facilities for a complaint or self-reported incident determined by the department to be an alleged high-level nonimmediate jeopardy situation. For purposes of this rule, "high-level nonimmediate jeopardy situation" means the alleged noncompliance with Iowa Code chapter 135C, or rules adopted pursuant thereto, may have caused harm that negatively impacts the resident's mental, physical, or psychosocial status and is of such consequence to the resident's well-being that a rapid response is warranted.

c. *Other nonimmediate jeopardy situation.* Within 45 calendar days for a complaint or self-reported incident determined by the department to be an alleged nonimmediate jeopardy situation, other than a high-level nonimmediate jeopardy situation. For purposes of this rule, "other nonimmediate jeopardy situation" means a situation that is not a high-level nonimmediate jeopardy situation where the alleged noncompliance with Iowa Code chapter 135C, or rules adopted pursuant thereto, may cause harm of limited consequence and does not significantly impair the individual's mental, physical, or psychosocial status or function.

d. *No inspection of facility-reported incidents.* The department may determine not to institute an inspection of a self-reported incident using criteria including, but not limited to, the following:

(1) There is no evident deficiency on the part of the facility, and the facility has taken appropriate measures to address the situation; or

(2) There is a potential deficiency but:

1. The facility has taken appropriate measures to address the situation;

2. The facility does not have a recent history of identified deficiency similar to or related to the incident being reported;

3. A complaint has not been filed regarding the incident being reported; and

4. The resulting injury does not cause a significant negative impact to the resident's quality of life.

50.11(4) *Standard for determining whether a complaint or self-reported incident is substantiated.* The department shall apply a preponderance of the evidence standard in determining whether a complaint or self-reported incident is substantiated.

50.11(5) *Notification of program and complainant.* The department shall notify the facility and, if known, the complainant of the findings of the complaint investigation. The department shall also notify the complainant, if known, if the department does not investigate a complaint, and the reasons for not investigating the complaint shall be included in the notification.

50.11(6) *Process for complaint and self-reported incident.* The department and facility shall follow the process outlined in rule 481—50.10(135C), as applicable, when conducting or responding to a complaint or self-reported incident investigation.

[**ARC 8433B**, IAB 12/30/09, effective 2/3/10]

481—50.12(135C) Requirements for service. At each inspection, the facility shall provide the most current contact information for the purpose of service of departmental notices. A statement of deficiencies or citation shall be served upon a facility using one of the following methods.

50.12(1) *Electronic mail.* If a facility has electronic mail, electronic mail shall be used for service of statements of deficiencies and citations. If electronic mail is used, the following shall be complied with:

a. The department shall send the electronic message return receipt requested. The response from the return receipt shall officially document receipt of the service and the date of receipt.

b. A facility shall allow the electronic return receipt to be returned to the department and shall not delay the sending of the return receipt.

c. If the department has not received the return receipt within three business days of sending the service via electronic mail, the department shall contact the facility to verify the receipt of the service.

50.12(2) *Certified mail.* If a facility does not have access to electronic mail, the service shall be sent via certified mail, return receipt requested.

50.12(3) *Personal service.* The department may choose to personally serve the notice upon the health care facility by delivering a copy of the statement of deficiencies or citation to the health care facility and presenting the copy to the facility.

[**ARC 8433B**, IAB 12/30/09, effective 2/3/10]

481—50.13(135C) Inspectors' conflicts of interest.

50.13(1) *Conflicts.* Any of the following circumstances disqualifies an inspector from inspecting a particular health care facility licensed under Iowa Code chapter 135C:

a. The inspector currently works or, within the past two years, has worked as an employee or employment agency staff at the health care facility, or as an officer, consultant, or agent for the health care facility to be inspected.

b. The inspector has any financial interest or any ownership interest in the facility. For purposes of this paragraph, indirect ownership, such as through a broad-based mutual fund, does not constitute a financial or ownership interest.

c. The inspector has an immediate family member who has a relationship with the facility as described in subrule 50.13(1), paragraphs *"a"* and *"b."*

50.13(2) *Immediate family member.* For purposes of this rule, "immediate family member" means the same as set forth in 42 CFR 488.301, and includes a husband or wife; natural or adoptive

parent, child, or sibling; stepparent, stepchild, or stepsibling; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; or grandparent or grandchild.
[**ARC 8433B**, IAB 12/30/09, effective 2/3/10]

These rules are intended to implement Iowa Code sections 22.11 and 135B.3 to 135B.7 and Iowa Code chapters 10A and 135C.

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CHAPTER 51
HOSPITALS

[Prior to 12/14/88, see Health Department[470] Ch 51]
[Prior to 8/8/90, see Public Health[641] Ch 51]

481—51.1(135B) Definitions. As used in this chapter, unless the context otherwise requires, the following definitions apply:

"Critical access hospital" means any hospital located in a rural area and certified by the Iowa department of public health as being a necessary provider of health care services to residents of the area. A "critical access hospital" makes available 24-hour emergency care, is a designated provider in a rural health network, and meets the criteria specified pursuant to 481—51.53(135B). If swing-bed approval has been granted, all 25 beds may be used interchangeably for acute or skilled nursing facility level of care services.

"Department" means the Iowa department of inspections and appeals.

"Governing board" means the board of trustees, the owner or the person or persons designated by the owner as the governing authority who shall have supreme authority in the hospital and be responsible for the management, control, and appointment of the medical staff.

"Governmental unit" means the state, or any county, municipality, or other political subdivision, or any department, division, board or other agency of any of the foregoing.

"Hospital" or *"general hospital"* means an institution, place, building, or agency represented and held out to the general public as ready, willing and able to furnish care, accommodations, facilities and equipment for the diagnosis or treatment, over a period exceeding 24 hours, of two or more nonrelated individuals suffering from illness, injury, infirmity or deformity, or other physical or mental condition for which medical, surgical and obstetrical care services are provided. The term "hospital" does not include the following:

1. Any institution for well children, day nursery and child care center, foster boarding homes or houses, and homes for disabled children. However, such institutions that have a dual function, including nursing and medical care, and care of the sick are required to be licensed.
2. Homes, houses or institutions for aged persons which limit their functions to room and board and provide no medical or nursing care and house no bedridden person.
3. Dispensary or first-aid stations maintained for the care of employees, students, customers, and members of any commercial or industrial plant, educational institution, or convent.

"Long-term acute care hospital" means any hospital that has an average inpatient length of stay greater than 25 days, and that provides extended medical and rehabilitative care for patients who are clinically complex and who may suffer from multiple acute or chronic conditions. Services provided by a long-term acute care hospital include but are not limited to comprehensive rehabilitation, respiratory therapy, head trauma treatment, and pain management. A long-term acute care hospital shall meet the requirements for a general hospital including emergency services, except that obstetrical facilities are not required, and, if the long-term acute care hospital is located within a separately licensed hospital and does not provide its own emergency services, the long-term acute care hospital shall contract for emergency services with the host general hospital.

"Medical staff" means an organized body that is composed of individuals appointed by the hospital governing board, that operates under bylaws approved by the governing board and that is responsible for the quality of medical care provided to patients by the hospital. All members of the medical staff, one of whom shall be a licensed physician, shall be licensed to practice in the state of Iowa.

"Person" means any individual, firm, partnership, corporation, company, association, or joint stock association and includes any trustee, receiver, assignee, or other similar representative.

"Premises" means any or all designated portions of a building or structure, enclosures or places in the building, or real estate when the distinct and clearly identifiable parts provide separate care and services. The definition of "premises" shall not be construed to permit the existence of a separately licensed specialty hospital within the physical structure of a general hospital. A specialty hospital shall be

defined pursuant to 42 CFR Section 411.351 and any amendments thereto, or pursuant to any regulations promulgated by the Secretary of Health and Human Services.

"Registered nurse" means a person who has graduated from an accredited school of nursing and who is registered in the state of Iowa.

"Specialized hospital" means any hospital devoted primarily to the specialized care and treatment of persons with chronic or long-term illness, injury, or infirmity. The diagnosis, treatment or care shall be administered by or performed under the direction of persons especially qualified in the diagnosis and treatment of the particular illness, injury, or infirmity. A specialized hospital shall meet the requirements for a general hospital. "Specialized hospital" as defined in this rule does not include a specialty hospital defined pursuant to 42 CFR Section 411.351.

481—51.2(135B) Classification, compliance and license.

51.2(1) Classification. For the purpose of administering the hospital licensing law, all institutions subject to licensure shall be classified as a critical access hospital, general hospital, long-term acute care hospital, or specialized hospital. The license issued by the department shall clearly identify the classification of the hospital.

51.2(2) Compliance requirements for each classification. A hospital shall comply with all of the general regulations for hospitals and shall comply with regulations pertaining to specialized services, if specialized services are provided in the hospital.

51.2(3) Separate license required. A separate license shall be required for each hospital even though more than one is operated under the same management. A separate license is not required for separate buildings of a hospital located on separate parcels of land, which are not adjoining but provide elements of the hospital's full range of services for the diagnosis, care, and treatment of human illness, including convalescence and rehabilitation, and which are organized under a single owner or governing board with a single designated administrator and medical staff.

51.2(4) Posting of license. The license shall be conspicuously posted on the premises.

51.2(5) The department shall recognize, in lieu of its own licensure inspection, the comparable inspections and inspection findings of The Joint Commission (JC), the American Osteopathic Association (AOA), Det Norske Veritas (DNV), or the Center for Improvement in Healthcare Quality (CIHQ) if the department is provided with copies of all requested materials relating to the inspection process. In cases of the initial licensure, the department may require its own inspection when needed in addition to comparable accreditations to allow the hospital to begin operations. The department may also initiate its own inspection when it is determined that the inspection findings of the JC, AOA, DNV, or CIHQ are insufficient to address concerns identified as possible licensure issues.

51.2(6) Hospitals not accredited by the JC, AOA, DNV, or CIHQ shall be inspected by the department utilizing the current Medicare conditions of participation found in Title XVIII of the federal Social Security Act and 42 CFR Part 482, Subparts A, B, C, D, and E, or 42 CFR Part 485, Subpart F, as of October 1, 2006. Licensed-only hospitals shall be inspected utilizing the requirements of this chapter. The department may promulgate additional standards. The department may recognize, in lieu of its own licensure inspection, the comparable inspection and inspection findings of a Medicare conditions of participation survey.

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

[**ARC 9253B**, IAB 12/1/10, effective 1/5/11; **ARC 1305C**, IAB 2/5/14, effective 3/12/14]

481—51.3(135B) Quality improvement program. There shall be an ongoing hospitalwide quality improvement program. This program is to be designed to improve, as needed, the quality of patient care by:

1. Assessing clinical patient care;
2. Assessing nonclinical and patient-related services within the hospital;
3. Developing remedial action as needed;
4. Ongoing monitoring and evaluating of the progress of remedial action taken.

51.3(1) The governing body shall ensure there is an effective hospitalwide patient-oriented quality improvement program.

51.3(2) The quality improvement program shall involve active participation of physician members of the hospital's medical staff and other health care professionals, as appropriate. Evidence of this participation will include ongoing case review and assessment of other patient care problems which have been identified through the quality improvement process.

51.3(3) There shall be a written plan for the quality improvement program that:

a. Describes the program's objectives, organization, scope, and mechanisms for overseeing the effectiveness of monitoring, evaluation, and problem-solving activities;

b. Ensures participation from all departments, services (including services provided both directly and under contract), and disciplines;

c. Provides for assessment of participation through a quality improvement committee meeting on an established periodic basis;

d. Provides for coordination of quality improvement activities;

e. Ensures communication, reporting and documentation of all quality improvement activities on a regular basis to the governing board, the medical staff, and the hospital administrator;

f. Provides for an annual evaluation by the governing board of the effectiveness of the quality improvement program; and

g. Addresses accessibility and confidentiality of materials relating to, generated by or part of the quality improvement process.

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

481—51.4(135B) Long-term acute care hospital located within a general hospital.

51.4(1) If a long-term acute care hospital occupies the same building, premises or physical location of a general hospital, all treatment facilities and administrative offices for each hospital shall be clearly marked and separated from each other, and located within the licensed premises of each licensee.

a. Treatment facilities shall be sufficient to meet the medical needs of the patients.

b. Administrative offices shall include, but not be limited to, record rooms and personnel offices.

c. There shall be clearly identifiable and distinguishable signs for each hospital.

51.4(2) If a long-term acute care hospital occupies the same building, premises or physical location of a general hospital, each hospital shall have its own entrance. The separate entrance shall have appropriate signs and shall be clearly identifiable as belonging to a particular hospital. Nothing shall prohibit a long-term acute care hospital that is occupying the same building, premises or physical location as a general hospital from utilizing the entrance, hallway, stairs, elevators or escalators of the general hospital to provide access to the long-term acute care hospital's separate entrance.

51.4(3) A long-term acute care hospital located within a general hospital shall have sufficient staff to meet the patients' needs. No nursing services staff of either the long-term acute care hospital or the host general hospital shall be simultaneously assigned patient duties in both licensed hospitals.

51.4(4) Each long-term acute care hospital located within a general hospital and the host general hospital shall have a separate and distinct governing board, which shall be in control of the respective hospital. No more than one board member shall serve in a common capacity on the governing board of each licensed hospital. For the purposes of this rule, control exists if an individual or an organization has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution.

51.4(5) A long-term acute care hospital located within a general hospital may contract with the host general hospital for the provision of services, including but not limited to pharmaceutical, radiological, laboratory, food and dietetic, surgical, anesthesia, emergency, housekeeping, laundry and environmental, or other services necessary to maintain a clean and safe physical environment. The contract shall be executed by the governing boards of the long-term acute care hospital and the host general hospital. All contracts shall clearly delineate the responsibilities of and services provided by the long-term acute care hospital and the host general hospital.

51.4(6) Any life safety code violation identified by the state fire marshal during an inspection of a licensee may be a life safety code violation for both the long-term acute care hospital and the general hospital.

481—51.5(135B) Medical staff.

51.5(1) A roster of medical staff members shall be kept.

51.5(2) All hospitals shall have one or more licensed physicians designated for emergency call service at all times.

51.5(3) A hospital shall not deny clinical privileges to physicians and surgeons, podiatrists, osteopaths or osteopathic surgeons, dentists, certified health service providers in psychology, physician assistants or advanced registered nurse practitioners licensed under Iowa Code chapter 148, 148C, 149, 150, 150A, 152, or 153 or section 154B.7 solely by reason of the license held by the practitioner or solely by reasons of the school or institution in which the practitioner received medical schooling or postgraduate training if the medical schooling or postgraduate training was accredited by an organization recognized by the council on postsecondary accreditation or an accrediting group recognized by the United States Department of Education.

51.5(4) A hospital shall establish and implement written criteria for the granting of clinical privileges. The written criteria shall include, but not be limited to, consideration of the:

a. Ability of the applicant to provide patient care services independently or appropriately in the hospital;

b. License held by the applicant to practice;

c. Training, experience, and competence of applicant;

d. Relationship between the applicant's request for privileges and the hospital's current scope of patient care services;

e. Applicant's ability to provide comprehensive, appropriate and cost-effective services.

481—51.6(135B) Patient rights and responsibilities. The hospital governing board shall adopt a statement of principles relating to patient rights and responsibilities. In developing a statement of principles, the hospital may use reference statements of patient rights and responsibilities developed by the American Hospital Association, The Joint Commission (JC), the American Osteopathic Association (AOA), Det Norske Veritas (DNV), the Center for Improvement in Healthcare Quality (CIHQ), and other appropriate sources.

51.6(1) The statement of principles shall be made available to patients of the hospital.

51.6(2) The statement of principles regarding patient rights shall, at a minimum, address:

a. Access to treatment regardless of race, creed, sex, national origin, diagnosis, or source of payment for care;

b. Preservation of individual dignity and protection of personal privacy in receipt of care;

c. Confidentiality of medical and other appropriate information;

d. Assurance of reasonable safety within the hospital;

e. Knowledge of the identity of the physician or other practitioner primarily responsible for the patient's care as well as identity and professional status of others providing services to the patient while in the hospital;

f. Nature of patient's right to information regarding the patient's medical condition unless medically contraindicated, to consult with a specialist at the patient's request and expense, and to refuse treatment to the extent authorized by law;

g. Access to and explanation of patient billings; and

h. Process for patient pursuit of grievances.

51.6(3) The statement of principles regarding patient responsibilities shall, at a minimum, address:

a. Need of patient to provide accurate and complete information regarding the patient's health status;

b. Need of patient to follow recommended treatment plans;

c. Requirement that patient abide by hospital rules and regulations affecting patient care and conduct and be considerate of the rights of other patients and hospital personnel; and

d. Obligation to fulfill the patient's financial obligations as soon as possible following discharge.

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

[**ARC 9253B**, IAB 12/1/10, effective 1/5/11; **ARC 1305C**, IAB 2/5/14, effective 3/12/14]

481—51.7(135B) Abuse.

51.7(1) *Definitions.*

a. Mental abuse includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation.

b. Physical abuse includes, but is not limited to, corporal punishment and the use of restraints as punishment.

c. Sexual abuse includes, but is not limited to, the exposing of pubes to a patient, and the exposure of a patient's genitals, pubes, breasts or buttocks, fondling or touching the inner thigh, groin, buttocks, anus, or breast of a patient or the clothing covering these areas for sexual satisfaction, sexually suggestive comments or remarks made to a patient, a genital-to-genital or oral-to-genital contact or the commission of a sexual offense under Iowa Code chapter 709 or Iowa Code section 726.2.

d. Domestic abuse, as defined in Iowa Code section 236.2, means the commission of assault under either of the following circumstances:

(1) The assault is between family or household members who resided together at the time of the assault; or

(2) The assault is between separated spouses or persons divorced from each other and not residing together at the time of the assault.

e. Family or household members, as defined in Iowa Code section 236.2, are spouses, persons cohabiting, parents, or other persons related by consanguinity or affinity, except children under the age of 18.

51.7(2) *Abuse prohibited.* Each patient shall receive kind and considerate care at all times and shall be free from mental, physical, and sexual abuse.

a. Restraints shall be applied only when they are necessary to prevent injury to the patient or to others and shall be used only when alternative measures are not sufficient to accomplish their purposes.

b. There must be a written order signed by the attending physician approving the use of restraints either at the time they are applied or as soon thereafter as possible.

c. Careful consideration shall be given to the methods by which the restraints can be speedily removed in case of fire or other emergency.

51.7(3) *Domestic abuse.* Each hospital shall establish and implement protocols with respect to victims of domestic abuse.

a. The policies and procedures shall at a minimum provide for:

(1) An interview with the victim in a place that ensures privacy;

(2) Confidentiality of the person's treatment and information;

(3) Sharing of information regarding the domestic abuse hotline and programs; and

(4) Education of appropriate emergency department staff to assist in the identification of victims of domestic abuse.

b. The treatment records of victims of domestic abuse shall include:

(1) An assessment of the extent of abuse to the victim specifically describing the location and extent of the injury and reported pain;

(2) Evidence that the victim was informed of the telephone numbers for the domestic abuse hotline and domestic abuse programs, and the victim's response;

(3) A record of the treatment and intervention by health care provider personnel;

(4) A record of the need for follow-up care and specification of the follow-up care to be given (e.g., X-rays, surgery, consultation, similar care); and

(5) The victim's statement of how the injury occurred.

51.7(4) *Child abuse and dependent adult abuse.* Each hospital shall ensure that written policies and procedures cover all requirements for the mandatory reporting of abuse pursuant to the Iowa Code. Each hospital shall provide that the treatment records of victims of child abuse or dependent adult abuse include a statement that the department of human services protective services was contacted.

481—51.8(135B) Organ and tissue—requests and procurement.

51.8(1) Each hospital licensed in accordance with Iowa Code chapter 135B shall have in place written policies and protocols for organ and tissue donation. Hospital policies and protocols for organ and tissue donation shall require that the patient, or appropriate person able to consent on behalf of the patient, be made aware of the option to donate as well as the option to refuse donation and the ability, if any, to revoke consent once given.

a. Hospitals shall be familiar with the uniform anatomical gift law, Iowa Code chapter 142C, and shall develop policies and protocols for consent to organ and tissue donation by either the patient or an appropriate person to consent on the patient's behalf consistent with that law's provisions.

b. Hospital policies and protocols for organ and tissue donation shall set forth the responsibilities of the attending physician or physicians, nursing staff, and other appropriate hospital staff persons in the organ and tissue donation process. At a minimum, the policies shall set forth who in particular is authorized to make an organ or tissue donor request and that all such requests shall be made only in accordance with clearly delineated written protocol approved by the hospital's medical staff and governing board.

c. Hospital policies and protocols for organ and tissue donation shall provide that the attending physician inform appropriate family members or others of impending death or that death has occurred prior to an organ or tissue donor request.

d. Hospital policies and protocols for organ and tissue donation shall set forth those situations in which donation shall not be made including, but not necessarily limited to, the following:

(1) Where the patient is not medically suitable, as determined by the organ or tissue procurement organization;

(2) Where the hospital lacks the appropriate facilities or equipment for maintaining the patient or the organs for the time and in the manner necessary to facilitate appropriate procurement of the organ(s);

(3) Where the medical examiner has refused to release the body, except a donor request may be made where the medical examiner indicates that the body will be available at a time where the patient remains medically suitable for organ or tissue donation;

(4) Where the hospital has appropriate documentation that the patient or the appropriate person to consent on behalf of the patient does not want to consider the donation option;

(5) Rescinded IAB 8/6/03, effective 9/10/03.

e. Hospital policies and protocols for organ and tissue donation shall require documentation in the patient's medical record of the fact that a donor request was made and either accepted or refused, stating to whom the request was made and who accepted or refused; or that a donor request was not made, stating the reason why no request was made; or that a consent previously given was subsequently revoked.

f. Method and manner of consent, where consent to organ or tissue donation has been given, shall be noted in the patient's medical record. Where revocation of consent, if applicable, occurs, the manner and method of revocation shall also be noted in the patient's medical record.

g. Where the patient has validly executed a donation prior to death, attempt will be made to notify appropriate family members, if reasonably available, of the donation before the procurement process begins.

h. Hospital policies and protocols for organ and tissue donation shall provide for ongoing communication with the patient's family or other appropriate representatives regarding the donation process, the present status of that process and unexpected delays in the process, and family rights and responsibilities following organ or tissue donation.

51.8(2) Determination of death.

a. No organ or tissue shall be removed from a donor until death has been determined according to the requirements of Iowa law and generally acceptable standards of medical practice.

b. Death is defined by Iowa Code section 702.8 as a condition determined by the following standards:

A person will be considered dead if in the announced opinion of a physician licensed pursuant to Iowa Code chapter 148, 150, or 150A, a physician assistant licensed pursuant to Iowa Code chapter 148C, or a registered nurse or a licensed practical nurse licensed pursuant to Iowa Code chapter 152, based on ordinary standards of medical practice, that person has experienced an irreversible cessation of spontaneous respiratory and circulatory functions. In the event that artificial means of support preclude a determination that these functions have ceased, a person will be considered dead if in the announced opinion of two physicians, based on ordinary standards of medical practice, that person has experienced an irreversible cessation of spontaneous brain functions. Death will have occurred at the time when the relevant functions ceased.

c. The surgeon performing the organ removal shall not participate in the determination of brain death.

d. The patient's medical record shall include documentation of the date and time of death and identification of the practitioner or practitioners who determined death, as provided in 51.8(2)*"b."*

51.8(3) Determination of medical suitability.

a. At or near the time of the patient's death or when death has occurred, no organ and tissue donor request shall be made until the patient has been determined by the designated organ or tissue procurement organization to be medically suitable for organ or tissue donation.

b. Each hospital shall consult with a recognized organ and tissue procurement program or programs in establishing medical requirements for organ and tissue donation and in evaluating a particular patient's suitability for donation. Where required by federal law, hospitals shall work only with organ or tissue procurement organizations designated by the Department of Health and Human Services (DHHS). Organ and tissue procurement programs maintain guidelines for determining medical suitability and generally will provide a hospital with a copy of those guidelines which may be incorporated into the hospital's own policies and protocol for organ and tissue donation.

51.8(4) Organ and tissue procurement.

a. Hospital policies and protocol for organ and tissue donation shall set forth the process to be used for contacting an organ procurement organization (OPO).

b. Hospitals with an agreement with the designated OPO shall take into account the terms and conditions of the agreement in developing their policies and protocols. Hospitals shall contact only the OPO designated by the federal Department of Health and Human Services.

c. Generally an OPO will assume the costs of procuring medically suitable organs and tissues, including costs borne by the donating hospital in maintaining the patient until organ retrieval can occur as well as in the retrieval process itself. A hospital shall be familiar with its financial obligations, if any, in the procurement process and with cost accounting/reporting responsibilities it bears, if any, under Medicare and Medicaid. In situations, if any, where the patient or the patient's family may be liable for certain costs associated with organ donation or procurement, the patient or person able to consent for the patient shall be fully informed of the potential financial obligations at the time of request and before consent is either given or refused.

d. When an organ or tissue is retrieved for transplantation purposes, the hospital shall ensure that the medical records of the donor and, if applicable, the recipient fulfill the requirements for any surgical inpatient medical record. Medical record documentation shall include the method of maintenance of the patient while awaiting organ or tissue retrieval and operative report documentation (including an autopsy if an autopsy has been performed) regarding the removal of the organ or tissue.

e. The procurement process shall not occur until necessary consent by the patient or appropriate person to consent on behalf of the patient is received and documented. Also, in cases requiring the involvement of the medical examiner, release of the body must be authorized by the medical examiner and documented.

f. Where a donor specifies to whom the organ or tissue donation is to be made, the hospital shall first contact the named donee to determine whether the donee accepts the donation. Where the donee refuses the donation or is unable for other reasons to accept, then the hospital shall document in the medical record the fact that the donation was not accepted. The hospital shall then notify the appropriate consenting party that the donation was not accepted and determine whether the consenting party desires to make further donation. A hospital shall make good faith effort to cooperate in the donation/procurement process where a specific donee has been named but shall not be required to participate in the donation process where procurement for a specific donee would result in undue burden or unreasonable cost to the hospital; in such situations, the hospital shall notify the appropriate consenting party and determine whether the consenting party desires to make further donation.

g. Where consent has been given for organ or tissue donation, revocation of prior consent, if applicable, shall not be effective once surgical procedures have begun on either the donor or the recipient.

51.8(5) Informed consent. Hospital policies and protocols for organ and tissue donation shall be consistent with informed consent provisions provided by the organ or tissue procurement organization.

51.8(6) Confidentiality. Hospital policies and protocols for organ and tissue donation shall provide that donor and recipient patient-identifying information shall be kept confidential except and only to the extent necessary to assist and complete the procurement and transplant process.

51.8(7) Training of hospital personnel. Hospital policies and protocols for organ and tissue donation shall include provisions for initial and ongoing training of hospital medical, nursing, and other appropriate staff persons regarding the various aspects of the organ and tissue donation and procurement process. The type and extent of training will vary from hospital to hospital, based on factors such as likelihood of medically suitable donors, capabilities for maintaining organ donors/patients, referral sources for potential organ and tissue donor candidates, and overall participation in organ and tissue procurement and transplants.

This rule is intended to implement Iowa Code section 135B.7.

481—51.9(135B) Nursing services.

51.9(1) The hospital shall have an organized nursing service which shall provide complete and efficient nursing care to each patient. The authority, responsibility and function of each nurse shall be clearly defined.

51.9(2) Registered nurse(s) shall utilize the nursing process in the provision of nursing care to each patient. The nursing process includes:

a. Nursing assessment about the health status of the patient, analysis of the data, and formation of a nursing diagnosis;

b. Planning of nursing care which includes determining goals and priorities for actions which are based on the nursing diagnosis;

c. Nursing interventions implementing the plan of care;

d. Evaluation of patient status in relation to established goals and the plan of care.

51.9(3) Licensed practical nurse(s) shall participate in the nursing process as described in subrule 51.9(2) consistent with accepted practice by assisting the registered nurse or physician.

51.9(4) All nurses employed in a hospital who practice nursing as a registered nurse or licensed practical nurse shall be licensed in Iowa.

51.9(5) There shall be a director of nursing service with administrative and executive competency who shall be a registered nurse licensed in the state of Iowa.

51.9(6) Supervisors and head nurses shall have had preparation courses and experience in accordance with hospital policy commensurate with the responsibility of the specific assignment.

51.9(7) All nonprofessional workers performing patient-care service shall be under the supervision of a registered nurse. Their duties shall be defined in writing by the hospital and they shall be instructed in all duties assigned to them.

51.9(8) The nursing service shall have adequate numbers of licensed registered nurses, licensed practical nurses, and other personnel to provide nursing care essential for the proper treatment, well-being, and recovery of the patient.

51.9(9) Written policies and procedures shall be established for the administrative and technical guidance of the personnel in the hospital. Each employee shall be familiar with these policies and procedures.

51.9(10) Each hospital shall have a minimum of one registered nurse on duty at all times.

481—51.10(135B) Water supply. Rescinded IAB 12/22/93, effective 1/26/94.

481—51.11(135B) Sewage disposal. Rescinded IAB 12/22/93, effective 1/26/94.

481—51.12(135B) Records and reports.

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

51.12(2) *Hospital records.*

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

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

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

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

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

481—51.13(135B) Sterilizing equipment. Rescinded IAB 12/22/93, effective 1/26/94; see 481—51.50(135B).

481—51.14(135B) Pharmaceutical service.

51.14(1) *General requirements.* Hospital pharmaceutical services shall be licensed in accordance with Iowa board of pharmacy examiners rules in 657—Chapter 7.

51.14(2) *Medication administration.* All drugs and biologicals must be administered by, or under the supervision of, nursing or other trained personnel in accordance with hospital policies and procedures. The person assigned the responsibility of medication administration must complete the entire procedure by personally preparing the dose from a multiple-dose container or using a prepackaged unit dose, personally administering it to the patient, and observing the act of the medication being taken.

51.14(3) *Medication orders.* All verbal orders must be authenticated in writing and signed by the prescribing practitioner within a period not to exceed 30 days following a patient's discharge.

When telephone, oral or electronic mechanisms are used to transmit medication orders, they must be accepted only by personnel that are authorized to do so by hospital policies and procedures in a manner consistent with federal and state law.

51.14(4) *Standing orders.* Standing orders for drugs may be used for specified patients when authorized by the prescribing practitioner. These standing orders shall be in accordance with policies and procedures established by the appropriate committee within each hospital. At a minimum, the standing orders shall:

a. Specify the circumstances under which the drug is to be administered;

b. Specify the types of medical conditions of the patients for whom the standing orders are intended;

c. Be reviewed and revised by the prescribing practitioner on a regular basis as specified by hospital policies and procedures;

d. Be specific as to the drug, dosage, route, and frequency of administration; and

e. Be dated, signed by the prescribing practitioner within a period not to exceed 30 days following a patient's discharge, and included in the patient's medical record.

51.14(5) *Self-administration of medications.* Patients shall only be permitted to self-administer medications when specifically ordered by the prescribing practitioner and the prescribing practitioner has determined this practice is safe for the specific patient. The hospital shall develop policies and procedures regarding storage and documentation of the administration of drugs.

481—51.15(135B) Screens. Rescinded IAB 12/22/93, effective 1/26/94; see 481—51.50(135B).

481—51.16(135B) Radiological services.

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

51.16(2) All radiological services including diagnostic, fluoroscopy, mammography, therapeutic, and nuclear medicine furnished by the hospital or its agent shall be furnished in compliance with 641 IAC Chapters 38 to 42.

481—51.17(135B) Laundry. Rescinded IAB 12/22/93, effective 1/26/94; see 481—51.50(135B).

481—51.18(135B) Laboratory service.

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

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

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

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

481—51.19 Reserved.

481—51.20(135B) Food and nutrition services.

51.20(1) *Food and nutrition service definition.* "Food service" means providing safe, satisfying, and nutritionally adequate food for patients through the provision of appropriate staff, space, equipment, and supplies. "Nutrition service" means providing assessment and education to ensure that the nutritional needs of the patients are met.

51.20(2) *General requirements.*

a. All food shall be handled, prepared, served, and stored in compliance with the requirements of the 2005 Food and Drug Administration Food Code with Supplement adopted under provisions of Iowa Code section 137F.2.

b. The food service shall provide food of the quality and quantity to meet the patient's needs in accordance with the qualified health practitioner's orders and, to the extent medically possible, to meet the current Recommended Dietary Allowances, adopted by the Food and Nutrition Board of the National Research Council, National Academy of Sciences, and the following:

(1) Not less than three meals shall be served daily unless contraindicated.

(2) Not more than 14 hours shall elapse between the evening meal and breakfast of the following day.

(3) Nourishment between meals shall be available to all patients unless contraindicated by the qualified health care practitioner.

(4) Patient food preferences shall be respected as much as possible, and substitutes shall be offered through use of appropriate food groups.

(5) When food is provided by a contract food service, all applicable requirements set forth herein shall be met. The hospital shall maintain adequate space, equipment, and staple food supplies to provide patient food service in emergencies.

c. Policies and procedures shall be developed and maintained in consultation with representatives of the medical staff, nursing staff, food and nutrition service staff, pharmacy staff, and administration to govern the provision of food and nutrition services. Policies and procedures shall be approved by the medical staff, administration, and governing body.

d. A current diet manual approved by the dietitian and the medical staff shall be used as the basis for diet orders and for planning therapeutic diets. The diet manual shall be reviewed, revised and updated at least every five years. Copies of the diet manual shall be readily available to all medical, nursing, and food service personnel.

e. Therapeutic diets shall be provided as prescribed by the qualified health care practitioner and shall be planned, prepared, and served with supervision or consultation from the licensed dietitian. Persons responsible for therapeutic diets shall have sufficient knowledge of food to make appropriate substitutions when necessary.

f. The patient's diet card shall state likes, dislikes, food allergies, and other pertinent information.

g. Menus.

(1) Menus for regular and therapeutic diets shall be written, approved, dated and available in the food service area at least one week in advance.

(2) If meals served vary from the planned menu, the change shall be noted in writing as part of the available menu. A copy of the menu as served shall be kept on file for at least 30 days.

(3) Menus should be planned with consideration for cultural and religious background and food habits of patients.

(4) Standardized recipes with nutritional analysis adjusted to number of portions shall be maintained and used in food preparation.

h. Food shall be prepared by methods that conserve nutritive value, flavor, and appearance. Food shall be served attractively at appropriate and safe temperatures and in a form to meet individual needs.

i. Nutritional care.

(1) Nutrition screening shall be conducted by qualified hospital staff to determine the patient's need for a comprehensive nutrition assessment by the licensed dietitian.

(2) Nutritional care shall be integrated in the patient care plan, as appropriate, based upon the patient's diagnosis and length of stay.

(3) The licensed dietitian shall record in the patient's medical record any observations and information pertinent to medical nutrition therapy.

(4) Pertinent dietary records shall be included in the patient's transfer discharge record to ensure continuity of nutritional care.

(5) Upon discharge, nutrition counseling and education shall be provided to the patient and family as ordered by the qualified health care practitioner, requested by the patient or deemed appropriate by the licensed dietitian.

j. In-service training, in accordance with hospital policies, shall be provided for all food and nutrition service personnel. A record of subject areas covered, date and duration of each session, and attendance lists shall be maintained. In-service records shall be kept for a minimum of one year.

k. On the nursing units, a separate patient food storage area shall be maintained that ensures proper temperature control.

51.20(3) *Food and nutrition service staff.*

a. A licensed dietitian shall be employed on a full-time, part-time or consulting basis. Part-time or consultant services shall be provided on the premises at appropriate times on a regularly scheduled basis. These services shall be of sufficient duration and frequency to provide continuing liaison with medical and nursing staffs, advice to the administrator, patient counseling, guidance to the supervisor and staff of the food and nutrition service, approval of all menus, and participation in the development or revision of departmental policies and procedures and in planning and conducting in-service education programs.

b. If a licensed dietitian is not employed full-time, then one must be employed on a part-time or consultation basis with an additional full-time person who has completed a 250-hour dietary manager course and who shall be employed to be responsible for the operation of the food service.

c. Sufficient food service personnel shall be employed, oriented, trained, and their working hours scheduled to provide for the nutritional needs of the patients and to maintain the food service areas. If food service employees are assigned duties in other service areas, those duties shall not interfere with the sanitation, safety, or time required for food service work assignments.

51.20(4) *Food service equipment and supplies.* Equipment necessary for preparation and maintenance of menus, records, and references shall be provided. At least one week's supply of staple foods and a reasonable supply of perishable foods shall be maintained on the premises. Supplies shall be appropriate to meet the requirements of the menu.

[**ARC 9252B**, IAB 12/1/10, effective 1/5/11]

481—51.21 Reserved.

481—51.22(135B) Equipment for patient care. Hospital equipment shall be selected, maintained and utilized in accordance with the needs of the patients.

51.22(1) *Furnishings, supplies and equipment.* Rescinded IAB 12/1/99, effective 1/5/00.

51.22(2) *Hot water bags.* Rescinded IAB 12/1/99, effective 1/5/00.

51.22(3) *Restraints.* Rescinded IAB 3/30/94, effective 5/4/94. See rule 51.7(135B).

51.22(4) *Signals.* Rescinded IAB 12/1/99, effective 1/5/00.

51.22(5) *Screens.* Rescinded IAB 12/1/99, effective 1/5/00.

51.22(6) *Storage space.* Rescinded IAB 12/1/99, effective 1/5/00.

481—51.23 Reserved.

481—51.24(135B) Infection control. There shall be proper policies and procedures for the prevention and control of communicable diseases. The hospital shall provide for compliance with the rules for the control of communicable disease as provided by the state department of public health in 641—Chapter 1, 1987 and 1988 Centers for Disease Control (CDC) guidelines on universal precautions and 1985 CDC guidelines for hand washing.

51.24(1) *Segregation.* There shall be proper arrangement of areas, rooms and patients' beds to provide for the prevention of cross-infections and the control of communicable diseases.

a. There shall be proper procedures for the cleansing of rooms and surgeries, immediately following the care of a communicable case.

b. Segregation of communicable cases shall include policies for the medical, nursing and lay staffs, providing for proper isolation technique in order to prevent cross-infection.

51.24(2) *Visitors.* The governing authority of the hospital shall establish proper policies for the control of visitors to all services in the hospital in accordance with hospital practice. In the maternity area, each hospital should develop its own criteria, control measures, and protocols to ensure against introduction of infection in this critical area. These criteria should be reviewed and approved by the committee of the hospital.

51.24(3) *Health examinations.* Health examinations for all personnel shall be required at the commencement of employment and thereafter at least every four years. The examination shall include, at a minimum, the health status of the employee. Consideration shall be given to requiring health examinations at shorter intervals for those employees working in high-risk areas. Screening and testing for tuberculosis shall be conducted pursuant to 481—Chapter 59.

51.24(4) *Notification.* Prior to removal of a deceased resident/patient from a facility, the funeral director or person responsible for transporting the body shall be notified by the facility staff of any special precautions that were followed by the facility having to do with the mode of transmission of a known or suspected communicable disease.

This rule is intended to implement Iowa Code section 135B.7.

[**ARC 0484C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

481—51.25 Reserved.

481—51.26(135B) Surgical services. All hospitals providing surgical services shall be properly organized and equipped to provide for the safe and aseptic treatment of surgical patients.

51.26(1) Written policies and procedures shall be implemented governing surgical services that are consistent with the needs of the patient and the resources of the hospital. Policies and procedures shall be developed in consultation with and the approval of the hospital's medical staff. At a minimum, the policies and procedures shall provide for:

a. Surgical services under the direction of a qualified doctor of medicine or osteopathy.

b. Delineation of the privileges and qualifications of individuals authorized to provide surgical services as set forth in the hospital's medical staff bylaws and in accordance with subrule 51.5(4). The surgical service must maintain a roster of these individuals specifying the surgical privileges of each. Surgical privileges shall be reviewed and updated at least once every two years.

c. Immediate availability of at least one registered nurse for the operating room suites to respond to emergencies.

d. The qualifications and job descriptions of nursing personnel, surgical technicians, and other support personnel and continuing education required.

e. Appropriate staffing for surgical services including physician and anesthesia coverage and other support personnel.

f. Availability of ancillary services for surgical patients including, but not limited to: blood banking, laboratory, radiology, and anesthesia.

g. Infection control and disease prevention, including aseptic surveillance and practice, identification of infected and noninfected cases, sterilization and disinfection procedures, and ongoing monitoring of infections and infection rates.

h. Housekeeping requirements.

i. Safety practices.

j. Ongoing quality assessment, performance improvement, and process improvement.

k. Provisions for the pathological examination of tissue specimens either directly or through contractual arrangements.

l. Appropriate preoperative teaching and discharge planning.

Reference sources to guide hospitals in the development of policies and procedures are: "Statement of Principles," March 1994 Edition, American College of Surgeons; and "Standards and Recommended Practices," 1995 Edition, Association of Operating Room Nurses.

51.26(2) Policies and procedures may be adjusted as appropriate to reflect the provision of surgical services in inpatient, outpatient or one-day surgical settings.

51.26(3) There must be an appropriate history and physical workup documented and a properly executed consent form in the chart of each patient prior to surgery, except in the event of an emergency.

51.26(4) An operative report must be written or dictated promptly following surgery and signed by the individual conducting the surgery.

51.26(5) Equipment available in the operating room, recovery room, outpatient surgical areas, and for postsurgical care, must be consistent with the needs of the patient.

51.26(6) The surgical facilities shall be constructed in accordance with 481—51.50(135B).

481—51.27 Reserved.

481—51.28(135B) Anesthesia services.

51.28(1) There shall be written policies and procedures governing anesthesia services which are consistent with the needs and resources of the hospital.

a. Policies and procedures shall be developed in consultation with and with the approval of the hospital's medical staff.

b. At a minimum, the policies and procedures shall provide:

(1) Anesthesia services shall be provided under the direction of a qualified doctor of medicine or osteopathy.

(2) Delineation of the qualifications of individuals authorized to administer anesthesia as set out in the hospital's medical staff bylaws or medical staff rules and regulations.

(3) For preanesthesia evaluation, appraisal of a patient's current condition, preparation of an intraoperative anesthesia record, and discharge criteria for patients.

(4) For equipment functioning and safety, including ensuring that a qualified medical doctor, osteopathic physician and surgeon or anesthetist checks, prior to the administration of anesthesia, the readiness, availability, cleanliness, and working condition of all equipment to be used in the administration of anesthetic agents.

(5) For minimizing electrical hazards in all anesthetizing areas.

(6) Quality assurance which shall at least include infection control procedures; integration of anesthesia services into various areas of the hospital; and ongoing monitoring, review, and evaluation of anesthesia services, processes, and procedures.

51.28(2) Policies and procedures may be adjusted as appropriate to reflect provision of anesthesia services in inpatient, outpatient, or one-day surgery settings.

This rule is intended to implement Iowa Code section 135B.7.

481—51.29 Reserved.

481—51.30(135B) Emergency services. All hospitals shall provide for emergency service which offers reasonable care within the medical capabilities of the facility in determining whether an emergency exists, renders care appropriate to the facility and at a minimum renders lifesaving first aid and makes appropriate referral to a facility that is capable of providing needed services.

51.30(1) The hospital has written policies and procedures specifying the scope and conduct of patient care to be provided in the emergency service.

a. The policies specify the mechanism for providing physician coverage at all times as defined by the medical staff bylaws.

b. The policies provide for a planned, formal training program required of all personnel providing patient care in the emergency service. This program shall cover emergency care for patients of all ages.

c. The policies require that a medical record be kept on every patient given treatment in the emergency service and establish the medical record documentation. The documentation should include at a minimum appropriate information regarding the medical screening provided, except where the person refuses, then notation of patient refusal; physician documentation of the presence or absence of an emergency medical condition or active labor; physician documentation of transfer or discharge, stating the basis for transfer or discharge; and where transfer occurs, identity of the facility of transfer, acceptance of the patient by the facility of transfer, and means of transfer of the patient.

d. The policies and procedures are reviewed and approved annually by the governing board.

51.30(2) Hospital policies and procedures shall be developed in accordance with the hospital's medical, technological, personnel and equipment capabilities.

481—51.31 Reserved.

481—51.32(135B) Obstetric and neonatal services.

51.32(1) All general or specialized hospitals providing for the obstetrical care of maternity patients shall be properly organized and equipped to provide accommodations for mothers and newborn infants. The supervision of the maternity area shall be under the direction of a qualified registered nurse, and there shall be accommodations for the isolation of infected cases.

51.32(2) Written policies and procedures shall be implemented governing obstetric and neonatal services that are consistent with the needs of the patient and resources of the hospital. Policies and procedures shall be developed in consultation with and with the approval of the hospital's medical staff. At a minimum, the policies and procedures shall provide for:

a. Obstetric and neonatal services under the direction of a qualified doctor of medicine or osteopathy.

b. Delineation of the privileges and qualifications of individuals authorized to provide obstetrical/gynecological service as set out in the hospital's medical staff bylaws.

c. The qualifications of nursing personnel and continuing education required.

d. Adequate staffing for obstetrical and newborn services.

e. Location and arrangement of obstetric and newborn services.

f. Infection control and disease prevention.

g. Ongoing quality assessment.

Reference sources to guide hospitals in the development of policies and procedures are: 641—Chapter 150, Iowa Regionalized System of Perinatal Health Care, Iowa Administrative Code, and Guidelines for Perinatal Care, Fourth Edition, American Academy of Pediatrics, American College of Obstetrics and Gynecology.

481—51.33 Reserved.

481—51.34(135B) Pediatric services.

51.34(1) All general or specialized hospitals providing pediatric care shall be properly organized and equipped to provide appropriate accommodations for children. The supervision of the pediatric area shall be under the direction of a qualified registered nurse.

51.34(2) Written policies and procedures shall be implemented governing pediatric services that are consistent with the needs of the child and resources of the hospital. Policies and procedures shall be developed in consultation with and the approval of the hospital's medical staff. At a minimum, the policies and procedures shall provide for:

a. Pediatric services under the medical direction of a qualified doctor of medicine or osteopathy.

b. Delineation of the privileges and qualifications of individuals authorized to provide pediatric services as set out in the hospital's medical staff bylaws.

c. The qualifications of nursing personnel and continuing education required, including care in the event of emergency situations.

d. Adequate staffing and equipment for pediatric services including ancillary services. Staff participating in the care of pediatric patients shall have an interest in pediatrics and shall have specialized education appropriate to their profession for the care of pediatric patients.

e. Ancillary services for pediatric patients shall be available and include, but not be limited to, pharmaceutical care, laboratory services, respiratory therapy, physical therapy and speech therapy.

f. Ongoing quality assessment.

g. Written protocol for transfer of pediatric patients in the event the hospital does not have capability to provide care for these patients.

Reference sources to guide hospitals in the development of policies and procedures are American Academy of Pediatrics' 1994 Policy Reference Guide and policy statements which are published on a monthly basis in "Pediatrics" and "Pediatric Dosage Handbook," Third Edition, American Pharmaceutical Association.

51.34(3) There shall be proper facilities and procedures for the isolation of pediatric patients with communicable diseases.

481—51.35 Reserved.

481—51.36(135B) Psychiatric services.

51.36(1) Any institution operating as a psychiatric hospital or operating a designated psychiatric unit shall:

a. Be a hospital or unit primarily engaged in providing, by or under the supervision of a doctor of medicine or osteopathy, psychiatric services for the diagnosis and treatment of persons with psychiatric illnesses/disorders;

b. Meet the general and specialized rules of this chapter pertaining to general hospitals. If medical and surgical diagnostic and treatment services are not available within the institution, the institution shall have an agreement with an outside source of these services to ensure they are immediately available;

c. Have policies and procedures for informing patients of their rights and responsibilities and for ensuring the availability of a patient advocate; and

d. Have sufficient numbers of qualified professionals and support staff to evaluate patients, formulate written individualized comprehensive treatment plans, provide active treatment measures, and engage in discharge planning.

51.36(2) Personnel.

a. *Director of inpatient psychiatric services.* The director of inpatient psychiatric services shall be a doctor of medicine or osteopathy qualified to meet the training and experience requirements for examination by the American Board of Psychiatry and Neurology or the American Osteopathic Board of Neurology and Psychiatry. The number and qualifications of doctors of medicine or doctors of osteopathy on staff must be adequate to provide essential psychiatric and medical services.

b. *Director of psychiatric nursing services.* The director of psychiatric nursing services shall:

(1) Be a registered nurse who has a master's degree in psychiatric or mental health nursing; or

(2) Be qualified by education and two years' experience in the care of persons with mental disorders.

c. *Psychological services.* Psychological services shall be provided or available which are in compliance with Iowa Code chapter 154B.

d. *Social services.* Social services shall provide, or have available by contract, at least one staff member who has:

(1) A master's degree from an accredited school of social work; or

(2) A bachelor's degree in social work with two years' experience in the care of persons with mental disorders.

e. *Therapeutic services.* Therapeutic activities shall be provided by qualified therapists. The activities shall be appropriate to the needs and interests of the patients.

51.36(3) Individual written plan of care. An individual written plan of care shall be developed by an interdisciplinary team of a physician and other personnel who are employed by, or who provide service under contract to patients in the facility. The plan of care shall:

a. Be based on a diagnostic and psychiatric evaluation that includes examination of the medical, psychological, social, behavioral, and developmental aspects of the patient. The initial diagnostic and psychiatric evaluation shall be completed within 60 hours of admission;

b. Be developed by an interdisciplinary team in consultation with the patient, the patient's legal guardian, and others who are currently providing services or who will provide care upon discharge;

c. State treatment objectives through measurable and obtainable outcomes;

d. Prescribe an integrated program of therapies, activities, and experiences designed to meet those objectives;

e. Include an appropriate postdischarge plan with coordination of services to provide continuity of care following discharge; and

f. Be reviewed as needed or at least every 30 days by the interdisciplinary team for the continued appropriateness of the plan and for a determination of needed changes.

481—51.37 Reserved.

481—51.38(135B) Long-term care service.

51.38(1) *Long-term care service definition.* Long-term care service means any building or distinct part of a building utilized by the hospital for the provision of a service (except as provided by 51.38(2) below) that falls within the definition of a health care facility as specified in Iowa Code chapter 135C and Iowa Code section 135C.1(12), nursing facility, as it would be applied were it not operating as part of a hospital licensed under Iowa Code chapter 135B.

51.38(2) *Long-term care service general requirements.* The general requirements for the hospital's long-term care service shall be the same as required by Iowa Code chapter 135C and the rules promulgated under its authority for the category of health care facility involved. Exceptions to those rules requiring distinct parts to be established may be waived where it is found to be in the best interest of the long-term care resident and of no detriment to the patients in the hospital.

Requests for variances to other rules for which equivalent health, safety and welfare provisions are provided may be made in accordance with the appropriate health care facility rules. In any case where a distinct part has been established for long-term residents or where the department has given approval for the intermingling of such residents with acute care patients, the same provisions and rules promulgated under Iowa Code chapter 135C shall be applicable. These rules include, but are not limited to, the same restrictions, obligations, programs of care, personal and rehabilitative services and all of the conveniences and considerations which the residents would normally have received in a licensed health care facility.

51.38(3) *Long-term care service staff.* The staffing requirements for the hospital's long-term care service shall be the same as required by Iowa Code chapter 135C and the rules promulgated under its authority for the category of health care facility involved. Where a hospital operates a freestanding nursing care facility, it shall be under the administrative authority of a licensed nursing home administrator who will be responsible to the hospital's administrator. Where a hospital operates a distinct part long-term care unit under the auspices of the hospital license, a licensed nursing home administrator is not required.

51.38(4) *Long-term care service equipment and supplies.* The equipment and supplies required for the hospital's long-term care service shall be the same as required by Iowa Code chapter 135C and the rules promulgated under its authority for the category of health care facility involved.

51.38(5) *Long-term care service space.* The space requirements for the various areas and resident rooms of the hospital's long-term care service shall be the same as required by Iowa Code chapter 135C and the rules promulgated under its authority for the category of health care facility involved.

481—51.39(135B) Penalty and enforcement. See Iowa Code sections 135B.14 to 135B.16.

481—51.40(135B) Validity of rules. If any provision of these rules or the application thereof to any person or circumstances shall be held invalid, such validity shall not affect the provisions or application of these rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules are declared to be severable.

481—51.41(135B) Criminal, dependent adult abuse, and child abuse record checks.

51.41(1) *Definitions.* The following definitions apply for the purposes of this rule.

"Background check" or *"record check"* means criminal history, child abuse and dependent adult abuse record checks.

"Direct services" means services provided through person-to-person contact. "Direct services" excludes services provided by individuals such as building contractors, repair workers, or others who are in a hospital for a very limited purpose, who are not in the hospital on a regular basis, and who do not provide any treatment or services for the patients of the hospital.

"Employee" means any individual who is paid, either by the hospital or any other entity (i.e., temporary agency, private duty, Medicare/Medicaid or independent contractors).

"Evaluation" means review by the department of human services to determine whether a founded child abuse, dependent adult abuse or criminal conviction warrants the person's being prohibited from employment in a hospital.

"Indirect services" means services provided without person-to-person contact such as those provided by administration, dietary, laundry, and maintenance.

51.41(2) *Requirements for employer prior to employing an individual.* Prior to employment of a person in a hospital, the hospital shall request that the department of public safety perform a criminal

history check and that the department of human services perform child and dependent adult abuse record checks of the person in this state.

a. Informing the prospective employee. A hospital shall ask each person seeking employment by the hospital, "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime in this state or any other state?" The person shall also be informed that a background check will be conducted. The person shall indicate, by signature, that the person has been informed that the background check will be conducted.

b. Conducting a background check. The hospital may access the single contact repository (SING) to perform the required background check. If the SING is used, the hospital shall submit the person's maiden name, if applicable, with the background check request. If SING is not used, the hospital must obtain a criminal history check from the department of public safety and a check of the child and dependent adult abuse registries from the department of human services.

c. If a person considered for employment has been convicted of a crime. If a person being considered for employment in a hospital has been convicted of a crime under a law of any state, the department of public safety shall notify the hospital that upon the request of the hospital the department of human services will perform an evaluation to determine whether the crime warrants prohibition of the person's employment in the hospital.

d. If a person considered for employment has a record of founded child abuse or dependent adult abuse. If a department of human services child or dependent adult abuse record check shows that a person being considered for employment in a hospital has a record of founded child or dependent adult abuse, the department of human services shall notify the hospital that upon the request of the hospital the department of human services will perform an evaluation to determine whether the founded child or dependent adult abuse warrants prohibition of employment in the hospital.

e. Employment pending evaluation. The hospital may employ a person for not more than 60 calendar days pending the completion of the evaluation by the department of human services if all of the following apply. The 60-day period begins on the first day of the person's employment.

(1) The person is being considered for employment other than employment involving the operation of a motor vehicle;

(2) The person does not have a record of founded child or dependent adult abuse;

(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

(4) The hospital has requested an evaluation to determine whether the crime warrants prohibition of the person's employment.

f. Validity of background check results. The results of a background check conducted pursuant to this rule shall be valid for a period of 30 calendar days from the date the results of the background check are received by the hospital.

51.41(3) *Employment prohibition.* A person who has committed a crime or has a record of founded child or dependent adult abuse shall not be employed in a hospital unless an evaluation has been performed by the department of human services.

51.41(4) *Transfer of an employee to another hospital owned or operated by the same person.* If an employee transfers from one hospital to another hospital owned or operated by the same person, without a lapse in employment, the hospital is not required to request additional criminal and child and dependent adult abuse record checks of that employee.

51.41(5) *Transfer of ownership of a hospital.* If the ownership of a hospital is transferred, at the time of transfer the background check required by this rule shall be performed for each employee for whom there is no documentation that such background check has been performed. The hospital may continue to employ such employee pending the performance of the background check and any related evaluation.

51.41(6) *Change of employment—person with criminal or abuse record—exception to record check evaluation requirements.* A person with a criminal or abuse record who is or was employed by a certified hospital and is hired by another certified hospital shall be subject to the background check.

a. A reevaluation of the latest record check is not required, and the person may commence employment with the other hospital if the following requirements are met:

(1) The department of human services previously performed an evaluation concerning the person's criminal or abuse record and concluded the record did not warrant prohibition of the person's employment;

(2) The latest background check does not indicate a crime was committed or founded abuse record was entered subsequent to the prior evaluation;

(3) The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed;

(4) Any restrictions placed on the person's employment in the previous evaluation by the department of human services and still applicable shall remain applicable in the person's subsequent employment; and

(5) The person subject to the background check has maintained a copy of the previous evaluation and provided it to the subsequent employer, or the previous employer provides the previous evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, a current record check evaluation shall be performed.

b. For purposes of this subrule, a position is "substantially the same or has the same job responsibilities" if the position requires the same certification, licensure, or advanced training. For example, a licensed nurse has substantially the same or the same job responsibilities as a director of nursing; a certified nurse aide does not have substantially the same or the same job responsibilities as a licensed nurse.

c. The subsequent employer must maintain the previous evaluation in the employee's personnel file for verification of the exception to the requirement for a record check evaluation.

d. The subsequent employer may request a reevaluation of the background check and may employ the person while the reevaluation is being performed, even though an exemption under paragraph 51.41(6)*"a"* may be authorized.

51.41(7) *Employee notification of criminal convictions or founded abuse after employment.* If a person employed by an employer that is subject to this rule is convicted of a crime or has a record of founded child or dependent adult abuse entered in the abuse registry after the person's employment application date, the person shall inform the employer of such information within 48 hours of the criminal conviction or entry of the record of founded child or dependent adult abuse.

a. The employer shall act to verify the information within 48 hours 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.

b. If the information is verified, the hospital shall follow the requirements of paragraphs 51.41(2)*"c"* and *"d."*

c. The employer may continue to employ the person pending the performance of an evaluation by the department of human services.

d. A person who is required by this subrule to inform the person's employer of a conviction or entry of an abuse record and fails to do so within the required period commits a serious misdemeanor under Iowa Code section 135C.33.

e. The employer may notify the county attorney for the county where the employer is located of any violation or failure by an employee to notify the employer of a criminal conviction or entry of an abuse record within the period required under this subrule.

51.41(8) *Hospital receipt of credible information that an employee has been convicted of a crime or founded for abuse.* If the hospital receives credible information, as determined by the hospital, from someone other than the employee, that the employee has been convicted of a crime or a record of founded child or dependent adult abuse has been entered in the abuse registry after employment, and the employee

has not informed the employer of the information within the time required by subrule 51.41(7), the hospital shall take the following actions:

a. The hospital shall act to verify credible information within 48 hours 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.

b. If the information is verified, the hospital shall follow the requirements of paragraphs 51.41(2)*"c"* and *"d."*

51.41(9) *Proof of background checks for temporary employment agencies and contractors.* Proof of background checks may be kept in the files maintained by temporary employment agencies and contractors. Facilities may require temporary employment agencies and contractors to provide a copy of the result of the background checks. Copies of such results shall be made available to the department upon request.

This rule is intended to implement Iowa Code sections 135B.7 and 135B.34 and 2013 Iowa Acts, Senate File 347.

[**ARC 0963C**, IAB 8/21/13, effective 9/25/13; **ARC 1304C**, IAB 2/5/14, effective 3/12/14]

481—51.42 to **51.49** Reserved.

481—51.50(135B) Minimum standards for construction.

51.50(1) *Minimum standards.* Hospitals and off-site premises licensed under this chapter shall be built in accordance with the following construction standards.

a. Construction shall be in accordance with the standards set forth in Part 2 and other applicable provisions of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, produced by the Facility Guidelines Institute.

b. A critical access hospital as defined in rule 481—51.1(135B) shall meet the standards for construction for small primary care hospitals set forth in Part 2.3 of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, produced by the Facility Guidelines Institute, with the following exceptions:

(1) The patient room capacity requirements contained in section 2.3-2.2.2.1(1) shall not apply. The maximum number of beds per room shall be two.

(2) The first paragraph of section 2.3-2.2.4.6 is amended to read as follows: "The small primary care hospital shall include the following:".

(3) Section 2.3-3.4.1, which limits the types of surgical procedures, shall not apply.

c. Existing hospitals, critical access hospitals, and off-site premises built in compliance with prior editions of the hospital construction guidelines will be deemed in compliance with subsequent regulations, with the exception of any new structural renovations, additions, functional alterations, or changes in utilization to existing facilities, which shall meet the standards specified in this subrule.

d. In jurisdictions without a local building code enforcement program, the construction shall be in conformance with the state building code, as authorized by Iowa Code section 103A.7, in effect at the time of plan submittal for review and approval. In jurisdictions with a local building code enforcement program, local building code enforcement must include both the adoption and enforcement of a local building code through plan reviews and inspections.

A hospital or off-site premises that is required to meet the provisions of the state building code shall be deemed to be in compliance with the fire safety requirements of the state building code if the hospital or off-site premises is in compliance with the provisions of rule 661—205.5(100). In any case in which an applicable requirement of the Life Safety Code, 2000 edition, is inconsistent with an applicable requirement of the state building code, the hospital shall be deemed to be in compliance with the state building code requirement if the Life Safety Code requirement is met.

Rule 661—301.5(103A) shall not be applicable to hospitals and other structures required under this chapter to meet the provisions of the state building code.

e. The design and construction of a hospital or off-site premises shall be in conformance with NFPA 101: Life Safety Code 2000 as published by the National Fire Protection Association.

51.50(2) *Submission of construction documents.*

a. Submissions of architectural technical documents, engineering documents, and plans and specifications to the building code commissioner are the responsibility of the owner of the building or facility, although the actual submission may be completed by an authorized agent of the owner or the responsible design professional.

b. "Responsible design professional" means a registered architect or licensed professional engineer who signs the documents submitted.

c. Plans, specifications and other supporting information shall be sufficiently clear and complete to show in detail that the proposed work will comply with the requirements of the applicable provisions of the state building code.

d. In section 107.2.5 of the International Building Code, 2009 edition, the word "permit" shall be replaced by the words "plan review."

e. Submittals to the commissioner shall be certified or stamped and signed as required by Iowa Code chapters 542B and 544A unless the applicant has certified on the submittal to the applicability of a specific exception under Iowa Code section 544A.18 and the submittal does not constitute the practice of professional engineering as defined by Iowa Code section 542B.2.

f. The responsible design professional shall certify that the building plans meet the requirements specified in subrule 51.50(1), unless a variance has been granted pursuant to subrule 51.50(3).

51.50(3) *Variances.* The director of the department may grant variances to building and construction guidelines as contained in the 2010 edition of the Guidelines for Design and Construction of Health Care Facilities. The hospital or off-site premises must submit a variance request in writing to the director. The request must demonstrate how patient safety and the quality of care offered will not be compromised by the variance. The facility must demonstrate its ability to completely fulfill all other requirements of the service. The director shall make a written determination of the request. In determining whether a variance request shall be granted, the director shall give consideration to the following conditions and to any other conditions the director deems relevant:

a. The design and planning for the specific property shall offer improved or compensating features which provide equivalent desirability and utility;

b. Alternate or special construction methods, techniques, and mechanical equipment shall offer equivalent durability; utility; safety; structural strength and rigidity; sanitation; odor control; protection from corrosion, decay and insect attack; and quality of workmanship;

c. The health, safety or welfare of any patient shall not be endangered;

d. The variance shall be limited to the specific project under consideration and shall not be construed as establishing a precedent for similar acceptance in other cases;

e. Occupancy and function of the building shall be considered; and

f. The type of licensing shall be considered.

[**ARC 9251B**, IAB 12/1/10, effective 1/5/11; **ARC 0135C**, IAB 5/30/12, effective 7/4/12]

481—51.51(135B) Minimum standards for construction after July 8, 1998, and prior to May 22, 2002. Rescinded IAB 12/1/10, effective 1/5/11.

481—51.52(135B) Minimum standards for construction after May 22, 2002. Rescinded IAB 12/1/10, effective 1/5/11.

481—51.53(135B) Critical access hospitals. Critical access hospitals shall meet the following criteria:

51.53(1) The hospital shall be no less than 35 miles from another hospital or no less than 15 miles over secondary roads or shall be designated by the department of public health as a necessary provider of health care prior to January 1, 2006.

51.53(2) The hospital shall be a public or nonprofit hospital and shall be located in a county in a rural area. Rural counties do not include Black Hawk, Johnson, Linn, Polk, Pottawattamie, Scott and Woodbury Counties. All other counties are considered to be in rural areas for purposes of this subrule.

51.53(3) The hospital shall provide 24-hour emergency care services as described in 481 IAC 51.30(135B).

51.53(4) The hospital shall maintain no more than 25 acute care inpatient beds. However, if the hospital provides inpatient psychiatric services in a distinct part unit or inpatient rehabilitation services in a distinct part unit, no more than 10 beds shall be maintained in the distinct part unit. The beds in the distinct part unit are excluded from the 25 inpatient-bed count limit specified in 42 CFR 485.620(a).

51.53(5) The hospital shall meet the Medicare conditions of participation as a critical access hospital as described in 42 CFR Part 485, Subpart F, as of October 1, 2004.

51.53(6) The hospital shall continue to comply with all general hospital license requirements as defined in 481 IAC 51.

51.53(7) The department shall recognize, in lieu of its own inspection, the comparable inspections and inspections findings of The Joint Commission (JC), the American Osteopathic Association (AOA), Det Norske Veritas (DNV), or the Center for Improvement in Healthcare Quality (CIHQ) if the department is provided with copies of all requested materials relating to the inspections and the inspection process.

[**ARC 9253B**, IAB 12/1/10, effective 1/5/11; **ARC 1305C**, IAB 2/5/14, effective 3/12/14]

These rules are intended to implement Iowa Code chapter 135B.

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◊ Two or more ARCs

1 Hospital Protocol for Donor Requests as it appeared in IAC 641—Chapter 180 prior to 4/4/90.

2 January 16, 2013, effective date of 51.24(3) [ARC 0484C] delayed 70 days by the Administrative Rules Review Committee at its meeting held January 8, 2013.

CHAPTER 52
DEPENDENT ADULT ABUSE IN FACILITIES AND PROGRAMS

481—52.1(235E) Definitions. For purposes of this chapter, the following definitions apply:

"Assault of a dependent adult" means the commission of any act which is generally intended to cause pain or injury to a dependent adult, or which is generally intended to result in physical contact which would be considered by a reasonable person to be insulting or offensive or any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.

"Caretaker" means a person who is a staff member of a facility or program who provides care, protection, or services to a dependent adult voluntarily, by contract, through employment, or by order of the court. For the purpose of an allegation of exploitation, if the caretaker-dependent adult relationship started when a staff member was employed in the facility, the staff member may be considered a caretaker after employment is terminated.

"Confidentiality" means the withholding of information from any manner of communication, public or private.

"Court" means the district court.

"Department" means the department of inspections and appeals.

"Dependent adult" means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for the person's own care or protection is impaired, either temporarily or permanently.

"Dependent adult abuse" means any of the following as a result of the willful misconduct or gross negligence or reckless act or omission of a caretaker, taking into account the totality of the circumstances: physical injury, unreasonable confinement, unreasonable punishment, assault, sexual offense, sexual exploitation, exploitation, or neglect. "Dependent adult abuse" does not include any of the following:

1. Circumstances in which the dependent adult declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.

2. Circumstances in which the dependent adult's caretaker, acting in accordance with the dependent adult's stated or implied consent, declines medical treatment or care.

3. The withholding or withdrawing of health care from a dependent adult who is terminally ill in the opinion of a licensed physician, when the withholding or withdrawing of health care is done at the request of the dependent adult or at the request of the dependent adult's next of kin, attorney in fact, or guardian pursuant to the applicable procedures under Iowa Code chapter 125, 144A, 144B, 222, 229, or 633.

"Exploitation" means a caretaker who knowingly obtains, uses, endeavors to obtain to use, or who misappropriates, a dependent adult's funds, assets, medications, or property with the intent to temporarily or permanently deprive a dependent adult of the use, benefit, or possession of the funds, assets, medication, or property for the benefit of someone other than the dependent adult.

"Facility" means a health care facility as defined in Iowa Code section 135C.1 or a hospital as defined in Iowa Code section 135B.1.

"Gross negligence" means an act or omission that signifies more than ordinary inadvertence or inattention, but less than conscious indifference to consequences; and, in other words, means an extreme departure from the ordinary standard of care.

"Immediately," for purposes of mandatory reporters' reporting of suspected dependent adult abuse, means within 24 hours.

"Inspector" means a surveyor, monitor or investigator with the department or any department designee.

"Intimate relationship" means a significant romantic involvement between two persons that need not include sexual involvement, but does not include a casual social relationship or association in a business or professional capacity. In determining whether persons are in an intimate relationship, the following nonexclusive list of factors may be considered:

1. The duration of the relationship,
2. The frequency of interaction,
3. Whether the relationship has been terminated, and
4. The nature of the relationship, characterized by either person's expectation of sexual or romantic involvement.

"Misappropriates" means taking unfair advantage of or wrongfully or dishonestly exercising control over property.

"Neglect of a dependent adult" means the deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a dependent adult's life or physical or mental health.

"Person" means person as defined in Iowa Code section 4.1.

"Physical injury" means a physical injury, or injury which is at a variance with the history given of the injury, which involves a breach of skill or care or learning ordinarily exercised by a caretaker in similar circumstances. "Physical injury" includes damage to any bodily tissue to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition, damage to any bodily tissue to the extent that the tissue cannot be restored to a sound and healthy condition, or damage to any bodily tissue which results in the death of the person who has sustained the damage.

"Program" means an elder group home as defined in Iowa Code section 231B.1, an assisted living program certified under Iowa Code section 231C.3, or an adult day services program as defined in Iowa Code section 231D.1.

"Recklessly" means that a person acts or fails to act with respect to a material element of a public offense, when the person is aware of and consciously disregards a substantial and unjustifiable risk that the material element exists or will result from the act or omission. The risk must be of such a nature and degree that disregard of the risk constitutes a gross deviation from the standard conduct that a reasonable person would observe in the situation.

"Registry" means the central registry for dependent adult abuse information established in Iowa Code section 235B.5.

"Report" means a verbal or written statement, made to the department, which alleges that dependent adult abuse has occurred.

"Resident" means a resident of a health care facility as defined in Iowa Code chapter 135C, a patient in a hospital as defined in Iowa Code chapter 135B, a tenant of an assisted living program as defined in Iowa Code chapter 231C, a tenant in an elder group home as defined in Iowa Code chapter 231B, or a participant in an adult day services program as defined in Iowa Code chapter 231D.

"Sexual exploitation" means any consensual or nonconsensual sexual conduct with a dependent adult by a caretaker whether within a facility or program or at a location outside of a facility or program. "Sexual exploitation" includes but is not limited to:

1. Kissing;
2. Touching of the clothed or unclothed breast, groin, buttock, anus, pubes, or genitals;
3. A sex act as defined in Iowa Code section 702.17;
4. The transmission, display or taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for a purpose not related to treatment, care, monitoring, assessment or diagnosis or as part of an ongoing investigation.

"Sexual exploitation" does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch or hug between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses or domestic partners in an intimate relationship.

"Sexual offense" means the commission of a sexual offense under Iowa Code chapter 709 or Iowa Code section 726.2 with or against a dependent adult.

"Staff member" means an individual who provides direct or indirect treatment or services to residents in a facility or program. Direct treatment or services include those provided through person-to-person contact. Indirect treatment or services include those provided without person-to-person contact such as those provided by administration, dietary, laundry, and maintenance. Specifically excluded from the

definition of "staff member" are individuals such as part-time volunteers, building contractors, repair workers or others who are in a facility or program for a very limited purpose, are not in the facility or program on a regular basis, or do not provide any treatment or services to the residents of the facility or program.

"Unreasonable confinement" means confinement that includes but is not limited to the use of restraints, either physical or chemical, for the convenience of staff. "Unreasonable confinement" does not include the use of confinement and restraints if the methods are employed in conformance with state and federal standards governing confinement and restraint or as authorized by a physician or physician extender.

"Unreasonable punishment" means a willful act or statement intended by the caretaker to punish, agitate, confuse, frighten, or cause emotional distress to the dependent adult. Such willful act or statement includes but is not limited to intimidating behavior, threats, harassment, deceptive acts, or false or misleading statements.

"Willful misconduct" means an intentional act of unreasonable character committed with disregard for a known or obvious risk that is so great as to make it highly probable that harm will follow.

[**ARC 8294B**, IAB 11/18/09, effective 1/1/10]

481—52.2(235E) Persons who must report dependent adult abuse and the reporting procedure for those persons.

52.2(1) Persons who must report dependent adult abuse. The following persons shall report suspected dependent adult abuse in accordance with subrule 52.2(2) below.

a. A staff member. Specifically excluded from the definition of "staff member" only for purposes of the requirements set forth in this subrule are individuals who have no contact or de minimis contact with residents in a facility or program.

b. An employee of a facility or program who, in the course of employment, examines, attends, counsels, or treats a dependent adult in a facility or program and reasonably believes the dependent adult has suffered dependent adult abuse.

52.2(2) Reporting suspected dependent adult abuse in facilities or programs.

a. If a staff member or employee is required to make a report pursuant to this rule, the staff member or employee shall immediately notify the person in charge or the person's designated agent who shall then notify the department within 24 hours of such notification or the next business day.

b. If the person in charge is the alleged dependent adult abuser, the staff member shall directly report the abuse to the department within 24 hours or the next business day.

c. Nothing in this subrule prevents a mandatory reporter or any other person from notifying the department directly of any suspected abuse.

d. The employer or supervisor of a person who is required to or may make a report pursuant to this rule shall not apply a policy, work rule, or other requirement that interferes with the person making a report of dependent adult abuse or that results in the failure of another person to make the report.

e. When the person making the report has reason to believe that immediate protection for the dependent adult is advisable, that person should also immediately make an oral report to an appropriate law enforcement agency.

f. A report of suspected dependent adult abuse shall contain as much of the following information as the person making the report is able to furnish:

(1) The date and time of the incident;

(2) The name, date of birth and diagnoses of the dependent adult;

(3) Whether the dependent adult sustained an injury and, if yes, whether photographs of the injury were taken;

(4) The nature and extent of the dependent adult abuse, including evidence of previous dependent adult abuse allegations;

(5) A list of the staff members working at the time of the incident, including each staff member's full name, title, date of birth, address and telephone number;

(6) The alleged perpetrator's full name, title, date of birth, social security number, address and telephone number;

(7) Other information which the person making the report believes might be helpful in establishing the cause of the abuse or the identity of the person or persons responsible for the abuse or helpful in providing assistance to the dependent adult; and

(8) The name, address and telephone number of the person making the report.

52.2(3) A report shall be accepted whether or not it contains all of the information requested. When the report is made to any agency other than the department, that agency shall promptly refer the report to the department.

52.2(4) A person required to report abuse who knowingly and willfully fails to do so within 24 hours may be subject to criminal penalties and civil liability as provided for by statute.

52.2(5) Interference with a person required to report.

a. It is unlawful for any person or employer to discharge, suspend, or otherwise discipline a person for any of the following:

(1) For reporting suspected dependent adult abuse;

(2) For cooperating with or assisting the department in evaluating or investigating a case of dependent adult abuse; or

(3) For participating in judicial proceedings relating to dependent adult abuse.

b. A person or employer found in violation of this subrule is guilty of a simple misdemeanor.

52.2(6) Staff members who are employed by a facility or program on January 1, 2010, and who were not previously required to attend dependent adult abuse training shall be required to have attended the training no later than December 31, 2010.

[**ARC 8294B**, IAB 11/18/09, effective 1/1/10]

481—52.3(235E) Reports and registry of dependent adult abuse.

52.3(1) *Receipt and evaluation of reports.* The department shall receive and evaluate reports of dependent adult abuse in facilities and programs. The department shall inform the department of human services of such evaluations and dispositions for inclusion in the central registry for dependent adult abuse information pursuant to Iowa Code section 235B.5.

52.3(2) *Reports sent to the department or the department of human services.* Any person who believes that a dependent adult has suffered dependent adult abuse may report the suspected dependent adult abuse to the department. The department shall transfer any reports received of dependent adult abuse in the community to the department of human services. The department of human services shall transfer any reports received of dependent adult abuse in facilities or programs to the department.

52.3(3) *Reports of abuse that is minor, isolated, and unlikely to reoccur.*

a. Minor, isolated, and unlikely to reoccur—first instance. A report of dependent adult abuse that meets the definition of "dependent adult abuse" as defined in Iowa Code section 235E.1(5)*"a"*(1)(a) or (d) which the department determines is minor, isolated, and unlikely to reoccur shall be collected and maintained by the department of human services for a five-year period, shall not be included in the central registry, and shall not be considered founded dependent adult abuse.

b. Minor, isolated, and unlikely to reoccur—subsequent instance(s). A subsequent report of dependent adult abuse that meets the definition of "dependent adult abuse" as defined in Iowa Code section 235E.1(5)*"a"*(1)(a) or (d), that occurs within the five-year period, and that is committed by the same caretaker may also be considered minor, isolated, and unlikely to reoccur, depending on the totality of circumstances.

c. Retention of reports. All initial and subsequent reports are collected and maintained by the department of human services until a five-year period has expired, so long as no additional reports have been filed.

[**ARC 8294B**, IAB 11/18/09, effective 1/1/10]

481—52.4(235E) Financial institution employees and reporting suspected financial exploitation. An employee of a financial institution may report suspected financial exploitation of a dependent adult to the department.
[**ARC 8294B**, IAB 11/18/09, effective 1/1/10]

481—52.5(235E) Evaluation of report. Upon receipt of a report as defined in rule 481—52.1(235E), the department shall conduct an intake sufficient to determine whether the allegation constitutes dependent adult abuse as defined in rule 481—52.1(235E).
[**ARC 8294B**, IAB 11/18/09, effective 1/1/10]

481—52.6(235E) Separation of victim and alleged abuser. Upon receiving a claim of dependent adult abuse of a dependent adult in a facility or program, the facility or program shall separate the victim and the alleged abuser immediately and shall maintain that separation until the department's abuse investigation is completed and the abuse determination is made.

NOTE: Facilities that participate in the federal Medicare or Medicaid program may be subject to additional federal requirements regarding separation.
[**ARC 8294B**, IAB 11/18/09, effective 1/1/10]

481—52.7(235E) Interviews, examination of evidence, and investigation of dependent adult abuse allegations.

52.7(1) *Entering and examining evidence at a facility or program.* An inspector of the department may enter any facility or program without a warrant and may examine all records and items pertaining to residents, employees, former employees, and the alleged dependent adult abuser and any other records and items necessary to ensure the integrity of the investigation unless the record or item is protected by some other legal privilege.

52.7(2) *Interviews.*

a. An inspector of the department may contact or interview any resident, employee, former employee, or any other person who might have knowledge about the alleged dependent adult abuse.

b. An alleged dependent adult abuser may request to have an attorney present at the alleged dependent adult abuser's expense at any time during the interview, but the request may not unreasonably delay the investigation. An employee organization representative or union representative may observe an investigative interview conducted by the department of an alleged dependent adult abuser if all of the following conditions are met:

(1) The alleged dependent adult abuser is part of a bargaining unit or employee organization that is party to a collective bargaining agreement under Iowa Code chapter 20 or any other applicable state or federal law.

(2) The alleged dependent adult abuser requests the presence of a union representative or employee organization representative.

(3) The representative maintains the confidentiality of all information from the interview subject to the penalties provided in Iowa Code section 235B.12 if such confidentiality is breached.

(4) The purpose of the interview is a civil administrative dependent adult abuse investigation under applicable law.

52.7(3) *Photographs of victim, vicinity and related matters.* An inspector may take or cause to be taken photographs of the dependent adult abuse victim and the vicinity involved. The department shall obtain consent from the dependent adult abuse victim or guardian or other person with a power of attorney over the dependent adult abuse victim prior to taking photographs of the dependent adult abuse victim.

52.7(4) *Evaluating information.* An inspector shall consider the information as reported, other known or discovered information, and any information gathered as a result of the inspector's contact with collateral sources, including prior abuse allegations and disciplinary actions.
[**ARC 8294B**, IAB 11/18/09, effective 1/1/10]

481—52.8(235E) Notification to subsequent employers. The department shall notify a facility or program that subsequently employs an alleged or founded dependent adult abuser.
[**ARC 8294B**, IAB 11/18/09, effective 1/1/10]

These rules are intended to implement Iowa Code chapter 235E.

[Filed ARC 8294B (Notice ARC 7828B, IAB 6/3/09; Amended Notice ARC 7939B, IAB 7/1/09), IAB 11/18/09, effective 1/1/10]

CHAPTER 53
HOSPICE LICENSE STANDARDS

481—53.1(135J) Definitions. The use of the word "shall" indicates mandatory standards. The definitions set out in Iowa Code section 135J.1 shall be considered to be incorporated verbatim in the rules. As used in this chapter:

"Bereavement service" is support offered during the bereavement period to the family and friends of someone who has died.

"Care setting" means the place in which care is being given, for example, patient's home, a hospital, a care facility or another place of residence.

"Family" means the immediate kin of the patient, including a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, child, or stepchild. Additional relatives or individuals with significant personal ties to the hospice patient may be included in the hospice patient's family.

"Home care provider" means a care agency that contracts with the hospice to provide services in the home of the hospice patient. The providers may include, but are not limited to, home health aides, homemakers, nurses, occupational therapists or physical therapists.

"Primary caregiver" means the person with major responsibility for providing care to a hospice patient.

"Protocols" are defined as written sets of directions to be followed in performing procedures. These may be routine or may describe specific actions staff must follow when particular events occur.

"Psychosocial needs" involve a person's mental and emotional life related to behavior to other people.

"Social services" are services provided by someone who has a bachelor's or higher degree in social work.

"Spiritual counselor" may be clergy, a hospice employee, a volunteer or someone chosen by the patient.

"Utilization review" means a program to assess the kind of care delivered and to identify needs which may not have been met.

481—53.2(135J) License. Application for an initial or renewal license may be obtained from the Department of Inspections and Appeals, Division of Health Facilities, Lucas State Office Building, Des Moines, Iowa 50319.

53.2(1) Prior to the issuance of a license each hospice must meet all the requirements set forth in this chapter.

53.2(2) The applicant shall submit a nonrefundable biennial license fee of $500. If a license lapses for failure to make timely application for renewal, an additional 25 percent is required.

53.2(3) Each hospice seeking licensure is surveyed before the initial license is issued and biennially before a license is renewed.

53.2(4) Home care provider and inpatient facilities used by the hospice shall be inspected by the department to determine whether hospice regulations are met.

53.2(5) Hospices certified as Medicare providers by the department or accredited by the Joint Commission on the Accreditation of Health Organizations will be licensed without inspection.

53.2(6) The department may not prohibit any entity from establishing or maintaining a hospice without a license.

53.2(7) The department may deny, suspend or revoke a license if the department finds that a hospice does not comply with these rules.

53.2(8) A license is issued only for the premises, person, hospital or facility named on the application. The license may not be transferred or assigned to another person or entity.

53.2(9) A license expires two years after the date issued unless it is suspended or revoked before that date.

This rule is intended to implement Iowa Code sections 135J.2 and 135J.4 to 135J.6.

481—53.3(135J) Patient rights. Each hospice program shall have written policies and procedures that support, enhance and protect the human, civil, constitutional and statutory rights of all patients.

53.3(1) Patient rights include, but are not limited to, the right to:

a. Be treated with dignity and respect;

b. Be informed of the type of care and the services provided by the hospice program;

c. Information regarding diagnosis and prognosis and any change in either;

d. Review and participate in their plan of care; and

e. Privacy.

53.3(2) A copy of these rights shall be provided to all individuals admitted to a hospice.

This rule is intended to implement Iowa Code section 135J.3(3).

481—53.4(135J) Governing body. The hospice shall have a local governing body which consists of people who represent the geographic area for which the hospice intends to provide service.

53.4(1) The governing body shall:

a. Develop a written mission statement, goals and objectives for the hospice and meet with sufficient regularity to ensure accomplishment of those goals and objectives;

b. Develop, amend and implement bylaws;

c. Assume responsibility for the total operation of the hospice;

d. Appoint an administrator whose qualifications and duties are defined in writing and who has authority to manage the business affairs and to direct all programs of the hospice;

e. Develop the budget and monitor the fiscal affairs of the hospice;

f. Provide for medical direction by a licensed physician;

g. Provide appropriate, qualified personnel in sufficient quantity to ensure availability of hospice services listed below, 24 hours a day, seven days a week;

h. Develop and implement written policies and procedures relating to:

(1) Admission and discharge criteria,

(2) Response to referrals,

(3) Medical direction,

(4) Physician services,

(5) Nursing services,

(6) Nutritional services,

(7) Pharmacy services,

(8) Social services,

(9) Volunteer services,

(10) Spiritual services,

(11) Patient and family education,

(12) Bereavement services,

(13) Staff response to death at home and in institutions,

(14) Coordination and communication between all agencies serving the patient and family,

(15) Communication with community agencies, and

(16) Community education efforts;

i. Develop and implement written personnel policies; and

j. Develop and implement a written plan for review of the services delivered.

53.4(2) The governing body shall ensure that someone is responsible to:

a. Organize and direct the ongoing functions of the hospice program;

b. Meet the requirements of the written job descriptions;

c. Maintain liaison with the governing body and staff to ensure administrative control and professional supervision over all patient and family services furnished;

d. Provide orientation and in-service training for all staff which covers the physical, emotional, spiritual and social needs of hospice patients and their families during the final stages of illness, at death and during grief;

e. Plan, organize, implement, guide and evaluate the program;

f. Formulate and conduct a review of policies and procedures, including quality assurance; and

g. Ensure that all required reports and records are completed, submitted and maintained. This includes personnel, administrative and clinical records.

This rule is intended to implement Iowa Code section 135J.3.

481—53.5(135J) Quality assurance and utilization review. The hospice must have a written procedure for individual assessment of care provided, a process for identifying problems and a system to report findings and recommendations for improving the quality of care delivered to the governing body.

53.5(1) At least quarterly, the medical director, patient coordinator and social worker used by the hospice program shall review a minimum of a 10 percent sample of combined active and inactive clinical records of care delivered to hospice patients and families. A written summary shall be prepared for each individual assessment, commenting on the amount and kind of care delivered and including statements addressing any unmet needs.

53.5(2) At least quarterly, all summaries of individual assessments shall be reviewed by the people responsible for coordinating quality assurance. A written report will be prepared addressing any identified problems with care, treatment services, availability of services and methods of care delivery.

53.5(3) The quality assurance reports shall be made available to the hospice administrator and governing body. The reports shall be reviewed by the governing body at least annually, and the review recorded in the governing body's meeting minutes.

This rule is intended to implement Iowa Code section 135J.3(8).

481—53.6(135J) Attending physician services. The patient or family shall designate an attending physician who is responsible for managing necessary medical care. The attending physician shall:

1. Have an active Iowa license to practice medicine pursuant to Iowa Code chapter 148, 150 or 150A;
2. Certify in conjunction with the medical director that each person requesting admittance is eligible as required by Iowa Code section 135J.1(3) for hospice care;
3. Be responsible for the medical component of the plan of care;
4. Participate in developing and revising the plan of care;
5. Arrange for continuity of the medical management in the attending physician's absence; and
6. Monitor the condition of the patient and family by direct contact, or communication with the interdisciplinary team (IDT) and others.

This rule is intended to implement Iowa Code section 135J.3(4).

481—53.7(135J) Medical director. Each hospice shall have a medical director who is a physician licensed to practice medicine pursuant to Iowa Code chapter 148, 150 or 150A. The medical director shall:

1. Be a member of the interdisciplinary team;
2. Monitor the quality of care provided;
3. Assist in providing assurance of the quality of care provided to the patient and family;
4. Maintain liaison with the attending physician;
5. Review clinical material from the patient's attending physician to certify the prognosis as anticipated by that physician;
6. Participate in providing direction for the medical component of care;
7. Participate in resolving conflicts regarding care to be provided;
8. Name a qualified physician to be available in the medical director's absence; and
9. Participate in the development and review of patient and family care policies, procedures and protocols.

This rule is intended to implement Iowa Code section 135J.3(1).

481—53.8(135J) Interdisciplinary team (IDT). The IDT shall establish a plan of care for each patient and family based on assessments performed by team members.

53.8(1) The interdisciplinary team shall include the:

a. Patient;

b. Hospice patient's family;

c. Attending physician;

d. Medical director;

e. Patient care coordinator;

f. Staff nurse;

g. Social worker;

h. Coordinator of volunteer service; and may include

i. A spiritual counselor and others deemed appropriate by the hospice.

53.8(2) Prior to or on the day of admission, the attending physician and at least one IDT team member shall develop an initial plan based on a preliminary assessment of the patient and family needs.

53.8(3) Within seven calendar days of admission the interdisciplinary team shall assess the needs of the patient and family. A care plan shall be based on these findings.

53.8(4) Within seven calendar days of admission the interdisciplinary team shall meet to develop a comprehensive written plan of care. The plan of care shall:

a. Identify the primary caregiver or an alternate arrangement for care;

b. List the needs of the patient and family;

c. List any intervention planned to meet the needs of the patient and family and the results expected from each intervention;

d. Indicate which team member(s) is responsible for each intervention;

e. Indicate the anticipated frequency of each intervention; and

f. Indicate the prognosis and expected disease process.

53.8(5) The IDT shall monitor and revise the plan of care on a regular basis. The team shall meet weekly and exchange information regarding the needs of the patient and family. Changes in the care plan shall be made when the needs of the patient or family change or when interventions do not result in the expected or intended response.

This rule is intended to implement Iowa Code section 135J.3(5).

481—53.9(135J) Nursing services. Nursing services shall be planned and provided or supervised by a registered nurse who has a current Iowa license to practice nursing. The service shall be available 24 hours a day, seven days a week.

53.9(1) A registered nurse shall assess patient and family nursing needs and develop a nursing plan of care to meet these needs.

53.9(2) The nursing service staff shall:

a. Participate in IDT meetings to develop and amend the plan of care;

b. Provide nursing service in accordance with the overall plan of care developed by the IDT;

c. Consult with the patient and family regarding how to meet nursing and nursing-related needs of the patient;

d. Document nursing care given and observations made regarding patient, family reactions and status;

e. Consult with other care providers and the family to enhance continuity of care;

f. Develop and implement nursing service objectives, policies and procedures;

g. Develop job descriptions for all nursing personnel;

h. Establish staff schedules to meet patient and family needs and ensure 24-hour service;

i. Develop and implement orientation and training programs;

j. Develop and implement performance evaluation for the nursing staff;

k. Assign duties to nurses consistent with their education and experience; and

l. Facilitate periodic meetings of the professional nursing staff to evaluate the nursing care provided by hospice personnel.

53.9(3) Persons who are employed by, volunteer with or work under contract to a licensed hospice organization may administer medications only if they are also a licensed nurse, a licensed physician or a certified medication aide.

This rule is intended to implement Iowa Code section 135J.3(2).

481—53.10 Reserved.

481—53.11(135J) Coordinator of patient care. A registered nurse, social worker or health care administrator shall be designated to coordinate implementation of the plan of care for each patient.

The coordinator of patient care shall at least:

1. Coordinate all aspects of patient care to ensure continuity, including care by all service disciplines in all care settings;
2. Facilitate exchange of information among all personnel who provide services to ensure complementary efforts and support for objectives outlined in the plan of care;
3. Facilitate communication between caregivers, patient and family;
4. Maintain a roster of patients;
5. Maintain a schedule for IDT review of care plans; and
6. Chair IDT conferences.

This rule is intended to implement Iowa Code section 135J.3(2).

481—53.12(135J) Social services. Social services shall be planned and provided or supervised by a person who has at least a bachelor's degree in social work from a school approved by the council on social work education. The social worker shall at least:

1. Consider the emotions and social support system of the patient and family;
2. Assess the ability of the family and the patient to function socially and to deal with their emotions;
3. Identify patient and family social service needs;
4. Participate on the IDT to develop and amend the plan of care;
5. Provide services in accordance with the plans of care developed by the IDT;
6. Document services provided and observations made regarding patient and family response and status; and
7. Cooperate and communicate with other providers and the family to enhance the continuity of care.

This rule is intended to implement Iowa Code section 135J.3(2).

481—53.13(135J) Counseling services. Counseling is the process of helping people adjust to the grief of illness, dying and loss. Counseling shall be provided in accordance with the plan of care. When the interdisciplinary team identifies the need for additional counseling services, a team member shall be designated to make an appropriate referral. No referrals may be made without the agreement of the patient and the family.

This rule is intended to implement Iowa Code section 135J.3(2).

481—53.14(135J) Volunteer services. Each hospice shall provide volunteer services to meet patient and family needs. A coordinator of volunteer services shall be designated to implement written policies and procedures.

53.14(1) Each volunteer shall have at least 14 hours of education provided by the hospice before being assigned to a patient and family. The following topics shall be included in the educational program:

a. Hospice concept and philosophy;
b. Symptom control;
c. Infection control;
d. Home care skills;
e. Safety measures and transfer techniques;
f. Stress management;

g. Communication needs;
h. Psychosocial needs;
i. Spiritual needs;
j. Death, dying and grief; and
k. Funerals and alternative rituals.

53.14(2) The hospice shall offer at least two hours of in-service training each quarter.

This rule is intended to implement Iowa Code section 135J.3(2).

481—53.15(135J) Spiritual counseling. Spiritual counseling shall be available to all patients and their families.

53.15(1) Spiritual counseling shall:

a. Be based on the beliefs and values of the patient and family; and
b. Be provided in accordance with the interdisciplinary plan of care.

53.15(2) If spiritual counseling is provided through a working relationship with clergy or other spiritual counselors in the community, there shall be ongoing communication between that counselor and the interdisciplinary care team.

53.15(3) There shall be written and implemented policies and procedures regarding spiritual counseling.

This rule is intended to implement Iowa Code section 135J.3(2).

481—53.16(135J) Optional services. Optional services are services provided by the hospice which are not required. Examples are home health aide, therapy and respite. The following apply to the provision of all optional services provided by a hospice:

53.16(1) All service providers shall be oriented to the hospice concept and philosophy.

53.16(2) All services shall be provided in accordance with the interdisciplinary plan of care.

53.16(3) Written and implemented policies and procedures shall:

a. Identify service providers;
b. Identify the person who will supervise the provision of services;
c. Require documentation of services provided and patient and family response; and
d. Describe a mechanism for evaluating quality of care provided.

This rule is intended to implement Iowa Code section 135J.1(7).

481—53.17(135J) Contracted services. A hospice may contract with other health care providers for the provision of all services.

53.17(1) Contracts shall be written and clearly delineate the authority and responsibility of each party to the contract.

53.17(2) The hospice shall maintain responsibility for coordinating and administering the hospice program.

53.17(3) Contracting for a service does not absolve the hospice of legal responsibility for provision of that service.

53.17(4) The hospice shall inform the patient whether the hospice is paying for the contracted services.

This rule is intended to implement Iowa Code section 135J.3(2).

481—53.18(135J) Short-term hospital services. Each hospice shall have a written agreement with a local or area hospital which promotes continuation of the hospice plan of care and training for hospital staff who care for hospice patients.

This rule is intended to implement Iowa Code section 135J.3(2).

481—53.19(135J) Bereavement services. Bereavement services shall be available to each family after the death of a patient and shall be provided in accordance with family needs.

53.19(1) Bereavement services shall include:

a. Exchange of information between people who provide bereavement services and team members who provided care before death;

b. Consideration of the family's situation, including risk factors, used to develop a plan for services;

c. Identification of types of help or intervention to be available and provided;

d. Contact with the family after the death as required by their needs as documented in the plan of care; and

e. A process to assess family reactions and hospice referrals for intervention deemed appropriate by the IDT.

53.19(2) There shall be written and implemented policies and procedures governing the delivery of bereavement services.

This rule is intended to implement Iowa Code section 135J.3(6).

481—53.20(135J) Records. In accordance with accepted principles of medical record practice, each hospice shall maintain a centralized complete record on every individual receiving services. This record shall be preserved for at least three years following termination of services.

53.20(1) Each entry shall be dated and signed, including the name and title of the person who makes the entry.

53.20(2) The record shall include documentation of all services provided, whether furnished by the hospice or by contractual agreement. Each record shall include, but not be limited to:

a. Patient identification and demographic data;

b. Initial and subsequent assessments;

c. The plan of care;

d. Medical history;

e. Documentation of all services provided;

f. Consent and authorization forms;

g. Physicians' orders;

h. Medication records;

i. Discharge summary; and

j. Discharge and transfer records.

53.20(3) The hospice shall have written and implemented policies to safeguard destruction or unauthorized use of patient records. Written procedures shall govern use and removal of records, conditions for release of information and identification by title of the person who may release records.

These rules are intended to implement Iowa Code sections 135J.1 to 135J.6.

[Filed 4/12/90, Notice 12/27/89—published 5/2/90, effective 6/6/90]

CHAPTER 54
GOVERNOR'S AWARD FOR QUALITY CARE

481—54.1(135C) Purpose. A governor's award for quality care is established to recognize health care facilities in Iowa that demonstrate provision of the highest quality care to residents. Health care facilities eligible for nomination and selection must be licensed pursuant to Iowa Code chapter 135C.

481—54.2(135C) Definitions.

"Community living training services" means those activities provided to assist a person to acquire or sustain the knowledge and skills essential to independent functioning to the person's maximum potential in the physical and social environment.

"Department" means the department of inspections and appeals.

"Director" means the director of the department of inspections and appeals or the director's designee.

"Health care facility" or *"facility"* means residential care facilities, nursing facilities, intermediate care facilities for persons with mental illness, and intermediate care facilities for persons with an intellectual disability licensed pursuant to Iowa Code chapter 135C.

"Nursing care" means those services that can be provided only under the direction of a registered nurse or licensed practical nurse.

"Personal care" means assistance with those activities of daily living that 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 feeding, and supervision of medications that can be self-administered.

"Rehabilitative services" means services to encourage and assist restoration of optimum mental and physical capabilities of the individual resident of a health care facility.

"Social services" means services relating to the psychological and social needs of the individual in adjusting to living in a health care facility and minimizing stress arising from that circumstance.

[**ARC 0766C**, IAB 5/29/13, effective 7/3/13]

481—54.3(135C) Nomination. The department shall make available a nomination application no later than January 1 of each year. The department shall accept nominations until March 1 of each year.

481—54.4(135C) Applicant eligibility. Eligible nominations shall be made by a resident, family member of a resident or another health care facility. A health care facility cannot nominate itself for the award; however, this prohibition shall not apply to facilities with common ownership.

[**ARC 1205C**, IAB 12/11/13, effective 1/15/14]

481—54.5(135C) Nomination information. Applications for the governor's quality care award shall contain but not be limited to the following information:

54.5(1) The reasons that the nominated facility should be considered.

54.5(2) Any unique or special care or services provided by the facility to its residents. Care or services include any unique or special nursing care, personal care, rehabilitative services, social services, or community living training services provided by the facility for its residents or involvement with the local community.

54.5(3) Activities conducted by the facility to enhance the quality of life for its residents.

481—54.6(135C) Evaluation. The department shall review all nominations and select finalists based upon the material(s) provided in the nomination forms. The department shall also consider the following factors in making its selections:

54.6(1) The facility report card completed pursuant to Iowa Code section 135C.20A.

54.6(2) Any unique services provided by a facility to its residents to improve the quality of care in the facility.

54.6(3) Any information submitted by resident advocacy committee members, residents, a resident's family members, or facility staff with regard to the quality of care provided by the facility to its residents.

54.6(4) Whether the facility accepts residents for whom costs are paid under Iowa Code chapter 249A.

54.6(5) Whether there are any outstanding complaints against the facility, as well as the resolution of any complaint already investigated by the department.

54.6(6) Whether the annual fiscal review conducted by the department indicated any irregularities in the residents' accounts.

481—54.7(135C) Selection of finalists. When reviewing the nominations, the department shall rank all facilities according to the above criteria. The ranked list of facilities shall be provided to the director for further review and consideration. When the final selection is made, no more than two facilities from each congressional district shall be recognized as award winners.

481—54.8(135C) Certificate of recognition. Prior to the final selection of facilities, representatives from the department will tour all facilities still in contention to determine the winners. Each winning facility will receive a certificate in recognition of its designation as a quality health care provider. The winning facilities shall be announced and recognized annually at the governor's conference on aging.

These rules are intended to implement Iowa Code sections 10A.104(5), 135C.14 and 135C.20B.

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CHAPTER 55
Reserved

CHAPTER 56
FINING AND CITATIONS
[Prior to 7/15/87, Health Department[470] Ch 56]

481—56.1(135C) Authority for citations. Pursuant to the authority vested in the director of the department of inspections and appeals to issue citations and assess penalties for violations of the statutes or departmental rules relating to the health care facilities, the following rules indicate the method by which citations may be issued when a particular statute or departmental rule is violated by a facility.

481—56.2(135C) Classification of violations—classes. There are three classifications for violations of statutes or departmental rules which may result in the issuance of a citation by the director of inspections and appeals and the assessment of a penalty therefor.

56.2(1) *Class I.* A class I violation is one which presents an imminent danger or a substantial probability of resultant death or physical harm to the residents of the facility in which the violation occurs. A physical condition or one or more practices in a facility may constitute a class I violation;

56.2(2) *Class II.* A class II violation is one that has a direct or immediate relationship to the health, safety, or security of residents of a health care facility, but which presents no imminent danger nor substantial probability of death or physical harm to them. A physical condition or one or more practices within a facility, including either physical abuse of any resident or failure to treat any resident with consideration, respect, and full recognition of the resident's dignity and individuality, in violation of a specific rule adopted by the department, may constitute a class II violation;

56.2(3) *Class III.* A class III violation is one which is not classifiable in the department's rules nor classifiable under the criteria stated in those rules as a class I or class II violation.

481—56.3(135C) Fines. Citations which are issued by the director of the department of inspections and appeals for violations of the statutes or rules relating to health care facilities will subject the facility to the following penalties.

56.3(1) *Citation for a class I violation.* The penalty shall not be less than $2,000 nor more than $10,000. The penalty for a class I violation shall be doubled when the violation is due to an intentional act by the facility in violation of a provision of Iowa Code chapter 135C or a rule adopted pursuant thereto.

56.3(2) *Citation for a class II violation.* The penalty shall not be less than $100 nor more than $500. Using the criteria established in paragraph 56.3(2)*"a,"* the director of the department of inspections and appeals may, upon written request, waive the penalty if the class II violation is corrected within the time specified in the citation. The director shall not waive penalties related to the items listed in subrule 56.3(4).

a. Criteria for waiving the penalty for a class II violation. The director shall consider the following criteria, among others, when deciding whether to grant a waiver of a class II penalty.

(1) The past history of the facility within the last 24 months of the violation as it relates to the nature of the violation;

(2) The rights of residents to make informed decisions with their doctor(s) and family/legal representative(s); and

(3) The financial hardship the fine will cause the facility.

b. Process for requesting a waiver of the penalty for a class II violation.

(1) A facility shall submit documentation that supports the waiver request.

(2) If the facility has requested a waiver based on financial hardship, the facility must provide proof of the hardship for the individual facility, along with the parent corporation, if any. Supporting documentation shall, at minimum, include the facility's, and the parent corporation's, if any, most recent profit and loss statement and balance sheet.

(3) Requests for a waiver shall be submitted within ten working days of receipt by the facility of the notice that the violation has been corrected.

(4) The department shall make a decision on the waiver request or request additional information, if necessary, within ten working days of receipt of a waiver request and shall notify the facility in writing of the department's determination by personal service, by electronic mail, or by certified mail. If additional information is requested, such information shall be provided by the facility within five working days. If additional information is necessary, the department shall make a decision on the waiver request within ten working days of receipt of the additional information requested by the department.

(5) If the waiver request is granted and the facility has paid the penalty, the facility shall be refunded the amount of the penalty paid that was subject to the approved waiver request.

c. *Denial of penalty waiver request for a class II violation.* The director's decision to deny a waiver request is not subject to appeal. The underlying citation or state statement of deficiencies is eligible for appeal.

56.3(3) *Citation for a class III violation.* No penalty shall be assessed for a class III violation except as provided in rule 481—56.5(135C).

56.3(4) *Self-identification and correction of a class II or class III violation prior to the on-site inspection.* If a facility self-identifies a deficient practice prior to the on-site visit inspection, there has been no complaint filed with the department related to that specific deficient practice, and the facility corrects such practice prior to an inspection, no citation shall be issued or fine assessed for class II or III violations except for those penalties arising pursuant to paragraphs *"a"* to *"f"*:

a. Abuse.

(1) Rule 481—57.39(135C);

(2) Rule 481—58.43(135C);

(3) 481—subrules 62.23(23) to 62.23(25);

(4) Rule 481—63.37(135C);

(5) Rule 481—64.33(235B);

(6) Rule 481—65.15(135C);

(7) 481—subrules 65.25(3) to 65.25(5); and

(8) 42 CFR Section 483.420(d).

b. Personnel histories.

(1) Iowa Code section 135C.33;

(2) 481—subrule 57.12(3);

(3) 481—subrule 58.11(3);

(4) 481—subrule 62.9(5);

(5) 481—subrule 63.11(3);

(6) Rule 481—64.34(135C); and

(7) 481—subrule 65.9(5).

c. Failure to implement physician's orders as required.

(1) 481—paragraph 57.12(2)*"d"*;

(2) 481—paragraph 58.19(2)*"h"*;

(3) 481—paragraph 62.15(1)*"a"*;

(4) 481—paragraph 63.11(2)*"d"*; and

(5) 42 CFR Section 483.460(c)(4).

d. Failure to notify the physician of any accident, injury, or adverse change in a resident's condition.

(1) 481—subrule 57.15(5);

(2) 481—subrule 58.14(5); and

(3) 481—paragraph 62.19(2)*"c."*

e. Failure to administer all medications as ordered by the resident's physician.

(1) 481—paragraph 57.12(2)*"d"*;

(2) 481—paragraph 58.19(2)*"a"*;

(3) 481—paragraph 63.11(2)*"d"*;

(4) 481—subrule 64.4(9); and

(5) 42 CFR Section 483.460(c)(4).

f. Failure to meet the fire safety rules and regulations promulgated by the state fire marshal.

(1) 481—paragraph 58.28(1)*"a"*;

(2) 481—subrule 62.19(7);

(3) 481—paragraph 63.23(1)*"a"*; and

(4) 42 CFR Section 483.470(j).

g. Process for documenting self-identification. If, during the inspection, an area of concern is identified to the facility that was self-identified and corrected by the facility prior to the inspection, no complaint has been filed, and the violation does not fall in the exemptions listed in 481—paragraphs 56.3(4)*"a"* to *"f,"* the facility shall complete a "Self-Identification and Correction Form" and submit it to the inspector(s) prior to the conclusion of the inspection, or to the department within two working days of the exit interview via E-mail, facsimile, or overnight courier. The documentation shall include:

(1) The nature of the problem;

(2) The date the problem was identified;

(3) Who identified the problem, i.e., family, resident, staff, physician, pharmacist;

(4) Action steps taken to correct the problem;

(5) Date the facility determined correction was completed; and

(6) All documentation that substantiates the above information.

56.3(5) *State penalty dismissed if the corresponding federal deficiency or citation is dismissed or removed.* Any state penalty, including a fine or citation, issued as a result of a joint state and federal survey and certification process shall be dismissed if the corresponding federal deficiency or citation is dismissed or removed.

a. If the federal deficiency is dismissed or removed during the federal informal dispute resolution process, the department shall remove any corresponding state fine, citation or deficiency within 20 working days of issuance of the decision.

b. If the federal deficiency is dismissed or removed at the conclusion of the federal administrative hearing process, the facility shall submit to the department a copy of the decision, along with a written request for the removal of the corresponding state fine, citation, or deficiency.

56.3(6) *Reduction of fine amount by 35 percent.* If a facility has been assessed a penalty, does not request a formal hearing pursuant to Iowa Code section 135C.43 and rule 481—56.17(135C), or withdraws its request for a formal hearing within 30 days of the date that the penalty was assessed, and the penalty is paid within 30 days of receipt of notice or service, the amount of the civil penalty shall be reduced by 35 percent.

[**ARC 8433B**, IAB 12/30/09, effective 2/3/10]

481—56.4(135C) Time for compliance. Citations which are issued by the director of the department of inspections and appeals for violations of the statutes or rules related to health care facilities shall specify the length of time permitted for the violation to be abated or eliminated, as follows:

56.4(1) *Citation for a class I violation:* The violation shall be abated or eliminated immediately, unless the department determines that a stated period of time, specified in the citation, is required to correct the violation;

56.4(2) *Citation for a class II violation:* The violation shall be corrected within a stated period of time determined by the department and specified in the citation. The stated period of time specified in the citation may subsequently be modified by the department for good cause shown;

56.4(3) *Citation for a class III violation:* The violation shall be corrected within a reasonable time specified by the department in the citation.

481—56.5(135C) Failure to correct a violation within the time specified—penalty. Failure to correct any class of violation within the time specified in the citation, unless the licensee shows that the failure was due to circumstances beyond the licensee's control, shall subject the facility to a further penalty of $50 for each day that the violation continues after the time specified for correction.

481—56.6(135C) Treble and double fines.

56.6(1) *Treble fines for repeated violations.* The director of the department of inspections and appeals shall treble the penalties specified in rule 481—56.3(135C) for any second or subsequent class I or class II violation occurring within any 12-month period, if a citation was issued for the same class I or class II violation occurring within that period and a penalty was assessed therefor.

56.6(2) *Double fines for intentional class I violations.* The director of the department of inspections and appeals shall double the penalties specified in subrule 56.3(1) when the violation is due to an intentional act by the facility in violation of a provision of Iowa Code chapter 135C or rule adopted pursuant thereto.

a. For purposes of this subrule, "intentional" means doing an act voluntarily, not by mistake or accident, and doing the act with a specific purpose in mind.

b. The facts and circumstances surrounding the act shall be considered when determining whether the act was done intentionally.

c. It is assumed that a person intends the natural results of the person's act(s).

[**ARC 8433B**, IAB 12/30/09, effective 2/3/10]

481—56.7(135C) Notation of classes of violations. All rules relating to health care facilities, other than those which are informational in character, shall be followed by a notation at the end of each rule, or pertinent part thereof. This notation shall consist of a Roman numeral or numerals in parentheses. These Roman numerals refer to the class (either class I, class II, or class III) of violation which may be cited by the commissioner when that rule, or part of a rule carrying the notation is violated by the facility.

481—56.8(135C) Notation for more than one class of violation. In those instances where a particular rule, or part of a rule is followed by a notation consisting of more than one Roman numeral in parentheses, at the discretion of the director of the department of inspections and appeals, the director may issue a citation for a violation of that rule, or part thereof, designating any one of the multiple classes of violations specified in the notation.

481—56.9(135C) Factors determining selection of class of violation. In determining which class of violation will be designated in the citation, where more than one class is specified in the notation following the rule, the director of the department of inspections and appeals shall consider evidence of the circumstances surrounding the violation, including, but not limited to, the following factors:

56.9(1) The frequency and length of time the violation occurred, i.e., whether the violation was an isolated or a widespread occurrence, practice, or condition;

56.9(2) The past history of the facility within 24 months of the violation as it relates to the nature of the violation;

56.9(3) The culpability of the facility as it relates to the reasons the violation occurred;

56.9(4) The extent of any harm to the residents or the effect on the health, safety, or security of the residents which resulted from the violation;

56.9(5) The relationship of the violation to any other types of violations which have occurred in the facility;

56.9(6) The actions of the facility after the occurrence of the violation, including when corrective measures, if any, were implemented and whether the facility notified the director as required;

56.9(7) The accuracy and extent of records kept by the facility which relate to the violation, and the availability of such records to the department;

56.9(8) The rights of residents to make informed decisions with their doctor(s) and family/legal representative(s); and

56.9(9) Whether the facility made a good-faith effort to address a high-risk resident's specific needs, and whether the evidence substantiates this effort.

481—56.10(135C) Factors determining imposition of citation and fine. The director of the department of inspections and appeals may consider evidence of the circumstances surrounding the violation including, but not limited to, those factors set out in rule 481—56.9(135C) when:

1. Determining whether a violation will be subject to a fine or citation; and

2. Determining the monetary amount of the penalty to be specified in the citation, when such a fine is authorized to be levied for a particular class of violation.

481—56.11(135C) Class I violation not specified in the rules. The director of the department of inspections and appeals may issue a citation for a class I violation when a physical condition or one or more practices exist in a facility which are not in violation of a specific statute or rule, but which constitute an imminent danger or a substantial probability of resultant death or physical harm to the residents of the facility.

481—56.12(135C) Class I violation as a result of multiple lesser violations. The director of the department of inspections and appeals may issue a citation for a class I violation when a physical condition or one or more practices exist in a facility which are a result of multiple lesser violations of the statutes or rules, but which taken as a whole constitute an imminent danger or a substantial probability of resultant death or physical harm to the residents of the facility.

481—56.13(135C) Form of citations. Each citation issued by the director of the department of inspections and appeals shall contain the following information:

56.13(1) A description of the nature of the violation;

56.13(2) A statement of the Code section or subsection or the rule or standard violated. (In the case of class I violations as described in 481—56.11(135C), a statement of the specific physical condition or one or more practices may be made in lieu of this statement.);

56.13(3) A statement of the classification of the violation, as specified in 481—56.2(135C);

56.13(4) When appropriate, a statement of the period of time allowed for correction of the violation, which shall in each case be the shortest period of time the department deems feasible; and

56.13(5) A statement that the fine may be reduced by 35 percent pursuant to Iowa Code section 135C.43A and subrule 56.3(6).

[**ARC 8433B**, IAB 12/30/09, effective 2/3/10]

481—56.14(135C) Licensee's response to a citation. Within 20 business days after service of a citation, the facility shall respond in the following manner, according to the type of citation issued.

56.14(1) If the facility does not desire to seek an informal conference or contest the citation, the facility shall remit to the department of inspections and appeals the amount specified by the department of inspections and appeals in the citation unless:

a. The violation was issued in conjunction with a federal civil money penalty, and the department holds the fine issued pursuant to this chapter in abeyance pursuant to Iowa Code section 249A.19, or

b. The class II violation for which the penalty was imposed has been waived pursuant to subrule 56.3(2).

56.14(2) For each class II or class III violation, the facility shall send a written response to the department of inspections and appeals, acknowledging that the citation has been received and stating that the violation will be corrected within the specified period of time allowed by the citation.

56.14(3) Informal conference. If the facility desires to contest a citation for a class I, class II or class III violation, the facility shall notify the department of inspections and appeals in writing that it desires to contest such citation and request in writing an informal conference with an independent reviewer. The informal conference will be held concurrently with any informal dispute resolution held pursuant to 42 CFR Section 488.331 for those health care facilities certified under Medicare or the medical assistance program.

a. *Definition.* For purposes of this subrule, "independent reviewer" means an attorney licensed in the state of Iowa who is not currently and has not been employed by the department in the past eight years, or has not appeared in front of the department on behalf of a health care facility in the past eight years. Preference shall be given to an attorney with background knowledge, experience or training in long-term care.

b. Request for informal conference. The request for an informal conference must be in writing, addressed to the compliance officer and include the following:

(1) Identification of the citation(s) being disputed;

(2) The type of informal conference requested: face-to-face or telephone conference; and

(3) A request for surveyor worksheets for the citation(s) being disputed, if desired.

c. Submission of documentation. Within the same ten-day period required for submission of a plan of correction pursuant to 481—subrule 50.10(7), the facility shall submit the following:

(1) The names of those who will be attending the informal conference, including legal counsel; and

(2) Documentation supporting the facility's position. The facility must highlight or use some other means to identify written information pertinent to the disputed deficiency(ies). Supporting documentation that is not submitted within the required time frame will not be considered, except as otherwise permitted by the independent reviewer upon good cause shown. "Good cause" means substantial or adequate grounds for failing to submit documentation in a timely manner. In determining whether the facility has shown good cause, the independent reviewer shall consider what circumstances kept the facility from submitting the supporting documentation within the required time frame.

d. Face-to-face or telephone conference. A face-to-face or telephone conference, if requested, will be scheduled to occur within ten business days of the receipt of the written request, all supporting documentation, and the plan of correction required by 481—subrule 50.10(7).

(1) Failure to submit supporting documentation will not delay scheduling.

(2) The conference will be scheduled for one hour to allow the facility to informally present information and explanation concerning the contested deficiencies. Due to the confidential nature of the conference, attendance may be limited.

(3) If additional information is requested during the informal conference, the facility will have two business days to deliver the additional materials to the department.

(4) When extenuating circumstances preclude a face-to-face conference, a telephone conference will be held or the facility may be given one opportunity to reschedule the face-to-face conference.

e. Results. The results of the informal conference will generally be sent within ten business days after the date of the informal conference, or within ten business days after the receipt of additional information, if requested.

(1) The independent reviewer may affirm or may modify or dismiss the citation. The independent reviewer shall state in writing the specific reasons for the affirmation, modification or dismissal of the citation.

(2) The department will issue an amended (changes in factual content) or corrected (changes in typographical/data errors) citation if changes result from the informal conference.

(3) The facility must submit to the department a new plan of correction for the amended or corrected citation within ten calendar days from the date of the letter conveying the results of the informal conference.

[**ARC 8433B**, IAB 12/30/09, effective 2/3/10; **ARC 1047C**, IAB 10/2/13, effective 1/1/14]

481—56.15(135C) Procedure for facility after informal conference. After the conclusion of an informal conference requested by the licensee and provided pursuant to 56.14(3):

56.15(1) If the facility does not desire to further contest an affirmed or modified citation for a class I, class II or class III violation, the facility shall, within five business days after the informal conference, or within five business days after receipt of the written decision and explanation of the independent reviewer, whichever occurs later, comply with the provisions of subrule 56.14(1).

56.15(2) If the facility does desire to further contest an affirmed or modified citation for a class I, class II or class III violation, the facility shall, within five business days after the informal conference, or within five business days after receipt of the written decision and explanation of the independent reviewer, whichever occurs later, notify the department of inspections and appeals in writing of the facility's intent to formally contest the citation.

[**ARC 8433B**, IAB 12/30/09, effective 2/3/10; **ARC 1047C**, IAB 10/2/13, effective 1/1/14]

481—56.16(135C) Contesting a citation for a class I violation. Rescinded IAB 12/30/09, effective 2/3/10.

481—56.17(135C) Formal contest. The procedures for contested cases, as set out in Iowa Code chapter 17A, and the rules adopted by the department of inspections and appeals shall be followed in all cases where proper notice has been made to the department of inspections and appeals of the intent to formally contest any citation.

These rules are intended to implement Iowa Code chapters 10A and 135C.

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[1] Effective date of Ch 56 delayed by the Administrative Rules Review Committee until 12/6/76, pursuant to Iowa Code section 17A.4 as amended by 66 GA, SF 1288, section 2, to allow further time to study and examine the rules.

[2] See IAB Inspections and Appeals Department.

CHAPTER 57
RESIDENTIAL CARE FACILITIES

[Prior to 7/15/87, Health Department[470] Ch 57]

481—57.1(135C) Definitions. For the purpose of these rules, the following terms shall have the meaning indicated in this chapter. The definitions set out in Iowa Code section 135C.1 shall be considered to be incorporated verbatim in the rules. The use of the words "shall" and "must" indicate those standards are mandatory. The use of the words "should" and "could" indicate those standards are recommended.

57.1(1) *"Accommodation"* means the provision of lodging, including sleeping, dining, and living areas.

57.1(2) *"Administrator"* means a person approved and certified by the department who administers, manages, supervises, and is in general administrative charge of a residential care facility, whether or not such individual has an ownership interest in such facility, and whether or not the functions and duties are shared with one or more individuals.

57.1(3) *"Alcoholic"* means a person in a state of dependency resulting from excessive or prolonged consumption of alcoholic beverages as defined in Iowa Code section 125.2.

57.1(4) *"Ambulatory"* means the condition of a person who immediately and without aid of another is physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

57.1(5) *"Basement"* means that part of a building where the finish floor is more than 30 inches below the finish grade of the building.

57.1(6) *"Board"* means the regular provision of meals.

57.1(7) *"Communicable disease"* means a disease caused by the presence of viruses or microbial agents within a person's body, which agents may be transmitted either directly or indirectly to other persons.

57.1(8) *"Department"* means the state department of inspections and appeals.

57.1(9) *"Distinct part "* means a clearly identifiable area or section within a health care facility, consisting of at least a residential unit, wing, floor, or building containing contiguous rooms.

57.1(10) *"Drug addiction"* means a state of dependency, as medically determined, resulting from excessive or prolonged use of drugs as defined in Iowa Code chapter 204.

57.1(11) *"Medication"* means any drug including over-the-counter substances ordered and administered under the direction of the physician.

57.1(12) *"Nonambulatory"* means the condition of a person who immediately and without aid of another is not physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

57.1(13) *"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 feeding, and supervision over medications which can be self-administered.

57.1(14) *"Program of care"* means all services being provided for a resident in a health care facility.

57.1(15) *"Qualified intellectual disabilities professional"* means a psychologist, physician, registered nurse, educator, social worker, physical or occupational therapist, speech therapist or audiologist who meets the educational requirements for the profession, as required in the state of Iowa, and having one year's experience working with persons with an intellectual disability.

57.1(16) *"Rate"* means that daily fee charged for all residents equally and shall include the cost of all minimum services required in these rules and regulations.

57.1(17) *"Responsible party"* means the person who signs or cosigns the admission agreement required in 481—57.14(135C) or the resident's guardian or conservator if one has been appointed. In the event that a resident has neither a guardian, conservator nor person who signed or cosigned the resident's admission agreement, the term "responsible party" shall include the resident's sponsoring agency, e.g., the department of social services, veteran's administration, religious groups, fraternal

organizations, or foundations that assume responsibility and advocate for their client patients and pay for their health care.

57.1(18) *"Restraints"* means the measures taken to control a resident's physical activity for the resident's own protection or for the protection of others.

[**ARC 0766C**, IAB 5/29/13, effective 7/3/13]

481—57.2(135C) Variances. Variances from these rules may be granted by the director of the department of inspections and appeals for good and sufficient reason when the need for variance has been established; no danger to the health, safety, or welfare of any resident results; alternate means are employed or compensating circumstances exist and the variance will apply only to an individual residential care facility. Variances will be reviewed at the discretion of the director of the department of inspections and appeals.

57.2(1) To request a variance, the licensee must:

a. Apply for variance in writing on a form provided by the department of inspections and appeals;

b. Cite the rule or rules from which a variance is desired;

c. State why compliance with the rule or rules cannot be accomplished;

d. Explain alternate arrangements or compensating circumstances which justify the variance;

e. Demonstrate that the requested variance will not endanger the health, safety, or welfare of any resident.

57.2(2) Upon receipt of a request for variance, the director of the department of inspections and appeals will:

a. Examine the rule from which variance is requested to determine that the request is necessary and reasonable;

b. If the request meets the above criteria, evaluate the alternate arrangements of compensating circumstances against the requirement of the rules;

c. Examine the effect of the requested variance on the health, safety, or welfare of the residents;

d. Consult with the applicant if additional information is required.

57.2(3) Based upon these studies, approval of the variance will be either granted or denied within 120 days of receipt.

481—57.3(135C) Application for licensure.

57.3(1) Initial application and licensing. In order to obtain an initial residential care facility license for a residential care facility which is currently licensed the applicant must:

a. Meet all of the rules, regulations, and standards contained in 481—Chapters 57 and 60;

b. Submit a letter of intent and a written résumé of the resident care program and other services provided for departmental review and approval;

c. Make application at least 30 days prior to the change of ownership of the facility on forms provided by the department;

d. Submit a floor plan of each floor of the facility drawn on 8½- × 11-inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which room will be put and window and door location;

e. Submit a photograph of the front and side elevation of the 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. Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

57.3(2) In order to obtain an initial residential care facility license for a facility not currently licensed as a residential care facility, the applicant must:

a. Meet all of the rules, regulations, and standards contained in 481—Chapters 57 and 60. Exceptions noted in 481—subrule 60.3(2) shall not apply;

b. Submit a letter of intent and a written résumé of the resident care program and other services provided for departmental review and approval;

c. Make application at least 30 days prior to the proposed opening date of the facility on forms provided by the department;

d. Submit a floor plan of each floor of the residential care facility, drawn on 8½- × 11-inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which room will be put and window and door locations;

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. Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

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

a. Submit the completed application form 30 days prior to annual license renewal date of residential care facility license;

b. Submit the statutory license fee for a residential care facility with the application for renewal;

c. Have an approved current certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations;

d. Submit appropriate changes in the résumé to reflect any changes in the resident care program or other services.

57.3(4) Licenses are issued to the person or governmental unit which has responsibility for the operation of the facility and authority to comply with all applicable statutes, rules or regulations.

The person or governmental unit must be the owner of the facility or, if the facility is leased, the lessee.

481—57.4(135C) Special categories. Special variations and considerations may be granted a residential care facility which is operated for people who have special problems such as intellectual disabilities, physical disabilities, have a physical or mental disability or a condition in common which can best be treated in a specialized environment under an approved program of care commensurate with the needs of the residents of the facility. Criteria for these specialized programs shall be established by the department based on the résumé of programs and services furnished by the facility and the numbers and qualifications of the administrator and staff providing these services in the facility.

57.4(1) Such a facility shall be provided with the kind of equipment, numbers of qualified staff, and operated in such fashion as to meet the requirements of the department.

57.4(2) On approval of the department, the state fire marshal, the department of human services, or other appropriate agencies, other variations from the established rules and regulations and standards for a licensed health care facility of that category may be made as is necessary to successfully implement the specialized program, providing that it does not endanger the health, safety, or welfare of any resident and that alternate means to effect the same degree of protection shall be used when such variances are permitted.

[**ARC 0766C**, IAB 5/29/13, effective 7/3/13]

481—57.5(135C) General requirements.

57.5(1) The license shall be displayed in a conspicuous place in the facility which is viewed by the public. (III)

57.5(2) The license shall be valid only in the possession of the licensee to whom it is issued.

57.5(3) The posted license shall accurately reflect the current status of the residential care facility. (III)

57.5(4) Licenses expire one year after the date of issuance or as indicated on the license.

57.5(5) 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. (III)

481—57.6(135C) Notifications required by the department. The department shall be notified:

57.6(1) Within 48 hours, by letter, of any reduction or loss of personal care or dietary staff lasting more than seven days which places the staffing ratio below that required for licensing. No additional residents may be admitted until the minimum staffing requirements are achieved; (III)

57.6(2) Of any proposed change in the residential care facility's functional operation or addition or deletion of required services; (III)

57.6(3) Thirty days before addition, alteration, or new construction is begun in the residential care facility or on the premises; (III)

57.6(4) Thirty days in advance of closure of the residential care facility; (III)

57.6(5) Within two weeks of any change in administrator; (III)

57.6(6) When any change in the category of license is sought; (III)

57.6(7) Prior to the purchase, transfer, assignment, or lease of a residential care facility, the licensee shall:

a. Inform the department of the pending sale, transfer, assignment, or lease of the facility; (III)

b. Inform the department of the name and address of the prospective purchaser, transferee, assignee, or lessee at least 30 days before the sale, transfer, assignment, or lease if completed; (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)

57.6(8) Pursuant to the authorization submitted to the department by the licensee prior to the purchase, transfer, assignment, or lease of a residential care facility, the department shall upon request send or give copies of all recent licensure surveys and of any other pertinent information relating to the facility's licensure status to the prospective purchaser, transferee, assignee, or lessee; costs for such copies shall be paid by the prospective purchaser.

481—57.7(135C) Special classification—memory care.

57.7(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)

57.7(2) *Résumé of care.* A résumé of the program 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 the program of care shall be submitted when services are substantially changed. The résumé of the program 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 roles.

57.7(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 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. 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)

57.7(4) *Plans.* Plans for the unit or facility shall be submitted in accordance with 481—Chapter 60. (II, III)

57.7(5) *Assessment prior to transfer or admission.* Prior to transfer or admission 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)

57.7(6) *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 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 57.7(6)*"a"* shall count toward the required annual in-service training. (II, III)

57.7(7) *Staffing.* There shall be at least one staff person on a memory care unit at all times. (I, II, III)

57.7(8) *Others living in the memory care unit.* Residents not requiring memory care services may live in the memory care unit if a 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 to the placement in writing. (II, III)

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

[**ARC 1476C**, IAB 6/11/14, effective 7/16/14]

481—57.8(135C) Licenses for distinct parts.

57.8(1) Separate licenses may be issued for distinct parts of a health care facility which are clearly identifiable, containing contiguous rooms in a separate wing or building or on a separate floor of the facility and which provide care and services of separate categories.

57.8(2) The following requirements shall be met for a 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. A separate 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.

481—57.9(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 regulations. (III)

57.9(1) The administrator shall be at least 18 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:

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

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

c. Have two years of supervised experience in a residential care facility, at least six months of which was in an administrative capacity. (III)

57.9(2) The administrator may act as an administrator for not more than two residential care facilities. (II)

a. The distance between the two facilities shall be no greater than 50 miles. (II)

b. The administrator shall spend the equivalent of three full eight-hour days per week in each facility. (II)

c. 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)

57.9(3) The licensee may be the approved administrator providing the licensee meets the requirements set forth in these regulations and devotes the required time to administrative duties. Residency in the facility does not in itself meet the requirement. (III)

57.9(4) 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 six months when, through no fault of its own, the home has lost its administrator and has not been able to replace the administrator provided the department has been notified prior to the date of the administrator's appointment. (III)

57.9(5) In the 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:

a. Be knowledgeable of the operation of the facility; (III)

b. Have access to records concerned with the operation of the facility; (III)

c. Be capable of carrying out administrative duties and of assuming administrative responsibilities; (III)

d. Be at least 18 years of age; (III)

e. Be empowered to act on behalf of the licensee during the administrator's absence concerning the health, safety, and welfare of the residents; (III)

f. Have had training to carry out assignments and take care of emergencies and sudden illnesses of residents. (III)

57.9(6) An administrator of only one facility shall be considered as a full-time employee. Full-time employment is defined as 40 hours per week. (III)

481—57.10(135C) Administration.

57.10(1) The licensee shall:

a. Assume the responsibility for the overall operation of the residential care facility; (III)

b. Be responsible for compliance with all applicable laws and with the rules of the department; (III)

c. Establish written policies, which shall be available for review, for the operation of the residential care facility. (III)

57.10(2) The administrator shall:

a. Be responsible for the selection and direction of competent personnel who provide services for the resident care program; (III)

b. Be responsible for the arrangement for all department heads to annually attend a minimum of ten contact hours of educational programs to increase skills and knowledge needed for the position; (III)

c. Be responsible for a monthly in-service educational program for all employees and to maintain records of programs and participants; (III)

d. Make available the residential care facility payroll records for departmental review as needed. (III)

481—57.11(135C) General policies.

57.11(1) There shall be written personnel policies in facilities of more than 15 beds to include hours of work and attendance at educational programs. (III)

57.11(2) There shall be a written job description developed for each category of worker in facilities of more than 15 beds. The job description shall include title of job, job summary, age range, qualifications (formal education and experience), skills needed, physical requirements, and responsibilities. (III)

57.11(3) There shall be written personnel policies for each facility. Personnel policies shall include the following requirements:

a. Employees shall have a physical examination before employment. (I, II, III)

b. Employees shall have a physical examination at least every four years. (I, II, III)

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

57.11(4) Health certificates for all employees shall be available for review. (III)

57.11(5) Rescinded IAB 10/19/88, effective 11/23/88.

57.11(6) There shall be written policies for emergency medical care for employees and residents in case of sudden illness or accident, which includes the individuals to be contacted in case of emergency. (III)

57.11(7) The facility shall have a written agreement with a hospital for the timely admission of a resident who, in the opinion of the attending physician, requires hospitalization. (III)

57.11(8) The residential care facility shall have established policies concerning the control, investigation, and prevention of infections within the facility. (III)

57.11(9) Each facility licensed as a residential care facility shall provide an organized continuous 24-hour program of care commensurate with the needs of the residents of the home and under the direction of an administrator whose combined training and supervisory experience is such as to ensure adequate and competent care. (III)

57.11(10) Prior to the removal of a deceased resident/patient from a facility, the funeral director or person responsible for transporting the body shall be notified by the facility staff of any special

precautions that were followed by the facility having to do with the mode of transmission of a known or suspected communicable disease. (III)

57.11(11) Each facility shall have a written and implemented infection control program addressing the following:

a. Techniques for hand washing consistent with Guidelines for Handwashing and Hospital Control, 1985, Centers for Disease Control, U.S. Department of Health and Human Services, PB85-923404; (I, II, III)

b. Techniques for handling of blood, body fluids, and body wastes consistent with Guideline for Isolation Precautions in Hospitals, Centers for Disease Control, U.S. Department of Health and Human Services, PB96-138102; (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 consistent with Guideline for Isolation Precautions in Hospitals, Centers for Disease Control, U.S. Department of Health and Human Services, PB96-138102; (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)

h. Techniques for use and disposal of needles, syringes, and other sharp instruments consistent with Guideline for Isolation Precautions in Hospitals, Centers for Disease Control, U.S. Department of Health and Human Services, PB96-138102; (I, II, III)

CDC Guidelines may be obtained from the U.S. Department of Commerce, Technology Adminstration, National Technical Information Service, 5285 Port Royal Rd., Springfield, Virginia 22161 (1-800-553-6847).

57.11(12) Aseptic techniques. If a resident needs any of the treatment or devices on the list below, written and implemented procedures regarding aseptic techniques shall be followed.

a. Intravenous or central line catheter consistent with Guideline for Prevention of Intravascular Device Related Infections, Centers for Disease Control, U.S. Department of Health and Human Services, PB97-130074, (I, II, III)

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)

[**ARC 0663C**, IAB 4/3/13, effective 5/8/13]

481—57.12(135C) Personnel.

57.12(1) *General qualifications.*

a. No person with a current record of habitual alcohol intoxication or addiction to the use of drugs shall serve in a managerial role of a residential care facility. (II)

b. No person under the influence of alcohol or intoxicating drugs shall be permitted to provide services in a residential care facility. (II)

c. No person shall be allowed to provide services in a facility if the person has a disease;

(1) Which is transmissible through required workplace contact, (I, II, III)

(2) Which presents a significant risk of infecting others, (I, II, III)

(3) Which presents a substantial possibility of harming others, and (I, II, III)

(4) For which no reasonable accommodation can eliminate the risk. (I, II, III)

Refer to Guidelines for Infection Control in Hospital Personnel, Centers for Disease Control, U.S. Department of Health and Human Services, PB85-923402 to determine (1), (2), (3) and (4).

d. Reserved.

e. Individuals with either physical or mental disabilities may be employed for specific duties, but only if that disability is unrelated to that individual's ability to perform the duties of the job. (III)

57.12(2) *Supervision and staffing.*

a. Staffing.

(1) In a facility that is licensed for more than one level of care, where the facility consists of a single building or of contiguous buildings, the department shall establish on an individual facility basis the numbers and qualifications of the staff required in a residential care facility, based on the needs of the residents in that facility.

(2) In a facility licensed only for residential care the facility shall provide the following minimum staffing ratios of personal care staff:

Days—1:25 or less (II, III)

Evenings—1:35 or less (II, III)

Nights—1:45 or less (II, III)

Additional staffing above the minimum ratio may be required by the department commensurate with the needs of individual residents.

b. Personnel in a residential care facility shall provide 24-hour coverage for residential care services. Personnel shall be up and dressed at all times in facilities over 15 beds. (II, III)

c. Direct care staff shall be present in the facility unless all residents are involved in activities away from the facility. (II, III)

d. Physician's orders shall be implemented by qualified personnel. (II, III)

57.12(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 2013 Iowa Acts, Senate File 347, 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)

[**ARC 0903C**, IAB 8/7/13, effective 9/11/13]

481—57.13(135C) Admission, transfer, and discharge.

57.13(1) *General admission policies.*

a. No resident shall be admitted to or retained in a residential care facility who is in need of greater services than the facility can provide. (II, III)

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

c. There shall be no more beds erected than is stipulated on the license. (II, III)

d. There shall be no more beds erected in a room than its size and other characteristics will permit. (II, III)

e. The admission of a resident to a residential care facility shall not give the facility or any employee of the facility the right to manage, use, or dispose of any property of the resident except with the written authorization of the resident or the resident's legal representative. (III)

f. 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 safe and orderly management of the residential care facility as required by these rules. (III)

g. A residential care 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 which would convey unreasonable responsibilities to the licensee be removed from the premises of the facility for safekeeping. (III)

h. Rescinded, effective 7/14/82.

i. Funds or properties received by the residential care facility, belonging to or due a resident, expendable for the resident's account, shall be trust funds. (III)

j. Infants and children under the age of 16 shall not be admitted to health care facilities for adults unless given prior written approval by the department. A distinct part of a health care facility, segregated from the adult section, may be established based on a program of care submitted by the licensee or applicant which is commensurate with the needs of the residents of the health care facility and has received the department's review and approval. (III)

k. 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 to the person acting as guardian within the third degree of consanguinity. (III)

l. Upon the verified petition of the county board of supervisors, the district court may appoint the administrator of a county care facility as conservator or guardian or both of a resident of such county care facility. Such administrator shall serve as conservator or guardian or both without fee. The administrator may establish either separate or common bank accounts for cash funds of such resident wards. (III)

57.13(2) *Discharge or transfer.*

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

b. Proper arrangements shall be made by the residential care facility 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 or legal representative. (III)

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

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

e. When a resident is transferred or discharged, the appropriate record as set forth in 57.16(1) will accompany the resident. (II, III)

f. Prior to the transfer or discharge of a resident to another health care facility, arrangements to provide for continuity of care shall be made with the facility to which the resident is being sent. (II, III)

481—57.14(135C) Contracts. Each contract shall:

57.14(1) State the base rate or scale per day or per month, the services included, and the method of payment; (III)

57.14(2) Contain a complete schedule of all offered services for which a fee may be charged in addition to the base rate. (III) Furthermore, the contract shall:

a. Stipulate that no further additional fees shall be charged for items not contained in complete schedule of services as set forth in subsection 2; (III)

b. State the method of payment of additional charges; (III)

c. 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)

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

57.14(3) Contain an itemized list of those services, with the specific fee the resident will be charged and method of payment, as related to the resident's current condition, based on the program assessment at the time of admission, which is determined in consultation with the administrator; (III)

57.14(4) Include the total fee to be charged initially to the specific resident; (III)

57.14(5) State the conditions whereby the facility may make adjustments to its overall fees for resident care as a result of changing costs. (III) Furthermore, the contract shall provide that the facility shall give:

a. 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; (III)

b. Notification to the resident, or 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 be also given within a reasonable time, not to exceed one week, listing specifically the adjustments made. (III)

57.14(6) State the terms of agreement in regard to refund of all advance payments, in the event of transfer, death, voluntary, or involuntary discharge; (III)

57.14(7) State the terms of agreement concerning the holding 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.

a. The facility shall ask the resident or responsible party if they want the bed 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)

b. The facility shall reserve the bed when requested for as long as payments are made in accordance with the contract. (II)

57.14(8) State the conditions under which the involuntary discharge or transfer of a resident would be effected; (III)

57.14(9) State the conditions of voluntary discharge or transfer; (III)

57.14(10) Set forth any other matters deemed appropriate by the parties to the contract. No contract 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; (III)

57.14(11) Each party shall receive a copy of the signed contract. (III)

481—57.15(135C) Physical examinations.

57.15(1) Each resident in a residential care facility shall have a designated licensed physician, who may be called when needed. (III)

57.15(2) Each resident admitted to a residential care facility shall have had 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, 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 chief complaints, 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)

57.15(3) Arrangements shall be made to have a physician available to furnish medical care in case of emergency. (II, III)

57.15(4) Rescinded, effective 7/14/82.

57.15(5) The person in charge shall immediately notify the physician of any accident, injury, or adverse change in the resident's condition. (I, II, III)

57.15(6) Each resident shall be visited by or shall visit the resident's physician at least once each year. The year period shall be measured from the date of admission and is not to include preadmission physicals. Any required physician task or visit in a residential care facility may also be performed by an advanced registered nurse practitioner, clinical nurse specialist, or physician assistant who is working in collaboration with the physician. (III)

57.15(7) Residents shall be admitted to a residential care facility only on a written order signed by a physician certifying that the individual being admitted requires no more than personal care and supervision but does not require nursing care. (III)

This rule is intended to implement Iowa Code section 135C.23(2).

[**ARC 0663C**, IAB 4/3/13, effective 5/8/13]

481—57.16(135C) Records.

57.16(1) *Resident record.* The licensee shall keep a permanent record on all residents admitted to a residential care facility with all entries 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; (III)

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

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

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

i. Pharmacist's name, telephone number, and address; (III)

j. Physical examination and medical history; (III)

k. Certification by the physician that the resident requires no more than personal care and supervision, but does not require nursing care; (III)

l. Physician's orders for medication, treatments, and diet in writing and signed by the physician quarterly; (III)

m. A notation of yearly or other visits to physician or other professional services; (III)

n. Any change in the resident's condition; (II, III)

o. If the physician has certified that the resident is capable of taking prescribed medications, the resident shall be required to keep the administrator advised of current medications, treatments, and diet. The administrator shall keep a listing of medications, treatments, and diet prescribed by the physician for each resident; (III)

p. If the physician has certified that the resident is not capable of taking prescribed medication, it must be administered by a qualified person of the facility. A qualified person shall be defined as either a registered or licensed practical nurse or an individual who has completed the state-approved training course in medication administration; (II)

q. Medications administered by an employee of the facility shall be recorded on a medication record by the individual who administers the medication; (II, III)

r. A notation describing condition on admission, transfer, and discharge; (III)

s. In the event of a resident's death, notations in the resident's record shall include 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 that the resident's family and physician were notified of the resident's death; (III)

t. A copy of instructions given to the resident, legal representative, or facility in the event of discharge or transfer; (III)

u. Disposition of valuables. (III)

57.16(2) *Incident record.*

a. Each residential care facility shall maintain an incident record report and shall have available incident report forms. (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 and sign the incident report. (III)

d. The report shall cover all accidents whether there is apparent injury or where hidden injury may have occurred. (III)

e. The report shall cover all accidents or unusual occurrences within the facility or on the premises affecting residents, visitors, or employees. (III)

f. A copy of the incident report shall be kept on file in the facility. (III)

57.16(3) *Retention of records.*

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

b. Records shall be retained within the facility upon change of ownership. (III)

c. Rescinded, effective 7/14/82.

d. When the facility ceases to operate, the resident's record shall be released to the facility to which the resident is transferred. If no transfer occurs, the record shall be released to the individual's physician. (III)

57.16(4) *Reports to the department.* The licensee shall furnish statistical information concerning the operation of the facility to the department on request. (III)

57.16(5) *Personnel record.*

a. An employment record shall be kept for each employee consisting of the following information: Name and address of employee, social security number of employee, date of birth of employee, date of employment, experience and education, references, position in the home, date and reason for discharge or resignation. (III)

b. The personnel records shall be made available for review upon request by the department. (III)

481—57.17(135C) Resident care and personal services.

57.17(1) Beds shall be made daily and adjusted as necessary. A complete change of linen shall be made at least once a week and more often if necessary. (III)

57.17(2) Residents shall receive sufficient supervision so that their personal cleanliness is maintained. (II, III)

57.17(3) Residents shall have clean clothing as needed to present a neat appearance, be free of odors, and to be comfortable. Clothing shall be appropriate to their activities and to the weather. (III)

57.17(4) Rescinded, effective 7/14/82.

57.17(5) Residents shall be encouraged to leave their rooms and make use of the recreational room or living room of the facility. (III)

57.17(6) Residents shall not be required to pass through another's bedroom to reach a bathroom, living room, dining room, corridor, or other common areas of the facility. (III)

57.17(7) Rescinded, effective 7/14/82.

57.17(8) Uncontrollable residents shall be transferred or discharged from the facility in accordance with contract arrangements and requirements of Iowa Code chapter 135C. (II, III)

57.17(9) Residents shall be required to bathe at least twice a week. (II, III)

57.17(10) Nonambulatory residents.

a. All nonambulatory residents shall be housed on the grade level floor. (II)

b. These provisions in paragraph *"a"* above relating to nonambulatory residents are not applicable if the facility has a suitably sized elevator.

481—57.18 Rescinded, effective 7/14/82.

481—57.19(135C) Drugs.

57.19(1) *Drug storage.*

a. Residents who have been certified in writing by the physician as capable of taking their own medications, may retain these medications in their bedroom but locked storage must be provided. (III)

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

(1) A cabinet with a lock shall be provided which can be used for storage of drugs, solutions, and prescriptions; (III)

(2) A bathroom shall not be used for drug storage; (III)

(3) The drug storage cabinet shall be kept locked when not in use; (III)

(4) The drug storage cabinet key shall be in the possession of the employee charged with the responsibility of administering medications; (II)

(5) Schedule II drugs, as defined by Iowa Code chapter 204, shall be kept in a locked box within the locked medication cabinet; (II, III)

(6) Medications requiring refrigeration shall be kept in a refrigerator and separated from food and other items; (III)

(7) Drugs for external use shall be stored separately from drugs for internal use; (III)

(8) All potent, poisonous, or caustic materials shall be stored separately from drugs. They shall be plainly labeled and stored in a specific, well-illuminated cabinet, closet, or storeroom and made accessible only to authorized persons; (I, II)

(9) The drug cabinet shall have a work counter. Both the counter and cabinet shall be well-lighted; (III)

(10) Running water shall be available in the room in which the medicine cabinet is located or in an adjacent room; (III)

(11) Inspection of drug storage condition shall be made by the administrator and a registered pharmacist not less than once every three months. The inspection shall be verified by a report signed by the administrator and the pharmacist and filed with the administrator. The report shall include, but not be limited to, certifying absence of the following: expired drugs, deteriorated drugs, improper labeling, drugs for which there is no current physician's order, and drugs improperly stored. (III)

(12) Double-locked storage of Schedule II drugs shall not be required under single-unit package drug distribution systems in which the quantity stored does not exceed a three-day supply and a missing dose can be readily detected. (II)

c. Bulk supplies of prescription drugs shall not be kept in a residential care facility unless a licensed pharmacy is established in the facility under the direct supervision and control of a pharmacist. (III)

57.19(2) *Drug safeguards.*

a. All prescribed medications shall be clearly labeled indicating the resident's full name, physician'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 or physician issuing the drug. Where unit dose is used, prescribed medications shall, as a minimum, indicate the resident's full name, physician's name, name and strength of drug, and directions for use. Standard containers shall be utilized for dispensing drugs. Paper envelopes shall not be considered standard containers. (III)

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

c. The medication for each resident shall be kept or stored in the original containers. (II, III)

d. When a resident is discharged or leaves the facility, the unused prescription shall be sent with the resident or with a legal representative only upon the written order of a physician. (III)

e. Unused prescription drugs prescribed for residents who have died shall be destroyed by the person in charge with a witness and notation made on the resident's record, or, if a unit dose system is used, such drugs shall be returned to the supplying pharmacist. (III)

f. Prescriptions shall be refilled only with the permission of the attending physician. (II, III)

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

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

i. There shall be a formal routine for the proper disposal of discontinued medications within a reasonable but specified time. These medications shall not be retained with the resident's current medications. Discontinued drugs shall be destroyed by a responsible person with a witness and notation made to that effect or returned to the pharmacist for destruction or resident credit. Drugs listed under the Schedule II drugs shall be disposed of in accordance with the provisions of the Iowa board of pharmacy examiners. (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 personal physician of the resident, 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 keep possession of any medications unless the attending physician 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 attending physician. (II)

m. Each facility shall establish a policy in conjunction with a licensed pharmacist to govern distributing prescribed medication to residents who are on leave from a facility. (III)

(1) Medication may be issued to residents who will be on leave from a facility for less than 24 hours. Notwithstanding the prohibition against paper envelopes in 57.19(2)*"a,"* non-child-resistant containers may be used. Each container may hold only one medication. A label on each container shall indicate the date, the resident's name, the facility, the medication, its strength, dose, and time of administration.

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

(3) Medication distributed as above may be issued only by facility personnel responsible for administering medication.

57.19(3) *Drug administration.*

a. A properly trained person shall be charged with the responsibility of administering nonparenteral medications.

b. The individual shall have knowledge of the purpose of the drugs, their dangers, and contraindications.

c. This person shall be a licensed nurse or physician 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.

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

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

(2) Be employed in the same facility for at least six consecutive months prior to the start of the medication aide course. This requirement is not subject to waiver.

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

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. This individual 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;

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

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

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 *"d"* of this subrule do not apply to this individual.

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

h. Injectable medications shall be administered as permitted by Iowa law by a qualified nurse, physician, pharmacist, or physician assistant (PA).

i. Residents certified by their physician as capable of injecting their own insulin may do so. Insulin may be administered pursuant to *"h"* above or as otherwise authorized by the resident's physician. Authorization by the physician shall:

(1) Be in writing,

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

(3) Be renewed quarterly,

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

(5) Include documentation by the physician that the authorized person is qualified to administer insulin to that resident.

j. An individual inventory record shall be maintained for each Schedule II drug prescribed for each resident. (II)

k. The unit dose system may be used by the facility.

l. 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.

[**ARC 1050C**, IAB 10/2/13, effective 11/6/13]

481—57.20(135C) Dental services.

57.20(1) The residential care facility personnel shall assist residents to obtain regular and emergency dental services. (III)

57.20(2) Transportation arrangements shall be made when necessary for the resident to be transported to the dentist's office. (III)

57.20(3) Dental services shall be performed only on the request of the resident, responsible relative, or legal representative. The resident's physician shall be advised of the resident's dental problems. (III)

57.20(4) All dental reports or progress notes shall be included in the clinical record. (III)

57.20(5) Personal care staff shall assist the resident in carrying out dentist's recommendations. (III)

57.20(6) Dentists shall be asked to participate in the in-service program of the facility. (III)

481—57.21(135C) Dietary.

57.21(1) *Dietary staffing.*

a. In facilities licensed for over 15 beds, persons in charge of meal planning and food preparation shall complete the home study course on sanitation and food preparation offered by the department. (III)

b. In facilities licensed for over 15 beds, food service personnel shall be on duty during a 12-hour span extending from the preparation of breakfast through supper. (III)

c. There shall be written work schedules and time schedules covering each type of job in the food service department. These work and time schedules shall be posted or kept in a notebook which is available for use in the food service area in facilities over 15 beds. (III)

57.21(2) *Nutrition and menu planning.*

a. Menus shall be planned and followed to meet nutritional needs of residents in accordance with the physician's orders. (II)

b. Menus shall be planned and served to include foods and amounts necessary to meet the recommended daily dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences. (II) Recommended daily dietary allowances are:

(1) Milk - two or more cups served as beverage or used in cooking;

(2) Meat group - two or more servings of meat, fish, poultry, eggs, cheese or equivalent; at least four to five ounces edible portion per day;

(3) Vegetable and fruit group - four or more servings (two cups). This shall include a citrus fruit or other fruit and vegetable important for vitamin C daily, a dark green or deep yellow vegetable for vitamin A at least every other day, and other fruits and vegetables, including potatoes;

(4) Bread and cereal group - four or more servings of whole-grain, enriched or restored;

(5) Foods other than those listed will usually be included to meet daily energy requirements (calories) to add to the total nutrients and variety of meals.

c. At least three meals or their equivalent shall be served daily, at regular hours. (II)

(1) There shall be no more than a 14-hour span between substantial evening meal and breakfast. (II, III)

(2) To the extent medically possible, bedtime nourishments shall be offered routinely to all residents. Special nourishments shall be available when ordered by physician. (II, III)

d. Menus shall include a variety of foods prepared in various ways. The same menu shall not be repeated on the same day of the following week. (III)

e. Menus shall be written at least one week in advance. The current menu shall be located in an accessible place in the dietetic service department 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, they shall be of similar nutritive value and recorded on the menu or in a notebook. (III)

g. A file of tested recipes adjusted to the number of people to be fed in the facility shall be maintained. (III)

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

a. All food and drink shall be clean, wholesome, free from spoilage, and safe for human consumption. (II, III)

b. The use of foods from salvaged, damaged, or unlabeled containers shall be prohibited. (III)

c. All perishable or potentially hazardous food shall be stored at safe temperatures of 45°F (7°C) or below, or 140°F (60°C) or above. (III)

d. No perishable food shall be allowed to stand at room temperature any longer than is required to prepare and serve. (III)

e. 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 nutrition section of the department of health. (II, III)

f. Table service shall be attractive. Dishes shall be free of cracks, chips, and stains. (III)

g. If family-style service is used, all leftover prepared food that has been on the table shall be properly handled. (III)

h. Poisonous compounds shall not be kept in food storage or preparation areas. (II)

57.21(4) *Sanitation in food preparation area.*

a. "Food Service Sanitation Manual", revised 1976, U.S. Department of Health, Education, and Welfare, Public Health Service, U.S. Government Printing Office, Washington, D.C., shall be used as the established, nationally recognized reference for establishing and determining satisfactory compliance with food service sanitation.

b. Residents shall not be allowed in the food preparation area. (III)

c. In facilities licensed for over 15 beds, the kitchen shall not be used for serving meals to residents, food service personnel, or other staff. (III)

d. All foods, while being stored, prepared, displayed, served, or transported shall be protected against contamination from dust, flies, rodents, and other vermin. (II, III)

e. Food shall be protected from unclean utensils and worn surfaces, unnecessary handling, coughs and sneezes, flooding, drainage, and overhead leakage. (II, III)

f. All appliances and work areas shall be kept clean. (III)

g. There shall be written procedures established for cleaning all work and serving areas in facilities over 15 beds. (III)

h. A schedule for duties to be performed daily shall be posted in each food area. (III)

i. 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. (III)

j. Spillage and breakage shall be cleaned up immediately. (III)

k. All garbage not mechanically disposed of shall be kept in nonabsorbent, cleanable containers pending disposal. All filled containers shall be covered and stored in a sanitary manner. (III)

l. The food service area shall be located so it will not be used as a passageway by residents, guests, or nonfood service staff. (III)

m. The walls, ceilings, and floors of all rooms in which food is prepared and served shall be in good repair, smooth, washable, and shall be kept clean. (III)

n. 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 it is in sealed, leakproof containers. (III)

o. Ice shall be stored and handled in such a manner as to prevent contamination. Ice scoops should be sanitized daily and kept in a clean container. (III)

p. There shall be no animals or birds in the food preparation area. (III)

q. No dishes or cooking utensils shall be towel dried. (III)

r. In facilities over 15 beds, a mechanical dishwasher is required. (III)

s. If there is a dishwashing machine, it must provide a wash temperature of 140°F (60°C) to 160°F (71°C) and a rinse temperature of 170°F (76°C) to 180°F (82°C). In a freestanding residential care facility licensed for 15 or fewer beds, a wash and rinse temperature of 140°F (60°C) to 160°F (71°C) shall be acceptable. (III)

t. 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)

u. All dishes, silverware, and cooking utensils shall be stored above the floor in a sanitary manner, in a clean, dry place protected from flies, splashes, dust, and other contaminants. (III)

v. Procedures for washing and handling dishes shall be followed in order to protect the welfare of the residents and employees. Persons handling dirty dishes shall not handle clean dishes without washing their hands. (III)

w. Dishes, silverware, and cooking utensils shall be properly cleaned by prerinsing or scraping, washing, sanitizing, and air-drying. (III)

57.21(5) *Hygiene of food service personnel.*

a. Food service personnel shall be free of communicable diseases and practice hygienic food-handling techniques. In the event food service employees are assigned duties outside the dietetic service, these duties shall not interfere with sanitation, safety, or time required for dietetic work assignments. Personnel recovering from a diagnosed intestinal infection shall submit a report from their physician showing freedom from infection before returning to work in the food service department. (II, III)

b. Employees shall wear clean, washable uniforms that are not used for duties outside the food service area. (III)

c. Hairnets shall be worn by all food service personnel. Individuals with beards shall provide for total enclosure of facial hair. (III)

d. Clean aprons and hairnets shall be available for use by other personnel in emergency situations. (III)

e. Persons handling food shall be knowledgeable of good hand-washing techniques. A hand-wash sink shall be provided in or adjacent to the food service area. Continuous on-the-job training on sanitation shall be encouraged. (III)

f. The use of tobacco shall be prohibited in the kitchen. (III)

57.21(6) *Food and drink.* All food and drink consumed within the facility shall be clean and wholesome and comply with local ordinances and applicable provisions of state and federal laws. (II, III)

481—57.22(135C) Service plan.

57.22(1) Prior to admission of a resident, the administrator or the administrator's designee shall develop a written and organized orientation plan. The plan shall be designed to assist the resident in adapting to the facility and to assist the facility staff in becoming knowledgeable of the resident and the resident's needs. (III)

57.22(2) Within 30 days of admission, the administrator or the administrator's designee shall, in conjunction with the resident, other facility staff or any organization that works with or serves the resident, develop a written, individualized, and integrated program of ongoing services for the resident. (III)

a. The program shall be planned and implemented to address the resident's priorities and assessed needs, such as living, rehabilitation, activity, behavioral, emotional, mental health and social, and shall take into consideration the resident's personal goals and preferences, including the resident's preferred living situation. (III)

b. The service plan shall include specific goals and objectives with regular documentation of each. (III)

c. The service plan shall be reviewed at least quarterly, or more often as necessary. (III)

57.22(3) 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 family members or responsible party. (III)

481—57.23(135C) Resident activities program.

57.23(1) Each residential care facility shall provide an organized resident activity program for the group and for the individual resident which shall include suitable activities for evenings and weekends. (III)

a. The activity 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. This shall include helping residents continue in their individual interests or hobbies. (III)

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

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

d. No resident shall be forced to participate in the activity program. (III)

57.23(2) *Coordination of activities program.*

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

[1]*b.* [2] Staffing for the activity program shall be provided on the minimum basis of 45 minutes per licensed bed per week. (II, III)

c. The activity coordinator shall have completed the activity coordinators' orientation course offered through the department within six months of employment or have comparable training and experience as approved by the department. (III)

d. The activity coordinator shall attend workshops or educational programs which relate to activity programming. These shall total a minimum of ten contact hours per year. These programs shall be approved by the department. (III)

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

57.23(3) *Duties of activity coordinator.* The activity coordinator shall:

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

b. Coordinate all activities, including volunteer or auxiliary activities and religious services; (III)

c. Keep all necessary records including:

(1) Attendance; (III)

(2) Record individual resident progress notes at least every three months; (III)

(3) Monthly calendars, prepared in advance. (III)

d. Coordinate the activity program with all other services in the facility; (III)

e. Participate in the in-service training program in the facility. This shall include attending as well as presenting sessions. (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. These may include: books (standard and large print), magazines,

newspapers, radio, television, and bulletin boards. Also appropriate would be box games, game equipment, songbooks, cards, craft supplies, record player, movie projector, piano, outdoor equipment, etc. (III)

b. Storage shall be provided for recreational equipment and supplies. (III)

c. Locked storage should be available for potentially dangerous items such as scissors, knives, and toxic materials. (III)

[1] Emergency, pursuant to Iowa Code section 17A.5(2)*"b"*(2).

[2] Objection filed 2/14/79, see insert IAC 3/7/79.

481—57.24(135C) Certified volunteer long-term care ombudsman program. A certified volunteer long-term care ombudsman appointed in accordance with Iowa Code section 231.45 as amended by 2013 Iowa Acts, Senate File 184, shall operate within the scope of the rules for volunteer ombudsmen promulgated by the office of long-term care ombudsman and the Iowa department on aging.
[**ARC 1205C**, IAB 12/11/13, effective 1/15/14]

481—57.25(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. (III)

57.25(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.

57.25(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 posted. (III)

b. In-service shall be provided to ensure that all employees are knowledgeable of the emergency plan. (III)

57.25(3) *Resident safety.*

a. Residents shall be permitted to smoke only where proper facilities are provided. Smoking shall not be permitted in bedrooms. Smoking by residents considered to be careless shall be prohibited except when under direct supervision. (II, III)

b. Smoking is prohibited in all rooms where oxygen is being administered or in rooms where oxygen is stored. (II, III)

c. Whenever full or empty tanks of oxygen are being used or stored, they shall be securely supported in an upright position. (II, III)

d. Smoking shall be permitted only in posted areas. (II, III)

e. Residents shall receive adequate supervision to ensure against hazard from themselves, others, or elements in the environment. (II, III)

57.25(4) *Restraints.*

a. Rescinded, effective 7/14/82.

b. Residents shall not be kept behind locked doors;

c. Temporary seclusion of residents shall be used only in an emergency to prevent injury to the resident or to others pending transfer to appropriate placement;

d. A divided door equipped with a securing device that may be readily opened by personnel shall be considered an appropriate means of temporarily confining a resident in the resident's room;

e. Divided doors shall be of such type that when the upper half is closed the lower section shall close.

481—57.26(135C) Housekeeping.

57.26(1) Written procedures shall be established and implemented for daily and weekly cleaning schedules. (III)

57.26(2) Each resident unit shall be cleaned on a routine schedule. (III)

57.26(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. (III)

57.26(4) A hallway or corridor shall not be used for storage of equipment. (III)

57.26(5) All odors shall be kept under control by cleanliness and proper ventilation. (III)

57.26(6) Clothing worn by personnel shall be clean and washable. (III)

57.26(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)

57.26(8) All furniture, bedding, linens, and equipment shall be cleaned periodically and before use by another resident. (III)

57.26(9) Polishes used on floors shall provide a nonslip finish. (III)

57.26(10) Throw or scatter rugs shall not be permitted. (III)

57.26(11) Entrances, exits, steps, and outside walkways shall be kept free from ice, snow, and other hazards. (II, III)

57.26(12) Residents shall not have access to storage areas for all cleaning agents, bleaches, insecticides, or any other poisonous, dangerous, or flammable materials. (II, III)

57.26(13) Sufficient numbers of noncombustible trash containers, which have covers, shall be available. (III)

57.26(14) Personal possessions of residents which may constitute hazards to themselves or to others shall be removed and stored. (III)

481—57.27(135C) Maintenance.

57.27(1) Each facility shall establish a maintenance program to ensure the continued maintenance of the facility, to promote good housekeeping procedures, and ensure sanitary practices throughout the facility. In facilities over 15 beds, this program shall be established in writing and available for review by the department. (III)

57.27(2) The building, grounds, and other buildings shall be maintained in a clean, orderly condition and in good repair. (III)

57.27(3) Draperies and furniture shall be clean and in good repair. (III)

57.27(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. (III)

57.27(5) The electrical systems, including appliances, cords, and switches, shall be maintained to guarantee safe functioning and comply with the national electric code. (III)

57.27(6) All plumbing fixtures shall function properly and comply with the state plumbing code. (III)

57.27(7) Yearly inspections of the heating and cooling systems shall be made to guarantee safe operation. (III)

57.27(8) The building, grounds, and other buildings shall be kept free of breeding areas for flies, other insects, and rodents. (III)

57.27(9) The facility shall be kept free of flies, other insects, and rodents. (III)

57.27(10) Janitor closet.

a. Facilities shall be provided with storage for cleaning equipment, supplies, and utensils. (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 over 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—57.28(135C) Laundry.

57.28(1) All soiled linens shall be collected in and transported to the laundry room in closed, leakproof laundry bags or covered, impermeable containers. (III)

57.28(2) Except for related activities, the laundry room shall not be used for other purposes. (III)

57.28(3) Procedures shall be written for the proper handling of wet, soiled, and contaminated linens. (III)

57.28(4) Residents' personal laundry shall be marked with an identification. (III)

57.28(5) Bed linens, towels, and washcloths shall be clean and stain-free. (III)

57.28(6) If laundry is done in the facility, the following shall be provided:

a. A clean, dry, well-lighted area to accommodate a washer and dryer of adequate size to serve the needs of the facility. (III)

b. In facilities of over 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—57.29(135C) Garbage and waste disposal.

57.29(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)

57.29(2) All containers for refuse shall be watertight, rodent-proof, and have tight-fitting covers. (III)

57.29(3) All containers shall be thoroughly cleaned each time the containers are emptied. (III)

57.29(4) All wastes shall be properly disposed of in compliance with local ordinances and state codes. (III)

57.29(5) Special provision shall be made for the disposal of soiled dressings and similar items in a safe, sanitary manner. (III)

481—57.30(135C) Buildings, furnishings, and equipment.

57.30(1) *Buildings—general requirements.*

a. For purposes of computation of usable floor space in bedrooms and other living areas of the facility, that part of the room having no less than seven feet of ceiling height shall be used. Usable floor space may include irregularities in the rooms such as alcoves and offsets with approval of the department. Usable floor space shall not include space needed for corridor door swings or wardrobes being used as a substitute for closet space. (III)

b. Battery-operated, portable emergency lights in good working condition shall be available at all times, at a ratio of one light per one employee on duty from 6 p.m. to 6 a.m. (III)

c. All windows shall be supplied with curtains and shades or drapes which are kept clean and in good repair. (III)

d. Light fixtures shall be so equipped to prevent glare and to prevent hazards to the residents. (III)

e. Exposed heating pipes, hot water pipes, or radiators in rooms and areas used by residents and within reach of residents shall be covered or protected to prevent injury or burns to residents. (II, III)

f. All fans located within seven feet of the floor shall be protected by screen guards of not more than one-fourth inch mesh. (III)

g. Whenever glass sliding doors or transparent panels are used, they shall be marked conspicuously. (III)

h. The facility shall meet the equivalent requirements of the appropriate group occupancy of the state building code. (III)

i. No part of any room shall be enclosed, subdivided, or partitioned unless such part is separately lighted and ventilated and meets such other requirements as its usage and occupancy dictates except closets used for the storage of residents' clothing. (III)

j. All stairways in resident-occupied areas shall have substantial handrails on both sides. (III)

k. Each open stairway shall have protective barriers. (III)

l. Screens of 16 mesh per square inch shall be provided at all openings. (III)

m. Screen doors shall swing outward and be self-closing. At the discretion of the state fire marshal, screens for fire doors may swing in. (III)

n. All resident rooms shall have a door. (III)

o. All rooms in resident-occupied areas shall have general lighting switched at the entrance to each room. (III)

57.30(2) *Furnishings and equipment.*

a. All furnishings and equipment shall be durable, cleanable, and appropriate to its function and in accordance with the department's approved program of care. (III)

b. All resident areas shall be decorated, painted, and furnished to provide a home-like atmosphere. (III)

c. Upholstery materials shall be moisture- and soil-resistant, except on furniture provided by the resident and the property of the resident. (III)

d. Night lights shall be provided in corridors, at stairways, attendant's stations and residents' bedrooms, and hazardous areas with no less than one foot-candle throughout the area at all times. (III)

57.30(3) *Dining and living rooms.*

a. Every facility shall have a dining room and a living room easily accessible to all residents. (III)

b. Dining rooms and living rooms shall at no time be used as bedrooms. (III)

c. Dining rooms and living rooms shall be available for use by residents at appropriate times to provide periods of social and diversional individual and group activities. (III)

d. A combination dining room and living room may be permitted if the space requirements of a multipurpose room as provided in 57.30(3)*"e"* are met. (III)

e. Multipurpose rooms. When space is provided for multipurpose dining and activities and recreational purposes, the area shall total at least 30 square feet per licensed bed for the first 100 beds and 27 square feet per licensed bed for all beds in excess of 100. An open area of sufficient size shall be provided to permit group activities such as religious meetings or presentation of demonstrations or entertainment.

f. Living rooms.

(1) Living rooms shall be maintained for the use of residents and their visitors and may be used for recreational activities. (III)

(2) Living rooms shall be suitably furnished. (III)

(3) When space is provided to be used only for activities and recreational purposes, the area shall be at least 15 square feet per licensed bed. At least 50 percent of the required area must be in one room. (III)

g. Dining rooms.

(1) Dining rooms shall be furnished with dining tables and chairs appropriate to the size and function of the facility. These rooms and furnishings shall be kept clean and sanitary. (III)

(2) When space is provided to be used only for dining, the area shall total at least 15 square feet per licensed bed. (III)

57.30(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 arm chair, 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 multiple bedroom, drawer space shall be assigned each resident. (III)

f. Walls, ceilings, and floors shall have easily cleanable surfaces and shall be kept clean and in good repair. (III)

g. Beds and other furnishings shall not obstruct free passage to and through doorways. (III)

h. There shall be a wardrobe or closet in each resident's room. Minimum clear dimensions shall be 1′ 10″ deep by 1′ 8″ wide with full hanging space and provide a clothes rod and shelf. In a multiple bedroom, closet or wardrobe space shall be assigned each resident sufficient for the resident's needs. (III)

i. Beds shall not be placed with the head of the bed in front of a window or radiator. (III)

j. 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 it is covered so as to protect the resident from contact with it or from excessive heat. (III)

k. Reading lamps shall be provided each resident in the resident's room. (III)

l. Each room shall have sufficient accessible mirrors to serve residents' needs. (III)

m. Usable floor space of a room shall be no less than eight feet in any major dimension. (III)

n. Bedrooms shall have a minimum of 80 square feet of usable floor space per bed. (III)

o. There shall be no more than four residents per room. (III)

p. Each resident room shall be provided with light and ventilation by means of a window or windows with an area equal to one-eighth of the total floor area. The windows shall be openable. (III)

57.30(5) *Bath and toilet facilities.*

a. Provision shall be made for bars to hold individual towels and washcloths. (III)

b. All lavatories shall have paper towel dispensers and an available supply of soap. (III)

c. Minimum numbers of toilet and bath facilities shall be one lavatory, one toilet for each 10 residents, and one tub or shower for each 15 residents or fraction thereof. (III)

d. There shall be a minimum of one bathroom with tub or shower, toilet stool and lavatory on each floor in multistory buildings for facilities licensed for over 15 beds. Separate toilets for the sexes shall be provided. (III)

e. Grab bars shall be provided at all toilet stools, tubs, and showers. Grab bars, accessories, and anchorage shall have sufficient strength to sustain a deadweight of 250 pounds for five minutes. (III)

f. Each toilet room shall have a door. (III)

g. All toilet, bath, and shower facilities shall be supplied with adequate safety devices appropriate to the needs of the individual residents. Raised toilet seats shall be available for residents who are aged or infirm. (III)

h. Toilet and bath facilities shall have an aggregate outside window area of at least four square feet. Facilities having a system of mechanical ventilation are exempt from this regulation. (III)

i. Every facility shall provide a toilet and lavatory with grab bars for the public and staff. (III)

57.30(6) *Heating.* A centralized heating system capable of maintaining a minimum temperature of 78°F (26°C) shall be provided. Portable units or space heaters are prohibited from being used in the facility except in an emergency. (III)

57.30(7) *Water supply.*

a. Every facility shall have an adequate water supply from an approved source. A municipal source of supply shall be considered as meeting this requirement. (III)

b. Private sources of supply shall be tested annually and the report submitted with the annual application for license. (III)

c. A bacterially unsafe source of supply shall be grounds for denial, suspension, or revocation of license. (III)

d. The department may require testing of private sources of supply at its discretion in addition to the annual test. The facility shall supply reports of such tests as directed by the department. (III)

e. Hot and cold running water under pressure shall be available in the facility. (III)

f. Prior to construction of a new facility or new water source, private sources of supply shall be surveyed and shall comply with the requirements of the department. (III)

57.30(8) *Sewage system.*

a. Sewage shall be collected and disposed of in a manner approved by the department. Disposal into a municipal system will be considered as meeting this requirement. (III)

b. Private sewage systems shall conform to the rules and regulations of the department of environmental quality, state health department, and the natural resources council. (III)

c. Every facility shall have an interior plumbing system complete with flushing device. (III)

57.30(9) *Attendant's station.* In facilities over 15 beds, an attendant's station with a minimum of 40 square feet shall be provided which is centrally located in the resident area and shall have a well-lighted desk with the necessary equipment for the keeping of required records and supplies. (III)

481—57.31(135C) Family and employee accommodations.

57.31(1) Children under 14 years of age shall not be allowed into the service areas. (III)

57.31(2) The residents' bedrooms shall not be occupied by employees, family members of employees, or family members of the licensee. (III)

57.31(3) In facilities where the total occupancy of family, employees, and residents is five or less, one toilet and one tub or shower shall be the minimum requirement. (III)

57.31(4) 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 residents. (III)

57.31(5) In all health care 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 residents. (III)

481—57.32(135C) Animals. No animals shall be allowed within the facility except with written approval of the department and under controlled conditions. (III)

481—57.33(135C) Environment and grounds.

57.33(1) A residential care facility shall be constructed in a neighborhood free from excessive noise, dirt, polluted, or odorous air, or similar disturbances. (III)

57.33(2) There shall be an area available for outdoor activities calculated at 25 square feet per licensed bed. Open air porches may be included in meeting such requirements. (III)

481—57.34(135C) Supplies.

57.34(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 of odors. (III)

d. Each bed shall be provided with clean, washable bedspreads. There shall be a supply available when changes are necessary. (III)

e. Uncrowded and convenient storage shall be provided for linens, pillows, and bedding. (III)

57.34(2) *First aid kit.* A first aid emergency kit shall be available on each floor in every facility. (II, III)

57.34(3) *General supplies.*

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)

481—57.35(135C) Residents' rights in general.

57.35(1) Each facility shall ensure that policies and procedures are written and implemented which include, at a minimum, all of the following provisions (subrules 57.35(2) to 57.35(6)) and which govern all areas of service provided by the facility. These policies and procedures shall be available to staff, residents, their families or legal representatives and the public and shall be reviewed annually. (II)

57.35(2) Policies and procedures regarding the admission, transfer, and discharge of residents shall ensure that:

a. Only those persons are accepted whose needs can be met by the facility directly or in cooperation with community resources or other providers of care with which it is affiliated or has contracts. (II)

b. As changes occur in residents' physical or mental condition, necessitating services or care which cannot be adequately provided by the facility, they are transferred promptly to other appropriate facilities. (II)

57.35(3) Policies and procedures regarding the use of chemical and physical restraints shall define the use of restraints and identify the individual who may authorize the application of physical restraints in emergencies, and describe the mechanism for monitoring and controlling their use. (II)

57.35(4) Policies and procedures shall include a method for submitting complaints and recommendations by residents or their responsible party and for ensuring a response and disposition by the facility. (II)

57.35(5) Policies and procedures shall include provisions governing access to, duplication of, and dissemination of information from the residents' records. (II)

57.35(6) 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 admission, or in the case of residents already in the facility, upon the facility's adoption or amendment of residents' rights policies. (II)

a. The facility shall make known to residents what they may expect from the facility and its staff, and what is expected from them. The facility shall communicate these expectations during the period of not more than two weeks before or five days after admission. 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 admission. (II)

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)

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 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. In the case of an intellectually disabled resident, the signature shall be witnessed by a person not associated with or employed by the facility. The witness may be a parent, guardian, Medicaid agency representative, etc. (II)

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)

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)

57.35(7) Each resident or responsible party shall be fully informed in a contract as required in rule 57.14(135C), prior to or at the time of admission and during the resident's stay, of services available in the facility, and of related charges not covered by the facility's basic per diem rate. (II)

57.35(8) Each resident or responsible party shall be fully informed by a physician of the resident's health and medical condition unless medically contraindicated (as documented by a physician in the resident's record). Each resident shall be afforded the opportunity to participate in the planning of the resident's total care and medical treatment, which may include, but is not limited to, nursing care, nutritional care, rehabilitation, restorative therapies, activities, and social work services. Each resident only participates in experimental research conducted under the U.S. Department of Health and Human Services protection from research risks policy and then only upon the resident's informed written consent. Each resident has the right to refuse treatment except as provided by Iowa Code chapter 229. In the case of a confused or intellectually disabled individual, the responsible party shall be informed by the physician of the resident's medical condition and be afforded the opportunity to participate in the planning of the resident's total care and medical treatment, to be informed of the medical condition, and to refuse to participate in experimental research. (II)

a. The requirement that residents shall be informed of their conditions, involved in the planning of their care, and advised of any significant changes in either shall be communicated to every physician responsible for the medical care of residents in the facility. (II)

b. The administrator or designee shall be responsible for working with attending physicians in the implementation of this requirement. (II)

c. If the physician determines or in the case of a confused or intellectually disabled resident the responsible party determines that informing the resident of the resident's condition is contraindicated, this decision and reasons for it shall be documented in the resident's record by the physician. (II)

d. Any clinical investigation involving residents must be under the sponsorship of an institution with a human subjects review board functioning in accordance with the requirements of Public Law 93-348, as implemented by Part 46 of Title 45 of the Code of Federal Regulations, as amended to December 1, 1981 (45 CFR 46). A resident being considered for participation in experimental research must be fully informed of the nature of the experiment, e.g., medication, treatment, and understand the possible consequences of participating or not participating. The resident's (or responsible party's) written informed consent must be received prior to participation. (II)

57.35(9) In residential care facilities which are also county care facilities, policies and procedures shall address the admission and retention of persons with histories of dangerous and disturbing behavior. For the purpose of this subrule, persons with histories of dangerous or disturbing behavior are those persons who have been committed for evaluation and found to be seriously mentally impaired pursuant to Iowa Code section 229.13 or 812.1 within six months of the request for admission to the facility. In addition to establishing the criteria for admission and retention of persons so defined, the policies and procedures shall provide for:

a. Reasonable precautions to prevent the resident from harming self, other residents, or employees of the facility.

b. Treatment of persons with mental illness as defined in Iowa Code section 229.1(1) which is provided in accordance with the individualized health care plan.

c. Ongoing and documented staff training on individualized health care planning for persons with mental illness.

[**ARC 0766C**, IAB 5/29/13, effective 7/3/13]

481—57.36(135C) Involuntary discharge or transfer.

57.36(1) A facility shall not involuntarily discharge or transfer a resident from a facility except: for medical reasons; for the resident's welfare or that of other residents; for nonpayment for the resident's stay (as contained in the contract for the resident's stay), except as prohibited by Title XIX of the Social Security Act, 42 U.S.C. 1396 to 1396k and by reason of action pursuant to Iowa Code chapter 229. (I, II)

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

b. "Welfare" of a resident or that of other residents refers to their social, emotional, or physical well-being. A resident might 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). Evidence 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 be in writing and shall include specific information to support this determination. (II)

c. Involuntary transfer or discharge of a resident from a facility shall be preceded by a written notice to the resident or responsible party at least 30 days in advance of the proposed transfer or discharge. The 30-day requirement shall not apply in any of the following instances:

(1) If an emergency transfer or discharge is mandated by the resident's health care needs and is in accord with the written orders and medical justification of the attending physician. Emergency transfers or discharges may also be mandated to protect the health, safety, or well-being of other residents and staff from the resident being transferred. (II)

(2) If 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, physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility. (II)

d. The notice required by paragraph *"c"* 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 (elite), which reads: "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 state 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. Provision may be made for extension of the 14-day requirement upon request to the department of inspections and appeals designee in emergency circumstances. If you lose the hearing, you will not be transferred before the expiration of 30 days following receipt of the original notice of the discharge or transfer, or no sooner than 5 days following final decision of such hearing. 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, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083." (II)

e. A request for a hearing made under 57.36(1)*"d"*(3) shall stay a transfer or discharge pending a hearing or appeal decision. (II)

f. The type of hearing shall be determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident, responsible party, and Iowa department on aging long-term care ombudsman of record, not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident or responsible party that they have a right to appear at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. The Iowa department on aging long-term care ombudsman shall have the right to appear at the hearing.

g. The hearing shall be heard by a department of inspections and appeals designee pursuant to Iowa Code chapter 17A. (The hearing shall be public unless the resident or representative requests in writing that it be closed.) The licensee or designee shall have the opportunity to present to the representative of the department any oral testimony or written materials to show by a preponderance of the evidence just cause why a transfer or discharge may be made. The resident and responsible party shall also have an opportunity to present to the representative of the department any oral testimony or written material to show just cause why a transfer or discharge should not be made. In a determination as to whether a transfer or discharge is authorized, the burden of proof rests on the party requesting the transfer or discharge.

h. Based upon all testimony and material submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, responsible party, and department on aging long-term care ombudsman within 10 working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

A request for review of a proposed decision in which the department is the final decision maker shall be made within 15 days of issuance of the proposed decision, unless otherwise provided by statute. Requests shall be mailed or delivered by either party to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. Failure to request review will preclude judicial review unless the department reviews a proposed decision upon its own motion within 15 days of the issuance of the decision.

i. A copy of the notice required by paragraph *"c"* 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, physician, the person or agency responsible for the resident's placement, maintenance, and care in the facility, and the department on aging long-term care ombudsman.

j. 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)

k. The involuntary transfer or discharge shall be discussed 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 within 48 hours after notice of discharge has been received. The explanation and discussion of the reasons for involuntary transfer or discharge shall be given by the facility administrator or other appropriate facility representative as the administrator's designee. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions and made a part of the resident's record. (II)

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

(1) Counseling 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)

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

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

m. In the case of an emergency transfer or discharge as outlined in 57.36(1)*"c"*(1), the resident must still be given a written notice prior to or within 48 hours following transfer or discharge. A copy of this notice must be placed in the resident's file and it must contain all the information required by subparagraphs (1) and (2) of 57.36(1)*"d."* In addition, the notice must contain a statement in not less than 12-point type (elite), which 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. 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 you may 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." A hearing requested pursuant to this subrule shall be held in accordance with paragraphs *"f," "g,"* and *"h."* (II)

n. 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 a facility voluntarily closing, a period of 30 days must be allowed for an orderly transfer of residents to other facilities.

57.36(2) Intrafacility transfer:

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

(1) Incompatibility with or disturbing to other roommates, as documented in the resident's record.

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

(3) For medical, nursing or psychosocial reasons, as documented in the resident's record, 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 which 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 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 57.36(2)*"a"*(5). (II)

(2) As punishment or behavior modification (except as specified in 57.36(2)*"a"*(1)). (II)

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

c. If intrafacility relocation is necessary for reasons outlined in paragraph *"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 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 requiring emergency relocation and the notification shall be documented. (II)

481—57.37(135C) Residents' rights. 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)

57.37(1) 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 issues or pending decisions of the facility that affect them and their views shall be solicited prior to action. (II)

57.37(2) The facility shall implement a written procedure for registering and resolving grievances and recommendations by residents or their responsible party. The procedure shall ensure protection of the resident from any form of reprisal or intimidation. The written procedure shall include:

a. Designation of an employee responsible for handling grievances and recommendations. (II)

b. A method of investigating and assessing the validity of a grievance or recommendation. (II)

c. Methods of resolving grievances. (II)

d. Methods of recording grievances and actions taken. (II)

57.37(3) The facility shall post in a prominent area the name, telephone number, and address of the ombudsman, survey agency, local law enforcement agency, and certified volunteer long-term care ombudsman and the text of Iowa Code section 135C.46 to provide to residents a further course of redress. (II)

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481—57.38(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, and to the extent, under written authorization by the resident that the facility assists in management, the management shall be carried out in accordance with Iowa Code section 135C.24. (II)

57.38(1) The facility shall maintain a written account of all residents' funds received by or deposited with the facility. (II)

57.38(2) An employee shall be designated in writing to be responsible for resident accounts. (II)

57.38(3) The facility shall keep on deposit personal funds over which the resident has control in accordance with Iowa Code subsection 135C.24(2). 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 confused or intellectually disabled resident, the resident's responsible party shall designate a method of disbursing the resident's funds. (II)

57.38(4) If the facility makes financial transactions on a resident's behalf, the resident must receive or acknowledge having seen 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)

57.38(5) A resident's personal funds shall not be used without the written consent of the resident or the resident's guardian. (II)

57.38(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 guardian. The department may report findings that resident funds have been used without written consent to the audits division or the local law enforcement agency, as appropriate. (II)

[**ARC 0766C**, IAB 5/29/13, effective 7/3/13]

481—57.39(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. Each resident shall be free from chemical and physical restraints, except in an emergency for the shortest amount of time necessary to protect the resident from injury to the resident or to others, pending the immediate transfer to an appropriate facility. The decision to use restraints on an emergency basis shall be made by the designated charge person, who shall promptly report the action taken to the physician, and the reasons for using restraints shall be documented in the resident's record. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

57.39(1) Mental abuse includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation. (II)

57.39(2) Physical abuse includes, but is not limited to, corporal punishment and the use of restraints as punishment. (II)

57.39(3) Drugs such as tranquilizers may not be used as chemical restraints to limit or control resident behavior for the convenience of staff. (II)

57.39(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)

57.39(5) and **57.39(6)** Rescinded IAB 12/11/13, effective 1/15/14.

[**ARC 1204C**, IAB 12/11/13, effective 1/15/14]

481—57.40(135C) Resident records. Each resident shall be ensured confidential treatment of all information contained in the resident's records, including information contained in an automatic data bank. The resident's written consent shall be required for the release of information to persons not otherwise authorized under law to receive it. (II)

57.40(1) The facility shall limit access to any medical records to staff and consultants providing professional service to the resident. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

57.40(2) Similar procedures shall safeguard the confidentiality of residents' personal records, e.g., financial records and social services records. Only those personnel concerned with the financial affairs of the residents may have access to the financial records. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

57.40(3) 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 determines 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)

481—57.41(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. (II)

57.41(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. (II)

57.41(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)

57.41(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)

57.41(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)

57.41(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—57.42(135C) Resident work. No resident may be required to perform services for the facility, except as provided by Iowa Code sections 35D.14 and 347B.5. (II)

57.42(1) Residents may not be used to provide a source of labor for the facility against their will. Physician's approval is required for all work programs. (I, II)

57.42(2) Residents who perform work for the facility must receive remuneration unless the work is part of their approved training program. Persons on the resident census performing work shall not be used to replace paid employees in fulfilling staffing requirements. (II)

481—57.43(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)

57.43(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)

57.43(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 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)

57.43(3) Decisions to restrict a visitor are reviewed and reevaluated: each time the medical orders are reviewed by the physician; at least quarterly by the facility's staff; or at the resident's request. (II)

57.43(4) Space shall be provided for residents to receive visitors in reasonable comfort and privacy. (II)

57.43(5) Telephones consistent with ANSI standards (405.1134(c)) 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)

57.43(6) Arrangements shall be made to provide assistance to residents who require help in reading or sending mail. (II)

57.43(7) Residents shall be permitted to leave the facility and environs at reasonable times unless there are justifiable reasons established in writing by the attending physician, qualified intellectual disabilities professional, or facility administrator for refusing permission. (II)

57.43(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)

[**ARC 0766C**, IAB 5/29/13, effective 7/3/13]

481—57.44(135C) Resident activities. 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 qualified intellectual disabilities professional as appropriate in the resident's resident record. (II)

57.44(1) 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)

57.44(2) All residents shall have the freedom to refuse to participate in these activities. (II)

[**ARC 0766C**, IAB 5/29/13, effective 7/3/13]

481—57.45(135C) Resident property. Each resident may retain and use personal clothing and possessions as space permits and provided such use is not otherwise prohibited by these rules. (II)

57.45(1) Residents shall be permitted to keep reasonable amounts of personal clothing and possessions for their use while in the facility. The personal property shall be kept in a safe location which is convenient to the resident. (II)

57.45(2) Residents shall be advised, prior to or at the time of admission, of the kinds and amounts of clothing and possessions permitted for personal use, and whether the facility will accept responsibility for maintaining these items, e.g., cleaning and laundry. (II)

57.45(3) Any personal clothing or possessions retained by the facility for the resident during the resident's stay shall be identified and recorded on admission and a record placed on the resident's chart. The facility shall be responsible for secure storage of the items, and they shall be returned to the resident promptly upon request or upon discharge from the facility. (II)

57.45(4) A resident's personal property shall not be used without the written consent of the resident or the resident's guardian. (II)

57.45(5) A resident's personal property shall be returned to the resident when it has been used without the written consent of the resident or the resident's guardian. The department may report findings that a resident's property has been used without written consent to the local law enforcement agency, as appropriate. (II)

481—57.46(135C) Family visits. Each resident, if married, shall be ensured privacy for visits by the resident's spouse; if both are residents in the facility, they shall be permitted to share a room, if available. (II)

57.46(1) The facility shall provide for needed privacy in visits between spouses. (II)

57.46(2) Spouses who are residents in the same facility shall be permitted to share a room, if available, unless one of their attending physicians documents in the medical record those specific reasons why such an arrangement would have an adverse effect on the health of the resident. (II)

57.46(3) Family members shall be permitted to share a room, if available, if requested by both parties, unless one of their attending physicians documents in the medical record those specific reasons why such an agreement would have an adverse effect on the health of the resident. (II)

481—57.47(135C) Choice of physician. Each resident shall be permitted free choice of a physician and a pharmacy, if accessible. The facility may require the pharmacy selected to utilize a drug distribution system compatible with the system currently used by the facility. (II)

481—57.48(135C) Incompetent residents.

57.48(1) Each facility shall provide that all rights and responsibilities of the resident devolve to the resident's responsible party when a resident is adjudicated incompetent in accordance with state law or, in the case of a resident who has not been adjudicated incompetent under the laws of the state, in accordance with 42 CFR 483.10. This subrule is not intended to limit the authority of any individual acting pursuant to Iowa Code chapter 144A. (II)

57.48(2) The fact that a resident has been adjudicated incompetent does not absolve the facility from advising the resident of these rights to the extent the resident is able to understand them. The facility shall also advise the responsible party, if any, and acquire a statement indicating an understanding of residents' rights. (II)

481—57.49(135C) County care facilities. In addition to Chapter 57 licensing rules, county care facilities licensed as residential care facilities must also comply with department of human services rules, 441—Chapter 37. Violations of any standard established by the department of human services is a Class II violation pursuant to 481—56.2(135C).

481—57.50(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.

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 *"a"* through *"j"* of this rule. (I, II, III)

57.50(1) 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.

57.50(2) Approval of the state fire marshal shall be obtained before approval of the department will be considered.

57.50(3) 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—57.51(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. 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.

57.51(1) A residential care facility which chooses to provide respite care services is not required to obtain a separate license or pay a license fee.

57.51(2) Rule 481—57.36(135C), regarding involuntary discharge or transfer rights, does not apply to residents who are being cared for under a respite care contract.

57.51(3) Pursuant to rule 481—57.14(135C), the facility shall have a contract with each resident in the facility. When the resident is there for respite care services, the contract shall specify the time period during which the resident 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 specifically state the resident may be involuntarily discharged while being considered as a respite care resident. The contract shall meet other requirements under 481—57.14(135C), except the requirements under subrule 57.14(7).

57.51(4) 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.

These rules are intended to implement Iowa Code sections 10A.202, 10A.402, 135C.6(1), 135C.14, 135C.23(2), 135C.25, 135C.36, 227.4, 235B.1(6), and 235B.1(11).

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◊ Two or more ARCs

1 Effective date of 470—57.15(2)*"a"* and *"b"* delayed until the expiration of 45 calendar days into the 1987 session of the General Assembly pursuant to Iowa Code section 17A.8(9), IAB 6/4/86.

2 See IAB, Inspections and Appeals Department.

3 Effective date of 481—57.12(2)*"a,"* last paragraph, delayed 70 days by the Administrative Rules Review Committee at its meeting held July 8, 1993.

OBJECTION

At its February 13 meeting the Administrative Rules Review Committee voted the following objection: [Subrules 57.23(2)*"b,"* 58.26(2)*"b,"* 59.31(2)*"b,"* 63.21(3)*"b,"* published IAB 12/13/78]

The committee objects to the amendments to 470* IAC 57.23(2)*"b,"* 58.26(2)*"b,"* 59.31(2)*"b"* and 63.21(3)*"b,"* which strike the phrase "Twenty-five percent of the staffing may be provided by qualified volunteers. The time shall be spent in working with the organized program activity.", on the grounds these provisions are unreasonable. It is the understanding of the committee these deletions in effect require facilities to employ a person to coordinate recreation activities. It is the feeling of the committee this would result in higher per bed costs without demonstrably improving the services rendered to the patient. Volunteers have always played a major role in health care institutions, and no evidence has been submitted indicating a decline in that role or in public interest in donating time and energy.

These amendments appear in the 12-13-78 IAB, and have been filed under the emergency provisions of chapter 17A, 1979 Code.

*Chapter 57 transferred to Inspections and Appeals[481], IAC 7/15/87.

CHAPTER 58
NURSING FACILITIES
[Prior to 7/15/87, Health Department[470] Ch 58]

481—58.1(135C) Definitions. For the purpose of these rules, the following terms shall have the meaning indicated in this chapter. The definitions set out in Iowa Code section 135C.1 shall be considered to be incorporated verbatim in the rules. The use of the words "shall" and "must" indicates those standards are mandatory. The use of the words "should" and "could" indicates those standards are recommended.

"Accommodation" means the provision of lodging, including sleeping, dining, and living areas.

"Administrator" means a person licensed pursuant to Iowa Code chapter 147 who administers, manages, supervises, and is in general administrative charge of a nursing facility, whether or not such individual has an ownership interest in such facility, and whether or not the functions and duties are shared with one or more individuals.

"Ambulatory" means the condition of a person who immediately and without aid of another is physically or 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.

"Board" means the regular provision of meals.

"Chairfast" means capable of maintaining a sitting position but lacking the capacity of bearing own weight, even with the aid of a mechanical device or another individual.

"Communicable disease" means a disease caused by the presence of viruses or microbial agents within a person's body, which agents may be transmitted either directly or indirectly to other persons.

"Department" means the state department of inspections and appeals.

"Distinct part" means a clearly identifiable area or section within a health care facility, consisting of at least a residential unit, wing, floor, or building containing contiguous rooms.

"Medication" means any drug including over-the-counter substances ordered and administered under the direction of the physician.

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

"Nourishing snack" is defined as a verbal offering of items, single or in combination, from the basic food groups. Adequacy of the "nourishing snack" will be determined both by resident interviews and by evaluation of the overall nutritional status of residents in the facility.

"Person directed care environment" means the provision of care and services provided in a facility that promotes decision making and choices by the resident, enhances the primary caregiver's capacity to respond to each resident's needs, and promotes a homelike environment. Examples of a person directed care environment include, but are not limited to, the Green House concept, the Eden alternative, service houses and neighborhoods.

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

"Potentially hazardous food" means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, the growth and toxin production of clostridium botulinum, or in raw shell eggs, the growth of salmonella enteritidis. Potentially hazardous food includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic and oil mixtures that are not acidified or otherwise modified at a food processing plant in a way that results in mixtures that do not support growth of bacteria.

"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, physical or occupational therapist, speech therapist or audiologist who meets the educational requirements for the profession, as required in the state of Iowa, and having one year's experience working with persons with an intellectual disability.

"Qualified nurse" means a registered nurse or a licensed practical nurse, as defined in Iowa Code chapter 152.

"Rate" means that daily fee charged for all residents equally and shall include the cost of all minimum services required in these rules and regulations.

"Responsible party" means the person who signs or cosigns the admission agreement required in 481—58.13(135C) or the resident's guardian or conservator if one has been appointed. In the event that a resident does not have a guardian, conservator or other person signing the admission 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, religious groups, fraternal organizations, or foundations that assume responsibility and advocate for their client patients and pay for their health care.

"Restraints" means any chemical, manual method or physical or mechanical device, material, or equipment attached to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body.

"Substantial evening meal" is defined as an offering of three or more menu items at one time, one of which includes a high protein such as meat, fish, eggs or cheese. The meal would represent no less than 20 percent of the day's total nutritional requirements.

[**ARC 0766C**, IAB 5/29/13, effective 7/3/13; **ARC 1398C**, IAB 4/2/14, effective 5/7/14]

481—58.2(135C) Variances. Variances from these rules may be granted by the director of the department of inspections and appeals for good and sufficient reason when the need for variance has been established; no danger to the health, safety, or welfare of any resident results; alternate means are employed or compensating circumstances exist and the variance will apply only to an individual nursing facility. Variances will be reviewed at the discretion of the director of the department of inspections and appeals.

58.2(1) To request a variance, the licensee must:

a. Apply for variance in writing on a form provided by the department;

b. Cite the rule or rules from which a variance is desired;

c. State why compliance with the rule or rules cannot be accomplished;

d. Explain alternate arrangements or compensating circumstances which justify the variance;

e. Demonstrate that the requested variance will not endanger the health, safety, or welfare of any resident.

58.2(2) Upon receipt of a request for variance, the director of inspections and appeals will:

a. Examine the rule from which variance is requested to determine that the request is necessary and reasonable;

b. If the request meets the above criteria, evaluate the alternate arrangements or compensating circumstances against the requirement of the rules;

c. Examine the effect of the requested variance on the health, safety, or welfare of the residents;

d. Consult with the applicant if additional information is required.

58.2(3) Based upon these studies, approval of the variance will be either granted or denied within 120 days of receipt.

481—58.3(135C) Application for licensure.

58.3(1) Initial application and licensing. In order to obtain an initial nursing facility license, for a nursing facility which is currently licensed, the applicant must:

a. Meet all of the rules, regulations, and standards contained in 481—Chapters 58 and 61. Applicable exceptions found in rule 481—61.2(135C) shall apply based on the construction date of the facility.

b. Submit a letter of intent and a written résumé of the resident care program and other services provided for departmental review and approval;

c. Make application at least 30 days prior to the change of ownership of the facility on forms provided by the department;

d. Submit a floor plan of each floor of the nursing facility, drawn on 8½- × 11-inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which room will be put and window and door location;

e. Submit a photograph of the front and side elevation of the nursing facility;

f. Submit the statutory fee for a nursing facility license;

g. Meet the requirements of a nursing facility for which licensure application is made;

h. Comply with all other local statutes and ordinances in existence at the time of licensure;

i. Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

58.3(2) In order to obtain an initial nursing facility license for a facility not currently licensed as a nursing facility, the applicant must:

a. Meet all of the rules, regulations, and standards contained in 481—Chapters 58 and 61. Exceptions noted in 481—subrule 61.1(2) shall not apply;

b. Submit a letter of intent and a written résumé of the resident care program and other services provided for departmental review and approval;

c. Make application at least 30 days prior to the change of ownership of the facility on forms provided by the department;

d. Submit a floor plan of each floor of the nursing facility, drawn on 8½- × 11-inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which room will be put and window and door locations;

e. Submit a photograph of the front and side elevation of the nursing facility;

f. Submit the statutory fee for a nursing facility license;

g. Comply with all other local statutes and ordinances in existence at the time of licensure;

h. Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

58.3(3) *Renewal application.* In order to obtain a renewal of the nursing facility license, the applicant must:

a. Submit the completed application form 30 days prior to annual license renewal date of nursing facility license;

b. Submit the statutory license fee for a nursing facility with the application for renewal;

c. Have an approved current certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations;

d. Submit appropriate changes in the résumé to reflect any changes in the resident care program or other services.

58.3(4) Licenses are issued to the person or governmental unit which has responsibility for the operation of the facility and authority to comply with all applicable statutes, rules or regulations.

The person or governmental unit must be the owner of the facility or, if the facility is leased, the lessee.

481—58.4(135C) General requirements.

58.4(1) The license shall be displayed in a conspicuous place in the facility which is viewed by the public. (III)

58.4(2) The license shall be valid only in the possession of the licensee to whom it is issued.

58.4(3) The posted license shall accurately reflect the current status of the nursing facility. (III)

58.4(4) Licenses expire one year after the date of issuance or as indicated on the license.

58.4(5) No nursing facility shall be licensed for more beds than have been approved by the health facilities construction review committee.

58.4(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. (III)

481—58.5(135C) Notifications required by the department. The department shall be notified:

58.5(1) Within 48 hours, by letter, of any reduction or loss of nursing or dietary staff lasting more than seven days which places the staffing ratio below that required for licensing. No additional residents shall be admitted until the minimum staffing requirements are achieved; (III)

58.5(2) Of any proposed change in the nursing facility's functional operation or addition or deletion of required services; (III)

58.5(3) Thirty days before addition, alteration, or new construction is begun in the nursing facility or on the premises; (III)

58.5(4) Thirty days in advance of closure of the nursing facility; (III)

58.5(5) Within two weeks of any change in administrator; (III)

58.5(6) When any change in the category of license is sought; (III)

58.5(7) Prior to the purchase, transfer, assignment, or lease of a nursing facility, the licensee shall:

a. Inform the department of the pending sale, transfer, assignment, or lease of the facility; (III)

b. Inform the department of the name and address of the prospective purchaser, transferee, assignee, or lessee at least 30 days before the sale, transfer, assignment, or lease is completed; (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 nursing facility to the named prospective purchaser, transferee, assignee, or lessee. (III)

58.5(8) Pursuant to the authorization submitted to the department by the licensee prior to the purchase, transfer, assignment, or lease of a nursing facility, the department shall upon request send or give copies of all recent licensure surveys and of any other pertinent information relating to the facility's licensure status to the prospective purchaser, transferee, assignee, or lessee; costs for such copies shall be paid by the prospective purchaser.

481—58.6(135C) Witness fees. Rescinded IAB 3/30/94, effective 5/4/94. See 481—subrule 50.6(4).

481—58.7(135C) Licenses for distinct parts.

58.7(1) Separate licenses may be issued for distinct parts of a health care facility which are clearly identifiable, containing contiguous rooms in a separate wing or building or on a separate floor of the facility and which provide care and services of separate categories.

58.7(2) The following requirements shall be met for a 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. A distinct part must be operationally and financially feasible;

d. A separate 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.

481—58.8(135C) Administrator.

58.8(1) Each nursing facility shall have one person in charge, duly licensed as a nursing home administrator or acting in a provisional capacity. (III)

58.8(2) A licensed administrator may act as an administrator for not more than two nursing facilities.

a. The distance between the two facilities shall be no greater than 50 miles. (II)

b. The administrator shall spend the equivalent of three full eight-hour days per week in each facility. (II)

c. 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)

58.8(3) The licensee may be the licensed nursing home administrator providing the licensee meets the requirements as set forth in these regulations and devotes the required time to administrative duties. Residency in the facility does not in itself meet the requirement. (III)

58.8(4) A provisional administrator may be appointed on a temporary basis by the nursing facility licensee to assume the administrative duties when the facility, through no fault of its own, has lost its administrator and has been unable to replace the administrator provided that no facility licensed under Iowa Code chapter 135C shall be permitted to have a provisional administrator for more than 12 months in any 12-month period and further provided that:

a. The department has been notified prior to the date of the administrator's appointment; (III)

b. The board of examiners for nursing home administrators has approved the administrator's appointment and has confirmed such appointment in writing to the department. (III)

58.8(5) In the absence of the administrator, a responsible person shall be designated in writing to the department to be in charge of the facility. The administrator shall not be absent from the facility for more than 3 months without approval of the department. (III)

The person designated shall:

a. Be knowledgeable of the operation of the facility; (III)

b. Have access to records concerned with the operation of the facility; (III)

c. Be capable of carrying out administrative duties and of assuming administrative responsibilities; (III)

d. Be at least 21 years of age; (III)

e. Be empowered to act on behalf of the licensee during the administrator's absence concerning the health, safety, and welfare of the residents; (III)

f. Have had training to carry out assignments and take care of emergencies and sudden illness of residents. (III)

58.8(6) A licensed administrator in charge of two facilities shall employ an individual designated as a full-time assistant administrator for each facility. (III)

58.8(7) An administrator of only one facility shall be considered as a full-time employee. Full-time employment is defined as 40 hours per week. (III)

[**ARC 1398C**, IAB 4/2/14, effective 5/7/14]

481—58.9(135C) Administration.

58.9(1) The licensee shall:

a. Assume the responsibility for the overall operation of the nursing facility; (III)

b. Be responsible for compliance with all applicable laws and with the rules of the department; (III)

c. Establish written policies, which shall be available for review, for the operation of the nursing facility. (III)

58.9(2) The administrator shall:

a. Be responsible for the selection and direction of competent personnel to provide services for the resident care program; (III)

b. Be responsible for the arrangement for all department heads to annually attend a minimum of ten contact hours of educational programs to increase skills and knowledge needed for the position; (III)

c. Be responsible for a monthly in-service educational program for all employees and to maintain records of programs and participants; (III)

d. Make available the nursing facility payroll records for departmental review as needed; (III)

e. Be required to maintain a staffing pattern of all departments. These records must be maintained for six months and are to be made available for departmental review. (III)

481—58.10(135C) General policies.

58.10(1) There shall be written personnel policies in facilities of more than 15 beds to include hours of work, and attendance at educational programs. (III)

58.10(2) There shall be a written job description developed for each category of worker. The job description shall include title of job, job summary, qualifications (formal education and experience), skills needed, physical requirements, and responsibilities. (III)

58.10(3) There shall be written personnel policies for each facility. Personnel policies shall include the following requirements:

a. Employees shall have a physical examination before employment. (I, II, III)

b. Employees shall have a physical examination at least every four years. (I, II, III)

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

58.10(4) Health certificates for all employees shall be available for review. (III)

58.10(5) Rescinded IAB 10/19/88, effective 11/23/88.

58.10(6) There shall be written policies for emergency medical care for employees and residents in case of sudden illness or accident which includes the individual to be contacted in case of emergency. (III)

58.10(7) The facility shall have a written agreement with a hospital for the timely admission of a resident who, in the opinion of the attending physician, requires hospitalization. (III)

58.10(8) Infection control program. Each facility shall have a written and implemented infection control and exposure control program with policies and procedures based on the guidelines issued by the Centers for Disease Control and Prevention, U.S. Department of Health and Human Services. (I, II, III) CDC guidelines are available at http://www.cdc.gov/ncidod/dhqp/index.html.

58.10(9) Infection control committee. Each facility shall establish an infection control committee of representative professional staff responsible for overall infection control in the facility. (III)

a. The committee shall annually review and revise the infection control policies and procedures to monitor effectiveness and suggest improvement. (III)

b. The committee shall meet at least quarterly, submit reports to the administrator, and maintain minutes in sufficient detail to document its proceedings and actions. (III)

c. The committee shall monitor the health aspect and the environment of the facility. (III)

58.10(10) There shall be written policies for resident care programs and services as outlined in these rules. (III)

58.10(11) Prior to the removal of a deceased resident/patient from a facility, the funeral director or person responsible for transporting the body shall be notified by the facility staff of any special precautions that were followed by the facility having to do with the mode of transmission of a known or suspected communicable disease. (III)

[**ARC 0663C**, IAB 4/3/13, effective 5/8/13]

481—58.11(135C) Personnel.

58.11(1) *General qualifications.*

a. No person with a current record of habitual alcohol intoxication or addiction to the use of drugs shall serve in a managerial role of a nursing facility. (II)

b. No person under the influence of alcohol or intoxicating drugs shall be permitted to provide services in a nursing facility. (II)

c. No person shall be allowed to provide services in a facility if the person has a disease:

(1) Which is transmissible through required workplace contact, (I, II, III)

(2) Which presents a significant risk of infecting others, (I, II, III)

(3) Which presents a substantial possibility of harming others, and (I, II, III)

(4) For which no reasonable accommodation can eliminate the risk. (I, II, III)

Refer to Guidelines for Infection Control in Hospital Personnel, Centers for Disease Control, U.S. Department of Health and Human Services, PB85-923402 to determine (1), (2), (3) and (4).

d. Reserved.

e. Individuals with either physical or mental disabilities may be employed for specific duties, but only if that disability is unrelated to that individual's ability to perform the duties of the job. (III)

f. Persons employed in all departments, except the nursing department of a nursing facility shall be qualified through formal training or through prior experience to perform the type of work for which they have been employed. Prior experience means at least 240 hours of full-time employment in a field related to their duties. Persons may be hired in laundry, housekeeping, activities and dietary without experience or training if the facility institutes a formal in-service training program to fit the job description in question and documents such as having taken place within 30 days after the initial hiring of such untrained employees. (III)

g. Rescinded, effective 7/14/82.

h. The health services supervisor shall be a qualified nurse as defined in these regulations. (II)

i. Those persons employed as nurse's aides, orderlies, or attendants in a nursing facility who have not completed the state-approved 75-hour nurse's aide program shall be required to participate in a structured on-the-job training program of 20 hours' duration to be conducted prior to any resident contact, except that contact required by the training program. This educational program shall be in addition to facility orientation. Each individual shall demonstrate competencies covered by the curriculum. This shall be observed and documented by an R.N. and maintained in the personnel file. No aide shall work independently until this is accomplished, nor shall the aide's hours count toward meeting the minimum hours of nursing care required by the department. The curriculum shall be approved by the department. An aide who has completed the state-approved 75-hour course may model skills to be learned.

Further, such personnel shall be enrolled in a state-approved 75-hour nurse's aide program to be completed no later than six months from the date of employment. If the state-approved 75-hour program has been completed prior to employment, the on-the-job training program requirement is waived. The 20-hour course is in addition to the 75-hour course and is not a substitute in whole or in part. The 75-hour program, approved by the department, may be provided by the facility or academic institution.

Newly hired aides who have completed the state-approved 75-hour course shall demonstrate competencies taught in the 20-hour course upon hire. This shall be observed and documented by an R.N. and maintained in the personnel file.

All personnel administering medications must have completed the state-approved training program in medication administration. (II)

j. There shall be an organized ongoing in-service educational and training program planned in advance for all personnel in all departments. (II, III)

k. Nurse aides, orderlies or attendants in a nursing facility who have received training other than the Iowa state-approved program, must pass a challenge examination approved by the department of inspections and appeals. Evidence of prior formal training in a nursing aide, orderly, attendant, or other comparable program must be presented to the facility or institution conducting the challenge examination before the examination is given. The approved facility or institution, following department of inspections and appeals guidelines, shall make the determination of who is qualified to take the examination. Documentation of the challenge examinations administered shall be maintained.

58.11(2) *Nursing supervision and staffing.*

a. Rescinded IAB 8/7/91, effective 7/19/91.

b. Where only part-time nurses are employed, one nurse shall be designated health service supervisor. (III)

c. A qualified nurse shall be employed to relieve the supervising nurses, including charge nurses, on holidays, vacation, sick leave, days off, absences or emergencies. Pertinent information for contacting such relief person shall be posted at the nurse's station. (III)

d. When the health service supervisor serves as the administrator of a facility 50 beds and over, a qualified nurse must be employed to relieve the health service supervisor of nursing responsibilities. (III)

e. The department may establish on an individual facility basis the numbers and qualifications of the staff required in the facility using as its criteria the services being offered and the needs of the residents. (III)

f. Additional staffing, above the minimum ratio, may be required by the department commensurate with the needs of the individual residents. (III)

g. The minimum hours of resident care personnel required for residents needing intermediate nursing care shall be 2.0 hours per resident day computed on a seven-day week. A minimum of 20 percent of this time shall be provided by qualified nurses. If the maximum medical assistance rate is reduced below the 74th percentile, the requirement will return to 1.7 hours per resident per day computed on a seven-day week. A minimum of 20 percent of this time shall be provided by qualified nurses. (II, III)

h. The health service supervisor's hours worked per week shall be included in computing the 20 percent requirement.

i. A nursing facility of 75 beds or more shall have a qualified nurse on duty 24 hours per day, seven days a week. (II, III)

j. In facilities under 75 beds, if the health service supervisor is a licensed practical nurse, the facility shall employ a registered nurse, for at least four hours each week for consultation, who must be on duty at the same time as the health service supervisor. (II, III)

(1) This shall be an on-site consultation and documentation shall be made of the visit. (III)

(2) The registered nurse-consultant shall have responsibilities clearly outlined in a written agreement with the facility. (III)

(3) Consultation shall include but not be limited to the following: counseling the health service supervisor in the management of the health services; (III) reviewing and evaluating the health services in determining that the needs of the residents are met; (II, III) conducting a review of medications at least monthly if the facility does not employ a registered nurse part-time. (II, III)

k. Facilities with 75 or more beds must employ a health service supervisor who is a registered nurse. (II)

l. There shall be at least two people who shall be capable of rendering nursing service, awake, dressed, and on duty at all times. (II)

m. Physician's orders shall be implemented by qualified personnel. (II, III)

58.11(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 2013 Iowa Acts, Senate File 347, 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)

[**ARC 0903C**, IAB 8/7/13, effective 9/11/13]

481—58.12(135C) Admission, transfer, and discharge.

58.12(1) *General admission policies.*

a. No resident shall be admitted or retained in a nursing facility who is in need of greater services than the facility can provide. (II, III)

b. No nursing facility shall admit more residents than the number of beds for which it is licensed, except guest rooms for visitors. (II, III)

c. There shall be no more beds erected than is stipulated on the license. (II, III)

d. There shall be no more beds erected in a room than its size and other characteristics will permit. (II, III)

e. The admission of a resident to a nursing facility shall not give the facility or any employee of the facility the right to manage, use, or dispose of any property of the resident except with the written authorization of the resident or the resident's legal representative. (III)

f. The admission of a resident shall not grant the nursing 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 safe and orderly management of the facility as required by these rules. (III)

g. A nursing 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 which would

convey unreasonable responsibilities to the licensee be removed from the premises of the facility for safekeeping. (III)

h. Rescinded, effective 7/14/82.

i. Funds or properties received by the nursing facility belonging to or due a resident, expendable for the resident's account, shall be trust funds. (III)

j. Infants and children under the age of 16 shall not be admitted to health care facilities for adults unless given prior written approval by the department. A distinct part of a health care facility, segregated from the adult section, may be established based on a program of care submitted by the licensee or applicant which is commensurate with the needs of the residents of the health care facility and has received the department's review and approval. (III)

k. 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 to the person acting as guardian within the third degree of consanguinity.

l. Within 30 days of a resident's admission to a health care facility receiving reimbursement through the medical assistance program under Iowa Code chapter 249A, the facility shall ask the resident or the resident's personal representative whether the resident is a veteran and shall document the response. If the facility determines that the resident is a potential veteran, the facility shall report the resident's name along with the names of the resident's spouse and any dependent children, as well as the name of the contact person for this information, to the Iowa department of veterans affairs. Where appropriate, the facility may also report such information to the Iowa department of human services.

If a resident is eligible for benefits through the United States Department of Veterans Affairs or other third-party payor, the facility first shall seek reimbursement from the identified payor source before seeking reimbursement from the medical assistance program established under Iowa Code chapter 249A.

The provisions of this paragraph shall not apply to the admission of an individual as a resident to a state mental health institute for acute psychiatric care or to the admission of an individual to the Iowa Veterans Home. (II, III)

58.12(2) *Discharge or transfer.*

a. Prior notification shall be made to the resident, as well as the resident's next of kin, legal representative, attending physician, and sponsoring agency, if any, prior to transfer or discharge of any resident. (III)

b. Proper arrangements shall be made by the nursing facility for the welfare of the resident prior to transfer or discharge in the event of an emergency or inability to reach the next of kin or legal representative. (III)

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

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

e. When a resident is transferred or discharged, the appropriate record as set forth in 58.15(2)*"k"* of these rules will accompany the resident. (II, III)

f. Prior to the transfer or discharge of a resident to another health care facility, arrangements to provide for continuity of care shall be made with the facility to which the resident is being sent. (II, III)

481—58.13(135C) Contracts. Each contract shall:

58.13(1) State the base rate or scale per day or per month, the services included, and the method of payment; (III)

58.13(2) Contain a complete schedule of all offered services for which a fee may be charged in addition to the base rate. Furthermore, the contract shall: (III)

a. Stipulate that no further additional fees shall be charged for items not contained in complete schedule of services as set forth in 58.13(3); (III)

b. State the method of payment of additional charges; (III)

c. 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)

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

58.13(3) Contain an itemized list of those services, with the specific fee the resident will be charged and method of payment, as related to the resident's current condition, based on the nursing assessment at the time of admission, which is determined in consultation with the administrator; (III)

58.13(4) Include the total fee to be charged initially to the specific resident; (III)

58.13(5) State the conditions whereby the facility may make adjustments to the facility's overall fees for resident care as a result of changing costs. (III) Furthermore, the contract shall provide that the facility shall give:

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

b. Notification to the resident, or 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; (III)

58.13(6) State the terms of agreement in regard to refund of all advance payments in the event of transfer, death, voluntary or involuntary discharge; (III)

58.13(7) State the terms of agreement concerning the holding 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.

a. The facility shall ask the resident or responsible party if the resident wants the bed 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)

b. The facility shall reserve the bed when requested for as long as payments are made in accordance with the contract. (II)

58.13(8) State the conditions under which the involuntary discharge or transfer of a resident would be effected; (III)

58.13(9) State the conditions of voluntary discharge or transfer; (III)

58.13(10) Set forth any other matters deemed appropriate by the parties to the contract. No contract 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; (III)

58.13(11) Each party shall receive a copy of the signed contract. (III)

481—58.14(135C) Medical services.

58.14(1) Each resident in a nursing facility shall designate a licensed physician who may be called when needed. Professional management of a resident's care shall be the responsibility of the hospice program when:

a. The resident is terminally ill, and

b. The resident has elected to receive hospice services under the federal Medicare program from a Medicare-certified hospice program, and

c. The facility and the hospice program have entered into a written agreement under which the hospice program takes full responsibility for the professional management of hospice care.

58.14(2) Each resident admitted to a nursing facility shall have had a physical examination prior to admission. If the resident is admitted directly from a hospital, a copy of the hospital admission physical

and discharge summary may be made part of the record in lieu of an additional physical examination. A record of the examination, signed by the physician, shall be a part of the resident's record. (III)

58.14(3) Arrangements shall be made to have a physician available to furnish medical care in case of emergency. (II, III)

58.14(4) Rescinded, effective 7/14/82.

58.14(5) The person in charge shall immediately notify the physician of any accident, injury, or adverse change in the resident's condition. (I, II, III)

58.14(6) A schedule listing the names and telephone numbers of the physicians shall be posted in each nursing station. (III)

58.14(7) Residents shall be admitted to a nursing facility only on a written order signed by a physician certifying that the individual being admitted requires no greater degree of nursing care than the facility is licensed to provide. (III)

58.14(8) Physician delegation of tasks. Each resident, including private pay residents, shall be visited by or shall visit the resident's physician at least twice a year. The year period shall be measured from the date of admission and is not to include preadmission physicals.

a. For a skilled nursing patient, the resident must be seen by a physician for the initial comprehensive visit. Additional visits are required at least once every 30 days for 90 days after admission and at least once every 60 days thereafter. After the initial comprehensive visit, alternate required visits may be performed by an advanced registered nurse practitioner, clinical nurse specialist or physician assistant who is working in collaboration with a physician, as outlined in Table 1. (III)

b. Notwithstanding the provisions of 42 CFR 483.40, any required physician task or visit in a nursing facility may also be performed by an advanced registered nurse practitioner, clinical nurse specialist, or physician assistant who is working in collaboration with a physician, as outlined in Table 1. (III)

c. In dually certified skilled nursing/nursing facilities, the advanced registered nurse practitioner, clinical nurse specialist, and physician assistant must follow the skilled nursing facility requirements for services for skilled nursing facility stays. For nursing facility stays in skilled nursing/nursing facilities, any required physician task or visit may be performed by an advanced registered nurse practitioner, clinical nurse specialist, or physician assistant working in collaboration with the physician. (III)

d. Nurse practitioners, clinical nurse specialists, and physician assistants may perform other tasks that are not reserved to the physician such as visits outside the normal schedule needed to address new symptoms or other changes in medical status. (III)

Table 1: Authority for non-physician practitioners to perform visits, sign orders, and sign certifications/recertifications when permitted by state law*

	Initial Comprehensive Visit/Orders	Other Required Visits[1]	Other Medically Necessary Visits and Orders[2]	Certification/ Recertification
Skilled Nursing Facilities				
Physician assistant, nurse practitioner and clinical nurse specialist employed by the facility	May not perform/May not sign	May perform alternate visits	May perform and sign	May not sign
Physician assistant, nurse practitioner and clinical nurse specialist not a facility employee	May not perform/May not sign	May perform alternate visits	May perform and sign	May sign subject to state requirements

	Initial Comprehensive Visit/Orders	Other Required Visits[1]	Other Medically Necessary Visits and Orders[2]	Certification/ Recertification
Nursing Facilities				
Nurse practitioner, clinical nurse specialist, and physician assistant employed by the facility	May not perform/May not sign	May not perform	May perform and sign	Not applicable[+]
Nurse practitioner, clinical nurse specialist, and physician assistant not a facility employee	May perform/May sign	May perform	May perform and sign	Not applicable[+]

*As permitted by state law governing the scope and practice of nurse practitioners, clinical nurse specialists, and physician assistants.

[1] Other required visits include the skilled nursing resident monthly visits that may be alternated between physician and advanced registered nurse practitioners, clinical nurse specialists, or physician assistants after the initial comprehensive visit is completed.

[2] Medically necessary visits may be performed prior to the initial comprehensive visit.

[+] This requirement relates specifically to coverage of Part A Medicare stays, which can take place only in a Medicare-certified skilled nursing facility.

[**ARC 1048C**, IAB 10/2/13, effective 11/6/13; **ARC 1398C**, IAB 4/2/14, effective 5/7/14]

481—58.15(135C) Records.

58.15(1) *Resident admission record.* The licensee shall keep a permanent record on all residents admitted to a nursing facility with all entries current, dated, and signed. This shall be a part of the resident clinical record. (III) The admission record form shall include:

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

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

c. Church affiliation; (III)

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

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

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

i. Pharmacist's name, telephone number, and address. (III)

58.15(2) *Resident clinical record.* There shall be a separate clinical record for each resident admitted to a nursing facility with all entries current, dated, and signed. (III) The resident clinical record shall include:

a. Admission record; (III)

b. Admission diagnosis; (III)

c. Physical examination: 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, tuberculosis status, physical examination, diagnosis, statement of chief complaints, estimation of restoration potential and results of any diagnostic procedures. The report of the physical examination shall be signed by the physician. (III)

d. Physician's certification that the resident requires no greater degree of nursing care than the facility is licensed to provide; (III)

e. Physician's orders for medication, treatment, and diet in writing and signed by the physician quarterly; (III)

f. Progress notes.

(1) Physician shall enter a progress note at the time of each visit; (III)

(2) Other professionals, i.e., dentists, social workers, physical therapists, pharmacists, and others shall enter a progress note at the time of each visit; (III)

g. All laboratory, X-ray, and other diagnostic reports; (III)

h. Nurse's record including:

(1) Admitting notes including time and mode of transportation; room assignment; disposition of valuables; symptoms and complaints; general condition; vital signs; and weight; (II, III)

(2) Routine notes including physician's visits; telephone calls to and from the physician; unusual incidents and accidents; change of condition; social interaction; and P.R.N. medications administered including time and reason administered, and resident's reaction; (II, III)

(3) Discharge or transfer notes including time and mode of transportation; resident's general condition; instructions given to resident or legal representative; list of medications and disposition; and completion of transfer form for continuity of care; (II, III)

(4) Death notes including notification of physician and family to include time, disposition of body, resident's personal possessions and medications; and complete and accurate notes of resident's vital signs and symptoms preceding death; (III)

i. Medication record.

(1) An accurate record of all medications administered shall be maintained for each resident. (II, III)

(2) Schedule II drug records shall be kept in accordance with state and federal laws; (II, III)

j. Death record. In the event of a resident's death, notations in the resident's record shall include 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 that the resident's family and physician were notified of the resident's death; (III)

k. Transfer form.

(1) The transfer form shall include identification data from the admission record, name of transferring institution, name of receiving institution, and date of transfer; (III)

(2) The nurse's report shall include resident attitudes, behavior, interests, functional abilities (activities of daily living), unusual treatments, nursing care, problems, likes and dislikes, nutrition, current medications (when last given), and condition on transfer; (III)

(3) The physician's report shall include reason for transfer, medications, treatment, diet, activities, significant laboratory and X-ray findings, and diagnosis and prognosis; (III)

l. Consultation reports shall indicate services rendered by allied health professionals in the facility or in health-centered agencies such as dentists, physical therapists, podiatrists, oculists, and others. (III)

58.15(3) *Resident personal record.* Personal records may be kept as a separate file by the facility.

a. Personal records may include factual information regarding personal statistics, family and responsible relative resources, financial status, and other confidential information.

b. Personal records shall be accessible to professional staff involved in planning for services to meet the needs of the resident. (III)

c. When the resident's records are closed, the information shall become a part of the final record. (III)

d. Personal records shall include a duplicate copy of the contract(s). (III)

58.15(4) *Incident record.*

a. Each nursing facility shall maintain an incident record report and shall have available incident report forms. (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 prepare and sign the report. (III)

d. The report shall cover all accidents where there is apparent injury or where hidden injury may have occurred. (III)

e. The report shall cover all accidents or unusual occurrences within the facility or on the premises affecting residents, visitors, or employees. (III)

f. A copy of the incident report shall be kept on file in the facility. (III)

58.15(5) *Retention of records.*

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

b. Records shall be retained within the facility upon change of ownership. (III)

c. Rescinded, effective 7/14/82.

d. When the facility ceases to operate, the resident's record shall be released to the facility to which the resident is transferred. If no transfer occurs, the record shall be released to the individual's physician. (III)

58.15(6) *Reports to the department.* The licensee shall furnish statistical information concerning the operation of the facility to the department on request. (III)

58.15(7) *Personnel record.*

a. An employment record shall be kept for each employee, consisting of the following information: name and address of employee, social security number of employee, date of birth of employee, date of employment, experience and education, references, position in the home, criminal history and dependent adult abuse background checks, and date and reason for discharge or resignation. (III)

b. The personnel records shall be made available for review upon request by the department. (III)

481—58.16(135C) Resident care and personal services.

58.16(1) Beds shall be made daily and adjusted as necessary. A complete change of linen shall be made at least once a week and more often if necessary. (III)

58.16(2) Residents shall receive sufficient supervision so that their personal cleanliness is maintained. (II, III)

58.16(3) Residents shall have clean clothing as needed to present a neat appearance, to be free of odors, and to be comfortable. Clothing shall be based on resident choice and shall be appropriate to residents' activities and to the weather. (III)

58.16(4) Rescinded, effective 7/14/82.

58.16(5) Residents shall be encouraged to leave their rooms and make use of the recreational room or living room of the facility. (III)

58.16(6) Residents shall not be required to pass through another's bedroom to reach a bathroom, living room, dining room, corridor, or other common areas of the facility. (III)

58.16(7) Rescinded, effective 7/14/82.

58.16(8) Uncontrollable residents shall be transferred or discharged from the facility in accordance with contract arrangements and requirements of Iowa Code chapter 135C. (II, III)

58.16(9) Except for those who request differently, residents who are not bedfast shall be fully dressed each day to maintain self-esteem and promote the residents' normal lifestyles. (III)

58.16(10) Residents shall receive a bath of their choice, based on the facility's accommodations, as needed to maintain proper hygiene. (II, III)

481—58.17 Rescinded, effective 7/14/82.

481—58.18(135C) Nursing care.

58.18(1) Individual health care plans shall be based on resident treatment decisions, the nature of the illness or disability, treatment, and care prescribed. Goals shall be developed by each discipline providing service, treatment, and care. These plans shall be in writing, revised as necessary, and kept current. They shall be made available to all those rendering the services and for review by the department. (III)

58.18(2) Rescinded IAB 4/2/14, effective 5/7/14.

58.18(3) The facility shall provide resident and family education as an integral part of restorative and supportive care. (III)

58.18(4) The facility shall provide prompt response from qualified staff for the resident's use of the nurse call system. (II, III) (Prompt response being considered as no longer than 15 minutes.)

[**ARC 1398C**, IAB 4/2/14, effective 5/7/14]

481—58.19(135C) Required nursing services for residents. The resident shall receive and the facility shall provide, as appropriate, the following required nursing services under the 24-hour direction of qualified nurses with ancillary coverage as set forth in these rules:

58.19(1) *Activities of daily living.*

a. Bathing; (II, III)

b. Daily oral hygiene (denture care); (II, III)

c. Routine shampoo; (II, III)

d. Nail care; (III)

e. Shaving; (III)

f. Daily care and application of prostheses (glasses, hearing aids, glass eyes, limb prosthetics, braces, or other assistive devices); (II, III)

g. Ambulation with equipment if applicable, or transferring, or positioning; (I, II, III)

h. Daily routine range of motion; (II, III)

i. Mobility (assistance with wheelchair, mechanical lift, or other means of locomotion); (I, II, III)

j. Elimination.

(1) Assistance to and from the bathroom and perineal care; (II, III)

(2) Bedpan assistance; (II, III)

(3) Care for incontinent residents; (II, III)

(4) Bowel and bladder training programs including in-dwelling catheter care (i.e., insertion and irrigation), enema and suppository administration, and monitoring and recording of intake and output, including solid waste; (I, II, III)

k. Colostomy care (to be performed only by a registered nurse or licensed practical nurse or by a qualified aide under the direction of a registered nurse or licensed practical nurse); (I, II, III)

l. Ileostomy care (to be performed only by a registered nurse or licensed practical nurse or by a qualified aide under the direction of a registered nurse or licensed practical nurse); (I, II, III)

m. All linens necessary; (III)

n. Nutrition and meal service.

(1) Regular, therapeutic, modified diets, and snacks; (I, II, III)

(2) Mealtime preparation of resident; (II, III)

(3) Assistance to and from meals; (II, III)

(4) In-room meal service or tray service; (II, III)

(5) Assistance with food preparation and meal assistance including total assistance if needed; (II, III)

(6) Assistance with adaptive devices; (II, III)

(7) Enteral nutrition (to be performed by a registered nurse or licensed practical nurse only); (I, II, III)

o. Promote initiation of self-care for elements of resident care; (II, III)

p. Oral suctioning (to be performed only by a registered nurse or licensed practical nurse or by a qualified aide under the direction of a registered nurse or licensed practical nurse). (I, II)

58.19(2) *Medication and treatment.*

a. Administration of all medications as ordered by the physician including oral, instillations, topical, injectable (to be injected by a registered nurse or licensed practical nurse only); (I, II)

b. Provision of the appropriate care and treatment of wounds, including pressure sores, to promote healing, prevent infection, and prevent new sores from developing; (I, II)

c. Blood glucose monitoring; (I, II)

d. Vital signs, blood pressure, and weights; (I, II)

e. Ambulation and transfer; (II, III)

f. Provision of restraints; (I, II)

g. Administration of oxygen (to be performed only by a registered nurse or licensed practical nurse or by a qualified aide under the direction of a registered nurse or licensed practical nurse); (I, II)

h. Provision of all treatments; (I, II, III)

i. Provision of emergency medical care, including arranging for transportation, in accordance with written policies and procedures of the facility; (I, II, III)

j. Provision of accurate assessment and timely intervention for all residents who have an onset of adverse symptoms which represent a change in mental, emotional, or physical condition. (I, II, III)

[**ARC 1398C**, IAB 4/2/14, effective 5/7/14]

481—58.20(135C) Duties of health service supervisor. Every nursing facility shall have a health service supervisor who shall:

58.20(1) Direct the implementation of the physician's orders; (I, II)

58.20(2) Plan for and direct the nursing care, services, treatments, procedures, and other services in order that each resident's needs and choices, where practicable, are met; (II, III)

58.20(3) Review the health care needs and choices, where practicable, of each resident admitted to the facility and assist the attending physician in planning for the resident's care; (II, III)

58.20(4) Develop and implement a written health care plan in cooperation with, to the extent practicable, the resident, the resident's family or the resident's legal representative, and others in accordance with instructions of the attending physician as follows:

a. The written health care plan, based on the assessment and reassessment of the resident's health needs and choices, where practicable, is personalized for the individual resident and indicates care to be given, goals to be accomplished, and methods, approaches, and modifications necessary to achieve best results; (III)

b. The health service supervisor is responsible for preparing, reviewing, supervising the implementation, and revising the written health care plan; (III)

c. The health care plan is readily available for use by all personnel caring for the resident; (III)

58.20(5) Initiate preventative and restorative nursing procedures for each resident so as to achieve and maintain the highest possible degree of function, self-care, and independence based on resident choice, where practicable; (II, III)

58.20(6) Supervise health services personnel to ensure they perform the following restorative measures in their daily care of residents:

a. Maintaining good bodily alignment and proper positioning; (II, III)

b. Making every effort to keep the resident active except when contraindicated by physician's orders, and encouraging residents to achieve independence in activities of daily living by teaching self-care, transfer, and ambulation activities; (III)

c. Assisting residents to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests as necessary; (III)

d. Assisting residents to carry out prescribed therapy exercises between visits of the therapist; (III)

e. Assisting residents with routine range of motion exercises; (III)

58.20(7) Plan and conduct nursing staff orientation and in-service programs and provide for training of nurse's aides; (III)

58.20(8) Plan with the resident and the resident's physician and family and health-related agencies for the care of the resident upon discharge; (III)

58.20(9) Designate a responsible person to be in charge during absences; (III)

58.20(10) Be responsible for all assignments and work schedules for all health services personnel to ensure that the health needs of the residents are met; (III)

58.20(11) Ensure that all nurse's notes are descriptive of the care rendered including the resident's response; (III)

58.20(12) Visit each resident routinely to be knowledgeable of the resident's current condition; (III)

58.20(13) Evaluate in writing the performance of each individual on the health care staff on at least an annual basis. This evaluation shall be available for review in the facility to the department; (III)

58.20(14) Keep the administrator informed of the resident's status; (III)

58.20(15) Teach and coordinate rehabilitative health care including activities of daily living, promotion and maintenance of optimal physical and mental functioning; (III)

58.20(16) Supervise serving of meals to ensure that individuals unable to assist themselves are promptly fed and that special eating adaptive devices are available as needed; (II, III)

58.20(17) Make available a nursing procedure manual which shall include all procedures practiced in the facility; (III)

58.20(18) Participate with the administrator in the formulation of written policies and procedures for resident services; (III)

58.20(19) The person in charge shall immediately notify the family of any accident, injury, or adverse change in the resident's condition requiring physician's notification. (III)

481—58.21(135C) Drugs, storage, and handling.

58.21(1) Drug storage for residents who are unable to take their own medications and require supervision shall meet the following requirements:

a. A cabinet with a lock, convenient to nursing service, shall be provided and used for storage of all drugs, solutions, and prescriptions; (III)

b. The drug storage cabinet shall be kept locked when not in use; (III)

c. The medication cabinet key shall be in the possession of the person directly responsible for issuing medications; (II, III)

d. Double-locked storage of Schedule II drugs shall not be required under single unit package drug distribution systems in which the quantity stored does not exceed a three-day supply and a missing dose can be readily detected. (II)

58.21(2) Drugs for external use shall be stored separately from drugs for internal use. (III)

58.21(3) Medications requiring refrigeration shall be kept in a refrigerator and separated from food and other items. A method for locking these medications shall be provided. (III)

58.21(4) All potent, poisonous, or caustic materials shall be stored separately from drugs. They shall be plainly labeled and stored in a specific, well-illuminated cabinet, closet, or storeroom and made accessible only to authorized persons. (I, II)

58.21(5) All flammable materials shall be specially stored and handled in accordance with applicable local and state fire regulations. (II)

58.21(6) A properly trained person shall be charged with the responsibility of administering nonparenteral medications.

a. The individual shall have knowledge of the purpose of the drugs, their dangers, and contraindications.

b. This person shall be a licensed nurse or physician 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.

c. Prior to taking a department-approved medication aide course, the individual shall:

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

(2) Be employed in the same facility for at least six consecutive months prior to the start of the medication aide course. This requirement is not subject to waiver.

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

d. A person who is a nursing student or a graduate nurse may take the challenge examination in place of taking a medication aide course. This individual 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;

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

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

(4) Successfully complete a department-approved nurse aide competency evaluation.

e. 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 *"c"* of this subrule do not apply to this individual.

58.21(7) 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. (II) In facilities where the unit dose system is used, the person assigned the responsibility must complete the procedure by observing the actual act of swallowing the medication and charting the medication. Medications shall be prepared on the same shift of the same day that they are administered, (II) unless the unit dose system is used.

58.21(8) An accurate written record of medications administered shall be made by the individual administering the medication. (III)

58.21(9) Records shall be kept of all Schedule II drug medications received and dispensed in accordance with the controlled drug and substance Act. (III)

58.21(10) Any unusual resident reaction shall be reported to the physician at once. (II)

58.21(11) A policy shall be established by the facility in conjunction with a licensed pharmacist to govern the distribution of prescribed medications to residents who are on leave from the facility. (III)

a. Medication may be issued to residents who will be on leave from a facility for less than 24 hours. Notwithstanding the prohibition against paper envelopes in 58.21(14)*"a,"* non-child-resistant containers may be used. Each container may hold only one medication. A label on each container shall indicate the date, the resident's name, the facility, the medication, its strength, dose, and time of administration.

b. Medication for residents on leave from a facility longer than 24 hours shall be obtained in accordance with requirements established by the Iowa board of pharmacy examiners.

c. Medication distributed as above may be issued only by a nurse responsible for administering medication. (I, II, III)

58.21(12) Emergency medications. A nursing facility shall provide emergency medications pursuant to the following requirements: (III)

a. Prescription drugs as well as nonprescription items must be prescribed or approved by the physician, in consultation with the pharmacist, who provides emergency service to the facility; (III)

b. The emergency medications shall be stored in an accessible place; (III)

c. A list of the emergency medications and quantities of each item shall be maintained by the facility; (III)

d. The container holding the emergency medications shall be closed with a seal which may be broken when drugs are required in an emergency or for inspection; (III)

e. Any item removed from the emergency medications shall be replaced within 48 hours; (III)

f. A permanent record shall be kept of each time the emergency medications are used; (III)

g. The emergency medications shall be inspected by a pharmacist at least once every three months to determine the stability of items. (III)

58.21(13) Drug handling.

a. Bulk supplies of prescription drugs shall not be kept in a nursing facility unless a licensed pharmacy is established in the facility under the direct supervision and control of a pharmacist. (III)

b. Inspection of drug storage condition shall be made by the health service supervisor and a registered pharmacist not less than once every three months. The inspection shall be verified by a report signed by the nurse and pharmacist and filed with the administrator. The report shall include, but not be limited to, certifying absence of the following: expired drugs, deteriorated drugs, improper labeling, drugs for which there is no current physician's order, and drugs improperly stored. (III)

c. If the facility permits licensed nurses to dilute or reconstitute drugs at the nursing station, distinctive supplementary labels shall be available for the purpose. The notation on the label shall be so made as to be indelible. (III)

d. Dilution and reconstitution of drugs and their labeling shall be done by the pharmacist whenever possible. If not possible, the following shall be carried out only by the licensed nurse:

(1) Specific directions for dilution or reconstitution and expiration date should accompany the drug; (III)

(2) A distinctive supplementary label shall be affixed to the drug container when diluted or reconstituted by the nurse for other than immediate use. (III) The label shall bear the following: resident's name, dosage and strength per unit/volume, nurse's name, expiration date, and date and time of dilution. (III)

58.21(14) Drug safeguards.

a. All prescribed medications shall be clearly labeled indicating the resident's full name, physician'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 or physician issuing the drug. Where unit dose is used, prescribed medications shall, as a minimum, indicate the resident's full name, physician's name, name and strength of drug, and directions for use. Standard containers shall be utilized for dispensing drugs. Paper envelopes shall not be considered standard containers. (III)

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

c. There shall be no medications or any solution in unlabeled containers. (II, III)

d. The medications of each resident shall be kept or stored in the originally received containers. (II, III)

e. Labels on containers shall be clearly legible and firmly affixed. No label shall be superimposed on another label of a drug container. (II, III)

f. When a resident is discharged or leaves the facility, the unused prescription shall be sent with the resident or with a legal representative only upon the written order of a physician. (III)

g. Unused prescription drugs prescribed for residents who are deceased shall be returned to the supplying pharmacist. (III)

h. Prescriptions shall be refilled only with the permission of the attending physician. (II, III)

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

j. Instructions shall be requested of the Iowa board of pharmacy examiners concerning disposal of unused Schedule II drugs prescribed for residents who have died or for whom the Schedule II drug was discontinued. (III)

k. There shall be a formal routine for the proper disposal of discontinued medications within a reasonable but specified time. These medications shall not be retained with the resident's current medications. Discontinued drugs shall be destroyed by the responsible nurse with a witness and a notation made to that effect or returned to the pharmacist for destruction or resident credit. Drugs listed under the Schedule II drugs shall be disposed of in accordance with the provisions of the Iowa board of pharmacy examiners. (II, III)

l. 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 physician, in consultation with the pharmacist serving the home, shall institute policies and provide procedures for review and endorsement of stop orders on drugs. This policy shall be conveniently located for personnel administering medications. (II, III)

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

n. Residents who have been certified in writing by the physician as capable of taking their own medications may retain these medications in their bedroom, but locked storage must be provided. (II)

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

p. A qualified nurse shall:

(1) Establish a medication schedule system which identifies the time and dosage of each medication prescribed for each resident, is based on the resident's desired routine, and is approved by the resident's physician. (II, III)

(2) Establish a medication record containing the information specified above needed to monitor each resident's drug regimen. (II, III)

q. Telephone orders shall be taken by a qualified nurse. Orders shall be written into the resident's record and signed by the person receiving the order. Telephone orders shall be submitted to the physician for signature within 48 hours. (III)

r. A pharmacy operating in connection with a nursing facility shall comply with the provisions of the pharmacy law requiring registration of pharmacies and the regulations of the Iowa board of pharmacy examiners. (III)

s. In a nursing facility with a pharmacy or drug supply, service shall be under the personal supervision of a pharmacist licensed to practice in the state of Iowa. (III)

58.21(15) Drug administration.

a. Injectable medications shall be administered as permitted by Iowa law by a qualified nurse, physician, pharmacist, or physician assistant (PA). In the case of a resident who has been certified by the resident's physician or physician assistant (PA) as capable of taking the resident's own insulin, the resident may inject the resident's own insulin. (II)

b. An individual inventory record shall be maintained for each Schedule II drug prescribed for each resident. (II)

c. The health service supervisor shall be responsible for the supervision and direction of all personnel administering medications. (II)

[**ARC 1050C**, IAB 10/2/13, effective 11/6/13]

481—58.22(135C) Rehabilitative services. Rehabilitative services shall be provided to maintain function or improve the resident's ability to carry out the activities of daily living.

58.22(1) *Physical therapy services.*

a. Each facility shall have a written agreement with a licensed physical therapist to provide physical therapy services. (III)

b. Physical therapy shall be rendered only by a physical therapist licensed to practice in the state of Iowa. All personnel assisting with the physical therapy of residents must be under the direction of a licensed physical therapist. (II, III)

c. The licensed physical therapist shall:

(1) Evaluate the resident and prepare a physical therapy treatment plan conforming to the medical orders and goals; (III)

(2) Consult with other personnel in the facility who are providing resident care and plan with them for the integration of a physical therapy treatment program into the overall health care plan; (III)

(3) Instruct the nursing personnel responsible for administering selected restorative procedures between treatments; (III)

(4) Present programs in the facility's in-service education programs. (III)

d. Treatment records in the resident's medical chart shall include:

(1) The physician's prescription for treatment; (III)

(2) An initial evaluation note by the physical therapist; (III)

(3) The physical therapy care plan defining clearly the long-term and short-term goals and outlining the current treatment program; (III)

(4) Notes of the treatments given and changes in the resident's condition; (III)

(5) A complete discharge summary to include recommendations for nursing staff and family. (III)

e. There shall be adequate facilities, space, appropriate equipment, and storage areas as are essential to the treatment or examinations of residents. (III)

58.22(2) *Other rehabilitative services.*

a. The facility shall arrange for specialized and supportive rehabilitative services when such services are ordered by a physician. (III) These may include audiology and occupational therapy.

b. Audiology services shall be under the direction of a person licensed in the state of Iowa by the board of speech pathology and audiology. (II, III)

c. Occupational therapy services shall be under the direction of a qualified occupational therapist who is currently registered by the American Occupational Therapy Association. (II, III)

d. The appropriate professional shall:

(1) Develop the treatment plan and administer or direct treatment in accordance with the physician's prescription and rehabilitation goals; (III)

(2) Consult with other personnel within the facility who are providing resident care and plan with them for the integration of a treatment program into the overall health care plan. (III)

481—58.23(135C) Dental, diagnostic, and other services.

58.23(1) *Dental services.*

a. The nursing facility personnel shall assist residents to obtain regular and emergency dental services. (III)

b. Transportation arrangements shall be made when necessary for the resident to be transported to the dentist's office. (III)

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

d. All dental reports or progress notes shall be included in the clinical record. (III)

e. Nursing personnel shall assist the resident in carrying out dentist's recommendations. (III)

f. Dentists shall be asked to participate in the in-service program of the facility. (III)

58.23(2) *Diagnostic services.*

a. The nursing facility shall make provisions for promptly securing required clinical laboratory, X-ray, and other diagnostic services. (III)

b. All diagnostic services shall be provided only on the written, signed order of a physician. (III)

c. Agreements shall be made with the local hospital laboratory or independent laboratory to perform specific diagnostic tests when they are required. (III)

d. Transportation arrangements for residents shall be made, when necessary, to and from the source of service. (III)

e. Copies of all diagnostic reports shall be requested by the facility and included in the resident's clinical record. (III)

f. The physician ordering the specific diagnostic service shall be promptly notified of the results. (III)

g. Simple tests such as customarily done by nursing personnel for diabetic residents may be performed in the facility. (III)

58.23(3) *Other services.*

a. The nursing facility shall assist residents to obtain such supportive services as requested by the physician. (III)

b. Transportation arrangements shall be made when necessary. (III)

c. Services could include the need for prosthetic devices, glasses, hearing aids, and other necessary items. (III)

481—58.24(135C) Dietary.

58.24(1) *Organization of dietetic services.* The facility shall meet the needs of the residents and provide the services listed in this standard. If the service is contracted out, the contractor shall meet the same standard. A written agreement shall be formulated between the facility and the contractor and shall convey to the department the right to inspect the food service facilities of the contractor. (III)

a. There shall be written policies and procedures for dietetic services that include staffing, nutrition, menu planning, therapeutic diets, preparation, service, ordering, receiving, storage, sanitation, and staff hygiene. The policies and procedures shall be made available for use by dietetic services. (III)

b. There shall be written job descriptions for each position in dietetic services. The job descriptions shall be made available for use by dietetic services. (III)

58.24(2) *Dietary staffing.*

a. The facility shall employ a qualified dietary supervisor who:

(1) Is a qualified dietitian as defined in 58.24(2)*"e"*; or

(2) Is a graduate of a dietetic technician training program approved by the American Dietetic Association; or

(3) Is a certified dietary manager certified by the certifying board for dietary managers of the Dietary Managers Association (DMA) and maintains that credential through 45 hours of DMA-approved continuing education; or

(4) Has completed a DMA-approved course curriculum necessary to take the certification examination required to become a certified dietary manager; or

(5) Has documented evidence of at least two years' satisfactory work experience in food service supervision and who is in an approved dietary manager association program and will successfully complete the program within 12 months of the date of enrollment; or

(6) Has completed or is in the final 90-hour training course approved by the department. (II, III)

b. The supervisor shall have overall supervisory responsibility for dietetic services and shall be employed for a sufficient number of hours to complete management responsibilities that include:

(1) Participating in regular conferences with consultant dietitian, administrator and other department heads; (III)

(2) Writing menus with consultation from the dietitian and seeing that current menus are posted and followed and that menu changes are recorded; (III)

(3) Establishing and maintaining standards for food preparation and service; (II, III)

(4) Participating in selection, orientation, and in-service training of dietary personnel; (II, III)

(5) Supervising activities of dietary personnel; (II, III)

(6) Maintaining up-to-date records of residents identified by name, location and diet order; (III)

(7) Visiting residents to learn individual needs and communicating with other members of the health care team regarding nutritional needs of residents when necessary; (II, III)

(8) Keeping records of repairs of equipment in dietetic services. (III)

c. The facility shall employ sufficient supportive personnel to carry out the following functions:

(1) Preparing and serving adequate amounts of food that are handled in a manner to be bacteriologically safe; (II, III)

(2) Washing and sanitizing dishes, pots, pans and equipment at temperatures required by procedures described elsewhere; (II, III)

(3) Serving of therapeutic diets as prescribed by the physician and following the planned menu. (II, III)

d. The facility may assign simultaneous duties in the kitchen and laundry, housekeeping, or nursing service to appropriately trained personnel. Proper sanitary and personal hygiene procedures shall be followed as outlined under the rules pertaining to staff hygiene. (II, III)

e. If the dietetic service supervisor is not a licensed dietitian, a consultant dietitian is required. The consultant dietitian shall be licensed by the state of Iowa pursuant to Iowa Code chapter 152A.

f. Consultants' visits shall be scheduled to be of sufficient duration and at a time convenient to:

(1) Record, in the resident's medical record, any observations, assessments and information pertinent to medical nutrition therapy; (I, II, III)

(2) Work with residents and staff on resident care plans; (III)

(3) Consult with the administrator and others on developing and implementing policies and procedures; (III)

(4) Write or approve general and therapeutic menus; (III)

(5) Work with the dietetic supervisor on developing procedures, recipes and other management tools; (III)

(6) Present planned in-service training and staff development for food service employees and others. Documentation of consultation shall be available for review in the facility by the department. (III)

g. In facilities licensed for more than 15 beds, dietetic services shall be available for a minimum of a 12-hour span extending from the time of preparation of breakfast through supper. (III)

58.24(3) *Nutrition and menu planning.*

a. Menus shall be planned and followed to meet the nutritional needs of each resident in accordance with the physician's orders and in consideration of the resident's choices and preferences. (II, III)

b. Menus shall be planned to provide 100 percent of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. A current copy of the Simplified Diet Manual published by Blackwell Publishing, Ames, Iowa, shall be available and used in the planning and serving of all meals. (II)

c. At least three meals or their equivalent shall be served daily, at regular hours comparable to normal mealtimes in the community. (II)

(1) There shall be no more than a 14-hour span between a substantial evening meal and breakfast except as provided in subparagraph (3) below. (II, III)

(2) The facility shall offer snacks at bedtime daily. (II, III)

(3) When a nourishing snack is provided at bedtime, up to 16 hours may elapse between a substantial evening meal and breakfast of the following day. The current resident group must agree to this meal span and a nourishing snack must be served. (II)

d. Menus shall include a variety of foods prepared in various ways. The same menu shall not be repeated on the same day of the following week. (III)

e. Menus shall be written at least one week in advance. The current menu shall be located in an accessible place in the dietetic service department 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 department personnel. When substitutions are necessary, they shall be of similar nutritive value and recorded. (III)

g. A file of tested recipes adjusted to the number of people to be served in the facility shall be maintained. (III)

h. Alternate foods shall be offered to residents who refuse the food served. (II, III)

58.24(4) *Therapeutic diets.*

a. Therapeutic diets shall be prescribed by the attending physician. A current therapeutic diet manual shall be readily available to attending physicians, nurses and dietetic service personnel. This manual shall be used as a guide for writing menus for therapeutic diets. A licensed dietitian shall be responsible for writing and approving the therapeutic menu and reviewing procedures for preparation and service of food. (III)

b. Personnel responsible for planning, preparing and serving therapeutic diets shall receive instructions on those diets. (III)

58.24(5) *Food preparation and service.*

a. Methods used to prepare foods shall be those which conserve nutritive value and flavor and meet the taste preferences of the residents. (III)

b. Foods shall be attractively served. (III)

c. Foods shall be cut up, chopped, ground or blended to meet individual needs. (II, III)

d. Self-help devices shall be provided as needed. (II, III)

e. Table service shall be attractive. (III)

f. Plasticware, china and glassware that are unsightly, unsanitary or hazardous because of chips, cracks or loss of glaze shall be discarded. (III)

g. All food that is transported through public corridors shall be covered. (III)

h. All potentially hazardous food or beverages capable of supporting rapid and progressive growth of microorganisms that can cause food infections or food intoxication shall be maintained at temperatures of 41°F or below or at 140°F or above at all times, except during necessary periods of preparation. Frozen food shall be maintained frozen. (I, II, III)

i. Potentially hazardous food that is cooked, cooled and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least 165°F for 15 seconds. (I, II, III)

j. Food must be reheated to 165°F within no more than two hours after the heating process begins. (I, II, III)

k. Cooked potentially hazardous food shall be cooled:

(1) Within two hours, from 140°F to 70°F; and

(2) Within four hours, from 70°F to 41°F or less. (I, II, III)

58.24(6) *Dietary ordering, receiving, and storage.*

a. All food and beverages shall be of wholesome quality and procured from sources approved or considered satisfactory by federal, state and local authorities. Food or beverages from unlabeled, rusty, leaking, broken or damaged containers shall not be served. (I, II, III)

b. A minimum of at least a one-week supply of staple foods and a three-day supply of perishable foods shall be maintained on the premises to meet the planned menu needs until the next food delivery. Supplies shall be appropriate to meet the requirements of the menu. (III)

c. All milk shall be pasteurized. (III)

d. Milk may be served in individual, single-use containers. Milk may be served from refrigerated bulk milk dispensers or from the original container. Milk served from a refrigerated bulk milk dispenser shall be dispensed directly into the glass or other container from which the resident drinks. (II, III)

e. Records which show amount and kind of food purchased shall be retained for three months and shall be made available to the department upon request. (III)

f. Dry or staple items shall be stored at least six inches (15 cm) above the floor in a ventilated room, not subject to sewage or wastewater backflow, and protected from condensation, leakage, rodents or vermin in accordance with the Food Code, 1999 edition. (III)

g. Pesticides, other toxic substances and drugs shall not be stored in the food preparation or storage areas used for food or food preparation equipment and utensils. Soaps, detergents, cleaning compounds or similar substances shall not be stored in food storage rooms or areas. (II)

h. Food storage areas shall be clean at all times. (III)

i. There shall be a reliable thermometer in each refrigerator, freezer and in storerooms used for food. (III)

j. Foods held in refrigerated or other storage areas shall be appropriately covered. Food that was prepared and not served shall be stored appropriately, clearly identifiable and dated. (III)

58.24(7) *Sanitation in food preparation area.*

a. Unless otherwise indicated in this chapter or 481—Chapter 61, the sanitary provisions as indicated in Chapters 3, 4 and 7 of the 1999 Food Code, U.S. Public Health Service, Food and Drug Administration, Washington, DC 20204, shall apply.

b. Residents may be allowed in the food preparation area. (III)

c. The food preparation area may be used as a dining area for residents, staff or food service personnel. (III)

d. All food service areas shall be kept clean, free from litter and rubbish, and protected from rodents, animals, roaches, flies and other insects. (II, III)

e. All utensils, counters, shelves and equipment shall be kept clean, maintained in good repair, and shall be free from breaks, corrosion, cracks and chipped areas. (II, III)

f. There shall be effective written procedures established for cleaning all work and serving areas. (III)

g. A schedule of cleaning duties to be performed daily shall be posted. (III)

h. An exhaust system and hood shall be clean, operational and maintained in good repair. (III)

i. Spillage and breakage shall be cleaned up immediately and disposed of in a sanitary manner. (III)

j. Wastes from the food service that are not disposed of by mechanical means shall be kept in leakproof, nonabsorbent, tightly closed containers when not in immediate use and shall be disposed of frequently. (III)

k. 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)

l. The walls, ceilings and floors of all rooms in which food is prepared and served shall be in good repair, smooth, washable, and shall be kept clean. Walls and floors in wet areas should be moisture-resistant. (III)

m. Ice shall be stored and handled in such a manner as to prevent contamination. Ice scoops should be sanitized daily and kept in a clean container. (III)

n. There shall be no animals or birds in the food preparation area. (III)

o. All utensils used for eating, drinking, and preparing and serving food and drink shall be cleaned and disinfected or discarded after each use. (III)

p. If utensils are washed and rinsed in an automatic dishmachine, one of the following methods shall be used:

(1) When a conventional dishmachine is utilized, the utensils shall be washed in a minimum of 140°F using soap or detergent and sanitized in a hot water rinse of not less than 170°F. (II, III)

(2) When a chemical dishmachine is utilized, the utensils shall be washed in a minimum of 120°F using soap or detergent and sanitized using a chemical sanitizer that is automatically dispensed by the machine and is in a concentration equivalent to 50 parts per million (ppm) available chloride. (II, III)

q. If utensils are washed and rinsed in a three-compartment sink, the utensils shall be thoroughly washed in hot water at a minimum temperature of 110°F using soap or detergent, rinsed in hot water to remove soap or detergent, and sanitized by one of the following methods:

(1) Immersion for at least 30 seconds in clean water at 180°F; (II, III)

(2) Immersion in water containing bactericidal chemical at a minimum concentration as recommended by the manufacturer. (II, III)

r. After sanitation, the utensils shall be allowed to drain and dry in racks or baskets on nonabsorbent surfaces. Drying cloths shall not be used. (III)

s. Procedures for washing and handling dishes shall be followed in order to protect the welfare of the residents and employees. Persons handling dirty dishes shall not handle clean dishes without first washing their hands. (III)

t. A mop and mop pail shall be provided for exclusive use in kitchen and food storage areas. (III)

58.24(8) *Hygiene of food service personnel.*

a. Personnel, if involved in dietetic services, shall be trained in basic food sanitation techniques, shall be clean and wear clean clothing, including a cap or a hairnet sufficient to contain, cover and restrain hair. Beards, mustaches and sideburns that are not closely cropped and neatly trimmed shall be covered. (III)

b. Personnel shall be excluded from duty when affected by skin infections or communicable diseases in accordance with the facility's infection control policies. (II, III)

c. Employee street clothing stored in the food service area shall be in a closed area. (III)

d. Food preparation sinks shall not be used for hand washing. Separate hand-washing facilities with soap, hot and cold running water, and single-use towels shall be used properly. (II, III)

e. The use of tobacco shall be prohibited in the food preparation area. (III)

58.24(9) *Paid nutritional assistants.* A paid nutritional assistant means an individual who meets the requirements of this subrule and who is an employee of the facility or an employee of a temporary employment agency employed by the facility. A facility may use an individual working in the facility as a paid nutritional assistant only if that individual has successfully completed a state-approved training program for paid nutritional assistants. (I, II, III)

a. *Training program requirements.*

(1) A state-approved training program for paid nutritional assistants must include, at a minimum, eight hours of training in the following areas:

1. Feeding techniques.
2. Assistance with feeding and hydration.
3. Communication and interpersonal skills.
4. Appropriate responses to resident behavior.

5. Safety and emergency procedures, including the Heimlich maneuver.
6. Infection control.
7. Resident rights.
8. Recognizing changes in residents that are inconsistent with their normal behavior and reporting these changes to the supervisory nurse.

(2) In addition to the training program requirements specified above, the training program must include at least four hours of classroom study, two hours of supervised laboratory work, and two hours of supervised clinical experience.

(3) A facility that offers a paid nutritional assistant training program must provide sufficient supplies in order to teach the objectives of the course.

(4) All paid nutritional assistant training program instructors shall be registered nurses. Other qualified health care professionals may assist the instructor in teaching the classroom portion and clinical or laboratory experiences. The ratio of students to instructor shall not exceed ten students per instructor in the clinical setting.

(5) Each individual enrolled in a paid nutritional assistant training program shall complete a 50-question multiple choice written test and must obtain a score of 80 percent or higher. In addition, the individual must successfully perform the feeding of a resident in a clinical setting. A registered nurse shall conduct the final competency determination.

(6) If an individual does not pass either the written test or competency demonstration, the individual may retest the failed portion a second time. If the individual does not pass either the written test or competency demonstration portion the second time, the individual shall not be allowed to retest.

b. *Program approval.* A facility or other entity may not offer or teach a paid nutritional assistant training program until the department has approved the program. Individuals trained in a program not approved by the department will not be allowed to function as paid nutritional assistants.

(1) A facility or other institution offering a paid nutritional assistant training program must provide the following information about the training program to the department before offering the program or teaching paid nutritional assistants:

1. Policies and procedures for program administration.
2. Qualifications of the instructors.
3. Maintenance of program records, including attendance records.
4. Criteria for determining competency.
5. Program costs and refund policies.
6. Lesson plans, including the objectives to be taught, skills demonstrations, assignments, quizzes, and classroom, laboratory and clinical hours.

(2) The facility or other institution offering a paid nutritional assistant training program must submit the materials specified above for department review. The department shall, within ten days of receipt of the material, advise the facility or institution whether the program is approved, or request additional information to assist the department in determining whether the curriculum meets the requirements for a paid nutritional assistant training program. Before approving any paid nutritional assistant training program, the department shall determine whether the curriculum meets the requirements specified in this subrule. The department shall maintain a list of facilities and institutions eligible to provide paid nutritional assistant training. (I, II, III)

(3) A facility shall maintain a record of all individuals who have successfully completed the required training program and are used by the facility as paid nutritional assistants. The individual shall complete the training program with a demonstration of knowledge and competency skills necessary to serve as a paid nutritional assistant. (I, II, III)

(4) Upon successful completion of the training program, the facility or other institution providing the training shall, within ten calendar days, provide the individual with a signed and dated certificate of completion. A facility that employs paid nutritional assistants shall maintain on file copies of the completed certificate and skills checklist for each individual who has successfully completed the training program. (I, II, III)

c. *Working restrictions.*

(1) A paid nutritional assistant must work under the supervision of a registered nurse or a licensed practical nurse. In an emergency, a paid nutritional assistant must call a supervisory nurse for help on the resident call system. (I, II, III)

(2) A facility must ensure that a paid nutritional assistant feeds only residents who have no complicated feeding problems. Complicated feeding problems include, but are not limited to, difficulty swallowing, recurrent lung aspirations, and tube, parenteral or intravenous feedings. The facility must base resident selection on the charge nurse's assessment and the resident's latest assessment and plan of care. (I, II, III)

481—58.25(135C) Social services program.

58.25(1) The administrator or designee shall be responsible for developing a written, organized orientation program for all residents. (III)

58.25(2) The program shall be planned and implemented to resolve or reduce personal, family, business, and emotional problems that may interfere with the medical or health care, recovery, and rehabilitation of the individual. (III)

58.25(3) The social services plan, including specific goals and regular evaluation of progress, shall be incorporated into the overall plan of care. (III)

481—58.26(135C) Resident activities program.

58.26(1) *Organized activities.* Each nursing facility shall provide an organized resident activity program for the group and for the individual resident which shall include suitable activities for evenings and weekends. (III)

a. The activity 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. This shall include helping residents continue in their individual interests or hobbies. (III)

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

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

d. No resident shall be forced to participate in the activity program. (III)

e. The activity program shall include suitable activities for those residents unable to leave their rooms. (III)

f. The program shall be incorporated into the overall health plan and shall be designed to meet the goals as written in the plan.

58.26(2) *Coordination of activities program.*

a. Each nursing facility shall employ a person to direct the activities program. (III)

[1]*b.* [2]Staffing for the activity program shall be provided on the minimum basis of 35 minutes per licensed bed per week. (II, III)

c. The activity coordinator shall have completed the activity coordinators' orientation course offered through the department within six months of employment or have comparable training and experience as approved by the department. (III)

d. The activity coordinator shall attend workshops or educational programs which relate to activity programming. These shall total a minimum of ten contact hours per year. These programs shall be approved by the department. (III)

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

58.26(3) *Duties of activity coordinator.* The activity coordinator shall:

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

b. Coordinate all activities, including volunteer or auxiliary activities and religious services; (III)

c. Keep all necessary records including:

(1) Attendance; (III)

(2) Individual resident progress notes recorded at regular intervals (at least quarterly). A copy of these notes shall be placed in the resident's clinical record; (III)

(3) Monthly calendars, prepared in advance. (III)

d. Coordinate the activity program with all other services in the facility; (III)

e. Participate in the in-service training program in the facility. This shall include attending as well as presenting sessions. (III)

58.26(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) These may include: books (standard and large print), magazines, newspapers, radio, television, and bulletin boards. Also appropriate would be box games, game equipment, songbooks, cards, craft supplies, record player, movie projector, piano, outdoor equipment, etc.

b. Storage shall be provided for recreational equipment and supplies. (III)

c. Locked storage should be available for potentially dangerous items such as scissors, knives, and toxic materials. (III)

[1] Emergency, pursuant to Iowa Code section 17A.5(2)*"b"*(2).

[2] Objection filed 2/14/79; see Objection following 481—Ch 57.

481—58.27(135C) Certified volunteer long-term care ombudsman program. A certified volunteer long-term care ombudsman appointed in accordance with Iowa Code section 231.45 as amended by 2013 Iowa Acts, Senate File 184, shall operate within the scope of the rules for volunteer ombudsmen promulgated by the office of long-term care ombudsman and Iowa department on aging.
[**ARC 1205C**, IAB 12/11/13, effective 1/15/14]

481—58.28(135C) Safety. The licensee of a nursing facility shall be responsible for the provision and maintenance of a safe environment for residents and personnel. (III)

58.28(1) *Fire safety.*

a. All nursing 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.

58.28(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 posted. (III)

b. In-service shall be provided to ensure that all employees are knowledgeable of the emergency plan. (III)

58.28(3) *Resident safety.*

a. Residents shall be permitted to smoke only where proper facilities are provided. Smoking shall not be permitted in bedrooms. Smoking by residents considered to be careless shall be prohibited except when the resident is under direct supervision. (II, III)

b. Smoking is prohibited in all rooms where oxygen is being administered or in rooms where oxygen is stored. (II, III)

c. Whenever full or empty tanks of oxygen are being used or stored, they shall be securely supported in an upright position. (II, III)

d. Smoking shall be permitted only in posted areas. (II, III)

e. Each resident shall receive adequate supervision to protect against hazards from self, others, or elements in the environment. (I, II, III)

f. Residents shall be protected against physical or environmental hazards to themselves. (I, II, III)
[**ARC 1398C**, IAB 4/2/14, effective 5/7/14]

481—58.29(135C) Resident care.

58.29(1) There shall be a readily available supply of self-help and ambulation devices such as wheelchairs, walkers, and such other devices maintained in good repair that will meet the current needs of all residents. (III)

58.29(2) The facility shall ensure that each ambulatory resident has well-fitting shoes to provide support and prevent slipping. (III)

58.29(3) Equipment for personal care shall be maintained in a safe and sanitary condition. (II, III)

58.29(4) The expiration date for sterile equipment shall be exhibited on its wrappings. (III)

58.29(5) Residents who have been known to wander shall be provided with appropriate means of identification. (II, III)

58.29(6) Electric heating pads, blankets, or sheets shall be used only on the written order of a physician, when allowed by the Life Safety Code or applicable state or local fire regulations. (II, III)

481—58.30 Rescinded, effective 7/14/82.

481—58.31(135C) Housekeeping.

58.31(1) Written procedures shall be established and implemented for daily and weekly cleaning schedules. (III)

58.31(2) Each resident unit shall be cleaned on a routine schedule. (III)

58.31(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. (III)

58.31(4) A hallway or corridor shall not be used for storage of equipment. (III)

58.31(5) All odors shall be kept under control by cleanliness and proper ventilation. (III)

58.31(6) Clothing worn by personnel shall be clean and washable. (III)

58.31(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)

58.31(8) All furniture, bedding, linens, and equipment shall be cleaned periodically and before use by another resident. (III)

58.31(9) Polishes used on floors shall provide a nonslip finish. (III)

58.31(10) *Throw or scatter rugs shall not be permitted. (III)

*Objection. For text of Objection, see IAC Supp., Part I, 9/7/77. For text of Filed rules, 470—Chapter 58, see IAC Supp. 10/5/77.

58.31(11) Entrances, exits, steps, and outside walkways shall be kept free from ice, snow, and other hazards. (II, III)

58.31(12) Residents shall not have access to storage areas for all cleaning agents, bleaches, insecticides, or any other poisonous, dangerous, or flammable materials. (II, III)

58.31(13) Sufficient numbers of noncombustible trash containers, which have covers, shall be available. (III)

58.31(14) Definite procedures shall be established for training housekeeping personnel. (III)

58.31(15) Rescinded IAB 12/6/06, effective 1/10/07.

58.31(16) There shall be provisions for the cleaning and storage of housekeeping equipment and supplies for each nursing unit. (III)

58.31(17) Bathtubs, shower stalls, or lavatories shall not be used for laundering, cleaning of utensils and mops, or for storage. (III)

58.31(18) Bedside utensils shall be stored in enclosed cabinets. (III)

58.31(19) Kitchen sinks shall not be used for the cleaning of mops, soaking of laundry, cleaning of bedside utensils, nursing utensils, or dumping of wastewater. (III)

58.31(20) Personal possessions of residents which may constitute hazards to themselves or others shall be removed and stored. (III)

481—58.32(135C) Maintenance.

58.32(1) Each facility shall establish a maintenance program in writing to ensure the continued maintenance of the facility, to promote good housekeeping procedures, and to ensure sanitary practices throughout the facility. (III)

58.32(2) The building, grounds, and other buildings shall be maintained in a clean, orderly condition and in good repair. (III)

58.32(3) Draperies and furniture shall be clean and in good repair. (III)

58.32(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. (III)

58.32(5) The electrical systems, including appliances, cords, and switches, shall be maintained to guarantee safe functioning and comply with the national electrical code. (III)

58.32(6) All plumbing fixtures shall function properly and comply with the state plumbing code. (III)

58.32(7) Yearly inspections of the heating and cooling systems shall be made to guarantee safe operation. Documentation of these inspections shall be available for review. (III)

58.32(8) The building, grounds, and other buildings shall be kept free of breeding areas for flies, other insects, and rodents. (III)

58.32(9) The facility shall be kept free of flies, other insects, and rodents. (III)

58.32(10) Maintenance personnel.

a. A written program shall be established for the orientation of maintenance personnel. (III)

b. Maintenance personnel shall:

(1) Follow established written maintenance programs; (III)

(2) Be provided with appropriate, well-constructed, and properly maintained equipment. (III)

481—58.33(135C) Laundry.

58.33(1) All soiled linens shall be collected in and transported to the laundry room in closed, leakproof laundry bags or covered, impermeable containers. (III)

58.33(2) Except for related activities, the laundry room shall not be used for other purposes. (III)

58.33(3) Procedures shall be written for the proper handling of wet, soiled, and contaminated linens. (III)

58.33(4) Residents' personal laundry shall be marked with an identification. (III)

58.33(5) Bed linens, towels, and washcloths shall be clean and stain-free. (III)

481—58.34(135C) Garbage and waste disposal.

58.34(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)

58.34(2) All containers for refuse shall be watertight, rodent-proof, and have tight-fitting covers. (III)

58.34(3) All containers shall be thoroughly cleaned each time the containers are emptied. (III)

58.34(4) All wastes shall be properly disposed of in compliance with local ordinances and state codes. (III)

58.34(5) Special provision shall be made for the disposal of soiled dressings and similar items in a safe, sanitary manner. (III)

481—58.35(135C) Buildings, furnishings, and equipment.

58.35(1) *Buildings—general requirements.*

a. For purposes of computation of usable floor space in bedrooms and other living areas of the facility, that part of the room having no less than seven feet of ceiling height shall be used. Usable floor space may include irregularities in the rooms such as alcoves and offsets with approval of the department. Usable floor space shall not include space needed for corridor door swings or wardrobes being used as a substitute for closet space. (III)

b. Battery-operated, portable emergency lights in good working condition shall be available at all times, at a ratio of one light per one employee on duty from 6 p.m. to 6 a.m. (III)

c. All windows shall be supplied with curtains and shades or drapes which are kept clean and in good repair. (III)

d. Light fixtures shall be so equipped to prevent glare and to prevent hazards to the residents. (III)

e. Exposed heating pipes, hot water pipes, or radiators in rooms and areas used by residents and within reach of residents shall be covered or protected to prevent injury or burns to residents. (II, III)

f. All fans located within seven feet of the floor shall be protected by screen guards of not more than one-half-inch mesh. (III)

g. Whenever glass sliding doors or transparent panels are used, they shall be marked conspicuously. (III)

h. The facility shall meet the equivalent requirements of the appropriate group occupancy of the state building code. (III)

i. No part of any room shall be enclosed, subdivided, or partitioned unless such part is separately lighted and ventilated and meets such other requirements as its usage and occupancy dictates, except closets used for the storage of residents' clothing. (III)

58.35(2) *Furnishings and equipment.*

a. All furnishings and equipment shall be durable, cleanable, and appropriate to its function and in accordance with the department's approved program of care. (III)

b. All resident areas shall be decorated, painted, and furnished to provide a home-like atmosphere. (III)

c. Upholstery materials shall be moisture- and soil-resistant, except on furniture provided by the resident and the property of the resident. (III)

58.35(3) *Dining and living rooms.*

a. Every facility shall have a dining room and a living room easily accessible to all residents. (III)

b. Dining rooms and living rooms shall at no time be used as bedrooms. (III)

c. Dining rooms and living rooms shall be available for use by residents at appropriate times to provide periods of social and diversional individual and group activities. (III)

d. A combination dining room and living room may be permitted if the space requirements of a multipurpose room as provided in 58.35(3)*"e"* are met. (III)

e. Multipurpose rooms. When space is provided for multipurpose dining and activities and recreational purposes, the area shall total at least 30 square feet per licensed bed for the first 100 beds and 27 square feet per licensed bed for all beds in excess of 100. An open area of sufficient size shall be provided to permit group activities such as religious meetings or presentation of demonstrations or entertainment. (III)

f. Living rooms.

(1) Living rooms shall be maintained for the use of residents and their visitors and may be used for recreational activities. (III)

(2) Living rooms shall be suitably provided with parlor furniture, television and radio receivers in good working order, recreational material such as games, puzzles, and cards, and reading material such as current newspapers and magazines. Furnishings and equipment of the room should be such as to allow group activities. (III)

(3) Card tables or game tables shall be made available. The tables should be of a height to allow a person seated in a wheelchair to partake in the games or card playing. (III)

(4) Chairs of proper height and appropriate to their use shall be provided for seating residents at game tables and card tables. (III)

g. Dining rooms.

(1) Dining rooms shall be furnished with dining tables and chairs appropriate to the size and function of the facility. These rooms and furnishings shall be kept clean and sanitary. (III)

(2) Dining tables and chairs shall be provided. (III)

(3) Dining tables should be so constructed that a person seated in a wheelchair can dine comfortably. (III)

(4) Tables shall be of sturdy construction with smooth, durable, nonpermeable tops that can be cleaned with a detergent sanitizing solution. (III)

(5) Dining chairs shall be sturdy and comfortable. Some arm chairs should be provided for ease of movement for some residents. (III)

(6) Residents shall be encouraged to eat in the dining room. (III)

58.35(4) *Bedrooms.*

a. Each resident shall be provided with a standard, single, or twin bed that is substantially constructed and in good repair. Rollaway beds, metal cots, or folding beds are not acceptable. Seventy-five percent of the beds shall have a spring with an adjustable head and foot section. A resident shall have the right to sleep in a chair per the resident's request and to have the bed removed from the room to allow for additional space. (III)

b. Each bed shall be equipped with the following: casters or glides unless a low bed and mattress are being used for fall precautions; a clean, comfortable, well-constructed mattress approximately five inches thick and standard in size for the bed; clean, comfortable pillows of average size; and moisture-proof covers and sheets as necessary to keep the mattress and pillows dry and clean. (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 multiple bedroom, drawer space shall be assigned each resident. (III)

f. Walls, ceilings, and floors shall have easily cleanable surfaces and shall be kept clean and in good repair. (III)

g. Beds and other furnishings shall not obstruct free passage to and through doorways. (III)

h. Clothing shall be hung in closets or wardrobes available in each room. (III)

i. Beds shall not be placed with the head of the bed in front of a window or radiator. (III)

j. 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 it is covered so as to protect the resident from contact with it or from excessive heat. (III)

k. Reading lamps shall be provided each resident in the resident's room. (III)

l. Each room shall have sufficient accessible mirrors to serve the resident's needs. Mirrors are not required if the room is located in a CCDI unit and the mirrors cause concern for the resident. (III)

m. Sturdy, adjustable overbed tables shall be provided for each resident who is unable to eat in the dining room. (III)

n. Each resident bedroom shall have a door. The door shall be the swing type and shall not swing into the corridor. (III)

58.35(5) *Heating.* A centralized heating system capable of maintaining a minimum temperature of 78°F (26°C) shall be provided. Portable units or space heaters are prohibited from being used in the facility except in an emergency. (III)

58.35(6) *Water supply.*

a. Every facility shall have an adequate water supply from an approved source. A municipal source of supply shall be considered as meeting this requirement. (III)

b. Private sources of supply shall be tested annually and the report submitted with the annual application for license. (III)

c. A bacterially unsafe source of supply shall be grounds for denial, suspension, or revocation of license. (III)

d. The department may require testing of private sources of supply at its discretion in addition to the annual test. The facility shall supply reports of such tests as directed by the department. (III)

e. Hot and cold running water under pressure shall be available in the facility. (III)

f. Prior to construction of a new facility or new water source, private sources of supply shall be surveyed and shall comply with the requirements of the department of health. (III)

58.35(7) *Nonambulatory residents.*

a. All nonambulatory residents shall be housed on the grade level floor. (II, III)

b. These provisions in *"a"* above relating to nonambulatory residents are not applicable if the facility has a suitably sized elevator.

481—58.36(135C) Family and employee accommodations.

58.36(1) Children under 14 years of age shall not be allowed into the service areas. (III)

58.36(2) The residents' bedrooms shall not be occupied by employees or family members of the licensee. (III)

58.36(3) In facilities where the total occupancy of family, employees, and residents is five or less, one toilet and one tub or shower shall be the minimum requirement. (III)

58.36(4) 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 residents. (III)

58.36(5) In all health care 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 residents. (III)

481—58.37(135C) Animals. Animals may be permitted within the facility with prior approval of the department and under controlled conditions. (III)

481—58.38(135C) Supplies.

58.38(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. Uncrowded and convenient storage shall be provided for linens, pillows, and bedding. (III)

58.38(2) *First-aid kit.* A first-aid emergency kit shall be available on each floor in every facility. (II, III)

58.38(3) *Supplies and equipment for nursing services.*

a. All nursing care equipment shall be properly sanitized or sterilized before use by another resident. (II)

b. There shall be disposable or one-time use items available with provisions for proper disposal to prevent reuse except as allowed by 58.10(8)*"h,"*481—paragraph 59.12(10)*"h,"* or 481—paragraph 64.12(14)*"h."* (I, II, III)

c. Convenient, safe storage shall be provided for bath and toilet supplies, bathroom scales, mechanical lifts, and shower chairs. (III)

d. Sanitary and protective storage shall be provided for all equipment and supplies. (III)

e. All items that must be sterilized shall be autoclaved unless sterile disposable items are furnished which are promptly disposed of after a single use. (III)

f. Supplies and equipment for nursing and personal care sufficient in quantities to meet the needs of the residents shall be provided and, as a minimum, include the following: (III)

Bath basins	Rectal tubes
Soap containers	Catheters and catheterization equipment
Denture cups	Douche nozzle
Emesis basins	Oxygen therapy equipment
Mouthwash cups	Naso-gastric feeding equipment
Bedpans	Wheelchairs
Urinals	Moisture-proof draw sheets
Enema equipment	Moisture-proof pillow covers
Commodes	Moisture-proof mattress covers

Quart graduate measure
Thermometer for measurement of bath water temperature
Oral thermometer
Rectal thermometer
Basins for sterilizing thermometers
Basins for irrigations
Asepto syringes
Sphygmomanometer
Paper towels
Paper handkerchiefs
Insulin syringes
2 cc hypodermic syringes
Weight scales
Hypodermic needles
Stethoscope
Ice caps
Hot water bottles
Foot tubs
Metal pitcher
Disinfectant solutions
Alcohol
Lubricating jelly
Skin lotion
Applicators
Tongue blades
Toilet paper
Rubber gloves or disposable gloves
Scales for nonambulatory patients
Tourniquet
Suction machine
Medicine dispensing containers
Bandages
Adhesive
Portable linen hampers
Denture identification equipment
Tracheotomy care equipment

481—58.39(135C) Residents' rights in general.

58.39(1) Each facility shall ensure that policies and procedures are written and implemented which include, at a minimum, all of the following provisions (subrules 58.39(2) to 58.39(6)) and which govern all areas of service provided by the facility. These policies and procedures shall be available to staff, residents, their families or legal representatives and the public and shall be reviewed annually. (II)

58.39(2) Policies and procedures shall address the admission and retention of persons with histories of dangerous or disturbing behavior. For the purposes of the subrule, persons with histories of dangerous or disturbing behavior are those persons who have been found to be seriously mentally impaired pursuant to Iowa Code section 229.13 or 812.1 within six months of the request for admission to the facility. In addition to establishing the criteria for admission and retention of persons so defined, the policies and procedures shall provide for:

a. Reasonable precautions to prevent the resident from harming self, other residents, or employees of the facility.

b. Treatment of persons with mental illness as defined in Iowa Code section 229.1(1) and which is provided in accordance with the individualized health care plan.

c. Ongoing and documented staff training on individualized health care planning for persons with mental illness.

58.39(3) Policies and procedures regarding the admission, transfer, and discharge of residents shall ensure that:

a. Only those persons are accepted whose needs can be met by the facility directly or in cooperation with community resources or other providers of care with which it is affiliated or has contracts. (II)

b. As changes occur in residents' physical or mental condition, necessitating services or care which cannot be adequately provided by the facility, they are transferred promptly to other appropriate facilities. (II)

58.39(4) Policies and procedures regarding the use of chemical and physical restraints shall define the use of said restraints and identify the individual who may authorize the application of physical restraints in emergencies, and describe the mechanism for monitoring and controlling their use. (II)

58.39(5) Policies and procedures shall include a method for submitting complaints and recommendations by residents or their responsible party and for ensuring a response and disposition by the facility. (II)

58.39(6) Policies and procedures shall include provisions governing access to, duplication of, and dissemination of information from the residents' records. (II)

58.39(7) 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 admission, or in the case of residents already in the facility, upon the facility's adoption or amendment of residents' rights policies. (II)

a. The facility shall make known to residents what they may expect from the facility and its staff, and what is expected from them. The facility shall communicate these expectations during the period of not more than two weeks before or five days after admission. 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 admission. (II)

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)

c. A statement shall be signed by the resident, or the resident's responsible party, indicating an understanding of these rights and responsibilities, and shall be maintained in the 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, if applicable. In the case of an intellectually disabled resident, the signature shall be witnessed by a person not associated with or employed by the facility. The witness may be a parent, guardian, Medicaid agency representative, etc. (II)

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)

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 such changes. (II)

58.39(8) Each resident or responsible party shall be fully informed in a contract as required in rule 481—58.13(135C), prior to or at the time of admission and during the resident's stay, of services available in the facility, and of related charges including any charges for services not covered under the Title XIX program or not covered by the facility's basic per diem rate. (II)

58.39(9) Each resident or responsible party shall be fully informed by a physician of the resident's health and medical condition unless medically contraindicated (as documented by a physician in the resident's record). Each resident shall be afforded the opportunity to participate in the planning of the resident's total care and medical treatment, which may include, but is not limited to, nursing care, nutritional care, rehabilitation, restorative therapies, activities, and social work services. Each resident only participates in experimental research conducted under the U.S. Department of Health and Human Services' protection from research risks policy and then only upon the resident's informed written consent. Each resident has the right to refuse treatment except as provided by Iowa Code chapter 229. In the case of a confused or intellectually disabled individual, the responsible party shall be informed by the physician of the resident's medical condition and be afforded the opportunity to participate in the planning of the resident's total care and medical treatment, to be informed of the medical condition, and to refuse to participate in experimental research. (II)

a. The requirement that residents shall be informed of their conditions, involved in the planning of their care, and advised of any significant changes in either shall be communicated to every physician responsible for the medical care of residents in the facility. (II)

b. The administrator or designee shall be responsible for working with attending physicians in the implementation of this requirement. (II)

c. If the physician determines or in the case of a confused or intellectually disabled resident the responsible party determines that informing the resident of the resident's condition is contraindicated, this decision and reasons for it shall be documented in the resident's record by the physician. (II)

d. The resident's plan of care shall be based on the physician's orders. It shall be developed upon admission by appropriate facility staff and shall include participation by the resident if capable. Residents shall be advised of alternative courses of care and treatment and their consequences when such alternatives are available. The resident's preference about alternatives shall be elicited and honored if feasible.

e. Any clinical investigation involving residents must be under the sponsorship of an institution with a human subjects review board functioning in accordance with the requirements of Public Law 93-348, as implemented by Part 46 of Title 45 of the Code of Federal Regulations, as amended to December 1, 1981 (45 CFR 46). A resident being considered for participation in experimental research must be fully informed of the nature of the experiment, e.g., medication, treatment, and understand the possible consequences of participating or not participating. The resident's (or responsible party's) written informed consent must be received prior to participation. (II)

This rule is intended to implement Iowa Code section 135C.23(2).

[**ARC 0766C**, IAB 5/29/13, effective 7/3/13]

481—58.40(135C) Involuntary discharge or transfer.

58.40(1) A facility shall not involuntarily discharge or transfer a resident from a facility except: for medical reasons; for the resident's welfare or that of other residents; for nonpayment for the resident's stay (as contained in the contract for the resident's stay), except as prohibited by Title XIX of the Social Security Act, 42 U.S.C. 1396 to 1396k by reason of action pursuant to Iowa Code chapter 229; by reason of negative action by the Iowa department of social services; and by reason of negative action by the professional standards review organization. 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 chapter 249A. (I, II)

a. "Medical reasons" for transfer or discharge are based on the resident's needs and are determined and documented in the resident's record by the attending physician. Transfer or discharge may be required to provide a different level of care. In the case of transfer or discharge for the reason that the resident's condition has improved such that the resident no longer needs the level of care being provided by the facility, the determination that such medical reason exists is the exclusive province of the professional standards review organization or utilization review process in effect for residents whose care is paid in full or in part by Title XIX. (II)

b. "Welfare" of a resident or that of other residents refers to their social, emotional, or physical well-being. A resident might 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 the resident's needs and rights). Evidence 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 be in writing and shall include specific information to support this determination.

c. Involuntary transfer or discharge of a resident from a facility shall be preceded by a written notice to the resident or responsible party at least 30 days in advance of the proposed transfer or discharge. The 30-day requirement shall not apply in any of the following instances:

(1) If an emergency transfer or discharge is mandated by the resident's health care needs and is in accord with the written orders and medical justification of the attending physician. Emergency transfers or discharges may also be mandated to protect the health, safety, or well-being of other residents and staff from the resident being transferred. (II)

(2) If 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, physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility.

(3) If the discharge or transfer is the result of a final, nonappealable decision by the department of social services or the professional standards review organization.

d. The notice required by paragraph *"c"* 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 (elite), which reads: "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 state 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 receipt of your request by the department and you will not be transferred prior to a final decision. Provision may be made for extension of the 14-day requirement upon request to the department of inspections and appeals designee in emergency circumstances. If you lose the hearing, you will not be transferred before the expiration of 30 days following receipt of the original notice of the discharge or transfer, or no sooner than 5 days following final decision of such hearing. 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, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083." (II)

e. A request for a hearing made under 58.40(1)*"d"*(3) shall stay a transfer or discharge pending a hearing or appeal decision. (II)

f. The type of hearing shall be determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident, responsible party, and Iowa department on aging long-term care ombudsman of record not later than five full business days after receipt of request. This notice shall also inform the licensee, resident or responsible party that they have a right to appear at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. The Iowa department on aging long-term care ombudsman shall have the right to appear at the hearing.

g. The hearing shall be heard by a department of inspections and appeals designee pursuant to Iowa Code chapter 17A. (The hearing shall be public unless the resident or representative requests in writing that it be closed.) The licensee or designee shall have the opportunity to present to the representative of the department any oral testimony or written materials to show by a preponderance of the evidence just cause why a transfer or discharge may be made. The resident and responsible party shall also have an opportunity to present to the representative of the department any oral testimony or written material to show just cause why a transfer or discharge should not be made. In a determination as to whether a transfer or discharge is authorized, the burden of proof rests on the party requesting the transfer or discharge.

h. Based upon all testimony and materials submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, responsible party, and department on aging long-term care ombudsman within 10 working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

A request for review of a proposed decision in which the department is the final decision maker shall be made within 15 days of issuance of the proposed decision, unless otherwise provided by statute. Requests shall be mailed or delivered by either party to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. Failure to request review will preclude judicial review unless the department reviews a proposed decision upon its own motion within 15 days of the issuance of the decision.

i. A copy of the notice required by paragraph *"c"* 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, physician, the person or agency responsible for the resident's placement, maintenance, and care in the facility, and the department on aging long-term care ombudsman.

j. 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 professional standards review organization (Iowa Foundation for Medical Care), appeals shall be filed with those agencies as appropriate. Continued payment shall be consistent with rules of those agencies.

k. 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)

l. The involuntary transfer or discharge shall be discussed 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 within 48 hours after notice of discharge has been received. The explanation and discussion of the reasons for involuntary transfer or discharge shall be given by the facility administrator or other appropriate facility representative as the administrator's designee. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions and made part of the resident's record. (II)

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

(1) Counseling 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)

(2) 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)

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

n. In the case of an emergency transfer or discharge as outlined in 58.40(1)*"c"*(1), the resident must still be given a written notice prior to or within 48 hours following transfer or discharge. A copy of this notice must be placed in the resident's file and it must contain all the information required by 58.40(1)*"d"*(1) and (2). In addition, the notice must contain a statement in not less than 12-point type (elite), which 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. 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 you may 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." A hearing requested pursuant to this subrule shall be held in accordance with paragraphs *"f," "g,"* and *"h."* (II)

o. 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 a facility voluntarily closing, a period of 30 days must be allowed for an orderly transfer of residents to other facilities.

58.40(2) Intrafacility transfer:

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

(1) Incompatibility with or disturbing to other roommates, as documented in the resident's record.

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

(3) For medical, nursing or psychosocial reasons, as documented in the resident's record, 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 which 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 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 58.40(2)*"a"*(5). (II)

(2) As punishment or behavior modification, except as specified in 58.40(2)*"a"*(1). (II)

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

c. If intrafacility relocation is necessary for reasons outlined in paragraph *"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 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 requiring emergency relocation and such notification shall be documented. (II)

481—58.41(135C) Residents' rights. Each resident shall be encouraged and assisted throughout the resident's period of stay, to exercise 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)

58.41(1) 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 issues or pending decisions of the facility that affect them and their views shall be solicited prior to action. (II)

58.41(2) The facility shall implement a written procedure for registering and resolving grievances and recommendations by residents or their responsible party. The procedure shall ensure protection of the resident from any form of reprisal or intimidation. The written procedure shall include:

a. Designation of an employee responsible for handling grievances and recommendations. (II)

b. A method of investigating and assessing the validity of a grievance or recommendation. (II)

c. Methods of resolving grievances. (II)

d. Methods of recording grievances and actions taken. (II)

58.41(3) The facility shall post in a prominent area the name, telephone number, and address of the ombudsman, survey agency, local law enforcement agency, and certified volunteer long-term care ombudsman and the text of Iowa Code section 135C.46 to provide to residents a further course of redress. (II)

[**ARC 1205C**, IAB 12/11/13, effective 1/15/14]

481—58.42(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, and

to the extent, under written authorization by the resident that the facility assists in management, the management shall be carried out in accordance with Iowa Code section 135C.24. (II)

58.42(1) The facility shall maintain a written account of all residents' funds received by or deposited with the facility. (II)

58.42(2) An employee shall be designated in writing to be responsible for resident accounts. (II)

58.42(3) The facility shall keep on deposit personal funds over which the resident has control in accordance with Iowa Code section 135C.24(2). 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 confused or intellectually disabled resident, the resident's responsible party shall designate a method of disbursing the resident's funds. (II)

58.42(4) If the facility makes financial transactions on a resident's behalf, the resident must receive or acknowledge that the resident has seen 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)

58.42(5) A resident's personal funds shall not be used without the written consent of the resident or the resident's guardian. (II)

58.42(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 guardian. The department may report findings that resident funds have been used without written consent to the audits division or the local law enforcement agency, as appropriate. (II)

[**ARC 0766C**, IAB 5/29/13, effective 7/3/13]

481—58.43(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. Each resident shall be free from chemical and physical restraints except as follows: when authorized in writing by a physician for a specified period of time; when necessary in an emergency to protect the resident from injury to the resident or to others, in which case restraints may be authorized by designated professional personnel who promptly report the action taken to the physician; and in the case of an intellectually disabled individual when ordered in writing by a physician and authorized by a designated qualified intellectual disabilities professional for use during behavior modification sessions. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

58.43(1) Mental abuse includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation. (II)

58.43(2) Physical abuse includes, but is not limited to, corporal punishment and the use of restraints as punishment. (II)

58.43(3) Drugs such as tranquilizers may not be used as chemical restraints to limit or control resident behavior for the convenience of staff. (II)

58.43(4) Physicians' orders are required to utilize all types of physical restraints and shall be renewed at least quarterly. (II) Physical restraints are defined as the following:

Type I—the equipment used to promote the safety of the individual but is not applied directly to their person. Examples: divided doors and totally enclosed cribs.

Type II—the application of a device to the body to promote safety of the individual. Examples: vest devices, soft-tie devices, hand socks, geriatric chairs.

Type III—the application of a device to any part of the body which will inhibit the movement of that part of the body only. Examples: wrist, ankle or leg restraints and waist straps.

58.43(5) Physical restraints are not to be used to limit resident mobility for the convenience of staff and must comply with life safety requirements. If a resident's behavior is such that it may result in injury to the resident or others and any form of physical restraint is utilized, it should be in conjunction with a treatment procedure(s) designed to modify the behavioral problems for which the resident is restrained, or as a last resort, after failure of attempted therapy. (I, II)

58.43(6) Each time a Type II or III restraint is used documentation on the nurse's progress record shall be made which includes type of restraint and reasons for the restraint and length of time resident was restrained. The documentation of the use of Type III restraint shall also include the time of position change. (II)

58.43(7) Each facility shall implement written policies and procedures governing the use of restraints which clearly delineate at least the following:

a. Physicians' orders shall indicate the specific reasons for the use of restraints. (II)

b. Their use is temporary and the resident will not be restrained for an indefinite amount of time. (I, II)

c. A qualified nurse shall make the decision for the use of a Type II or Type III restraint for which there shall be a physician's order. (II)

d. A resident placed in a Type II or III restraint shall be checked at least every 30 minutes by appropriately trained staff. No form of restraint shall be used or applied in such a manner as to cause injury or the potential for injury and provide a minimum of discomfort to resident restrained. (I, II)

e. Reorders are issued only after the attending physician reviews the resident's condition. (II)

f. Their use is not employed as punishment, for the convenience of the staff, or as a substitute for supervision or program. (I, II)

g. The opportunity for motion and exercise shall be provided for a period of not less than ten minutes during each two hours in which Type II and Type III restraints are employed, except when resident is sleeping. However, when resident awakens, this shall be provided. This shall be documented each time. A check sheet may serve this purpose. (I, II)

h. Locked restraints or leather restraints shall not be permitted except in life-threatening situations. Straight jackets and secluding residents behind locked doors shall not be employed. (I, II)

i. Nursing assessment of the resident's need for continued application of a Type III restraint shall be made every 12 hours and documented on the nurse's progress record. Documentation shall include the type of restraint, reason for the restraint and the circumstances. Nursing assessment of the resident's need for continued application of either a Type I or Type II restraint and nursing evaluation of the resident's physical and mental condition shall be made every 30 days and documented on the nurse's progress record. (II)

j. A divided door equipped with a securing device that may be readily opened by personnel shall be considered an appropriate means of temporarily confining a resident in the resident's room. (II)

k. Divided doors shall be of the type that when the upper half is closed the lower section shall close. (II)

l. Methods of restraint shall permit rapid removal of the resident in the event of fire or other emergency. (I, II)

m. The facility shall provide orientation and ongoing education programs in the proper use of restraints.

58.43(8) In the case of an intellectually disabled individual who participates in a behavior modification program involving use of restraints or aversive stimuli, the program shall be conducted only with the informed consent of the individual's parent or responsible party. Where restraints are employed, an individualized program shall be developed by the interdisciplinary team with specific methodologies for monitoring its progress. (II)

a. The resident's responsible party shall receive a written account of the proposed plan of the use of restraints or aversive stimuli and have an opportunity to discuss the proposal with a representative(s) of the treatment team. (II)

b. The responsible party must consent in writing prior to the use of the procedure. Consent may also be withdrawn in writing. (II)

58.43(9) 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)

58.43(10) and **58.43(11)** Rescinded IAB 12/11/13, effective 1/15/14.

This rule is intended to implement Iowa Code sections 135C.14, 235B.3(1), and 235B.3(11).

[**ARC 0766C**, IAB 5/29/13, effective 7/3/13; **ARC 1204C**, IAB 12/11/13, effective 1/15/14]

481—58.44(135C) Resident records. Each resident shall be ensured confidential treatment of all information contained in the resident's records, including information contained in an automatic data bank. The resident's written consent shall be required for the release of information to persons not otherwise authorized under law to receive it. (II)

58.44(1) The facility shall limit access to any medical records to staff and consultants providing professional service to the resident. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

58.44(2) Similar procedures shall safeguard the confidentiality of residents' personal records, e.g., financial records and social services records. Only those personnel concerned with the financial affairs of the residents may have access to the financial records. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

58.44(3) 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 determines 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)

481—58.45(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. (II)

58.45(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. (II)

58.45(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)

58.45(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)

58.45(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)

58.45(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 in emergency conditions. (II)

481—58.46(135C) Resident work. No resident may be required to perform services for the facility, except as provided by Iowa Code sections 35D.14 and 347B.5. (II)

58.46(1) Residents may not be used to provide a source of labor for the facility against their will. Physician's approval is required for all work programs. (I, II)

58.46(2) If the plan of care requires activities for therapeutic or training reasons, the plan for these activities shall be professionally developed and implemented. Therapeutic or training goals must be clearly stated and measurable and the plan shall be time limited and reviewed at least quarterly. (II)

58.46(3) Residents who perform work for the facility must receive remuneration unless the work is part of their approved training program. Persons on the resident census performing work shall not be used to replace paid employees in fulfilling staffing requirements. (II)

481—58.47(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)

58.47(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)

58.47(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 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)

58.47(3) Decisions to restrict a visitor are reviewed and reevaluated: each time the medical orders are reviewed by the physician; at least quarterly by the facility's staff; or at the resident's request. (II)

58.47(4) Space shall be provided for residents to receive visitors in reasonable comfort and privacy. (II)

58.47(5) Telephones consistent with ANSI standards (405.1134(c)) 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)

58.47(6) Arrangements shall be made to provide assistance to residents who require help in reading or sending mail. (II)

58.47(7) Residents shall be permitted to leave the facility and environs at reasonable times unless there are justifiable reasons established in writing by the attending physician, qualified intellectual disabilities professional or facility administrator for refusing permission. (II)

58.47(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)

[**ARC 0766C**, IAB 5/29/13, effective 7/3/13]

481—58.48(135C) Resident activities. 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 qualified intellectual disabilities professional as appropriate in the resident's record. (II)

58.48(1) 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)

58.48(2) All residents shall have the freedom to refuse to participate in these activities. (II)

[**ARC 0766C**, IAB 5/29/13, effective 7/3/13]

481—58.49(135C) Resident property. Each resident may retain and use personal clothing and possessions as space permits and provided such use is not otherwise prohibited by these rules. (II)

58.49(1) Residents shall be permitted to keep reasonable amounts of personal clothing and possessions for their use while in the facility. The personal property shall be kept in a safe location which is convenient to the resident. (II)

58.49(2) Residents shall be advised, prior to or at the time of admission, of the kinds and amounts of clothing and possessions permitted for personal use, and whether the facility will accept responsibility for maintaining these items, e.g., cleaning and laundry. (II)

58.49(3) Any personal clothing or possessions retained by the facility for the resident during the resident's stay shall be identified and recorded on admission and a record placed on the resident's chart. The facility shall be responsible for secure storage of the items, and they shall be returned to the resident promptly upon request or upon discharge from the facility. (II)

58.49(4) A resident's personal property shall not be used without the written consent of the resident or the resident's guardian. (II)

58.49(5) A resident's personal property shall be returned to the resident when it has been used without the written consent of the resident or the resident's guardian. The department may report findings

that a resident's property has been used without written consent to the local law enforcement agency, as appropriate. (II)

481—58.50(135C) Family visits. Each resident, if married, shall be ensured privacy for visits by the resident's spouse; if both are residents in the facility, they shall be permitted to share a room if available. (II)

58.50(1) The facility shall provide for needed privacy in visits between spouses. (II)

58.50(2) Spouses who are residents in the same facility shall be permitted to share a room, if available, unless one of their attending physicians documents in the medical record those specific reasons why an arrangement would have an adverse effect on the health of the resident. (II)

58.50(3) Family members shall be permitted to share a room, if available, if requested by both parties, unless one of their attending physicians documents in the medical record those specific reasons why such an agreement would have an adverse effect on the health of the resident. (II)

481—58.51(135C) Choice of physician and pharmacy. Each resident shall be permitted free choice of a physician and a pharmacy, if accessible. The facility may require the pharmacy selected to utilize a drug distribution system compatible with the system currently used by the facility.

A facility shall not require the repackaging of medications dispensed by the Veterans Administration or an institution operated by the Veterans Administration for the purpose of making the drug distribution system compatible with the system used by the facility. (II)

481—58.52(135C) Incompetent resident.

58.52(1) Each facility shall provide that all rights and responsibilities of the resident devolve to the resident's responsible party when a resident is adjudicated incompetent in accordance with state law or, in the case of a resident who has not been adjudicated incompetent under the laws of the state, in accordance with 42 CFR 483.10. This subrule is not intended to limit the authority of any individual acting pursuant to Iowa Code chapter 144A. (II)

58.52(2) The fact that a resident has been adjudicated incompetent does not absolve the facility from advising the resident of these rights to the extent the resident is able to understand them. The facility shall also advise the responsible party, if any, and acquire a statement indicating an understanding of residents' rights. (II)

481—58.53(135C) County care facilities. In addition to Chapter 58 licensing rules, county care facilities licensed as nursing facilities must also comply with department of human services rules, 441—Chapter 37. Violation of any standard established by the department of human services is a Class II violation pursuant to 481—56.2(135C).

481—58.54(73GA,ch 1016) Special unit or facility dedicated to the care of persons with chronic confusion or a dementing illness (CCDI unit or facility).

58.54(1) A nursing facility which chooses to care for residents in a distinct part shall obtain a license for a CCDI unit or facility. In the case of a distinct part, this license will be in addition to its ICF license. The license shall state the number of beds in the unit or facility. (III)

a. Application for this category of care shall be submitted on a form provided by the department. (III)

b. Plans to modify the physical environment shall be submitted to the department. The plans shall be reviewed based on the requirements of 481—Chapter 61. (III)

58.54(2) A statement of philosophy shall be developed for each unit or facility which states the beliefs upon which decisions will be made regarding the CCDI unit or facility. Objectives shall be developed for each CCDI unit or facility as a whole. The objectives shall be stated in terms of expected results. (II, III)

58.54(3) A résumé of the program of care shall be submitted to the department for approval at least 60 days before a separate CCDI unit or facility is opened. A new résumé of the program of care shall be submitted when services are substantially changed. (II, III)

The résumé of the program of care shall:

a. Describe the population to be served; (II, III)

b. State philosophy and objectives; (II, III)

c. List admission and discharge criteria; (II, III)

d. Include a copy of the floor plan; (II, III)

e. List the titles of policies and procedures developed for the unit or facility; (II, III)

f. Propose a staffing pattern; (II, III)

g. Set out a plan for specialized staff training; (II, III)

h. State visitor, volunteer, and safety policies; (II, III)

i. Describe programs for activities, social services and families; (II, III) and

j. Describe the interdisciplinary care planning team. (II, III)

58.54(4) Separate written policies and procedures shall be implemented in each CCDI unit or facility. There shall be:

a. Admission and discharge policies and procedures which state the criteria to be used to admit residents and the evaluation process which will be used. These policies shall require a statement from the attending physician agreeing to the placement before a resident can be moved into a CCDI unit or facility. (II, III)

b. Safety policies and procedures which state the actions to be taken by staff in the event of a fire, natural disaster, emergency medical 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 and when hazardous cleaning materials or potentially dangerous mechanical equipment is being used in the unit or facility. The facility shall identify its method for security of the unit or facility and the manner in which the effectiveness of the security system will be monitored. (II, III)

c. Program and service policies and procedures which explain programs and services offered in the unit or facility including the rationale. (III)

d. Policies and procedures concerning staff which state minimum numbers, types and qualifications of staff in the unit or facility. (II, III)

e. Policies about visiting which suggest times and ensure the residents' rights to free access to visitors. (II, III)

f. Quality assurance policies and procedures which list the process and criteria which will be used to monitor and to respond to risks specific to the residents. This shall include, but not be limited to, drug use, restraint use, infections, incidents and acute behavioral events. (II, III)

58.54(5) Preadmission assessment of physical, mental, social and behavioral status shall be completed to determine whether the applicant meets admission criteria. This assessment shall be completed by a registered nurse and a staff social worker or social work consultant and shall become part of the permanent record upon admission of the resident. (II, III)

58.54(6) All staff working in a CCDI unit or facility shall have training appropriate to the needs of the residents. (II, III)

a. Upon assignment to the unit or facility, everyone working in the unit or facility shall be oriented to the needs of people with chronic confusion or dementing illnesses. They shall have special training appropriate to their job description within 30 days of assignment to the unit or facility. (II, III) The orientation shall be at least six hours. The following topics shall be covered:

(1) Explanation of the disease or disorder; (II, III)

(2) Symptoms and behaviors of memory-impaired people; (II, III)

(3) Progression of the disease; (II, III)

(4) Communication with CCDI residents; (II, III)

(5) Adjustment to care facility residency by the CCDI unit or facility residents and their families; (II, III)

(6) Inappropriate and problem behavior of CCDI unit or facility residents and how to deal with it; (II, III)

(7) Activities of daily living for CCDI residents; (II, III)

(8) Handling combative behavior; (II, III) and

(9) Stress reduction for staff and residents. (II, III)

b. Licensed nurses, certified aides, certified medication aides, 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 CCDI residents. The six-hour training shall count toward the required annual in-service training. (II, III)

58.54(7) There shall be at least one nursing staff person on a CCDI unit at all times. (I, II, III)

58.54(8) The CCDI unit or facility license may be revoked, suspended or denied pursuant to Iowa Code chapter 135C and Iowa Administrative Code 481—Chapter 50.

This rule is intended to implement 1990 Iowa Acts, chapter 1016.

481—58.55(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 physical structure of the facility, if the other business or activity meets the requirements of applicable state and federal laws, administrative rules, and federal regulations.

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 *"a"* through *"f"* of subrule 58.55(1). (I, II, III)

58.55(1) 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. Noise created by the proposed business or activity;

c. Odors created by the proposed business or activity;

d. 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;

e. Proposed staffing for the business or activity; and

f. Sharing of services and staff between the proposed business or activity and the facility.

58.55(2) Approval of the state fire marshal shall be obtained before approval of the department will be considered.

58.55(3) 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 61. (I, II, III)

481—58.56(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. A nursing facility which chooses to provide respite care services must meet the following requirements related to respite services and must be licensed as a nursing facility.

58.56(1) A nursing facility certified as a Medicaid nursing facility or Medicare skilled nursing facility must meet all Medicaid and Medicare requirements including CFR 483.12, admission, transfer and discharge rights.

58.56(2) A nursing facility which chooses to provide respite care services is not required to obtain a separate license or pay a license fee.

58.56(3) Rule 481—58.40(135C) regarding involuntary discharge or transfer rights, does not apply to residents who are being cared for under a respite care contract.

58.56(4) Pursuant to rule 481—58.13(135C), the facility shall have a contract with each resident in the facility. When the resident is there for respite care services, the contract shall specify the time period during which the resident 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 specifically state the resident may be involuntarily discharged while being considered as a respite care resident. The contract shall meet other requirements under 481—58.13(135C), except the requirements under subrule 58.13(7).

58.56(5) 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.

481—58.57(135C) Training of inspectors.

58.57(1) Subject to the availability of funding, all nursing facility inspectors shall receive 12 hours of annual continuing education in gerontology, wound care, dementia, falls, or a combination of these subjects.

58.57(2) An inspector shall not be personally liable for financing the training required under subrule 58.57(1).

58.57(3) The department shall consult with the collective bargaining representative of the inspector in regard to the training required under this rule.

[**ARC 8433B**, IAB 12/30/09, effective 2/3/10]

These rules are intended to implement Iowa Code sections 10A.202, 10A.402, 135C.6(1), 135C.14, 135C.25, 135C.32, 135C.36 and 227.4 and 1990 Iowa Acts, chapter 1016.

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1 Effective date of 470—58.15(2)*"c"* delayed 70 days by the Administrative Rules Review Committee, IAB 2/26/86.
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2 See IAB, Inspections and Appeals Department.

CHAPTER 59
TUBERCULOSIS (TB) SCREENING

481—59.1(135B,135C) Purpose. The intent of this chapter is to outline requirements and procedures to conduct tuberculosis screening for health care workers in health care facilities and hospitals and for residents of health care facilities regulated by the department.
[**ARC 0484C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

481—59.2(135B,135C) Definitions. For purposes of this chapter, the following definitions apply:

"Bacille Calmette-Guérin (BCG) vaccination" means a vaccine for TB. BCG is used in many countries with a high prevalence of TB to prevent childhood tuberculosis meningitis and military disease. BCG is not generally recommended for use in the United States because of the low risk of infection with *Mycobacterium tuberculosis*, the variable effectiveness of the vaccine against adult pulmonary TB, and the vaccine's potential interference with tuberculin skin test reactivity.

"Baseline TB screening" means the screening of health care workers (HCWs) of health care facilities or hospitals and residents of health care facilities for latent tuberculosis infection (LTBI) and TB disease at the beginning of employment in a facility or hospital, or upon admission to a facility. Baseline TB screening includes a symptom screen for all HCWs and residents, and tuberculin skin tests (TSTs) or interferon-gamma release assay (IGRA) for *Mycobacterium tuberculosis* for those persons with previous negative test results for *M. tuberculosis* infection.

"Baseline TST" or *"baseline IGRA"* means the TST or IGRA, respectively, that is administered at the beginning of employment to newly hired HCWs or upon admission to residents of health care facilities.

"Boosting" means a phenomenon in which a person has a negative TST (i.e., false-negative) result years after infection with *M. tuberculosis* and then a positive subsequent TST result. The positive TST result is caused by a boosted immune response of previous sensitivity rather than by a new infection (false-positive TST conversion). Two-step testing reduces the likelihood of mistaking a boosted reaction for a new infection.

"Department" means the department of inspections and appeals.

"Employment" or *"employed"* means hired or retained for paid or unpaid work in a facility or hospital.

"Extrapulmonary TB" means TB disease in any part of the body other than the lungs (e.g., kidney, spine, or lymph nodes).

"Health care facility" or *"facility"* means a health care facility as defined in Iowa Code section 135C.1 or a long-term care service of a hospital as defined in rule 481—51.38(135B).

"Health care worker" or *"HCW"* means any paid or unpaid person working in a health care facility or hospital, including any person who is paid either by the health care facility or hospital, or paid by any other entity (i.e., temporary agency, private duty, Medicaid/Medicare or independent contractors), or any volunteer who volunteers in a health care facility or hospital on a consistent and regularly scheduled basis for five or more hours per week. Specifically excluded from the definition of "health care worker" are individuals such as visitors, building contractors, repair workers or others who are in the facility or hospital for a very limited purpose and are not in the facility or hospital on a regular basis.

"Hospital" means a hospital as defined in Iowa Code section 135B.1.

"Interferon-gamma release assay" or *"IGRA"* means whole-blood tests that can aid in diagnosing *Mycobacterium tuberculosis* infection.

"Laryngeal TB" means a form of TB disease that involves the larynx and may be highly infectious.

"Latent TB infection" or *"LTBI"* means infection with *M. tuberculosis* without symptoms or signs of disease having manifested.

"Mantoux method" means a skin test performed by intradermally injecting 0.1 mL of purified protein derivative (PPD) tuberculin solution into the volar or dorsal surface of the forearm.

"Patient" means a person admitted to a hospital.

"Pulmonary TB" means TB disease that occurs in the lung parenchyma, usually producing a cough that lasts greater than three weeks. Pulmonary TB is usually infectious.

"Purified protein derivative (PPD) tuberculin" means a material used in diagnostic tests for detecting infection with *M. tuberculosis*.

"Resident" means a person admitted to a health care facility or a long-term care service of a hospital as defined in rule 481—51.38(135B). For purposes of this chapter, "resident" does not include a patient admitted to a hospital.

"Risk classification" means the category the infection control team, or designated other staff, determines is appropriate for the facility or hospital as a result of the TB risk assessment.

"Serial screening" refers to TB screening performed at regular intervals following baseline TB screening. Serial TB screening, also called annual or ongoing TB testing, consists of two components: (1) assessing for current symptoms of active TB disease, and (2) testing for the presence of infection with *M. tuberculosis* by administering either a TST or single IGRA.

"Symptom screen" means a procedure used during a clinical evaluation in which persons are asked if they have experienced any departure from normal in function, appearance, or sensation related to TB disease (e.g., cough).

"TB patient" means a person who had undiagnosed infectious pulmonary or laryngeal TB while in a health care facility or hospital during the preceding year. "TB patient" does not include persons with LTBI (treated or untreated), extrapulmonary TB disease, pulmonary, or laryngeal TB that have met criteria for noninfectiousness.

"TB risk assessment" means an initial and ongoing evaluation of the risk for transmission of *M. tuberculosis* in a particular health care setting.

"TB screening" means an administrative control measure in which evaluation for LTBI and TB disease is performed through baseline and serial screening of HCWs in hospitals and health care facilities and residents of health care facilities.

"TB screening plan" means a plan that health care facilities and hospitals develop and implement that comprises four major components: (1) baseline testing for *M. tuberculosis* infection, (2) serial testing for *M. tuberculosis* infection, (3) serial screening for signs or symptoms of TB disease, and (4) TB training and education.

"Treatment for LTBI" means treatment that prevents the progression of *M. tuberculosis* infection into TB disease.

"Tuberculin skin test" or *"TST"* means a diagnostic aid for finding *M. tuberculosis* infection. The Mantoux method is the recommended method to be used for TST.

"Tuberculosis" or *"TB"* means the namesake member organism of *M. tuberculosis* complex and the most common causative infectious agent of TB disease in humans. In certain instances, the species name refers to the entire *M. tuberculosis* complex, which includes *M. bovis* and *M. african*, *M. microti*, *M. canetti*, *M. caprae*, and *M. pinnipedii*.

"Tuberculosis disease" or *"TB disease"* means a condition caused by infection with a member of the *M. tuberculosis* complex that has progressed to causing clinical (manifesting symptoms or signs) or subclinical (early stage of disease in which signs or symptoms are not present, but other indications of disease activity are present) illness.

"Two-step tuberculin skin test" or *"two-step TST"* means the procedure used for the baseline skin testing of persons who will receive serial TSTs to reduce the likelihood of mistaking a boosted reaction for a new infection.

[**ARC 0484C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; **ARC 0674C**, IAB 4/3/13, effective 3/26/13; **ARC 0761C**, IAB 5/29/13, effective 7/3/13]

481—59.3(135B,135C) TB risk assessment.

59.3(1) Annually, a health care facility or hospital shall conduct a TB risk assessment to evaluate the risk for transmission of *M. tuberculosis*, regardless of whether a person with suspected or confirmed TB disease is expected to be encountered in the facility or hospital. The TB risk assessment shall be utilized to determine the types of administrative, environmental, and respiratory protection controls needed and

serves as an ongoing evaluation tool of the quality of TB infection control and for the identification of needed improvements in infection control measures.

59.3(2) The TB risk assessment shall include:

a. The community rate of TB,

b. The number of persons with infectious TB encountered in the facility or hospital, and

c. The speed with which persons with infectious TB disease are suspected, isolated, and evaluated to determine if persons with infectious TB exposed staff or others in the facility or hospital. TB cases include persons who had undiagnosed infectious pulmonary or laryngeal TB while in the facility or hospital during the preceding year. This does not include persons with LTBI (treated or untreated), persons with extrapulmonary TB disease, or persons with pulmonary and laryngeal TB that have met criteria for noninfectiousness.

[**ARC 0484C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

481—59.4(135B,135C) Health care facility or hospital risk classification. The infection control team or designated staff in a health care facility or hospital is responsible for determining the type of risk classification. The facility or hospital risk classification is used to determine frequency of TB screening. The facility or hospital risk classification may change due to an increase or decrease in the number of TB cases during the preceding year. The following criteria are consistent with those of the Centers for Disease Control and Prevention (CDC), TB Elimination Division, as outlined in the MMWR December 30, 2005/Vol.54/No.RR-17, "Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Settings, 2005."

59.4(1) *Types of risk classifications.*

a. "Low risk" means that a facility or hospital is one in which persons with active TB disease are not expected to be encountered and in which exposure to TB is unlikely.

b. "Medium risk" means that a facility or hospital is one in which health care workers will or might be exposed to persons with active TB disease or to clinical specimens that might contain *M. tuberculosis*.

c. "Potential ongoing transmission" means that a facility or hospital is one in which there is evidence of person-to-person transmission of *M. tuberculosis.* This classification is a temporary classification. If it is determined that this classification applies to a facility or hospital, the facility or hospital shall consult with the department of public health's TB control program.

59.4(2) *Classification criteria—low risk.*

a. Inpatient settings with 200 beds or more: If a facility or hospital has fewer than six TB patients for the preceding year, the facility or hospital shall be classified as low risk.

b. Inpatient settings with fewer than 200 beds: If a facility or hospital has fewer than three TB patients for the preceding year, the facility or hospital shall be classified as low risk.

59.4(3) *Classification criteria—medium risk.*

a. Inpatient settings with 200 beds or more: If a facility or hospital has six or more TB patients for the preceding year, the facility or hospital shall be classified as medium risk.

b. Inpatient settings with fewer than 200 beds: If a facility or hospital has three or more TB patients for the preceding year, the facility or hospital shall be classified as medium risk.

59.4(4) *Classification criteria—potential ongoing transmission.* If evidence of ongoing *M. tuberculosis* transmission exists at a facility or hospital, the facility or hospital shall be classified as potential ongoing transmission, regardless of the facility's or hospital's previous classification.

[**ARC 0484C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

481—59.5(135B,135C) Baseline TB screening procedures for health care facilities and hospitals.

59.5(1) All HCWs shall receive baseline TB screening upon hire. Baseline TB screening consists of two components: (1) assessing for current symptoms of active TB disease and (2) using a two-step TST or a single IGRA to test for infection with *M. tuberculosis*.

59.5(2) An HCW may begin working with patients or residents after a negative TB symptom screen (i.e., no symptoms of active TB disease) and a negative TST (i.e., first step) or negative IGRA. The second TST may be performed after the HCW starts working with patients or residents.

59.5(3) An HCW with a new positive test result for *M. tuberculosis* infection (i.e., TST or IGRA) shall receive one chest radiograph result to exclude TB disease. Repeat radiographs are not needed unless symptoms or signs of TB disease develop or unless recommended by a clinician. Treatment for LTBI should be considered in accordance with CDC guidelines.

59.5(4) An HCW with documentation of past positive test results (i.e., TST or IGRA) and documentation of the results of a chest radiograph indicating no active disease, dated after the date of the positive TST or IGRA test result, does not need another chest radiograph at the time of hire.

59.5(5) TB, TST or IGRA tests for *M. tuberculosis* infection do not need to be performed for HCWs with a documented history of TB disease, documented previously positive test result for *M. tuberculosis* infection, or documented completion of treatment for LTBI or TB disease. Documentation of a previously positive test result for *M. tuberculosis* infection can be substituted for a baseline test result if the documentation includes a recorded TST result in millimeters or IGRA result, including the concentration of cytokine measured (e.g., interferon-gamma (IFN-g)). All other HCWs should undergo baseline testing for *M. tuberculosis* infection to ensure that the test result on record in the setting has been performed and measured using the recommended diagnostic procedures.

59.5(6) A second TST is not needed if the HCW has a documented TST result from any time during the previous 12 months. If a newly employed HCW has had a documented negative TST result within the previous 12 months, a single TST can be administered in the new setting. This additional TST represents the second stage of two-step testing. The second test decreases the possibility that boosting on later testing will lead to incorrect suspicion of transmission of *M. tuberculosis* in the setting.

59.5(7) Previous BCG vaccination is not a contraindication to having an IGRA, a TST or two-step skin testing administered. HCWs with previous BCG vaccination should receive baseline and serial testing in the same manner as those without BCG vaccination. Evaluation of TST reactions in persons vaccinated with BCG should be interpreted using the same criteria for those not BCG-vaccinated. An HCW's history of BCG vaccination should be disregarded when administering and interpreting TST results. Prior BCG vaccination does not cause a false-positive IGRA test result.

[**ARC 0484C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

481—59.6(135B,135C) Serial TB screening procedures for health care facilities and hospitals.

59.6(1) *Health care facilities or hospitals classified as low risk.* After baseline testing of HCWs for infection with *M. tuberculosis*, additional TB screening of HCWs is not necessary unless an exposure to *M. tuberculosis* occurs.

59.6(2) *Health care facilities or hospitals classified as medium risk.*

a. After undergoing baseline testing for infection with *M. tuberculosis*, HCWs should receive TB screening annually (i.e., symptom screen for all HCWs and testing for infection with *M. tuberculosis* for HCWs with baseline negative test results).

b. HCWs with a baseline positive or new positive test result for *M. tuberculosis* infection or documentation of previous treatment for LTBI or TB disease shall receive one chest radiograph result to exclude TB disease. Instead of participating in serial testing, HCWs should receive a symptom screen annually. This screen should be accomplished by educating HCWs about symptoms of TB disease and instructing HCWs to report any such symptoms immediately to the occupational health unit. Treatment for LTBI should be considered in accordance with CDC guidelines.

59.6(3) *Health care facilities or hospitals classified as potential ongoing transmission.* Testing for infection with *M. tuberculosis* may need to be performed every eight to ten weeks until lapses in infection control have been corrected and no additional evidence of ongoing transmission is apparent. The potential ongoing transmission classification should be used only as a temporary classification. This classification warrants immediate investigation and corrective steps. After a determination that ongoing transmission has ceased, the setting shall be reclassified as medium risk for a minimum of one year.

[**ARC 0484C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

481—59.7(135B,135C) Screening of HCWs who transfer to other health care facilities or hospitals.

59.7(1) *HCWs transferring from a low-risk health care facility or hospital to another low-risk health care facility or hospital.* After a baseline result for infection with *M. tuberculosis* is established and

documented, serial testing for *M. tuberculosis* infection is not necessary for HCWs transferring from a low-risk health care facility or hospital to another low-risk health care facility or hospital.

59.7(2) *HCWs transferring from a low-risk health care facility or hospital to a medium-risk health care facility or hospital.* After a baseline result for infection with *M. tuberculosis* is established and documented, annual TB screening, including a symptom screen and TST or IGRA for persons with previously negative test results, should be performed for HCWs transferring from a low-risk health care facility or hospital to a medium-risk health care facility or hospital.
[**ARC 0484C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

481—59.8(135B,135C) Baseline TB screening procedures for residents of health care facilities.

59.8(1) TB screening is a formal procedure to evaluate residents for LTBI and TB disease. Baseline TB screening consists of two components: (1) assessing for current symptoms of active TB disease and (2) using two-step TST or a single IGRA to test for infection with *M. tuberculosis*.

59.8(2) All residents shall be assessed for current symptoms of active TB disease upon admission. Within 72 hours of a resident's admission, baseline TB testing for infection shall be initiated unless baseline TB testing occurred within three months prior to the resident's admission.

59.8(3) Residents with a new positive test result for *M. tuberculosis* infection (i.e., TST or IGRA) shall receive one chest radiograph result to exclude TB disease. Repeat radiographs are not needed unless symptoms or signs of TB disease develop or unless recommended by a clinician.

59.8(4) Residents with documentation of past positive test results (i.e., TST or IGRA) and documentation of the results of a chest radiograph indicating no active disease, dated after the date of the positive TST or IGRA test result, do not need another chest radiograph at the time of admission.

59.8(5) TB, TST or IGRA tests for *M. tuberculosis* infection do not need to be performed for residents with a documented history of TB disease, documented previously positive test result for *M. tuberculosis* infection, or documented completion of treatment for LTBI or TB disease. Documentation of a previously positive test result for *M. tuberculosis* infection can be substituted for a baseline test result if the documentation includes a recorded TST result in millimeters or IGRA result, including the concentration of cytokine measured (e.g., IFN-g). All other residents should undergo baseline testing for *M. tuberculosis* infection to ensure that the test result on record in the setting has been performed and measured using the recommended diagnostic procedures.

59.8(6) A second TST is not needed if the resident has a documented TST result from any time during the previous 12 months. If a new resident has had a documented negative TST result within the previous 12 months, a single TST can be administered in the new setting. This additional TST represents the second stage of two-step testing. The second test decreases the possibility that boosting on later testing will lead to incorrect suspicion of transmission of *M. tuberculosis* in the health care facility.
[**ARC 0484C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

481—59.9(135B,135C) Serial TB screening procedures for residents of health care facilities. After baseline TB screening is accomplished, serial TB screening of residents is not recommended.
[**ARC 0484C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

481—59.10(135B,135C) Performance of screening and testing. Any nurse licensed in Iowa and properly trained to screen for TB and perform TB testing may screen for TB and perform TB testing.
[**ARC 0484C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

These rules are intended to implement Iowa Code sections 135B.7 and 135C.14.

[Filed ARC 0484C (Notice ARC 0353C, IAB 10/3/12), IAB 12/12/12, effective 1/16/13][1]
[Filed Emergency ARC 0674C, IAB 4/3/13, effective 3/26/13]
[Filed ARC 0761C (Notice ARC 0675C, IAB 4/3/13), IAB 5/29/13, effective 7/3/13]

[1] January 16, 2013, effective date of Chapter 59 [ARC 0484C] delayed 70 days by the Administrative Rules Review Committee at its meeting held January 8, 2013.

CHAPTER 60
MINIMUM PHYSICAL STANDARDS FOR RESIDENTIAL CARE FACILITIES

[Prior to 7/15/87, Health Department[470] Ch 60]

481—60.1(135C) Definitions. Definitions in 481—57.1(135C) and 481—63.1(135C) of the rules of this department are hereby incorporated by reference as part of this chapter.

481—60.2(135C) Variances. Procedures for variances in 481—57.2(135C) or 481—63.2(135C) of the rules of this department are hereby incorporated by reference as part of this chapter. Certain occupancies, conditions in the area, or the site may make compliance with the rules impractical or impossible. Certain conditions may justify minor modification of the rules. In specific cases, variances to the rules may be permitted by the reviewing authority.

481—60.3(135C) General requirements.

60.3(1) Residential care facilities shall contain the elements described herein and shall be built in accordance with construction requirements outlined. (III)

60.3(2) This chapter covers both new and existing construction. In various sections of the rules specific provisions for existing structures, differing from those for new construction, are provided by a notation at the end of the rule as follows:

a. Exception 1: Rule does not pertain to facilities licensed for less than 16 beds; or units housing fewer than 16 beds which are in distinctly separate buildings, located on a contiguous parcel of land, separated only by a public or private street. (Refer to Iowa Code chapter 414, municipal zoning, section 22, zoning for family homes, for additional information.)

b. Exception 2: Rule does not pertain to facilities licensed before May 1, 1972.

c. Exception 3: Rule does not pertain to facilities with construction plans approved by the department before May 1, 1977.

d. Exception 4: Rule does not pertain to facilities licensed before March 30, 1988.

e. Exception 5: Rule does not pertain to facilities licensed as residential care facilities for eight or fewer beds.

f. Exception 6: Rule does not pertain to facilities built according to plans approved by the department prior to May 6, 1992.

60.3(3) The rules and regulations apply to all residential care facilities and the renovations, additions, functional alterations, or change of space utilization to existing residential care facilities construction after the effective date of these rules. Conversion of a building or any of the parts not currently licensed as a residential care facility must meet the rules governing construction of new residential care facilities. (III)

60.3(4) Building site is subject to departmental approval as based upon the following criteria:

a. Submit a vicinity map indicating the site location and address on an 8½- by 11-inch sheet. If possible, include a city map. (III)

b. Neighborhood environment shall be free from excessive noise, dirt, polluted or odorous air. (III)

c. There shall be an area available for outdoor activities calculated at 40 square feet per licensed bed. (III) (Exception 4) Open air porches may be included in meeting requirements.

d. Each facility shall have on-site parking space to satisfy the needs of residents, employees, staff, and visitors. (III)

The following shall be provided:

(1) In facilities of 16 beds or greater, provide one space for each five beds, plus one space for each shift staff member and employee. (Exception 4)

(2) In facilities of 15 beds or fewer, provide one space for each three beds, plus one space for each shift staff member and employee. (Exception 4)

(3) Handicapped parking as appropriate, or a minimum of one space. (Exception 4)

e. Accessibility shall be provided for emergency and delivery vehicles. (III)

60.3(5) When construction is contemplated, whether for a new building, an addition to an existing building, functional alteration to an existing building, or conversion of an existing building, the licensee or applicant for license shall:

a. File a detailed and comprehensive program of care as set forth in rules 481—57.3(135C) or 481—63.3(135C), for departmental review and approval, including a description of the specific needs of the residents to be served and any other information the department may require. (III)

b. Submit a preliminary site plan and floor plan for departmental review. The design must meet the requirements of all applicable state statutes, state fire codes, federal standards, and local ordinances. The most stringent rules of the above regulations apply in resolving conflicts. (III)

c. Submit legible working drawings and specifications showing all elements of construction, fixed equipment, and mechanical and electrical systems to the department and to the state fire marshal for review. Such construction documents shall be prepared by or under the direct supervision of a registered architect or engineer, working within the appropriate field of registration, licensed to practice in Iowa. All construction documents shall be certified by and bear the seal of the architect or engineer responsible for the project. Each project shall be evaluated for its impact on the facility. Projects not affecting primary structural elements may, at the discretion of the department, be excluded from this rule. (III)

d. Receive written approval from the department and the state fire marshal's office before start of construction. If on-site construction above the foundation is not started within 12 months of the date of final approval of the working drawings and specifications, this approval shall be void and the plans and specifications shall be resubmitted for reconsideration of approval. (III)

e. All changes to the approved plans and specifications shall be approved in writing by the department and the state fire marshal's office prior to making the change. Applicant is responsible for ensuring that construction proceeds as per approved plans and specifications. (III)

f. For new construction, an addition, functional alteration or conversion of an existing building, it shall be the responsibility of the owner or agent to notify the department at all of the following intervals and wait for inspection by the department before proceeding:

(1) At least 30 days before commencement of construction on the premises; (III)

(2) At least 30 days before the pouring of the concrete floor slab; (III)

(3) After completion of the mechanical or electrical rough-in and 30 days before enclosing walls; (III)

(4) Thirty days before the completion of the project. (III)

g. Certain occupancies, conditions in the area, or the site may make compliance with the rules impractical or impossible. Certain conditions may justify minor modifications of the rules. In specific cases, variations to the rules may be permitted by the reviewing authority after the following conditions are considered:

(1) The design and planning for the specific property offer improved or compensating features providing equivalent desirability and utility;

(2) Alternate or special construction methods, techniques, and mechanical equipment, if proposed, offer equivalent durability, utility, safety, structural strength and rigidity, sanitation, odor control, protection from corrosion, decay and insect attack, and quality of workmanship;

(3) Variations permitted by the department do not individually or in combination with other variations endanger the health, safety, or welfare of any resident;

(4) Variations are limited to the specific project under consideration and are not construed as establishing a precedent for similar acceptance in other cases;

(5) Occupancy and function of the building shall be considered;

(6) Type of licensing shall be considered.

60.3(6) Except as provided in subrule 60.3(8), the facility shall be made accessible to and usable by the physically handicapped in accordance with the requirements of division 7 of the state building code, 661—16.704(103A) and 661—16.705(103A). (III) (Exception 3)

60.3(7) Facilities licensed as residential care facilities for eight or fewer beds shall be accessible to and functional for the physically handicapped. An appropriate number (at least one) of the bathrooms and bedrooms shall be accessible to and usable by the physically handicapped. (III)

60.3(8) No room in a basement shall be occupied for living purposes unless the room meets all the requirements of the department and receives approval of the department as fit for human habitation. (III)

60.3(9) Foundation drainage.

a. A foundation drainage system shall be installed around any portion of a building containing a basement. (III) (Exception 4)

b. The foundation drainage system should be installed at a slope so the water will run to a low point and then run into a sump pit in the basement, to a storm sewer system, or out to surface drainage. (III) (Exception 4)

c. The foundation drainage system shall not be connected to the sanitary sewer system. (III) (Exception 4)

d. The highpoint of the flow line shall be 4 inches below the elevation of the basement floor slab. (III) (Exception 4)

60.3(10) Projects involving alterations of and additions to existing buildings shall be programmed and phased so that on-site construction will minimize disruptions of existing functions. Access, exitways, and fire protection shall be maintained so the safety of the occupants will not be jeopardized during construction. (III)

60.3(11) Record drawings. Upon completion of the contract, the department shall be provided a complete set of approved legible plans and specifications showing all construction, fixed equipment, mechanical, and electrical systems and addendums as installed or built. (III)

60.3(12) The installation of any equipment found to be hazardous, or which fails to meet the purposes for which it is intended, shall be removed or replaced, or a substitute of suitable equipment shall be required. (III) (Exception 4)

481—60.4(135C) Typical construction. This rule contains construction requirements that are typical in all areas of the building.

60.4(1) Details and finishes shall be designed to provide a high degree of safety for the occupants by minimizing the opportunity for accidents. Hazards such as sharp corners shall be avoided. (III)

60.4(2) Minimum exit corridor widths.

a. Minimum exit corridor widths shall be 6 feet, except that corridors in adjunct areas not intended for the housing or use of residents may be a minimum of 4 feet in width. (III) Handrails may project into corridors. (Exceptions 1 and 3)

b. In facilities of 15 beds or less, the minimum exit corridor widths shall be 5 feet. (III) (Exception 4)

60.4(3) Drinking fountains, telephone booths, and vending machines shall be located so they do not project into the required width of any corridor. (III)

60.4(4) Minimum width of all side-hinged doors to all rooms shall be 3 feet. (III) (Exceptions 3, 4, and 5) Doors to resident toilet rooms and other rooms needing access for wheelchairs shall have a minimum clear opening width of 32 inches. (III)

60.4(5) Approved handrails shall be provided on both sides of corridors used by residents with a clear distance of 1½ inches between handrail and wall. (III) (Exception 4) This rule does not apply to residential care facilities for the mentally retarded licensed for eight or fewer beds.

a. Handrails shall be mounted with their top surfaces 31 to 34 inches above the finished floor. (III) (Exception 3)

b. Handrails shall have the ends rounded and returned to the wall. (III) (Exceptions 2 and 4)

c. All stairways in resident-occupied areas shall have substantial handrails on both sides. (III)

60.4(6) Each open stairway shall be protected with an approved guardrail. (III)

60.4(7) Landings shall be provided at the top and the bottom of each stair run. There shall be an approved landing between the top step and the doorway regardless of the direction of the door swing. (III) (Exception 4)

60.4(8) Toilet and bath facilities shall have an aggregate outside window area of at least 4 square feet. Facilities having a system of mechanical ventilation are exempt from this regulation. (III)

60.4(9) No door shall swing into the exit corridor except doors to spaces such as small closets which are not subject to occupancy or resident bedroom doors as indicated in 481—60.5(6)*"i"* or as required by the state fire marshal. (III)

60.4(10) All doors opening from corridors shall be swing-type except elevator doors. (III)

60.4(11) Mirrors.

a. Mirrors in resident bathrooms or toilet rooms shall be arranged for convenient use by residents in wheelchairs as well as by residents in a standing position. (III)

b. The bottom of the mirror shall be no higher than 40 inches from the floor. (III) (Exception 3)

60.4(12) All lavatories shall have towel dispensers which hold nonreusable towels. (III)

60.4(13) Screens of 16 mesh per square inch shall be provided at all exterior openings and any doors that are normally left in an open position. (III)

60.4(14) Screen doors shall swing outward and be self-closing. At the discretion of the state fire marshal, screens for fire doors may swing in. (III)

60.4(15) Fire escape porch railings and protected barrier enclosures shall be designed to resist a horizontal thrust of 50 pounds per running foot of railing applied to the top of the railing. (III)

60.4(16) Exposed heating pipes, hot water pipes, or radiators in rooms and areas used by residents and within reach of residents shall be covered or protected to prevent injury or burns to residents. (II, III)

60.4(17) All fans located within 7 feet of the floor shall be protected by screen guards of not more than ¼-inch mesh. On fans with U.L. approved safety guards netting shall not be required. (III)

60.4(18) Finishes shall be as follows:

a. Floors generally shall be easy to clean and shall have the wear resistance appropriate for the location involved. Floors in kitchens and related spaces shall be waterproof and greaseproof. In all areas where floors are subject to wetting, they shall have a slip-resistant finish. (III)

b. Ceilings generally shall be washable or easy to clean. (III) This requirement does not apply to boiler rooms, mechanical and building equipment rooms, shops, and similar spaces.

c. Ceilings in the dietary and food preparation areas shall have a finished ceiling covering all overhead piping and ductwork. (III) (Exception 3)

d. Ceilings shall be acoustically treated in the attendant's area, day rooms, dining rooms, recreation areas, waiting areas, and corridors in resident areas. (III) (Exceptions 1 and 4)

e. Wall assemblies shall be constructed to present cleanable and continuous surfaces to the interior of resident rooms and resident corridors. (III) (Exception 4)

60.4(19) Partition, floor, and ceiling construction in resident areas shall comply with noise reduction criteria in the following table. The requirements set forth in this table assume installation methods which will not appreciably reduce the efficiency of the assembly as tested. Location of electrical receptacles, grills, ductwork, and other mechanical items, and blocking and sealing of partitions at floors and ceilings shall not compromise the sound isolation required. (III)

Table No. 1
(Exception 2)

	Airborne Sound Transmission Class (STC)*	
	Partitions	Floors
Resident's room to resident's room	35	35
Corridor to resident's room	35	35
Public space to resident's room**	40	40
Service areas to resident's room***	50	50

*Sound transmission (STC) shall be determined by tests in accordance with methods set forth in ASTM Standard E 90 and ASTM Standard E 413.

**Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar places.

***Service areas include kitchens, elevators, elevator machine rooms, laundries, garages, maintenance rooms, boiler and mechanical equipment rooms, and similar spaces of high noise. Mechanical equipment located on the same floor or above residents' rooms, office, nurses stations, and similar occupied spaces shall be effectively isolated from the floor.

60.4(20) The following ceiling heights shall be provided:

a. Corridors, storage rooms, resident's toilet rooms, and other minor rooms, not less than 7 feet 6 inches. (III) (Exception 2)

b. All other rooms — not less than 8 feet. (III) (Exception 2)

c. Ceiling-mounted equipment, luminaries, suspended tracks, rails, and pipes located in the path of normal traffic shall not be less than 6 feet 8 inches above the floor. (III) (Exception 3)

60.4(21) Doors, sidelights, borrowed lights, and windows in which the glazing extends below 31 inches from the floor shall have a horizontal mullion or railing at 31 to 34 inches above the finished floor, and be glazed with safety glass, plastic glazing material, or wire glass where required by the state fire marshal. (III) (Exceptions 3 and 4) All replacement glass shall meet this code with no exception. (III)

60.4(22) All sheet plastic and molded plastic insulation in living spaces, attics, and crawl spaces shall be covered with an approved thermal barrier as defined in NFPA No. 205M-T, "Plastics in Building Construction." The thermal barrier shall be constructed of materials with no less than the fire protection qualities of ½-inch fire resistant gypsum board or as accepted by U.B.C., Sec. 1712(b)2, 1985 Edition. (III) (Exception 3)

60.4(23) Thresholds shall be low profile and expansion joint covers shall be made flush with the floor surface to facilitate the use of wheelchairs and carts. (III)

481—60.5(135C) Supervised care unit.

60.5(1) Definition of a supervised care unit. A supervised care unit shall not contain more than 60 beds and shall have the following rooms or areas: (III)

Attendant's station,
Clean workroom,
Medication room,
Resident rooms,
Resident toilets or baths,
Private room,
Soiled workroom, and
Enclosed clean linen storage.

60.5(2) In facilities over 15 beds, an attendant's station with a minimum of 40 square feet shall be provided which is centrally located in the resident area and shall have a well-lighted desk with the necessary equipment for the keeping of required records and supplies. (III)

60.5(3) A clean workroom, which may be combined with the medication room for storage and assembly of clean supplies, shall contain a work counter and sink. (III) (Exceptions 1 and 2)

60.5(4) The medication room shall be well-lighted and shall have the following: (III)

a. Drug cabinet,

b. Work counter,

c. Refrigerator storage,

d. Chest or compartment with a lock for Schedule II drugs,

e. Lavatory.

60.5(5) Instead of the requirements in subrule 60.5(4), facilities licensed for 15 beds or less shall contain space for storage of medications which: (III)

a. Is locked,

b. Is adjacent to a lavatory,

c. Provides for Schedule II drugs as defined by Iowa Code chapter 124, which shall be kept in a locked box within the locked medication cabinet,

d. Has space available for refrigerating medication.

60.5(6) Resident rooms shall meet as a minimum the following requirements:

a. Bedrooms shall open directly into a corridor or common living area. (III) Bedrooms shall not be used as a thoroughfare. (III)

b. The minimum room area, exclusive of closets, toilet rooms, lockers, wardrobes, vestibules, and corridor door swings shall be 100 square feet in one-bed rooms and 80 square feet per bed in multibed rooms. Usable floor space of a room shall be no less than 8 feet in any major dimension. (III) (Exception 4)

c. Each resident room shall be provided with light and ventilation by means of a window or windows with a net glass area equal to 10 percent of the total floor area. The windows shall be openable without the use of tools. The window sill shall not be higher than 3 feet above the floor. (III) (Exception 4)

d. There shall be a wardrobe or closet in each resident's room. For each resident, the minimum clear dimensions shall be 1 foot 10 inches deep by 2 feet 6 inches wide of clear hanging space. A clothes rod and shelf shall be provided. Where a closet is shared, segregated portions shall be established. Each wardrobe and closet in each resident room shall have a door. (III) (Exceptions 2 and 4)

e. No bedroom shall be located so that its floor will be more than 30 inches below the adjacent grade level. (III)

f. Fixtures or storage shall be provided to hold individual towels and washcloths. (III)

g. No part of any room shall be enclosed, subdivided, or partitioned unless such part is separately lighted and ventilated and meets other requirements its usage and occupancy dictate, except closets used for the storage of resident's clothing. (III)

h. Rooms in which beds are erected shall not be used for purposes other than bedrooms. (III)

i. Each resident bedroom shall have a door. The door shall be the swing type and shall swing in, unless fully recessed. (III)

j. Multibed rooms shall be designed to permit no more than two beds, side-by-side, parallel to the window wall. (III) (Exceptions 2 and 4)

k. Each resident bedroom shall be so designed that the head of the bed shall not be in front of a window or a heat register or radiator. (III)

l. One lavatory shall be provided in each resident room. The lavatory may be omitted from a room when a lavatory is located in an adjoining toilet room which serves that room. (III) (Exception 3)

m. In facilities with eight or fewer beds, one lavatory shall be provided in each resident room. The lavatory may be omitted from a room when a lavatory is located in an adjacent toilet room which serves that room.

n. Multibed rooms shall provide full visual privacy for each resident. (III)

60.5(7) Resident toilet rooms.

a. Each resident room toilet shall have a swing or sliding door (not a pocket door). The door shall not swing into the toilet room. The doorway must have a minimum clear opening width of 32 inches. (III) (Exception 4)

b. An appropriate number of toilets commensurate with the facility's program of care shall be accessible to and usable by handicapped residents (minimum of one). (III) (Exceptions 3 and 4)

c. All toilet rooms shall have mechanical ventilation. (III) (Exception 3)

60.5(8) Central bathing.

a. Minimum numbers of toilet and bath facilities shall be one lavatory and one water closet for each 10 residents, and one tub or shower for each 15 residents or fraction thereof. See 481—60.5(8)*"l"* for grab bars and 481—60.11(4)*"e"*(9) for number of fixtures in smaller facilities. (III)

b. There shall be a minimum of one bathroom with tub or shower, water closet, and lavatory on each floor which has resident bedrooms in multistory buildings. (III)

c. Separate toilets for the sexes shall be provided. (III) (Exception 1)

d. Privacy for dressing and bathing shall be provided in central bathrooms. (III)

e. All bathrooms shall have mechanical ventilation. (III) (Exception 3) See 60.11(3)*"i."*

f. The number of showers accessible to and usable by handicapped residents shall be commensurate with the facility's program of care. There shall be at least one. (III) (Exception 3)

g. Each bathroom shall have a water closet and a hand-washing lavatory. (III)

h. Toilet and bathing facilities shall not open directly into food preparation areas. (III)

i. Central bathing areas shall have a swinging door which swings into the bathroom. (III)

j. The number of sinks accessible to and usable by handicapped residents shall be commensurate with the facility's program of care. All lavatories shall be securely anchored to withstand an applied vertical load of not less than 250 pounds on the front of the fixture. Exposed hot water and drain pipes under lavatories shall be insulated or shielded as per the state building code. (III) (Exception 4)

k. Soap holders shall be provided in showers and bathtubs. (III) (Exception 3)

l. All toilet, bath, and shower facilities shall be supplied with grab bars and adequate safety devices appropriate to the needs of the individual residents. The bars shall have 1½-inch clearance to walls, shall be sufficient strength and anchorage to sustain a concentrated load of 250 pounds, and shall meet division 7 of the Iowa state building code.

m. Raised toilet seats shall be available for residents as needed. (III)

n. 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 residents. (III)

o. Each facility must provide no less than one bathing system accessible to the handicapped. (III) (Exceptions 1 and 4)

p. Bathtubs or showers shall be equipped with screwdriver stop valves in the water supply system. (III) (Exception 4)

q. Showers shall be equipped with a shower head on the end of a flexible hose. (III) (Exception 4)

60.5(9) Private room.

a. At least one single bed resident room shall be provided for purposes of privacy or incompatibility with other residents in the home. This room shall be used for emergency purposes and for short, intermittent periods of time. (III) (Exceptions 2 and 4)

b. The bed in the privacy room shall be counted in the total licensed bed capacity of the facility. The resident of such room shall be informed, and it shall be contained in the resident's contract, that the resident is subject to removal from the room when it becomes necessary to transfer another resident of the facility into it. Where, in the determination of the department, the facility is not making proper use of the room when privacy or isolation is deemed necessary, the department may choose not to license that bed in order to promote its effective use. (III)

60.5(10) A soiled workroom, workcounter, waste and soiled linen receptacles, and a two-compartment sink shall be provided. (III) One compartment of the double sink shall be a minimum of 10 inches deep for cleaning and sanitizing equipment. (III) (Exceptions 1 and 3)

60.5(11) Enclosed clean linen storage, separate from the clean workroom. (III)

481—60.6(135C) Support area.

60.6(1) Definition of a support area. The size of a support area shall depend upon the number and types of beds within the supervised unit. A support area shall contain the following rooms or areas: (III)

Dining room,

Activity or recreation area,

Personal care room,

Equipment storage.

60.6(2) Multipurpose rooms. Where space is provided for multipurpose dining, activities, or recreational purposes, the area shall total at least 30 square feet per licensed bed for the first 100 beds and 27 feet per licensed bed for all beds in excess of 100. An open area of sufficient size shall be provided to permit group activities such as religious meetings or presentation of demonstrations or entertainment. (III)

60.6(3) Where space is provided to be used only for activities and recreational purposes, the area shall be at least 15 square feet per licensed bed. At least 50 percent of the required area must be in one room. (III)

60.6(4) Where the dining and the lounge recreation areas are separated, each area shall provide a minimum of 180 square feet of usable floor space and be not less than 10 feet in any one dimension. Where space is provided to be used only for dining, the area shall total at least 15 square feet per licensed bed. (III)

60.6(5) Areas appropriate for the activities program shall be provided which shall:

a. Be readily accessible to wheelchair and ambulatory residents. (III)

b. Be of sufficient size to accommodate necessary equipment and to permit unobstructed movement of wheelchairs, residents, and personnel responsible for instructing and supervising residents. (III)

c. Have space to store recreational equipment and supplies for the activities program within, or convenient to, the area or areas. Locked storage shall be available for potentially dangerous items such as scissors, knives and toxic materials. (III)

60.6(6) Personal care room.

a. A personal care room with barber and beauty shop facilities shall be provided. (III) (Exception 1)

b. In facilities of less than 100 beds, a multipurpose room with appropriate space and equipment may be utilized for such activities.

60.6(7) An equipment storage room shall be provided. (III) The area of this storage room may be used in calculating the total required general storage area as found in subrule 60.7(5). (Exception 1)

60.6(8) Enclosed clothing storage of at least 2 linear feet per bed for storage of off-season clothing shall be provided. (III) This could be counted as part of the general storage areas requirement and could be installed accessible in the general storage area. (Exception 4)

481—60.7(135C) Service area.

60.7(1) *Definition of a service area.* The size of a service area shall depend upon the number and types of beds within the supervised unit. A service area shall contain the following rooms or areas: (III)

Dietetic service area,

Janitor's closet,

Laundry area,

General storage area,

Mechanical room,

Maintenance shop,

Yard equipment storage area.

60.7(2) *Dietetic service area.*

a. Detailed layout plans and specifications of equipment shall be submitted to the department for review and approval before the new construction, alterations, or additions to existing kitchens begin. (III)

b. The construction and installation of equipment of the dietetic service area shall comply with or exceed the minimum standards set forth in the "Food Service Manual" (DHEW Publication No.(FDA) 78-2081, 1976 Edition). (III) (Exception 4)

c. In facilities where the total occupancy of family, employees and residents is more than six, the dietetic service area shall provide food serving facilities for residents and staff outside the food preparation area. (III)

d. The dishwashing area shall be provided with mechanical dishwashing equipment. (III) Either conventional or chemical dishwashing equipment may be used.

(1) Where conventional dishwashing equipment is used, refer to 481—60.11(4)*"e"*(9) for water temperature requirements. (III)

(2) A three-compartment pot and pan sink shall be provided for warewashing which provides and maintains 110° Fahrenheit to 115° Fahrenheit water for washing and 170° Fahrenheit to 180° Fahrenheit for sanitizing, or a two-compartment sink shall be provided for soaking and washing utensils, with easy access to a dish machine which must be large enough for sanitizing all sizes of utensils used. (III)

(3) Machines (single-tank stationary rack, door-type machines and spray-type glass washers) using chemicals for sanitation may be used, provided that:

1. The temperature of the wash water shall not be less than 120° Fahrenheit. (III)
2. Chemicals added for sanitation purposes shall be automatically dispensed. (III)
3. The wash water shall be kept clean. (III)
4. Utensils and equipment shall be exposed to the final chemical sanitizing rinse in accordance with manufacturers' specifications for time and concentration. (III)
5. The chemical sanitizing rinse water temperature shall be not less than 75° Fahrenheit nor less than the temperature specified by the machine's manufacturer. (III)
6. Chemical sanitizers used shall meet the requirements of 21 CFR 178.1010, January 1987. (III) (See Food Service Sanitation Manual)
7. A test kit or other device that accurately measures the parts per million concentration of the solution shall be available and used. (III)

e. The dietetic service area shall be designed to provide a separation of the clean and dirty areas and to eliminate intermingling of the two types of activities. (III) Food preparation and service areas are regarded as clean areas.

f. A hand-washing lavatory without mirror shall be provided in the dietetic service area. (III) (Exception 2) In facilities licensed for eight beds or fewer, the lavatory shall be adjacent or convenient to the dietetic service area. (III)

g. There shall be refrigerated storage for at least a three-day supply of perishable food. (III)

h. No less than 2½ square feet of shelving per resident bed shall be provided for staple food storage. (III) (Exception 3) There shall be available storage for at least a seven-day supply of staple food. (III)

i. A cart storage area shall be provided. (III) (Exceptions 1 and 2)

j. Provisions for maintaining sanitary waste disposal and storage shall be provided on the premises. (III)

k. A toilet room with lavatory conveniently accessible for the dietary staff shall be provided. (III)

l. There shall be an outside service entrance to the food service area which does not open directly into the dietary department. (III) (Exceptions 1 and 2)

m. The food service area shall not be less than 8 square feet per resident bed. (III) (Exception 1)

n. See subrule 60.11(3) for ventilation requirements. (III)

o. Where meals are provided by a health care facility or by a commercial food service, the preparation, storing and serving of the food and the utensil sanitizing procedures shall meet the requirements of these rules. (III)

p. Mechanical ventilation shall be provided in food storerooms to maintain temperatures and humidity at a level appropriate for the type of food being stored. (III) (Exception 4)

q. All cooking systems shall be provided with a properly sized exhaust system. See 60.11(3)*"o."* (III) (Exception 4)

r. One janitor's closet shall be in the immediate vicinity of the dietary area for dietary use only. (III) (Exceptions 1 and 2)

60.7(3) *Janitor's closet.*

a. A janitor's closet shall be provided for storage of housekeeping supplies and equipment, including a floor receptor or service sink. (III) (Exception 1)

b. The door to the janitor's closet shall be equipped with a lock. (III)

c. Locked storage shall be provided for chemicals. (III)

d. A receptor floor drain or service sink shall be provided. (III)

60.7(4) *Laundry area.*

a. In the laundry a work flow pattern shall be established in which soiled linen is not transported through the clean area to the soiled area. Two distinct areas physically separated, not necessarily by a wall, are required. (III) (Exception 1)

b. A hand-washing lavatory shall be located between the soiled area and the clean area. (III) (Exception 4) In facilities licensed for 15 beds or fewer, a hand-washing lavatory located adjacent to the laundry area may meet this requirement.

c. Refer to 60.11(4)*"e"*(9) for water temperature requirements. (III)

d. Where linen is processed on site, the following shall be provided:

(1) A clean, dry, well-lighted laundry processing room with equipment sufficient to process seven days' needs within the workweek. (III)

(2) A soiled linen holding area. (III) (Exception 1)

(3) A clean linen, mending, and ironing area. (III) (Exception 1)

(4) Linen cart storage. (III) (Exception 1)

(5) Lockable storage for laundry supplies. (III) (Exception 4)

(6) One janitor's closet or alcove in the immediate vicinity of the laundry. (III) (Exceptions 1 and 2)

e. The laundry room in any facility not using off-site processing but serving more than 20 residents shall contain no less than 125 square feet of available floor space. (III)

f. Where linen is processed off the site, the following shall be provided:

(1) Soiled linen holding room. (III)

(2) Clean linen receiving, holding, inspection, and storage area. (III)

60.7(5) *General storage areas.*

a. General storage areas totaling not less than 10 square feet per bed shall be provided. (III) Storage areas are not required to be located in the same area. (Exception 4)

b. The equipment storage room space, found in subrule 60.6(7), may be included in this general storage area, but is not required to be located in the same area as referred to in 60.7(5)*"a."*

c. Storage areas for linens, janitor's supplies, sterile nursing supplies, activities supplies, library books, office supplies, kitchen supplies, and mechanical plant accessories shall not be included as part of the general storage area and are not required to be located in the same area. (III)

d. Thirty percent of the general storage area may be provided in a building outside the facility, readily and easily accessible by the personnel.

60.7(6) *Mechanical, electrical, and maintenance areas.* The following areas shall be provided:

a. Boiler room or mechanical room, to include a maintenance area in facilities of less than 100 beds, and electrical equipment room. (III)

(1) These rooms may be used for noncombustible material storage.

(2) Any noncombustible material shall not be stored close to or hinder access to any fuel-fired equipment or electrical panels. (III)

(3) These areas shall not be included in calculating the 10 square feet per bed for general storage areas, as required under 60.7(5)*"a."*

b. Maintenance shop for facilities of 100 beds or more. (III) (Exception 2)

c. Yard equipment storage may be provided in a separate room or building for yard maintenance equipment and supplies. This shall not be included in the general storage area. (III)

d. No portable fuel-operated equipment shall be housed inside a facility unless it is separated by at least a two-hour fire separation approved by the state fire marshal's office. (III)

e. Rooms containing heating or cooling equipment shall be locked.

481—60.8(135C) Administration and staff area. The size of an administration and staff area shall depend upon the number and types of beds within the supervised unit. An administration and staff area shall contain the following rooms or areas: (III)

1. An administrator's office. (III) (Exception 1)
2. A business office, containing storage for office equipment and supplies. (III) (Exceptions 1 and 2)
3. A reception and information counter or desk, which may be combined in the business office. (III) (Exception 1) In facilities of 15 beds or less, a secured area shall be provided. This area shall contain work space for charting, record storage, and may contain medication storage. (III)
4. A designated room or area for conferences, and in-service training and space for desk for the use of auxiliary personnel such as activity directors, housekeepers, consultants, and volunteers. (III) (Exceptions 1 and 3)
5. A lounge shall be provided for staff. (III) (Exception 1) Toilet rooms with lavatory and water closet shall be provided for the staff. (III) (Exception 1)
6. Closets or compartments for the safekeeping of coats and personal effects of staff. (III)

481—60.9(135C) Definition of public area. The size of the public area shall depend upon the number and types of beds within the supervised unit. A public area shall contain the following rooms or areas: (III)

60.9(1) A vestibule area equipped with coat rack and shelf shall be available. (III)

60.9(2) A public telephone shall be accessible to the residents within the facility to make personal calls. (III)

60.9(3) Drinking fountains shall be available. (III) (Exception 1)

60.9(4) Every facility shall provide a separate toilet for the public, with a lavatory and water closet.

a. Each facility of eight beds or less shall designate a toilet, with lavatory and water closet for public use.

b. Public toilets shall be accessible to and usable by the physically handicapped, equipped with appropriate equipment installed to meet the American Standards National Document A 117.1-1986. (III) (Exception 3)

c. In facilities over 15 beds, there shall be public facilities for both men and women. (III) (Exception 4)

d. Public facilities for both men and women must contain a clear floor area free from obstructions of 60 inches in diameter. (Exception 3)

481—60.10(135C) Elevator requirements. All residential care facilities where resident facilities are located on other than the first floor shall have one or more electric or electrohydraulic elevators, as required. For purposes of this requirement, resident facilities include, but are not limited to, diagnostic, recreation, activity, resident dining, therapy rooms, or additional resident bedrooms. The first floor is that floor first reached from the main front entrance. (III) (Exceptions 1 and 4 apply to rule 60.10(135C)) Elevators, where installed, shall comply with the division of labor rules as promulgated in Iowa Code chapter 89A and 875—Chapters 71 to 77. (III)

481—60.11(135C) Mechanical requirements. In new construction, prior to completion of the contract and final acceptance of the facility, the architect or engineer shall obtain from the contractor certification that all mechanical systems have been tested, balanced, and that the installation and performance of such systems shall conform to the requirements of the plans and specifications. Upon completion of the contract, the owner shall be furnished with a complete set of manufacturer's operating, maintenance, and preventive instructions and parts list with numbers and descriptions for each piece of equipment.

The owner shall also be provided with instruction in the operational use of systems and equipment as required. (III)

60.11(1) Steam and hot water heating and domestic water heating systems shall comply with the following:

a. Boilers shall be installed to comply with the division of labor services rules promulgated under Iowa Code chapter 89 and 875—Chapters 90 to 96, Iowa Administrative Code, and shall be inspected annually. (III)

b. Boiler feed pumps, condensate return pumps, fuel oil pumps, and hot water circulating pumps shall be connected and installed to provide standby service when any pump breaks down. (III) (Exception 4)

c. Supply and return mains and risers of cooling, heating, and steam systems shall be valved to isolate the various sections of each system. Each piece of equipment shall be valved at the supply and return ends. (III) (Exception 3)

60.11(2) Thermal and acoustical insulation.

a. Insulation shall be provided for the following, within the building: (Exception 4)

(1) Steam supply and condensate return piping; (III)

(2) Piping above 125° Fahrenheit, which is exposed to contact by residents; (II, III)

(3) Chilled water, refrigerant and other process piping and equipment operating with fluid temperatures below ambient dewpoint; (III)

(4) Water supply and roof drainage piping on which condensation may occur; (III)

(5) Boilers, smoke-breaching and stacks; (III)

(6) Hot water piping above 180° Fahrenheit, and all hot water boilers, heaters, and piping; (III)

(7) Other piping, ducts, and equipment as necessary to maintain the efficiency of the system. (III)

b. Insulation, including finishes and adhesives on the interior surface of ducts, pipes and equipment, shall have a flame-spread rating of 25 or less and a smoke develop rating of 50 or less, as determined by an independent testing laboratory in accordance with HFPA 255. (III) (Exception 4)

c. Insulation on cold surfaces shall include an exterior vapor barrier. (III)

60.11(3) Air conditioning, heating and ventilating system. (All provisions in 60.11(3)*"b"* to 60.11(3)*"s"* are subject to Exception 4).

a. The heating system shall be capable of maintaining a temperature of 78° Fahrenheit in all occupied areas at a winter design temperature of 10° Fahrenheit.

b. The cooling system shall be designed to maintain all living spaces within the comfort zone. The comfort zone is defined in the ANSI/ASHRAE Standard 55-1981 or the 1985 ASHRAE Fundamentals Handbook. (III)

c. All air supply and air exhaust systems shall be mechanically operated and ducted from a central system to and from each room. All fans serving exhaust systems shall be located at the discharge end of the system. The ventilation rates shown in Table 2 shall be considered as minimum acceptable rates, and shall not be construed as precluding the use of higher ventilation rates. (III)

d. The bottoms of ventilation openings shall be not less than 3 inches above the floor of any room. (III)

e. All central systems designed to heat and cool the building with recirculation of air shall be equipped with a minimum 2-inch deep, 8- to 11-pleat per foot, Class 2 Underwriters' Laboratories, self-extinguishing, nonwoven, cotton, downstream, or final filter with a minimum efficiency of 25 to 30 percent and average arrestance of 90 percent, tested in accordance with ASHRAE Standard 52-76. This does not preclude the additional use of a prefilter upstream of the air handling equipment to extend the service life of the downstream, or final filter. (III) (Exception 6)

f. Any alternate ventilation system designed to attain an equivalent degree of odor control and purity of air to resident areas shall be considered for approval under conditions in 481—Chapters 57 and 63, rules 57.2(135C) and 63.2(135C). (III)

g. Rooms containing fuel-fired heating units shall be provided with sufficient outdoor air to maintain combustion rates of equipment and reasonable temperatures in the room and adjoining areas. (III)

h. Appropriate ventilation shall be provided in food storerooms to maintain temperature and humidity for the type of food being stored. (III)

i. Outdoor ventilation air intakes shall be located as far away as practicable, but not less than 25 feet from the exhaust outlets of any ventilating systems, combustion equipment stacks or noxious fumes. The bottom of outdoor intakes serving central air systems shall be located as high as practical, but not less than 6 feet above grade level, or, if installed through the roof, 3 feet above roof opening. (III)

j. The ventilation system shall be designed and balanced to provide the general pressure relationship to adjacent areas shown in the Pressure Relationship and Ventilation Table 2. Through-the-wall air conditioning units will not be used to calculate make up air. (III) (Exception 4)

k. Corridors, attics, or crawl spaces shall not be used as a plenum to supply air to or exhaust air from any rooms. (III)

l. The air system for resident rooms between smoke stop partitions shall be operated with common switches. (III)

m. Actuation of the fire alarm system shall shut down the air distribution system. (III)

n. Air handling duct systems shall meet the requirements of NFPA Standard 90A and 90B. Supply and return registers shall not be at the same level and shall be designed to inhibit stratification. (III)

o. Fire and smoke dampers shall be constructed, located and installed in accordance with the requirements of NFPA Standards 90A, 90B, and 101. (III)

p. Range and dishwasher exhaust hood in food preparation centers shall have a minimum exhaust rate of 60 cubic feet per minute, per square feet of hood face area. Face area is defined for this purpose as the open area from the exposed perimeter of the hood to the average perimeter of the cooking surfaces. All hoods over cooking ranges shall be equipped with grease filters, a fire extinguishing system, and heat actuated fan controls. Cleanout openings shall be provided every 20 feet in horizontal exhaust duct systems serving hoods. Tempered air shall be supplied to balance the exhausted air. Special hood designs shall be evaluated. (III) (Exceptions 1 and 4)

q. Mechanical ventilation over cooking equipment and dishwashing equipment shall be properly designed to take hot air out and not bring cold air down on hot food or dishes. (III)

r. Filter beds shall be located upstream of the air conditioning equipment, unless a prefilter is employed. In this case the prefilter shall be upstream of the equipment and the main filter bed may be located further downstream. Filter frames shall be durable and carefully dimensioned and shall provide an airtight fit within enclosing ductwork. All joints between filter segments and the enclosing ductwork shall be gasketed or sealed to provide a positive seal against air leakage. (III)

s. All under-the-slab perimeter ductwork shall be encased in lightweight or insulating concrete and sloped to a plenum low point. (III)

t. Laundry rooms shall be supplied with sufficient tempered outside air to balance the amounts exhausted and for combustion. (III)

u. The amounts of air and pressure relationship as set forth in Table 2 shall be provided. (III)

v. Condensate piping from cooling coils should be a minimum of 3/4 inch IPS and provided with cleanouts every 10 feet. (III)

w. Attics or crawl spaces shall not be used to house heating or cooling equipment.

x. All such areas must be accessible through a swinging door.

Table No. 2

PRESSURE RELATIONSHIPS AND VENTILATION OF CERTAIN AREAS OF RESIDENTIAL CARE FACILITIES

Area Designation	Minimum Total Air Changes Per Hour Supplied to Room	All Air Exhausted Directly to Outdoors	Room Pressure in Relation To Adjacent Space
Resident Room	2	Optional	Equal
Resident Area Corridor	2	Optional	Equal
Lounge and Designated Smoking Area	6	Optional	Negative
Soiled Workroom or Soiled Holding	10	Yes	Negative
Toilet Room	10	Yes	Negative
Bathroom	10	Yes	Negative
Janitor's Closet	10	Yes	Negative
Food Preparation Center	10	Yes	Equal
Dishwashing Room	10	Yes	Negative
Laundry, General	10	Yes	Equal
Soiled Linen Sorting and Storage	10	Yes	Negative

60.11(4) Plumbing and other piping systems.

a. Every facility shall have a complete interior plumbing system. (III)

b. All plumbing and other piping systems shall be installed in accordance with the requirements of the Iowa state plumbing code and applicable provisions of local ordinances. (III) (Exception 3)

c. All water supply systems pipes below grade or in concrete slabs shall be type K, soft copper. No joints will be allowed below the slab.

d. Rescinded IAB 10/7/09, effective 11/11/09.

e. Water supply systems. Water supply systems shall meet the following requirements:

(1) All facilities shall have a potable water source from a city water system or a private source which complies with the regulations and is approved by the department of natural resources. (III)

(2) Systems shall be designed to supply water to the fixtures and equipment at a minimum pressure of 15 pounds per square inch during maximum demand periods. (III)

(3) The temperature of the hot water to the resident lavatories, bath, and showers shall range between 110° Fahrenheit and 120° Fahrenheit. (III)

(4) Plumbing fixtures in janitor's rooms and soiled workrooms shall be provided with hot water. (III)

(5) Each water service main, branch main, riser and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture. (III) (Exception 4)

(6) Backflow preventers (vacuum breakers) shall be installed on hose bibbs, janitors' sinks, bedpan flushing attachments, hair care sinks, and on all other threaded fixtures to which hoses or tubing can be attached. (III)

(7) Water softeners which supply cold water to the kitchen, drinking fountains, and ice machines shall not add sodium to the water. (III) (Exception 4)

(8) Hot water distribution systems shall be arranged to provide hot water as specified at each hot water outlet at all times. (III) (See Table 3) A circulating pump in a hot water system shall meet these requirements. (Exception 4) A circulating pump is not required in facilities licensed for 15 or fewer beds.

(9) The hot water system shall be designed to supply 110° Fahrenheit to 120° Fahrenheit hot water for bathing for all residents in accordance with their program of care. For facilities licensed for 15 beds or fewer, one bathing unit shall be provided for each five residents. (III) (Exception 4)

Table No. 3
HOT WATER USE
Resident

	Areas	Dietary	Laundry
Gallons per HR. per Bed**	3	2	2
Temperature (degrees F)	110	120*	160***

*Provisions shall be made to provide 180° Fahrenheit rinse water at dishwasher. (III) (May be provided by a separate booster heater.)

**Quantities indicated for design demand of hot water are for general reference minimums and shall not substitute for accepted engineering design procedures using actual number and types of fixtures to be installed. Design shall also be affected by temperatures of cold water used for mixing, length of run and insulation relative to heat loss, etc. As an example, total quantity of hot water needed will be less when temperature available at the outlet is very nearly that of the source tank and the cold water used for tempering is relatively warm.

***Provisions shall be made to provide 160° Fahrenheit hot water at the laundry equipment when needed. (This may be by steam jet or separate booster heater.) However, it is emphasized that this does not imply that all water used would be at this temperature.

Water temperatures required for acceptable laundry results will vary according to type of cycle, time of operation, and formula of soap and bleach as well as type and degree of soil. Lower temperatures may be adequate for most procedures in many facilities but the higher 160° Fahrenheit shall be available when needed for special conditions.

f. Drainage systems. Drainage systems shall meet the following requirements:

(1) Sewage shall be collected and disposed of in a manner approved by the department. Disposal into a municipal system shall be considered as meeting this requirement. (III)

(2) Private sewage systems shall conform to the rules and regulations promulgated by the department of natural resources. (III)

(3) Piping over food preparation centers, food serving facilities, food storage areas, and other critical areas shall be kept to a minimum and shall not be exposed. Special precautions shall be taken to protect these areas from possible leakage or condensation from necessary overhead piping systems. (III) (Exceptions 1 and 4)

(4) Plastic piping may be used in any drain-waste vent system. (III)

(5) Rescinded IAB 2/8/89, effective 3/15/89.

(6) Pipe cleanouts shall not be more than 50 feet apart in horizontal drain line. (III) (Exception 4)

(7) Floor drains with appropriate grates shall be provided for all mechanical equipment rooms, laundries, kitchens, dishwashing areas, shower stalls and one in front of showers or bath units, soiled utility, basement floors and any other areas where water may collect on the floor. (III)

(8) Foundation drains shall be provided in accordance with subrule 60.3(10). (III)

(9) All tub and shower floor surfaces shall be specified or designated as slip-resistant surfaces.

[**ARC 8189B**, IAB 10/7/09, effective 11/11/09]

481—60.12(135C) Electrical requirement.

60.12(1) *General electrical requirements.*

a. All materials, including equipment, conductors, controls, and signaling devices, shall be installed to provide a complete electrical system with the necessary characteristics and capacity to supply the electrical facilities shown in the specifications or indicated on the plans. All materials shall be listed as complying with available standards of Underwriters Laboratories, Inc., or other similarly established standards. (III)

b. Electrical systems and equipment shall meet the minimum requirements of the National Electrical Code. (III)

c. Drop cords, extension cords, or any type of flexible cord shall not be used as a substitute for fixed or hard wiring. Surge protectors may be used for computers and related devices, facsimile, photocopying and scanning machines, and other consumer electronic devices in a resident's room and other locations in a facility provided the surge protector is of metal construction and approved by Underwriters Laboratories, Inc., or other similarly recognized laboratories. Only fixed supplementary electric heating shall be installed. (III)

d. Electrical metallic tubing or rigid heavy wall conduit shall be used throughout the interior of the facility. In areas used for patient care, the grounding terminals of all receptacles and all non-current-carrying conductive surfaces of fixed electrical equipment likely to become energized that are subject to personal contact, shall be grounded by a green insulated copper conductor. The grounding conductor shall be sized in accordance with the requirements of the 1990 "National Electrical Code" and installed in electrical metallic tubing with the branch-circuit conductors supplying these receptacles or fixed equipment. (III) (Exception 4)

60.12(2) *Panel boards.* Panel boards serving lighting and appliance circuits shall be located on the same floor as the circuits they serve. (Exceptions 4 and 5) All circuits shall be identified on the panel door. (III) This requirement does not apply to emergency system circuits which can be centrally located. (Exception 4)

60.12(3) *Lighting.* All spaces occupied by people, machinery, and equipment within buildings, approaches thereto, and parking lots shall have electric lighting. (III)

a. All rooms in resident-occupied areas shall have general lighting switched at the entrance to each room. (III)

b. Reading lamps shall be provided in each resident's room. (III)

c. Night lights shall be provided in corridors, at stairways, attendant's stations, residents' bedrooms, and hazardous areas with no less than 1 foot-candle throughout the area at all times. (III)

d. At least one recessed light fixture for night lighting installed no higher than 18 inches above the floor shall be switched at the entrance to each resident's room. (III) (Exception 4)

e. Light fixtures shall be so equipped to prevent glare and to prevent hazards to the residents. (III)

60.12(4) *Receptacles (Convenience outlet locations).*

a. Each resident room shall have grounding-type receptacles.

b. Receptacles shall be located as follows: one on each side of the head of each bed; one for television, where used and one on another wall. For parallel adjacent beds, only one receptacle is required between the beds. (III) (Exception 3)

c. Receptacles for general and emergency use shall be installed a maximum of 50 feet apart in all corridors and within 25 feet of ends of corridors. (III) (Exception 4)

d. All receptacles within 6 feet of sinks or lavatories and those installed outside the building shall be protected by a local ground fault circuit interrupter. (III)

60.12(5) *Call system.*

a. Where the facility has a call system installed, the system shall be electrical and all calls shall register at the operational center. (III)

b. Calling systems which provide two-way voice communication shall be equipped with an indicating light at each calling station, and the lights shall remain lighted as long as the voice circuit is operating. (III)

60.12(6) *Emergency electric service.*

a. Emergency electric on-site engine generator service shall be provided in any facility to provide electricity during an interruption of the normal electric supply that could affect the resident care or safety of the occupants. (Exceptions 1 and 4)

b. In facilities less than 16 beds an emergency battery source of electricity shall be provided in accordance with Section 517-40 of the National Electric Code. (III)

c. The required emergency generating set, including the prime mover, shall not be powered solely by natural gas or cooled solely by domestic water. (III) (Exception 4)

d. The emergency generator set shall be of sufficient capacity to supply all lighting and power load demands of the emergency system and shall be located on the premises. (III)

e. Emergency electric service shall be provided to the distribution system for lighting as follows:

(1) Exit ways and all necessary ways of approach thereto, including exit signs and exit direction signs, exterior of exits, exit doorways, stairways, and corridors, (III)

(2) Egress as required in NFPA Standard 101, (III)

(3) Dining and recreation rooms, (III)

(4) Attendant's station, (III)

(5) Generator set location, switch-gear location and boiler room, (III)

(6) Elevator, where required for emergency. (III)

f. Emergency electric service shall be provided to the distribution system for equipment essential to life safety and for the protection of important equipment or vital materials as follows:

(1) Call board; (III)

(2) Alarm system, including fire alarm actuated at manual stations; water flow alarm devices or sprinkler systems, where electrically operated; fire detection and smoke-detecting systems; paging or speaker systems intended for issuing instructions during emergency conditions; and alarms required for nonflammable medical gas systems, where installed; (III)

(3) Sewage and sump lift pump, where installed; (III)

(4) All required duplex receptacles in resident corridors; (III)

(5) One elevator; (III) (Exception 4)

(6) Equipment, such as burners and pumps, necessary for operation of one or more boilers and their necessary auxiliaries and controls required for heating and sterilization; (III) and

(7) Equipment necessary for maintaining telephone service. (III)

g. Emergency electric service shall be provided to the distribution system for heating as follows:

(1) Where electricity is the only source of power normally used for space heating, the emergency service shall provide for heating of resident rooms or an area of approximately 30 square feet per bed within the facility to accommodate all of the residents for the duration of the emergency; (III)

(2) Emergency heating shall not be required where the facility is supplied by at least two service feeders, each supplied by separate sources from an integrated transmission distribution system, each capable of supplying required service, and each so routed, connected and protected that a fault any place between the utility energy source and the facility shall not cause an interruption of more than one of the electric service feeders. (III)

h. The emergency electrical system shall be brought to full voltage and frequency and connected within 10 seconds through one or more primary automatic transfer switches. Power to pumps and burners may be brought to full power through the use of manual switches. (III)

i. Receptacles connected to the emergency system shall be distinctively marked for identification. (III)

j. Storage battery-powered lights, provided to augment the emergency lighting or for continuity of lighting during the interim of transfer switches, shall not be used as a substitute for the requirements of a generator. (III)

481—60.13(135C) Codes and standards.

60.13(1) *General.* Nothing stated herein shall relieve the sponsor from compliance with building codes, ordinances, and regulations which are enforced by city, county, or state jurisdictions. Where such codes, ordinances, and regulations are not in effect, it shall be the responsibility of the sponsor to consult one of the national building codes generally used in the area for all components of the standards set forth herein, provided the requirements of the code are not inconsistent with the minimum standards herein. (III)

60.13(2) *List of referenced codes and standards.* The latest revisions of the following codes and standards have been used in whole or in part in these rules and shall be used as references where specific details are required or interpretation is needed:

American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Handbooks.

American Society for Testing and Materials (ASTM) Standard No. E 84-61, Method of Test for Surface Burning Characteristics of Building Material.

International Conference of Building Officials (ICBO) Uniform Building Code.

Iowa State Building Code.

Iowa State Plumbing Code.

Iowa State Bureau of Labor Standards.

National Fire Protection Association (NFPA) Standard No. 70, National Electrical Code.

National Fire Protection Association (NFPA) Standard No. 90A and Installation of Air Conditioning and Ventilating Systems.

National Fire Protection Association (NFPA) Standard No. 101, Life Safety Code.

Food Service Sanitation Manual (DHEW Publication No. (FDA) 8-2081).

Underwriters Laboratories, Inc. listings.

American National Standards Institute (ANSI) Standard No. A117.1—1986, American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped.

Copies of nongovernment publications can be obtained from the various agencies at the addresses listed:

American Society for Testing and Materials
1916 Race Street
Philadelphia, Pennsylvania 19103

National Fire Protection Association
Batterymarch Park
Quincy, Massachusetts 02269

Underwriters Laboratories, Inc.
333 Pfingsten Road
Northbrook, Illinois 66062

American National Standards Institute
1430 Broadway
New York, New York 10018
International Conference of Building Officials (ICBO)
Uniform Building Code
5360 South Workman Mill Road
Whittier, California 90601

American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE)
1791 Tullie Circle N.E.
Atlanta, Georgia 30329

Except as noted in the list, copies of government publications can be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

These rules are intended to implement Iowa Code sections 10A.502(4) and 135C.2(1)*"b."*

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CHAPTER 61
MINIMUM PHYSICAL STANDARDS FOR NURSING FACILITIES

[Prior to 7/15/87, Health Department[470] Ch 61]

481—61.1(135C) Definitions. Definitions in rule 481—58.1(135C) are incorporated by reference as part of this chapter. In addition, the following definition shall apply:

"Responsible design professional" means a registered architect or licensed professional engineer who signs the documents submitted pursuant to rule 481—61.3(135C).

[**ARC 0763C**, IAB 5/29/13, effective 7/3/13]

481—61.2(135C) General requirements. Nursing facilities licensed under this chapter shall be built in accordance with the following construction standards:

61.2(1) Construction shall be in conformance with 661—Chapter 205, Fire Safety Requirements for Hospitals and Health Care Facilities. Projects required to meet the provisions of the state building code shall be deemed to be in compliance with the fire safety requirements of the state building code if the project is in compliance with the provisions of 661—Chapter 205.

61.2(2) Construction shall be in conformance with 661—Chapter 301, State Building Code—General Provisions. Projects meeting the local building code shall be deemed to be in compliance with the state building code provided that the local jurisdiction has established a building department, has adopted a building code by ordinance and enforces the local code through a system which includes both plan review and inspection.

61.2(3) Construction shall be in accordance with the standards set forth in Part 4.2 and other applicable provisions of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, published by the Facility Guidelines Institute.

61.2(4) Nothing in these rules shall relieve a nursing facility from compliance with fire and building codes, ordinances and regulations which are enforced by city, county, state or federal jurisdictions.

61.2(5) New equipment. Any alteration or installation of new equipment shall be accomplished as nearly as practical in conformance with all applicable codes, ordinances, regulations and standards required for new construction. Alteration or installation of new equipment shall not diminish the level of compliance with any codes, ordinances, regulations or standards below that which existed prior to the alteration. Any feature that does not meet the requirement for new buildings but exceeds the requirement for existing buildings shall not be further diminished. Features that exceed requirements for new construction need not be maintained. In no case shall any feature be less than that required for existing buildings. (III)

61.2(6) Existing nursing facilities built in compliance with prior versions of this chapter will be deemed in compliance, with the exception of any renovations, additions, functional alterations, changes of space utilization, or conversions to existing facilities for which construction documents are submitted pursuant to rule 481—61.3(135C) on or after July 1, 2013, which shall meet the standards specified in this chapter. Conversion of a building or any of the parts not currently licensed as a nursing facility must meet the rules governing construction of new facilities, except as provided in Life Safety Code, 2000 edition, sections 18.1.1.4.4 and 19.1.1.4.4.

61.2(7) Final plan approval and final occupancy shall be given by the state fire marshal's office.

[**ARC 0763C**, IAB 5/29/13, effective 7/3/13]

481—61.3(135C) Submission of construction documents.

61.3(1) Submissions of architectural technical documents, engineering documents, and plans and specifications to the state fire marshal's office shall be as required by rule 661—300.4(103A) and are the responsibility of the owner of the building or facility, although the actual submission may be completed by an authorized agent of the owner or the responsible design professional.

61.3(2) Plans, specifications and other supporting information shall be sufficiently clear and complete to show in detail that the proposed work will comply with the construction standards required by rule 481—61.2(135C).

61.3(3) Submittals to the state fire marshal's office shall be certified or stamped and signed as required by Iowa Code chapters 542B and 544A unless the applicant has certified on the submittal to the applicability of a specific exception under Iowa Code section 544A.18 and the submittal does not constitute the practice of engineering as defined by Iowa Code section 542B.2.

61.3(4) The responsible design professional shall certify that the building plans meet the requirements specified in this chapter, unless a variance has been granted pursuant to rule 481—61.4(135C).

[**ARC 0763C**, IAB 5/29/13, effective 7/3/13]

481—61.4(135C) Variances.

61.4(1) Procedures in rule 481—58.2(135C) for requesting a variance are incorporated by reference as part of this chapter.

61.4(2) Certain resident populations, conditions in the area, or the site may justify variances. In specific cases, variances to the rules may be granted by the director after the following conditions are met:

a. The design and planning for the specific property shall offer improved or compensating features which provide equivalent desirability and utility;

b. Alternate or special construction methods, techniques, and mechanical equipment shall offer equivalent durability, utility, safety, structural strength and rigidity, sanitation, odor control, protection from corrosion, decay and insect attack, and quality of workmanship;

c. The health, safety or welfare of any resident shall not be endangered;

d. Variations are limited to the specific project under consideration and shall not be construed as establishing a precedent for similar acceptance in other cases;

e. The occupancy and function of the building shall be considered; and

f. The type of licensure shall be considered.

[**ARC 0763C**, IAB 5/29/13, effective 7/3/13]

481—61.5(135C) Additional notification requirements.

61.5(1) When new construction or renovation, addition, functional alteration, change of space utilization, or conversion of an existing building is contemplated, the licensee or applicant for a license shall:

a. File a detailed and comprehensive program of care, as set forth in rule 481—58.3(135C), which includes a description of the specific needs of the residents to be served, and any other information the department may require. (III)

b. Receive written approval from the state fire marshal's office before starting construction. The applicant is responsible for ensuring that construction proceeds according to approved plans and specifications. If construction is not started within 12 months of the date of final approval of the working drawings and specifications, the approval shall be void and the plans and specifications shall be resubmitted. Multiphase projects shall be completed within a time period approved by the state fire marshal's office.

c. Meet requirements for new construction if the project includes changes to structural and life safety components of the building or changes for accessibility of persons with disabilities. Only that portion of the building that is part of the project must meet requirements for new construction.

61.5(2) Inspections.

a. For new construction or renovations, additions, functional alterations, change of space utilization or conversion of an existing building, it is the responsibility of the owner or an agent to notify the state fire marshal's office at all of the following intervals and wait for inspection before proceeding. Inspections shall be conducted in accordance with the following schedule:

(1) Two days prior to the beginning of any construction or demolition.

(2) After installation of any under-slab plumbing and before covering is installed.

(3) After installation of electrical, mechanical and plumbing and prior to covering.

(4) Five days prior to a final occupancy inspection.

b. The following must approve the project before final occupancy: the state fire inspector, the state building inspector and, in jurisdictions without electrical code enforcement, the state electrical inspector. Approval of local or county jurisdictions is as required by those jurisdictions.
[**ARC 0763C**, IAB 5/29/13, effective 7/3/13]

481—61.6(135C) Construction requirements. This rule contains construction requirements for all areas of the building.

61.6(1) *General provisions.*

a. Projects shall be constructed in compliance with 661—Chapter 205, Fire Safety Requirements for Hospitals and Health Care Facilities. Projects required to meet the provisions of the state building code shall be deemed to be in compliance with the fire safety requirements of the state building code if the nursing facility is in compliance with the provisions of 661—Chapter 205, Fire Safety Requirements for Hospitals and Health Care Facilities.

b. Projects shall be constructed in compliance with 661—Chapter 301, State Building Code—General Provisions. Projects meeting the local building code shall be deemed to be in compliance with the state building code provided that the local jurisdiction has established a building department, has adopted a building code by ordinance and enforces the local code through a system which includes both plan review and inspection.

c. Projects shall be constructed in compliance with the standards set forth in Part 4.2 and other applicable provisions of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, published by the Facility Guidelines Institute.

d. Final plan approval and final occupancy shall be given by the state fire marshal's office.

61.6(2) *Mechanical requirements.*

a. Projects shall be constructed in compliance with 661—Chapter 205, Fire Safety Requirements for Hospitals and Health Care Facilities.

b. Projects shall be constructed in compliance with the state mechanical code as provided in rule 661—301.4(103A). Projects meeting the local mechanical code shall be deemed to be in compliance with the state mechanical code provided that the local jurisdiction has established a building department, has adopted a building code by ordinance and enforces the local code through a system which includes both plan review and inspection.

c. Final plan approval and final occupancy shall be given by the state fire marshal's office.

61.6(3) *Electrical requirements.*

a. Projects shall be constructed in compliance with standards referenced in 661—Chapter 205, Fire Safety Requirements for Hospitals and Health Care Facilities.

b. Projects shall be constructed in compliance with the state electrical code as provided in rule 661—301.5(103A).

61.6(4) *Plumbing requirements.* Projects shall be constructed in compliance with 641—Chapter 25, State Plumbing Code.

61.6(5) *Accessibility requirements.* Projects shall be constructed in compliance with 661—Chapter 302, State Building Code—Accessibility of Buildings and Facilities Available to the Public.

61.6(6) *Lighting requirements.* Light shall be provided in the areas of the building as required in Table 4.1-3 of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, published by the Facilities Guidelines Institute.

61.6(7) *Exit door alarm system.* An exit door alarm system shall be installed on all exterior doors. (I, II, III)
[**ARC 0763C**, IAB 5/29/13, effective 7/3/13]

481—61.7(135C) Nursing care unit.

61.7(1) A seclusion room may be used in an intermediate care facility for persons with mental illness.

61.7(2) When a seclusion room is used, it must meet the following standards. A seclusion room shall:

a. Be located where direct care staff can provide direct supervision; (I, II, III)

b. Have only one door which swings out but does not swing into a corridor; (II, III)

c. Have only locking devices that are approved by the state fire marshal; (I, II, III)

d. Have unbreakable, fire-safe vision panels arranged to permit observation of the resident. The arrangement shall ensure resident privacy and prevent casual observation by visitors or other residents; (I, II, III)

e. House only one resident at a time; (I, II, III)

f. Have an area of at least 60 square feet, but not more than 100 square feet; (II, III)

g. Be constructed to protect against the possibility of hiding, escape, injury and suicide; (I, II, III)

h. Have construction of the room area, including floor, walls, ceilings, and all openings, approved in writing by the state fire marshal prior to construction or alteration of a room. Padding materials, if used, shall be approved in writing by the state fire marshal; (I, II, III)

i. Contain only vandal- and tamper-resistant fixtures and hardware; (I, II, III)

j. Contain no electrical receptacles; (I, II, III)

k. Contain an exhaust ventilation system with a fan located at the discharge end of the system, with exhaust discharging to the outside; (II, III)

l. Have electrical switches for the light and exhaust ventilation systems installed outside the room; (I, II, III)

m. Have an emergency call system for staff located outside the room near the observation window; (II, III) and

n. Be built with materials that are easily maintained and sanitized. (III)

[**ARC 0763C**, IAB 5/29/13, effective 7/3/13]

481—61.8(135C) Dietetic and other service areas.

61.8(1) *Dietetic service area.* The construction and installation of equipment of the dietetic service area shall comply with the requirements of the Food and Drug Administration Food Code adopted under provisions of Iowa Code section 137F.2. (III)

61.8(2) *General storage areas.* General storage areas totaling not less than 14 square feet per bed shall be provided. If each resident has a 4-foot wide closet in the bedroom, the general storage area per bed may be reduced from 14 square feet to 10 square feet per bed. Storage areas are not required to be located in only one room. (III)

a. Storage areas for linens, janitor's supplies, sterile nursing supplies, activities supplies, library books, office supplies, kitchen supplies and mechanical plant accessories shall not be included as part of the general storage area and are not required to be located in the same area. (III)

b. Thirty percent of the general storage area may be provided in a building outside the facility if the building is easily accessible to personnel. (III)

[**ARC 0763C**, IAB 5/29/13, effective 7/3/13]

481—61.9(135C) Specialized unit or facility for persons with chronic confusion or a dementing illness (CCDI unit or facility). A CCDI unit or facility shall be designed in accordance with Section 4.2-2.2.3.2 and other applicable provisions of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, produced by the Facility Guidelines Institute. The following provisions shall also apply:

61.9(1) A CCDI unit or facility shall be designed so that residents, staff and visitors will not pass through the unit in order to reach exits or other areas of the facility unless in an emergency. (III)

61.9(2) If the unit or facility is to be a locked unit or facility, all locking devices shall meet the 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)

61.9(3) The outdoor activity area for the unit or facility shall be secure. Nontoxic plants shall be used in the secured outdoor activity area. (I, II)

61.9(4) There shall be no steps inside the CCDI unit or freestanding CCDI facility. (III)

61.9(5) Dining and activity areas for the unit or facility shall be located within the unit or facility and shall not be used as the primary dining or activity area by other facility residents. (III)

61.9(6) An area shall be provided to allow nurses to prepare daily resident reports. (III)

61.9(7) If the lounge and activity areas are not adjacent to resident rooms, there shall be in clear view of the lounge and activity area one unisex resident toilet room for each ten residents. (III)
[**ARC 0763C**, IAB 5/29/13, effective 7/3/13]

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CHAPTER 62
RESIDENTIAL CARE FACILITIES FOR PERSONS WITH MENTAL ILLNESS (RCF/PMI)

481—62.1(135C) Definitions. For the purposes of these rules, the following terms shall have the meaning indicated in this chapter. The definitions set out in Iowa Code section 135C.1 shall be considered incorporated verbatim in the rules. The use of the words "shall" and "must" indicate these standards are mandatory.

"Academic services" means those activities provided to assist a person to acquire general information and skills which establish the basis for subsequent acquisition and application of knowledge.

"Age appropriate" means those activities, settings, and personal appearance and possessions commensurate with the person's chronological age.

"Chronic mental illness" means a persistent mental or emotional disorder that seriously impairs an adult's functioning relative to such primary aspects of daily living as personal relations, living arrangements, or employment.

"Commission" means the mental health and mental retardation commission.

"Community living training services" are those activities provided to assist a person to acquire or sustain the knowledge and skills essential to independent functioning to the person's maximum potential in the physical and social environment. These services may focus on the following areas:

1. Independent living skills means those skills necessary to sustain oneself in the physical environment and are essential to the management of one's personal property and business. This includes self-advocacy skills.
2. Socialization skills which include self-awareness and self-control, social responsiveness, group participation, social amenities, and interpersonal skills.
3. Communication skills which include expressive and receptive skills in verbal and nonverbal language including reading and writing.
4. Leisure time and recreational skills which include the skills necessary for a person to use leisure time in a manner which is satisfying and constructive to the person.
5. Parenting skills which include those skills necessary to meet the needs of the person's child. This service is designed to assist the person with mental illness to acquire or sustain the skills necessary for parenting.

"Department" means the Iowa department of inspections and appeals.

"Dependent adult abuse" is as defined in rule 481—52.1(235E).

"Diagnosis" means the investigation and analysis of the cause or nature of a person's condition, situation, or problem.

"Direct care staff" means those staff persons who provide a homelike environment for the residents and assist or supervise the resident in meeting the goals in the resident's program plan.

"Evaluation services" means those activities designed to identify a person's current functioning level and those factors which are barriers to maintaining the current level or achieving a higher level of functioning.

"Exploitation" means the act or process of taking unfair advantage of a resident, or the resident's physical or financial resources, for one's own personal or pecuniary profit by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.

"Goals" means general statements of attainable expected accomplishments to be achieved in meeting identified needs.

"Incident" means all accidental, purposeful, or other occurrences within the facility or on the premises affecting residents, visitors, or employees whether there is apparent injury or where hidden injury may have occurred.

"Individual program plan (IPP)" means a written plan for the provision of services to the resident that is developed and implemented using an interdisciplinary process, that is based on the resident's functional status, strengths and needs, and that identifies service activities designed to enable a person

to maintain or move toward independent functioning. The plan identifies a continuum of development and outlines progressive steps and anticipated outcomes of services.

"Informed consent" means an agreement by a person, or by the person's legally authorized representative, based upon an understanding of:

1. A full explanation of the procedures to be followed including an identification of those that are and are not experimental,
2. A description of the attendant discomforts, risks, and benefits to be expected,
3. A disclosure of appropriate alternative procedures that would be advantageous for the person.

"Interdisciplinary process" means an approach to assessment, individual program planning, and service implementation in which planning participants function as a team. Each participant utilizing the skills, competencies, insights and perspectives provided by the participant's training and experience focuses on identifying the service needs of the resident and the resident's family. The purpose of the process is for participants to review and discuss, face-to-face, all information and recommendations and to reach decisions as a team. Participants share all information and recommendations, and develop as a team a single, integrated, individual program plan to meet the resident's and, when appropriate, the resident's family's needs.

"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 resident's needs.

"Least restrictive environment" means the environment in which the interventions in the lives of people with mental illness can be carried out with a minimum of limitation, intrusion, disruption, and departure from commonly accepted patterns of living.

It is the environment which allows residents to participate, to the maximum extent possible, in everyday life and to have control over the decisions that affect them. It is an environment that provides needed supports which do not interfere with personal liberty and do not unduly interfere with a person's access to the normal events of life.

"Legal services" means those activities designed to assist the person in exercising constitutional and legislatively enacted rights.

"Level of functioning" means a person's current physiological and psychological status and current academic, community living, self-care, and vocational skills.

"Long-term residential care facility for persons with mental illness (RCF/PMI)" means a residential setting to maintain or improve community living skills to reach maximum potential for independent living and to prevent movement to a more restrictive setting.

"Mechanical restraint" means a device applied to a person's limbs, head, or body which restricts a person's movement and includes but is not limited to leather straps, leather cuffs, camisoles, or handcuffs.

"Mental abuse" means, but is not limited to, humiliation, harassment, and threats of punishment or deprivation.

"Mental illness" means a substantial disorder of thought or mood which significantly impairs judgment, behavior, or the capacity to recognize reality or the ability to cope with the ordinary demands of life. Mental disorders include the organic and functional psychoses, neuroses, personality disorders, alcoholism and drug dependence, behavioral disorders and other disorders as defined by the current edition of American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

"Normalization" means helping persons, in accordance with their needs and preference, to achieve a lifestyle that is consistent with the norms and patterns of general society and in ways which incorporate the age-appropriate and least restrictive principles.

"Objectives" means specific, time-limited, and measurable statements showing outcomes or accomplishments necessary to progress toward the goal.

"Physical abuse" means, but is not limited to, corporal punishment and the use of restraints as punishment.

"Physical injury" means damage to any bodily tissue to the extent the tissue must undergo a healing process in order to be restored to a sound and healthy condition. It may also mean damage to the extent the bodily tissue cannot be restored to a sound and healthy condition, or results in the death of the resident whose bodily tissue sustained the damage.

"Physical or physiological treatment" means those activities designed to prevent, halt, control, relieve, or reverse symptoms or conditions which interfere with the physical or physiological functioning of the human body.

"Physical restraint" means a technique involving the use of one or more of a staff person's arms, legs, hands or other body areas to restrict or control the movements of a resident. This does not include the use of mechanical restraint.

"Physician" means a person licensed to practice medicine and surgery, osteopathy and surgery, osteopathy, or chiropractic under the laws of this state; but a physician licensed as a physician and surgeon shall be designated as a "physician" or "surgeon"; a person licensed as an osteopath and surgeon shall be designated as an "osteopathic physician" or "osteopathic surgeon"; a person designated as an osteopath shall be designated as an "osteopathic physician"; and a person licensed as a chiropractor shall be designated as a "chiropractor."

"Program" means a set of related resources and services directed to the accomplishment of a fixed set of goals and objectives for any of the following:

1. Special target populations,
2. The population of a specified geographic area(s),
3. A specified purpose, and
4. A person.

"Psychotherapeutic treatment" means those activities designed to assist a person in the identification or modification of beliefs, emotions, attitudes, or behaviors in order to maintain or improve the person's functioning in response to the physical, emotional and social environment.

"Qualified mental health professional (QMHP)" means a person who:

Is a psychiatrist, psychologist, social worker, psychiatric nurse or mental health counselor; or

Is a doctor of medicine or osteopathic medicine or has at least a master's degree or its equivalent with coursework focusing on diagnosis and evaluation and psychotherapeutic treatment of mental health problems and mental illness.

Equivalent means at least 32 semester hours of graduate level study in the following areas:

1. Psychology (normal and abnormal)
2. Assessment (psychological and physiological)
3. Growth, development, and personality
4. Learning theory
5. Counseling theory and technique (group dynamics)
6. Human behavior
7. Sociology
8. Interpersonal relations
9. Change
10. Systems theory
11. Interdisciplinary team process
12. Organizational theory
13. Planning

These persons must have two years of documented supervised experience in providing mental health services; or

Is employed by a community mental health center or mental health service provider accredited by the commission and has less than a master's degree but at least a bachelor's degree and sufficient education and experience as determined by the chief administrative officer of the community mental health center, with the approval of the commission with coursework and experience focusing on diagnosis and evaluation and treatment of persons with mental health problems and mental illness.

All persons must hold a current license when required by Iowa law.

1. *"Psychiatrist"* means a doctor of medicine or osteopathic medicine and surgery who is certified by the American Board of Psychiatry and Neurology or who is eligible for certification.

2. *"Psychologist"* means a person who is licensed to practice psychology in the state of Iowa, or is certified by the Iowa department of education as a school psychologist, or is eligible for certification, or meets the requirements for eligibility for a license to practice psychology in the state of Iowa that were effective prior to July 1, 1985.

3. *"Social worker"* means a person who is licensed to practice social work in the state of Iowa, or who is eligible for licensure.

4. *"Psychiatric nurse"* means a person who meets the requirements of certified psychiatric-mental health nurse practitioner pursuant to 655—Chapter 7, Iowa Administrative Code, or is eligible for certification.

5. *"Mental health counselor"* means a person who is certified or eligible for certification as a mental health counselor by the National Academy of Certified Clinical Mental Health Counselors.

"Resident" means a person who has been admitted to the facility to receive care and services.

"Seclusion" means the isolation of the resident in a locked room which cannot be opened by the resident.

"Self-care training services" means those activities provided to assist a person to acquire or sustain the knowledge, habits, and skills essential to the daily needs of the person. The activities focus on personal hygiene, general health maintenance, mobility skills, and other activities of daily living.

"Service" means a set of interrelated activities provided to a resident pursuant to the IPP.

"Sexual abuse" means, but is not limited to, the exposing of pubes to a resident, the exposure of a resident's genitals, pubes, breasts or buttocks for sexual satisfaction, fondling or touching the inner thigh, groin, buttocks, anus or breast of a resident or the clothing covering these areas, sexually suggestive comments or remarks made to a resident, a genital to genital or oral to genital contact or the commission of a sexual offense under Iowa Code chapter 709 or Iowa Code section 726.2.

"Short-term transitional residential care facility for persons with mental illness" means a transitional setting to move the person toward independent living by helping the person gain mastery of independent living skills.

"Support services" means those activities provided to or on behalf of a person in the areas of personal care and assistance and property maintenance in order to allow a person to live in the least restrictive environment.

"Transportation services" means those activities designed to assist a person to travel from one place to another to obtain services or carry out life's activities.

"Verbal abuse" means, but is not limited to, the use of derogatory terms or names, undue voice volume and rude comments, orders, or responses to residents.

"Vocational training services" means those activities designed to familiarize a person with production or employment requirements and to maintain or develop the person's ability to function in a work setting. This service includes programming which allows or promotes the development of skills, attitudes, and personal attributes appropriate to the work setting.

"Work" means any activity during which a resident provides goods or services for wages.

"Written, in writing or recorded" means that an account or entry is made in a permanent form.

[**ARC 1204C**, IAB 12/11/13, effective 1/15/14]

481—62.2(135C) Application for license.

62.2(1) *Initial application and licensing.* In order to obtain an initial license for a residential care facility for persons with mental illness, the applicant must meet all of the rules, regulations, and standards contained in Iowa Code chapter 135C, and Iowa Administrative Code 481—Chapters 60 and 62, and submit an application to the department which states the type and category of license for which the facility is applying.

a. Submit a résumé of care with a narrative which includes the following information:

(1) The purpose of the facility.

(2) A description of the target population and limitations on resident eligibility.

(3) An identification and description of the services the facility will provide which shall minimally include specific and measurable goals and objectives for each of the services to be made available by the facility and a description of the resources needed to provide each of the services including staff, physical facilities and funds.

(4) A description of the human services system available in the area, including, but not limited to, social, public health, visiting nurse, vocational training, employment services, sheltered living arrangements, and services of private agencies.

(5) A description of working relationships with the human services agencies when applicable, which shall include at a minimum:

1. A description of how the facility will coordinate with the human services to facilitate continuity of care and coordination of services to residents; and

2. A description of how the facility will coordinate with those agencies to identify unnecessary duplication of services and plan for development and coordination of needed services.

b. Submit a floor plan of each floor of the facility drawn on 8½- x 11-inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathroom; and designation of the use to which room will be put and window and door location;

c. Submit a photograph of the front and side elevation of the facility;

d. Submit the statutory fee for a residential care facility license;

e. Show evidence of a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules.

62.2(2) *Renewal application or change of ownership.* In order to obtain a renewal or change of ownership license of the residential care facility to serve persons with mental illness the applicant must:

a. Submit to the department the completed application form 30 days prior to annual license renewal or change of ownership date of the residential care facility license.

b. Submit the statutory license fee for a residential care facility for persons with mental illness with the application for renewal or change of ownership.

c. Have an approved current certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules.

d. Submit documentation of review of résumé of care pursuant to 62.2(1)*"a"* and a copy of any revisions to the plan.

This rule is intended to implement Iowa Code sections 135C.7 and 135C.9.

481—62.3(135C) Licenses for distinct parts.

62.3(1) Separate licenses may be issued for distinct parts which are clearly identifiable parts of a health care facility, containing contiguous rooms in a separate wing or building or on a separate floor of the facility and which provide care and services of separate categories.

62.3(2) The following requirements shall be met for a 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. A separate 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.

62.3(3) Licenses are issued to the person or governmental unit which has responsibility for the operation of the facility and authority to comply with all applicable statutes, rules or regulations.

The person or governmental unit must be the owner of the facility or, if the facility is leased, the lessee.

This rule is intended to implement Iowa Code sections 135C.6(1) and 135C.6(2).

481—62.4(135C) Variances. Variances from these rules may be granted by the director of the department:

1. When the need for a variance has been established consistent with the résumé of care or the resident's individual program plan.
2. When there is no danger to the health, safety, welfare, or rights of any resident.
3. The variance will apply only to a specific residential care facility for the mentally ill.
4. Variances shall be reviewed at the time of each licensure survey by the department to see if the need for the variance is still acceptable.

62.4(1) To request a variance, the licensee must:

a. Apply in writing on a form provided by the department;

b. Cite the rule or rules from which a variance is desired;

c. State why compliance with the rule or rules cannot be accomplished;

d. Explain how the variance is consistent with the résumé of care or the individual program plan;

e. Demonstrate that the requested variance will not endanger the health, safety, welfare, or rights of any resident.

62.4(2) Upon receipt of a request for variance, the director shall:

a. Examine the rule from which the variance is requested;

b. Evaluate the requested variance against the requirement of the rule to determine whether the request is necessary to meet the needs of the residents;

c. Examine the effect of the requested variance on the health, safety, or welfare of the residents;

d. Consult with the applicant to obtain additional written information if required.

62.4(3) Based upon this information, approval of the variance will be either granted or denied within 120 days of receipt.

481—62.5(135C) General requirements.

62.5(1) The license shall be valid and be posted in each facility so the public can see it easily. (III)

62.5(2) The license shall be valid only for the premises and person named on the license and is not transferable.

62.5(3) The posted license shall accurately reflect the current status of the residential care facility for persons with mental illness. (III)

62.5(4) Licenses expire one year after the date of issuance or as indicated on the license.

62.5(5) There shall be no more beds erected than are stipulated on the license. (II, III)

62.5(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. (III)

This rule is intended to implement Iowa Code section 135C.8.

481—62.6(135C) Notification required by the department. The department shall be notified:

Within 48 hours, by letter, of any reduction or loss of personal care or dietary staff lasting more than seven days which places the staff ratio below that required for licensing. No additional residents shall be admitted until the minimum staff requirements are achieved. (II, III)

Within 30 days of any proposed change in the résumé of care for the RCF/PMI. (II, III)

Thirty days before addition, alteration, or new construction is begun in the residential care facility or on the premises; (III)

Thirty days in advance of closure of the residential care facility for persons with mental illness; (III)

Within two weeks of any change of administrator; (II, III)

Within 30 days when any change in the category of license is sought. (III)

Prior to the purchase, transfer, assignment, or lease of a residential care facility the licensee shall:

1. Inform the department in writing of pending sale, transfer, assignment, or lease of the facility; (III)

2. Inform the department in writing of the name and address of the prospective purchaser, transferee, assignee, or lessee at least 30 days before the sale, transfer, assignment, or lease is completed; (III)

3. Submit a written authorization to the department permitting the department to release 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)

After the authorization has been submitted to the department, the department shall upon request send or give copies of all recent licensure surveys and any other pertinent information relating to the facility's licensure status to the prospective purchaser, transferee, assignee or lessee. Costs for copies requested shall be paid by the prospective purchaser, transferee, assignee or lessee. No information personally identifying any resident shall be provided to prospective purchaser, transferee, assignee or lessee. (II, III)

This rule is intended to implement Iowa Code sections 135C.6(3) and 135C.16(2).

481—62.7(135C) Administrator. Each residential care facility for persons with mental illness shall have one person in charge, duly approved by the department or acting in a provisional capacity in accordance with these rules. (II, III)

62.7(1) The administrator shall be at least 21 years of age and shall meet at least one of the following conditions:

a. Be a licensed nursing home administrator, or a certified residential care administrator in Iowa. These individuals must have at least two years' experience in direct care or supervision of persons with mental illness, (II, III) or

b. Be a qualified mental health professional (QMHP) with at least one year of experience in an administrative capacity in a health care facility, (II, III) or

c. Have completed a one-year educational training program approved by the department with emphasis on serving the needs of persons with mental illness, and two years' experience in direct care or supervision of persons with mental illness. (II, III)

d. Those individuals currently employed as administrators on the effective date of these rules (March 30, 1988) shall not be required to meet the above criteria during their employment in the current facility.

62.7(2) The administrator shall be responsible for no more than 150 beds in total if the administrator is an administrator of more than one facility. (II, III)

a. The distance between the two farthest facilities shall be no greater than 50 miles. (II, III)

b. An administrator of more than one facility must designate an administrative staff person in each facility who shall be responsible for directing programs in the facility during the administrator's absence. (II, III)

62.7(3) The administrative staff person shall be designated in writing and immediately available to the facility on a 24-hour basis when the administrator is absent and residents are in the facility. (II, III)

The person(s) designated shall:

a. Have at least two years' experience or training in a supervisory or direct care position in a mental health setting; (II, III)

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

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

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

e. Be at least 21 years of age; (III)

f. Be empowered to act on behalf of the licensee during the administrator's absence concerning the health, safety, and welfare of the residents; (II, III)

g. Have training to carry out assignments and take care of emergencies and sudden illnesses of residents. (II, III)

62.7(4) If an administrator serves more than one facility, a written plan shall be developed and available for review and approval by the department designating regular and specific times the

administrator will be available to meet with the staff and residents to provide direction and supervision of resident care and services. (II, III)

62.7(5) The licensee may be the approved administrator providing the requirements set forth in these rules are met. (III)

62.7(6) When a facility has been unable to replace the administrator, through no fault of its own, a provisional administrator meeting the qualifications of the administrative staff person may be appointed on a temporary basis by the licensee to assume the administrative responsibilities for the facility. This person shall not serve more than three months. The department must be notified before the appointment of the provisional administrator. (III)

A facility applying for initial licensing shall not have a provisional administrator. (III)

This rule is intended to implement Iowa Code section 135C.14(2).

481—62.8(135C) Administration.

62.8(1) The licensee shall:

a. Be responsible for the overall operation of the RCF/PMI. (III)

b. Be responsible for compliance with all applicable laws and with the rules of the department. (II, III)

c. Establish written policies, which shall be available for review by the department or other agencies designated by Iowa Code section 135C.16(3), for the operation of the RCF/PMI including but not limited to: (III)

1. Personnel (III)
2. Admission (III)
3. Evaluation services (II, III)
4. Programming and individual program plan (II, III)
5. Crisis intervention (II, III)
6. Discharge or transfer (III)
7. Medication management (II)
8. Resident property (II, III)
9. Financial affairs (II, III)
10. Records (III)
11. Health and safety (II, III)
12. Nutrition (III)
13. Physical facilities and maintenance (III)
14. Care review (III)
15. Resident rights (II, III)

d. Furnish statistical information concerning the operation of the facility to the department within 30 days of request. (III)

62.8(2) The administrator shall be responsible for the implementation of procedures to support the policies established by the licensee. (III)

This rule is intended to implement Iowa Code section 135C.14.

481—62.9(135C) Personnel.

62.9(1) The personnel policies and procedures shall include the following requirements: (III)

a. Written job descriptions for all employees or agreements for all consultants, which include duties and responsibilities; education, experience, or other requirements, and supervisory relationships. (III)

b. Annual performance evaluation of all employees and consultants which is dated and signed by the employee or consultant and the supervisor. (III)

c. Personnel records which are current, accurate, complete, and confidential to the extent allowed by law. The record shall contain documentation of how the employee's or consultant's education and experience are relevant to the position for which hired. (III)

d. Roles, responsibilities, and limitation of student interns and volunteers. (III)

e. An orientation program for all newly hired employees and consultants which includes an introduction to the facility's personnel policies and procedures, and a discussion of the facility's safety plan. (II, III)

f. A plan for a continuing education program with a minimum of eight in-service programs per year for all employees which shall include a written, individualized staff development plan for each employee. This includes, but is not limited to, the administrator, department heads, and direct care staff. The plan shall take into consideration the needs of the facility as identified in the résumé of care. The plan shall ensure that each employee has the opportunity to develop and enhance skills and to broaden and increase knowledge contributing to effective resident care, including but not limited to: (II, III)

(1) First aid. (II, III)

(2) Human needs and behavior. (II, III)

(3) Problems and needs of persons with mental illness. (II, III)

(4) Medication. (II, III)

(5) Crisis intervention. (II)

(6) Delivery of services in accordance with the principles of normalization. (III)

(7) Wellness. (III)

(8) Fire safety, disaster, and tornado preparation. (II, III)

g. Equal opportunity and affirmative action employment practices. (III)

h. Procedures to be used when disciplining an employee. (III)

i. Appropriate dress and personal hygiene for staff and residents. (III)

62.9(2) The facility shall require regular health examinations for all personnel, and examinations shall be required at the commencement of employment and thereafter at least every four years. The examination shall include, at a minimum, the health status of the employee. Screening and testing for tuberculosis shall be conducted pursuant to 481—Chapter 59. (III)

a. No person shall be allowed to provide services in a facility if the person has a disease:

(1) Which is transmissible through required workplace contact, (I, II, III)

(2) Which presents a significant risk of infecting others, (I, II, III)

(3) Which presents a substantial possibility of harming others, and (I, II, III)

(4) For which no reasonable accommodation can eliminate the risk. (I, II, III)

Refer to Guidelines for Infection Control in Hospital Personnel, Centers for Disease Control, U.S. Department of Health and Human Services, PB85-923402 to determine (1), (2), (3) and (4).

b. There shall be written policies for emergency medical care for employees in case of sudden illness or accident. These policies shall include the administrative individuals to be contacted. (III)

c. Health certificates for all employees shall be available for review by the department. (III)

62.9(3) Staffing. The facility shall establish, subject to approval of the department, the numbers and qualifications of the staff required in an RCF/PMI using as its criteria the services being offered as indicated on the résumé of care and as required for implementation of individual program plans. (II, III)

a. Personnel in an RCF/PMI shall provide 24-hour coverage for residential care services. Personnel shall be up and dressed at all times in facilities over 15 beds. In facilities with 15 or less beds, personnel shall be up and dressed when residents are awake. (II, III)

b. The policies and procedures shall provide for staff accessibility during normal sleeping hours in facilities with 15 beds or less. (I)

c. Direct care staff shall be present in the facility unless all residents are involved in activities away from the facility. The policies and procedures shall provide for an on-call staff person to be available when residents and staff are absent from the facility. (II, III)

(1) The on-call staff person shall be designated in writing.

(2) Residents shall be informed of how to call the on-call person.

d. The staffing plan shall ensure that at least one qualified direct care staff is on duty to carry out and implement the individual program plans. (II, III)

e. The RCF/PMI shall provide for services of a qualified mental health professional by direct employment or contract and whose responsibilities shall include, but not be limited to: (II, III)

(1) Approval of each resident's individual program plan; (II, III)

(2) Monitoring the implementation of each resident's individual program plan; (II, III)

(3) Recording each resident's progress; (II, III)

(4) Participation in a periodic review of each individual program plan pursuant to 62.12(4)*"a"* and *"b."* (II, III)

f. Each residential care facility with over 15 beds shall employ a person to direct the activity program both inside and outside the facility in accordance with each resident's individual program plan. (III)

g. Staff for the activity program shall be provided on a minimum basis of 45 minutes per licensed bed per week:

(1) The activity coordinator shall have completed the activity coordinator's orientation course approved by the department within six months of beginning employment or have comparable training and experience as approved by the department. (III)

(2) The activity coordinator shall attend workshops or educational programs which relate to activity programming. These shall total a minimum of ten contact hours per year. (III)

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

h. The activity coordinator shall have access to all residents' records excluding financial records; (III)

i. Responsibilities of the activity coordinator shall include:

(1) Coordinating all activities, including volunteer or auxiliary activities and religious services. (III)

(2) Keeping all necessary records including attendance, individual resident progress notes at least quarterly, and monthly calendars prepared one month in advance. (III)

(3) Coordinating the activity program with all other services in the facility. (III)

(4) Participating in the in-service training program in the facility. This shall include attending as well as presenting sessions. (III)

62.9(4) Personnel record.

a. A personnel record shall be kept for each employee. (III)

b. The record shall include the employee's:

1. Name and address, (III)
2. Social security number, (III)
3. Date of birth, (III)
4. Date of employment, (III)
5. References, (III)
6. Position in the facility, (III)
7. Job description, (III)
8. Documentation of experience and education, (III)
9. Staff development plan, (III)
10. Annual performance evaluation, (II, III)
11. Documentation of disciplinary action, (II, III)
12. Date and reason for discharge or resignation, (III)
13. Current physical examination. (III)

62.9(5) 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 2013 Iowa Acts, Senate File 347, 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)

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

[**ARC 0663C**, IAB 4/3/13, effective 5/8/13; **ARC 0903C**, IAB 8/7/13, effective 9/11/13; **ARC 1205C**, IAB 12/11/13, effective 1/15/14]

481—62.10(135C) General admission policies. There shall be admission policies which address the following:

1. No resident shall be admitted or retained who is in need of greater services than the facility can provide. (II, III)

2. Residents shall be admitted only on a written order signed by a physician certifying that the individual requires no more than personal care and supervision and does not require nursing care. (II, III)

3. A preplacement visit shall be completed prior to admission, except in case of an emergency admission or readmission, to familiarize the applicant with the facility and services offered. The policies and procedures may allow for waiving the requirement at the request of a person seeking admission when the completion of the visit would create a hardship for the person seeking admission. If the distance to be traveled makes it impossible to complete the visit in an eight-hour day, this may be considered to create a hardship. (III)

4. Prior to admission of an applicant, the facility shall obtain sufficient information to determine if its program is appropriate and adequate to meet the person's needs. (III)

5. Admission criteria shall include but not be limited to age, sex, diagnosis, from the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders, substance abuse, dual diagnosis and criteria that are consistent with the résumé of care. (III)

6. Each facility shall maintain a waiting list with selection priorities identified. (III)

7. No RCF/PMI may admit more residents than the number of beds for which it is licensed. (II, III)

8. There shall be a written, organized orientation program for all residents which shall be planned and implemented to resolve or reduce personal, family, business, and emotional problems that may interfere with the health care, recovery, and rehabilitation of the individual and which shall be available for review by the department. (III)

9. Infants and children under the age of 18 shall not be admitted to an RCF/PMI for adults unless given prior written approval by the department. A distinct part of an RCF/PMI, segregated from the adult section, may be established based on a résumé of care submitted by the licensee or applicant which is commensurate with the needs of the residents of the health care facility and has received the department's review and approval. (III)

This rule is intended to implement Iowa Code sections 135C.3 and 135C.23.

481—62.11(135C) Evaluation services.

62.11(1) Each resident admitted shall have had a physical examination prior to admission and annually thereafter. (II, III)

a. If the resident is admitted directly from a hospital, a copy of the hospital admission physical and discharge summary may be part of the record in lieu of an additional physical examination. (II, III)

b. The record of the admission physical examination 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 chief complaints, and results of any diagnostic procedure. (II, III)

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

62.11(2) Evaluation services shall be provided to each resident. An annual evaluation of each resident shall be completed no later than 12 months from the date of the last available evaluation. For residents who are on leave from a state mental health institution, the institution shall be responsible for the completion of the evaluation. The facility shall ensure the completion of the evaluation of all other residents. The annual evaluation shall identify physical health and current level of functioning and need for services. (II, III)

62.11(3) The portion of the evaluation to identify the resident's physical health shall:

a. Result in identification of current illness and disabilities and recommendations for physical and physiological treatment and services. (II, III)

b. Include an evaluation of the resident's ability for health maintenance. (III)

c. Be performed by a medical doctor or doctor of osteopathic medicine who holds a current license to practice medicine in the state of Iowa. If the evaluation is completed out of Iowa, it must be by a physician who holds a current license in the state in which the evaluation is performed. (II, III)

62.11(4) The portion of the evaluation to identify the resident's current functioning level and need for services shall:

a. Identify the resident's level of functioning and need for services in each of the following areas: self-care, community living skills, psychotherapeutic treatment, vocational skills, academic skills. (II, III)

b. Be of sufficient detail to determine the appropriateness of placement according to the skills and needs of the resident. (II, III)

c. Be made without regard to the availability of services. (III)

d. Be performed by a QMHP, in consultation with the interdisciplinary team. (II, III)

e. If an evaluation is available from the referral source, the evaluation shall be secured by the facility prior to the admission of the applicant. (III)

f. If an evaluation is not available, or does not contain all the required information, the facility shall ensure an evaluation to the extent necessary to determine if the applicant meets the criteria for admission. For those admitted, the remainder of the evaluation shall be performed prior to the development of an individual program plan. (III)

g. Results of all evaluations shall be in writing and maintained in the resident's record. Evaluations subsequent to the initial evaluation shall be performed in sufficient detail to determine changes in the resident's physical health, skills and need for services. (II, III)

62.11(5) A narrative social history shall be completed for each resident within 30 days of admission and approved by the qualified mental health professional prior to the development of the IPP. (III)

a. When the social history was secured from another provider, the information contained shall be reviewed within 30 days of admission. The date of the review, signature of the staff reviewing the history and a summary of significant changes in the information shall be entered in the resident's record. (III)

b. An annual review of the information contained within the social history shall be incorporated into the individual program plan progress note. (III)

c. The social history shall minimally address the following areas:

1. Referral source and reason for admission, (II, III)
2. Legal status, (II, III)
3. A description of previous living arrangements, (III)
4. A description of previous services received and summary of current service involvements, (II, III)
5. A summary of significant medical conditions including, but not limited to, illnesses, hospitalizations, past and current drug therapies, and special diets, (II, III)
6. Substance abuse history, (II, III)
7. Work history, (III)
8. Educational history, (III)
9. Relationship with family, significant others, and other support systems, (III)
10. Cultural and ethnic background and religious affiliation, (II, III)
11. Hobbies and leisure time activities, (III)
12. Likes, dislikes, habits, and patterns of behavior, (II, III)
13. Impressions and recommendations.

This rule is intended to implement Iowa Code section 135C.14(7).

[**ARC 0663C**, IAB 4/3/13, effective 5/8/13]

481—62.12(135C) Programming.

62.12(1) Individual program plan. An individual program plan (IPP) for each resident shall be developed by an interdisciplinary team. Services to the resident shall be appropriate to address the short-term transitional or long-term residential needs of the resident. The resident or the resident's legal

guardian has the ultimate authority to accept or reject the plan unless otherwise determined by the court. The IPP shall be approved and implementation monitored by the QMHP. (II, III)

a. The IPP shall be based on the individual service plan of the referring agency, if available, the information contained in the social history, the need for services identified in the evaluation, and any other pertinent information. (III)

b. The facility shall assist the resident in obtaining access to academic, community living skills training, legal, self-care training, support, transportation, treatment, and vocational training services to the resident as needed. These services may be provided by the facility or obtained from other providers. (III)

c. Services to the resident shall be provided in the least restrictive environment and shall incorporate the principle of normalization. (III)

d. If needed services are not available and accessible, the facility shall document the actions which were taken to locate and access or deliver those services. The documentation shall include the identification of the type of needs which will not be met due to the lack of available services. (III)

e. The IPP shall be developed within 30 days following admission to the facility and renewed at least annually. (II, III)

f. The IPP shall be in writing, dated, signed by the interdisciplinary team members, and maintained in the resident's record. (III)

g. Written notice of the meeting to develop an IPP shall be sent to all persons to be included in the interdisciplinary team conference in advance of the scheduled meeting. (III)

62.12(2) The IPP shall include the following:

1. Goals, (III)
2. Objectives, (III)
3. The specific service(s), including medication counseling, to be provided to achieve the objectives, the person(s) or agency(ies) responsible for providing the service(s), and the date of initiation and anticipated duration of service(s). (III)

62.12(3) The IPP shall state the evaluation procedure for determining if objectives are achieved which shall include the incorporation of a continuous process for review and revision. (III)

62.12(4) There shall be a review of the IPP by relevant staff, the resident, and appropriate others at least semiannually. (II, III)

a. The review shall include the development of a written report which addresses the following: summary of the resident's progress toward objectives; the need for continued services and any recommendation concerning alternative services or living arrangements; and any recommended change in guardianship or conservatorship status. The report shall reflect those involved in the review and the date of the review, and shall be maintained in the resident's record. (II, III)

b. The review shall be approved by the qualified mental health professional. (III)

62.12(5) There shall be procedures for recording the activities of each service provider toward assisting the resident in achieving the objectives in the IPP and the resident's response which shall include a mechanism for coordination with all service providers. (III)

a. An entry into the resident's record shall be made by staff whenever possible at the time of service provision but no later than seven days from service provision. (III)

b. Entries shall be dated and signed by the person providing the service. (III)

c. When the service includes ongoing activities occurring more than once a week, a summarized entry may be made weekly by staff in the resident's record. (III)

d. Entries shall be written in terms of behavioral observations and specific activities. Entries that involve subjective interpretations of a resident's behavior or progress shall be clearly identified and shall be supplemented with the behavioral observations which served as the basis of the interpretation. (III)

This rule is intended to implement Iowa Code section 135C.14.

481—62.13(135C) Crisis intervention.

62.13(1) There shall be written policies and procedures concerning crisis intervention. (II) These policies and procedures shall be:

a. Directed to maximizing the growth and development of the individual by incorporating a hierarchy of available alternative methods that emphasize positive approaches; (II, III)

b. Available in each program area and living unit; (II, III)

c. Available to individuals and their families; and (II, III)

d. Developed with the participation, as appropriate, of individuals served. (II, III)

62.13(2) Corporal punishment and verbal abuse (shouting, screaming, swearing, name- calling, or any other activity that would be damaging to an individual's self-respect) are prohibited by written policy. (II)

62.13(3) Medication shall not be used as punishment, for the convenience of staff, or as a substitute for a program. Direct care staff shall monitor residents on medication and notify the physician if a resident is too sedated to participate in IPP. (I, II)

62.13(4) Residents shall not be subjected to mechanical restraint. (I, II)

62.13(5) There shall be written policies that define the uses of seclusion and physical restraints, designate the staff member(s) who may authorize its use, and establish a mechanism for monitoring and controlling its use. (I, II) Temporary physical restraint and temporary seclusion 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)

b. For crisis intervention but shall not be used for punishment, for the convenience of staff or as a substitution for supervision or program; (I, II) and

c. Seclusion may only be used in an RCF/PMI if a variance is granted. When a seclusion room is used, it shall meet the standards set out in 481—subrule 61.5(12). (I, II)

62.13(6) The physician and QMHP shall be notified immediately of the resident's need for placement in seclusion and a time-limited order for seclusion obtained from the physician. The order shall be for no more than one hour at a time. If the resident is placed in seclusion longer than one hour, the resident shall be visited and evaluated by the physician or qualified mental health professional before a continuation of the seclusion order can be obtained. If the evaluation is conducted by a QMHP, the physician shall be notified of the resident's condition and the physician shall see the resident within 24 hours of each incident of seclusion and sign the seclusion order. (I, II)

62.13(7) If orders for seclusion remain in force for more than a total of 3 hours in a 24-hour period, the facility shall make arrangements for immediate transfer of the resident to a higher level of care. (I, II)

62.13(8) Standing or PRN orders for seclusion are prohibited. (I, II)

62.13(9) Written documentation of the above information shall be kept as a part of each resident's record and the administrator shall be responsible for maintaining a daily record of seclusion usage which shall be kept available for review by the department. (II, III)

62.13(10) Written documentation shall be kept of each incident of seclusion to minimally include: (II)

a. Explanation of less restrictive measures implemented prior to use of seclusion, (I, II)

b. Record of visual observation of the resident every ten minutes or more frequently if needed, (I)

c. Description of the resident's activity at the time of observation to include verbal exchange and behavior, (I, II)

d. Description of safety procedures taken (removal of dangerous objects, etc.), (I)

e. Record of vital signs including blood pressure, pulse and respiration unless contraindicated by resident behavior and reasons documented, (I, II)

f. Record of intake of food and fluid, (II, III)

g. Record of rest room use, (II, III)

h. Record of numbers of hours and minutes in seclusion. (II)

62.13(11) The facility shall provide training by qualified professionals to the staff on physical restraint and seclusion theory and techniques. (I)

a. The facility shall keep a record of above training for review by the department and shall include attendance. (II, III)

b. Only staff who have documented training in physical restraint and seclusion theory and techniques shall be authorized to assist with seclusion or physical restraint of a resident. (I)

c. Under no circumstances shall a resident be allowed to actively or passively assist in the restraint of another resident. (I)

This rule is intended to implement Iowa Code section 135C.14.

481—62.14(135C) Discharge or transfer. Procedures for the discharge or transfer of the resident shall be established and followed: (II, III)

62.14(1) 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)

a. Discharge planning shall begin within 30 days of admission and be carried out in accordance with the IPP. (II, III)

b. As changes occur in a resident's physical or mental condition, necessitating services or care which cannot be adequately provided by the facility, the resident shall be transferred promptly to another appropriate facility pursuant to 62.10(1)*"a."* (I, II)

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

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 or legal representative. (III)

e. The licensee shall not refuse to discharge or transfer a resident when directed by the physician, resident, legal representative, or court. (II, III)

f. Advance notification by telephone shall be made to the receiving facility prior to the transfer of any resident. (III)

g. When a resident is transferred or discharged, the current evaluation and treatment plan and progress notes for the last 30 days, as set forth in these rules, shall accompany the resident. (II, III)

h. Prior to the transfer or discharge of a resident to another health care facility, arrangements to provide for continuity of care shall be made with the facility to which the resident is being sent. (II, III)

i. A discharge or transfer authorization and summary shall be prepared for each resident who has been discharged or transferred from the facility and shall be disseminated to appropriate persons to ensure continuity of care and in accordance with the requirements to ensure confidentiality. (II, III)

j. 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.

62.14(2) Intrafacility transfer. Residents shall not be moved from room to room within a health care facility arbitrarily. (I, II)

a. Involuntary relocation may occur only to implement goals and objectives in the IPP and in the following situations:

(1) Incompatibility with or behavior disturbing to roommates, as documented in the residents' records; (I, II)

(2) To allow a new admission to the facility which would otherwise not be possible due to separation of roommates by sex; (II, III)

(3) Reasonable and necessary administrative decisions regarding the use and functioning of the building. (II, III)

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

(1) Punishment or behavior modification. (II)

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

c. If intrafacility relocation is necessary for reasons outlined in paragraph *"a,"* the resident shall be notified at least 48 hours prior to the transfer and the reason shall be explained. The legal guardian shall be notified as soon as possible. The notification shall be documented in the resident's record and signed by the resident or legal guardian. (II)

d. If emergency relocation is required 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 and legal guardian shall be notified immediately, or as soon as possible, of the condition requiring emergency relocation and the notification shall be documented. (II)

62.14(3) Involuntary discharge or transfer. Residents shall be transferred or discharged from the facility in accordance with contract arrangements and requirements of Iowa Code chapter 135C which states that a resident shall be transferred or discharged only for the following:

a. Medical reasons which include:

(1) Acute stage of alcoholism, mental illness, or an active state of a communicable disease, (I, II) or

(2) Need for medical procedures as determined by a physician, or services which cannot be or are not being carried out in the facility. (I, II)

b. Resident's welfare or welfare of other residents which includes a resident who is dangerous to the resident or other residents (I), or

c. Nonpayment except as prohibited by Medicaid. (II)

62.14(4) Involuntary transfer or discharge of a resident from a facility shall be preceded by a written notice to the resident or responsible party at least 30 days in advance of the proposed transfer or discharge. (II) The 30-day requirement shall not apply in any of the following instances:

a. If an emergency transfer or discharge is mandated by the resident's health care needs and is in accord with the written orders and written medical justification of the attending physician. Emergency transfers or discharges may also be mandated to protect the health, safety, or well-being of other residents and staff. (I, II)

b. If the transfer or discharge is subsequently agreed to by the resident or by the resident's legal guardian, and notification is given to the legal guardian, physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility. (II)

(1) The notice required by 62.14(4) 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. The following statement must be included:

"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 state 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. Provision may be made for extension of the 14-day requirement upon request to the department designee in emergency circumstances. If you lose the hearing, you will not be transferred before the expiration date of 30 days following receipt of the original notice of the discharge or transfer, or no sooner than 5 days following final decision of such hearing. 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)

(2) A request for a hearing made under 62.14(4)*"b"*(1) shall stay a transfer or discharge pending a hearing or appeal decision. (II)

(3) The type of hearing shall be determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident and legal guardian not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident, and legal guardian that they have a right to appear at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. (II)

(4) The hearing shall be heard by a department of inspections and appeals hearing officer pursuant to department rules. The licensee or designee shall have the opportunity to present oral testimony or written materials to show by a preponderance of the evidence just cause why a transfer or discharge may be made. The resident and legal guardian shall also have an opportunity to present oral testimony or written material to show just cause why a transfer or discharge should not be made; the burden of proof rests on the party requesting the transfer or discharge. (II)

(5) Based upon all testimony and material submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by regular mail to the licensee, resident and responsible party within 10 working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

A request for review of a proposed decision in which the department is the final decision maker shall be made within 15 days of issuance of the proposed decision, unless otherwise provided by statute. Requests shall be mailed or delivered by either party to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. Failure to request review will preclude judicial review unless the department reviews a proposed decision upon its own motion within 15 days of the issuance of the decision. (II)

(6) A copy of the notice required by 62.14(4) 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. (II)

(7) 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)

(8) The involuntary transfer or discharge shall be discussed with the resident, legal guardian, and the person or agency responsible for the resident's placement, maintenance, and care in the facility within 48 hours after notice of discharge has been received. The explanation and discussion of the reasons for involuntary transfer or discharge shall be given by the facility administrator or other appropriate facility representative as the administrator's designee. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions and shall be made a part of the resident's record. (II)

(9) The resident shall receive counseling services before (by sending facility) and after (by receiving facility) the involuntary transfer to minimize the possible adverse effects of the involuntary transfer. Counseling shall be documented in the resident's record. Counseling shall be provided by a qualified individual who meets one of the following criteria: (II)

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)

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

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

(12) In the case of an emergency transfer or discharge as outlined in 62.14(4)*"a,"* the resident must still be given a written notice prior to or within 48 hours following transfer or discharge. A copy of this notice must be placed in the resident's file and it must contain all the information required by 62.14(4)*"b"*(1)"1" and "2." In addition, the notice must contain a statement in not less than 12-point type, which 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 seven 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 you may 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."

A hearing requested pursuant to this subrule shall be held in accordance with 62.14(4)*"b"*(3), (4) and (5). (II)

(13) 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. In the case of a facility voluntarily closing, a period of 30 days must be allowed for an orderly transfer of residents to other facilities. (II)

This rule is intended to implement Iowa Code sections 135C.14(8), 135C.31, 135C.43, and 135C.46.
[**ARC 1205C**, IAB 12/11/13, effective 1/15/14]

481—62.15(135C) Medication management.

62.15(1) Medications shall be prescribed on an individual basis by one who is authorized by Iowa law to prescribe. (I, II)

a. Medication orders shall be correctly implemented by qualified personnel. (II)

b. Qualified staff shall ensure that residents are able to take their own medication. (I, II)

c. Each physician order allowing a resident to take their own medications shall specify whether this self-medication shall be without supervision or under the supervision of qualified staff as defined in 62.15(2). (I, II)

62.15(2) Drug administration.

a. A properly trained person shall be charged with the responsibility of administering nonparenteral medications.

b. The individual shall have knowledge of the purpose of the drugs, their dangers, and contraindications.

c. This person shall be a licensed nurse or physician 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.

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

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

(2) Be employed in the same facility for at least six consecutive months prior to the start of the medication aide course. This requirement is not subject to waiver.

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

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. This individual 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;

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

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

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 *"d"* of this subrule do not apply to this individual.

g. Unit dose medication shall remain in the identifiable unit dose package until given to the resident. (II)

h. Medications that are not contained in unit dose packaging shall be set up and administered by the same person and must be administered within one hour of preparation. (II)

i. The person administering medications must observe and check to make sure the resident swallows oral medications and must record the date, time, amount and name of each medication given. (II)

j. Injectable medications shall be administered as permitted by Iowa law by a qualified nurse, physician, pharmacist, or physician assistant (PA).

k. Residents certified by their physician as capable of injecting their own insulin may do so. Insulin may be administered pursuant to *"j"* above or as otherwise authorized by the resident's physician. Authorization by the physician shall:

(1) Be in writing,

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

(3) Be renewed quarterly,

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

(5) Include documentation by the physician that the authorized person is qualified to administer insulin to that resident.

l. Current and accurate records must be kept on the receipt and disposition of all Schedule II drugs. (II, III)

62.15(3) For each resident who is taking medication with or without supervision there shall be documentation on the individual's record to include:

a. Name of resident, (II, III)

b. Name of drug, dose, and schedule, (II, III)

c. Method of administration, (II, III)

d. Drug allergies and adverse reactions, (I, II)

e. Special precautions, (I, II)

f. Documentation of resident's continuing ability to administer own medication. (I, II)

62.15(4) Medication counseling shall be provided for all residents in accordance with the IPP on an ongoing basis and as part of discharge planning unless contraindicated in writing by the physician with reasons and pursuant to 62.12(2)*"c."* (II, III)

Each resident shall be given verbal and written information about all medications the resident is currently using, including over-the-counter medications. A suggested reference is "USPDI, Advice for the Patient." (II, III)

The information shall include:

a. Name, reason for, and amount of medication to be taken; (II)

b. Time medication is to be taken and the reason that schedule was established; (II)

c. Possible benefits, risks and side effects of each medication including over-the-counter medications; (II)

d. The names of people in the community qualified to answer questions about medications. (II, III)

e. A list of available resources or agencies which may assist the resident to obtain medication after discharge. (III)

62.15(5) Drug storage.

a. Residents who have been certified in writing by the physician as capable of taking their own medications may retain these medications in their bedrooms. Individual locked storage shall be utilized. (II, III)

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

(1) Adequate size cabinet with lock which can be used for storage of drugs, solutions, and prescriptions. A locked drug cart may be used. (II, III)

(2) A bathroom shall not be used for drug storage. (II, III)

(3) The drug storage cabinet shall be kept locked when not in use. (II, III)

(4) The drug storage cabinet key shall be in the possession of the employee charged with the responsibility of administering medication. (III)

(5) Medications requiring refrigeration which are stored in a common refrigerator shall be kept in a locked box properly labeled, and separated from food and other items. (III)

(6) Drugs for external use shall be stored separately from drugs for internal use. External medications are those to be applied to the outside of the body and include but are not limited to salves, ointments, gels, pastes, soaps, baths, and lotions. Internal medications are those to be applied inside the body or ingested and include but are not limited to oral and injectable medications, eye drops, ear drops and suppositories. Also, eye drops and ear drops shall be separated from each other as well as from other internal and external medications. (II, III)

(7) All potent, poisonous, or caustic materials shall be stored in a separate room from the medications. (II, III)

(8) Inspection of the condition of stored drugs shall be made by the administrator and a licensed pharmacist not less than once every three months. The inspection shall be verified by a report signed by the administrator and the pharmacist and filed with the administrator. The report shall include, but need not be limited to, certifying absence of the following: expired drugs, deteriorated drugs, improper labeling, drugs for which there is no current order, and drugs improperly stored. (III)

(9) Double-locked storage of Schedule II drugs shall not be required under single unit package drug distribution systems in which the quantity stored does not exceed a seven-day supply and a missing dose can be readily detected but must be kept in a locked medication cabinet. Quantities in excess of a seven-day supply must be double-locked. (II)

c. Bulk supplies of prescription drugs shall not be kept. (III)

62.15(6) Drug safeguards.

a. All labels on medications must be legible. If labels are not legible, the medication shall be sent back to the dispenser as defined in Iowa Code section 147.107 for relabeling. (II, III)

b. The medication for each resident shall be kept or stored in the original dispensed containers. (II, III)

c. The facility shall adopt policies and procedures for the destruction of unused prescription drugs for residents who have died. The policies and procedures shall include, but not be limited to, the following: (III)

(1) Drugs shall be destroyed by the person in charge in the presence of the administrator or the administrator's designee;

(2) Notation of the destruction shall be made in the resident's chart, with signatures of the persons involved in the destruction;

(3) The manner in which the drugs are disposed of shall be identified (i.e., incinerator, sewer, landfill). (II, III)

d. The facility shall also adopt policies and procedures for the disposal of controlled substances dispensed to residents whose administration has been discontinued by the prescriber. These policies and procedures shall include, but not be limited to, the following:

(1) Procedures for obtaining a release from the resident;

(2) The manner in which the drugs were destroyed and by whom, including witnesses to the destruction;

(3) Mechanisms for recording the destruction;

(4) Procedures to be used when the resident or the conservator or guardian refuses to grant permission for destruction. (II, III)

e. The facility shall adopt policies and procedures for the disposal of unused discontinued medication. The procedures shall include but not be limited to:

(1) A specified time after which medication must be destroyed, sent back to the dispenser or placed in long-term storage;

(2) Procedures for obtaining permission of the resident, or the conservator or guardian;

(3) Procedures to be used when the resident or conservator or guardian refuses to grant permission for disposal;

(4) Unused discontinued medication shall be locked and shall be separate from current medication. (II, III)

f. 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 facility, in consultation with a physician or pharmacist serving the home, shall institute policies and provide procedures. These shall be provided to all prescribers and pharmacists serving the facility and conveniently located for personnel administering medications. (III)

g. Residents shall not keep any prescription medication in their possession unless the attending physician has certified in writing on the resident's medical record that the resident is mentally and physically capable of doing so. Over-the-counter medications may be maintained provided they are in a locked container and pursuant to subrule 62.16(5). (I, II)

h. No prescription drugs shall be administered to a resident without a written order signed by a person qualified to prescribe the medication and renewed quarterly. (II)

i. Prescription drugs shall be reordered only with the permission of the attending prescriber. (II, III)

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

k. Residents on prescribed medication may maintain over-the-counter medication pursuant to 62.15(6)*"g"* unless contraindicated by the physician. The facility shall request this information from the physician and document in the resident's record. (II)

62.15(7) Each facility shall have policies and procedures established to govern the administration of prescribed medications to residents on leave from the facility. (III)

a. Medication may be issued to residents who will be on leave from a facility for less than 24 hours. Non-child-resistant containers may be used. Each container may hold only one medication. A label on each container shall indicate the date, the resident's name, the facility, the medication, its strength, dose, and time of administration.

b. Medication for residents on leave from a facility longer than 24 hours shall be obtained in accordance with requirements established by the Iowa board of pharmacy examiners.

c. Medication distributed as above may be issued only by facility personnel responsible for administering medication.

62.15(8) Each RCF/PMI that administers controlled substances shall obtain annually a registration issued by the board of pharmacy pursuant to Iowa Code section 124.302(1). (III)

This rule is intended to implement Iowa Code section 135C.14.

[**ARC 1050C**, IAB 10/2/13, effective 11/6/13]

481—62.16(135C) Resident property.

62.16(1) The admission of a resident does not give the facility or any employee of the facility the right to manage, use, or dispose of any property of the resident except with the written authorization of the resident or the resident's legal guardian. (II, III)

62.16(2) The admission of a resident shall not grant the RCF/PMI the authority or responsibility to manage the personal affairs of the resident except as may be necessary for the resident's safety and for safe and orderly management of the residential care facility as required by these rules and in accordance with the IPP. (III)

62.16(3) An RCF/PMI 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 which would convey unreasonable responsibilities to the licensee be removed from the premises of the facility for safekeeping. (III)

62.16(4) Resident's funds held by the RCF/PMI shall be in a trust account and kept separate from funds of the facility. (III)

62.16(5) No administrator, employee or representative thereof shall act as guardian, trustee, or conservator for any resident or the resident's property, unless the resident is related to the person acting as guardian within the third degree of consanguinity. (III)

62.16(6) If a facility is a county care facility and upon the verified petition of the county board of supervisors, the district court may appoint the administrator of a county care facility as conservator or guardian or both of a resident of that county care facility without fee. The administrator may establish either separate or common bank accounts for cash funds of these residents. (III)

This rule is intended to implement Iowa Code section 135C.24.

481—62.17(135C) Financial affairs. Each resident who has not been assigned a guardian or conservator by the court may manage the resident's personal financial affairs, and to the extent, under written authorization by the resident that the facility assists in management, the management shall be carried out in accordance with Iowa Code section 135C.24. (II)

62.17(1) The facility shall maintain a written account of all the resident's funds received by or deposited with the facility. (II)

a. An employee shall be designated in writing to be responsible for resident accounts. (II)

b. The facility shall keep on deposit personal funds over which the resident has control.

c. If the resident requests these funds, they shall be given to the resident with a receipt maintained by the facility and a copy to the resident. If a conservator or guardian has been appointed for the resident, the conservator or guardian shall designate the method of disbursing the resident's funds. (II)

d. If the facility makes a financial transaction on a resident's behalf, the resident or the resident's legal guardian or conservator must receive or acknowledge having seen 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)

e. A resident's personal funds shall not be used without the written consent of the resident or the resident's guardian. (II)

f. 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 guardian. The department may report findings that resident funds have been used without written consent to the audits division or the local law enforcement agency, as appropriate. (II)

62.17(2) Contracts. There shall be a written contract between the facility and each resident which meets the following requirements:

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)

c. Stipulate that no further additional fees shall be charged for items not contained in complete schedule of services as set forth in subrule 62.17(2); (III)

d. State the method of payment of additional charges; (III)

e. Contain an explanation of the method of assessment of additional charges and an explanation of the method of periodic reassessment, if any, resulting in charging the additional charges; (III)

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

g. Contain an itemized list of those services, with the specific fee the resident will be charged and method of payment, as related to the resident's current condition, based on the program assessment at the time of admission, which is determined in consultation with the administrator. (III)

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

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

(1) Written notification to the resident and 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 changes; (III)

(2) Notification to the resident and payor when appropriate, of changes in additional charges based on a change in the resident's condition. Notification must occur prior to the date the 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; (III)

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

j. State the terms of agreement concerning the holding 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 legal representative.

(1) The facility shall ask the resident or legal representative if they want the bed 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)

(2) The facility shall reserve the bed when requested for as long as payments are made in accordance with the contract. (II)

k. State the conditions under which the involuntary discharge or transfer of a resident would be effected; (III)

l. State the conditions of voluntary discharge or transfer; (III)

m. Set forth any other matters deemed appropriate by the parties to the contract. No contract or any provision 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; (III)

62.17(3) Each party shall receive a copy of the signed contract. (III)

This rule is intended to implement Iowa Code sections 135C.24 and 135C.23(1).

481—62.18(135C) Records.

62.18(1) *Resident record.* The licensee shall keep a permanent record about each resident with all entries current, dated, and signed. (II) 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; (III)

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

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

f. Name, address and telephone number of next of kin or legal representative; (III)

g. Name, address and telephone number of the person to be notified in case of emergency; (III)

h. Funeral director, telephone number, and address; (III)

i. Pharmacy name, telephone number, and address; (III)

j. Results of evaluation pursuant to 62.11(135C); (III)

k. Certification by the physician that the resident requires no more than personal care and supervision, but does not require nursing care; (III)

l. Physician's orders for medication and treatments shall be in writing and signed by the physician quarterly; diet orders shall be renewed yearly; (III)

m. A notation of yearly or other visits to physician or other professionals, all consultation reports and progress notes; (III)

n. Any change in the resident's condition; (II, III)

o. A notation describing the resident's condition on admission, transfer, and discharge; (III)

p. In the event of a resident's death, notations in the resident's record shall include 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 that the resident's family and physician were notified of the resident's death; (III)

q. A copy of instructions given to the resident, legal representative, or facility in the event of discharge or transfer; (III)

r. Disposition of personal property; (III)

s. Copy of IPP pursuant to 62.12(1); (III)

t. Progress notes pursuant to 62.12(4) and 62.12(5). (III)

62.18(2) *Confidentiality of resident records.* The facility shall have policies and procedures providing that each resident shall be ensured confidential treatment of all information, including information contained in an automatic data bank. The resident's or the resident's legal guardian's written informed consent shall be required for the release of information to persons not otherwise authorized under law to receive it. (II)

A release of information form shall be used which includes to whom the information shall be released, the reason for the information being released, how the information is to be used, and the period of time for which the release is in effect. A third party, not requesting the release, shall witness the release of information form. (II)

a. The facility shall limit access to any resident records to staff and consultants providing professional service to the resident. Information shall be made available to staff only to the extent that the information is relevant to the staff person's responsibilities and duties. (II)

Only those personnel concerned with financial affairs of the residents may have access to the financial information. This is not meant to preclude access by representatives of state or federal regulatory agencies. (II)

b. The resident, or the resident's legal guardian, shall be entitled to examine all information and shall have the right to secure full copies of the record at reasonable cost upon request, unless the physician or QMHP determines the disclosure of the record or section is contraindicated in which case this information will be deleted prior to making the record available to the resident. This determination and the reasons for it must be documented in the resident's record by the physician or qualified mental health professional in collaboration with the resident's interdisciplinary team. (II)

62.18(3) *Incident records.*

a. Each RCF/PMI shall maintain an incident record report and shall have available incident report forms. (II, III)

b. The report of every incident shall be in detail on a printed incident report form. (II, III)

c. The person in charge at the time of the incident shall oversee the preparation and sign the report. (III)

d. A copy of the incident report shall be kept on file in the facility available for review and a part of administrative records. (III)

62.18(4) *Retention of records.*

a. Records shall be retained in the facility for five years following termination of services to the resident even when there is a change of ownership. (III)

b. When the facility ceases to operate, the resident's record shall be released to the facility to which the resident is transferred. If no transfer occurs, the record shall be released to the individual's physician. (III)

This rule is intended to implement Iowa Code section 135C.24.

481—62.19(135C) Health and safety.

62.19(1) *Physician.* Each resident shall have a designated licensed physician who may be called when needed. (III)

62.19(2) *Emergency care.* The facility shall have written policies and procedures for emergency medical or psychiatric care to include:

a. A written agreement with a hospital or psychiatric facility or documentation of attempt to obtain a written agreement for the timely admission of a resident who, in the opinion of the attending physician, requires inpatient services; (II, III)

b. Provisions consistent with Iowa Code chapter 229; (II, III)

c. Immediate notification by the person in charge to the physician or QMHP, as appropriate, of any accident, injury or adverse change in the resident's condition. (I, II)

62.19(3) *First-aid kit.* A first-aid emergency kit shall be available on each floor in every facility. (II, III)

62.19(4) *Infection control.* Each facility shall have a written and implemented infection control program addressing the following:

a. Techniques for hand washing consistent with Guidelines for Handwashing and Hospital Control, 1985, Centers for Disease Control, U.S. Department of Health and Human Services, PB85-923404; (I, II, III)

b. Techniques for handling of blood, body fluids, and body wastes consistent with Guideline for Isolation Precautions in Hospitals, Centers for Disease Control, U.S. Department of Health and Human Services, PB96-138102; (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 consistent with Guideline for Isolation Precautions in Hospitals, Centers for Disease Control, U.S. Department of Health and Human Services, PB96-138102; (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)

h. Techniques for use and disposal of needles, syringes, and other sharp instruments consistent with Guideline for Isolation Precautions in Hospitals, Centers for Disease Control, U.S. Department of Health and Human Services, PB96-138102; (I, II, III)

CDC Guidelines may be obtained from the U.S. Department of Commerce, Technology Administration, National Technical Information Service, 5285 Port Royal Rd., Springfield, Virginia 22161 (1-800-553-6847).

62.19(5) *Aseptic techniques.* If a resident needs any of the treatment or devices on the list below, written and implemented procedures regarding aseptic techniques shall be followed.

a. Intravenous or central line catheter consistent with Guideline for Prevention of Intravascular Device Related Infections, Centers for Disease Control, U.S. Department of Health and Human Services, PB97-130074, (I, II, III)

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)

62.19(6) *Dental services.* Personnel shall assist residents to obtain regular and emergency dental services and provide necessary transportation. Dental services shall be performed only on the request of the resident or legal guardian. The resident's physician shall be advised of the resident's dental problems. (III)

62.19(7) *Safe environment.* The licensee of an RCF/PMI is responsible for the provision and maintenance of a safe environment for residents and personnel. (I, II) The RCF/PMI shall meet the fire and safety rules and regulations as promulgated by the state fire marshal. (I, II)

62.19(8) *Disaster.* The licensee shall have a written emergency plan to be followed in the event of fire, tornado, explosion, or other emergency. (II, III)

a. The plan shall be posted. (II, III)

b. Training shall be provided to ensure that all employees and residents are knowledgeable of the emergency plan. The training shall be documented. (II, III)

c. Residents shall be permitted to smoke only in posted areas where proper facilities are provided. Smoking by residents considered to be careless shall be prohibited except under direct supervision and in accordance with the IPP. (II, III)

62.19(9) *Safety precautions.* The facility shall take reasonable measures to ensure the safety of residents and shall involve the residents in learning the safe handling of household supplies and equipment in accordance with the policies and procedures established by the facility. (II)

a. All potent, poisonous, or caustic materials shall be plainly labeled and stored in a specific locked, well-illuminated cabinet, closet, or storeroom and made accessible only to authorized persons. (I, II)

b. Residents shall have access to storage areas for cleaning and laundry supplies as appropriate to the activities being performed unless contraindicated in their IPP. (I, II)

62.19(10) *Hazards.* Entrances, exits, steps, and outside steps and walkways shall be kept free from ice, snow, and other hazards. (II, III)

62.19(11) *Laundry.* All soiled linens shall be collected in and transported to the laundry room in closed, leakproof laundry bags or covered, impermeable containers. (III)

a. Except for related activities, the laundry room shall not be used for other purposes. (III)

b. Resident's personal laundry shall be marked with an identification unless the resident is responsible for doing the resident's own laundry as indicated in the individual program plan. (III)

c. There shall be an adequate supply of clean, stain-free linens so that each resident shall have at least three washcloths, hand towels, and bath towels. (III)

d. Each bed shall be provided with clean, stain-free, washable bedspreads and sufficient lightweight serviceable blankets. A complete change of bed linens shall be available for each bed. (III)

62.19(12) *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. These may include: books (standard and large print), magazines, newspapers, radio, television, bulletin boards, board game, game equipment, songbooks, cards, craft supplies, record player, movie projector, piano, and outdoor equipment. Supplies and equipment shall be appropriate to the chronological age of the residents. (III)

b. Storage shall be provided for recreational equipment and supplies. (III)

This rule is intended to implement Iowa Code section 135C.14(1).

481—62.20(135C) Nutrition.

62.20(1) There shall be policies and procedures written and implemented for dietary staffing.

a. The person responsible for planning menus and monitoring the kitchens in each facility shall have completed training, approved by the department, in sanitation and food preparation. (III)

b. In facilities licensed for over 15 beds, food service personnel shall be on duty during a 12-hour span extending from the preparation of breakfast through supper. (III)

c. There shall be written work schedules and time schedules covering each type of job in the food service department for facilities over 15 beds. These work and time schedules shall be posted or kept in a notebook which is available for use in the food service area. (III)

62.20(2) Nutrition and menu planning.

a. Residents shall be encouraged to the maximum extent possible to participate in meal planning, shopping, and in preparing and serving the meal and cleaning up. The facility shall be responsible for helping residents become knowledgeable of what constitutes a nutritionally adequate diet. (III)

b. Menus shall be planned and served to meet nutritional needs of residents in accordance with the physician's diet orders which shall be renewed yearly. Menus shall be planned and served to include foods and amounts necessary to meet the recommended daily dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences. (II) Other foods shall be included to meet energy requirements (calories) to add to the total nutrients and variety of meals. (III)

c. At least three meals or their equivalent shall be made available to each resident daily, consistent with those times normally existing in the community. (II, III)

(1) There shall be no more than a 14-hour span between the substantial evening meal and breakfast. (III)

(2) To the extent medically possible, bedtime nourishments, containing a protein source, shall be offered routinely to all residents. Special nourishments shall be available when ordered by the physician. (II, III)

d. Menus shall include a variety of foods prepared in various ways. The same menus shall not be repeated on the same day of the following week. (III)

e. If modified diets are ordered by the physician, the person responsible for writing the menus shall have completed department-approved training in simple therapeutic diets and a copy of a modified diet manual approved by the department and written within the past five years shall be available in the facility. (II, III)

f. Therapeutic diets shall be served accurately. (II)

g. Menus shall be written at least one week in advance. The current menu shall be located in an accessible place in the dietetic service department for easy use by persons purchasing, preparing, and serving food. (III)

h. 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, they shall be of similar nutritive value and recorded on the menu or in a notebook. (III)

i. A file of tested recipes adjusted to the number of people to be fed in the facility shall be maintained. (III)

62.20(3) Dietary storage, food preparation, service.

a. The use of foods from salvaged, damaged, or unlabeled containers is prohibited. (II, III)

b. No perishable food shall be allowed to stand at room temperature any longer than is required to prepare and serve. (II, III)

c. Canning of food is prohibited. The facility may freeze fruits, vegetables, and meats provided strict sanitary procedures are followed and in accordance with recommendations in the "Food Service Manual" revised 1976, U.S. Department of Health, Education, and Welfare, Public Health Service, U.S. Government Printing Office, Washington, D.C. (II)

d. Supplies of staple foods for a minimum of a one-week period and of perishable foods for a minimum of a three-day period shall be maintained on the premises. (III)

e. If family-style service is used, all leftover prepared food that has been on the table shall be safely handled. (III)

f. Poisonous compounds shall not be kept in food storage or preparation areas except for a sanitizing agent which shall be kept in a locked cabinet. (II, III)

62.20(4) Sanitation in food preparation area.

a. The facility shall develop and implement policies and procedures to address sanitation, meal preparation and service in accordance with recommendations in the food service sanitation manual pursuant to 62.20(2)*"c,"* and which shall be used as the established, nationally recognized reference for establishing and determining satisfactory compliance with the department's food service and sanitation rules. (III)

b. Residents shall be allowed in the food preparation area in accordance with their IPP. (III)

c. In facilities licensed for over 15 beds, the kitchen shall not be used for serving meals to residents, food service personnel, or other staff. (III)

d. All appliances and work areas shall be kept clean and sanitized. (III)

e. There shall be written procedures established for cleaning all work and serving areas in facilities over 15 beds and a schedule of duties to be performed daily shall be posted in each food area. (III)

f. The food service area shall be located so it will not be used as a passageway by residents, guests, or nonfood service staff in facilities over 15 beds. (III)

g. Dirty linen shall not be carried through the food service area unless it is in sealed, leakproof containers. (III)

h. Mops, scrub pails, and other cleaning equipment used in the resident areas shall not be stored or used in the dietary area. (III)

62.20(5) Hygiene of food service personnel.

a. In the event food service employees are assigned duties outside the dietetic service, these duties shall not interfere with sanitation, safety, or time required for dietetic work assignments. (II, III)

b. Employees shall wear clean, washable uniforms that are not used for duties outside the food service area in facilities over 15 beds. (III)

c. Hairnets shall be worn by all food service personnel in facilities over 15 beds and effective hair restraints in facilities less than 15 beds. (III)

d. Persons handling food shall use correct hand-washing and food-handling techniques as identified in the food service sanitation manual. (III)

e. Persons handling dirty dishes shall not handle clean dishes without washing their hands. (III)

This rule is intended to implement Iowa Code section 135C.14.

481—62.21(135C) Physical facilities and maintenance.

62.21(1) *Housekeeping.* The facility shall have written procedures for daily and weekly cleaning (III) to include but need not be limited to:

a. All rooms including furnishings, all corridors, storage areas, linen closets, attics, and basements shall be kept in a clean, orderly condition, free of unserviceable furniture and equipment or accumulations of refuse. (III)

b. All resident bedrooms, including furnishings, shall be cleaned and sanitized before use by another resident. (III)

c. Polishes used on floors shall provide a slip-resistant finish. (III)

62.21(2) *Equipment.* 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)

a. All facilities shall be provided with clean and sanitary storage for cleaning equipment, supplies, and utensils. In facilities over 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. A hallway or corridor shall not be used for storage of equipment. (III)

b. Sufficient numbers of noncombustible trash containers, which have covers, shall be available. (III)

c. All containers for trash shall be watertight, rodent-proof, and have tight-fitting covers and shall be thoroughly cleaned each time a container is emptied. (III)

d. All wastes shall be properly disposed of in compliance with the local ordinances and state codes. (III)

62.21(3) *Bedrooms.*

a. Each resident shall be provided with a bed, substantially constructed and in good repair. Roll-away 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 5 inches thick and standard in size for the bed; and clean, comfortable pillows of average bed size. (III)

c. There shall be a comfortable chair, either a rocking chair or arm chair, per resident bed. The resident's personal wishes shall be considered and documented. (III)

d. There shall be drawer space for each resident's clothing. In a multiple bedroom, drawer space shall be assigned each resident. (III)

e. There shall be a bedside table with a drawer and a reading lamp for each resident.

f. All furnishings and equipment shall be durable, cleanable, and appropriate to their function. (III)

g. All resident areas shall be decorated, painted, and furnished to provide a homelike atmosphere and in a manner which is age and culture appropriate. (III)

h. Upholstery materials shall be moisture- and soil-resistant, except on furniture which is provided by the resident and is the property of the resident. (III)

i. Beds and other furnishings shall not obstruct free passage to and through doorways. (III)

j. Beds shall not be placed with the side of the bed against a radiator or in close proximity to it unless the radiator is covered to protect the resident from contact with it or from excessive heat. (III)

62.21(4) *Bath and toilet facilities.* All lavatories shall have nonreusable towels and an available supply of soap. (III)

62.21(5) *Dining and living rooms.*

a. Every facility shall have a dining room and a living room easily accessible to all residents. (III)

b. Dining rooms and living rooms shall at no time be used as bedrooms. (III)

c. Dining rooms and living rooms shall be available for use by residents at appropriate times to allow social, diversional, individual, and group activities. (III)

d. A combination dining room and living room may be permitted if the space requirements of a multipurpose room as provided in 481—subrule 60.6(2) are met. (III)

e. Living rooms shall be suitably furnished and maintained for the use of residents and their visitors and may be used for recreational activities. (III)

f. Dining rooms shall be furnished with dining tables and chairs appropriate to the size and function of the facility. These rooms and furnishings shall be kept clean and sanitary. (III)

62.21(6) *Family and employee accommodations.*

a. The residents' bedrooms shall not be occupied by employees, family members of employees, or family members of the licensee. (III)

b. In facilities where the total occupancy of family, employees, and residents is five or less, one toilet and one tub or shower is the minimum requirement. (III)

c. In all health care facilities, if the family or employees live within the facility, living quarters shall be required for the family or employees separate from areas provided for residents. (III)

62.21(7) *Animals.* Animals shall be allowed within the facility with written approval of the department and under controlled conditions. (III)

62.21(8) *Maintenance.* Each facility shall establish a maintenance program to ensure continued maintenance of the facility, to promote good housekeeping procedures, and to ensure sanitary practices throughout the facility. In facilities over 15 beds, this program shall be in writing and be available for review by the department. (III)

a. The buildings, furnishing, and grounds shall be maintained in a clean, orderly condition and be in good repair. (III)

b. The buildings and grounds shall be kept free of flies, other insects, rodents, and their breeding areas. (III)

62.21(9) *Buildings, furnishings, and equipment.*

a. Battery-operated, portable emergency lights in good working condition shall be available at all times, at a ratio of one light per employee on duty from 6 p.m. to 6 a.m. (III)

b. All windows shall be supplied with curtains and shades or drapes which are kept in good repair. (III)

c. Wherever glass sliding doors or transparent panels are used, they shall be marked conspicuously and decoratively. (III)

62.21(10) *Water supply.* Every facility shall have an adequate water supply from an approved source. A municipal source of water shall be considered as meeting this requirement. (III) Private sources of water to a facility shall be tested annually and the report submitted with the annual application for license. (III)

a. A bacterially unsafe source of water shall be grounds for denial, suspension, or revocation of license. (III)

b. The department may require testing of private sources of water to a facility at its discretion in addition to the annual test. The facility shall supply reports of tests as directed by the department. (III)

This rule is intended to implement Iowa Code section 135C.14.

481—62.22(135C) Care review committee. Rescinded **ARC 1205C**, IAB 12/11/13, effective 1/15/14.

481—62.23(135C) Residents' rights in general.

62.23(1) Each facility shall ensure that policies and procedures are written and implemented which include, at a minimum, all of the following provisions subrules (62.23(2) to 62.23(22)) and which govern all areas of service provided to staff, residents, their families or legal representatives and shall be available to the public and shall be reviewed annually. (II)

62.23(2) Grievances. Written policies and procedures shall include a method for submitting grievances and recommendations by residents or their responsible party and for ensuring a response and disposition by the facility. The written procedure shall ensure protection of the resident from any form of reprisal or intimidation and shall include:

a. An employee or an alternate designated to be responsible for handling grievances and recommendations; (II) and

b. Methods to investigate and assess the validity of a grievance or recommendation, resolve grievances, and take action. (II)

62.23(3) Informed of rights. 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 admission, or in the case of residents already in the facility, upon the facility's adoption or amendment of residents' rights policies and be posted in locations accessible to all residents. (II)

a. The facility shall make known to residents what they may expect from the facility and its staff, and what is expected from residents. The facility shall communicate these expectations during the period of not more than two weeks before or five days after admission. 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 admission. (II)

b. Resident's rights and responsibilities shall be presented in language understandable to the resident. If the facility serves residents who are not English-speaking or are 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)

c. A statement shall be signed by the resident and legal guardian, if applicable, indicating an understanding of these rights and responsibilities, and the statement shall be maintained in the 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 legal guardian. (II)

d. All residents, next of kin, or legal guardian shall be advised within 30 days following changes made in the statement of residents' rights and responsibilities. Appropriate means shall be used to inform non-English-speaking, deaf or blind residents of changes. (II)

62.23(4) Informed of health condition. Each resident or legal guardian shall be fully informed by a physician of the resident's health and medical condition unless medically contraindicated as documented by a physician in the resident's record. (II)

62.23(5) Research. The resident or legal guardian shall make the decision as whether to participate in experimental research and then only upon written informed consent. (II, III)

Any clinical investigation involving residents must be under the sponsorship of an institution with a human subjects review board functioning in accordance with the requirement of Public Law 93-348, as implemented by Part 46 of Title 45 of the Code of Federal Regulations, as amended to December 1, 1981 (45 CFR 46). (III)

62.23(6) Resident work. Services performed by the resident for the facility shall be in accordance with the IPP. (II)

a. Residents shall not be used to provide a source of labor for the facility against the resident's will. Physician's approval is required for all work programs and must be renewed yearly. (II, III)

b. If the individual program plan requires activities for therapeutic or training reasons, the plan for these activities must be professionally developed and implemented. Therapeutic or training goals must be clearly stated and measurable and the plan shall be time-limited and reviewed at least quarterly. (II)

c. A resident engaged in work programs in the RCF/PMI shall be paid wages commensurate with wage and hour regulations for comparable work and productivity. (II)

d. The resident shall have the right to employment options commensurate with training and skills. (II)

62.23(7) Residents performing work shall not be used to replace paid employees in fulfilling staffing requirements. (II)

62.23(8) Encouragement to exercise rights. Each resident shall be encouraged and assisted throughout the resident's period of stay, to exercise resident and citizen rights 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)

62.23(9) Posting of names. The facility shall post in a prominent area the name, telephone number, and address of the survey agency, the local law enforcement agency and the protection and advocacy agency designated pursuant to Iowa Code section 135C.2(4) and the text of Iowa Code section 135C.46 to provide to residents another course of redress. (II)

62.23(10) Dignity preserved. Each resident shall be treated with consideration, respect, and full recognition of the resident's dignity and individuality, including privacy in treatment and in care of personal needs. (II)

a. Staff shall display respect for residents when speaking with, caring for, or talking about them, as constant affirmation of the individuality and dignity of human beings. (II)

b. 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, eating, and times to retire at night and arise in the morning shall be elicited and considered by the facility. The facility shall make every effort to match nonsmokers with other nonsmokers. (II)

c. Residents shall be examined and treated in a manner that maintains the privacy of their bodies. A closed door 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)

d. Privacy for each person shall be maintained when residents are being taken to the toilet or being bathed and while they are being helped with other types of personal hygiene, except as needed for resident safety or assistance. (II)

e. Staff shall knock and be acknowledged before entering a resident's room unless the resident is not capable of a response. This does not apply under emergency conditions. (II)

62.23(11) 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. Each resident may send and receive personal mail unopened unless prohibited in the IPP which has explicit approval of the resident or legal guardian. (II)

62.23(12) Visiting hours. 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)

a. 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:

(1) The resident refuses to see the visitor(s). (II)

(2) The visit would not be in accordance with the IPP. (II)

(3) The visitor's behavior is unreasonably disruptive to the functioning of the facility.

Reasons for denial of visitation shall be documented in the resident's records. (II)

b. Decisions to restrict a visitor are reevaluated at least quarterly by the QMHP or at the resident's request. (II)

62.23(13) Privacy. Space shall be provided for residents to receive visitors in comfort and privacy. (II)

62.23(14) Telephone calls. Telephones consistent with ANSI standards 42 CFR 405.1134(c) (10-1-86) 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)

62.23(15) Arrangements shall be made to provide assistance to residents who require help in reading or sending mail. (II)

62.23(16) Residents shall be permitted to leave the facility and environs at reasonable times unless there are justifiable reasons established in writing by the attending physician, QMHP, or facility administrator for refusing permission. (II)

62.23(17) 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)

62.23(18) Resident activities. Each resident may participate in activities of social, religious, and community groups as desired unless contraindicated for reasons documented by the attending physician or qualified mental health professional, as appropriate, in the resident's record. (II)

Residents who wish to meet with or participate in activities of social, religious or community groups in or outside the facility shall be informed, encouraged, and assisted to do so. (II)

62.23(19) Resident property. Each resident may retain and use personal clothing and possessions as space permits and provided use is not otherwise prohibited in these rules. (II)

a. Residents shall be permitted to keep reasonable amounts of personal clothing and possessions for their use while in the facility. The personal property shall be kept in a secure location which is convenient to the resident. (II)

b. Residents shall be advised, prior to or at the time of admission, of the kinds and amounts of clothing and possessions permitted for personal use, and whether the facility will accept responsibility for maintaining these items, e.g., cleaning and laundry. (II)

c. Any personal clothing or possessions retained by the facility for the resident shall be identified and recorded on admission and the record placed on the resident's chart. The facility shall be responsible for secure storage of items, and they shall be returned to the resident promptly upon request or upon discharge from the facility. (II)

d. A resident's personal property shall not be used without the written consent of the resident or the resident's guardian. (II)

e. A resident's personal property shall be returned to the resident when it has been used without the written consent of the resident or the resident's guardian. The department may report findings that a resident's property has been used without written consent to the local law enforcement agency, as appropriate. (II)

62.23(20) Sharing rooms. Residents, including spouses staying in the same facility, shall be permitted to share a room, if available, if requested by both parties, unless contraindicated in the IPP and when the reasons for denial are documented in the resident's record. (II)

62.23(21) Choice of physician and pharmacy. Each resident shall be permitted free choice of a physician and a pharmacy. The facility may require the pharmacy selected to use a drug distribution system compatible with the system currently used by the facility. (II)

62.23(22) Incompetent residents.

a. Each facility shall provide that all rights and responsibilities of the resident devolve to the resident's legal guardian when a resident is adjudicated incompetent in accordance with state law or, in the case of a resident who has not been adjudicated incompetent under the laws of the state, in accordance with 42 CFR 483.10. This paragraph is not intended to limit the authority of any individual acting pursuant to Iowa Code chapter 144A. (II)

b. The fact that a resident has been adjudicated incompetent does not absolve the facility from advising the resident of these rights to the extent the resident is able to understand them. The facility shall

also advise the legal guardian, if any, and acquire a statement indicating an understanding of resident's rights. (II)

62.23(23) Resident abuse prohibited. Each resident shall receive kind and considerate care at all times and shall be free from physical, sexual, mental and verbal abuse, exploitation, neglect, and physical injury. (I, II)

62.23(24) 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)

62.23(25) Rescinded IAB 12/11/13, effective 1/15/14.

This rule is intended to implement Iowa Code sections 135C.14 and 135C.24 and Iowa Code chapter 235E.

[**ARC 1205C**, IAB 12/11/13, effective 1/15/14; **ARC 1204C**, IAB 12/11/13, effective 1/15/14]

481—62.24(135C) County care facilities. In addition to Chapter 62 licensing rules, county care facilities licensed as residential care facilities for persons with mental illness must also comply with department of human services rules, 441—Chapter 37. Violation of any standard established by the department of human services is a class II violation pursuant to 481—56.2(135C).

This rule is intended to implement Iowa Code section 227.4.

481—62.25(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.

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 *"a"* through *"j"* of this rule. (I, II, III)

62.25(1) 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.

62.25(2) Approval of the state fire marshal shall be obtained before approval of the department will be considered.

62.25(3) 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)

This rule will become effective July 1, 1992.

481—62.26(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. A facility which chooses to provide respite care services must meet the following requirements related to respite care services and must be licensed as a health care facility.

62.26(1) A facility which chooses to provide respite care services is not required to obtain a separate license or pay a license fee.

62.26(2) Rules regarding involuntary discharge or transfer rights do not apply to residents who are being cared for under a respite care contract.

62.26(3) The facility shall have a contract with each resident in the facility. When the resident is there for respite care services, the contract shall specify the time period during which the resident 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 specifically state the resident may be involuntarily discharged while being considered as a respite care resident. The contract shall meet other requirements for contracts between a health care facility and resident, except the requirements concerning the holding and charging for a bed when a resident is hospitalized or leaves the facility temporarily for recreational or therapeutic reasons.

62.26(4) Respite care services shall not be provided by a facility to persons requiring a level of care which is higher than the level of care the facility is licensed to provide.

These rules are intended to implement Iowa Code sections 135C.2(6), 135C.4, 135C.6(1) to 135C.6(3), 135C.7, 135C.8, 135C.14, 135C.16(2), 135C.23 to 135C.25, 135C.31, 135C.36, and 227.4.

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CHAPTER 63
RESIDENTIAL CARE FACILITIES FOR THE INTELLECTUALLY DISABLED

[Prior to 7/15/87, Health Department[470] Ch 63]

481—63.1(135C) Definitions. For the purpose of these rules, the following terms shall have the meaning indicated in this chapter. The definitions set out in Iowa Code section 135C.1 shall be considered to be incorporated verbatim in the rules. The use of the words "shall" and "must" indicate those standards are mandatory. The use of the words "should" and "could" indicate those standards are recommended.

63.1(1) *"Accommodation"* means the provision of lodging, including sleeping, dining, and living areas.

63.1(2) *"Administrator"* means a person who administers, manages, supervises, and is in general administrative charge of a residential care facility for the intellectually disabled, whether or not such individual has an ownership interest in such facility, and whether or not the functions and duties are shared with one or more individuals.

63.1(3) *"Alcoholic"* means a person in a state of dependency resulting from excessive or prolonged consumption of alcoholic beverages as defined in Iowa Code section 125.2.

63.1(4) *"Ambulatory"* means a person who immediately and without aid of another, is physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

63.1(5) *"Basement"* means that part of a building where the finish floor is more than 30 inches below the finish grade.

63.1(6) *"Board"* means the regular provision of meals.

63.1(7) *"Communicable disease"* means a disease caused by the presence of virus or microbial agents within a person's body, which agents may be transmitted either directly or indirectly to other persons.

63.1(8) *"Department"* means the state department of inspections and appeals.

63.1(9) *"Distinct part"* means a clearly identifiable area or section within a residential care facility for the intellectually disabled, consisting of at least a residential unit, wing, floor, or building containing contiguous rooms.

63.1(10) *"Drug addiction"* means a state of dependency, as medically determined, resulting from excessive or prolonged use of drugs as defined in Iowa Code chapter 124.

63.1(11) *"Interdisciplinary team"* means persons drawn from, or representing such of the professions, disciplines, or services required for the care of the resident.

63.1(12) *"Medication"* means any drug including over-the-counter substances ordered and administered under the direction of the physician.

63.1(13) *"Nonambulatory"* means a person who immediately and without the aid of another is not physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

63.1(14) *"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 feeding, and supervision over medications which can be self-administered.

63.1(15) *"Program of care"* means all services being provided for a resident in a health care facility.

63.1(16) *"Qualified intellectual disabilities professional"* means a psychologist, physician, registered nurse, educator, social worker, physical or occupational therapist, speech therapist or audiologist who meets the educational requirements for the profession, as required in the state of Iowa, and having one year's experience working with the intellectually disabled.

63.1(17) *"Rate"* means that daily fee charged for all residents equally and shall include the cost of all minimum services required in these regulations.

63.1(18) *"Responsible party"* means the person who signs or cosigns the admission agreement required in 481—63.14(135C) or the resident's guardian or conservator if one has been appointed. In the event that a resident has neither a guardian, conservator nor person who signed or cosigned the

resident's admission agreement, the term "responsible party" shall include the resident's sponsoring agency, e.g., the department of social services, Veterans Administration, religious groups, fraternal organizations, or foundations that assume responsibility and advocate for their client patients and pay for their health care.

63.1(19) *"Restraints"* means the measures taken to control a resident's physical activity for the resident's own protection or for the protection of others.

[**ARC 0765C**, IAB 5/29/13, effective 7/3/13]

481—63.2(135C) Variances. Variances from these rules may be granted by the director of the department of inspections and appeals for good and sufficient reason when the need for variance has been established; no danger to the health, safety, or welfare of any resident results; alternate means are employed or compensating circumstances exist and the variance will apply only to an individual residential care facility for the intellectually disabled. Variances will be reviewed at the discretion of the director of the department of inspections and appeals.

63.2(1) To request a variance, the licensee must:

a. Apply for variance in writing, on a form provided by the department;

b. Cite the rule or rules from which a variance is desired;

c. State why compliance with the rule or rules cannot be accomplished;

d. Explain alternate arrangement or compensating circumstances which justify the variance;

e. Demonstrate that the requested variance will not endanger the health, safety, or welfare of any resident.

63.2(2) Upon receipt of a request for variance, the director of the department of inspections and appeals will:

a. Examine the rule from which variance is requested to determine that the request is necessary and reasonable;

b. If the request meets the above criteria, evaluate the alternate arrangements or compensating circumstances against the requirement of the rules;

c. Examine the effect of the requested variance on the health, safety, or welfare of the residents;

d. Consult with the applicant if additional information is required.

63.2(3) Based upon these studies, approval of the variance will be either granted or denied within 120 days of receipt.

[**ARC 0765C**, IAB 5/29/13, effective 7/3/13]

481—63.3(135C) Application for licensure.

63.3(1) Initial application and licensing. In order to obtain an initial residential care facility for the intellectually disabled license for a residential care facility for the intellectually disabled which is currently licensed, the applicant must:

a. Meet all of the rules, regulations, and standards contained in 481—Chapters 60 and 63;

b. Submit a letter of intent and a written résumé of the resident care program and other services provided which reflect the services indicated in individualized programs of care for each resident for departmental review and approval;

c. Make application at least 30 days prior to the change of ownership of the facility on forms provided by the department;

d. Submit a floor plan of each floor of the facility drawn on 8½- × 11-inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which each room will be put and window and door location;

e. Submit a photograph of the front and side elevation of the facility;

f. Submit the statutory fee for a residential care facility for the intellectually disabled for which licensure application is made;

g. Comply with all other local statutes and ordinances in existence at the time of licensure;

h. Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

63.3(2) In order for a facility not currently licensed as a residential care facility for the intellectually disabled to obtain an initial license as a residential care facility for the intellectually disabled, the applicant must:

a. Meet all of the rules, regulations, and standards contained in 481—Chapters 60 and 63 (exceptions noted in 60.3(2) shall not apply);

b. Submit a letter of intent and a written résumé of the resident care program and other services provided for departmental review and approval;

c. Make application at least 30 days prior to the proposed opening date of the facility on forms provided by the department;

d. Submit a floor plan of each floor of the residential care facility for the intellectually disabled, drawn on 8½- × 11-inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which the room will be put and window and door locations;

e. Submit a photograph of the front and side elevation of the residential care facility for the intellectually disabled;

f. Submit the statutory fee for a residential care facility for the intellectually disabled;

g. Comply with all other local statutes and ordinances in existence at the time of licensure;

h. Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

63.3(3) Renewal application. In order to obtain a renewal of the residential care facility for the intellectually disabled license, the applicant must:

a. Submit the completed application form 30 days prior to annual license renewal date of residential care facility for the intellectually disabled license;

b. Submit the statutory license fee for a residential care facility for the intellectually disabled with the application for renewal;

c. Have an approved current certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations;

d. Submit appropriate changes in the résumé to reflect any changes in the resident care program and other services.

63.3(4) Deemed status.

a. The department shall recognize, in lieu of its own inspection, the comparable inspection and inspection findings of the Accreditation Council for Service for Mentally Retarded and Other Developmentally Disabled Persons (AC—MR/DD), if the department is given copies of all requested materials relating to the comparable inspection process, is notified of the scheduled comparable inspection not less than 30 days in advance of the inspection, and is given the opportunity to monitor the comparable inspection. The department may verify the findings of 10 percent of the comparable inspections, selected annually on a random basis, in order to ensure compliance with minimum residential care standards established pursuant to this chapter.

b. The above accreditation will be accepted in lieu of the department's yearly licensure inspection for each year of the AC—MR/DD accreditation period up to two years.

63.3(5) Licenses are issued to the person or governmental unit which has responsibility for the operation of the facility and authority to comply with all applicable statutes, rules or regulations.

The person or governmental unit must be the owner of the facility or, if the facility is leased, the lessee.

This rule is intended to implement Iowa Code sections 135C.6(1) and 135C.9.

[**ARC 0765C**, IAB 5/29/13, effective 7/3/13]

481—63.4(135C) General requirements.

63.4(1) The license shall be displayed in a conspicuous place in the facility which is viewed by the public. (III)

63.4(2) The license shall be valid only in the possession of the licensee to whom it is issued.

63.4(3) The posted license shall accurately reflect the current status of the residential care facility for the intellectually disabled. (III)

63.4(4) Licenses expire one year after the date of issuance, or as indicated on the license.

63.4(5) 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. (III)

[**ARC 0765C**, IAB 5/29/13, effective 7/3/13]

481—63.5(135C) Notifications required by the department. The department shall be notified:

63.5(1) Within 48 hours, by letter, of any reduction or loss of personal care or dietary staff lasting more than seven days which places the staffing ratio below that required for licensing. No additional residents shall be admitted until the minimum staffing requirements are achieved; (III)

63.5(2) Of any proposed change in the residential care facility for the intellectually disabled's functional operation or addition or deletion of required services; (III)

63.5(3) Thirty days before addition, alteration, or new construction is begun in the residential care facility for the intellectually disabled, or on the premises; (III)

63.5(4) Thirty days in advance of closure of the residential care facility for the intellectually disabled; (III)

63.5(5) Within two weeks of any change in administrator; (III)

63.5(6) When any change in the category of license is sought; (III)

63.5(7) Prior to the purchase, transfer, assignment, or lease of a residential care facility for the intellectually disabled, the licensee shall:

a. Inform the department of the pending sale, transfer, assignment, or lease of the facility; (III)

b. Inform the department of the name and address of the prospective purchaser, transferee, assignee, or lessee at least 30 days before the sale, transfer, assignment, or lease is completed; (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 for the intellectually disabled to the named prospective purchaser, transferee, assignee, or lessee; (III)

63.5(8) Pursuant to the authorization submitted to the department by the licensee prior to the purchase, transfer, assignment, or lease of a residential care facility for the intellectually disabled, the department shall upon request, send or give copies of all recent licensure surveys and of any other pertinent information relating to the facility's licensure status to the prospective purchaser, transferee, assignee, or lessee; costs for such copies shall be paid by the prospective purchaser.

[**ARC 0765C**, IAB 5/29/13, effective 7/3/13]

481—63.6(135C) Witness fees. Rescinded IAB 3/30/94, effective 5/4/94. See 481—subrule 50.6(4).

481—63.7(135C) Licenses for distinct parts.

63.7(1) Separate licenses may be issued for distinct parts of a health care facility which are clearly identifiable, containing contiguous rooms in a separate wing or building or on a separate floor of the facility and which provide care and services of separate categories.

63.7(2) The following requirements shall be met for a 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. A distinct part must be operationally and financially feasible;

d. A separate 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.

481—63.8(135C) Administrator. Each residential care facility for the intellectually disabled shall have one person in charge, duly approved by the department or acting in a provisional capacity in accordance with these regulations. (III)

63.8(1) The administrator shall be at least 18 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:

a. Be a licensed nursing home administrator who is also a qualified intellectual disabilities professional; (III) or

b. Be a qualified intellectual disabilities professional with at least one year of experience in an administrative capacity in a health care facility; (III) or

c. Have completed a one-year educational training program approved by the department for residential care facility for the intellectually disabled. (III)

63.8(2) The administrator may act as an administrator for not more than two residential care facilities for the intellectually disabled. (II)

a. The distance between the two facilities shall be no greater than 50 miles. (II)

b. The administrator shall spend the equivalent of three full eight-hour days per week in each facility. (II)

c. 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)

63.8(3) The licensee may be the approved administrator providing the licensee meets the requirements as set forth in these regulations and devotes the required time to administrative duties. Residency in the facility does not in itself meet the requirement. (III)

63.8(4) A provisional administrator may be appointed on a temporary basis by the residential care facility for the intellectually disabled licensee to assume the administrative responsibilities for a residential care facility for the intellectually disabled for a period not to exceed six months when, through no fault of its own, the home has lost its administrator and has not been able to replace the administrator, provided the department has been notified prior to the date of the administrator's appointment. (III)

63.8(5) In the 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:

a. Be knowledgeable of the operation of the facility; (III)

b. Have access to records concerned with the operation of the facility; (III)

c. Be capable of carrying out administrative duties and of assuming administrative responsibilities; (III)

d. Be at least 18 years of age; (III)

e. Be empowered to act on behalf of the licensee during the administrator's absence concerning the health, safety, and welfare of the residents; (III)

f. Have had training to carry out assignments and take care of emergencies and sudden illnesses of residents. (III)

63.8(6) The licensee shall:

a. Assume the responsibility for the overall operation of the residential care facility for the intellectually disabled; (III)

b. Be responsible for compliance with all applicable laws and with the rules of the department; (III)

c. Establish written policies, which shall be available for review, for the operation of the residential care facility for the intellectually disabled. (III)

63.8(7) The administrator shall:

a. Be responsible for the selection and direction of competent personnel to provide services for the resident care program; (III)

b. Be responsible for the arrangement for all department heads to annually attend a minimum of ten contact hours of educational programs to increase skills and knowledge needed for the position; (III)

c. Be responsible for a monthly in-service educational program for all employees and to maintain records of programs and participants; (III)

d. Make available the residential care facility for the intellectually disabled payroll records for departmental review as needed. (III)

[**ARC 0765C**, IAB 5/29/13, effective 7/3/13]

481—63.9(135C) General policies.

63.9(1) There shall be written personnel policies in facilities of more than 15 beds to include hours of work, and attendance at educational programs. (III)

63.9(2) There shall be a written job description developed for each category of worker in facilities. The job description shall include title of job, job summary, age range, qualifications (formal education and experience), skills needed, physical requirements, and responsibilities. (III)

63.9(3) There shall be written personnel policies for each facility. Personnel policies shall include the following requirements:

a. Employees shall have a physical examination before employment. (I, II, III)

b. Employees shall have a physical examination at least every four years. (I, II, III)

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

63.9(4) Health certificates for all employees shall be available for review. (III)

63.9(5) Rescinded IAB 10/19/88, effective 11/23/88.

63.9(6) There shall be written policies for emergency medical care for employees and residents in case of sudden illness or accident which includes the individual to be contacted in case of emergency. (III)

63.9(7) The facility shall have a written agreement with a hospital for the timely admission of a resident who, in the opinion of the attending physician, requires hospitalization. (III)

63.9(8) The residential care facility for the intellectually disabled shall have established policies concerning the control, investigation, and prevention of infections within the facility. (III)

63.9(9) Each facility licensed as a residential care facility for the intellectually disabled shall provide an organized continuous 24-hour program of care commensurate with the needs of the residents of the home and under the direction of an administrator whose combined training and supervisory experience is such as to ensure adequate and competent care. (III)

63.9(10) Each facility shall have a written and implemented infection control program addressing the following:

a. Techniques for hand washing consistent with Guidelines for Handwashing and Hospital Control, 1985, Centers for Disease Control, U.S. Department of Health and Human Services, PB85-923404; (I, II, III)

b. Techniques for handling of blood, body fluids, and body wastes consistent with Guideline for Isolation Precautions in Hospitals, Centers for Disease Control, U.S. Department of Health and Human Services, PB96-138102; (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 consistent with Guideline for Isolation Precautions in Hospitals, Centers for Disease Control, U.S. Department of Health and Human Services, PB96-138102; (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)

h. Techniques for use and disposal of needles, syringes, and other sharp instruments consistent with Guideline for Isolation Precautions in Hospitals, Centers for Disease Control, U.S. Department of Health and Human Services, PB96-138102; (I, II, III)

CDC Guidelines may be obtained from the U.S. Department of Commerce, Technology Administration, National Technical Information Service, 5285 Port Royal Rd., Springfield, Virginia 22161 (1-800-553-6847).

63.9(11) Aseptic techniques. If a resident needs any of the treatments or devices on the list below, written and implemented procedures regarding aseptic techniques shall be followed.

a. Intravenous or central line catheter consistent with Guideline for Prevention of Intravascular Device Related Infections, Centers for Disease Control, U.S. Department of Health and Human Services, PB97-130074, (I, II, III)

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)

63.9(12) Prior to the removal of a deceased resident/patient from a facility, the funeral director or person responsible for transporting the body shall be notified by the facility staff of any special precautions that were followed by the facility having to do with the mode of transmission of a known or suspected communicable disease. (III)

[**ARC 0663C**, IAB 4/3/13, effective 5/8/13; **ARC 0765C**, IAB 5/29/13, effective 7/3/13]

481—63.10 Rescinded, effective 7/14/82.

481—63.11(135C) Personnel.

63.11(1) *General qualifications.*

a. No person with a current record of habitual alcohol intoxication or addiction to the use of drugs shall serve in a managerial role of a residential care facility for the intellectually disabled. (II)

b. No person under the influence of alcohol or intoxicating drugs shall be permitted to provide services in a residential care facility for the intellectually disabled. (II)

c. No person shall be allowed to provide services in a facility if the person has a disease:

(1) Which is transmissible through required workplace contact, (I, II, III)

(2) Which presents a significant risk of infecting others, (I, II, III)

(3) Which presents a substantial possibility of harming others, and (I, II, III)

(4) For which no reasonable accommodation can eliminate the risk. (I, II, III)

Refer to Guidelines for Infection Control in Hospital Personnel, Centers for Disease Control, U.S. Department of Health and Human Services, PB85-923402 to determine (1), (2), (3) and (4).

d. Reserved.

e. Individuals with either physical or mental disabilities may be employed for specific duties, but only if that disability is unrelated to that individual's ability to perform the duties of the job. (III)

63.11(2) *Supervision and staffing.*

a. The department shall establish on an individual facility basis the numbers and qualifications of the staff required in a residential care facility for the intellectually disabled, using as its criteria the services being offered as indicated on the résumé program of care and, as required for individual care plans, the needs of the resident. (II, III)

b. Personnel in a residential care facility for the intellectually disabled shall provide 24-hour coverage for residential care services for the intellectually disabled. Personnel shall be up and dressed at all times in facilities with more than 15 beds. In facilities with 15 or fewer beds, personnel shall be up and dressed when residents are awake. (II, III)

c. Direct care staff shall be present in the facility unless all residents are involved in activities away from the facility. (II, III)

d. Physician's orders shall be implemented by qualified personnel. (II, III)

63.11(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 2013 Iowa Acts, Senate File 347, 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)
[**ARC 0765C**, IAB 5/29/13, effective 7/3/13; **ARC 0903C**, IAB 8/7/13, effective 9/11/13]

481—63.12(135C) Resident care and personal services.

63.12(1) Beds shall be made daily and adjusted as necessary. A complete change of linen shall be made at least once a week and more often if necessary. (III)

63.12(2) Residents shall receive sufficient supervision so that their personal cleanliness is maintained. (II, III)

63.12(3) Residents shall have clean clothing as needed to present a neat appearance, be free of odors, and to be comfortable. Clothing shall be appropriate to their activities and to the weather. (III)

63.12(4) Rescinded, effective 7/14/82.

63.12(5) Residents shall be encouraged to leave their rooms and make use of the recreational room or living room of the facility. (III)

63.12(6) Residents shall not be required to pass through another's bedroom to reach a bathroom, living room, dining room, corridor, or other common areas of the facility. (III)

63.12(7) Rescinded, effective 7/14/82.

63.12(8) Uncontrollable residents shall be transferred or discharged from the facility in accordance with contract arrangements and requirements of Iowa Code chapter 135C. (II, III)

63.12(9) Residents shall be required to bathe at least twice a week. (II, III)

481—63.13(135C) Admission, transfer, and discharge.

63.13(1) *General admission policies.*

a. No resident who is in need of greater services than the facility can provide shall be admitted or retained in a residential care facility for the intellectually disabled. (II, III)

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

c. There shall be no more beds erected than is stipulated on the license. (II, III)

d. There shall be no more beds erected in a room than its size and other characteristics will permit. (II, III)

e. The admission of a resident to a residential care facility for the intellectually disabled shall not give the facility or any employee of the facility the right to manage, use, or dispose of any property of the resident except with the written authorization of the resident or the resident's legal representative. (III)

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

g. A residential care facility for the intellectually disabled 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 which would convey unreasonable responsibilities to the licensee be removed from the premises of the facility for safekeeping. (III)

h. Rescinded, effective 7/14/82.

i. Funds or properties received by the residential care facility for the intellectually disabled, belonging to or due a resident, expendable for the resident's account, shall be trust funds. (III)

j. Infants and children under the age of 16 shall not be admitted to health care facilities for adults unless given prior written approval by the department. A distinct part of a health care facility, segregated from the adult section, may be established based on a program of care submitted by the licensee or applicant which is commensurate with the needs of the residents of the health care facility and has received the department's review and approval. (III)

k. 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 to the person acting as guardian within the third degree of consanguinity. (III)

l. Upon the verified petition of the county board of supervisors, the district court may appoint the administrator of a county care facility as conservator or guardian or both of a resident of such county care facility. Such administrator shall serve as conservator or guardian or both without fee. The administrator may establish either separate or common bank accounts for cash funds of such resident wards. (III)

63.13(2) *Discharge or transfer.*

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

b. Proper arrangements shall be made by the residential care facility for the intellectually disabled for the welfare of the resident prior to transfer or discharge in the event of an emergency or inability to reach the next of kin or legal representative. (III)

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

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

e. When a resident is transferred or discharged, the appropriate record as set forth in 63.17(1) of these rules will accompany the resident. (II, III)

f. Prior to the transfer or discharge of a resident to another health care facility, arrangements to provide for continuity of care shall be made with the facility to which the resident is being sent. (II, III)

[**ARC 0765C**, IAB 5/29/13, effective 7/3/13]

481—63.14(135C) Contracts. Each party shall receive a copy of the signed contract. Each contract for residents shall:

63.14(1) State the base rate or scale per day or per month, the services included, and the method of payment; (III)

63.14(2) Contain a complete schedule of all offered services for which a fee may be charged in addition to the base rate. (III) Furthermore, the contract shall:

a. Stipulate that no further additional fees shall be charged for items not contained in complete schedule of services as set forth in subrule 63.14(2); (III)

b. State the method of payment of additional charges; (III)

c. 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)

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

63.14(3) Contain an itemized list of those services, with the specific fee the resident will be charged and method of payment, as related to the resident's current condition, based on a preadmission evaluation assessment which is determined in consultation with the administrator; (III)

63.14(4) Include the total fee to be charged initially to the resident; (III)

63.14(5) State the conditions whereby the facility may make adjustments to its overall fees for resident care as a result of changing costs. (III) Furthermore, the contract shall provide that the facility shall give:

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

b. Notification to the resident or 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; (III)

63.14(6) State the terms of agreement in regard to refund of all advance payments in the event of transfer, death, voluntary or involuntary discharge; (III)

63.14(7) State the terms of agreement concerning the holding 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:

a. The facility shall ask the resident or responsible party if they want the bed 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)

b. The facility shall reserve the bed when requested for as long as the resident can ensure payment in accordance with the contract; (II)

63.14(8) State the conditions under which the involuntary discharge or transfer of a resident would be effected; (III)

63.14(9) State the conditions of voluntary discharge or transfer; (III)

63.14(10) Set forth any other matters deemed appropriate by the parties to the contract. No contract 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. (III)

481—63.15(135C) Physical examinations.

63.15(1) Each resident in a residential care facility for the intellectually disabled shall have a designated licensed physician, who may be called when needed. (III)

63.15(2) Each resident admitted to a residential care facility for the intellectually disabled shall have had 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, 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 chief complaints, and results of any diagnostic procedures. (II, III)

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

63.15(3) Arrangements shall be made to have a physician available to furnish medical care in case of emergency. (II, III)

63.15(4) Rescinded, effective 7/14/82.

63.15(5) The person in charge shall immediately notify the physician of any accident, injury, or adverse change in the resident's condition. (I, II, III)

63.15(6) Each resident shall be visited by or shall visit the resident's physician at least annually. The year period shall be measured from the date of admission and is not to include preadmission physicals. Any required physician task or visit in a residential care facility for the intellectually disabled may also be performed by an advanced registered nurse practitioner, clinical nurse specialist, or physician assistant who is working in collaboration with the physician. (III)

63.15(7) Residents shall be admitted to a residential care facility for the intellectually disabled only on a written order signed by a physician certifying that the individual being admitted requires no more than personal care and supervision but does not require nursing care. (III)

This rule is intended to implement Iowa Code section 135C.23(2).

[**ARC 0663C**, IAB 4/3/13, effective 5/8/13; **ARC 0765C**, IAB 5/29/13, effective 7/3/13]

481—63.16(135C) Dental services.

63.16(1) The residential care facility for the intellectually disabled personnel shall assist residents to obtain regular and emergency dental services. (III)

63.16(2) Transportation arrangements shall be made when necessary for the resident to be transported to the dentist's office. (III)

63.16(3) Dental services shall be performed only on the request of the resident, responsible relative, or legal representative. The resident's physician shall be advised of the resident's dental problems. (III)

63.16(4) All dental reports or progress notes shall be included in the clinical record. (III)

63.16(5) Personal care staff shall assist the resident in carrying out dentist's recommendations. (III)

63.16(6) Dentists shall be asked to participate in the in-service program of the facility. (III)

[**ARC 0765C**, IAB 5/29/13, effective 7/3/13]

481—63.17(135C) Records.

63.17(1) *Resident record.* The licensee shall keep a permanent record on all residents admitted to a residential care facility for the intellectually disabled with all entries 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; (III)

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

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

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

i. Pharmacist's name, telephone number, and address; (III)

j. Physical examination and medical history; (III)

k. Certification by the physician that the resident requires no more than personal care and supervision, but does not require nursing care; (III)

l. Physician's orders for medication, treatment, and diet in writing and signed by the physician; (III)

m. A notation of yearly or other visits to physician or other professional services; (III)

n. Any change in the resident's condition; (II, III)

o. If the physician has certified that the resident is capable of taking prescribed medications, the resident shall be required to keep the administrator advised of current medications, treatments, and diet. The administrator shall keep a listing of medication, treatments, and diet prescribed by the physician for each resident; (III)

p. If the physician has certified that the resident is not capable of taking prescribed medication, it must be administered by a qualified person of the facility. A qualified person shall be defined as either a registered or licensed practical nurse or an individual who has completed the state-approved training course in medication administration; (II)

q. Medications administered by an employee of the facility shall be recorded on a medication record by the individual who administers the medication; (II, III)

r. A notation describing condition on admission, transfer, and discharge; (III)

s. In the event of a resident's death, notations in the resident's record shall include 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 that the resident's family and physician were notified of the resident's death; (III)

t. A copy of instructions given to the resident, legal representative, or facility in the event of discharge or transfer; (III)

u. Disposition of valuables. (III)

63.17(2) *Incident record.*

a. Each residential care facility for the intellectually disabled shall maintain an incident record report and shall have available incident report forms. (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 and sign the incident report. (III)

d. The report shall cover all accidents where there is apparent injury or where hidden injury may have occurred. (III)

e. The report shall cover all accidents or unusual occurrences within the facility or on the premises affecting residents, visitors, or employees. (III)

f. A copy of the incident report shall be kept on file in the facility. (III)

63.17(3) *Retention of records.*

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

b. Records shall be retained within the facility upon change of ownership. (III)

c. Rescinded, effective 7/14/82.

d. When the facility ceases to operate, the resident's record shall be released to the facility to which the resident is transferred. If no transfer occurs, the record shall be released to the individual's physician. (III)

63.17(4) *Reports to the department.* The licensee shall furnish statistical information concerning the operation of the facility to the department on request. (III)

63.17(5) *Personnel record.*

a. An employment record shall be kept for each employee consisting of the following information: name and address of employee, social security number of employee, date of birth of employee, date of employment, experience and education, references, position in the home, date and reason for discharge or resignation. (III)

b. The personnel records shall be made available for review upon request by the department. (III)

[**ARC 0765C**, IAB 5/29/13, effective 7/3/13]

481—63.18(135C) Drugs.

63.18(1) *Drug storage.*

a. Residents who have been certified in writing by the physician as capable of taking their own medications may retain these medications in their bedroom but locked storage must be provided. (III)

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

(1) A cabinet with a lock shall be provided which can be used for storage of drugs, solutions, and prescriptions; (III)

(2) A bathroom shall not be used for drug storage; (III)

(3) The drug storage cabinet shall be kept locked; (III)

(4) Schedule II drugs, as defined by Iowa Code chapter 124, shall be kept in a locked box within the locked medication cabinet; (II)

(5) The medicine cabinet key shall be in the possession of the employee charged with the responsibility of administering medications; (II, III)

(6) Medications requiring refrigeration shall be kept in a refrigerator and separated from food and other items; (III)

(7) Drugs for external use shall be stored separately from drugs for internal use; (III)

(8) All potent, poisonous, or caustic materials shall be stored separately from drugs. They shall be plainly labeled and stored in a specific, well-illuminated cabinet, closet, or storeroom and made accessible only to authorized persons; (I, II)

(9) The drug cabinet shall have a work counter, both the counter and cabinet shall be well-lighted; (III)

(10) Running water shall be available in the room in which the medicine cabinet is located or in an adjacent room; (III)

(11) Inspection of drug storage condition shall be made by the administrator and a registered pharmacist not less than once every three months. The inspection shall be verified by a report signed by the administrator and the pharmacist and filed with the administrator. The report shall include, but not be limited to, certifying absence of the following: expired drugs, deteriorated drugs, improper labeling, drugs for which there is no current physician's order, and drugs improperly stored. (III)

c. Bulk supplies of prescription drugs shall not be kept in a residential care facility for the intellectually disabled unless a licensed pharmacy is established in the facility under the direct supervision and control of a pharmacist. (III)

63.18(2) *Drug safeguards.*

a. All prescribed medications shall be clearly labeled indicating the resident's full name, physician'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 or physician issuing the drug. Where unit dose is used, prescribed medications shall, as a minimum, indicate the resident's full name, physician's name, name and strength of drug, and directions for use. Standard containers shall be utilized for dispensing drugs. Paper envelopes shall not be considered standard containers. (III)

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

c. The medications of each resident shall be kept or stored in the originally received containers. (II, III)

d. When a resident is discharged or leaves the facility, the unused prescription shall be sent with the resident or with a legal representative only upon the written order of a physician. (III)

e. Unused prescription drugs prescribed for residents who have died shall be destroyed by the person in charge with a witness and notation made on the resident's record, or, if a unit dose system is used, such drugs shall be returned to the supplying pharmacist. (III)

f. Prescriptions shall be refilled only with the permission of the attending physician. (II, III)

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

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

i. There shall be a formal routine for the proper disposal of discontinued medications within a reasonable but specified time. These medications shall not be retained with the resident's current medications. Discontinued drugs shall be destroyed by the responsible person with a witness and notation made to that effect or returned to the pharmacist for destruction or resident credit. Drugs listed under the Schedule II drugs shall be disposed of in accordance with the provisions of the Iowa board of pharmacy examiners. (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 personal physician of the resident, 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 keep in the resident's possession any medications unless the attending physician 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 attending physician. (II)

m. Each facility shall establish a policy cooperating with a licensed pharmacist to govern distributing prescribed medication to residents who are on leave from a facility. (III)

(1) Medication may be issued to residents who will be on leave from a facility for less than 24 hours. Notwithstanding the prohibition against paper envelopes in 63.18(2)*"a,"* non-child-resistant containers may be used. Each container may hold only one medication. A label on each container shall indicate the date, the resident's name, the facility, the medication, its strength, dose, and time of administration.

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

(3) Medication distributed as above may be issued only by facility personnel responsible for administering medication.

63.18(3) *Drug administration.*

a. A properly trained person shall be charged with the responsibility of administering nonparenteral medications.

b. The individual shall have knowledge of the purpose of the drugs, their dangers, and contraindications.

c. This person shall be a licensed nurse or physician 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.

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

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

(2) Be employed in the same facility for at least six consecutive months prior to the start of the medication aide course. This requirement is not subject to waiver.

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

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. This individual 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;

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

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

f. In an RCF/ID facility licensed for 15 or fewer beds, a person who has successfully completed a state-approved medication manager course may administer medications.

g. 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 *"d"* of this subrule do not apply to this individual.

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

i. Injectable medications shall be administered as permitted by Iowa law by a qualified nurse, physician, pharmacist, or physician assistant (PA).

j. Residents certified by their physician as capable of injecting their own insulin may do so. Insulin may be administered pursuant to *"i"* above or as otherwise authorized by the resident's physician. Authorization by the physician shall:

(1) Be in writing,

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

(3) Be renewed quarterly,

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

(5) Include documentation by the physician that the authorized person is qualified to administer insulin to that resident.

k. An individual inventory record shall be maintained for each Schedule II drug prescribed for each resident. (II)

[**ARC 0765C**, IAB 5/29/13, effective 7/3/13; **ARC 1050C**, IAB 10/2/13, effective 11/6/13]

481—63.19(135C) Dietary.

63.19(1) *Dietary staffing.*

a. In facilities licensed for over 15 beds, persons in charge of meal planning and food preparation shall complete the home study course on sanitation and food preparation offered by the department. (III)

b. In facilities licensed for over 15 beds, food service personnel shall be on duty during a 12-hour span extending from the preparation of breakfast through supper. (III)

c. There shall be written work schedules and time schedules covering each type of job in the food service department. These work and time schedules shall be posted or kept in a notebook which is available for use in the food service area in facilities over 15 beds. (III)

63.19(2) *Nutrition and menu planning.*

a. Menus shall be planned and followed to meet nutritional needs of residents in accordance with the physician's orders. (II)

b. Menus shall be planned and served to include foods and amounts necessary to meet the recommended daily dietary allowances of the food and nutrition board of the National Research Council, National Academy of Sciences. (II) Recommended daily dietary allowances are:

(1) Milk—two or more cups served as beverage or used in cooking;

(2) Meat group—two or more servings of meat, fish, poultry, eggs, cheese or equivalent; at least four to five ounces edible portion per day;

(3) Vegetable and fruit group—four or more servings (two cups). This shall include a citrus fruit or other fruit and vegetable important for vitamin C daily, a dark green or deep yellow vegetable for vitamin A at least every other day, and other fruits and vegetables, including potatoes;

(4) Bread and cereal group—four or more servings of whole-grain, enriched or restored;

(5) Foods other than those listed will usually be included to meet daily energy requirements (calories) to add to the total nutrients and variety of meals.

c. At least three meals or their equivalent shall be served daily, at regular hours. (II)

(1) There shall be no more than a 14-hour span between substantial evening meal and breakfast. (II, III)

(2) To the extent medically possible, bedtime nourishments shall be offered routinely to all residents. Special nourishments shall be available when ordered by physician. (II, III)

d. Menus shall include a variety of foods prepared in various ways. The same menu shall not be repeated on the same day of the following week. (III)

e. Menus shall be written at least one week in advance. The current menu shall be located in an accessible place in the dietetic service department 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, they shall be of similar nutritive value and recorded on the menu or in a notebook. (III)

g. A file of tested recipes adjusted to the number of people to be fed in the facility shall be maintained. (III)

63.19(3) *Dietary storage, food preparation, and service.*

a. All food and drink shall be clean, wholesome, free from spoilage, and safe for human consumption. (II, III)

b. The use of food from salvaged, damaged, or unlabeled containers shall be prohibited. (III)

c. All perishable or potentially hazardous food shall be stored at safe temperatures of 45°F (7°C) or below, or 140°F (60°C) or above. (III)

d. No perishable food shall be allowed to stand at room temperature any longer than is required to prepare and serve. (III)

e. Supplies of staple foods for a minimum of a one-week period and or 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 nutrition section of the department of health. (II, III)

f. Table service shall be attractive. Dishes shall be free of cracks, chips, and stains. (III)

g. If family-style service is used, all leftover prepared food that has been on the table shall be properly handled. (III)

h. Poisonous compounds shall not be kept in food storage or preparation areas. (II)

63.19(4) *Sanitation in food preparation area.*

a. "Food Service Sanitation Manual," revised 1976, U.S. Department of Health, Education, and Welfare, Public Health Service, U.S. Government Printing Office, Washington, D.C., shall be used as the established, nationally recognized reference for establishing and determining satisfactory compliance with food service sanitation.

b. Residents shall not be allowed in the food preparation area, unless indicated in their individualized care plans. (III)

c. In facilities licensed for over 15 beds, the kitchen shall not be used for serving meals to residents, food service personnel, or other staff. (III)

d. All foods, while being stored, prepared, displayed, served, or transported shall be protected against contamination from dust, flies, rodents, and other vermin. (II, III)

e. Food shall be protected from unclean utensils and worn surfaces, unnecessary handling, coughs and sneezes, flooding, drainage, and overhead leakage. (II, III)

f. All appliances and work areas shall be kept clean. (III)

g. There shall be written procedures established for cleaning all work and serving areas in facilities over 15 beds. (III)

h. A schedule for duties to be performed daily shall be posted in each food area. (III)

i. All cooking stoves 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. (III)

j. Spillage and breakage shall be cleaned up immediately. (III)

k. All garbage not mechanically disposed of shall be kept in nonabsorbent, cleanable containers pending disposal. All filled containers shall be covered and stored in a sanitary manner. (III)

l. The food service area shall be located so it will not be used as a passageway by residents, guests, or nonfood service staff. (III)

m. The walls, ceilings, and floors of all rooms in which food is prepared and served shall be in good repair, smooth, washable, and shall be kept clean. (III)

n. 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 it is in sealed, leakproof containers. (III)

o. Ice shall be stored and handled in such a manner as to prevent contamination. Ice scoops should be sanitized daily and kept in a clean container. (III)

p. There shall be no animals or birds in the food preparation area. (III)

q. No dishes or cooking utensils shall be towel dried. (III)

r. In facilities of over 15 beds directions for the dishwashing procedure shall be posted and available to all kitchen personnel. (III)

s. If there is a dishwashing machine, it must provide a wash temperature of 140°F (60°C) to 160°F (71°C) and a rinse temperature of 170°F (70°C) to 180°F (82°C). (III)

t. The washing and sanitizing of dishes and utensils shall meet approved sanitation procedures and practices. In facilities of 15 or more beds, a mechanical dishwashing machine or three-compartment sink shall be used for washing dishes; a booster heater for the third compartment or sanitizing agent shall be used. (III)

u. All dishes, silverware, and cooking utensils shall be stored above the floor in a sanitary manner, in a clean, dry place protected from flies, splashes, dust, and other contaminants. (III)

v. Procedures for washing and handling dishes shall be followed in order to protect the welfare of the residents and employees. Persons handling dirty dishes shall not handle clean dishes without washing their hands. (III)

w. Dishes, silverware, and cooking utensils shall be properly cleaned by prerinsing or scraping, washing, sanitizing, and air-drying. (III)

63.19(5) *Hygiene of food service personnel.*

a. Food service personnel shall be free of communicable diseases and practice hygienic food-handling techniques. In the event food service employees are assigned duties outside the dietetic service, these duties shall not interfere with sanitation, safety, or time required for dietetic work assignments. Personnel recovering from a diagnosed intestinal infection shall submit a report from their

physician showing freedom from infection before returning to work in the food service department. (II, III)

b. Staff employees who are full-time food service personnel shall wear clean, washable uniforms that are not used for duties outside the food service area. In all facilities, employees shall wear clean, washable clothing when in the food service area. (III)

c. Hairnets shall be worn by all staff food service personnel. Total enclosure of facial hair shall be provided for staff personnel. (III)

d. Clean aprons and hairnets shall be available for use by other personnel in emergency situations. (III)

e. Persons handling food shall be knowledgeable of good hand-washing techniques. A hand-wash sink shall be provided in or adjacent to the food service area. Continuous on-the-job training on sanitation shall be encouraged. (III)

f. The use of tobacco shall be prohibited in the kitchen. (III)

63.19(6) *Food and drink.* All food and drink consumed within the facility shall be clean and wholesome and comply with local ordinances and applicable provisions of state and federal laws. (II, III)

481—63.20(135C) Orientation program.

63.20(1) The administrator or designee shall be responsible for developing a written, organized orientation program for all residents. (III)

63.20(2) The program shall be planned and implemented to resolve or reduce personal, family, business, and emotional problems that may interfere with the medical or health care, recovery, and rehabilitation of the individual. (III)

481—63.21(135C) Individualized program of care.

63.21(1) The individualized program of care, including specific goals and regular evaluation of progress, shall incorporate the social services, psychological, educational activities, and medical needs of the residents, and shall be designed by an interdisciplinary team. (II)

63.21(2) Each residential care facility for the intellectually disabled shall provide an organized resident activity program for the group and for the individual resident which shall include suitable activities for evenings and weekends. (III)

a. The activity 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. This shall include helping residents continue in their individual interests or hobbies. (III)

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

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

d. Residents shall be encouraged, but not forced, to participate in the activity program. (III)

63.21(3) Coordination of activities program.

a. Each residential care facility for the intellectually disabled with over 15 beds shall employ a person to direct the activities program. (III)

[1]*b.* [2]Staffing for the activity program shall be provided on the minimum basis of 45 minutes per licensed bed per week. (II, III)

c. The activity coordinator shall have completed the activity coordinators' orientation course offered through the department within six months of employment or have comparable training and experience as approved by the department. (III)

d. The activity coordinator shall attend workshops or educational programs which relate to activity programming. These shall total a minimum of ten contact hours per year. These programs shall be approved by the department. (III)

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

63.21(4) Duties of activity coordinator. The activity coordinator shall:

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

b. Coordinate all activities, including volunteer or auxiliary activities and religious services; (III)

c. Keep all necessary records including:

(1) Attendance; (III)

(2) Individual resident progress notes recorded at regular intervals (at least every three months). (III)

(3) Monthly calendars, prepared in advance. (III)

d. Coordinate the activity program with all other services in the facility; (III)

e. Participate in the in-service training program in the facility. This shall include attending as well as presenting sessions. (III)

63.21(5) 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) These may include: books (standard and large print), magazines, newspapers, radio, television, and bulletin boards. Also appropriate would be box games, game equipment, songbooks, cards, craft supplies, record player, movie projector, piano, outdoor equipment, etc.

b. Storage shall be provided for recreational equipment and supplies. (III)

c. Locked storage should be available for potentially dangerous items such as scissors, knives, and toxic materials. (III)

[**ARC 0765C**, IAB 5/29/13, effective 7/3/13]

[1] Emergency, pursuant to Iowa Code section 17A.5(2)*"b"*(2).

[2] Objection filed 2/14/79; see Objection following 481—Ch 57.

481—63.22(135C) Care review committee. Rescinded **ARC 1205C**, IAB 12/11/13, effective 1/15/14.

481—63.23(135C) Safety. The licensee of a residential care facility for the intellectually disabled shall be responsible for the provision and maintenance of a safe environment for residents and personnel. (III)

63.23(1) *Fire safety.*

a. All residential care facilities for the intellectually disabled shall meet the fire safety rules and regulations as promulgated by the state fire marshal. (I, II)

b. The size and condition of the facility and needs of the residents shall be taken into consideration in evaluating safety precautions and practices.

63.23(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 which shall be rehearsed at least quarterly. (III)

a. The plan shall be available for review upon request. (III)

b. In-service shall be provided to ensure that all employees are knowledgeable of the emergency plan. (III)

63.23(3) *Resident safety.*

a. Residents shall be permitted to smoke only where proper facilities are provided. Smoking shall not be permitted in bedrooms. Smoking by residents considered to be careless shall be prohibited except when the resident is under direct supervision. (II, III)

b. Smoking is prohibited in all rooms where oxygen is being administered or in rooms where oxygen is stored. (II, III)

c. Whenever full or empty tanks of oxygen are being used or stored, they shall be securely supported in an upright position. (II, III)

d. Smoking shall be permitted only in designated areas. (II, III)

e. Residents shall receive adequate supervision to ensure against hazards from themselves, others, or elements in the environment. (II, III)

63.23(4) *Restraints.*

a. Residents shall not be kept behind locked doors.

b. Temporary seclusion of residents shall be used only in an emergency to prevent injury to the resident or to others pending transfer to appropriate placements.

c. A divided door equipped with a securing device that may be readily opened by personnel shall be considered an appropriate means of temporarily confining a resident in the resident's room.

d. Divided doors shall be of such type that when the upper half is closed the lower section shall close.

[**ARC 0765C**, IAB 5/29/13, effective 7/3/13]

481—63.24(135C) Housekeeping.

63.24(1) Written procedures shall be established and implemented for daily and weekly cleaning schedules. (III)

63.24(2) Each resident unit shall be cleaned on a routine schedule. (III)

63.24(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. (III)

63.24(4) A hallway or corridor shall not be used for storage of equipment. (III)

63.24(5) All odors shall be kept under control by cleanliness and proper ventilation. (III)

63.24(6) Clothing worn by personnel shall be clean and washable. (III)

63.24(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)

63.24(8) All furniture, bedding, linens, and equipment shall be cleaned periodically and before use by another resident. (III)

63.24(9) Polishes used on floors shall provide a nonslip finish. (III)

63.24(10) Throw or scatter rugs shall not be permitted. (III)

63.24(11) Entrances, exits, steps, and outside walkways shall be kept free from ice, snow, and other hazards. (II, III)

63.24(12) Cleaning agents, bleaches, insecticides, or any other poisonous, dangerous, or flammable materials shall not be accessible to residents except as indicated in individualized programs of care. (II, III)

63.24(13) Sufficient numbers of noncombustible trash containers, which have covers, shall be available. (III)

481—63.25(135C) Maintenance.

63.25(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 over 15 beds, this program shall be established in writing and available for review by the department. (III)

63.25(2) The building, grounds, and other buildings shall be maintained in a clean, orderly condition and in good repair. (III)

63.25(3) Draperies and furniture shall be clean and in good repair. (III)

63.25(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. (III)

63.25(5) The electrical systems, including appliances, cords, and switches, shall be maintained to guarantee safe functioning and comply with the National Electrical Code. (III)

63.25(6) All plumbing fixtures shall function properly and comply with the state plumbing code. (III)

63.25(7) Yearly inspections of the heating and cooling systems shall be made to guarantee safe operation. (III)

63.25(8) The building, grounds, and other buildings shall be kept free of breeding areas for flies, other insects, and rodents. (III)

63.25(9) The facility shall be kept free of flies, other insects, and rodents. (III)

63.25(10) Janitor closet.

a. Facilities shall be provided with storage for cleaning equipment, supplies, and utensils. (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 over 15 beds, a janitor's closet shall be provided. It shall be equipped with water for filling scrub pails and janitor's sink for emptying scrub pails. (III)

481—63.26(135C) Laundry.

63.26(1) All soiled linens shall be collected in and transported to the laundry room in closed, leakproof laundry bags or covered, impermeable containers. (III)

63.26(2) Except for related activities, the laundry room shall not be used for other purposes. (III)

63.26(3) Procedures shall be written for the proper handling of wet, soiled, and contaminated linens. (III)

63.26(4) Residents' personal laundry shall be marked with an identification. (III)

63.26(5) Bed linens, towels, washcloths, and residents' clothing shall be clean and stain-free. (III)

63.26(6) If laundry is done in the facility, the following shall be provided:

a. A clean, dry, well-lighted area to accommodate a washer and dryer of adequate size to serve the needs of the facility. (III)

b. In facilities of over 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—63.27(135C) Garbage and waste disposal.

63.27(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)

63.27(2) All containers for refuse shall be watertight, rodent-proof, and have tight-fitting covers. (III)

63.27(3) All containers shall be thoroughly cleaned each time the containers are emptied. (III)

63.27(4) All wastes shall be properly disposed of in compliance with local ordinances and state codes. (III)

63.27(5) Special provision shall be made for the disposal of soiled dressings and similar items in a safe, sanitary manner. (III)

481—63.28(135C) Buildings, furnishings, and equipment.

63.28(1) *Buildings—general requirements.*

a. For purposes of computation of usable floor space in bedrooms and other living areas of the facility, that part of the room having no less than 7 feet of ceiling height shall be used. Usable floor space may include irregularities in the rooms such as alcoves and offsets with approval of the department. Usable floor space shall not include space needed for corridor door swings or wardrobes being used as a substitute for closet space. (III)

b. Battery-operated, portable emergency lights in good working condition shall be available at all times, at a ratio of one light per one employee on duty from 6 p.m. to 6 a.m. (III)

c. All windows shall be supplied with curtains and shades or drapes which are kept clean and in good repair. (III)

d. Light fixtures shall be so equipped to prevent glare and to prevent hazards to the residents. (III)

e. Exposed heating pipes, hot water pipes, or radiators in rooms and areas used by residents and within reach of residents shall be covered or protected to prevent injury or burns to residents. (II, III)

f. All fans located within 7 feet of the floor shall be protected by screen guards of not more than ¼-inch mesh. (III)

g. Whenever glass sliding doors or transparent panels are used, they shall be marked conspicuously. (III)

h. The facility shall meet the equivalent requirements of the appropriate group occupancy of the state building code. (III)

i. No part of any room shall be enclosed, subdivided, or partitioned unless such part is separately lighted and ventilated and meets such other requirements as its usage and occupancy dictates, except closets used for the storage of resident's clothing. (III)

j. All stairways in resident-occupied areas shall have substantial handrails on both sides. (III)

k. Each stairway shall have protective barriers. (III)

l. Screens of 16 mesh per square inch shall be provided at all hold-open openings. (III)

m. Screen doors shall swing outward and be self-closing. At the discretion of the state fire marshal, screens for fire doors may swing in. (III)

n. All resident rooms shall have a door. (III)

o. All rooms in resident-occupied areas shall have general lighting switched at the entrance to each room. (III)

63.28(2) *Furnishings and equipment.*

a. All furnishings and equipment shall be durable, cleanable, and appropriate to its function and in accordance with the department's approved program of care. (III)

b. All resident areas shall be decorated, painted, and furnished to provide a homelike atmosphere. (III)

c. Upholstery materials shall be moisture- and soil-resistant, except on furniture provided by the resident and the property of the resident. (III)

d. Night lights may be required in corridors, at stairways, attendant's stations and resident's bedrooms, and hazardous areas with no less than 1 foot-candle throughout the area at all times. (III)

63.28(3) *Dining and living rooms.*

a. Every facility over 15 beds shall have a dining room and a living room easily accessible to all residents. (III)

b. Dining rooms and living rooms shall at no time be used as bedrooms. (III)

c. Dining rooms and living rooms shall be available for use by residents at appropriate times to provide periods of social and diversional individual and group activities. (III)

d. A combination dining room and living room may be permitted if the space requirements of a multipurpose room as provided in 63.28(3)*"e"* of the rules are met. (III)

e. Multipurpose rooms. When space is provided for multipurpose dining and activities and recreational purposes, the area shall total at least 30 square feet per licensed bed for the first 100 beds and 27 square feet per licensed bed for all beds in excess of 100. An open area of sufficient size shall be provided to permit group activities such as religious meetings or presentation of demonstrations or entertainment. (III)

f. Living rooms.

(1) Living rooms shall be maintained for the use of residents and their visitors and may be used for recreational activities. (III)

(2) Living rooms shall be suitably furnished. (III)

(3) When space is provided to be used only for activities and recreational purposes, the area shall be at least 15 square feet per licensed bed. At least 50 percent of the required area must be in one room. (III)

g. Dining rooms.

(1) Dining rooms shall be furnished with dining tables and chairs appropriate to the size and function of the facility. These rooms and furnishings shall be kept clean and sanitary. (III)

(2) When space is provided to be used only for dining, the area shall total at least 15 square feet per licensed bed. (III)

63.28(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; 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 bedside chair 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 multiple bedroom, drawer space shall be assigned each resident. (III)

f. Walls, ceilings, and floors shall have easily cleanable surfaces and shall be kept clean and in good repair. (III)

g. Beds and other furnishings shall not obstruct free passage to and through doorways. (III)

h. There shall be a wardrobe or closet in each resident's room. Minimum clear dimensions shall be 1 foot 10 inches deep by 1 foot 8 inches wide with full hanging space and provide a clothes rod and shelf. In a multiple bedroom, closet or wardrobe space shall be assigned each resident sufficient for the resident's needs. (III)

i. Beds shall not be placed with the head of the bed in front of a window or radiator. (III)

j. 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 it is covered so as to protect the resident from contact with it or from excessive heat. (III)

k. Reading lamps shall be provided each resident in the resident's room. (III)

l. Each room shall have sufficient accessible mirrors to serve residents' needs. (III)

m. Usable floor space of a room shall be no less than 8 feet in any major dimension. (III)

n. Bedrooms shall have a minimum of 80 square feet of usable floor space per bed. (III)

o. There shall be no more than four residents per room. (III)

p. Each resident room shall be provided with light and ventilation by means of a window or windows with an area equal to one-eighth of the total floor area. The windows shall be openable. (III)

63.28(5) *Bath and toilet facilities.*

a. Provision shall be made for bars to hold individual towels and washcloths. (III)

b. In facilities of over 15 beds all lavatories shall have paper towel dispensers and an available supply of soap. (III)

c. Minimum numbers of toilet and bath facilities shall be one lavatory, one toilet for each five residents, and one tub or shower for each ten residents or fraction thereof. (III)

d. There shall be a minimum of one bathroom with tub or shower, toilet stool and lavatory on each floor in multistory buildings for facilities licensed for over 15 beds. Separate toilets for the sexes shall be provided. (III)

e. Grab bars shall be provided at all toilet stools, tubs, and showers. Grab bars, accessories, and anchorage shall have sufficient strength to sustain a deadweight of 250 pounds for five minutes. (III)

f. Each toilet room shall have a door. (III)

g. All toilet, bath, and shower facilities shall be supplied with adequate safety devices appropriate to the needs of the individual residents. Raised toilet seats shall be available for residents who are aged or infirm. (III)

h. Toilet and bath facilities shall have an aggregate outside window area of at least 4 square feet. Facilities having a system of mechanical ventilation are exempt from this regulation. (III)

i. Every facility shall provide a toilet with grab bars and lavatory for the public and staff. (III)

63.28(6) *Heating.* A centralized heating system capable of maintaining a minimum temperature of 78°F (26°C) shall be provided. Portable units or space heaters are prohibited from being used in the facility except in an emergency. (III)

63.28(7) *Water supply.*

a. Every facility shall have an adequate water supply from an approved source. A municipal source of supply shall be considered as meeting this requirement. (III)

b. Private sources of supply shall be tested annually and the report submitted with the annual application for license. (III)

c. A bacterially unsafe source of supply shall be grounds for denial, suspension, or revocation of license. (III)

d. The department may require testing of private sources of supply at its discretion in addition to the annual test. The facility shall supply reports of such tests as directed by the department. (III)

e. Hot and cold running water under pressure shall be available in the facility. (III)

f. Prior to construction of a new facility or new water source, private sources of supply shall be surveyed and shall comply with the requirements of the department. (III)

63.28(8) *Sewage system.*

a. Sewage shall be collected and disposed of in a manner approved by the department. Disposal into a municipal system will be considered as meeting this requirement. (III)

b. Private sewage systems shall conform to the rules and regulations of the department of environmental quality, state health department, and the natural resources council. (III)

c. Every facility shall have an interior plumbing system complete with flushing device. (III)

63.28(9) *Attendant's station.* In facilities over 15 beds, an attendant's station with a minimum of 40 square feet shall be provided which is centrally located in the resident area and shall have a well-lighted desk with the necessary equipment for the keeping of required records and supplies. (III)

481—63.29(135C) Family and employee accommodations.

63.29(1) Children under 14 years of age shall not be allowed into the service areas in facilities of more than 15 beds. (III)

63.29(2) The residents' bedrooms shall not be occupied by employees, family members of employees, or family members of the licensee. (III)

63.29(3) In facilities where the total occupancy of family, employees, and residents is five or less, one toilet and one tub or shower shall be the minimum requirement. (III)

63.29(4) 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 residents. (III)

63.29(5) In facilities of more than 15 beds, 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 residents. (III)

481—63.30(135C) Animals. No animals shall be allowed within the facility except with written approval of the department and under controlled conditions. (III)

481—63.31(135C) Environment and grounds.

63.31(1) A residential care facility for the intellectually disabled shall be constructed in a neighborhood free from excessive noise, dirt, polluted or odorous air, or similar disturbances. (III)

63.31(2) There shall be an area available for outdoor activities calculated at 25 square feet per licensed bed. (III) Open-air porches may be included in meeting such requirement.

[**ARC 0765C**, IAB 5/29/13, effective 7/3/13]

481—63.32(135C) Supplies.

63.32(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. Uncrowded and convenient storage shall be provided for linens, pillows, and bedding. (III)

63.32(2) *First-aid kit.* A first-aid emergency kit shall be available on each floor in every facility. (II, III)

63.32(3) *General supplies.*

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)

481—63.33(135C) Residents' rights in general.

63.33(1) Each facility shall ensure that policies and procedures are written and implemented which include, at a minimum, all of the following provisions subrules (63.33(2) to 63.33(6)) and which govern all areas of service provided by the facility. These policies and procedures shall be available to staff, residents, their families or legal representatives and the public and shall be reviewed annually. (II)

63.33(2) Policies and procedures regarding the admission, transfer, and discharge of residents shall ensure that:

a. Only those persons are accepted whose needs can be met by the facility directly or in cooperation with community resources or other providers of care with which it is affiliated or has contracts. (II)

b. As changes occur in residents' physical or mental condition, necessitating services or care which cannot be adequately provided by the facility, they are transferred promptly to other appropriate facilities. (II)

63.33(3) Policies and procedures regarding the use of chemical and physical restraints shall define the use of restraints and identify the individual who may authorize the application of physical restraints in emergencies, and describe the mechanism for monitoring and controlling their use. (II)

63.33(4) Policies and procedures shall include a method for submitting complaints and recommendations by residents or their responsible party and for ensuring a response and disposition by the facility. (II)

63.33(5) Policies and procedures shall include provisions governing access to, duplication of, and dissemination of information from the residents' records. (II)

63.33(6) 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. The information must be provided upon admission or in the case of residents already in the facility upon the facility's adoption or amendment of resident right policies.

a. The facility shall make known to residents what they may expect from the facility and its staff, and what is expected from them. The facility shall communicate these expectations during the period of not more than two weeks before or five days after admission. 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 admission. (II)

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)

c. A statement shall be signed by the resident, or responsible party, indicating an understanding of these rights and responsibilities, and shall be maintained in the 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, if applicable. In the case of an intellectually disabled resident, the signature shall be witnessed by a person not associated with or employed by the facility. The witness may be a parent, guardian, Medicaid agency representative, etc. (II)

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)

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 such changes. (II)

63.33(7) Each resident or responsible party shall be fully informed in a contract as required in rule 481—63.14(135C), prior to or at the time of admission and during the resident's stay, of services available in the facility, and of related charges not covered by the facility's basic per diem rate. (II)

63.33(8) Each resident or responsible party shall be fully informed by a physician of the resident's health and medical condition unless medically contraindicated (as documented by a physician in the

resident's record). Each resident shall be afforded the opportunity to participate in the planning of the resident's total care and medical treatment, which may include, but is not limited to, nursing care, nutritional care, rehabilitation, restorative therapies, activities, and social work services. Each resident only participates in experimental research conducted under the U.S. Department of Health and Human Services' protection from research risks policy and then only upon the resident's informed written consent. Each resident has the right to refuse treatment except as provided by Iowa Code chapter 229. In the case of a confused or intellectually disabled individual, the responsible party shall be informed by the physician of the resident's medical condition and be afforded the opportunity to participate in the planning of the resident's total care and medical treatment, to be informed of the medical condition, and to refuse to participate in experimental research. (II)

a. The requirement that residents shall be informed of their conditions, involved in the planning of their care, and advised of any significant changes in either, shall be communicated to every physician responsible for the medical care of residents in the facility. (II)

b. The administrator or designee shall be responsible for working with attending physicians in the implementation of this requirement. (II)

c. If the physician determines or in the case of a confused or intellectually disabled resident the responsible party determines that informing the resident of the resident's condition is contraindicated, this decision and reasons for it shall be documented in the resident's record by the physician. (II)

d. Any clinical investigation involving residents must be under the sponsorship of an institution with a human subjects review board functioning in accordance with the requirements of Public Law 93-348, as implemented by Part 46 of Title 45 of the Code of Federal Regulations, as amended December 1, 1981 (45 CFR 46). A resident being considered for participation in experimental research must be fully informed of the nature of the experiment, e.g., medication, treatment, and understand the possible consequences of participating or not participating. The resident's (or responsible party's) written informed consent must be received prior to participation. (II)

[**ARC 0765C**, IAB 5/29/13, effective 7/3/13]

481—63.34(135C) Involuntary discharge or transfer.

63.34(1) A facility shall not involuntarily discharge or transfer a resident from a facility except: for medical reasons; for the resident's welfare or that of other residents; for nonpayment for the resident's stay (as contained in the contract for the resident's stay), and by reason of action pursuant to Iowa Code chapter 229. (I, II)

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

b. "Welfare" of a resident or that of other residents refers to their social, emotional, or physical well-being. A resident might 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 their needs and rights). Evidence 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 be in writing and shall include specific information to support this determination. (II)

c. Involuntary transfer or discharge of a resident from a facility shall be preceded by a written notice to the resident or responsible party at least 30 days in advance of the proposed transfer or discharge. The 30-day requirement shall not apply in any of the following instances:

(1) If an emergency transfer or discharge is mandated by the resident's health care needs and is in accord with the written orders and medical justification of the attending physician. Emergency transfers or discharges may also be mandated to protect the health, safety, or well-being of other residents and staff from the resident being transferred. (II)

(2) If 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, physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility. (II)

d. The notice required by paragraph *"c"* 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 (elite), which reads: "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 state 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 receipt of your request by the department and you will not be transferred prior to a final decision. Provision may be made for extension of the 14-day requirement upon request to the department of inspections and appeals designee in emergency circumstances. If you lose the hearing, you will not be transferred before the expiration of 30 days following receipt of the original notice of the discharge or transfer, or no sooner than 5 days following final decision of such hearing. 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, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083." (II)

e. A request for a hearing made under 63.34(1)*"d"*(3) shall stay a transfer or discharge pending a hearing or appeal decision. (II)

f. The type of hearing shall be determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident, and responsible party not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident and responsible party that they have a right to appear at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present.

g. The hearing shall be heard by a department of inspections and appeals designee pursuant to Iowa Code chapter 17A. (The hearing shall be public unless the resident or the resident's representative requests in writing that it be closed.) The licensee or designee shall have the opportunity to present to the representative of the department any oral testimony or written materials to show by a preponderance of the evidence just cause why a transfer or discharge may be made. The resident and responsible party shall also have an opportunity to present to the representative of the department any oral testimony or written material to show just cause why a transfer or discharge should not be made. In a determination as to whether a transfer or discharge is authorized, the burden of proof rests on the party requesting the transfer or discharge.

h. Based upon all testimony and materials submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, and responsible party within 10 working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

A request for review of a proposed decision in which the department is the final decision maker shall be made within 15 days of issuance of the proposed decision, unless otherwise provided by statute. Requests shall be mailed or delivered by either party to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. Failure to request review will preclude judicial review unless the department reviews a proposed decision upon its own motion within 15 days of the issuance of the decision.

i. A copy of the notice required by paragraph *"c"* 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, physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility.

j. 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)

k. The involuntary transfer or discharge shall be discussed 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 within 48 hours after notice of discharge has been received. The explanation and discussion of the reasons for involuntary transfer or discharge shall be given by the facility administrator or other appropriate facility representative as the administrator's designee. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions and made a part of the resident's record. (II)

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

(1) Counseling 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 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)

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

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

m. In the case of an emergency transfer or discharge as outlined in 63.34(1)*"c"*(1), the resident must still be given a written notice prior to or within 48 hours following transfer or discharge. A copy of this notice must be placed in the resident's file and it must contain all the information required by 63.34(1)*"d"*(1) and (2). In addition, the notice must contain a statement in not less than 12-point type (elite), which 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. 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 you may 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." A hearing requested pursuant to this subrule shall be held in accordance with paragraphs *"f," "g,"* and *"h."* (II)

n. 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 a facility voluntarily closing, a period of 30 days must be allowed for an orderly transfer of residents to other facilities.

63.34(2) Intrafacility transfer:

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

(1) Incompatibility with or disturbing to other roommates, as documented in the resident's record.

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

(3) For medical, nursing or psychosocial reasons, as documented in the resident's record, 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 which 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 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 63.34(2)*"a"*(5). (II)

(2) As punishment or behavior modification (except as specified in 63.34(2)*"a"*(1). (II)

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

c. If intrafacility relocation is necessary for reasons outlined in paragraph *"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. Notification shall be documented in the resident's record and signed by the resident or responsible party. (II)

d. If emergency relocation is required 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 requiring emergency relocation and the notification shall be documented. (II)

[**ARC 1205C**, IAB 12/11/13, effective 1/15/14]

481—63.35(135C) Resident rights. 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)

63.35(1) 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 issues or pending decisions of the facility that affect them and their views shall be solicited prior to action. (II)

63.35(2) The facility shall implement a written procedure for registering and resolving grievances and recommendations by residents or their responsible party. The procedure shall ensure protection of the resident from any form of reprisal or intimidation. The written procedure shall include:

a. Designation of an employee responsible for handling grievances and recommendations. (II)

b. A method of investigating and assessing the validity of a grievance or recommendation. (II)

c. Methods of resolving grievances. (II)

d. Methods of recording grievances and actions taken. (II)

63.35(3) The facility shall post in a prominent area the name, telephone number, and address of the ombudsman, survey agency and local law enforcement agency and the text of Iowa Code section 135C.46 to provide to residents a further course of redress. (II)

[**ARC 1205C**, IAB 12/11/13, effective 1/15/14]

481—63.36(135C) Financial affairs—management. Each resident, who has not been assigned a guardian or conservator by the court, may manage personal financial affairs, and to the extent, under written authorization by the resident that the facility assists in management, the management shall be carried out in accordance with Iowa Code section 135C.24. (II)

63.36(1) The facility shall maintain a written account of all residents' funds received by or deposited with the facility. (II)

63.36(2) An employee shall be designated in writing to be responsible for resident accounts. (II)

63.36(3) The facility shall keep on deposit personal funds over which the resident has control in accordance with Iowa Code section 135C.24(2). 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 confused or intellectually disabled resident, the resident's responsible party shall designate a method of disbursing the resident's funds. (II)

63.36(4) If the facility makes financial transactions on a resident's behalf, the resident must receive or acknowledge having seen 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)

63.36(5) A resident's personal funds shall not be used without the written consent of the resident or the resident's guardian. (II)

63.36(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 guardian. The department may report findings that resident funds have been used without written consent to the audits division or the local law enforcement agency, as appropriate. (II)

[**ARC 0765C**, IAB 5/29/13, effective 7/3/13]

481—63.37(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. Each resident shall be free from chemical and physical restraints, except in an emergency for the shortest amount of time necessary to protect the resident from injury to the resident or to others, pending the immediate transfer to an appropriate facility. The decision to use restraints on an emergency basis shall be made by the designated charge person, who shall promptly report the action taken to the physician, and the reasons for using restraints shall be documented in the resident's record. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

63.37(1) Mental abuse includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation. (II)

63.37(2) Physical abuse includes, but is not limited to, corporal punishment and the use of restraints as punishment. (II)

63.37(3) Drugs such as tranquilizers may not be used as chemical restraints to limit or control resident behavior for the convenience of staff or as a substitute for program. (II)

63.37(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)

63.37(5) and **63.37(6)** Rescinded IAB 12/11/13, effective 1/15/14.

This rule is intended to implement Iowa Code sections 135C.14 and 135C.24 and Iowa Code chapter 235E.

[**ARC 1204C**, IAB 12/11/13, effective 1/15/14]

481—63.38(135C) Resident records. Each resident shall be ensured confidential treatment of all information contained in the resident's records, including information contained in an automatic data bank. The resident's written consent shall be required for the release of information to persons not otherwise authorized under law to receive it. (II)

63.38(1) The facility shall limit access to any medical records to staff and consultants providing professional service to the resident. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

63.38(2) Similar procedures shall safeguard the confidentiality of residents' personal records, e.g., financial records and social services records. Only those personnel concerned with the financial affairs of the residents may have access to the financial records. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

63.38(3) 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 determines 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)

481—63.39(135C) Dignity preserved. The resident shall be treated with consideration, respect, and full recognition of the resident's dignity and individuality, including privacy in treatment and in care for the resident's personal needs. (II)

63.39(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. (II)

63.39(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)

63.39(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)

63.39(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)

63.39(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—63.40(135C) Resident work. No resident may be required to perform services for the facility, except as provided by Iowa Code sections 35D.14 and 347B.5. (II)

63.40(1) Residents may not be used to provide a source of labor for the facility against their will. Physician's approval is required for all work programs. (I, II)

63.40(2) If the plan of care requires activities for therapeutic or training reasons, the plan for these activities shall be professionally developed and implemented. Therapeutic or training goals must be clearly stated and measurable and the plan shall be time-limited and reviewed at least quarterly. (II)

63.40(3) Residents who perform work for the facility must receive remuneration unless such work is part of their approved training program. Persons on the resident census performing work shall not be used to replace paid employees in fulfilling staff requirements. (II)

481—63.41(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)

63.41(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)

63.41(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. (II)

b. The resident's physician 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)

63.41(3) Decisions to restrict a visitor are reviewed and reevaluated: each time the medical orders are reviewed by the physician; at least quarterly by the facility's staff; or at the resident's request. (II)

63.41(4) Space shall be provided for residents to receive visitors in reasonable comfort and privacy. (II)

63.41(5) Telephones consistent with ANSI standards (405.1134(c)) 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)

63.41(6) Arrangements shall be made to provide assistance to residents who require help in reading or sending mail. (II)

63.41(7) Residents shall be permitted to leave the facility and environs at reasonable times unless there are justifiable reasons established in writing by the attending physician, qualified intellectual disabilities professional or facility administrator for refusing permission. (II)

63.41(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)

[**ARC 0765C**, IAB 5/29/13, effective 7/3/13]

481—63.42(135C) Resident activities. 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 qualified intellectual disabilities professional as appropriate in the resident's record. (II)

63.42(1) 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)

63.42(2) All residents shall have the freedom to refuse to participate in these activities. (II)

[**ARC 0765C**, IAB 5/29/13, effective 7/3/13]

481—63.43(135C) Resident property. Each resident may retain and use personal clothing and possessions as space permits and provided such use is not otherwise prohibited by these rules. (II)

63.43(1) Residents shall be permitted to keep reasonable amounts of personal clothing and possessions for their use while in the facility. The personal property shall be kept in a safe location which is convenient to the resident. (II)

63.43(2) Residents shall be advised, prior to or at the time of admission, of the kinds and amounts of clothing and possessions permitted for personal use, and whether the facility will accept responsibility for maintaining these items, e.g., cleaning and laundry. (II)

63.43(3) Any personal clothing or possessions retained by the facility for the resident during the resident's stay shall be identified and recorded on admission and a record placed on the resident's chart. The facility shall be responsible for secure storage of such items, and they shall be returned to the resident promptly upon request or upon discharge from the facility. (II)

63.43(4) A resident's personal property shall not be used without the written consent of the resident or the resident's guardian. (II)

63.43(5) A resident's personal property shall be returned to the resident when it has been used without the written consent of the resident or the resident's guardian. The department may report findings that a resident's property has been used without written consent to the local law enforcement agency, as appropriate. (II)

481—63.44(135C) Family visits. Each resident, if married, shall be ensured privacy for visits by the resident's spouse; if both are residents in the facility, they shall be permitted to share a room, if possible. (II)

63.44(1) The facility shall provide for needed privacy in visits between spouses. (II)

63.44(2) Spouses who are residents in the same facility shall be permitted to share a room, if available, unless one of their attending physicians documents in the medical record those specific reasons why an arrangement would have an adverse effect on the health of the resident. (II)

63.44(3) Family members shall be permitted to share a room, if available, if requested by both parties, unless one of their attending physicians documents in the medical record those specific reasons why such an arrangement would have an adverse effect on the health of the resident. (II)

481—63.45(135C) Choice of physician. Each resident shall be permitted free choice of a physician and a pharmacy, if accessible. The facility may require the pharmacy selected to utilize a drug distribution system compatible with the system currently used by the facility. (II)

481—63.46(135C) Incompetent resident.

63.46(1) Each facility shall provide that all rights and responsibilities of the resident devolve to the resident's responsible party when a resident is adjudicated incompetent in accordance with state law or, in the case of a resident who has not been adjudicated incompetent under the laws of the state, in accordance with 42 CFR 483.10. This subrule is not intended to limit the authority of any individual acting pursuant to Iowa Code chapter 144A. (II)

63.46(2) The fact that a resident has been adjudicated incompetent does not absolve the facility from advising the resident of these rights to the extent the resident is able to understand them. The facility shall also advise the responsible party, if any, and acquire a statement indicating an understanding of residents' rights. (II)

481—63.47(135C) Specialized license for three- to five-bed facilities. The specialized license is for residential care facilities which serve persons with intellectual disabilities, chronic mental illness and other developmental disabilities having five or fewer residents as specified in Iowa Code section 225C.26. The facility is exempt from Iowa Code section 135.63. For this specialized license, all rules of 481—Chapter 63 apply except those which are deleted or amended, as indicated in subsequent rules.

63.47(1) The provider may apply for a specialized license from the department of inspections and appeals. Before the license is granted, the provider shall meet all of the following requirements:

a. Compliance with program requirements pursuant to Iowa Code chapter 135C and administrative rules relating to residential care facilities adopted by the state board of health, or standards adopted by the Accreditation Council for Services for Persons with Mental Retardation and Other Developmental Disabilities (1984). The program of care shall emphasize an age-appropriate and least restrictive program.

b. The facility shall be located in areas zoned for single- or multiple-family housing, or be located in an unincorporated area, and shall be constructed in compliance with applicable local housing codes and rules adopted for this classification of license by the state fire marshal. (II, III)

c. The facility shall be appropriately accessible to residents who have disabilities. (II, III)

d. Written plans shall demonstrate that the facility meets the needs of the residents pursuant to individual program plans meeting age-appropriate and least restrictive program requirements. (II)

e. Written plans shall demonstrate the residents have reasonable access to employment for job-related training, education, generic community resources, or integrated opportunities to promote community interaction. (II)

f. Unless documented as appropriate within the residents' individual program plans, populations with primary diagnosis of chronic mental illness or intellectual disability/developmental disability may not be residents of the same specialized license facility. (II, III)

63.47(2) The housing for persons with intellectual disabilities, chronic mental illness, and other developmental disabilities, developed pursuant to this rule shall be eligible for funding utilized by licensed residential care facilities for the intellectually disabled.

63.47(3) Rescinded IAB 6/27/90, effective 8/1/90.

63.47(4) Rescinded IAB 6/27/90, effective 8/1/90.

63.47(5) The director of the department of inspections and appeals shall appoint a specialized license committee not to exceed nine members. This committee shall monitor the program rules and procedures adopted for this classification of license.

63.47(6) All conditions and criteria in 481—Chapter 63 apply to the specialized license with the exception of the following deletions: 481—63.7(135C), 63.8(2)*"b,"* 63.8(7)*"b,"* 63.13(1)*"l,"* 63.18(1)*"b"*(9), 63.19(1)*"a," "b," "c,"* 63.19(2)*"c"*(1), *"e," "g,"* 63.19(4)*"a," "b," "c," "g," "h," "i," "l," "n," "p," "q," "r," "t,"* 63.19(5)*"b," "c," "d,"* 63.21(1), (2), (3)*"a"* to *"e,"* (4)*"a," "b," "c"*(1) to (3), *"d," "e,"* 63.21(5)*"c,"* 63.23(3)*"c,"* 63.23(4)*"c," "d,"* 63.24(1), (7), (10), 63.25(10)*"b,"*

63.26(1) to (4), (6)*"b,"* 63.27(3) to (5), 63.28(1)*"a," "b," "f," "g," "k," "l," "m," "o,"* 63.28(2)*"c,"* 63.28(3)*"a," "d," "e," "f"*(3), *"g"*(2), 63.28(5)*"b," "i,"* 63.28(9), 63.29(1), (4), (5), 63.33(6)*"d."*

63.47(7) The following rules in Chapter 63 are amended for this specialized license as follows:

1. 63.3(1)*"a"* and 63.3(2)—Delete all references to 481—Chapter 60.

2. 63.8(1)*"a"*—Add "or qualified mental health professional (III)" after "qualified intellectual disabilities professional". (III)

3. 63.8(2)—Add "For purposes of the specialized license, the administrator may act as an administrator for not more than three residential care facilities for the intellectually disabled, chronic mentally ill, and developmentally disabled." (II)

4. 63.9(1)—Add "For purposes of the specialized license there shall be written personnel policies in all facilities to include hours of work and attendance at the education program." (III)

5. 63.11(1)*"a"*—Delete the words "a managerial role of" in line 2.

6. 63.11(2)*"b"*—Delete the second sentence and "with 15 or less beds" in the third sentence.

7. 63.14(5)*"b"*—Add "or guardian" after "resident" in the first line.

8. 63.17(1)—Add a new paragraph: "v. Current Individual Program Plans (IPP)".

9. 63.17(5)*"a"*—Add "For the specialized license, a job description shall be in the individual's personnel file." (III)

10. 63.19(2)*"b"*—Delete from the end "Recommended daily dietary allowances are:" Also delete subparagraphs (1) to (5).

11. 63.19(2)*"f"*—Delete the second sentence.

12. 63.19(3)*"e"*—Delete "for a minimum of a one-week period" in the first line.

13. 63.19(4)*"m"*—Delete "smooth, washable," in the second line.

14. 63.19(4)*"o"*—Delete the second sentence.

15. 63.19(4)*"s"*—Add "and rinse" after "wash" in the first line and then delete the rest of the sentence after "(60°C)".

16. 63.19(4)*"w"*—Change "or" to "and" in the first line and delete ",washing, sanitizing, and air-drying".

17. 63.19(5)*"b"*—Delete the second sentence.

18. 63.19(5)*"f"*—Add "during food preparation" after "kitchen".

19. 63.24(9)—Change "nonslip" to "slip-resistant" in the first sentence.

20. 63.25(1)—Delete the second sentence.

21. 63.28(1)*"j"*—Change "on both sides" in the first line to "on at least one side".

22. 63.28(4)*"n"*—Change to read "Bedrooms shall have a minimum of 60 square feet for double, 80 square feet for single, and 100 square feet physical (wheelchair)." (III)

23. 63.28(4)*"o"*—Change "four" to "two".

24. 63.28(5)*"c"*—Amend to read: "Minimum numbers of toilets and bath facilities shall be one for each five residents." (III)

25. 63.28(5)*"d"*—Amend to read: "There shall be a minimum of one bathroom with tub or shower, toilet stool, and lavatory on each floor in the multistory buildings." (III)

26. 63.28(5)*"e"*—Amend to read: "Grab bars shall be provided as needed." (III)

27. 63.33(8)—Change any reference of "responsible party" to "legal guardian".

28. 63.33(8)*"c"*—Delete "in the case of a confused or intellectually disabled resident". Change any reference of "responsible party" to "legal guardian".

29. 63.33(8)*"d"*—Change any reference of "responsible party" to "legal guardian".

30. 63.46(1)—Change any reference of "responsible party" to "legal guardian" and delete the rest of the paragraph after "state law".

63.47(8) "Qualified mental health professional" is a person who:

a. Holds a master's degree from an accredited educational institution with coursework relevant to the position for which the person is hired;

b. Has at least two years' relevant experience supervised by a qualified mental health professional in assessing mental health problems and needs of persons in providing appropriate mental health services for those persons;

c. Holds a current Iowa license when required by Iowa licensure law.

63.47(9) "Intellectual disabilities" as used in this chapter shall also include the chronically mentally ill and the developmentally disabled for purposes of this specialized license.

a. For the specialized license, "persons with intellectual disabilities" means persons with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, manifested during the developmental period.

(1) "General intellectual functioning" is defined as the results obtained by assessment with one or more of the individually administered general intelligence tests developed for the purpose of assessing intellectual functioning;

(2) "Significantly subaverage functioning" is defined as approximately 70 IQ or below;

(3) "Adaptive behavior" is defined as the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for age and cultural group;

(4) "Developmental period" is defined as the period of time between conception and the eighteenth birthday.

b. For the specialized license, "persons with developmental disabilities" means persons with a severe, chronic disability which:

(1) Is attributable to mental or physical impairment, or a combination of physical and mental impairments;

(2) Is manifested before the person attains the age of 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in three or more of the following areas of life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency; and

(5) Reflects the person's need for a combination and sequence of services which are of lifelong or extended duration.

c. For the specialized license, "persons with chronic mental illness" means adults aged 18 or older, with persistent mental or emotional disorders that seriously impair their functioning relative to such primary aspects of daily living as personal relations, living arrangement or employment. Persons with chronic mental illness typically meet at least one of the following criteria:

(1) Have undergone psychiatric treatment more intensive than outpatient care more than once in a lifetime (e.g., emergency services, alternative home care, partial hospitalization or in-patient hospitalization);

(2) Have experienced a single episode of continuous, structured supportive residential care other than hospitalization.

In addition, such persons typically meet at least two of the following criteria, on a continuing or intermittent basis for at least two years:

1. Are unemployed, or employed in a sheltered setting, or have markedly limited skills and a poor work history;

2. Require financial assistance for out-of-hospital maintenance and may be unable to procure this assistance without help;

3. Show severe inability to establish or maintain a personal social support system;

4. Require help in basic living skills;

5. Exhibit inappropriate social behavior which results in demand for intervention by the mental health or judicial system.

In atypical instances chronically mentally ill persons may vary from the above criteria.

63.47(10) For the specialized license, there shall be implemented an individual program plan (IPP) of goals and objectives for each resident developed using evaluations, assessments and progress reports. (II)

63.47(11) For the specialized license, "age-appropriate" shall mean activities, settings, personal appearance and possessions commensurate with the person's chronological age.

63.47(12) For the specialized license, "least restrictive" shall mean the availability to the person of programs, services and settings that give the greatest opportunity for human development and to associate with and become part of the general society.

63.47(13) "Individual program plan" shall be a written plan for the provision of services to the person and, when appropriate, to the person's family, that is developed and implemented, using an interdisciplinary process, which identifies the person's and, when appropriate, the person's family's functional status, strengths, and needs, and service activities designed to enable a person to maintain or move toward independent functioning. The plan is developed in accordance with the developmental model, which is a service approach that recognizes and assumes the potential for positive change, growth, and sequential development in all people. (II)

a. An individual program plan shall be developed and implemented for each individual accepted for service, regardless of the individual's chronological age or developmental level. (I, II)

b. The interdisciplinary team shall develop the plan. (II) For the purpose of the specialized license, the team shall include:

(1) The person, the person's legal guardian, and the person's family unless the family's participation is contrary to the wishes of the adult person who has not been legally determined to be incompetent; (II, III)

(2) The service coordinator or case manager; (II, III)

(3) All current service providers; and (II, III)

(4) Other persons whose appropriateness may be identified through the diagnosis and evaluation or current reevaluation. (III)

c. The person or the person's legal guardian has the ultimate authority to accept or reject the plan unless otherwise determined by court. (III)

d. The resident and the facility retain the rights of appeal and due process from the interdisciplinary team decisions. (II, III)

63.47(14) Goals and objectives shall be stated separately and a time frame shall be specified for their achievement. (II, III)

a. Each individual enrolled shall have an individual program plan. (II)

b. The initial individual program plan shall be developed within 30 calendar days after the individual is enrolled in this service. (II)

c. The individual program shall be developed by an appropriately constituted interdisciplinary team. (II)

d. The individual program plan shall state specific objectives to reach identified goals and shall identify the individuals responsible for implementation. (II, III)

e. Goals and objectives shall be stated separately. (II, III)

f. Goals and objectives shall be assigned projected evaluation completion dates and shall be reviewed at least annually. (II, III)

g. Goals and objectives shall be expressed in behavioral terms that provide measurable indices of progress. (II)

h. Goals and objectives shall be sequenced with a developmental progression appropriate to the individual. (II, III)

i. Goals and objectives of the individual program plans shall be assigned priorities by the interdisciplinary team and implemented with documentation of needed resources. (II, III)

j. The individual program plan shall be written in terms that are understandable to all concerned. (II, III)

63.47(15) Where implementation is a shared responsibility, the individual program plan shall identify the agencies or persons responsible for delivering the services required. (III)

63.47(16) A review of the individual program plan shall be made at least quarterly by a member or members of the individual's interdisciplinary team, as determined by the team, in order to ensure the continuing implemented appropriateness of the plan and any necessary action to be initiated. (II)

a. Problems or changes that call for review of the individual program plan by the team shall be indicated. (II)

b. The team shall be convened at least annually to review the individual program plan where problems or changes that call for review by the team are indicated. (II, III)

c. The team review shall assess the individual's response to activities designed to achieve the objective stated in the individual program plan. (II, III)

d. The team review shall modify activities or objectives as necessary. (II, III)

e. The team review shall determine the services that are needed. (II, III)

f. The team review shall include consideration of the advisability of continued enrollment or alternative placements. (II, III)

[**ARC 0765C**, IAB 5/29/13, effective 7/3/13]

481—63.48(135C) County care facilities. Rescinded **ARC 0765C**, IAB 5/29/13, effective 7/3/13.

481—63.49(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.

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 *"a"* through *"j"* of this rule. (I, II, III)

63.49(1) 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.

63.49(2) Approval of the state fire marshal shall be obtained before approval of the department will be considered.

63.49(3) 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—63.50(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. A facility which chooses to provide respite care services must meet the following requirements related to respite care services and must be licensed as a health care facility.

63.50(1) A facility which chooses to provide respite care services is not required to obtain a separate license or pay a license fee.

63.50(2) Rules regarding involuntary discharge or transfer rights do not apply to residents who are being cared for under a respite care contract.

63.50(3) The facility shall have a contract with each resident in the facility. When the resident is there for respite care services, the contract shall specify the time period during which the resident 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 specifically state the resident may be involuntarily discharged while being considered as a respite care resident. The contract shall meet other requirements for contracts between a health care facility and resident, except the requirements concerning the holding and charging for a bed when a resident is hospitalized or leaves the facility temporarily for recreational or therapeutic reasons.

63.50(4) Respite care services shall not be provided by a facility to persons requiring a level of care which is higher than the level of care the facility is licensed to provide.

These rules are intended to implement Iowa Code sections 10A.202, 10A.402, 135C.1, 135C.2(5), 135C.2(6), 135C.6(1), 135C.14(3), 135C.14(5), 135C.14(8), 135C.25, 135C.25(3), 135C.36, 227.4, 235B.1(6), and 235B.1(11) and 1988 Iowa Acts, chapter 1239.

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◊ Two or more ARCs

1 Effective date of 63.15(2)*"a"* and *"b"* delayed 70 days by the Administrative Rules Review Committee, IAB 2/26/86. Effective date of 63.15(2)*"a"* and *"b"* delayed until the expiration of 45 calendar days into the 1987 session of the General Assembly pursuant to Iowa Code section 17A.8(9), IAC 6/4/86.

2 See IAB, Inspections and Appeals Department.

3 Two ARCs

4 Rule 481—63.49(135C), effective 7/1/92.

CHAPTER 64
INTERMEDIATE CARE FACILITIES FOR THE INTELLECTUALLY DISABLED*

481—64.1 Rescinded IAB 7/26/89, effective 7/7/89.

481—64.2(135C) Variances. Variances from these rules may be granted by the director of the department of inspections and appeals for good and sufficient reason when the need for variance has been established; no danger to the health, safety, or welfare of any resident results; alternate means are employed or compensating circumstances exist and the variance will apply only to an individual intermediate care facility for the intellectually disabled. Variances will be reviewed at the discretion of the director of the department of inspections and appeals.

64.2(1) To request a variance, the licensee must:

a. Apply for variance in writing on a form provided by the department;

b. Cite the rule or rules from which a variance is desired;

c. State why compliance with the rule or rules cannot be accomplished;

d. Explain alternate arrangements or compensating circumstances which justify the variance;

e. Demonstrate that the requested variance will not endanger the health, safety, or welfare of any resident.

64.2(2) Upon receipt of a request for variance, the director of the department of inspections and appeals will:

a. Examine the rule from which variance is requested to determine that the request is necessary and reasonable;

b. If the request meets the above criteria, evaluate the alternate arrangements or compensating circumstances against the requirement of the rules;

c. Examine the effect of the requested variance on the health, safety, or welfare of the residents;

d. Consult with the applicant if additional information is required.

64.2(3) Based upon these studies, approval of the variance will be either granted or denied within 120 days of receipt.

[**ARC 0764C**, IAB 5/29/13, effective 7/3/13]

481—64.3(135C) Application for license.

64.3(1) Initial application. In order to obtain an initial intermediate care facility for the intellectually disabled license for an intermediate care facility for the intellectually disabled which is currently licensed, the applicant must:

a. Submit a letter of intent and a written résumé of the resident care program and other services provided for departmental review and approval;

b. Make application at least 30 days prior to the change of ownership of the facility on forms provided by the department;

c. Submit a floor plan of each floor of the intermediate care facility, drawn on 8½- × 11-inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which room will be put and window and door location;

d. Submit a photograph of the front and side elevation of the intermediate care facility for the intellectually disabled;

e. Submit the statutory fee for an intermediate care facility for the intellectually disabled license;

f. Meet all of the rules, regulations and standards contained in 481—Chapter 64.

g. Comply with federal, state, and local laws, codes, and regulations pertaining to health and safety, including procurement, dispensing, administration, safeguarding and disposal of medications and controlled substances; building, construction, maintenance and equipment standards; sanitation; communicable and reportable diseases; and postmortem procedures;

*See Interpretive Guidelines at end hereof

h. Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

64.3(2) In order to obtain an initial intermediate care facility for the intellectually disabled license for a facility not currently licensed as an intermediate care facility for the intellectually disabled, the applicant must:

**a.* Meet all of the rules, regulations, and standards contained in 481—Chapters 61 and 64; exceptions noted in 481—subrule 61.1(2) shall not apply;

*Nullified by 1989 Iowa Acts, SJR 10

b. Submit a letter of intent and a written résumé of the resident care program and other services provided for departmental review and approval;

c. Make application at least 30 days prior to the proposed opening date of the facility on forms provided by the department;

d. Submit a floor plan of each floor of the intermediate care facility for the intellectually disabled, drawn on 8½- × 11-inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which the rooms will be put and window and door locations;

e. Submit a photograph of the front and side elevation of the intermediate care facility for the intellectually disabled;

f. Submit the statutory fee for an intermediate care facility for the intellectually disabled;

g. Comply with federal, state, and local laws, codes, and regulations pertaining to health and safety, including procurement, dispensing, administration, safeguarding and disposal of medications and controlled substances; building, construction, maintenance and equipment standards; sanitation; communicable and reportable diseases; and postmortem procedures;

h. Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

64.3(3) Renewal application. In order to obtain a renewal of the intermediate care facility for the intellectually disabled license, the applicant must:

a. Submit the completed application form 30 days prior to annual license renewal date of intermediate care facility for the intellectually disabled license;

b. Submit the statutory license fee for an intermediate care facility for the intellectually disabled with the application for renewal;

c. Have an approved current certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations;

d. Submit appropriate changes in the résumé to reflect any changes in the resident care program or other services.

64.3(4) Licenses are issued to the person or governmental unit which has responsibility for the operation of the facility and authority to comply with all applicable statutes, rules or regulations.

The person or governmental unit must be the owner of the facility or, if the facility is leased, the lessee.

[**ARC 0764C**, IAB 5/29/13, effective 7/3/13]

481—64.4(135C) General requirements.

64.4(1) The license shall be displayed in a conspicuous place in the facility which is viewed by the public. (III)

64.4(2) The license shall be valid only in the possession of the licensee to whom it is issued.

64.4(3) The posted license shall accurately reflect the current status of the intermediate care facility for the intellectually disabled. (III)

64.4(4) Licenses expire one year after the date of issuance or as indicated on the license.

64.4(5) 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. (III)

64.4(6) The facility shall have in effect a transfer agreement with one or more hospitals sufficiently close to the facility to make feasible the transfer between them of residents and their records. (III) Any facility which does not have such an agreement in effect but has attempted in good faith to enter into such an agreement with a hospital shall be considered to have such an agreement so long as it is in the public interest and essential to ensuring intermediate care facility for the intellectually disabled services for eligible persons in the community.

64.4(7) A resident's personal funds and property shall not be used without the written consent of the resident or the resident's guardian. (II)

64.4(8) A resident's personal funds and property shall be returned to the resident when the funds or property have been used without the written consent of the resident or the resident's guardian. The department may report findings that funds or property have been used without written consent to the audits division or the local law enforcement agency, as appropriate. (II)

64.4(9) A properly trained person shall be charged with the responsibility of administering non-parenteral medications.

a. The individual shall have knowledge of the purpose of the drugs, their dangers, and contraindications.

b. This person shall be a licensed nurse or physician 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.

c. A person who is a nursing student or a graduate nurse may take the challenge examination in place of taking a medication aide course. This individual 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;

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

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

(4) Successfully complete a department-approved nurse aide competency evaluation.

d. 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.

[**ARC 0764C**, IAB 5/29/13, effective 7/3/13]

481—64.5(135C) Notifications required by the department. The department shall be notified:

64.5(1) Within 48 hours, by letter, any reduction or loss of direct care professional or dietary staff lasting more than seven days which places the staffing ratio of the intermediate care facility for the intellectually disabled below that required for licensing. No additional residents shall be admitted until the minimum staffing requirements are achieved; (III)

64.5(2) Of any proposed change in the intermediate care facility for the intellectually disabled's functional operation or addition or deletion of required services; (III)

64.5(3) Thirty days before addition, alteration, or new construction is begun in the intermediate care facility for the intellectually disabled, or on the premises; (III)

64.5(4) Thirty days in advance of closure of the intermediate care facility for the intellectually disabled; (III)

64.5(5) Within two weeks of any change in administrator; (III)

64.5(6) When any change in the category of license is sought; (III)

64.5(7) Prior to the purchase, transfer, assignment, or lease of an intermediate care facility for the intellectually disabled, the licensee shall:

a. Inform the department of the pending sale, transfer, assignment, or lease of the facility; (III)

b. Inform the department of the name and address of the prospective purchaser, transferee, assignee, or lessee at least 30 days before the sale, transfer, assignment, or lease is completed; (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 intermediate care facility for the intellectually disabled to the named prospective purchaser, transferee, assignee, or lessee. (III)

64.5(8) Pursuant to the authorization submitted to the department by the licensee prior to the purchase, transfer, assignment, or lease of an intermediate care facility for the intellectually disabled, the department shall, upon request, send or give copies of all recent licensure surveys and of any other pertinent information relating to the facility's licensure status to the prospective purchaser, transferee, assignee, or lessee; costs for such copies shall be paid by the prospective purchaser.

[**ARC 0764C**, IAB 5/29/13, effective 7/3/13]

481—64.6(135C) Veteran eligibility.

64.6(1) Within 30 days of a resident's admission to a health care facility receiving reimbursement through the medical assistance program under Iowa Code chapter 249A, the facility shall ask the resident or the resident's personal representative whether the resident is a veteran and shall document the response. If the facility determines that the resident is a potential veteran, the facility shall report the resident's name along with the names of the resident's spouse and any dependent children, as well as the name of the contact person for this information, to the Iowa department of veterans affairs. Where appropriate, the facility may also report such information to the Iowa department of human services.

64.6(2) If a resident is eligible for benefits through the United States Department of Veterans Affairs or other third-party payor, the facility first shall seek reimbursement from the identified payor source before seeking reimbursement from the medical assistance program established under Iowa Code chapter 249A.

64.6(3) The provisions of this rule shall not apply to the admission of an individual as a resident to a state mental health institute for acute psychiatric care. (II, III)

481—64.7(135C) Licenses for distinct parts.

64.7(1) Separate licenses may be issued for distinct parts of a health care facility which are clearly identifiable, containing contiguous rooms in a separate wing or building or on a separate floor of the facility and which provide care and services of separate categories.

64.7(2) The following requirements shall be met for a 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. A separate 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.

481—64.8 to **64.16** Rescinded IAB 7/26/89, effective 7/7/89.

481—64.17(135C) Contracts. Each party shall receive a copy of the signed contract. (III) Each contract for residents shall:

64.17(1) State the rate or scale per day or per month for services included in the rate or scale and method of payment; (III)

64.17(2) Contain a complete schedule of all offered services for which a fee may be charged in addition to the base rate. (III) Furthermore, the contract shall:

a. Stipulate that no further additional fees shall be charged for items not contained in complete schedule of services as set forth in this subrule; (III)

b. State the method of payment of additional charges; (III)

c. 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)

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

64.17(3) Contain an itemized list of those services, with the specific fee the resident will be charged and method of payment, as related to the resident's current condition, based on a preadmission evaluation assessment which is determined in consultation with the administrator; (III)

64.17(4) Include the total fee per day to be charged to the resident; (III)

64.17(5) State the conditions whereby the facility may make adjustments to its overall fees for resident care as a result of changing costs. (III) Furthermore, the contract shall provide that the facility shall give:

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

b. Notification to the resident, or responsible party when appropriate, of changes in charges, based on a change in the resident's condition. Notification must occur prior to the date such revised 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; (III)

64.17(6) State the terms of agreement in regard to refund of all advance payments in the event of transfer, death, voluntary or involuntary discharge; (III)

64.17(7) State the terms of agreement concerning the holding and charging for a bed in the event of temporary absence of the resident; such terms shall include, at a minimum, the following provisions:

a. If a resident has a temporary absence from a facility for medical treatment, the facility shall ask the resident or responsible party if they wish the bed held open. This shall be documented in the resident's record including the response. Upon request of the resident/responsible party, the facility shall hold the bed open for at least ten days during the resident's absence and the facility shall receive payment for the absent period in accordance with provisions of the contract. (II)

b. If a resident has a temporary absence from a facility for therapeutic reasons as approved by a physician or qualified intellectual disabilities professional, the facility shall ask if the resident or responsible party wishes that the bed be held open. This request shall be documented in the resident's record, including the response. The bed shall be held open at least 30 days per year, and the facility shall receive payment for the absent periods in accordance with the provisions of the contract. The required holding during temporary absences for therapeutic reasons is limited to 30 days per year. (II)

c. For Title XIX residents the department of social services shall continue funding for the temporary absence as provided under paragraphs *"a"* and *"b"* and in accordance with department of social services guidelines.

d. Private pay residents shall have a negotiated rate stated in the signed contract relating to these provisions. (II)

64.17(8) State the conditions under which the involuntary discharge or transfer of a resident would be effected; (III)

64.17(9) State the conditions of voluntary discharge or transfer; (III)

64.17(10) Set forth any other matters deemed appropriate by the parties to the contract. No contract or any provision thereof shall be drawn or construed so as to relieve any facility of any requirement or obligation imposed upon it by this chapter or any standards or rules in force pursuant to this chapter. (III)

[**ARC 0764C**, IAB 5/29/13, effective 7/3/13]

481—64.18(135C) Records.

64.18(1) *Resident record.* The licensee shall keep a permanent record about each resident, with all entries current, dated, and signed. (II) 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 of resident; (III)

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

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

f. Name, address, and telephone number of resident's next of kin or legal representative; (III)

g. Name, address, and telephone number of the person to be notified in case of emergency; (III)

h. Funeral director's telephone number and address; (III)

i. Pharmacy's name, telephone number and address; (III)

j. Certification by the physician that the resident requires no higher level of care than the facility is licensed to provide; (III)

k. Physician's orders for medication and treatments in writing, which shall be signed by the physician quarterly, and diet orders, which shall be renewed yearly; (III)

l. A notation of the resident's yearly or other visits to physician or other professionals and all consultation reports and progress notes; (III)

m. Documentation describing any change in the resident's condition; (II, III)

n. A notation describing the resident's condition on admission, transfer, and discharge; (III)

o. In the event of a resident's death, notations in the resident's record shall include 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 that the resident's family and physician were notified of the resident's death; (III)

p. A copy of instructions given to the resident, the resident's legal representative, or receiving facility in the event of the resident's discharge or transfer; (III) and

q. Disposition of personal property. (III)

64.18(2) *Confidentiality of resident records.* The facility shall have policies and procedures providing that each resident shall be ensured confidential treatment of all information, including information contained in an automated data bank. The resident's or the resident's legal guardian's written informed consent shall be required for the release of information to persons not otherwise authorized under law to receive it. (II)

A release of information form shall be used which includes to whom the information shall be released, the reason for the release of the information, how the information is to be used, and the period of time for which the release is in effect. A third party not requesting the release shall witness the signing of the release of information form. (II)

a. The facility shall limit access to any resident records to staff and consultants providing professional service to the resident. Information shall be made available to staff only to the extent that the information is relevant to the staff person's responsibilities and duties. (II)

Only those personnel concerned with financial affairs of the residents may have access to the financial information. This paragraph is not meant to preclude access by representatives of state or federal regulatory agencies. (II)

b. The resident, or the resident's legal guardian, shall be entitled to examine all information and shall have the right to secure full copies of the record at reasonable cost upon request, unless the physician or qualified mental health professional determines the disclosure of the record or certain information contained in the record is contraindicated in which case the information will be deleted before the record is made available to the resident. This determination and the reasons for it must be documented in the resident's record by the physician or qualified mental health professional in collaboration with the resident's interdisciplinary team. (II)

64.18(3) *Incident records.* Each facility shall maintain an incident record report and shall have available incident report forms. (II, III)

a. The report of every incident shall be in detail on a printed incident report form. (II, III)

b. The person in charge at the time of the incident shall oversee the preparation of the report and sign the report. (III)

c. The facility shall maintain a copy of the incident report as part of the facility's administrative records and shall make the record available for review. (III)

64.18(4) *Retention of records.* A resident's records shall be retained in the facility for five years following termination of services to the resident even when there is a change of ownership of the facility. (III)

When the facility ceases to operate, the resident's records shall be released to the receiving facility. If no transfer occurs, the records shall be released to the resident's physician. (III)

481—64.19 to **64.32** Reserved.

481—64.33(135C) Allegations of dependent adult abuse.

64.33(1) *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)

64.33(2) *Separation of accused abuser and victim.* Upon a claim of dependent adult abuse of a resident being reported, the administrator of the facility shall separate the victim and accused abuser immediately and maintain the separation until the department's abuse investigation is completed and an abuse determination is made. (I, II)

[**ARC 1204C**, IAB 12/11/13, effective 1/15/14]

481—64.34(135C) 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 2013 Iowa Acts, Senate File 347, 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)

[**ARC 0903C**, IAB 8/7/13, effective 9/11/13]

481—64.35(135C) Care review committee. Rescinded **ARC 1205C**, IAB 12/11/13, effective 1/15/14.

481—64.36(135C) Involuntary discharge or transfer.

64.36(1) A facility shall not involuntarily discharge or transfer a resident from a facility except: for medical reasons; for the resident's welfare or that of other residents; for nonpayment for the resident's stay (as contained in the contract for the resident's stay), except as prohibited by Title XIX of the Social Security Act, 42 U.S.C. 1396 to 1396k by reason of action pursuant to Iowa Code chapter 229; by reason of negative action by the Iowa department of human services; and by reason of negative action by the professional review organization. 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 chapter 249A. (I, II)

a. "Medical reasons" for transfer or discharge are based on the resident's needs and are determined and documented in the resident's record by the attending physician. Transfer or discharge may be required to provide a different level of care. In the case of transfer or discharge for the reason that the resident's condition has improved so that the resident no longer needs the level of care being provided by the facility, the determination that medical reason exists is the exclusive province of the professional review organization or utilization review process in effect for residents whose care is paid in full or in part by Title XIX. (II)

b. "Welfare" of a resident or that of other residents refers to their social, emotional, or physical well-being. A resident might 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 their needs and rights). Evidence that the resident's continued presence in the facility would adversely affect the welfare of the resident or that of other residents shall be made by the administrator or designee and shall be in writing and shall include specific information to support this determination. (II)

c. Involuntary transfer or discharge of a resident from a facility shall be preceded by a written notice to the resident or responsible party at least 30 days in advance of the proposed transfer or discharge. The 30-day requirement shall not apply in any of the following instances:

(1) If an emergency transfer or discharge is mandated by the resident's health care needs and is in accord with the written orders and medical justification of the attending physician. Emergency transfers or discharges may also be mandated to protect the health, safety, or well-being of other residents and staff from the resident being transferred. (II)

(2) If 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, physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility. (II)

(3) If the discharge or transfer is the result of a final, nonappealable decision by the department of human services or the professional review organization.

d. The notice required by 64.36(1)*"c"* 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 (elite), which reads: "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 state 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 receipt of your request by the department and you will not be transferred prior to a final decision. Provision may be made for extension of the 14-day requirement upon request to the department of inspections and appeals designee in emergency circumstances. If you lose the hearing, you will not be transferred before the expiration of 30 days following receipt of the original notice of the discharge or transfer, or no sooner than 5 days following final decision of such hearing. 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, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319." (II)

e. A request for a hearing made under 64.36(1)*"d"*(3) shall stay a transfer or discharge pending a hearing or appeal decision. (II)

f. The type of hearing shall be determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident, and responsible party not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident and responsible party that they have a right to appear at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present.

g. The hearing shall be heard by a department of inspections and appeals designee pursuant to Iowa Code chapter 17A. (The hearing shall be public unless the resident or the resident's representative requests in writing that it be closed.) The licensee or a designee shall have the opportunity to present to the representative of the department any oral testimony or written materials to show by a preponderance of the evidence just cause why a transfer or discharge may be made. The resident and responsible party shall also have an opportunity to present to the representative of the department any oral testimony or written material to show just cause why a transfer or discharge should not be made. In a determination as to whether a transfer or discharge is authorized, the burden of proof rests on the party requesting the transfer or discharge.

h. Based upon all testimony and material submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, and responsible party within 10 working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

A request for review of a proposed decision in which the department is the final decision maker shall be made within 15 days of issuance of the proposed decision, unless otherwise provided by statute. Requests shall be mailed or delivered by either party to the Director, Department of Inspections and

Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. Failure to request review will preclude judicial review unless the department reviews a proposed decision upon its own motion within 15 days of the issuance of the decision.

i. A copy of the notice required by 64.36(1)*"c"* 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, physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility.

j. 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 professional review organization (Iowa Foundation for Medical Care), appeals shall be filed with those agencies as appropriate. Continued payment shall be consistent with rules of those agencies.

k. 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)

l. The involuntary transfer or discharge shall be discussed 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 within 48 hours after notice of discharge has been received. The explanation and discussion of the reasons for involuntary transfer or discharge shall be given by the facility administrator or other appropriate facility representative as the administrator's designee. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions and made a part of the resident's record. (II)

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

(1) Counseling 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)

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

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

n. In the case of an emergency transfer or discharge as outlined in 64.36(1)*"c"*(1), the resident must still be given a written notice prior to or within 48 hours following transfer or discharge. A copy of this notice must be placed in the resident's file and it must contain all the information required by 64.36(1)*"d"*(1) and (2). In addition, the notice must contain a statement in not less than 12-point type (elite), which 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. 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 you may 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." A hearing requested pursuant to this subrule shall be held in accordance with 64.36(1)*"f," "g,"* and *"h."* (II)

o. 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 a facility voluntarily closing, a period of 30 days must be allowed for an orderly transfer of residents to other facilities.

64.36(2) Intrafacility transfer.

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

(1) Incompatibility with or disturbing to other roommates, as documented in the resident's record.

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

(3) For medical, nursing or psychosocial reasons, as documented in the resident's record, 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 which 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 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 64.36(2)*"a"*(5). (II)

(2) As punishment or behavior modification (except as specified in 64.36(2)*"a"*(1). (II)

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

c. If intrafacility relocation is necessary for reasons outlined in 64.36(2)*"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 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 requiring emergency relocation and notification shall be documented. (II)

This rule is intended to implement Iowa Code sections 135C.2(3) and 135C.14(8).

[**ARC 1205C**, IAB 12/11/13, effective 1/15/14]

481—64.37 to **64.58** Rescinded IAB 7/26/89, effective 7/7/89.

481—64.59(135C) County care facilities. Rescinded **ARC 0764C**, IAB 5/29/13, effective 7/3/13.

481—64.60(135C) Federal regulations adopted—conditions of participation. Regulations in 42 CFR Part 483, Subpart D, Sections 410 to 480 effective October 3, 1988, are adopted by reference and incorporated as part of these rules. A copy of these regulations is available on request from the Health Facilities Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319.

Classification of violations is I, II, and III, determined by the division using the provisions in 481—Chapter 56, "Fining and Citations," to enforce a fine to cite a facility.

This rule is intended to implement Iowa Code section 135C.2(3).

481—64.61(135C) Federal regulations adopted—rights. Regulations in 42 CFR Part 483, Subpart B, Sections 10, 12, 13, and 15 effective August 1, 1989, are adopted by reference and incorporated as part of these rules. Section 10 governs resident rights; Section 12, admission, transfer or discharge rights; Section 13, resident behavior and facility practices; and Section 15, quality of life. Classification of

violations for all of these regulations is I and II. A copy is available on request from the Health Facilities Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319.

NOTE: The federal interpretive guidelines are printed immediately following 481—Chapter 64.

This rule is intended to implement Iowa Code section 135C.14(8).

481—64.62(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.

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 *"a"* through *"j"* of this rule. (I, II, III)

64.62(1) 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.

64.62(2) Approval of the state fire marshal shall be obtained before approval of the department will be considered.

64.62(3) 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. (I, II, III)

481—64.63(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. A facility which chooses to provide respite care services must meet the following requirements related to respite care services and must be licensed as a health care facility.

64.63(1) A facility which chooses to provide respite care services is not required to obtain a separate license or pay a license fee.

64.63(2) Rules regarding involuntary discharge or transfer rights do not apply to residents who are being cared for under a respite care contract.

64.63(3) The facility shall have a contract with each resident in the facility. When the resident is there for respite care services, the contract shall specify the time period during which the resident 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 specifically state the resident may be involuntarily discharged while being considered as a respite care resident. The contract shall meet other requirements for contracts between a health care facility and resident, except the requirements concerning the holding and charging for a bed when a resident is hospitalized or leaves the facility temporarily for recreational or therapeutic reasons.

64.63(4) Respite care services shall not be provided by a facility to persons requiring a level of care which is higher than the level of care the facility is licensed to provide.

These rules are intended to implement Iowa Code sections 10A.202, 10A.402, 135C.2(6), 135C.6(1), 135C.14, 135C.14(8), 135C.25, 135C.25(3), 135C.32, 135C.36, 227.4, 235B.1(6), and 235B.3(11).

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◊ Two or more ARCs

1 See IAB, Inspections and Appeals Department.

2 Two ARCs

INTERPRETIVE GUIDELINES*

These guidelines are included in the Iowa Administrative Code pursuant to Iowa Code section 135C.2(3)*"d"* and are not subject to the rule-making provisions in Iowa Code sections 17A.4 and 17A.5.

440.150(c) The statutory and regulatory use of the word "institution" includes settings that serve four or more people with mental retardation and/or related conditions.

See §435.1009 for definition of "persons with related conditions."

The presence or absence of an individual requiring a medical care plan, as defined at W320, is not salient in the determination of whether a facility is eligible to participate in the ICF/MR program.

483.410(a)(1) The responsibility for direction includes areas such as health, safety, sanitation, maintenance and repair, and utilization and management of staff, especially when problems in these areas are of a serious or recurrent nature. Condition level deficiencies (other than the Governing Body Condition) or repeat, pervasive patterns of deficiencies at the Standard level may be an indication that the governing body is not providing sufficient operating direction over the facility. When a pattern of serious or repeated deficiencies is identified during the survey, interview the administrator or review the minutes of governing body meetings, if available, to determine whether or not the governing body has identified and addressed the problem.

Staff who have been trained, but are not implementing programs or are inappropriately deployed (e.g., there are enough staff but they are assigned to duties like record keeping which prevents them from delivering needed services), may indicate a failure of the governing body to adequately direct the staff's activities.

483.410(b) Licenses, permits, and approvals of the facility must be available to you upon request. Current reports of inspections by State and/or local health authorities are on file, and notations are made of action taken by the facility to correct deficiencies.

Some State or local laws are more stringent or prescriptive than the Federal Medicaid requirement on the same issue. Failure of the facility to meet a Federal (i.e., non- Medicare or Medicaid), State or local law may be cited only when the authority having jurisdiction (AHJ) has both made a determination of non-compliance and has taken a final adverse action.

An adverse action is defined as any procedure that goes beyond the approval of a plan of correction, such as a civil money penalty, ban on admissions, denial of payment, or loss of license, and is not under appeal by the provider. The AHJ is the public official(s) having authority to make a determination of noncompliance, and is responsible for signing correspondence notifying the facility of the adverse action.

If you believe you have identified a situation indicating the provider may not be in compliance with a Federal, State or local law, refer that information to the AHJ for follow-up action. If a final adverse action results, then the facility could be found to not meet §483.410(b).

483.410(c)(1) The structure and content of the individual's record must be an accurate, functional representation of the actual experience of the individual in the facility. This should be identified through interviews with staff and, when possible, with individuals being served, as well as through observations.

The regulations do not specify that all information about an individual be located in the individual program plan (IPP) document, only that information explicitly identified in the regulations. The regulations do not prescribe the manner, form or where in the individual's record this information is to be recorded.

483.410(c)(2) "Keep confidential" means safeguarding the content of information including video, audio, and/or computer stored information from unauthorized disclosure without the specific informed consent of the individual, parent of a minor child, or legal guardian, and consistent with the advocate's right of access, as required in the Developmental Disabilities Act. Facility staff and consultants, hired to provide services to the individual, should have access to only that portion of information that is necessary to provide effective responsive services to the individual.

*Editor's Note: Verbatim from federal regulations—neither the Department nor the Administrative Code Editors have attempted to correct inconsistencies in numbering, spelling or grammar.

Confidentiality applies to both central records and information kept at dispersed locations. If there is information considered too confidential to place in the record used by all staff (e.g., identification of the family's financial assets, sensitive medical data), it may be retained in a secure place in the facility (e.g., social worker's locked desk). A notation must be made in the record of the location of confidential information (e.g., "Family information is available from the social worker").

The sharing of individual specific information with members of the "specially constituted committee" required by §483.450(f)(3), who are not affiliated with the agency, does not violate an individual's right to have information about him or her kept confidential. The committee needs to know relevant information to function properly.

The facility is allowed the flexibility to work out arrangements with its members to maintain confidentiality.

483.410(c)(3) Although one facet of the requirement is that the facility must decide how this is to be accomplished (i.e., policies and procedures), the surveyor's primary focus should be on the second part of the requirement, i.e., the facility's implementation or "outcome" that consent is obtained prior to the release of any individual information (e.g., records, photographs, interviews, or other means of exposure to public view or identification).

The following guidance is provided to assist in determining whether informed consent for release of information is adequate:

1. Was the confidential information to be released specifically identified?
2. Was the person or agency to whom the information was to be released identified to the consenting party?
3. Was the consent time-limited (i.e., include the date the consent was given, and the date which the specific consent would be invalid)?
4. Was the person giving consent legally able to give consent?

Information regarding an individual's HIV status may not be released without specific consent and may not be in the record if that consent has not been given. Staff are expected to use universal precautions when dealing with all individuals, therefore, it is unnecessary to routinely share information about HIV status with all staff. Under some conditions, knowledge may be shared with those directly involved in the care of infected persons. Surveyors should be familiar with State law requirements.

483.410(c)(4) In cases in which facilities have created the option for an individual's record to be maintained by computer, rather than hard copy, electronic signatures are acceptable.

Given the large number of entries that are made in individual's records, this requirement is cited only when a systemic problem is identified.

483.410(c)(6) "Appropriate" means those parts of each individual's record most likely (or known) to be needed by the residential staff to carry out the individual's active treatment program in the unit, to alert staff to health risks and other aspects of medical treatment, to support the psychosocial needs of the individual, and anything else necessary to the staff's ability to work on behalf of the individual.

483.410(d)(1) Federal statute (P.L. 94-142) requires all school-aged children to receive a free and appropriate school education. Therefore, a written agreement between ICFs/MR and public schools is not necessary.

483.410(d)(2)(ii) Outside providers of day services would not have to meet certain requirements relating to physical environment under §§483.470 (a)-(g), (j), and (k) unless that source also provides living quarters for ICF/MR individuals. Outside sources must, of course, meet any applicable State and local requirements.

The facility's responsibility includes assuring that any restrictive techniques proposed for use by outside service providers are used only when warranted and with the required safeguards and approvals.

483.410(d)(3) "Assure" means that the facility's staff actively participate with staff in outside programs in the assessment process and in development of objectives and intervention strategies. For example, if a public school is implementing a manual communication system with an individual, the direct care staff in the individual's living unit should have instructions to implement the program in the residential environment. Likewise, if the facility is implementing a behavior management program

for the individual, it should be shared with and implemented as needed by the outside program. This communication is often difficult, but nevertheless essential to the provision of active treatment.

483.410(d)(4) Even though the facility's premises may be rented from a landlord, the facility must ensure that the requirements for physical environment are met, either through arrangement with the landlord or through the facility's own services.

483.420 A citation of W127 or W150, which require that individuals are not subjected to verbal, sexual, or psychological abuse or punishment, is sufficient justification that the facility has failed to comply with the most fundamental of protections and, therefore, does not comply with this Condition of Participation.

483.420(a) "Ensure" means that the facility actively asserts the individual's rights and does not wait for him or her to claim a right. This obligation exists even when the individual is less than fully competent and requires that the facility is actively engaged in activities which result in the pro-active assertion of the individual's rights, e.g., guardianship, advocacy, training programs, use of specially constituted committee, etc.

483.420(a)(1) The obligation to inform requires that the facility present information in a manner and form which can be understood, e.g., use of print materials, specialized programs to inform individuals who are deaf or blind, use of interpreters, etc.

483.420(a)(2) The term "attendant risks of treatment" refers to all treatment, including medical treatment. An individual who refuses a particular treatment (e.g., a behavior control, seizure control medication or a particular intervention strategy) must be offered information about acceptable alternatives to the treatment being refused, if acceptable alternatives are available. The individual's preference about alternatives should be elicited and considered in deciding on the course of treatment. If the individual also refuses the alternative treatment, or if no alternative exists to the treatment refused, the facility must consider the effect this refusal may have on other individuals, the individual himself or herself and the facility, and if it can continue to treat the individual consistent with these regulations. Thus, every effort must be made to assist the individual to understand and cooperate in the legitimate exercise of the IPP.

An individual being considered for participation in experimental research must be fully informed of the nature of the experiment (e.g., medication, treatment) and understand the possible consequences of participating or not participating. The individual's written consent must be received prior to participation. For an individual who is a minor or who has been adjudicated as incompetent, the written informed consent of parents of the minor or the legal guardian is required.

The determination as to whether the individual was sufficiently "informed" is based on the following:

1. Was the individual aware of the proposed program or treatment, the procedures to be followed, and the identification of the person who will perform the treatment activity?
2. Was the individual aware of the intended outcome or benefits of the proposed program or treatment?
3. Was the individual aware of the possible risks, including side effects and attendant discomfort of the proposed program or treatment, and the steps to be taken to minimize risk?
4. Was the individual aware of the ramifications if he or she decided not to participate, and of the alternatives to the proposed activity, particularly alternatives offering less risk or adverse effects?
5. Did the individual participate voluntarily? Did the individual have the opportunity to have questions about the activity answered?
6. Was the information about the activity presented in language that could be readily understood by the individual?

Additionally, for experimental, invasive or potentially harmful treatment, activities or procedures for which written informed consent is recommended, if not otherwise required by State or Federal law:

1. Was the consent time-limited (i.e., include the date the consent was signed and the date it becomes invalid)?
2. Did the individual realize that consent to participate could be withdrawn at any time without risk of punitive action?
3. Was the person who gave consent the legally appropriate party to do so for the individual?

483.420(a)(3) The facility must ensure protection of the individual from any form of reprisal or intimidation as a result of a complaint or grievance reported by an individual.

As long as there are no decisions or circumstances which require action by a legally-appointed surrogate, a spokesperson or advocate could assist the individual in exercising his or her rights as a citizen of the United States and as a person residing in the facility. Some examples might include assisting the individual to express his/her needs, wants and interests, to utilize community resources or to file a complaint. A spokesperson might also express opinions regarding situations in which consent by the beneficiary, parent of a minor, or legal guardian is required in order to bring to the attention of the facility potential concerns or problems.

The extent to which any person can act on behalf of another individual who has been assessed as needing a guardian, however, is entirely dependent upon the needs of the individual client and upon the laws and regulations of the State in which that individual resides. The facility and surveyor must be familiar with the laws and regulations of the State in which the facility is located. It is inappropriate for the facility to unofficially delegate the individual's rights to others (e.g., parents, family, advocacy groups, etc.). To the extent that the individual is able to make decisions for himself or herself, it is inappropriate to delegate the person's rights to others.

Individuals who need guardianship or advocacy, and do not have this need addressed, are not prepared to exercise their rights as citizens of the United States. The facility's failure to ensure guardianship or advocacy for those who need it should be cited. Further deficiencies may also be cited under W123, W124, W143, and W263, depending upon the survey findings.

483.420(a)(4) Since the use of money is a right, determine if the facility demonstrated, based on objective data, that the individual was unable to be taught how to use money before the decision was made to restrict that right.

483.420(a)(5) The facility is responsible to organize itself in such a manner that it proactively assures individuals are free from serious and immediate threat to their physical and psychological health and safety. Citing of this requirement indicates that there is a high probability that abuse to individuals could occur at any time, or already has occurred and may well occur again, if the individuals are not effectively protected from the serious physical or psychological harm or injury, or if the threat is not removed. A citation of this requirement, therefore, must result in a determination of Condition level non-compliance due to immediate and serious threat. Cross reference W122 for additional guidance.

"Threat," as used in this guideline, is any condition/situation which could cause or result in severe, temporary or permanent injury or harm to the mental or physical condition of individuals, or in their death.

"Abuse" refers to the ill-treatment, violation, revilement, malignment, exploitation and/or otherwise disregard of an individual, whether purposeful, or due to carelessness, inattentiveness, or omission of the perpetrator.

"Physical abuse" refers to any physical motion or action, (e.g., hitting, slapping, punching, kicking, pinching, etc.) by which bodily harm or trauma occurs. It includes use of corporal punishment as well as the use of any restrictive, intrusive procedure to control inappropriate behavior for purposes of punishment. Observe individuals to see if they are bruised, cut, burned (cigarettes, etc.).

"Verbal abuse" refers to any use of oral, written or gestured language by which abuse occurs. This includes pejorative and derogatory terms to describe persons with disabilities.

"Psychological abuse" includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation, sexual coercion, intimidation, whereby individuals suffer psychological harm or trauma.

Individuals must not be subjected to abuse by anyone (including, but not limited to, facility staff, consultants or volunteers, staff of other agencies serving the individual, family members or legal guardians, friends, other individuals, or themselves).

Since many individuals residing in ICFs/MR are unable to communicate feelings of fear, humiliation, etc., the assumption must be made that any actions that would usually be viewed as psychologically or verbally abusive by a member of the general public, is also viewed as abusive by the individual residing in the ICF/MR, regardless of that individual's perceived ability to comprehend the nature of the incident.

The facility must take whatever action is necessary to protect the individuals residing there. For example, if a facility is forced by court order or arbitration rulings to retain or reinstate an employee believed to be abusive, the facility may need to take other measures (such as assigning the employee to an area where there is no contact with beneficiaries, providing increased supervision and additional training for the employee, appealing the arbitration or court decision or pursuing formal criminal charges) in order to ensure beneficiary safety.

483.420(a)(6) The chronic use of restraints may indicate one or more of the following: the individual's developmental and/or behavioral needs are not being met and the appropriateness of placement should be questioned; staff behavior may be prompting behaviors in individuals which result in the chronic use of physical restraints and drugs to control behavior; staff may have inadequate training and/or experience to provide active treatment and employ preventive measures that reduce the levels of behaviors judged to require physical restraints and drugs to control behavior; and restraints may be applied to behaviors which are, in fact, not threatening to the health and welfare of the individual or other individuals and staff.

483.420(a)(7) The facility must have a method of arranging for privacy of visits between individuals with significant relationships, if they do not both reside at the facility.

483.420(a)(7) The facility must examine and treat individuals in a manner that maintains the privacy of their bodies. Only employees directly involved in the treatment are present when treatments are given. Some method or mechanism which ensures privacy (such as a closed door, a drawn curtain or systematically implemented training for an individual to use their own methods) must be employed to shield the individual from passers-by. People not involved in the care of the individual should not be present without their consent while they are being examined or treated.

If an individual requires assistance during toileting, bathing, and other personal hygiene activities, staff should assist, giving utmost attention to the individual's need for privacy. There is no prohibition, however, on staff to work with individuals of the opposite sex.

Exercise special attention to ensure that your behavior, during onsite observations in the individual's home, does not violate an individual's right to privacy during treatment and care of personal needs.

483.420(a)(8) "Work," as used in the regulation, means any directed activity, or series of related activities which results in benefit to the economy of the facility or in a contribution to its maintenance, or in the production of a salable product. In deciding whether a particular activity constitutes "work" as defined above, the key determinant is if an individual was unavailable to perform the particular activity or function, would the facility be required to hire additional full or part-time staff (or pay overtime to existing staff) in order to properly maintain the facility or to provide necessary care services to individuals, in order to carry out its assigned mission?

Individuals are not to be used to provide a source of labor for a facility against their will or in opposition to the objectives of the IPP.

Seriously question any situation in which an individual is observed or reported to be "volunteering" to do real work that benefits the facility, or its maintenance without compensation. Interview such individuals to determine if they have given informed consent to such practices and understand that by providing employable services they are able to be compensated. This does not preclude an individual from helping out a friend or being kind to others. Self-care activities related to the care of one's own person are not considered "work" for purposes of compensation.

Regular participation in the domiciliary activities of maintaining one's own immediate household or residential living unit which can lead to the individual's greater functional ability to perform independent household tasks is also not considered "work" for the facility. Shared duties are common and appropriate. Included in, but not limited to, these domiciliary tasks are:

- Meal planning, food purchasing, food preparation, table setting, serving, dishwashing, etc.;
- Household cleaning, laundry;
- Clothes repair;
- Light yard and house maintenance (painting, simple carpentry, etc.); and
- General household shopping, including clothing.

In general, participation in any household task which promotes greater independent functioning (and which the individual has not yet learned) is permitted as long as tasks are included in the IPP in written behavioral and measurable terms. This participation must be supervised, and indices of performance should be available. No task may be performed for the convenience of staff (e.g., supervising individuals, running personal errands) or which has no relationship to the individual's IPP.

As individuals become widely competent and independent in household tasks, they must not be used in those capacities and represented as "in training" and serious consideration should be given to the individual's potential for even less restrictive residential environments. (See also §§483.440(a)(2) and (b)(1).) However, it is acceptable for individuals to engage in household tasks which are in common with other individuals, all sharing the total household tasks commonly shared in nuclear family units. The test in this regard is:

The expectation is that tasks are the general responsibility of the individual, and that the duties rotate to the maximum extent possible; and/or

The individual can assume control in performing the responsibility given (e.g., John has until Thursday at 8 p.m. to clean the living and dining rooms), thereby adding to the development of internal controls and assumption of responsibility by individuals.

Work performed by the individual which no other individual is required or expected to do, or is not a regular part of running the household, must be compensated.

"Compensated" means the receipt of money or other forms of negotiable compensation for work (including work performed in an occupational training program) which is available to the individual, to be used at his or her discretion in determining the benefits to be derived therefrom.

"Prevailing wage" refers to the wage paid to non-disabled workers in nearby industry or the surrounding community for essentially the same type, quality and quantity of work or work requiring comparable skills.

A working individual must be paid at least the prevailing minimum wage except when an appropriate certificate has been obtained by the facility in accordance with current regulations and guidelines issued under the Fair Labor Standards Act, as amended.

Any individual performing work, as defined above, must be compensated in direct proportion to his or her productivity as measured in work equivalents of a regular employee's output. For example, if an individual's productivity for a particular work activity or function is determined to be 30 percent of normal output for an average non-disabled worker, and the prevailing wage is $4.00 an hour, then the individual should be compensated in money at a rate of one dollar and twenty cents per hour (.30 x $4.00 =$1.20). If a piece rate can be determined for a particular job, an individual is paid based on the number of pieces he or she produces. An individual's pay is not dependent on the production of other individuals when he or she works in a group.

When the individual's active treatment program includes assignment to occupational or vocational training or work, specific work objectives of anticipated progress should be included in the IPP along with reasons for the assignments. If the training of individuals on particular occupational activities or functions involves "real work" to be accomplished for the facility, the individuals must be compensated based on ability. For example, if in the process of work training activities involved with learning to clean a floor, the floor for a particular building is cleaned and does not require further janitorial cleanup, then the individual must be compensated for this activity.

483.420(a)(9) Space must be provided for individuals to receive visitors in reasonable comfort and privacy.

483.420(a)(9) Assistance must be provided to individuals who require help in reading or sending mail. Refer to W145.

483.420(a)(11) Outdoor and out of home activities are planned for all individuals on a regular basis.

483.420(a)(12) All individual possessions regardless of their apparent value to others must be treated with respect, for what they are and for what they may represent to the individual. The facility should encourage individuals to use or display possessions of his or her choice in a culturally normative manner. Appropriate personal possessions includes personal care and hygiene items. Individuals should not be without personal possessions because of the behavior of others with whom they live. If a method

for identifying personal effects is used, it should be inconspicuous and in a manner that will assist the individual to identify them.

"Appropriate" clothing means a supply of clothing that is sufficient, in good repair, accounts for a variety of occasions and seasons, and appropriate to age, size, gender, and level of activity. Modification or adaptation of clothing fasteners should be considered based on the needs of an individual with a physical disability to be independent.

As appropriate, each individual's active treatment program maximizes opportunities for choice and self-direction with regard to choosing and shopping for clothing which enhances his or her appearance, and selecting daily clothing in accordance with age, sex and cultural norms. Individuals are permitted to keep personal clothing and possessions for their use while in the facility. Determine how the facility both ensures the safety of personal possessions while at the same time providing individual access to them when the individual chooses.

Individuals are provided the opportunity, encouraged, and trained to use age-appropriate materials. The term "age-appropriate" refers to anything that reinforces recognition of the individual as a person of a certain chronological age. The facility's environment must be furnished with materials and activities that will enhance opportunities for growth. Determine whether the failure of an individual to achieve functional, adaptive skills, or to have opportunities to make informed choices, or to achieve any positive outcomes is a result of the constant use of materials or participation in activities that are age-inappropriate.

483.420(b)(1)(i) A "full and complete accounting for personal funds" does not need to document accounting for incidental expenses or "pocket money," funds a capable individual handles without assistance, funds dispensed to an individual under a program to train the individual in money management, and funds that are not entrusted to the facility (e.g., funds paid directly to the individual's representative payee).

483.420(b)(1)(ii) Although prudent to do so, there is no Federal requirement to maintain individuals' personal funds in financial institutions in interest bearing accounts, or in accounts separate from other individual accounts. However, if the facility elects to pool individuals' funds in an interest bearing account, including common trust accounts, it is expected to know the interest separately accrued by each individual, as part of its required accounting of funds. Interest accumulated to an individual's account belongs to the individual, not the facility.

483.420(b)(2) Parents or other family members should not have automatic access to the financial records of adult individuals. It is not necessary that a facility be required to furnish an annual financial statement to the individual or the individual's family, since the facility is already required to make the financial record available at any time upon request. The individual, in turn, is free to choose to make his or her financial record available to anyone else.

483.420(c)(1) "Unobtainable," as used in this standard, means that the facility has made a bonafide effort to seek parental or guardian participation in the process, even though the effort may ultimately be unsuccessful (for example, the parent may be impossible to locate or may prove unwilling or unable to participate).

"Inappropriate" as used in this standard means that the parent or legal guardian's behavior is so disruptive or uncooperative that others cannot effectively participate; the individual does not wish his or her parent to participate, and the individual is competent to make this decision; or there is strong evidence that the parent or guardian is not acting on the individual's behalf or in the individual's best interest. In the case of the latter, determine what the facility has done to bring effective resolution to the problem.

483.420(c)(2) Where possible, randomly select a family or guardian to validate the quality, nature and frequency of the communications between the facility and families or guardians (but only with their consent). There is no requirement that each contact with family and friends be documented.

483.420(c)(3) Any limitations of visitors are recorded by the interdisciplinary team with reason and time limits given. Decisions to restrict a visitor must be reviewed and re-evaluated each time the IPP is reviewed or at the individual's request. If you find broad restrictions, review general facility access policies.

The facility should have arrangements available to provide privacy for families and others when visiting with individuals.

483.420(c)(5) It is not acceptable for a facility to sponsor or allow individuals to take a particular type of trip that is contraindicated. For example, in the situation of an individual subject to abuse by a parent, the facility obviously is not required to permit such a trip. However, as with any right that may need to be modified or limited, the individual should be provided with the least restrictive and most appropriate alternative available.

483.420(c)(6) "Significant" incidents or changes in the individual's condition refers to any type of occurrence or event, that is perceived to have some level of importance to the individual, family or guardian. Examples include, but are not limited to, allegations of mistreatment, psychological trauma experienced by the individual, loss or change of a program service or staff person, entry or placement in new programs or agencies, day-to-day events on which family members express interest to be informed, etc.

483.420(d)(1) "Mistreatment" as used in this standard, includes behavior or facility practices that result in any type of individual exploitation such as financial, sexual, or criminal.

"Neglect" means failure to provide goods or services necessary to avoid physical or psychological harm.

See W127 for definitions related to "abuse."

483.420(d)(1)(i) See W127, Facility Practices, as related specifically to staff of the facility.

A citation of this requirement indicates that abuse to an individual by staff of the facility is highly likely to occur or has already occurred and may well occur again if the individual is not effectively protected. A citation of this requirement, therefore, must result in Condition-level non-compliance due to immediate and serious threat. Cross reference W122 and W127.

483.420(d)(1)(ii) Cross-reference W465.

483.420(d)(1)(iii) This regulation applies to the hiring of new employees on or after October 3, 1988. The facility is required to screen potential employees for a prior employment history of child or client abuse, neglect or mistreatment, as well as for any conviction based on those offenses. The abuse, neglect or mistreatment must be directed toward a child or an individual who is a client (resident, patient) in order for the prohibition of employment to apply.

This requirement also applies to acts of abuse, neglect or mistreatment committed by a current ICF/MR employee outside the jurisdiction of the ICF/MR (e.g., in the community or in another health care facility). A substantiated allegation of abuse, neglect or mistreatment which occurred after October 3, 1988, (regardless of the date of the person's employment in the ICF/MR), and which resulted in the termination of that person's employment from another health care facility, becomes a part of the person's employment history and the ICF/MR is prohibited from continuing to employ the individual. For example, an individual who abused a resident in a nursing facility and as a result, is barred from employment in the nursing home setting would also be prohibited from employment in the ICF/MR. While facilities are not required to periodically screen existing employees, if the facility becomes aware that such action has been taken against an employee, the facility is required to prohibit continued employment. This is also true of any conviction in a court of law for child or client (resident, patient) abuse, neglect or mistreatment. Therefore, conviction for abusing one's own child is also a reason employment would be prohibited.

The definition of "mistreatment" under the guideline at W153 includes financial exploitation. Therefore, if an employee was convicted or had a prior employment history of theft of an individual's funds, that would also be a reason employment would be prohibited.

Access other information, as appropriate, including information contained in "closed" records, in order to adequately evaluate compliance.

483.420(d)(2) The facility is responsible for reporting any injuries of unknown origin and any allegations of mistreatment to an individual residing in the facility regardless of who is the perpetrator (e.g., facility staff, parents, legal guardians, volunteer staff from outside agencies serving the individual, neighbors, or other individuals, etc.).

483.420(d)(3) The facility is responsible for investigating all injuries of unknown origin and must prevent further potential abuse while the investigation is in progress.

483.420(d)(4) Some States require that allegations of abuse must be reported to the police. CMS cannot regulate the activities of the police. However, if the police take longer than five working days for their investigation, the facility is still required to complete an internal investigation report of findings within the five day timeframe. "Working days" means Monday through Friday, excluding State and Federal holidays.

483.420(d)(4) This requirement refers to corrective action taken based upon findings of investigations of incidents which have occurred within the jurisdiction of the facility. It requires that the seriousness of infractions be weighed in the determination of what action is necessary by the facility to correct the situation appropriately. In cases of abuse, neglect or mistreatment by staff, where extenuating circumstances exist and dependent on the nature of the infraction, a remedy that is consistent with appropriate progressive disciplinary measures may be acceptable. When the intentional action or inaction of a staff person has resulted in abuse, neglect or mistreatment which poses a serious and immediate threat to individuals' health and safety, termination of employment is the only acceptable corrective action.

Appropriate corrective action is also required for findings of abuse, neglect or mistreatment by other individuals residing in the facility, staff of outside agencies, parents or any other person, and for injuries to individuals resulting from controllable environmental factors.

Appropriate corrective action is defined as that action which is reasonably likely to prevent the abuse, neglect, mistreatment or injury from recurring.

When an employee appeals a finding of abuse by the facility, whether through arbitration or in a court of law, the decision of the arbitrator or the court of law is then considered the final finding. If the arbitrator found that the charges lacked substance, the allegation would be considered unsubstantiated. The facility, however, is still required to ensure that individuals residing in the facility are not subjected to physical, verbal, sexual or psychological abuse or punishment by W127.

An arbitrator may find that the allegation of abuse is substantiated, but impose a lesser penalty than that which was sought by the facility. For example, the facility may seek termination of employment as the appropriate corrective action but the arbitrator determines that a 10 day suspension is more appropriate. The facts of the situation will have to be evaluated by the surveyor and a judgment made regarding appropriateness. Therefore, while the facility is permitted by the regulation to exercise judgment regarding appropriate corrective action, the surveyor must also exercise judgment and may determine that the corrective action is NOT reasonably likely to prevent the abuse from recurring.

483.430(a) View the person serving in the QMRP role as pivotal to the adequacy of the program the individual receives, since it is this role that is intended to ensure that the individual receives those services and interventions necessary by competent persons capable of delivering them. The paramount importance of having persons competent to judge and supervise active treatment issues cannot be overstated.

An individual's IPP may be coordinated and monitored by more than one QMRP or by other staff persons who perform the QMRP duties. There must, however, be one QMRP who is assigned primary responsibility and accountability for the individual's IPP and the QMRP function.

The regulations do not specify if the person designated as QMRP must do the duties of a QMRP exclusively, or is allowed to perform other professional staff duties in addition. The facility has the flexibility to allocate staff resources in whatever manner it believes is necessary as long as it ensures that the QMRP function is performed effectively for each individual.

The test of whether the number of QMRPs is adequate rests with the ability of the facility to provide the services described in §483.430(a) in an effective manner. The number will vary depending on such factors as the number of individuals the facility serves, the complexity of needs manifested by these individuals, the number, qualifications and competencies of additional professional staff members, and whether or not other duties are assigned to the QMRP function.

483.430(b)(1) For an active treatment program to be responsive to the individual's unique needs, there must be a foundation of competent professional knowledge that can be drawn upon in the implementation

of the interdisciplinary team process. Individuals with developmental deficits will require initial, temporary, or ongoing services from professional staff, knowledgeable about contemporary care practices associated with these areas. A special mention needs to be made that individuals should not be provided with services that are not needed (e.g., if an individual is basically healthy and not on medication, then the individual should not be provided extensive health and health-related services).

The needs identified in the initial comprehensive functional assessment, as required in §483.440(c)(3)(v), should guide the team in deciding if a particular professional's further involvement is necessary and, if so, to what extent professional involvement must continue on a direct or indirect basis.

Since such needed professional expertise may fall within the purview of multiple professional disciplines, based on overlapping training and experience, determine if the facility's delivery of professional services is adequate by the extent to which individuals' needs are aggressively and competently addressed. Some examples in which professional expertise may overlap include:

- Physical development and health: nurse (routine medical or nursing care needs that do not interfere with participation in other programs); physician, physician assistant, nurse practitioner (acute major medical intervention, or the treatment of chronic medical needs which will be dependent upon an individual's success or failure in other treatment programs).
- Nutritional status: nurse (routine nutritional needs that do not affect participation in other programs); nutritionist or dietitian (chronic health problems related to nutritional deficiencies, modified or special diets).
- Sensorimotor development: physical educators, adaptive physical educators, recreation therapists, (routine motor needs involving varying degrees of physical fitness or dexterity); special educators or other visual impairment specialists (specialized mobility training and orientation needs); occupational therapist, physical therapist, physiatrist (specialized fine and gross motor needs caused by muscular, neuromuscular, or physical limitations, and which may require the therapeutic use of adaptive equipment or adapted augmentative communication devices to increase functional independence); dietitians to increase specialized fine and gross motor skills in eating.
- Affective (emotional) development: special educators, social workers, psychologists, psychiatrists, mental health counselors, rehabilitation counselors, behavior therapists, behavior management specialists.
- Speech and language (communication) development: speech-language pathologists, special educators for people who are deaf or hearing impaired.
- Auditory functioning: audiologists (basic or comprehensive audiologic assessment and use of amplification equipment); speech-language pathologists (like audiologists, may perform aural rehabilitation); special educators for individuals who are hearing impaired.
- Cognitive development: teacher (if required by law, i.e., school aged children, or if pursuit of GED is indicated), psychologist, speech-language pathologist.
- Vocational development: vocational educators, occupational educators, occupational therapists, vocational rehabilitation counselors, or other work specialists (if development of specific vocational skills or work placement is indicated).
- Social Development: teachers, professional recreation staff, social workers, psychologists (specialized training needs for social skill development).
- Adaptive behaviors or independent living skills: Special educators, occupational therapists.

483.430(b)(1) There are some individuals in ICFs/MR who can often have their needs effectively met without having direct contact with professional staff on a daily basis. The intent of the requirement is not to require that professionals work directly with individuals on a daily basis, but only as often as an individual's needs indicate that professional contact is necessary. The amount and degree of direct care that professionals must provide will depend on the needs of the individual and the ability of other staff to train and direct individuals on a day-to-day basis.

483.430(b)(2) If there is sufficient evidence that para- and non-professional staff demonstrate the needed competencies to carry through with intervention strategies, you may be satisfied there is sufficient professional staff to carry out the active treatment program. However, if the professional's expertise is

not demonstrable at the para- and non-professional staff level, question both the numbers of professional staff and the effectiveness of the transdisciplinary training of para- and non-professional staff.

483.430(b)(3) "Participate" means providing input through whatever means is necessary to ensure that the individual's IPP is responsive to the individual's needs. The purpose of the interdisciplinary team process is to provide team members with the opportunity to review and discuss information and recommendations relevant to the individual's needs, and to reach decisions as a team, rather than individually, on how best to address those needs. Therefore, determine whether or not there is a pattern of active treatment based on professional participation in the process.

Without a negative outcome to demonstrate that professional involvement in any aspect of the active treatment process (e.g., comprehensive functional assessment, IPP development, program implementation, etc.) was insufficient or inaccurate, the facility is allowed the flexibility to use its resources in a manner that works in behalf of the client, in accordance with the regulations.

483.430(b)(4) "Participate" means both seeking out self-training and provision of training to others.

483.430(b)(5)(i)-(ix) The introductory phrase "to be designated as…" means that a provider is allowed to represent him or herself as a professional provider in that discipline, only if the provider meets State licensing requirements, or if the particular discipline does not fall under State licensure requirements, the provider meets the qualifications specified in §§483.430(b)(5)(i)-(ix). A person who is not qualified, for example, as a social worker, may not be referred to as a social worker per se. Nevertheless, such a person may be able to provide social services in an ICF/MR if there is no conflict with State law, and as long as the individuals' needs are met.

483.430(b)(5)(ix) The Commission on Dietetic Accreditation of the American Dietetic Association is the organization to whom the American Dietetic Association delegates this responsibility.

483.430(b)(5)(x) The intent for including a "human services professional" category is to expand the number and types of persons who could qualify as QMRPs, while still maintaining acceptable professional standards.

"Human services field" includes all the professional disciplines stipulated in §§483.430(a)(3)(i)(ii) and §§483.430(b)(5)(i)-(ix), as well as any related academic disciplines associated with the study of: human behavior (e.g., psychology, sociology, speech communication, gerontology etc.), human skill development (e.g., education, counseling, human development), humans and their cultural behavior (e.g., anthropology), or any other study of services related to basic human care needs (e.g., rehabilitation counseling), or the human condition (e.g., literature, the arts).

An individual with a "bachelors degree in a human services field" means an individual who has received: at least a bachelor's degree from a college or university (master and doctorate degrees are also acceptable) and has received academic credit for a major or minor coursework concentration in a human services field, as defined above. Although a variety of degrees may satisfy the requirements, majors such as geology and chemical engineering are not acceptable.

Taking into consideration a facility's needs, the types of training and coursework that a person has completed, and the intent of the regulation, the facility and you can exercise wide latitude of judgment to determine what constitutes an acceptable "human services" professional. Again, the key concern is the demonstrated competency to do the job.

483.430(c)(1) Volunteers may provide supplementary services. The facility may not rely on volunteers to fill required staff positions and perform direct care services.

Examine closely the adequacy of staffing when individuals served are engaged in the care, training, treatment or supervision of other individuals, either as part of training, "volunteer work," or normal daily routines. (See W131-W132 for additional interpretation of productive work done as a "volunteer" or as part of the individual's active treatment program.) The test of adequacy is whether or not there is sufficient staff to accomplish the job in the absence of the individual's work. Work done as part of an active treatment training program requires that the staff are monitoring and teaching new skills as part of the IPP.

483.430(c)(2) The test of adequacy about "awake" staffing is how well the facility has organized itself to detect and react to potential emergencies, such as fire, injuries, health emergencies described in the

medical care plan (e.g., aspiration, cardiac or respiratory failure, uncontrolled seizures) and behavioral crises described in the IPP.

483.430(c)(3) The intent of the regulation is that at all times a staff person is in a position to help if individual needs arise. For purposes of this provision, "on duty" staff need not be awake during normal bedtime hours.

Facilities sending some or all of the individuals to out of home or off grounds active treatment programs for a majority of the day need not provide a full complement of direct care staff in the residence during their absence. However, a minimum of one staff person must be on duty, if even one individual is present.

483.430(c)(4) "Support staff" include all personnel hired by the facility that are not either direct care staff or professional staff. For example, support staff include, but are not limited to, secretaries, clerks, housekeepers, maintenance and laundry personnel.

Direct care staff should be utilized at their highest level of competence, but they may assume other roles as long as their ability to exercise their primary direct care duties is not diluted. For example, direct care staff may serve as aides in a training program during the hours individuals are away from the living unit.

483.430(d)(1) "Sufficient" direct care staff means the number of staff, over and above the ratios specified in §483.430(d)(3), necessary to implement active treatment, as dictated by the individual's active treatment needs.

Do not look at numbers alone. The facility is responsible for organizing and evaluating its individual appointments, programming schedules, activities, materials, equipment, grouping assignments and available staff in such a way that maximizes benefit to the individual. During the course of the onsite survey, you should be able to observe behavioral evidence of such organization. Evaluate this data in light of the success or failure observed relevant to providing active treatment, and come to a judgment about the adequacy of the facility's staffing.

483.430(d)(2) "Direct care staff" are those personnel whose daily responsibility it is to manage, supervise and provide direct care to individuals in their residential living units. This staff could include professional staff (e.g., registered nurses, social workers) or other support staff, if their primary assigned daily shift function is to provide management, supervision and direct care of individuals' daily needs (e.g., bathing, dressing, feeding, toileting, recreation and reinforcement of active treatment objectives) in their living units. However, professional staff who simply work with individuals in a living unit on a periodic basis cannot be included. Also, supervisors of direct care staff can be counted only if they share in the actual work of the direct care of individuals. Supervisors whose principal assigned function is to supervise other staff cannot be included.

483.430(d)(3) The minimum ratios in this standard indicate the minimum number of direct-care staff that must be present and on duty, 24 hours a day, 365 days a year, for each discrete living unit. It does not include anyone functioning as direct care staff. For example, to calculate the minimum number of living unit staff that must be present and on duty in a discrete living unit serving 16 individuals with multiple disabilities: divide the number of individuals "16," by the number corresponding to the regulation "3.2," the result equals "5." Therefore, the facility must determine how many staff it must hire to ensure that at least 5 staff will be able to be present and on duty during the 24 hour period in which those individuals are present.

Using the living unit described above, "calculated over all shifts in a 24-hour period" means that there are present and on duty every day of the year: one direct care staff for each eight individuals on the first shift (1:8), one direct care staff for each eight individuals on the second shift (1:8), and one direct care staff for each 16 individuals on the third shift (1:16). Therefore, there are five (5) direct care staff present and on duty for each twenty-four hour day, for 16 individuals. The same calculations are made for the other ratios, whichever applies. Determine if absences of staff for breaks and meals results in a pattern of prolonged periods in which present and on-duty staff do not meet the ratios.

483.430(e)(2) View in-service training as a dynamic growth process. It is predicated on the view that all levels of staff can share competencies which enable the individual to benefit from the consistent, wide-spread application of the interventions required by the individual's particular needs.

In the final analysis, the adequacy of the in-service training program is measured in the demonstrated competencies of all levels of staff relevant to the individual's unique needs as well as in terms of the "affective" characteristics of the caregivers and the personal quality of their relationships with the individuals. Observe the staff's knowledge by observing the outcomes of good transdisciplinary staff development (i.e., in the principles of active treatment) in such recommended competencies as:

- Respect, dignity, and positive regard for individuals (e.g., how staff refers to individuals, refer to W150);
- Use of behavioral principles in training interactions between staff and individuals;
- Use of developmental programming principles and techniques, e.g., functional training techniques, task analysis, and effective data keeping procedures;
- Use of accurate procedures regarding abuse detection and prevention, restraints, medications, individual safety, emergencies, etc.;
- Use of adaptive mobility and augmentative communication devices and systems to help individuals achieve independence in basic self-help skills; and
- Use of positive behavior intervention programming.

483.430(e)(3) Observe staff interactions with individuals to see if the specific interventions, techniques and strategies to change inappropriate behavior outlined in the sampled individual's program plans are correctly implemented. In the absence of implementation, investigate further to determine if there was a justifiable reason for not implementing an intervention (e.g., the plan was revised, the specific situation demanded a different approach, the conditions for use of a particular technique were not present, etc.). When staff are unable to demonstrate how to correctly implement an intervention, or are unable to explain when and how the intervention is to be implemented, inadequate training is evident.

483.430(e)(4) Observe whether or not staff are competent and knowledgeable about the needs, programs and progress of each sampled individual with whom they are assigned to work. Staff should be able to demonstrate in practice the results of training for the individuals for whom they are responsible. See guidelines at §483.430(e)(3).

483.440(a)(1) "Continuous" is defined to mean the competent interaction of staff with individuals served at all times, whenever the need arises or opportunities present, in both formal and informal settings.

Verify that active treatment is identifiable during formal and informal interactions between staff and individuals served. The performance of the individual should reflect the success, if any, of interventions being applied or the need to alter the intervention procedures.

The ICF/MR ensures that each individual receives active treatment daily regardless of whether or not an outside resource(s) is used for programming (e.g., public school, day habilitation center, senior day services program, sheltered workshop, supported employment).

Those "active" interventions necessary to prevent or decelerate regression are considered to be part of the overall active treatment program. For example, if the application of a specific stimulation technique to the area of the mouth of an individual with severe physical and medical disabilities, decelerates the individual's rate of reliance on tube feedings, and helps the individual retain ability to take food by mouth, then this intervention is considered to be a component of active treatment for the individual.

Active treatment for elderly individuals may increasingly need to focus on interventions and activities which promote physical wellness and fitness, socialization and tasks that stress maintaining coordination skills and reducing the rate of loss of skills that accompanies the physical aspects of the aging process. Attending a senior center may be a justifiable part of an active treatment program for an elderly person.

Active treatment is the sum total of the major components of the active treatment process or loop which make up the requirements under this Condition of Participation (i.e., assessment, individual program planning, implementation, program documentation, program monitoring and change). It defines the primary nature of the services which must be provided by a facility (and received by its clients) in order to make it eligible under the law to be "certified" as an ICF/MR. Active treatment results in the positive outcomes identified by the Condition-level compliance principles. Surveyors must examine and evaluate all negative findings related to active treatment, and if determined to be significant, those findings should be cited at the salient tag numbers related to each of the components

of the active treatment process. When review of those deficiencies leads to the conclusion that active treatment is not being received, then this standard and the explicit statutory requirement for active treatment at §1905(d)(2) of the Social Security Act are not met. A determination of noncompliance with this requirement, therefore, must also result in a determination of noncompliance at the Condition of Participation level for Active Treatment Services and at §440.150(c), tag number W100.

Although the active treatment process must be identifiable in documentation, it must be observable in daily practice. Determine how the ICF/MR accomplishes (or fails to accomplish) an environment of competence that enables active treatment to occur.

483.440(a)(2) The regulations define the target population eligible for the ICF/MR benefit, by defining the services that are required for a facility to provide in order for it to qualify as an ICF/MR and receive Federal Financial Participation (FFP). At the front end, one of the "required services" is training in basic fundamental skills. The type of skills described in W242, by their very nature, target a population who have significant deficits in growth and development.

The presence of any group of individuals (court-ordered or not), could call into question the overall nature of the services provided by the ICF/MR. Individuals displaying some or all of the characteristics described in the Interpretive Guideline at §483.440(b)(1), do not "need active treatment services" or ICF/MR level of care, and are not appropriately placed. Agencies which provide residential services to persons with mental retardation do not qualify automatically for participation in Medicaid as ICFs/MR. Although the facility may be providing services to meet the needs of these types of individuals, the services provided by the facility do not meet the regulatory definition of "active treatment."

Furthermore, if the primary purpose of the facility is no longer to provide services to persons with mental retardation or related conditions who are in need of active treatment, then the facility does not meet the statutory requirement at §1905(d) of the Social Security Act and the regulatory definition of an ICF/MR, and therefore cannot be certified. A determination of noncompliance with this requirement, therefore, must result in a determination of noncompliance at the Condition of Participation level and at §440.150(c).

Conversely, if the overall facility meets the definition of an ICF/MR, the law does tolerate the presence of a few individuals for whom payment cannot be claimed. If an entity must serve both people who are generally independent and people who are in need of active treatment, then the entity may need to consider establishing a distinct part ICF/MR to serve those individuals who are in need of active treatment.

Negative findings about active treatment with regard to generally independent clients may be in conflict with level of care determinations made by State inspection of care (IOC) teams. Bring these negative active treatment findings to the attention of the IOC agency within the State for appropriate disposition of Medicaid ICF/MR certification. (See also W198, if the negative findings involve newly admitted individuals.)

There are some individuals who need the help of an ICF/MR to continue to function independently because they have learned to depend upon the programmatic structure it provides. The fact that they are not yet independent, even though they can be, makes it appropriate for them to receive active treatment services directed at achieving needed and possible independence.

483.440(b)(1) Individuals with the following characteristics do not necessarily require a continuous active treatment program in order to function or to achieve optimal independence. Review closely to what extent the ICF/MR serves individuals, who in the aggregate:

- Are independent without aggressive and consistent training;
- Are usually able to apply skills learned in training situations to other settings and environments;
- Are generally able to take care of most of their personal care needs, make known to others their basic needs and wants, and understand simple commands;
- Are capable of working at a competitive wage level without support, and to some extent, are able to engage appropriately in social interactions;
- Are engaged in productive work within the facility which is done at an acceptable level of independence (i.e., not done as part of a training program to teach the individual new skills);

- Are able usually, to conduct themselves appropriately when allowed to have time away from the facility's premises; and
- Do not require the range of professional services or interventions in order to make progress.

Based on the order of a court, the ICF/MR may be required to admit individuals who do not need active treatment. Although CMS has no jurisdiction to prevent the courts from ordering the placements of such individuals into institutions certified as ICFs/MR, the individuals, by definition, would be ineligible to be classified by Medicaid for the ICF/MR benefit. To the extent that the placement of these court-ordered individuals does not interfere with the ability of the ICF/MR to provide active treatment for its individuals, the facility's overall certification is not affected.

483.440(b)(2) No admission should be regarded as permanent. Readmission of an individual to the ICF/MR falls under the same requirements as initial admission.

In the absence of State regulations designating the person(s) authorized to approve admission (e.g., State or Regional Admissions Committees), the decision to admit an individual to the ICF/MR is based on the findings of an interdisciplinary team, including a QMRP.

Occasionally, emergency admissions of individuals may occur without benefit of a preliminary evaluation having been conducted prior to admission. For purposes of §483.440(b)(2) and consistent with §456.370(a), this requirement will be considered as "met" at such time that an evaluation is conducted which supports the need for an individual's placement in the ICF/MR. Refer to W210.

483.440(b)(3) The facility must decide, based on objective data, whether or not needs can be met. In some cases, the facility may be required to meet the "reasonable accommodation" requirement of the Americans with Disabilities Act. Failure to admit individuals merely because they have a particular medical condition may constitute a civil rights violation. All such instances should be reported to the Office of Civil Rights for investigation.

483.440(b)(4)(i) "Transfer" means the temporary movement of an individual between facilities, the temporary movement from the ICF/MR to a psychiatric or medical hospital for medical reasons, the permanent movement of an individual between living units of the same facility, or the permanent movement of an entire facility (including individuals served, staff and records) to a new location. "Discharge" means the permanent movement of an individual to another facility or setting which operates independently from the ICF/MR. Moving an individual for "good cause" means for any reason that is in the best interest of the individual.

483.440(b)(4)(ii) The family and the individual should be involved in any decision to move an individual, since this decision generally, should be part of a team process that includes the individual or guardian. If an individual has an advocate, the advocate should participate in the decision-making process.

483.440(b)(5)(ii) The discharge plan required by 42 CFR 456.380 and the post-discharge plan of care are the same. The regulations require only one discharge plan which meets the requirements.

483.440(c)(1) There is no "correct" number of individuals who comprise the interdisciplinary team. The regulation also does not specify the professional disciplines which make up the interdisciplinary team. Based upon outcomes, assess whether the expertise available to the team was appropriate to meet the needs of the individual.

The facility must make every effort to coordinate the IEP or program plan from an outside day program with the IPP process. This may result in a single IEP/IPP document, but there is no requirement for the IPP to be one document. The "collective" IPP must contain the information required under the regulations, and observation should confirm integration of the IPP across the various settings.

Negative answers to the following probes may indicate a lack of input from appropriate team members. Evaluate findings for systemic lack of input by a particular team member, lack of communication among team members, or lack of team effort and cooperation.

483.440(c)(2) Meetings should be scheduled and conducted to facilitate the participation of all members of the team, but especially the individual, unless he or she is clearly unable or unwilling, the individual's parents (except in the case of a competent adult who does not desire them to do so) or the individual's guardian or legal representative. The ICF/MR is expected to pursue aggressively the attendance of all relevant participants at the team meeting, (e.g., a conference call with a consultant during deliberations meets this requirement). Question routine "unscheduled" absences by individuals, guardians and

particular disciplines or consultants, and determine the impact on effectiveness and responsiveness of the IPP to meet the individual's needs.

483.440(c)(3) "Accurate" assessments refer to assessment data that are current, relevant and valid, and that the skills, abilities, and training needs identified by the assessment correspond to the individual's actual status. Additionally, for assessment data to be accurate, the cultural background and experience of the individual must be reflected in the choice, administration and interpretation of the evaluation(s) used. A few examples of appropriate adaptations might be: specialized equipment, use of an interpreter, use of manual communication, tests designed to measure performance in the presence of visual disability, etc.

The contents of assessments or the particular assessment which must be used are not specified. A nursing assessment, for example, would not need to reference all domains, or a psychiatric or psychological evaluation would not necessarily have to be based on a particular "tool." Similarly, the results of the comprehensive assessment are not required to be written into a narrative report(s). Verify that the tests, evaluations, etc. that comprise the comprehensive functional assessment, yield data that are accurate, reflect the current status and needs of the individual, and can serve as a functional basis for an IPP to be developed.

483.440(c)(3) The active treatment assessment process should be sensitive to the behaviors of individuals throughout their life span. For example, infants and toddlers are expected to engage in more play-related, exploratory activities, adolescents are expected to engage in activities of increasingly greater responsibility in preparation for adulthood, adults are expected to support themselves or at least be engaged in training or education activities toward that end, and elderly citizens, are expected to choose whichever form of productive activity meets their needs and interests (employment, handiwork, pursuit of leisure, etc.) for as long as they are able.

483.440(c)(3)(i) In the presence of a diagnoses (medical or otherwise), evaluation data must be available to support the determination.

483.440(c)(3)(ii-iii) The comprehensive functional assessment (CFA) may be a report synthesizing the results of salient assessments or a series of reports. If individual reports are utilized, the complete diagnostic work-up or problem list identified by others is not required to be repeated unless it is relevant to the particular assessment. Findings are recorded in terms that facilitate clear communication across disciplines. Diagnoses or imprecise terms and phrases (including, but not limited to, "grade level," "age level," "developmental level," "good attending skills," and "poor motor ability") in the absence of specific terms, are not acceptable.

Assessment of the behavior assumed to be maladaptive should include analyses of the potential causes, such as lack of exposure to positive models and teaching strategies, lack of ability to communicate needs and desires, lack of success experiences, a history of punishing experiences, presence of a physiological condition, or other environmental or social conditions which may elicit or sustain the behavior.

Specific "developmental" strengths and needs describe what the individual "can" and cannot do.

483.440(c)(3)(iv) In the presence of significant developmental deficits, it is not acceptable for the comprehensive evaluation to identify that a particular professional therapy or treatment is not needed. To meet the requirement for "need for service," the assessment must identify the course of specific interventions recommended to meet the individual's needs in lieu of direct professional therapy or treatment.

483.440(c)(3)(v) The facility must assess in developmental areas, but not by professional disciplines unless the functional assessment shows a need for a full professional evaluation. Findings relative to the domains required under §483.440(c)(3)(v) include, but are not limited to:

483.440(c)(3)(v) 1. Physical development and health. Physical development includes the individual's developmental history, results of the physical examination conducted by a licensed physician, physician assistant, or nurse practitioner, health assessment data (including a medication and immunization history), which may be compiled by a nurse, and skills normally associated with the monitoring and supervision of one's own health status, and administration and or scheduling of one's own medical treatments. When indicated by physical examination results, consultations by specialists are provided

or obtained. The need for advance directives or do not resuscitate (DNR) orders may be assessed on a case-by-case basis, as part of this area by individuals qualified to do so.

483.440(c)(3)(v) 2. Nutritional status. Nutritional status includes determination of appropriateness of diet, adequacy of total food intake, and the skills associated with eating, (including chewing, sucking and swallowing disorders), food service practices, and monitoring and supervision of one's own nutritional status.

483.440(c)(3)(v) 3. Sensorimotor development. Sensory development includes the development of perceptual skills that are involved in observing the environment and making sense of it. Motor development includes those behaviors that primarily involve: muscular, neuromuscular, or physical skills and varying degrees of physical dexterity. Because sensory and motor development are intimately related, and because activities in these areas are functionally inseparable, attention to these two aspects of bodily activity is often combined in the concept of sensorimotor development. Assessment data identify the extent to which corrective, orthotic, prosthetic, or support devices would impact on functional status.

483.440(c)(3)(v) 4. Affective (Emotional) development. Affective or emotional development includes the development of behaviors that relate to one's interests, attitudes, values, and emotional expressions.

483.440(c)(3)(v) 5. Speech and language (communication) development. Communication development refers to the development of both verbal and nonverbal and receptive and expressive communication skills. Assessment data identify the appropriate intervention strategy to be applied, and which, if any, augmentative or assistive devices will improve communication and functional status.

483.440(c)(3)(v) 6. Auditory functioning. Auditory functioning refers to the extent to which a person can hear and to the maximum use of residual hearing if a hearing loss exists and whether or not the individual will benefit from the use of amplification, including a hearing aid or a program of amplification. An individual's treatment might need to include being desensitized to tolerate the use of a hearing aid or assistive listening device to prevent the device from being rejected or destroyed. Assessment may include teaching techniques for conducting the assessment or the use of electrophysiologic techniques.

483.440(c)(3)(v) 7. Cognitive development. Cognitive development refers to the development of those processes by which information received by the senses is stored, recovered, and used. It includes the development of the processes and abilities involved in memory, reasoning and problem solving.

483.440(c)(3)(v) 8. Social Development. Social development refers to the formation of those self-help, recreation and leisure, and interpersonal skills that enable an individual to establish and maintain appropriate roles and fulfilling relationships with others.

483.440(c)(3)(v) 9. Adaptive behaviors or independent living skills. Adaptive behavior refers to the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected of their age and cultural group. Independent living skills include, but are not limited to, such things as meal preparation, doing laundry, bed-making, and budgeting. Assessment may be performed by anyone trained to do so. Standardized tests are not required. Standardized adaptive behavior scales which identify all or predominantly all "developmental needs" are not sufficient enough to meet this requirement, but can serve as a basis for screening.

483.440(c)(3)(v) 10. Vocational (prevocational) development, "as applicable." Vocational development refers to work interests, work skills, work attitudes, work-related behaviors, and present and future employment options. The determination of whether or not a vocational assessment is "applicable" is typically based on age (adolescents or adults more than likely require this type of assessment).

483.440(c)(4) The presence of a comprehensive list of behaviorally stated needs is acceptable for this portion of the requirement. "Comprehensive" means that objectives are stated for the needs identified in each domain included in the comprehensive functional assessment.

Objectives may address services to be provided, learning/treatment needs, adaptive equipment, etc., §§483.440(c)(4)(i)-(v) regulate requirements for current IPP training objectives (as opposed to staff, service, or long term objectives).

Validate that the needs identified by the team are appropriate for the individual based upon review of the comprehensive functional assessment data, observations, and interviews with the individual and staff.

483.440(c)(4) To organize objectives into a planned sequence the ICF/MR must consider the outcomes it projects for the individual in the long term. For example, if the long term objective is for the individual to travel independently in the community, the planned sequence may involve training the individual to recognize traffic signs, cross a street safely, and to obtain help when needed if lost or an emergency arises. Interview staff to discover the purpose to be achieved upon completion of the objective. For example, does staff know why an individual is taught to stack rings?

483.440(c)(4)(i) "Single" behavioral outcome means that for each discrete behavior that the team intends the individual to learn a separate objective is assigned. (For example, "Mary will bake a cake and clean the oven" are two separate behaviors and, therefore, should be stated in two separate objectives.) Performance of a series of separate behaviors could constitute a single behavioral outcome when appropriate for the individual. For example, completing a hygiene routine of face washing, tooth-brushing and hair-combing is one behavioral outcome when the individual is able to perform each of those skills, but needs to learn to complete the entire routine each morning.

483.440(c)(4)(ii) The "projected date of completion" for an IPP objective is not the same as a "review" date. For each objective assigned priority, the team should assign a projected date (month and year) by which it believes the individual will have learned the new skill, based on all of the assessment data. This date triggers the team to evaluate continuously whether or not the individual's progress or learning curve is sufficient to warrant a revision to the training program. There is no requirement to identify an implementation date for each objective in the plan.

483.440(c)(4)(iii) "Behavioral" terms include only those behaviors which are "individual" rather than "staff" oriented and those that any person would agree can be seen or heard. Determine if all staff who work with the individual can define the exact same outcome on which to measure the individual's performance. "Measurable indices of performance" are the quantifiable criteria to use in determining successful achievement of the objective. Criteria include various measurements of intensity and duration. For example, "M. will walk ten feet, with her tripod walker, for 5 consecutive days."

483.440(c)(4)(iv) To organize an objective in an appropriate progression, the ICF/MR must consider the person's current functional abilities and project what steps, methods and strategies are likely to be effective in achieving the objective. Baseline data are one means of establishing an appropriate starting point for an objective. Objectives must be adapted based upon the person's functional abilities. For example, if the objective is to learn to put on shoes independently and the person does not have the manual dexterity to tie shoe laces, then the objective could include the use of slip-on shoes or shoes with velcro closures in order to facilitate the person learning this skill.

483.440(c)(4)(v) After all the training objectives have been established as required by W227, the IPP identifies those objectives which the team considers to be most important, or which need to be implemented before others can be accomplished, and then assigns them priority. Some examples of assigning priority include, but are not limited to, rank ordering (most important to least important), assignment of "priority" or "non-priority," etc.

483.440(c)(5) The written training program refers only to those objectives to which the team has assigned priority status for formal implementation.

483.440(c)(5)(iii) This may or may not be the same person who implements the program. There is no requirement to identify who implements the program.

483.440(c)(5)(iv) The facility must determine the type of data necessary to judge an individual's progress on an objective, and describe that data collection method in the written training program. The facility determines what data to collect, but the system chosen must yield accurate measurement of the criteria stated in the individual's IPP objectives. For example, if the criteria in the individual's IPP objective specified some behavior to be measured by "accuracy," or "successes out of opportunities," then it would not be acceptable for the prescribed data collection method to record "level of prompt."

Methods of data collection on IPP training programs should be based on the total (including direct care) facility's staff analysis and observations of an individual's behavior. Examples of a few data

collection systems include, but are not limited to, level of prompt, successful trials completed out of opportunities given, frequency counts, frequency sampling, etc. The facility should collect data with enough frequency and enough content that it can measure appropriately the individual's performance toward the targeted IPP objective.

483.440(c)(6)(iii) The receipt of training targeted toward amelioration of these most basic skill deficit areas is a critical component of the active treatment program needed by individuals who are eligible for the ICF/MR benefit, and therefore, is a required ICF/MR service. Some ADL skills overlap with each other (e.g., personal hygiene, oral hygiene, grooming and bathing). It is acceptable for the interdisciplinary team to set priorities within these overlapping skills. It must be clear, however, that the facility has organized its services to emphasize training in these areas. This will be seen not only in the IPP, but also in the competent interaction of staff with individuals, in both formal and informal settings. This basic skill training defines the nature of ICF/MR services. To the extent that individuals demonstrate that they increasingly do not need the types of services described in this requirement, and increasingly correspond to the characteristics of clients described at W197 such that the "overall" nature of the facility services would not be required to provide the type of emphasis described at W242, question the appropriateness of the individual's placement in an ICF/MR and/or the certification of the facility as an ICF/MR (see W197 and W198).

"Training" as used in this regulation means:

Aggressive implementation of a systematic program of formal and informal techniques (competent interactions);

Continuously targeted toward the individual achieving the measurable behavioral level of skill competency specified in IPP objectives;

Conducted in all applicable settings; and

Conducted by all personnel involved with the client.

"Developmental incapability" is a decision to be made by the interdisciplinary team based on its assessment of the individual's developmental strengths and needs. For example, there is ample evidence that even individuals with the most severe physical and mental disabilities can be toilet trained. Recognition is given to the fact that some individuals, however, have insufficient sensory and neuromuscular control ever to be totally independent in toileting skills. For most of this group, there are intermediate steps which can be achieved, including toilet scheduling, in which the individual is able to be trained to a schedule of elimination with needed assistance from staff. The intent of the toileting part of this regulation is met if there is evidence that the individual has been provided an aggressive, well organized, and well executed toilet training program in the past and that the team determines the individual's "developmental incapability."

483.440(c)(6)(iv) Mechanical devices used to support an individual's proper body position or alignment may be essential to prevent contractures and deformities, but the staff should be sensitive to the fact that mechanical supports may restrict movement and the individual should not be in the supports all the time or as a substitute for programs or therapy which may reduce the dependency on the support. Some supports allow movement and provide opportunity for more increased functioning. Some examples of devices used as mechanical supports include splints, wedges, bolsters, lap trays, etc.

Wheelchairs are not generally used to position or align the body and would not alone constitute a mechanical support. However, adaptations to wheelchairs which do position or align the body would have to be specified according to this requirement. Adaptations to a wheelchair which facilitate correct body alignment by inhibiting reflexive, involuntary motor activity are also mechanical supports.

483.440(c)(6)(v) With the exception of those individuals who are acutely ill (such as those who are hospitalized or incapacitated by a short term illness), all individuals should be out of bed and outside their bedroom area as long as possible each day, and in proper body alignment at all times. This is a necessity in order to prevent regression, contractures, and deformities and to provide sensory stimulation.

Question patterns of bed rest "orders" or "scheduled" bed rest as a routine part of an individual's program. A nap period of an hour, for example, is not "bed rest." However, if the ICF/MR, as a general pattern of scheduling, expects an individual to be one - two hours in bed in the morning, one - two hours in bed in the afternoon, and an 8:00 p.m. bedtime in the evening, for example, then the practice becomes

"bed rest," and the intent of the regulation will more than likely not be met. Question seriously large amounts of time during which a resident is confined to bed.

483.440(c)(6)(vi) Due to the basic underlying importance "choice" plays in the quality of one's life, the ICF/MR should maximize daily activities for its individuals in such a way that varying degrees of decision-making can be practiced as skills are acquired. Examples of some activities leading toward responsibility for one's own self-management include, but are not limited to, choosing housing or roommates, choosing clothing to purchase or wear, choosing what to eat, making and keeping appointments, and choosing from an array of appropriate activities. Interview staff to determine how attitudes and activities of the team and consultants facilitate or impede individual choice.

Choices can be made by all individuals. The type of choices the person makes may vary from very simple to more complex, depending upon individual abilities. Look at choices in the context of the individuals served by the facility.

483.440(d)(1) For an individual newly admitted to the ICF/MR, the time period between admission and the 30 day interdisciplinary team meeting should be primarily for purposes of assisting the individual to become adjusted and acclimated to his or her new living environment and completing the functional assessment. During this time period the facility should also be providing those services and activities determined during the pre-admission assessment as essential to the individual's daily functioning. In order to be able to produce the comprehensive assessment, the facility must evaluate the individual's status in as many naturally occurring, functional environments as possible.

It must be clear that the active treatment program received by the individual is internally consistent and not simply a series of disconnected formal intervention applications within certain scheduled intervals.

The criteria of what constitutes a "sufficient number and frequency of interventions" are based on the individual's assessment and the progress the individual makes toward achieving IPP objectives.

Whether "structure" must be imposed by staff or whether the individual can direct his or her own activities for a period of time (without direct staff observation) is based on the individual's ability to engage in constructive, age-appropriate, adaptive behavior (without engaging in maladaptive behavior to self or others). Be certain that an individual's time in the home or living unit is maximized toward the further development and refinement (including self-initiation) of appropriate skills, including, but not limited to, leisure and recreation.

For the active treatment process to be effective, the overall pattern of interaction between staff and individuals must be accountable to the comprehensive functional assessment and the IPP process. During the overall observation of individuals, you should be able to track that: the individual's comprehensive assessment identified the specific developmental need or strength justifying the activity, technique or interaction; in the case of a "need," the team projected a measurable objective or target to address it; and the technique, interaction, or activity which is observed, produced the desired target, produced a close approximation of the target, or was modified based on the individual's response.

483.440(d)(2) The active treatment schedule directs the intensity of the daily work of the staff and the individuals in implementation of the IPP in both informal and formal training activities. To the extent possible, the schedule provides a range of options, rather than a fixed regimen. Individuals should have opportunities to choose activities and to engage in them as independently and freely as possible. Staff routines and schedules should be supportive of this goal and result in the presence of reasonable choices by individuals. Investigate any pattern of staff action or scheduling which results routinely in all or the majority of individuals engaging in the same activity or routine at the same time. For example, everyone is out of bed, awake and dressed before staff on the third shift go home, or everyone goes to bed before the third shift arrives.

The active treatment schedule is not required to be posted.

While the facility should have the individual's schedule from the day program, there is no requirement that this schedule and the residential schedule be merged into one document.

483.440(d)(3) The facility is responsible for ensuring that during staff time spent with individuals, the staff member is able to provide needed interventions or reinforce acquired skills in accordance with the

IPP. This is one of the ways the ICF/MR implements continuous active treatment. "All" staff includes direct care staff.

The activities of the ICF/MR are coordinated with other habilitative and training activities in which the individual may participate outside of the ICF/MR, and vice versa.

483.440(e)(1) Data collection is evidence of individual performance and should not be taken constantly as evidence for surveyors that "treatments" occurred. "Data" are defined to be performance information collected and reported in numerical or quantifiable form on training objectives assigned priority in the IPP.

Data are those performance measurements recorded at the time the treatment, procedure, intervention or interaction occurs with the individual. They should be located in a place accessible to staff who conduct training.

483.440(e)(2) See also §483.410(c) Client Records.

483.440(f)(1)(i) - (iv) The interval within which IPP reviews are conducted is determined by the facility. However, the facility's review system must be sufficiently responsive to ensure that the IPP is reviewed whenever the conditions specified in §§483.440(f)(1)(i-iv) occur. Information relevant to IPP changes should be recorded as changes occur.

483.440(f)(2) For the "annual" review to meet the requirement, it must be completed by at least the 365th day after the last review. The ICF/MR may be required to conduct reviews at more frequent intervals by other, more stringent regulations (e.g., 90 day reviews required by §456.380(6)(c), State regulation, etc.). The facility's failure to comply with these other, more stringent regulations would NOT be cited under this requirement. Refer cases of suspected non-compliance to the authority having jurisdiction for the regulations in question.

483.440(f)(2) The review of the CFA applies to all evaluations conducted for an individual, unless otherwise specified in the regulation (e.g., annual physical examination). It is not required that each assessment be completely redone each year. It is required that at least annually the assessment(s) be updated when changes occur so as to accurately reflect the individual's current status. Systematic behaviorally stated data become part of the comprehensive functional evaluation of the individual.

483.440(f)(2) Look for IPPs that are unchanged from one year to the next, for priority skills and behaviors that are deferred or ignored for one reason or the other, and for informal, vague, and programmatically worthless statements in the review (such as "John did better this year - he wasn't as upset most of the time like he used to be"). If the ICF/MR has not been providing the individual with a systematic, behaviorally-oriented active treatment program during the year, the review will be incapable of making systematic, behaviorally-oriented statements about progress and change. If you find problem behaviors which do not decrease significantly, relatively frequent usage of restraint or other intrusive restrictive procedures, a "plateauing" (e.g., reaches partial desired performance, but does not improve over time and staff does not reassess) of skills development, or any other signs of "sameness" year after year, questions should be raised about the extent to which the ICF/MR is providing active treatment, the adequacy of IPPs, staff training, etc., particularly, if many individuals' annual reviews reveal these characteristics.

483.440(f)(3) Depending on its size, complexity and available resources, the ICF/MR may establish one multi-purpose committee to serve it for all advisory functions, or it may establish separate single-purpose committees. The facility's human rights committee may be shared among other agencies or the ICF/MR may utilize a human rights committee established by another governing body, e.g., a county or a statewide group, as long as all pertinent regulatory requirements are met.

The regulation does not specify the professional credentials of the "qualified persons who have either experience or training in contemporary practices to change inappropriate client behavior." There is no requirement that any specific disciplines, such as nurse, physician or pharmacist be members of the committee.

The intent of including "persons with no ownership or controlling interest" on the committee is to assure that, in addition to having no financial interest in the facility, at least one member is an impartial outsider in that he/she would not have an "interest" represented by any other of the required members or the facility itself. Staff and consultants employed by the facility or at another facility under the same governing body cannot fulfill this role.

Although occasional absences from committee meetings are understandable, patterns of absence by the required membership of the committee is not acceptable. At least a quorum of committee members must review, approve and monitor the programs which involve risk to client rights and protections. Depending upon the size of the facility and the number of individuals who need intrusive or restrictive techniques as a part of active treatment programs, more than one specially constituted committee may be needed to effectively meet the intent of the regulation. The facility is responsible to organize itself in a manner which permits the timely review of proposed programs.

483.440(f)(3)(i) Each individual program developed to decrease inappropriate behavior and which involves potential risk to rights and protections must be reviewed and approved by the committee prior to the program's implementation. Some examples of programs requiring review include, but are not limited to, programs incorporating usage of restraints, aversive conditioning, any medication used to modify behavior, contingent denial of any right or "earning" of a right as part of a behavior shaping strategy, and behavioral consequences involving issues of client dignity. There is no requirement for the committee to function as a peer review for technical or clinical adequacy of plans submitted for approval. The purpose is to assure that each individual's rights are protected through use of a group of outside individuals who are not invested in the maintenance of facility practices. The committee reviews the context by which each program is recommended, and then evaluates whether the program's level of intrusiveness is warranted. The committee should consider factors such as whether less intrusive methods have been attempted and whether the severity of behavior outweighs the risks of the proposed program.

The committee need not reapprove a program when revisions are made, as long as those revisions are in accordance with the approved plan. For example, if the physician changes the dosage of a medication in accordance with the drug treatment component of the active treatment plan to which the legally authorized person has given consent and which has already been approved by the committee, then there is no need for the committee or the legally authorized person to reapprove the plan. (See also W263.) Generally, this would also apply if the medication was changed to another within the same therapeutic class or family. Reapproval would be needed, however, if the reason for the change was the individual's strong untoward response to the original medication. Due to the differences in side effects and potential adverse response between drugs of a different class, reapproval would also be required if the new medication was from a different therapeutic class or family of drugs.

483.440(f)(3)(ii) Informed consent consists of permission by the legally responsible party after having been informed of the specific issue, treatment or procedure; the individual's specific status with regard to the issue, treatment or procedure; the attendant risks and benefits; alternative forms of treatment; the right to refuse treatment and the consequences of that refusal. Informed consent implies that the person who is to give consent is competent to evaluate the decision requiring consent.

For children up to the age of 18 the parent (natural guardian) or legally appointed guardian must give consent for him or her. At the age of 18, however, children become adults and are assumed to be competent unless otherwise determined by a court.

For individuals who are minors or who are clearly incompetent, but have no appointed legal guardian, informed consent for use of restrictive programs, practices or procedures must be obtained from the legal guardian, parent or someone or some agency designated by the State, in accordance with State law, to act as the representative of the individual's interests. Become familiar with the statutes of the State in which the ICF/MR is located to determine who or what mechanism is designated to give informed consent in such circumstances. Verify whether or not consent was obtained in accordance with law. Additionally, under these circumstances, the facility is required to identify those individuals, and expected to advocate for them by demonstrating continuing efforts to obtain timely adjudication of the individual's legal status.

The committee must ensure that the informed and voluntary consent of the individual, parent of a minor, legal guardian, or the person or organization designated by the State is obtained prior to each of the following circumstances: the involvement of the individual in research activities, or implementation of programs or practices that could abridge or involve risks to individual protections or rights.

Informed consent should be specific, separate ("blanket" consents are not allowed), and in writing. In case of unplanned events requiring immediate action, verbal consent may be obtained, however, it should be authenticated in writing as soon as reasonably possible.

483.440(f)(3)(iii) The function of the committee is not limited to the review, approval and monitoring of restrictive behavior management practices. Examples of individual rights issues that might be reviewed by the committee, in addition to behavior management, include, but are not limited to, research proposals involving individuals, abuse, neglect and mistreatment of individuals, allegations dealing with theft of an individual's personal property or funds, damage to an individual's goods or denial of other individual rights, individual grievances, visitation procedures, guardianship/advocacy issues, rights training programs, confidentiality issues, advance directives/DNR orders, etc.

483.450(a)(1) "Conduct between staff and clients" refers to the language, actions, discipline, rules, order, and other types of interactions exchanged between staff and individuals or imposed upon individuals by staff during an individual's daily experiences and which affect the quality of an individual's life.

While the regulation requires the development of written policies and procedures, the primary survey emphasis should be placed on the latter aspect of the regulation, i.e., implementation of those policies and procedures. Observations of interactions between staff and individuals should confirm that, to the maximum extent possible, individuals are provided with opportunities for growth and self-determination.

Individual's dignity is respected by staff and their behavior is within the context of any rules of conduct which have been established.

483.450(a)(1)(iii) "Client conduct" refers to any behavior, choice, action, or activity in which an individual may choose to engage alone or with others. The policy or "house rules" include(s), for example: allowable individual conduct (e.g., swearing or cursing, freedom of choice in religion, consumption of alcohol, smoking, sexual relations), reasonable locations where this conduct may or may not occur, and parameters for decision-making when an individual's choice conflicts with the group's choice (e.g., consensus, voting, taking turns, negotiation of differences).

"House rules" on the other hand, may not authorize staff or other individuals served to use a "laundry list" of discipline techniques to control an individual's inappropriate behavior, without regard to individualized need. If it is determined that staff must use a technique or intervention, then its use must be incorporated into an individual program plan that meets all applicable requirements specified in §483.450(b)-(e). Refer to W123.

483.450(b)(1) Use of items, procedures, or systems which are potentially stigmatizing to the individual or otherwise would represent a substantial departure from the behavior of comparable peers without disabilities, to control or prevent inappropriate behavior, falls under this requirement as well. (For example, requiring an individual to live in a locked residence and not providing the individual with a key, using a high crib with bedrails for an adult who gets out of bed at night and wanders or upsets other individuals, requiring an individual who strips off his clothes at inappropriate times to wear a jumpsuit turned backwards, or other odd usages of fashion.)

483.450(b)(1)(iii) You should see clear evidence to justify the use of a more restrictive technique. This requirement does not take away the team's discretion to use technology which represents reasonable standards of good practice, but it does require that there be evidence that justifies any decision not to use a positive or less restrictive technique first. Based on extraordinary circumstances resulting in an emergency, a facility may need to use a more restrictive method of intervention to protect the individual and others from harm than is consistent with the hierarchy it has established. This regulation does not prohibit a facility from using good judgment in this situation.

The surveyor should assess the use of emergency restrictive interventions to assure that the facility could not have reasonably anticipated the behavior, and verify that the team has reviewed the individual program plan for its adequate attention to the problem precipitating the emergency measure.

The facility is not required to justify discontinuing the use of a more restrictive technique before initiating a less restrictive technique, since the intent of the regulation is to use the most positive, least intrusive technique possible.

483.450(b)(5) Ongoing authorization for "programs" or "programmatic usages" of restrictive techniques, in the absence of evidence to justify such usage, constitutes a "standing" or "as needed program" to control inappropriate behavior, and are therefore not permitted.

483.450(c)(1) The use of time-out rooms is effective only if the individual does not like to be removed from an activity or from people. Look for patterns of frequent, lengthy time-out usage which often indicates that the environment is not reinforcing to the individual (i.e., the activities in and of themselves are not engaging, and/or the scheduled activities are potentially engaging yet the schedule is not implemented). If the individual who is in a time-out room engages in self-abuse, becomes incontinent or shows other signs of illness, staff should immediately discontinue the procedure and intervene.

Verify whether or not anyone standing or lying in any position, in any part of the time-out room can be seen.

Key locks, latch locks, and doors that open inward without an inside doorknob are not devices or mechanisms which require constant physical pressure from a staff member to keep a door shut, and, therefore, are not permitted by the regulations.

Pressure sensitive mechanisms must allow staff to enter the room at the moment the need arises.

483.450(c)(3) A door that opens inward can potentially be held closed, either intentionally or inadvertently, by the individual in the room, thereby denying staff immediate access to the room.

483.450(d)(1)(ii) "Emergency measure" is defined as use of the least restrictive procedures and for the briefest time necessary to control severely aggressive or destructive behaviors that place the individual or others in imminent danger when those behaviors reasonably could not have been anticipated, and only as they are necessary within the context of positive behavioral programming. Examine closely how frequently "emergency measures" are employed. Repeated applications of such measures within short intervals of time, without subsequent incorporation into a written active treatment program, as required by §483.440(c), raises serious questions about the individual's receipt of active treatment and the individual's right to be free from unnecessary restraint.

483.450(d)(2) The facility determines who may authorize use of emergency restraints.

483.450(d)(2)(i) The specific 12-hour authorization and re-authorization to use or extend usage of physical restraints does not apply to restraints used as an integral part of the individual program plan or to those that qualify as a health-related protection, as defined in the regulation.

483.450(d)(2)(ii) This refers to the reporting and retrospective authorization of the emergency measure when no prior use authorization could be obtained due to the seriousness and immediacy of the event.

483.450(d)(4) The frequency of monitoring will vary according to the type and design of the device and the psychological and physical well-being of the individual. For example, an individual in four-point restraints might require constant monitoring while someone in soft mittens may require less frequent monitoring. It is also true that for some individuals, constant visual supervision would serve to reinforce the inappropriate behavior and thereby reduce the clinical effectiveness of using the restraint. However, in no case may the 30 minute time limit be extended.

"As quickly as possible" means as soon as the individual is calm or no longer a danger to self or others.

483.450(D)(6) "Motion and exercise" includes an opportunity for liquid intake and toileting, if needed by the individual.

483.450(d)(6) In the presence of a restraint being worn during sleeping hours, surveyors must determine whether it is truly the nature of the individual's behavior which warrants this significant level of intrusion, or whether it in fact is a substitute for lower staffing during night time hours. The "motion and exercise" requirement applies to all restraints which restrict the range of motion of a limb or joint. Therefore, for example, if a helmet is applied to protect a head wound during sleeping hours, and the individual's range of motion in the neck has not been affected, then this requirement does not apply.

This requirement also does not apply to cases of medical restraints that are specifically ordered for the immobilization of bones and joints during the physical healing process involved with fractures, sprains, etc. (e.g., a broken bone immobilized by a cast or splint). However, if a physical restraint was applied to an extremity to prevent an individual from removing post-operative sutures, the restraint would be required to be released every two hours for a period of not less than 10 minutes.

Even though usage of mechanical supports, defined at §483.440(c)(6)(vi), may confine the movement of an individual, W306 does not apply to such usage.

483.450(e)(1) Section 483.450(e)(1) applies to all medications, including medications prescribed to control inappropriate behavior.

Overmedication occurs for many reasons. For medications prescribed to control maladaptive behavior, the most common reasons are: the individual's maladaptive behavior may not be responsive to drugs (e.g., if an individual has a non-drug-responsive form of self injury, then use of psychotropics may simply lead up to maximum drug doses without suppressing the behavior), drug therapy may be exacerbating the behavior (e.g., if a drug-induced side effect is mistaken for agitation, then the physician may mistakenly believe that the individual is undermedicated and increase the dose), presence of polypharmacy within the same drug class may result in a drug dose that would exceed the maximum daily limit for any one drug, the individual may be receiving too frequent injections which may result in significant drug accumulation over time, and the use of daily medication plus PRN or stat (one time) doses may result in greater than the recommended daily doses being prescribed (especially since intramuscular administration may be up to four times as potent). Overmedication may also occur as a result of the interaction between drugs, whether these drugs were prescribed for control of inappropriate behavior, or for a physical or medical condition.

Administration of PRN or stat doses for periods greater than a few weeks may indicate that the individual's daily dose is sub-therapeutic, the problem will not respond to the prescribed drug or the drug is exacerbating the problem. In such instances, the surveyor should verify whether or not the drug regimen has been reassessed.

483.450(e)(2) For drugs to be an effective therapeutic tool, they must be prescribed only to the extent that they are necessary for normal medical management of the individual.

In an emergency, a physician may authorize the use of a drug to control an inappropriate behavior. However, orders for continued emergency drug usage cannot continue until the team gives approval and the drug's usage has been included in the plan. Psychotropic drug therapy may not be used outside of an active treatment program targeted to eliminate the specific behaviors which are thought to be drug responsive.

Although only a physician can prescribe medication, the decision to use medication for control of behavior must be based on input from other team members. W329 and W330 address the physician's participation in the person's individual program plan as part of the interdisciplinary team. The interdisciplinary team involvement in this decision-making process is inextricably linked to an obligation to develop and implement effective non-drug interventions that address the targeted behavior. This obligation requires constant monitoring of the non-drug interventions to determine its efficacy, and to determine whether the judicious use of drug therapy may at times be appropriate.

Individuals who receive psychoactive drugs for behaviors associated with a diagnosed mental disorder, require an active treatment program designed to reduce, ameliorate, compensate or eliminate the psychiatric symptoms. The psychiatric diagnosis must be based on a comprehensive psychiatric evaluation in which the evidence supports the conclusion of a psychiatric diagnosis as required by W212. The focus of active treatment, in this instance, would be on the mental health of the individual.

Drugs from categories other than the principle drug classes that have behavior controlling properties (e.g., antipsychotic, antianxiety, and antidepressants) are sometimes used to control inappropriate behavior. Examples include the use of propranolol (Inderal), which is classified as an antihypertensive and antianginal drug, for self-injurious behavior, and carbamazepine (Tegretol), which is an anticonvulsant, for aggression. The regulation was written to encompass any drug when its use is for purposes of controlling inappropriate behavior. This requirement does not apply to drugs, such as propranolol, when they are used to treat medical conditions. However, if their use (e.g. dose, duration, etc.) indicates that they are being used to control inappropriate behavior, the interdisciplinary team must be involved in the decision to use them, and they must be incorporated into the active treatment program plan.

In order for an individual to receive dental or medical treatment, the physician may need to prescribe a sedative as part of the normal medical management for that individual. This situation, occurring rarely,

would not require an active treatment program targeted toward elimination of the behavior. The decision to use sedation for medical appointments must be made on an individual basis, and with input from the interdisciplinary team. When the individual is regularly exhibiting behaviors that are interfering with the ability to receive routine medical and dental treatment, then use of the sedative is required to be incorporated into a specific active treatment program.

483.450(e)(4)(i) Unless the physician regularly evaluates the individual and meets with those who work most closely with the individual to review treatment progress, it will be difficult to assess whether the individual responded positively to the treatment.

Since each drug has a specific profile of side effects, potential reactions should be looked for by direct examination and questioning. It is important that everyone who works with the individual be aware of the conclusion drawn from these drug reviews.

In addition to monitoring at regular intervals, the individual should be assessed at the time the medication is changed, as well. Individuals receiving long term antipsychotic drug therapy should be examined regularly for motor restlessness, such as Parkinsonian symptoms or tardive dyskinesia.

483.450(e)(4)(ii) Planned drug withdrawals must be carefully instituted. For example, usage of antipsychotic drug therapy may not only cause tardive dyskinesia but may mask the clinical manifestations of tardive dyskinesia during treatment. This requirement applies only to drugs prescribed to modify behavior; therefore, if Thorazine is prescribed to decrease aggressive behavior, the annual drug withdrawal requirement applies. However, if Phenobarbital is prescribed to prevent seizures, or Insulin is prescribed to control diabetes, then this requirement does not apply.

In determining whether there is clinical contraindication to the annual drug withdrawal, the physician and interdisciplinary team should consider the individual's clinical history, diagnostic/behavioral status, previous reduction/discontinuation attempts, and current regimen effectiveness. The individual's current clinical status or the nature of a psychiatric illness may indicate that gradual withdrawal of the drug is unwise at this time. It is not acceptable, however, to preclude a gradual drug withdrawal for a person, including a person with a psychiatric impairment, merely because of the possibility that his or her behavior may be exacerbated. Data which shows a direct relationship between past attempts at withdrawal, and an increase in the targeted behavior or symptoms should be available to support the decision not to attempt a gradual withdrawal. This data should reflect the programmatic interventions utilized to respond to the behavior prior to determining that gradual withdrawal is contraindicated. The team should periodically re-evaluate the decision not to attempt a gradual withdrawal based on the individual's progress or other changes in clinical status.

483.460(a)(2) The use of a medical care plan is intended only for those who are so ill or so at medical risk that 24-hour licensed nursing care is essential. A medical care plan need not be developed unless the individual requires licensed nursing care around the clock. Thus, individuals with chronic, but stable health problems such as controlled epilepsy, diabetes, etc. do not require a medical care plan.

It is not required that an individual have a health deficit and/or a medical care plan in order to receive ICF/MR services. The regulation is sufficiently flexible that the entire range of individuals, from those in good physical health to those who are very medically fragile, may be served.

A medical care plan may be temporary, in that it may be established to address acute health problems and then discontinued when those problems are resolved.

483.460(a)(3) Medical services are provided as necessary to maintain an optimum level of health for each individual and to prevent disability. Medical services include evaluation, diagnosis and treatment, as needed, by individuals.

Medical services, including sources for laboratory, radiology, and other medical and remedial services available to the individual must be provided if not provided in-house. There must be a written agreement that specifies the responsibilities of the facility and outside provider. (See §483.410(a).)

483.460(a)(3)(i) This standard is intended to be an annual screening so that individuals who need further indepth examination can be identified. If hearing screens are conducted annually by speech-language pathologists or audiologists the physical exam does not need to repeat this information.

Information relevant to knowing if the individual can see or hear, and how well, is tantamount for designing an appropriate active treatment strategy responsive to need.

If an individual's vision or hearing can only be assessed through examinations conducted by specialists (e.g., comprehensive ophthalmological examinations and evoked response audiometry (ERA)), these tests need not be conducted yearly, but rather upon specialist's recommendations. In such situations determine if yearly, the team evaluates the individual's vision and hearing response behaviors for change, and makes referrals, if necessary.

483.460(a)(3)(ii) These immunization guides can be obtained from the American Academy of Pediatrics, Elk Grove, IL, telephone: (708) 228-5005, or from the Centers for Disease Control, Division of Immunization Center for Preventive Services, telephone: (404) 639-8215.

483.460(a)(3)(iii) This does not preclude screening tests available to the general public such as tests for urine sugar.

483.460(a)(3)(iv) These recommendations can be obtained from the American Academy of Pediatrics, Elk Grove Village, IL, telephone: (708) 228-5005, or the American College of Chest Physicians, Northbrook, IL, telephone: (708) 498-1400.

The American College of Chest Physicians and the American Academy of Pediatrics endorse the recommendations of the Center for Disease Control and Prevention, Guidelines for Preventing the Transmission of Tuberculosis in Health Care Facilities, (most recent edition). The facility should have in place a system appropriate to its population for the identification, reporting, investigation, and control of TB in order to prevent its transmission within the facility. This system should include policies and procedures for screening new employees, new clients, and other people who interact on a consistent basis with individuals residing in the facility; for reporting positive TB test results to the appropriate State authorities; for the investigative procedures that would be put in place should an individual or staff person test positive for TB; and for the evaluation of the effectiveness of the entire system. There should be arrangements with outside service providers, when needed, to ensure that any individual who tests positive for TB will receive appropriate medical treatment. Also, the system should address the issue of any staff member who tests positive for TB. The Occupational Health and Safety Administration (OSHA) requirements regarding exposure control plans and activities may also apply.

483.460(b)(1) During the admission process, which extends from the time the individual is admitted to the time the initial IPP is completed, a physician is required to ensure that an assessment of the individual's medical status is thoroughly considered and addressed by the team as it develops the IPP. The physician's input may be by means of written reports, evaluations, and recommendations.

42 CFR 456.380 requires that a physician must establish a written plan of care for each applicant or recipient before admission to an ICF. This is done in conjunction with the interdisciplinary team. (See §483.440(c).) The written plan of care required by §456.380 and the IPP required by §483.440(c) may be the same document, which can fulfill both requirements.

483.460(b)(2) The need for physician participation is determined by the medical needs of the individual. How the participation (whether through written report, telephone consultation, attendance at the meeting, etc.) is to be accomplished is left to the discretion of the facility.

483.460(c)(1) Unless the individual is on a medical care plan, this participation may be through a written report.

483.460(c)(2) See also W416.

483.460(c)(3)(i) A direct physical examination means a visual review of the body as well as examination of body systems that might be necessary. This includes observing for any clues (including visual, tactile, nonverbal gestures, grimaces, etc.) to detect if there is a potential for needed follow-up and monitoring. A paper review of the individual's medical record and health statistics is not a direct physical examination.

If an individual is on a medical care plan, it is not necessary to perform the quarterly direct nursing physical examination.

483.460(c)(3)(ii) The term "licensed nurse" for purposes of this requirement means a registered nurse, a licensed practical nurse or a licensed vocational nurse. A facility is allowed to use a physician, in place of a licensed nurse, although this is certainly not required.

483.460(c)(3)(iii) "On a quarterly basis" means that the examination must be performed within the month in which the end of the quarter falls. If during the course of a year, there were three examinations

conducted by a licensed nurse and one annual examination performed by a physician, each of which is performed within the month in which the end of the quarter or year falls, the intent of this requirement is met.

483.460(c)(3)(iv) The record includes the date of the exam.

483.460(c)(3)(v) Some physical findings discovered by the nurse while conducting the physical exam will not necessarily result in referral to the physician. This practice is acceptable if the nurse is acting within the scope of the Nurse Practice Act of the State in which he or she is licensed.

483.460(c)(4) This includes nursing care for individuals without a medical care plan.

483.460(c)(5)(i) Facility staff need to know what the limits of their responsibilities are with medically involved individuals, and how to teach individuals on a continuing basis how to take care of minor accidents until further care can be provided.

483.460(d)(2) In evaluating whether or not there is sufficient licensed nursing staff, evaluate the need for licensed nursing care represented by the health characteristics of the individuals served (as described in physical exam results, IPPs, and medical care plans) in relation to the competency and qualifications represented by the staff who provide care (through the onsite survey). Make a judgment about the sufficiency of nursing staff to care for this particular population.

483.460(f)(1) A "month" is defined as the interval between the date of admission and close of business of the corresponding day in the following month.

483.460(f)(2) The requirement applies to all individuals (including those without teeth), and more frequently as dictated by the individual's needs.

483.460(g) Comprehensive dental treatment might include, but is not limited to:

1. Periodic examination and diagnosis, including radiographs, when indicated and detection of all manifestations of systemic disease;
2. Elimination of infection or life hazardous oral conditions, oral cancer, or cellulitis;
3. Treatment of injuries;
4. Restoration of decayed or fractured teeth;
5. Retention or recovery of space between teeth in children, when indicated;
6. Replacement of missing permanent teeth, when indicated; and
7. Appropriate pain control procedures for optimal care of the patient.

483.460(h)(1) A "dental summary" means a brief written report of each visit to the dentist and includes any care instructions to be followed-up by facility staff as a result of treatment.

483.460(i) Emphasis is placed on the provision of the service, and not on its method of delivery. Whether the facility utilizes the unit dose, individual prescription or a combination of these systems, or whether the facility has its own pharmacy or provides the service through arrangement with a community pharmacy, the emphasis is on the accuracy of the drug distribution system and the effectiveness of the drug therapy.

483.460(j)(1) The pharmacist should review on a more frequent basis the drug regimen of individuals whose response indicates problems with drug therapy. Refer to the "Indicators for Surveyor Assessment of the Performance of Drug Regimen Reviews" as stated in Appendix N to the State Operations Manual (Pharmaceutical Service Requirements in Long Term Care Facilities) to evaluate the drug regimen review done by the pharmacist.

483.460(j)(2) The physician and interdisciplinary team must consider the report of the pharmacist and determine whether to accept or reject the recommendations in the report. The pharmacist is not required to repeatedly report the same minor irregularities which have already been considered by the physician and the interdisciplinary team, but were rejected based upon the individual's specific condition.

483.460(j)(4) Each dose of medication, whether self-administered or not, shall be properly recorded in the individual's record. The intent of this requirement is to maintain a record of drugs administered.

483.460(j)(5) This regulation does not exclude the pharmacist from the evaluation process, but the pharmacist can best determine how to expend his/her efforts most productively in service to individuals at the facility.

483.460(k)(2) A medication "error" is a discrepancy between what the physician has ordered, and what you observe during the drug pass observation. The regulation does not allow for any medication errors.

"Self administered" means administration of medications by the individual, independent of a staff person obtaining, selecting, and preparing the medications for the individual. This includes all usage forms (oral, injections and suppositories).

The individual should be trained until he/she can perform this function without error.

483.460(k)(3) "Unlicensed personnel" of the facility does not refer to the situation of individuals administering their own medication. Unlicensed personnel administer only those forms of medication which State law permits.

483.460(k)(6) Do not expect individuals served to be more knowledgeable than members of the general public in order to self-administer medication. There is no requirement for the individual to be able to state both the generic and brand names of the medication being taken, nor is it expected that the individual be able to list all potential side effects of the medication. The test of competency to self-administer is whether the individual can take the correct medication, in the correct dosage, at the correct time.

483.460(k)(7) When individuals go out of a facility for home visits, or to attend workshops or school, drugs they are taking must be packaged and labeled in accordance with State law by a responsible person approved to administer medications. Be aware whether or not there are applicable State laws which may allow packaging by someone other than the pharmacist.

The test of adequacy of packaging and labeling is whether or not other persons administering medications are able to identify the individual's medication, method of administration, contraindications, if appropriate, and administration schedule.

483.460(l)(2) "Authorized persons" must be restricted to those who administer the drugs and nursing supervisors (if any). No other personnel should have access to these keys.

483.460(l)(2) Drugs that are self-administered do not have to be double locked. The purpose for the double locking is to limit access to scheduled drugs. Since the individual is generally the only one who has access to his/her drug supply (with perhaps the exception of a facility's Director of Nursing Services, who may have access to all of the facility's drug supplies), there is no need to further limit access.

483.460(l)(3) The facility may also use the medication administration record for purposes of documenting receipt and disposition of controlled drugs. By recording the amount received, a record of the receipt and disposition, can be realized.

483.460(l)(4) Reconciliation of receipt and disposition of controlled drugs need not be done on each shift. If periodic (e.g., weekly or monthly) reconciliations indicate losses, more frequent reconciliation (daily or by shift) may need to be performed to identify and stop losses.

483.460(m)(3) If a physician discontinues a drug for a particular individual, that particular drug supply should be removed from its usual storage area. This precludes that drug from being administered to the individual in error.

483.460(n) A "laboratory service or test" is defined as any examination or analysis of materials derived from the human body for purposes of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of human beings.

483.460(n)(2) A facility performing any laboratory service or test must have applied to CMS, and received either a certificate of waiver or a certificate of registration. An application for a certificate of waiver may be made if the facility performs only those tests on the waiver list. Those tests are:

- Dipstick or Tablet Reagent Urinalysis (non-automated) for the following:
  - Bilirubin;
  - Glucose;
  - Hemoglobin;
  - Ketone;
  - Leukocytes;
  - Nitrite;
  - pH;
  - Protein;
  - Specific gravity; and
  - Urobilinogen.
- Fecal Occult blood;

- Ovulation tests - visual color comparison tests for human luteinizing hormone;
- Urine pregnancy tests - visual color comparison tests;
- Erythrocyte sedimentation rate (non-automated);
- Hemoglobin - copper sulfate (non-automated);
- Blood glucose by glucose monitoring devices cleared by the FDA specifically for home use;
- Spun microhematocrit; and
- Hemoglobin by single analyte instruments with self-contained or component features to perform specimen/reagent interaction, providing direct measurement and readout.

If the facility performs tests, other than those on the waiver list, a certificate of registration is required. These certificates are required regardless of the frequency with which the laboratory services or tests are conducted. When no tests are performed, a certificate is not needed. Facilities only collecting specimens and not performing testing do not need a certificate.

A not-for-profit or a State or local government organization may have one certificate covering all the facilities it operates (i.e., all the separately certified residences which fall under its governing body), if no more than a total of 15 types of waivered or moderately complex laboratory tests are used.

483.470(a)(1) Individuals should live in the least restrictive grouping in keeping with their level of functioning. Prime consideration in the grouping of individuals is made according to social and intellectual development, friendship patterns, and commonality of interests.

The use of "grossly different ages" is intended to ensure, for example, that very young children are not inappropriately housed together with much older individuals. Extreme differences may in some instances actually impede appropriate training and may pose a threat to the safety of younger, more vulnerable individuals.

483.470(a)(2) The surveyor should determine if the individuals' skill level, rather than the individuals' physical, sensory or medical disability, justifies the housing pattern.

483.470(b)(l)(v) An "initially certified" facility includes any facility or portion thereof that is certified for participation in Medicaid after a period of non-participation (e.g., if its certification has been terminated or voluntarily withdrawn).

Each of the three criteria specified below must exist in order for a facility to qualify as undergoing "major renovations or conversions":

- Individuals must vacate the building during the period of renovation or construction;
- No Medicaid billing takes place during the period of renovation or construction; and
- A resurvey of the building is required before individuals may return to live in the building.

Facilities with buildings which were undergoing major renovations and were not reoccupied prior to October 3, 1988, are expected to meet the floor to ceiling wall requirements. This also applies to those facilities with buildings that had plans for renovation approved prior to October 3. There is no provision in the regulation for granting waivers of this requirement.

In a facility certified prior to October 3, 1988, if the conditions which define "major renovation or conversion" are avoided during installation of walls to divide "open bay sleeping areas," it is allowable for the walls not to extend from floor to ceiling.

483.470(b)(2) The intent of the regulation is to prohibit the housing of individuals in basements that are entirely below grade. Individuals may be housed on the lower level of housing (e.g., a bi-level house), provided the window height requirements are met.

483.470(b)(3) The only acceptable reason for individuals to be housed in bedrooms serving more than four people is because the individual is in very fragile health and needs extensive life support services, such as posturing for clearing the airways, or monitoring for uncontrolled seizures. If more than four people are housed together in the same room, the number should remain small, and each individual placed in the grouping must have a high level of medical monitoring need.

Most extensive life support services, by their very nature are able to be provided by licensed personnel alone, or only under the direct visual supervision of licensed personnel. The presence of a medical care plan is not required because all such life threatening possibilities are difficult to predict. However, the greatest majority of individuals who might qualify for this variance will be on a medical care plan.

See §2140 for the documentation required for a medical variance.

483.470(b)(4)(iii) A single bedspread may be used year round, if it is appropriate for all seasons.

483.470(b)(4)(iv) "Furniture" is to be distinguished from "furnishings" (such as plants, pictures, etc.), which though encouraged as being an appropriate and desirable aspect of a normalized living environment, cannot serve as a substitute for appropriate individual furniture that can be used by the individual alone.

The facility is permitted either to provide the individual with an individualized closet or with a designated area in a shared closet. The use of central clothing bins in a facility clothing room, in the absence of required individual closet space in the bedroom, is not an acceptable practice.

483.470(c)(2) For a storage space to be determined as "suitable," it must assure the safekeeping of the individual's possessions among other things being stored.

Use of the term "accessible" does not require unrestricted access in situations where this is precluded by an active treatment program designed to eliminate inappropriate behavior, or in which the individual's interdisciplinary team determines that unrestricted access would endanger the individual or others. The surveyor should determine whether or not there is a pattern of restricted access not because of the behavior of the individual, but because of the behavior of others with whom the individual lives. This could also raise the question of inappropriate grouping of individuals due to different functioning abilities.

483.470(d)(1) "Bathing facilities appropriate in . . . design" must include provisions for a mirror and sink/tooth-brushing area.

483.470(d)(2) Gang showers and open toilets are inappropriate to the quality of life, privacy, and personal dignity of the individuals served in the facility.

Individual privacy does not preclude the assistance provided by facility staff, when necessitated by the individual's condition.

483.470(d)(3) Individuals must be under the direct supervision of staff while being trained to operate hot water temperature controls.

483.470(e)(1)(i) Since a door serves primarily to provide egress rather than to perform the ventilation and aesthetic functions of an outside window, it may not be used for room ventilation in place of a window.

483.470(e)(2)(i) A "normal comfort range" in most instances is defined as not going below a temperature of 68 degrees Fahrenheit or exceeding a temperature of 81 degrees Fahrenheit for facilities in most geographic areas of the country (primarily at the Northernmost latitudes) where that temperature is exceeded only during rare, brief episodes of unseasonably hot weather.

483.470(f)(1) "Slip-resistant" is to be distinguished from "slip-free." There is a presumption made that floors will ordinarily be dry, and when wet, appropriate precautions will be taken.

483.470(g)(2) The term "furnish" means that the facility is responsible for obtaining or purchasing these items and is responsible for making any necessary arrangements to enable the individual actually to receive them. However, if an item is available free of charge the facility would satisfy the requirement simply by making the necessary arrangements for the individual to receive them. Individuals' personal funds should not be used for these items since this is a covered service under the ICF/MR benefit.

The term "maintain in good repair" means that the facility is responsible for ensuring that these items are kept in good working order.

483.470(g)(3) A bedroom hamper can be an acceptable dirty linen storage "area" if kept odor free, consistent with the infection control requirements at §483.470(l).

483.470(i)(2)(i) All facilities, regardless of their size require actual evacuation. "Actually evacuate," as used in this standard, applies to all individuals. The drills are conducted not only to rehearse the individuals and staff for fire (see §483.470(i)(2)(v)), but for other disasters such as hurricanes, tornadoes, floods, etc. Such disasters would require the entire occupancy to be evacuated, and, therefore, the actual evacuation must be practiced, as required.

483.470(i)(3) Since live-in staff and their relief personnel are generally the same staff who work with the individuals on a round-the-clock basis, they must conduct a minimum of 4 drills a year, each of which must occur at different times within the day (24-hour period) (i.e., morning, afternoon, and night (sleep

time)), and generally when individuals are at different locations within the house. If the facility has large numbers of relief personnel, more drills may be needed to meet the intent of this requirement.

483.470(j) These standards are covered by the Life Safety Code (LSC) survey. The facility must meet the appropriate chapter of the Life Safety Code, 1985 edition.

483.470(l)(1) An "active program" includes such observable practices as: the direct care staff routinely washing their hands or changing gloves after working with an individual who has an infectious disease or working with each individual during mealtimes; the use of aseptic technique, when appropriate; an ongoing program of communicable disease control and investigation of infections; and an active training program that ensures the individuals served receive adequate prevention of transmission information and skills, according to needs.

Procedures must be followed to prevent cross-contamination, including hand washing or changing gloves at mealtimes, after providing personal care to more than one individual, or when performing other tasks among individuals which provide the opportunity for cross-contamination to occur. Facilities for hand washing must exist and be available to staff. Toothbrushes and other personal hygiene items must be stored and used in such a manner to prevent cross-contamination.

Both the OSHA and the CDC have specific requirements regarding human immunodeficiency virus (HIV), TB, and hepatitis precautions. These requirements should be incorporated into the facility's practices when relevant to the individuals residing in the facility. Concerns about OSHA violations should be referred to OSHA.

483.470(l)(3) This regulation does not require the recording or tracking of specific groups of symptoms, if a record of incidents and corrective actions related to infections is maintained. This regulation does not address the form or location of this record or direct that it be separate from the documentation required by CFR 483.410(c)(1).

483.470(l)(4) The facility should use the Recommendations for Prevention of Communicable Disease Transmission in Health Care Settings (such as preventing HIV) issued by the Centers for Disease Control, Atlanta, Georgia 30333, as well as OSHA guidelines in these areas.

A facility participating in the Medicaid program may not discriminate against individuals who are HIV-infected so long as these individuals do not (on a case-by-case basis) pose a substantial health and safety risk to others, or pose a performance problem, and are "otherwise qualified."

483.480(a)(1) "Modified and specially-prescribed" diets are defined as diets that are altered in any way to enable the individual to eat (for example, food that is chopped, pureed, etc.) or diets that are intended to correct or prevent a nutritional deficiency or health problem.

483.480(a)(5) Since the main purpose of food is to support and maintain the health of an individual, it is important that the use of food as a behavior reinforcing device (primary reinforcement) not be abused. Foods are selected to provide essential nutrients. When these foods are routinely removed and denied during the meals, without comparable replacements, the individual is at risk of consuming a diet that is not adequate to meet nutritional needs, and in violation of §483.420(d)(1)(ii), which does not allow food contributing to a nutritionally adequate diet to be used as "punishment." Likewise, the addition of high caloric reinforcers must be coordinated into the total daily diet intake.

483.480(a)(6) For suggested guidelines write to:

1. U.S. Department of Agriculture
   Human Nutrition Information Services
   Washington, D.C. 20250
2. The National Dairy Council
   Rosemont, Illinois 60028-42334

483.480(b)(l)(i) A "substantial evening meal" is defined as offering of three or more menu items at one time, one of which includes a high-quality protein such as meat, fish, eggs, or cheese. The meal represents no less than 20 percent of the day's total nutritional requirements.

483.480(b)(1)(i) A "nourishing snack" is an offering of items, single or in combination, from the daily food guide.

483.480(b)(2)(iii) The term "form," as used in this requirement, refers to food consistency (i.e., pureed, chopped, ground, etc.).

483.480(b)(3) This standard does not apply to food served in family-style dishes, unless the length of time the food is on the table or other considerations (such as individuals fingering or drooling in the food) compromise the safety and nutritive value for reuse of the food.

483.480(d)(1) For purposes of this standard, "dining areas" mean discrete eating areas located outside of bedrooms, established, furnished, and equipped for the purpose of eating meals. For purposes of this standard, provision of meals in dining areas outside of the home (such as restaurants, food vendors, etc.) may also be included.

To the maximum extent possible, individuals should be afforded the opportunity to eat routine meals (like breakfast and dinner) in dining areas that approximate those afforded to their peers without disabilities (e.g., dining areas that are a part of the living unit, rather than eating all meals in buildings exclusively established for eating purposes).

483.480(d)(2) The intent of this regulation is to afford individuals the opportunity to participate in the social experience of dining with their companions. Observe whether or not facility staff model and reinforce appropriate communication and social behavior between dining companions seated at the same table.

483.480(d)(3) Single service eating devices must be discarded after each use.

Determine if the following types of adaptive devices are made available when needed:

- Double suction cups or other devices to anchor dishes on a table or tray for individuals with major coordination problems;
- Rocking one-handed knife-fork or knife-spoon for an individual with the use of only one hand;
- Built up or extended handles or silverware for those with problems of grasp or range of motion;
- Plate guards or plates with raised rims to provide a surface against which the individual with a physical disability can push food onto a fork or a spoon;
- Flexible drinking straws;
- Spoon bent to a 90 degree angle at the bowl or a swivel spoon to assist an individual without normal wrist motions.
- Any other adaptive device deemed by the team as needed by the individual to eat more independently.

483.480(d)(4) To the maximum extent possible, staff should model appropriate mealtime behavior and conversation by sitting at the table with individuals, and, when possible, eating meals with individuals.

Mastery of the social skills involved in eating in a variety of dining areas and settings is another step to the individual's independence beyond the health aspects of nutrition and the basic skills involved in eating independently. Achieving independence will further help the individual to live in less restrictive environments. Determine to what extent individuals are exposed to out-of-the-home dining environments available to the general public (e.g., restaurants, fast-food establishments, picnics, parties, cafeterias, etc.).

Depending on the needs of the individuals and the available space it may be more effective for meals to be conducted in two different seatings or groupings.

483.480(d)(5) This applies to all individuals, including those fed by nasogastric tube or gastrostomy tube. The IPP should identify the most appropriate position for the individual to be positioned during mealtime, in relation to the placement of the food contents.

[**ARC 0906C**, IAB 8/7/13, effective 11/6/13]

CHAPTER 65
INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL ILLNESS (ICF/PMI)

481—65.1(135C) Definitions. For the purposes of these rules, the following terms shall have the meaning indicated in this chapter. The definitions set out in Iowa Code section 135C.1 shall be considered incorporated verbatim in the rules. The use of the words "shall" and "must" indicate these standards are mandatory.

"Academic services" means those activities provided to assist a person to acquire general information and skills which establish the basis for subsequent acquisition and application of knowledge.

"Activity coordinator" means a person who has completed the state-approved activity coordinator's course.

"Age appropriate" means those activities, settings, and personal appearance and possessions commensurate with the person's chronological age.

"Chronic mental illness" (see the definition of "Mental illness").

"Commission" means the mental health and disability services commission.

"Community living training services" are those activities provided to assist a person to acquire or sustain the knowledge and skills essential to independent functioning to the person's maximum potential in the physical and social environment. These services may focus on the following areas:

1. Independent living skills which include those skills necessary to sustain oneself in the physical environment and are essential to the management of one's personal property and business. This includes self-advocacy skills.
2. Socialization skills which include self-awareness and self-control, social responsiveness, group participation, social amenities and interpersonal skills.
3. Communication skills which include expressive and receptive skills in verbal and nonverbal language, including reading and writing.
4. Leisure time and recreational skills which include the skills necessary for a person to use leisure time in a manner which is satisfying and constructive to the person.
5. Parenting skills which include those skills necessary to meet the needs of the person's child. This service is designed to assist the person with mental illness to acquire or sustain the skills necessary for parenting.

"Department" means the Iowa department of inspections and appeals.

"Dependent adult abuse" is as defined in rule 481—52.1(235E).

"Diagnosis" means the investigation and analysis of the cause or nature of a person's condition, situation or problem.

"Direct care staff" means those staff persons who provide a homelike environment for the residents and assist or supervise the resident in meeting the goals in the resident's program plan.

"Evaluation services" means those activities designed to identify a person's current functioning level and those factors which are barriers to maintaining the current level or achieving a higher level of functioning.

"Exploitation" means the act or process of taking unfair advantage of a resident, or the resident's physical or financial resources for one's own personal or pecuniary profit by the use of undue influence, harassment, duress, deception, false representation or false pretenses.

"Goals" means general statements of attainable expected accomplishments to be achieved in meeting identified needs.

"Incident" means all accidental, purposeful, or other occurrences within the facility or on the premises affecting residents, visitors, or employees whether there is apparent injury or where hidden injury may have occurred.

"Individual program plan (IPP)" means a written plan for the provision of services to the resident that is developed and implemented using an interdisciplinary process that is based on the resident's functional status, strengths, and needs and that identifies service activities designed to enable a person

to maintain or move toward independent functioning. The plan identifies a continuum of development and outlines progressive steps and anticipated outcomes of services.

"Informed consent" means an agreement by a person, or by the person's legally authorized representative, based upon an understanding of:

1. A full explanation of the procedures to be followed including an identification of those that are and are not experimental;
2. A description of the attendant discomforts, risks, and benefits to be expected; and
3. A disclosure of appropriate alternative procedures that would be advantageous for the person.

"Interdisciplinary process" means an approach to assessment, individual program planning, and service implementation in which planning participants function as a team. Each participant utilizing the skills, competencies, insights and perspectives provided by the participant's training and experience focuses on identifying the service needs of the resident and the resident's family. The purpose of the process is for participants to review and discuss, face-to-face, all information and recommendations and to reach decisions as a team. Participants share all information and recommendations, and develop as a team, a single, integrated individual program plan to meet the resident's needs and, when appropriate, the resident's family's needs.

"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, the resident's attending psychiatrist and QMHP, other providers of services, and other persons relevant to the resident's needs.

"Least restrictive environment" means the environment in which the interventions in the lives of people with mental illness can be carried out with a minimum of limitation, intrusion, disruption, and departure from commonly accepted patterns of living.

It is the environment which allows residents to participate, to the maximum extent possible, in everyday life and to have control over the decisions that affect them. It is an environment that provides needed supports which do not interfere with personal liberty and do not unduly interfere with a person's access to the normal events of life.

"Legal services" means those activities designed to assist the person in exercising constitutional and legislatively enacted rights.

"Level of functioning" means a person's current physiological and psychological status and current academic, community living, self-care and vocational skills.

"Mechanical restraint" means a device applied to a person's limbs, head or body which restricts a person's movement and includes, but is not limited to, leather straps, leather cuffs, camisoles or handcuffs.

"Mental abuse" means, but is not limited to, humiliation, harassment, and threats of punishment or deprivation.

"Mental health counselor" means a person who is certified or eligible for certification as a mental health counselor by the National Academy of Certified Clinical Mental Health Counselors.

"Mental health, mental retardation commission" means the commission described in Iowa Code section 225C.5.

"Mental illness" means a substantial disorder of thought or mood which significantly impairs judgment, behavior, or the capacity to recognize reality or the ability to cope with the ordinary demands of life. Mental illnesses include the organic and functional psychoses, neuroses, personality disorders, alcoholism and drug dependence, behavioral disorders and other disorders as defined by the current edition of "American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders." Mental illness is chronic when it is of long duration or marked by frequent recurrences.

"Normalization" means helping persons, in accordance with their needs and preferences, to achieve a lifestyle that is consistent with the norms and patterns of general society in ways which incorporate the age-appropriate and least restrictive principles.

"Objectives" means specific, time-limited, and measurable statements showing outcomes or accomplishments necessary to progress toward the goal.

"Physical abuse" means, but is not limited to, corporal punishment and the use of restraints as punishment.

"Physical injury" means damage to any bodily tissue to the extent the tissue must undergo a healing process in order to be restored to a sound and healthy condition. It may also mean damage to the extent the bodily tissue cannot be restored to a sound and healthy condition, or results in the death of the resident whose bodily tissue sustained the damage.

"Physical or physiological treatment" means those activities designed to prevent, halt, control, relieve, or reverse symptoms or conditions which interfere with the physical or physiological functioning of the human body.

"Physical restraint" means a technique involving the use of one or more of a staff person's arms, legs, hands or other body areas to restrict or control the movements of a resident. This does not include the use of mechanical restraint.

"Physician" means a person who is currently licensed in Iowa to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy.

"Program" means a set of related resources and services directed to the accomplishment of a fixed set of goals and objectives for any of the following:

1. Special target populations;
2. The population of a specified geographic area(s);
3. A specified purpose; and
4. A person.

"Psychiatric nurse" means a person who meets the requirements of certified psychiatric-mental health nurse practitioner pursuant to 655—Chapter 7, Iowa Administrative Code, or is eligible for certification.

"Psychiatrist" means a doctor of medicine or osteopathic medicine and surgery who is certified by the American Board of Psychiatry and Neurology or who is eligible for certification.

"Psychologist" means a person who is licensed to practice psychology in the state of Iowa, or is certified by the Iowa department of education as a school psychologist, or is eligible for certification.

"Psychotherapeutic treatment" means those activities designed to assist a person in the identification or modification of beliefs, emotions, attitudes, or behaviors in order to maintain or improve the person's functioning in response to the physical, emotional and social environment.

"Qualified mental health professional (QMHP)" means a person who:

1. Holds at least a master's degree in a mental health field, including but not limited to: psychology, counseling and guidance, nursing and social work; or is a doctor of medicine (M.D.) or a doctor of osteopathic medicine and surgery (D.O.); and
2. Holds a current Iowa license when required by the Iowa licensure law; and
3. Has at least two years of postdegree experience, supervised by a mental health professional, in assessing mental problems and needs of individuals and in providing appropriate mental health services for those individuals. See rule 481—65.4(135C) for variance procedures.

"Resident" means a person who has been admitted to the facility to receive care and services.

"Seclusion" means the isolation of the resident in a locked room which cannot be opened by the resident.

"Self-care training services" means those activities provided to assist a person to acquire or sustain the knowledge, habits and skills essential to the daily needs of the person. The activities focus on personal hygiene, general health maintenance, mobility skills and other activities of daily living.

"Service" means a set of interrelated activities provided to a resident pursuant to the IPP.

"Sexual abuse" means, but is not limited to, the exposing of pubes to a resident, the exposure of a resident's genitals, pubes, breasts or buttocks for sexual satisfaction, fondling or touching the inner thigh, groin, buttocks, anus or breast of a resident or the clothing covering these areas, sexually suggestive comments or remarks made to a resident, a genital to genital or rectal, or oral to genital or rectal contact, or the commission of a sexual offense under Iowa Code chapter 709 or Iowa Code section 726.2.

"Social worker" means a person who is licensed to practice social work in the state of Iowa, or who is eligible for licensure.

"Support services" means those activities provided to or on behalf of a person in the areas of personal care and assistance and property maintenance in order to allow a person to live in the least restrictive environment.

"Transportation services" means those activities designed to assist a person to travel from one place to another to obtain services or carry out life's activities.

"Verbal abuse" means, but is not limited to, the use of derogatory terms or names, undue voice volume and rude comments, orders or responses to residents.

"Vocational training services" means those activities designed to familiarize a person with production or employment requirements and to maintain or develop the person's ability to function in a work setting. This service includes programming which allows or promotes the development of skills, attitudes and personal attributes appropriate to the work setting.

"Work" means any activity during which a resident provides goods or services for wages.

"Written, in writing or recorded" means that an account or entry is made in a permanent form.

[**ARC 0766C**, IAB 5/29/13, effective 7/3/13; **ARC 1204C**, IAB 12/11/13, effective 1/15/14]

481—65.2(135C) Application for license. In order to obtain an initial license for an ICF/PMI, the applicant must comply with the rules and standards contained in Iowa Code chapter 135C and the standards in 481—Chapter 61. Variances from Chapter 61 regulations are allowed under rule 481—61.2(135C). An application must be submitted to the department which states the type and category of license for which the facility is applying.

65.2(1) Each application shall include:

a. A floor plan of each floor of the facility drawn on 8½- × 11-inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathroom, and designation of the use to which room will be put and window and door location;

b. A photograph of the front and side elevation of the facility;

c. The statutory fee for an intermediate care facility license;

d. Evidence of a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules.

65.2(2) A résumé of care with a narrative which includes the following information shall be submitted:

a. The purpose of the facility;

b. A description of the target population and limitations on resident eligibility;

c. An identification and description of the services the facility will provide. This shall include at least specific and measurable goals and objectives for each service available in the facility and a description of the resources needed to provide each service including staff, physical facilities and funds;

d. A description of the human service system available in the area, including, but not limited to, social, public health, visiting nurse, vocational training, employment services, sheltered living arrangements, and services of private agencies; and

e. A description of working relationships with the human service agencies when applicable which shall include at least how the facility will coordinate with:

(1) The department of human services to facilitate continuity of care and coordination of services to residents; and

(2) Other agencies to identify unnecessary duplication of services and plan for development and coordination of needed services.

65.2(3) In order to obtain a renewal or change of ownership license of the ICF/PMI the applicant must:

a. Submit to the department the completed application form 30 days prior to annual license renewal or change of ownership date of the ICF/PMI license;

b. Submit the statutory license fee for an ICF/PMI with the application for renewal or change of ownership;

c. Have an approved current certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules; and

d. Submit documentation of review of résumé of care pursuant to subrule 65.2(1), paragraph *"a,"* and a copy of any revisions to the plan.

This rule is intended to implement Iowa Code sections 135C.7 and 135C.9.

[**ARC 1205C**, IAB 12/11/13, effective 1/15/14]

481—65.3(135C) Licenses for distinct parts. Separate licenses may be issued for distinct parts which are clearly identifiable parts of a health care facility, containing contiguous rooms in a separate wing or building or on a separate floor of the facility, which provide care and services of separate categories.

The following requirements shall be met for a separate licensing of a distinct part:

1. The distinct part shall serve only residents who require the category of care and services immediately available to them within that part. (III)

2. The distinct part shall meet all the standards, rules and regulations pertaining to the category for which a license is being sought.

3. The distinct part must be operationally and financially feasible.

4. A separate 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)

5. 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 section 135C.6(2).

481—65.4(135C) Variances. Variances from these rules may be granted by the director of the department when:

1. The need for a variance has been established consistent with the résumé of care or the resident's individual program plan.

2. There is no danger to the health, safety, welfare or rights of any resident.

3. The variance will apply only to a specific intermediate care facility for the mentally ill.

Variances shall be reviewed at least at the time of each licensure survey and any other time by the department to see if the need for the variance is still acceptable.

65.4(1) To request a variance, the licensee must:

a. Apply in writing on a form provided by the department;

b. Cite the rule or rules from which a variance is desired;

c. State why compliance with the rule or rules cannot be accomplished;

d. Explain how the variance is consistent with the résumé of care or the individual program plan; and

e. Demonstrate that the requested variance will not endanger the health, safety, welfare or rights of any resident.

65.4(2) Upon receipt of a request for variance, the director will:

a. Examine the rule from which the variance is requested;

b. Evaluate the requested variance against the requirement of the rule to determine whether the request is necessary to meet the needs of the residents;

c. Examine the effect of the requested variance on the health, safety or welfare of the residents;

d. Consult with the applicant to obtain additional written information if required; and

e. Obtain approval of the Iowa mental health and disability services commission, when the request is for a variance from the requirement for qualification of a mental health professional.

65.4(3) Based upon this information, approval of the variance will be either granted or denied within 120 days of receipt.

[**ARC 0766C**, IAB 5/29/13, effective 7/3/13]

481—65.5(135C) General requirements.

65.5(1) A valid license shall be posted in each facility so the public can easily see it. (III)

65.5(2) Each license is valid only for the premises and person named on the license and is not transferable.

65.5(3) The posted license shall accurately reflect the current status of the facility. (III)

65.5(4) 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. (III)

65.5(5) Licenses expire one year after the date of issuance or as indicated on the license.

65.5(6) There shall be no more beds erected than are stipulated on the license. (II, III)

This rule is intended to implement Iowa Code section 135C.8.

481—65.6(135C) Notification required by the department. The department shall be notified within 48 hours, by letter, of any reduction or loss of personal care or dietary staff lasting more than seven days which places the staff ratio below that required for licensing. No additional residents shall be admitted until the minimum staff requirements are achieved. (II, III)

65.6(1) Other required notification and time periods are:

a. Within 30 days of any proposed change in the résumé of care for the ICF/PMI; (II, III)

b. Thirty days before addition, alteration, or new construction is begun in the ICF/PMI or on the premises; (III)

c. Thirty days before the ICF/PMI closes; (III)

d. Within two weeks of any change of administrator; (II, III) and

e. Within 30 days when any change in the category of license is sought. (III)

65.6(2) Prior to the purchase, transfer, assignment, or lease of an ICF/PMI the licensee shall:

a. Inform the department in writing of the pending sale, transfer, assignment, or lease of the facility; (III)

b. Inform the department in writing of the name and address of the prospective purchaser, transferee, assignee or lessee at least 30 days before the sale, transfer, assignment or lease is completed; (III) and

c. Submit a written authorization to the department permitting the department to release information of whatever kind from the department's files concerning the licensee's ICF/PMI to the named prospective purchaser, transferee, assignee or lessee. (III)

65.6(3) After the authorization has been submitted to the department, the department shall upon request send or give copies of all recent licensure surveys and any other pertinent information relating to the facility's licensure status to the prospective purchaser, transferee, assignee or lessee. Costs for copies requested shall be paid by the prospective purchaser, transferee, assignee or lessee. No information personally identifying any resident shall be provided to the prospective purchaser, transferee, assignee or lessee. (II, III)

This rule is intended to implement Iowa Code sections 135C.6(3) and 135C.16(2).

481—65.7(135C) Administrator. Each ICF/PMI shall have one person in charge, duly approved by the department or acting in a provisional capacity in accordance with these regulations. (II, III)

65.7(1) The administrator shall be at least 21 years of age and shall meet at least one of the following conditions:

a. Be licensed in Iowa as a nursing home administrator, or certified as a residential care administrator. No residential care facility administrator certified under a waiver from the department shall administrate an intermediate care facility for persons with mental illness. The administrator must have at least two years' experience in direct care or supervision of people with mental illness and at least one year of experience in an administrative capacity; (II, III) or

b. Be a qualified mental health professional (QMHP) with at least one year of experience in an administrative capacity. (II, III)

If an ICF/PMI is a distinct part of a licensed health care facility, the administrator of the facility as a whole may serve as the administrator of the ICF/PMI without meeting the requirements of subrule 65.7(1), paragraph *"a"* or *"b."* When this occurs, the person in charge of the ICF/PMI distinct part shall meet the requirements of subrule 65.7(1), paragraph *"a"* or *"b."* (II, III)

65.7(2) The administrator of more than one facility shall be responsible for no more than 150 beds in total. (II, III)

a. The distance between the two farthest facilities shall be no greater than 50 miles. (II, III)

b. An administrator of more than one facility must designate an administrative staff person in each facility who shall be responsible for directing programs in the facility during the administrator's absence. (II, III)

65.7(3) The administrative staff person shall be designated in writing and immediately available to the facility on a 24-hour basis when the administrator is absent and residents are in the facility. (II, III)

The person(s) designated shall:

a. Have at least two years' experience or training in a supervisory or direct care position in a mental health setting; (II, III)

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

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

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

e. Be at least 21 years of age; (III)

f. Be empowered to act on behalf of the licensee during the administrator's absence concerning the health, safety and welfare of the residents; (II, III) and

g. Have training to carry out assignments and take care of emergencies and sudden illnesses of residents. (II, III)

65.7(4) If an administrator serves more than one facility, a written plan shall be developed, implemented and available for review by the department designating regular and specific times the administrator will be available to meet with the staff and residents to provide direction and supervision of resident care and services. (II, III)

65.7(5) When a facility has been unable to replace the administrator, through no fault of its own, a provisional administrator meeting the qualifications of the administrative staff person may be appointed on a temporary basis by the licensee to assume the administrative responsibilities for the facility. This person shall not serve more than three months without approval from the department. The department must be notified before the appointment of the provisional administrator. (III)

65.7(6) A facility applying for initial licensing shall not have a provisional administrator. (III)

This rule is intended to implement Iowa Code section 135C.14(2).

481—65.8(135C) Administration.

65.8(1) The licensee shall:

a. Be responsible for the overall operation of the ICF/PMI; (III)

b. Be responsible for compliance with all applicable laws and with the rules of the department; (II, III)

c. Establish written policies, which shall be available for review by the department or other agencies designated by Iowa Code section 135C.16(3), for the operation of the ICF/PMI including, but not limited to: (III)

(1) Personnel; (III)
(2) Admission; (III)
(3) Evaluation services; (II, III)
(4) Programming and individual program plan; (II, III)
(5) Crisis intervention; (II, III)
(6) Discharge or transfer; (III)
(7) Medication management; (II)
(8) Resident property; (II, III)
(9) Financial affairs; (II, III)
(10) Records; (III)
(11) Health and safety; (II, III)
(12) Nutrition; (III)

(13) Physical facilities and maintenance; (III)

(14) Resident rights; (II, III) and

d. Furnish statistical information concerning the operation of the facility to the department within 30 days of request. (III)

65.8(2) The administrator shall be responsible for the implementation of procedures to support the policies established by the licensee. (III)

This rule is intended to implement Iowa Code section 135C.14.

[**ARC 1205C**, IAB 12/11/13, effective 1/15/14]

481—65.9(135C) Personnel.

65.9(1) The personnel policies and procedures shall include the following requirements:

a. Written job descriptions for all employees or agreements for all consultants, which include duties and responsibilities, education, experience, or other requirements, and supervisory relationships; (III)

b. Annual performance evaluations of all employees and consultants which are dated and signed by the employee or consultant and the supervisor; (III)

c. Personnel records which are current, accurate, complete and confidential to the extent allowed by law. The record shall contain documentation of how the employee's or consultant's education and experience are relevant to the position for which they were hired; (III)

d. Roles, responsibilities, and limitation of student interns and volunteers; (III)

e. An orientation program for all newly hired employees and consultants which includes introduction to facility personnel policies and procedures and a discussion of the safety plan. Subparagraphs 65.9(1)*"f"*(3), (5) and (9) shall be included; (II, III)

f. A plan for a continuing education program with a minimum of 12 in-service programs per year. There shall be a written, individualized staff development plan implemented for each employee. The plan shall take into consideration the duties of the employee and the needs of the facility identified in the résumé of care. The plan shall ensure that each employee has the opportunity to develop and enhance skills and to broaden and increase knowledge needed to provide effective resident care including, but not limited to:

(1) First aid; (II, III)

(2) Human needs and behavior; (II, III)

(3) Problems and needs of persons with mental illness; for example, diagnosis and treatment, suicide assessment and prevention; (II, III)

(4) Medication; (II, III)

(5) Crisis intervention; for example, use of restraints and seclusion; (II)

(6) Delivery of services in accordance with the principles of normalization; (III)

(7) Infection control and wellness; (III)

(8) Fire safety, disaster, and tornado preparation; (II, III) and

(9) Resident rights. (II, III)

g. Equal opportunity and affirmative action employment practices; (III)

h. Procedures to be used when disciplining an employee; (III) and

i. Appropriate dress and personal hygiene for staff and residents. (III)

65.9(2) There shall be written personnel policies for each facility. Personnel policies shall include the following requirements:

a. Employees shall have a physical examination before employment and at least every four years after beginning employment. (III)

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

c. No one shall provide services in a facility if the person has a disease:

(1) Which is transmissible through required workplace contact; (I, II, III)

(2) Which presents a significant risk of infecting others; (I, II, III)

(3) Which presents a substantial possibility of harming others; (I, II, III)

(4) For which no reasonable accommodation can eliminate the risk. (I, II, III)

Refer to Guideline for Infection Control in Hospital Personnel, 1998, Centers for Disease Control, U.S. Department of Health and Human Services, to determine (1), (2), (3) and (4).

d. There shall be written policies for emergency medical care for employees in case of sudden illness or accident. These policies shall include the administrative individuals to be contacted. (III)

e. Health certificates for all employees shall be available for review by the department. (III)

65.9(3) Staffing. The facility shall establish, subject to approval of the department, the numbers and qualifications of the staff required in an ICF/PMI using as its criteria the services being offered as indicated on the résumé of care and as required for implementation of individual program plans. (II, III)

a. Direct care staff. Direct care staff shall be present in the facility unless all residents are involved in activities away from the facility. The policies and procedures shall provide for an on-call staff person to be available when residents and staff are absent from the facility. (II, III)

(1) The on-call staff person shall be designated in writing. (II, III)

(2) Residents or another responsible person shall be informed of how to contact the on-call person. (II, III)

The staffing plan shall ensure that at least one qualified direct care staff person is on duty to carry out and implement the individual program plans. (II, III)

b. Qualified mental health professional. The ICF/PMI shall, by direct employment or contract, provide for sufficient services of a qualified mental health professional to attain or maintain the highest practicable mental and psychosocial well-being of each resident. Attainment shall be determined by resident assessment and individual plans of care. (I, II, III) Responsibilities of the QMHP shall include, but not be limited to:

(1) Approval of each resident's individual program plan; (II, III)

(2) Monitoring the implementation of each resident's individual program plan, including periodic personal contact; (II, III) and

(3) Participation on each resident's interdisciplinary team. (II, III)

c. Nursing staff. Each facility shall have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practical physical, mental and psychosocial well-being of each resident. Attainment shall be determined by resident assessments and individual plans of care.

(1) The director of nursing (DON) shall be a registered nurse who is employed by the facility at least 40 hours per week. This person shall have two years' experience in direct care or supervision of people with mental illness. (II, III)

(2) The facility shall provide 24-hour service by licensed nurses, including at least one registered nurse on the day tour of duty, seven days a week. (II, III)

(3) If the DON has other institutional responsibilities, a qualified registered nurse shall serve as the DON's assistant so there is the equivalent of a full-time nursing supervisor on duty. (II, III)

(4) The department shall establish, on an individual facility basis, the numbers and qualifications of the staff required in the facility using as its criteria the services being offered as indicated on the résumé of care and as required for implementation of individual program plans. (II, III)

(5) The DON shall not serve as charge nurse in a facility with an average daily total occupancy of 60 or more residents. (II, III)

(6) A waivered licensed practical nurse shall not be allowed as a charge nurse on any shift. (II, III)

(7) There shall be at least two people capable of rendering nursing service awake, dressed, and on duty at all times. (II, III)

d. Activity staff. Each ICF/PMI shall employ a recreational therapist, occupational therapist or activity coordinator to direct the activity program both inside and outside the facility in accordance with each resident's individual program plan. (III)

Staff for the activity program shall be based on the needs of the residents being served as identified on the IPP. (III)

(1) The activity program director shall attend workshops or educational programs which relate to activity programming. These shall total a minimum of ten contact hours per year. (III)

(2) Personnel coverage shall be provided when the activity program director is absent during scheduled activities. (III)

(3) The activity program director shall have access to all information about residents necessary to carry out the program. (III)

e. Responsibilities of the activity program director shall include:

(1) Coordinating all activities, including volunteer or auxiliary activities and religious services; (III)

(2) Ensuring that all records required are kept; (III)

(3) Coordinating the activity program with all other services in the facility; (III) and

(4) Participating in the in-service training program in the facility. This shall include attending as well as presenting sessions. (III)

65.9(4) Personnel record.

a. A personnel record shall be kept for each employee. (III)

b. The record shall include the employee's:

(1) Name and address, (III)

(2) Social security number, (III)

(3) Date of birth, (III)

(4) Date of employment, (III)

(5) References, (III)

(6) Position in the facility, (III)

(7) Job description, (III)

(8) Documentation of experience and education, (III)

(9) Staff development plan, (III)

(10) Annual performance evaluation, (II, III)

(11) Documentation of disciplinary action, (II, III)

(12) Date and reason for discharge or resignation, (III) and

(13) Current physical examination. (III)

65.9(5) 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 2013 Iowa Acts, Senate File 347, 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)

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

[**ARC 0663C**, IAB 4/3/13, effective 5/8/13; **ARC 0903C**, IAB 8/7/13, effective 9/11/13; **ARC 1205C**, IAB 12/11/13, effective 1/15/14]

481—65.10(135C) General admission policies. There shall be admission policies which address the following:

1. No resident shall be admitted or retained who is in need of greater services than the facility can provide. (II, III)

2. Residents shall be admitted only on a written order signed by a physician. (II, III)

3. A preplacement visit shall be completed prior to admission, except in case of an emergency admission or readmission, to familiarize the applicant with the facility and services offered. The policies and procedures may allow for waiving the requirement at the request of a person seeking admission when the completion of the visit would create a hardship for the person seeking admission. If the distance to be traveled makes it impossible to complete the visit in an eight-hour day, this may be considered to create a hardship. (III)

4. Prior to admission of an applicant, the facility shall obtain sufficient information to determine if its program is appropriate and adequate to meet the person's needs. (III)

5. Admission criteria shall include, but not be limited to, age, sex, current diagnosis from an American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders, substance abuse, dual diagnosis and criteria that are consistent with the résumé of care. (III)

6. Each facility shall maintain a waiting list with selection priorities identified. (III)

7. No ICF/PMI may admit more residents than the number of beds for which it is licensed. (II, III)

8. There shall be a written, organized orientation program for all residents which shall be planned and implemented to resolve or reduce personal, family, business, and emotional problems that may interfere with the health care, recovery, and rehabilitation of the individual and which shall be available for review by the department. (III)

9. Infants and children under the age of 18 shall not be admitted as residents to an ICF/PMI for adults unless given prior written approval by the department. A distinct part of an ICF/PMI, segregated from the adult section, may be established based on a résumé of care submitted by the licensee or applicant which is commensurate with the needs of the residents of the health care facility and has received the department's review and approval. (III)

10. Within 30 days of a resident's admission to a health care facility receiving reimbursement through the medical assistance program under Iowa Code chapter 249A, the facility shall ask the resident or the resident's personal representative whether the resident is a veteran and shall document the response. If the facility determines that the resident is a potential veteran, the facility shall report the resident's name along with the names of the resident's spouse and any dependent children, as well as the name of the contact person for this information, to the Iowa department of veterans affairs. Where appropriate, the facility may also report such information to the Iowa department of human services.

If a resident is eligible for benefits through the United States Department of Veterans Affairs or other third-party payor, the facility first shall seek reimbursement from the identified payor source before seeking reimbursement from the medical assistance program established under Iowa Code chapter 249A.

The provisions of this paragraph shall not apply to the admission of an individual as a resident to a state mental health institute for acute psychiatric care. (II, III)

This rule is intended to implement Iowa Code sections 135C.3 and 135C.23.

481—65.11(135C) Evaluation services. Each resident admitted shall have a physical examination and tuberculin test no more than 30 days before admission and a physical examination annually after that. Each annual examination shall be sufficient to ensure the resident has no physical condition which precludes living in the facility. If the resident is admitted directly from a hospital, a copy of the hospital admission physical and discharge summary may meet this requirement. (II, III)

65.11(1) In addition to the required initial physical examination, each resident shall be evaluated to identify physical health, current level of functioning and the need for services. This evaluation shall be completed within 30 days of admission and annually after that. Information from other sources may be used in the evaluation if the information meets the requirements of subrules 65.11(2) and 65.11(3). (II, III)

65.11(2) The portion of the evaluation which describes the resident's physical health shall:

a. Identify current illnesses and disabilities and include recommendations for physical and physiological treatment and services; (II, III)

b. Include a description of the resident's ability for health maintenance; (II)

c. Include a mental status examination and history of mental health and treatments; (II, III) and

d. Be performed by a physician with a valid license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy in Iowa. If the evaluation is not conducted in Iowa, it must be by a physician who holds a current license in the state in which the examination is performed. If the doctor is not a psychiatrist, a psychiatrist or health service provider in psychology licensed under Iowa Code section 154B.7 shall be consulted regarding the results of the mental status examination. (II, III)

65.11(3) The portion of the evaluation which describes the resident's current functioning level and need for services shall:

a. Identify the functioning level and need for services in self-care, community living skills, psychotherapeutic treatment, vocational skills, and academic skills as appropriate; (II, III)

b. Contain sufficient detail about skills and needs to determine appropriate placement; (II, III)

c. Be made without regard to the availability of services; (III) and

d. Be performed by a QMHP, consulting with an interdisciplinary team. (III)

65.11(4) Results of all evaluations shall be in writing and maintained in resident records. After the initial evaluation, all subsequent evaluations shall contain sufficient detail to determine changes in the resident's physical and mental health, skills, and need for services. (II, III)

65.11(5) A narrative social history shall be completed for each resident within 30 days of admission. The social history shall be completed and approved by the qualified mental health professional before the IPP is developed. (III)

a. When a social history is secured from another provider, the information shall be reviewed within 30 days of admission. The date of the review and a summary of significant changes in the information shall be entered in the resident's record. The social worker who reviews the history shall sign it. (III)

b. An annual review of the social history information shall be incorporated in the individual program plan progress notes. (III)

c. The social history shall address at least the following areas:

(1) Referral source and reason for admission; (II, III)

(2) Legal status; (II, III)

(3) Previous living arrangements; (III)

(4) Services received previously and current service involvements; (II, III)

(5) Significant medical and mental health conditions including at least illnesses, hospitalizations, past and current drug therapy, and special diets; (II, III)

(6) Substance abuse history; (II, III)

(7) Work history; (III)

(8) Education history; (II)

(9) Relationship with family, significant others, and other support systems; (III)

(10) Cultural, ethnic and religious background; (II, III)

(11) Hobbies and leisure time activities; (III)

(12) Likes, dislikes, habits, and patterns of behavior; (II, III)

(13) History of aggressive or suicidal behavior; (I, II, III) and

(14) Impressions and recommendations. (II, III)

This rule is intended to implement Iowa Code section 135C.14(7).

481—65.12(135C) Individual program plan (IPP). An initial program plan shall be developed within 24 hours of admission. This plan shall be based on information gained from the resident, family, physician or referring facility. Services to be provided shall be addressed. Intervention to be provided, if and when the need arises, shall also be addressed in the IPP. The plan shall be followed until the IPP required in subrule 65.12(1) is complete. The initial plan shall be completed by a registered nurse, a qualified social worker or a QMHP. (II, III)

65.12(1) An individual program plan for each resident shall be developed by an interdisciplinary team. The resident or the resident's legal guardian has the ultimate authority to accept or reject the plan unless otherwise determined by the court. The IPP shall be approved and have implementation monitored by the QMHP. (II, III)

a. The IPP shall be based on the individual service plan of the referring agency, if available, the information contained in the social history, the need for services identified in the evaluation, and any other pertinent information. (III)

b. The facility shall assist the resident in obtaining access to academic services, community living skills training, legal services, self-care training, support services, transportation, treatment, and vocational education as needed. These services may be provided by the facility or obtained from other providers. (III)

c. Services to the resident shall be provided in the least restrictive environment and shall incorporate the principle of normalization. (III)

d. If needed services are not available and accessible, the facility shall document the actions taken to locate and obtain those services. The documentation shall identify needs which will not be met because of the lack of available services. (III)

e. The IPP shall be developed within 30 days following admission to the facility and renewed at least annually. (II, III)

f. The IPP shall be written, dated, signed by the interdisciplinary team members, and maintained in the resident's record. (III)

g. Written notice of the meeting to develop an IPP shall be mailed or delivered to everyone included in the interdisciplinary team conference at least two weeks before the scheduled meeting. (III)

65.12(2) The IPP shall include the following:

a. Goals, (III)

b. Objectives, (III)

c. Specific services to be provided, (III)

d. People or agency responsible for providing services, (III)

e. Beginning date, (III) and

f. Anticipated duration of services. (III)

65.12(3) The IPP shall set out the procedure to be used to evaluate whether objectives are achieved. This procedure shall incorporate a process for ongoing review and revision. (III)

65.12(4) The interdisciplinary team shall review the IPP at a team meeting at least quarterly and when the resident's condition changes. (II, III)

a. The interdisciplinary team shall develop a written report which addresses:

(1) The resident's progress toward objectives; (II, III)

(2) The need for continued services; (II, III)

(3) Recommendations concerning alternative services or living arrangements; (II, III) and

(4) Any recommended change in guardianship, conservatorship or commitment status. (II, III)

b. The report shall reflect those involved in the review, the date of the review, and be maintained in the resident's record. (III)

65.12(5) There shall be procedures for recording the activities of each service provider and a mechanism to coordinate the activities of all service providers. Resident response to all activities shall be recorded. (III)

a. Staff shall create a record at the time of a service required by the IPP. If this is not possible, the record shall be written no more than seven days later. (III)

b. When the services are provided more than once a week, staff may make a monthly summarized entry in the resident's record. (III)

c. Entries shall be dated and signed by the person who provides the service. (III)

d. Entries shall be made when incidents occur. (III)

e. Entries shall be written in terms of behavioral observations and specific activities. Entries that involve subjective interpretations of a resident's behavior or progress shall be clearly identified and shall be supplemented with descriptions of behavior upon which the interpretation was based. (III)

This rule is intended to implement Iowa Code section 135C.14.

481—65.13(135C) Activity program. Each ICF/PMI shall have an organized activity program which is directed by a person qualified as required by 65.9(3)*"d."*

65.13(1) An activity program plan for the facility shall be based on needs identified in IPPs and on other interests expressed by residents. The activity program shall include leisure time management. (III)

65.13(2) Activities shall be offered at least daily during the daytime hours if residents are present, twice weekly in the evening and twice on the weekend. (III)

65.13(3) Activities offered shall be varied and shall be planned for individuals, small groups or large groups. (III)

65.13(4) Monthly calendars shall be prepared in advance and shall be kept for review by the department. Substitutions and cancellations shall be noted. (III)

65.13(5) Activities department personnel shall coordinate programs with other facility personnel. (III)

481—65.14(135C) Crisis intervention. There shall be written policies and procedures concerning crisis intervention. (II) These policies and procedures shall be:

1. Directed to maximizing the growth and development of the individual by incorporating a hierarchy of available alternative methods that emphasize positive approaches; (II, III)
2. Available in each program area and living unit; (II, III)
3. Available to individuals and their families; (II, III) and
4. Developed with the participation, as appropriate, of individuals served. (II, III)

65.14(1) Corporal punishment, physical abuse, and verbal abuse, for example, shouting, screaming, swearing, name calling, or any other activity which might damage an individual's self-respect shall be prohibited. All residents shall be treated with fairness and respect as required by rule 481—65.25(135C). (II)

65.14(2) Medication shall not be used as punishment, for the convenience of staff, or as a substitute for a program. Direct care staff shall monitor residents on medication and notify the physician if a resident is too sedated to participate in the IPP. (I, II)

481—65.15(135C) Restraint or seclusion. Physician's orders are required to use any kind of mechanical restraints or seclusion. (I, II, III) Restraints are defined as the following:

1. Type I is physical restraint which uses equipment to promote the safety of the individual. It is not applied directly to a person. Examples: divided doors and side rails.
2. Type II is mechanical restraint applied to someone's body. A device is applied to the body to promote safety of the individual. Examples: vests or soft tie devices, hand socks, geriatric chairs.
3. Type III is mechanical restraint applied to any part of the body which inhibits only the movement of that part of the body. Examples: wrist, ankle or leg restraints and waist straps.

65.15(1) Temporary restraint of residents shall be used only to prevent injury to the resident or to others. (I, II)

65.15(2) Temporary seclusion may be used:

a. To prevent injury to the resident or to others; (I, II)

b. To prevent serious disruption to the treatment program of other residents; (I, II)

c. To decrease stimulation which contributes to psychotic behavior; (I, II) and

d. When other interventions have failed. (I, II)

Restraint and seclusion shall not be used for punishment, for the convenience of staff, or as a substitution for supervision of program. Seclusion shall be used only in a department approved seclusion room. (I, II)

65.15(3) Restraints shall be stored in an area easily accessible to staff. (I, II, III) Type II and Type III restraints shall be specifically designed, manufactured, and customarily used to restrain individuals hospitalized in licensed psychiatric hospitals. Metal and plastic handcuffs, rope and makeshift devices are prohibited. (I, II)

65.15(4) Under no circumstances shall a resident be allowed to participate in the restraint of another resident. (I, II)

65.15(5) There shall be written policies that address the basic assumption and philosophy that govern the use of seclusion and physical and mechanical restraint. These shall:

a. Define the uses of seclusion and mechanical restraints; (III)

b. Designate staff who may authorize its use; (III)

c. Identify procedures to follow when implementing the policy which shall include provisions to ensure privacy and safety for restrained residents; (III) and

d. A written plan for treatment following the use of restraint or seclusion.

65.15(6) The physician and QMHP shall be notified immediately of the resident's need for placement in restraint or seclusion. An order for restraint or seclusion identifying the type, purpose and duration of use shall be obtained from the physician. If the resident is in seclusion longer than four hours, the physician and qualified mental health professional shall visit and evaluate the resident before the seclusion order is continued. If the resident is in restraint for two hours, the physician shall be called before the restraint order can be continued. If the resident is in restraint longer than four hours, the

physician and QMHP shall visit and evaluate the resident before a restraint order is continued. Standing or PRN orders for seclusion or restraint are prohibited. (I, II)

65.15(7) If a resident is restrained with Type II or Type III restraints for 6 hours or secluded for 12 hours in a 24-hour period; or if the resident is secluded or restrained with Type II or Type III restraints for any amount of time in three consecutive 24-hour periods, the physician and QMHP shall visit the resident and assess the resident's need for a higher level of care. If the need for restraint or seclusion continues, the resident shall be transferred to an acute level of care. (I, II)

65.15(8) During any period of mechanical restraint or seclusion, the facility shall provide for the emotional and physical needs of the resident. (I, II)

65.15(9) The resident shall be informed of the reason for seclusion and restraint and conditions for release. The resident's guardian shall be notified when Type II or Type III restraints or seclusion is used. The facility shall also notify the resident's family or other significant person if the resident has previously signed a form granting consent to do so. (I, II, III)

65.15(10) Each resident's record shall contain all information about restraints or seclusion. The administrator shall maintain a daily record of seclusion use. This record shall be available for review by the department. (II, III)

Documentation of each incident of restraint or seclusion shall include at least:

a. Clinical assessment before the resident is secluded or restrained; (I, II)

b. Circumstances that led to seclusion or restraint; (I, II)

c. Explanation of less restrictive measures used before restraint or seclusion; (I, II)

d. Physician's order; (I, II)

e. Visual observation of the resident every 15 minutes, or more frequently if needed, to monitor general well-being including respirations, circulation, positioning and alertness as indicated; (I, II)

f. Description of the resident's activity at the time of observation to include verbal exchange and behavior; (I, II)

g. Description of safety procedures taken (removal of dangerous objects, etc.); (I, II)

h. Vital signs, including blood pressure, pulse and respiration unless contraindicated by resident behavior and reasons documented; (I, II)

i. Release of each mechanical restraint and exercise and massage every two hours; (I, II, III)

j. Record of intake of food and fluid; (I, II, III)

k. Use of toilet; (II, III) and

l. Number of hours and minutes in seclusion. (II, III)

65.15(11) The facility shall educate staff on restraint and seclusion theory and techniques. The training shall be conducted by people with experience and documented education in the appropriate use of restraint and seclusion. (II, III)

a. The facility shall keep a record of the training for review by the department and shall include attendance. (II, III)

b. Only staff who have documented training in restraint and seclusion theory and techniques shall be authorized to assist with seclusion or restraint of a resident. (I, II, III)

65.15(12) The facility shall maintain a record of the hours and minutes of each type of restraint and seclusion used on a monthly basis.

481—65.16(135C) Discharge or transfer. Procedures for the discharge or transfer of the resident shall be established and followed. (II, III)

65.16(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)

a. Discharge planning shall begin within 30 days of admission and be carried out in accordance with the IPP. (II, III)

b. As changes occur in a resident's physical or mental condition necessitating services or care which cannot be adequately provided by the facility, the resident shall be transferred promptly to another appropriate facility pursuant to subrule 65.10(1). (II, III)

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

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 or legal representative. (III)

e. The licensee shall not refuse to discharge or transfer a resident when directed by the physician, resident, legal representative, or court. (II, III)

f. Advanced notification by telephone shall be made to the receiving facility prior to the transfer of any resident. (III)

g. When a resident is transferred or discharged, the current evaluation and treatment plan and progress notes for the last 30 days, as set forth in these rules, shall accompany the resident. (II, III)

h. Prior to the transfer or discharge of a resident to another health care facility, arrangements to provide for continuity of care shall be made with the facility to which the resident is being sent. (II, III)

i. A discharge or transfer authorization and summary shall be prepared for each resident who has been discharged or transferred from the facility. It shall be disseminated to appropriate persons to ensure continuity of care and in accordance with the requirements to ensure confidentiality. (II, III)

j. 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)

65.16(2) *Intrafacility transfer.* Residents shall not be arbitrarily moved from room to room within a health care facility. (II, III)

a. Involuntary relocation may occur only to implement goals and objectives in the IPP and in the following situations:

(1) Incompatibility with or behavior disturbing to roommates, as documented in the residents' records; (I, II)

(2) To allow a new admission to the facility which would otherwise not be possible due to separation of roommates by sex; (II, III)

(3) Reasonable and necessary administrative decisions regarding the use and functioning of the building. (II, III)

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

(1) Punishment or behavior modification; (II) and

(2) Discrimination on the basis of race or religion. (II, III)

c. If intrafacility relocation is necessary for reasons outlined in paragraph *"a,"* the resident shall be notified at least 48 hours prior to the transfer and the reason shall be explained. The legal guardian shall be notified as soon as possible. The notification shall be documented in the resident's record and signed by the resident or legal guardian within seven days unless documentation indicates that it was not possible to contact the legal guardian or obtain their signature. (II, III)

d. If emergency relocation is required 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 and legal guardian shall be notified immediately, or as soon as possible, of the condition requiring emergency relocation, and the notification shall be documented. (II, III)

65.16(3) *Involuntary discharge or transfer—reasons.* Residents shall be transferred or discharged from the facility in accordance with contract arrangements and requirements of Iowa Code chapter 135C which states that a resident shall be transferred or discharged only for the following:

a. Medical reasons which include:

(1) Acute stage of alcoholism, mental illness, or an active state of a communicable disease; (I, II) or

(2) Need for medical procedures as determined by a physician, or services which cannot be or are not being carried out in the facility; (I, II)

b. Resident's welfare or welfare of other residents which includes residents who are dangerous to themselves or other residents; (I) or

c. Nonpayment except as prohibited by Medicaid. (II)

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 responsible party at least 30 days in advance of the proposed transfer or discharge. (II) The 30-day requirement shall not apply in any of the following instances:

a. If an emergency transfer or discharge is mandated by the resident's health care needs and is in accord with the written orders and written medical justification of the attending physician. Emergency transfers or discharges may also be mandated to protect the health, safety, or well-being of other residents and staff. (I, II)

b. If the transfer or discharge is subsequently agreed to by the resident or by the resident's legal guardian, and notification is given to the legal guardian, physician, and the person or agency responsible for the resident's placement, maintenance and care in the facility. (II)

65.16(5) *Contents of notice.* The notice required by 65.16(4) shall contain all of the following information:

a. The stated reason for the proposed transfer or discharge. (II)

b. The effective date of the proposed transfer or discharge. (II)

c. The following statement must be included:

"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 receipt of your request by the department and you will not be transferred prior to a final decision. Provision may be made for extension of the 14-day requirement upon request to the department designee in emergency circumstances. If you lose the hearing, you will not be transferred before the expiration date of 30 days following receipt of the original notice of the discharge or transfer, or no sooner than 5 days following final decision of such hearing. 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 50319-0083." (II)

65.16(6) *Stay of transfer or discharge.* A request for a hearing made under 65.16(5)*"c"* shall stay a transfer or discharge pending a hearing or appeal decision. (II)

a. The type of hearing determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by United States mail or delivered in person to the licensee, resident, and legal guardian not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident, and legal guardian that they have a right to appear at the hearing in person or be represented by their attorneys or other individuals. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. (II)

b. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to department rules. The licensee or designee shall have the opportunity to present oral testimony or written materials to show by a preponderance of the evidence just cause why a transfer or discharge may be made. The resident and legal guardian shall also have an opportunity to present oral testimony or written material to show just cause why a transfer or discharge should not be made; the burden of proof rests on the party requesting the transfer or discharge. (II)

c. Based upon all testimony and materials submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact, conclusions of law, and issue a decision and order. This decision shall be mailed by regular mail to the licensee, resident, and legal guardian within 10 working days after the hearing has been concluded. (II)

d. Based upon all testimony and material submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, and responsible party within 10 working days after

the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

A request for review of a proposed decision in which the department is the final decision maker shall be made within 15 days of issuance of the proposed decision, unless otherwise provided by statute. Requests shall be mailed or delivered by either party to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. Failure to request review will preclude judicial review unless the department reviews a proposed decision upon its own motion within 15 days of the issuance of the decision. (II)

e. A copy of the notice required by 65.16(4) shall be personally delivered to the resident by the licensed facility 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. (II)

f. 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)

g. The involuntary transfer or discharge shall be discussed with the resident, legal guardian, and the person or agency responsible for the resident's placement, maintenance, and care in the facility within 48 hours after notice of discharge has been received. The explanation and discussion of the reasons for involuntary transfer or discharge shall be given by the facility administrator or other appropriate facility representative as the administrator's designee. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions and shall be made a part of the resident's record. (II)

h. The resident shall receive counseling services before (by the sending facility) and after (by the receiving facility) the involuntary transfer to minimize the possible adverse effects of the involuntary transfer. Counseling shall be documented in the resident's record. Counseling 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) or

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

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

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

k. In the case of an emergency transfer or discharge as outlined in 65.16(4)*"b,"* the resident must still be given a written notice prior to or within 48 hours following transfer or discharge. A copy of this notice must be placed in the resident's file and it must contain all the information required by 65.16(5). In addition, the notice must contain a statement in not less than 12-point type, which 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 seven 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 you may 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."

A hearing requested pursuant to this subrule shall be held in accordance with 65.16(6)*"a," "b"* and *"c."* (II)

l. 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. In the case of a facility voluntarily closing, a period of 30 days must be allowed for an orderly transfer of residents to other facilities. (II)

This rule is intended to implement Iowa Code sections 135C.14(8), 135C.31, 135C.43, and 135C.46.
[**ARC 1205C**, IAB 12/11/13, effective 1/15/14]

481—65.17(135C) Medication management. Medications shall be prescribed on an individual basis by a person who is authorized by Iowa law to prescribe. (I, II)

1. Medication orders shall be correctly implemented by qualified personnel. (II)
2. Qualified staff shall ensure that residents are able to take their own medication. (I, II)
3. Each physician order allowing a resident to self-administer medications shall specify whether this self-medication shall be without supervision or under the supervision of qualified staff as defined in 65.17(2). (I, II)

65.17(1) A properly trained person shall be charged with the responsibility of administering nonparenteral medications.

a. The individual shall have knowledge of the purpose of the drugs, their dangers, and contraindications.

b. This person shall be a licensed nurse or physician 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.

c. Prior to taking a department-approved medication aide course, the individual shall:

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

(2) Be employed in the same facility for at least six consecutive months prior to the start of the medication aide course. This requirement is not subject to waiver.

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

d. A person who is a nursing student or a graduate nurse may take the challenge examination in place of taking a medication aide course. This individual 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;

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

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

(4) Successfully complete a department-approved nurse aide competency evaluation.

e. 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 *"c"* of this subrule do not apply to this individual.

f. Unit dose medication shall remain in the identifiable unit dose package until given to the resident. (II)

g. Medications that are not contained in unit dose packaging shall be set up, identified by resident name and medication name, and administered by the same person. The medications shall be administered within one hour of preparation. (II)

h. The person administering medications must observe and check to make sure the resident swallows oral medications and must record the date, time, amount and name of each medication given. (II)

i. Injectable medications shall be administered as permitted by Iowa law by a qualified nurse, physician, pharmacist, or physician assistant (PA). In the case of a resident who has been certified by the resident's physician or physician assistant (PA) as capable of taking the resident's own insulin, the resident may prepare and inject the resident's own insulin. (II)

j. Current and accurate records must be kept on the receipt and disposition of all Schedule II drugs. (II, III)

65.17(2) For each resident who is taking medication with or without supervision, there shall be documentation on the individual's record to include:

a. Name of resident; (II, III)

b. Name of drug, dose, and schedule; (II, III)

c. Method of administration; (II, III)

d. Identified drug allergies and observed adverse reactions; (I, II)

e. Special precautions for that resident; (I, II) and

f. Documentation of resident's continuing ability to administer own medication. (I, II)

65.17(3) Medication counseling shall be provided for all residents in accordance with the IPP on an ongoing basis and as part of discharge planning unless contraindicated in writing by the physician with reasons and pursuant to 65.12(2)*"c."* (II, III)

Each resident and when appropriate, a family member or other identified caregiver, shall be given verbal and written information about all medications the resident is currently using, including over-the-counter medications. A suggested reference is "USPDI, Advice for the Patient." (II, III)

The information shall include:

a. Name, reason for, and amount of medication to be taken; (II)

b. Time medication is to be taken and reason that the schedule was established; (II)

c. Possible benefits, risks and side effects of each medication, including over-the-counter medications; (II)

d. A list of resources in the community qualified to answer questions about medications; (II, III) and

e. A list of available resources or agencies which may assist the resident to obtain medication after discharge. (III)

65.17(4) Residents who have been certified in writing by the physician as capable of taking their own medications may retain these medications in a secure centralized location. Individual locked storage shall be utilized. (II, III)

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

(1) Adequate size cabinet with lock which can be used for storage of drugs, solutions, and prescriptions. A locked drug cart may be used. (II, III)

(2) A bathroom shall not be used for drug storage. (II, III)

(3) The drug storage cabinet shall be kept locked when not in use. (II, III)

(4) The drug storage cabinet key shall be in the possession of the employee charged with the responsibility of administering medication. (II, III)

(5) Medications requiring refrigeration which are stored in a common refrigerator shall be kept in a locked box properly labeled, and separated from food and other items. (II, III)

(6) Drugs for external use shall be stored separately from drugs for internal use. External medications are those to be applied to the outside of the body and include, but are not limited to, salves, ointments, gels, paste, soaps, baths, and lotions. Internal medications are those to be applied inside the body or ingested and include, but are not limited to, oral and injectable medications, eye drops and ointments, ear drops and ointments, and suppositories. Also, eye drops and ear drops shall be separated from each other as well as from other internal and external medications. (II, III)

(7) All potent, poisonous, or caustic materials shall be stored in a separate room from the medications. (II, III)

(8) Inspection of the condition of stored drugs shall be made by the administrator and a licensed pharmacist not less than once every three months. The inspection shall be verified by a report signed

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

(9) Double-locked storage of Schedule II drugs shall not be required under single unit package drug distribution systems in which the quantity stored does not exceed a seven-day supply and a missing dose can be readily detected but must be kept in a locked medication cabinet. Quantities in excess of a seven-day supply must be double-locked. (II)

b. Bulk supplies of prescription drugs shall not be kept. (III)

65.17(5) All labels on medications must be legible. If labels are not legible, the medication shall be sent back to the dispenser as defined in Iowa Code section 147.107 for relabeling. (II, III)

a. The medication for each resident shall be kept or stored in the original dispensed containers. (II, III)

b. The facility shall adopt policies and procedures to destroy unused prescription drugs for residents who die. The policies and procedures shall include, but not be limited to, the following:

(1) Drugs shall be destroyed by the person in charge in the presence of the administrator or the administrator's designee or, if a unit dose system is used, the drugs shall be returned to the supplying pharmacist; (III)

(2) Notation of the destruction shall be made in the resident's chart, with signatures of the persons involved in the destruction; (III)

(3) The manner in which the drugs are disposed of shall be identified (i.e., incinerator, sewer, landfill). (II, III)

c. Reserved.

d. The facility shall also adopt policies and procedures for the disposal of controlled substances as defined by the Iowa board of pharmacy dispensed to residents whose administration has been discontinued by the prescriber. These policies and procedures shall include, but not be limited to, the following:

(1) Procedures for obtaining a release from the resident; (II, III)

(2) The manner in which the drugs were destroyed and by whom, including witnesses to the destruction; (II, III)

(3) Mechanisms for recording the destruction; (II, III)

(4) Procedures to be used when the resident or the conservator or guardian refuses to grant permission for destruction. (II, III)

e. The facility shall adopt policies and procedures for the disposal of unused, discontinued medication. The procedures shall include, but not be limited to:

(1) A specified time after which medication must be destroyed, sent back to the dispenser or placed in long-term storage; (II, III)

(2) Procedures for obtaining permission of the resident, or the conservator or guardian; (II, III)

(3) Procedures to be used when the resident, conservator or guardian refuses to grant permission for disposal; (II, III)

(4) Unused, discontinued medication shall be locked and shall be separate from current medication. (II, III)

f. Reserved.

g. Residents shall not keep any prescription or over-the-counter medication in their possession unless the resident has been determined to be capable of self-administration of medications. (I, II, III)

h. No prescription drugs shall be administered to a resident without a written order signed by a person qualified to prescribe the medication and renewed quarterly. (II)

i. Prescription drugs shall be reordered only with the permission of the attending prescriber. (II, III)

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

65.17(6) Each facility shall establish policies and procedures to govern the administration of prescribed medications to residents on leave from the facility. (III)

a. Medication may be issued to residents who will be on leave from a facility for less than 24 hours. Non-child-resistant containers may be used. Each container may hold only one medication. A label on each container shall indicate the date, the resident's name, the facility, the medication, its strength, dose, and time of administration. (II, III)

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

c. Medication distributed as described in this subrule may be issued only by facility personnel responsible for administering medication. (II, III)

65.17(7) Each ICF/PMI that administers controlled substances shall annually obtain a registration from the Iowa board of pharmacy examiners pursuant to Iowa Code section 204.302(1). (III)

This rule is intended to implement Iowa Code section 135C.14.

[**ARC 1050C**, IAB 10/2/13, effective 11/6/13]

481—65.18(135C) Resident property and personal affairs. The admission of a resident does not give the facility or any employee of the facility the right to manage, use, or dispose of any property of the resident except with the written authorization of the resident or the resident's legal guardian. (II, III)

65.18(1) The admission of a resident shall not grant the ICF/PMI the authority or responsibility to manage the personal affairs of the resident except as may be necessary for the resident's safety and for safe and orderly management of the facility as required by these rules and in accordance with the IPP. (III)

65.18(2) An ICF/PMI 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 which would convey unreasonable responsibilities to the licensee be removed from the premises of the facility for safekeeping. (III)

65.18(3) Residents' funds held by the ICF/PMI shall be in a trust account and kept separate from funds of the facility. (III)

65.18(4) No administrator, employee or their representative shall act as guardian, trustee, or conservator for any resident or the resident's property, unless the resident is related to the person acting as guardian within the third degree of consanguinity. (III)

65.18(5) If a facility is a county care facility, upon the verified petition of the county board of supervisors, the district court may appoint, without fee, the administrator of a county care facility as conservator or guardian, or both, of a resident of such a county care facility. The administrator may establish either separate or common bank accounts for cash funds of these residents. (III)

This rule is intended to implement Iowa Code section 135C.24.

481—65.19(135C) Financial affairs. Residents who have not been assigned a guardian or conservator by the court may manage their personal financial affairs, and to the extent, under written authorization by the residents that the facility assists in management, the management shall be carried out in accordance with Iowa Code section 135C.24. (II)

65.19(1) *Written account of resident funds.* The facility shall maintain a written account of all residents' funds received by or deposited with the facility. (II)

a. An employee shall be designated in writing to be responsible for resident accounts. (II)

b. The facility shall keep on deposit personal funds over which the resident has control when requested by the resident. (II)

c. If the resident requests these funds, they shall be given to the resident with a receipt maintained by the facility and a copy to the resident. If a conservator or guardian has been appointed for the resident, the conservator or guardian shall designate the method of disbursing the resident's funds. (II)

d. If the facility makes a financial transaction on a resident's behalf, the resident or the resident's legal guardian or conservator must receive or acknowledge having seen 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)

65.19(2) *Contracts.* There shall be a written contract between the facility and each resident which meets the following requirements:

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

b. Contains a complete schedule of all offered services for which a fee may be charged in addition to the base rate; (III)

c. Stipulates that no further additional fees shall be charged for items not contained in complete schedule of services listed in this subrule; (III)

d. States the method of payment of additional charges; (III)

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

f. States that additional fees may be charged to the resident for nonprescription drugs, other personal supplies, and services by a barber, beautician, etc.; (III)

g. Contains an itemized list of those services, with the specific fee the resident will be charged and method of payment, as related to the resident's current condition, based on the program assessment at the time of admission, which is determined in consultation with the administrator; (III)

h. Includes the total fee to be charged initially to the specific resident; (III)

i. States the conditions whereby the facility may make adjustments to its overall fees for residential care as a result of changing costs. (III) Furthermore, the contract shall provide that the facility shall give:

(1) Written notification to the resident and 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 changes; (III)

(2) Notification to the resident and payer, when appropriate, of changes in additional charges based on a change in the resident's condition. Notification must occur prior to the date the 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; (III) and

(3) The terms of agreement in regard to refund of all advance payments, in the event of transfer, death, or voluntary or involuntary discharge; (III)

j. States the terms of agreement concerning holding and charging for a bed in the event of temporary absence of the resident, which terms shall include, at a minimum, the following provisions:

(1) If a resident has a temporary absence from a facility for medical treatment, the facility shall hold the bed open and shall receive payment for the absent period in accordance with provisions of the contract between the resident or the legal guardian and the facility. (II)

(2) If a resident has a temporary absence from a facility in accordance with the IPP, the facility shall ask the resident and payer if they wish the bed held open. This shall be documented in the resident's record including the response. The bed shall be held open and the facility shall receive payment for the absent periods in accordance with the provisions of the contract between the resident or the legal guardian and the facility. (II)

k. States the conditions under which the involuntary discharge or transfer of a resident would be affected; (III)

l. States the conditions of voluntary discharge or transfer; (III) and

m. Sets forth any other matters deemed appropriate by the parties to the contract. No contract or any provision 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. (III)

65.19(3) *Contract—copy to party.* Each party shall receive a copy of the signed contract. (III)

65.19(4) The contract shall state the terms of agreement concerning the holding 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 legal representative.

a. The facility shall ask the resident or legal representative if they want the bed 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)

b. The facility shall reserve the bed when requested for as long as payments are made in accordance with the contract. (II)

This rule is intended to implement Iowa Code sections 135C.23(1) and 135C.24.

481—65.20(135C) Records.

65.20(1) *Resident record.* The licensee shall keep a permanent record about each resident with all entries current, dated, and signed. (II) 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; (III)

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

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

f. Name, address and telephone number of next of kin or legal representative; (III)

g. Name, address and telephone number of the person to be notified in case of emergency; (III)

h. Funeral director, telephone number, and address; (III)

i. Pharmacy name, telephone number, and address; (III)

j. Results of evaluation pursuant to rule 481—65.11(135C); (III)

k. Certification by the physician that the resident requires no higher level of care than the facility is licensed to provide; (III)

l. Physician's orders for medication and treatments in writing, signed by the physician quarterly and diet orders renewed yearly; (III)

m. A notation of yearly or other visits to physician or other professionals, all consultation reports and progress notes; (III)

n. Any change in the resident's condition; (II, III)

o. A notation describing the resident's condition on admission, transfer, and discharge; (III)

p. In the event of a resident's death, notations in the resident's record shall include 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 that the resident's family and physician were notified of the resident's death; (III)

q. A copy of instructions given to the resident, legal representative, or facility in the event of discharge or transfer; (III)

r. Disposition of personal property; (III)

s. Copy of IPP pursuant to subrule 65.12(1); (III) and

t. Progress notes pursuant to subrules 65.12(4) and 65.12(5). (III)

65.20(2) *Confidentiality of resident records.* The facility shall have policies and procedures providing that each resident shall be ensured confidential treatment of all information, including information contained in an automatic data bank. The resident's or the resident's legal guardian's written informed consent shall be required for the release of information to persons not otherwise authorized under law to receive it. (II)

A release of information form shall be used which includes to whom the information shall be released, the reason for the information being released, how the information is to be used, and the period of time for which the release is in effect. A third party, not requesting the release, shall witness the signing of the release of information form. (II)

a. The facility shall limit access to any resident records to staff and consultants providing professional service to the resident. Information shall be made available to staff only to the extent that the information is relevant to the staff person's responsibilities and duties. (II)

Only those personnel concerned with financial affairs of the residents may have access to the financial information. This is not meant to preclude access by representatives of state or federal regulatory agencies. (II)

b. The resident, or the resident's legal guardian, shall be entitled to examine all information and shall have the right to secure full copies of the record at reasonable cost upon request, unless the physician or QMHP determines the disclosure of the record or section is contraindicated in which case this information will be deleted prior to making the record available to the resident. This determination and the reasons for it must be documented in the resident's record by the physician or qualified mental health professional in collaboration with the resident's interdisciplinary team. (II)

65.20(3) *Incident records.* Each ICF/PMI shall maintain an incident record report and shall have available incident report forms. (II, III)

a. The report of every incident shall be in detail on a printed incident report form. (II, III)

b. The person in charge at the time of the incident shall oversee the preparation and sign the report. (III)

c. A copy of the incident report shall be kept on file in the facility available for review and a part of administrative records. (III)

65.20(4) *Retention of records.* Records shall be retained in the facility for five years following termination of services to the resident even when there is a change of ownership. (III)

When the facility ceases to operate, the resident's record shall be released to the facility to which the resident is transferred. If no transfer occurs, the record shall be released to the individual's physician. (III)

This rule is intended to implement Iowa Code section 135C.24.

481—65.21(135C) Health and safety.

65.21(1) *Physician.* Each resident shall have a designated licensed physician who may be called when needed. (III)

65.21(2) *Emergency care.* Each facility shall have written policies and procedures for emergency medical or psychiatric care to include:

a. A written agreement with a hospital or psychiatric facility or documentation of attempt to obtain a written agreement for the timely admission of a resident who, in the opinion of the attending physician, requires inpatient services; (II, III)

b. Provisions consistent with Iowa Code chapter 229; (II, III) and

c. Immediate notification by the person in charge to the physician or QMHP, as appropriate, of any accident, injury or adverse change in the resident's condition. (I, II)

65.21(3) *First-aid kit.* A first-aid emergency kit shall be available on each floor in every facility. (II, III)

65.21(4) *Infection control.* Each facility shall have a written and implemented infection control program addressing the following:

a. Techniques for hand washing consistent with Guidelines for Handwashing and Hospital Control, 1985, Centers for Disease Control, U.S. Department of Health and Human Services, PB85-923404; (I, II, III)

b. Techniques for handling of blood, body fluids, and body wastes consistent with Guideline for Isolation Precautions in Hospitals, Centers for Disease Control, U.S. Department of Health and Human Services, PB96-138102; (I, II, III)

c. Decubitus care; (I, II, III)

d. Infection identification; (I, II, III)

e. Resident care procedures to be used when there is an infection present consistent with Guideline for Isolation Precautions in Hospitals, Centers for Disease Control, U.S. Department of Health and Human Services, PB96-138102; (I, II, III)

f. Sanitation techniques for resident care equipment; (I, II, III)

g. Techniques for sanitary use and reuse of enteral feeding bags, feeding syringes and urine collection bags; (I, II, III)

h. Techniques for use and disposal of needles, syringes, and other sharp instruments consistent with Guideline for Isolation Precautions in Hospitals, Centers for Disease Control, U.S. Department of Health and Human Services, PB96-138102; (I, II, III) and

i. Aseptic techniques when using:

(1) Intravenous or central line catheter consistent with Guideline for Prevention of Intravascular Device Related Infections, Centers for Disease Control, U.S. Department of Health and Human Services, PB97-130074, (I, II, III)

(2) Urinary catheter, (I, II, III)

(3) Respiratory suction, oxygen or humidification, (I, II, III)

(4) Dressings, soaks, or packs, (I, II, III)

(5) Tracheostomy, (I, II, III)

(6) Nasogastric or gastrostomy tubes, (I, II, III)

(7) Sanitary use and reuse of feeding syringes and single-resident uses and reuse of urine collection bags. (I, II, III)

CDC Guidelines may be obtained from the U.S. Department of Commerce, Technology Administration, National Technical Information Service, 5285 Port Royal Rd., Springfield, Virginia 22161 (1-800-553-6847).

65.21(5) *Disposable items.* There shall be disposable or one-time use items available with provisions for proper disposal to prevent reuse except as allowed by 65.21(4)*"g."*

65.21(6) *Infection control committee.* Each facility shall establish an infection control committee of representative professional staff responsible for overall infection control in the facility. (III)

a. The committee shall annually review and revise the infection control policies and procedures to monitor effectiveness and suggest improvement. (III)

b. The committee shall meet at least quarterly, submit reports to the administrator, and maintain minutes in sufficient detail to document its proceedings and actions. (III)

c. The committee shall monitor the health aspect and the environment of the facility. (III)

These rules are intended to implement Iowa Code sections 135C.14(3), 135C.14(5) and 135C.14(8).

65.21(7) *Dental services.* The facility shall assist residents to obtain regular and emergency dental services and provide necessary transportation. Dental services shall be performed only on the request of the resident or legal guardian. The resident's physician shall be advised of the resident's dental problems. (III)

65.21(8) *Safe environment.* The licensee of an ICF/PMI is responsible for the provision and maintenance of a safe environment for residents and personnel. (I, II) The ICF/PMI may have locked exit doors and shall meet the fire and safety rules and regulations as promulgated by the state fire marshal. (I, II)

65.21(9) *Disaster.* The licensee shall have a written emergency plan to be followed in the event of fire, tornado, explosion, or other emergency. (II, III)

a. The plan shall be posted. (II, III)

b. Training shall be provided to ensure that all employees and residents are knowledgeable of the emergency plan. The training shall be documented. (II, III)

c. Residents shall be permitted to smoke only in posted areas where proper facilities are provided. Smoking by residents considered to be careless shall be prohibited except under direct supervision and in accordance with the IPP. (II, III)

65.21(10) *Safety precautions.* The facility shall take reasonable measures to ensure the safety of residents and shall involve the residents in learning the safe handling of household supplies and equipment in accordance with the policies and procedures established by the facility. (II)

All potent, poisonous, or caustic materials shall be plainly labeled and stored in a specific locked, well-illuminated cabinet, closet, or storeroom and made accessible only to authorized persons. (I, II)

65.21(11) *Hazards.* Entrances, exits, steps, and outside steps and walkways shall be cleared of ice and snow as soon as possible, and kept free of other hazards. (II, III)

65.21(12) *Laundry.* All soiled linens shall be collected in and transported to the laundry room in closed, leakproof laundry bags or covered, impermeable containers. (III)

a. Except for related activities, the laundry room shall not be used for other purposes. (III)

b. Personal laundry shall be marked with an identification unless the residents are responsible for doing their own laundry as indicated in the individual program plan. (III)

c. There shall be an adequate supply of clean, stain-free linens so that each resident shall have at least three washcloths, hand towels, and bath towels per week. (III)

d. Each bed shall be provided with clean, stain-free washable bedspreads and sufficient lightweight serviceable blankets. A complete change of bed linens shall be available for each bed. Linens on beds shall be clean, stain-free and in good repair at all times. (III)

65.21(13) *Supplies, equipment, and storage.* Each facility shall provide a variety of supplies and equipment of a nature calculated to fit the needs and interests of the residents. These may include: books (standard and large print), magazines, newspapers, radio, television, bulletin boards, board games, game equipment, songbooks, cards, craft supplies, record player, movie projector, piano, and outdoor equipment. Supplies and equipment shall be appropriate to the chronological age of the residents. (III)

Storage shall be provided for recreational equipment and supplies. (III)

This rule is intended to implement Iowa Code section 135C.14(1).

481—65.22(135C) Nutrition. There shall be policies and procedures written and implemented for dietary staffing.

1. The person responsible for planning menus and monitoring the kitchens in each facility shall have completed training, approved by the department, in sanitation and food preparation. (III)

2. In facilities licensed for over 15 beds, food service personnel shall be on duty during a 12-hour span extending from the preparation of breakfast through supper. (III)

3. There shall be written work schedules and time schedules covering each type of job in the food service department for facilities over 15 beds. These work and time schedules shall be posted or kept in a notebook which is available for use in the food service area. (III)

65.22(1) *Nutrition and menu planning.* Residents shall be encouraged to the maximum extent possible to participate in meal planning, shopping, and in preparing and serving the meal and cleaning up. The facility shall be responsible for helping residents become knowledgeable of what constitutes a nutritionally adequate diet. (III)

a. Menus shall be planned and served to meet nutritional needs of residents in accordance with the physician's diet orders which shall be renewed yearly. Menus shall be planned and served to include foods and amounts necessary to meet the recommended daily dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences. Other foods shall be included to meet energy requirements (calories) to add to the total nutrients and variety of meals. (II, III)

b. At least three meals or their equivalent shall be made available to each resident daily, consistent with those times normally existing in the community. (II, III)

(1) There shall be no more than a 14-hour span between the substantial evening meal and breakfast. (III)

(2) To the extent medically possible, bedtime nourishments, containing a protein source, shall be offered routinely to all residents. Special nourishments shall be available when ordered by the physician. (II, III)

c. Menus shall include a variety of foods prepared in various ways. The same menus shall not be repeated on the same day of the following week. (III)

d. If modified diets are ordered by the physician, the person responsible for writing the menus shall have completed department-approved training in simple therapeutic diets. A copy of a modified diet manual approved by the department and written within the past five years shall be available in the facility. (II, III)

e. Therapeutic diets shall be served accurately. (II, III)

f. Menus shall be written at least one week in advance. The current menu shall be located in an accessible place in the dietetic service department for easy use by persons purchasing, preparing, and serving food. (III)

g. 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, they shall be of similar nutritive value and recorded on the menu or in a notebook. (III)

h. A file of tested recipes adjusted to the number of people to be fed in the facility shall be maintained. (III)

65.22(2) *Dietary storage, food preparation, service.* In each stage, food shall be handled with maximum care for safety and good health.

a. The use of foods from salvaged, damaged, or unlabeled containers is prohibited. (II, III)

b. No perishable food shall be allowed to stand at room temperature any longer than is required to prepare and serve. (II, III)

c. Canning food is prohibited. The facility may freeze fruits, vegetables, and meats provided strict sanitary procedures are followed and in accordance with recommendations in the "Food Service Sanitation Manual," revised 1976, U.S. Department of Health, Education, and Welfare, Public Health Service, U.S. Government Printing Office, Washington, D.C. (II)

d. Supplies of staple foods for a minimum of a one-week period and of perishable foods for a minimum of a three-day period shall be maintained on the premises. (III)

e. If family-style service is used, all leftover prepared food that has been on the table shall be safely handled. (III)

f. Poisonous compounds shall not be kept in food storage or preparation areas except for a sanitizing agent which shall be kept in a locked cabinet. (II, III)

65.22(3) *Sanitation in food preparation area.* The facility shall develop and implement policies and procedures to address sanitation, meal preparation and service in accordance with recommendations in the "Food Service Sanitation Manual" reference in 65.22(2)*"c,"* which shall be used as the established, nationally recognized reference for establishing and determining satisfactory compliance with the department's food service and sanitation rules. (III)

a. In facilities of 15 beds or fewer, residents may be allowed in the food preparation area in accordance with their IPP. (III)

b. In facilities licensed for over 15 beds, the kitchen shall not be used for serving meals to residents, food service personnel, or other staff. (III)

c. All appliances and work areas shall be kept clean and sanitary. (III)

d. There shall be written procedures established for cleaning all work and serving areas in facilities over 15 beds and a schedule of duties to be performed daily shall be posted in each food area. (III)

e. The food service area shall be located so it will not be used as a passageway by residents, guests, or nonfood service staff in facilities over 15 beds. (III)

f. Dirty linen shall not be carried through the food service area unless it is in sealed, leakproof containers. (III)

g. Mops, scrub pails, and other cleaning equipment used in the resident areas shall not be stored or used in the dietary area. (III)

65.22(4) *Hygiene of food service personnel.* If food service employees are assigned duties outside the dietetic service, these duties shall not interfere with sanitation, safety, or time required for dietetic work assignments. (II, III)

a. Employees shall wear clean, washable uniforms that are not used for duties outside the food service area in facilities over 15 beds. (III)

b. Hair nets shall be worn by all food service personnel and residents who do work in the kitchen in facilities over 15 beds and effective hair restraints in facilities with fewer than 15 beds. (III)

c. People who handle food shall use correct hand-washing and food-handling techniques as identified in the "Food Service Sanitation Manual." People who handle dirty dishes shall not handle clean dishes without washing their hands. (III)

This rule is intended to implement Iowa Code section 135C.14.

481—65.23(135C) Physical facilities and maintenance.

65.23(1) *Housekeeping.* The facility shall have written procedures for daily and weekly cleaning (III) which include, but need not be limited to:

a. All rooms including furnishings, all corridors, storage areas, linen closets, attics, and basements shall be kept in a clean, orderly condition, free of unserviceable furniture and equipment or accumulations of refuse. (III)

b. All resident bedrooms, including furnishings, shall be cleaned and sanitized before use by another resident. (III)

c. Polishes used on floors shall provide a slip-resistant finish. (III)

65.23(2) *Equipment.* 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)

a. All facilities shall be provided with clean and sanitary storage for cleaning equipment, supplies, and utensils. In facilities over 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. A hallway or corridor shall not be used for storage of equipment. (III)

b. Sufficient numbers of noncombustible trash containers, which have covers, shall be available. (III)

c. All containers for trash shall be watertight, rodent-proof, and have tight-fitting covers and shall be thoroughly cleaned each time a container is emptied. (III)

d. All wastes shall be properly disposed of in compliance with the local ordinances and state codes. (III)

65.23(3) *Bedrooms.* Each resident shall be provided with a bed, substantially constructed and in good repair. (III)

a. 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 5 inches thick and standard in size for the bed; and clean, comfortable pillows of average bed size. (III)

c. There shall be a comfortable chair, either a rocking chair or arm chair, per resident bed. The resident's personal wishes shall be considered and documented. (III)

d. There shall be drawer space for each resident's clothing. In a multiple bedroom, drawer space shall be assigned each resident. (III)

e. There shall be a bedside table with a drawer and a reading lamp for each resident. (III)

f. All furnishings and equipment shall be durable, cleanable, and appropriate to its function. (III)

g. All resident areas shall be decorated, painted, and furnished to provide a homelike atmosphere and in a manner which is age and culture appropriate. (III)

h. Upholstery materials shall be moisture- and soil-resistant, except on furniture which is provided and owned by the resident. (III)

i. Beds and other furnishings shall not obstruct free passage to and through doorways. (III)

j. Beds shall not be placed with the side of the bed against a radiator or in close proximity to it unless the radiator is covered to protect the resident from contact with it or from excessive heat. (III)

65.23(4) *Bath and toilet facilities.* All lavatories shall have nonreusable towels or an air dryer and an available supply of soap. (III)

65.23(5) *Dining and living rooms.* Dining rooms and living rooms shall be available for use by residents at appropriate times to allow social, diversional, individual, and group activities. (III)

a. Every facility shall have a dining room and a living room easily accessible to all residents which are never used as bedrooms. (III)

b. A combination dining room and living room may be permitted if the space requirements of a multipurpose room as provided in 481—subrule 61.6(2) are met. (III)

c. Living rooms shall be suitably furnished and maintained for the use of residents and their visitors and may be used for recreational activities. (III)

d. Dining rooms shall be furnished with dining tables and chairs appropriate to the size and function of the facility. These rooms and furnishings shall be kept clean and sanitary. (III)

65.23(6) *Family and employee accommodations.* Resident bedrooms shall not be occupied by employees, family members of employees, or family members of the licensee. (III)

a. In facilities where the total occupancy of family, employees, and residents is five or fewer, one toilet and one tub or shower is the minimum requirement. (III)

b. In all health care facilities, if the family or employees live within the facility, living quarters shall be required for the family or employees separate from areas provided for residents. (III)

65.23(7) *Pets—policies.* Any facility in which a pet is living shall implement written policies and procedures addressing the following:

a. Vaccination schedule; (III)

b. Veterinary visit schedule; (III)

c. Housing or sleeping quarters; (III) and

d. Assignment of responsibility for feeding, bathing and cleanup. (III)

65.23(8) *Maintenance.* Each facility shall establish a program to ensure continued maintenance of the facility, to promote good housekeeping procedures, and to ensure sanitary practices throughout. In facilities over 15 beds, this program shall be in writing and be available for review by the department. (III)

a. The buildings, furnishings and grounds shall be maintained in a clean, orderly condition and be in good repair. (III)

b. The buildings and grounds shall be kept free of flies, other insects, rodents, and their breeding areas. (III)

65.23(9) *Buildings, furnishings, and equipment.*

a. Battery-operated, portable emergency lights in good working condition shall be available at all times, at a ratio of one light per employee on duty from 6 p.m. to 6 a.m. (III)

b. All windows shall be supplied with curtains and shades or drapes which are kept in good repair. (III)

c. Wherever glass sliding doors or transparent panels are used, they shall be marked conspicuously and decoratively. (III)

65.23(10) *Water supply.* Every facility shall have an adequate water supply from an approved source. A municipal source of water shall be considered as meeting this requirement. Private sources of water to a facility shall be tested annually and the report submitted with the annual application for license. (III)

a. A bacterially unsafe source of water shall be grounds for denial, suspension, or revocation of license. (III)

b. The department may require testing of private sources of water to a facility at its discretion in addition to the annual test. The facility shall supply reports of tests as directed by the department. (III)

This rule is intended to implement Iowa Code section 135C.14.

481—65.24(135C) Care review committee. Rescinded **ARC 1205C**, IAB 12/11/13, effective 1/15/14.

481—65.25(135C) Residents' rights in general. Each facility shall ensure that policies and procedures are written and implemented which include at least provisions in subrules 65.25(1) to 65.25(21). These shall govern all services provided to staff, residents, their families or legal representatives. The policies and procedures shall be available to the public and shall be reviewed annually. (II)

65.25(1) *Grievances.* Written policies and procedures shall include a method for submitting grievances and recommendations by residents or their legal representatives and for ensuring a response and disposition by the facility. The written procedure shall ensure protection of the resident from any form of reprisal or intimidation and shall include:

a. An employee or an alternate designated to be responsible for handling grievances and recommendations; (II)

b. Methods to investigate and assess the validity of a grievance or recommendation; (II) and

c. Methods to resolve grievances and take action. (II)

65.25(2) *Informed of rights.* Policies and procedures shall include a provision that residents be fully informed of their rights and responsibilities as residents and of all rules governing resident conduct and responsibilities. This information must be provided upon admission, or when the facility adopts or amends residents' rights policies. It shall be posted in locations accessible to all residents. (II)

a. The facility shall make known to residents what they may expect from the facility and its staff, and what is expected from residents. The facility shall communicate these expectations during a period not more than two weeks before or later than five days after admission. The communication shall be in writing in a separate handout or brochure describing the facility. It shall be interpreted verbally, as part of a preadmission interview, resident counseling, or in individual or group orientation sessions after admission. (II)

b. Residents' rights and responsibilities shall be presented in language understandable to residents. If the facility serves residents who do not speak English or are deaf, steps shall be taken to translate the information into a foreign or sign language. Blind residents shall be provided either Braille or a recording. Residents shall be encouraged to ask questions about their rights and responsibilities. Their questions shall be answered. (II)

c. A statement shall be signed by the resident and legal guardian, if applicable, to indicate the resident understands these rights and responsibilities. The statement shall be maintained in the record. The statement shall be signed no later than five days after admission. A copy of the signed statement shall be given to the resident or legal guardian. (II)

d. All residents, next of kin, or legal guardian shall be advised within 30 days of changes made in the statement of residents' rights and responsibilities. Appropriate means shall be used to inform non-English-speaking, deaf or blind residents of changes. (II)

65.25(3) *Resident abuse prohibited.* Each resident shall receive kind and considerate care at all times and shall be free from physical, sexual, mental and verbal abuse, exploitation, neglect, and physical injury. (I, II)

65.25(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)

65.25(5) *Report of abuse.* Rescinded IAB 12/11/13, effective 1/15/14.

65.25(6) *Informed of health condition.* Each resident or legal guardian shall be fully informed by a physician of the health and medical condition of the resident unless a physician documents reasons not to in the resident's record. (II)

65.25(7) *Research.* The resident or legal guardian shall decide whether a resident participates in experimental research. Participation shall occur only when the resident or guardian is fully informed and signs a consent form. (II, III)

Any clinical investigation involving residents must be sponsored by an institution with a human subjects review board functioning in accordance with the requirement of Public Law 93-348, as implemented by Part 46 of Title 45 of the Code of Federal Regulations, as amended December 1, 1981 (45 CFR 46). (III)

65.25(8) *Resident work.* Services performed by the resident for the facility shall be in accordance with the IPP. (II)

a. Residents shall not be used to provide a source of labor for the facility against the resident's will. Physician's approval is required for all work programs and must be renewed yearly. (II, III)

b. If the individual program plan requires activities for therapeutic or training reasons, the plan for these activities must be professionally developed and implemented. Therapeutic or training goals must be clearly stated and measurable and the plan shall be time limited and reviewed at least quarterly. (II, III)

c. A resident engaged in work programs in the ICF/PMI shall be paid wages commensurate with wage and hour regulations for comparable work and productivity. (II)

d. The resident shall have the right to employment options commensurate with training and skills. (II)

e. Residents performing work shall not be used to replace paid employees to fulfill staff requirements. (II)

65.25(9) *Encouragement to exercise rights.* Residents shall be encouraged and assisted throughout their period of stay to exercise resident and citizen rights. Residents may voice grievances and recommend changes in policies and services to administrative staff or to an outside representative of their choice free from interference, coercion, discrimination, or reprisal. (II)

65.25(10) *Posting of names.* The facility shall post in a prominent area the name, telephone number, and address of the survey agency, local law enforcement agency, administrator, members of the board of directors, corporate headquarters, and the protection and advocacy agency designated pursuant to Iowa Code section 135C.2(4) and the text of Iowa Code section 135C.46 to provide to residents another course of redress. (II)

65.25(11) *Dignity preserved.* Residents shall be treated with consideration, respect, and full recognition of their dignity and individuality, including privacy in treatment and in care of personal needs. (II)

a. Staff shall display respect for residents when speaking with, caring for, or talking about them as constant affirmation of the individuality and dignity of human beings. (II)

b. 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, eating, and times to retire at night and arise in the morning shall be elicited and considered by the facility. The facility shall make every effort to match nonsmokers with other nonsmokers. (II)

c. 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)

d. Residents shall be examined and treated in a manner that maintains the privacy of their bodies. A closed door shall shield the resident from passersby. People not involved in the care of a resident shall not be present without the resident's consent during examination or treatment. (II)

e. Privacy for each person shall be maintained when residents are being taken to the toilet or being bathed and while they are being helped with other types of personal hygiene, except as needed for resident safety or assistance. (II)

f. Staff shall knock and be acknowledged before entering a resident's room unless the resident is not capable of response. This does not apply under emergency conditions. (II)

65.25(12) *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. Each resident may send and receive personal mail unopened unless prohibited in the IPP which has explicit approval of the resident or legal guardian. Telephones consistent with ANSI standards 42 CFR 405.1134(c) (10-1-86) 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)

Arrangements shall be made to provide assistance to residents who require help in reading or sending mail. (II)

65.25(13) *Visiting policies and procedures.* 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)

a. 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:

(1) The resident refuses to see the visitor(s). (II)

(2) The visit would not be in accordance with the IPP. (II)

(3) The visitor's behavior is unreasonably disruptive to the functioning of the facility. (II)

Reasons for denial of visitation shall be documented in resident records. (II)

b. Decisions to restrict a visitor shall be reevaluated at least quarterly by the QMHP or at the resident's request. (II)

c. Space shall be provided for residents to receive visitors in comfort and privacy. (II)

65.25(14) *Resident activities.* Each resident may participate in activities of social, religious, and community groups as desired unless contraindicated for reasons documented by the attending physician or qualified mental health professional, as appropriate, in the resident's record. (II)

Residents who wish to meet with or participate in activities of social, religious or community groups in or outside the facility shall be informed, encouraged, and assisted to do so. (II)

Residents shall be permitted to leave the facility and environs at reasonable times unless there are justifiable reasons established in writing by the attending physician, QMHP, or facility administrator for refusing permission. (II)

65.25(15) *Resident property.* Each resident may retain and use personal clothing and possessions as space permits and provided use is not otherwise prohibited in these rules. (II)

a. Residents shall be permitted to keep reasonable amounts of personal clothing and possessions for their use while in the facility. The personal property shall be kept in a secure location which is convenient to the resident. (II)

b. Residents shall be advised, prior to or at the time of admission, of the kinds and amounts of clothing and possessions permitted for personal use, and whether the facility will accept responsibility for maintaining these items, e.g., cleaning and laundry. (II)

c. Any personal clothing or possession retained by the facility for the resident shall be identified and recorded on admission and the record placed on the resident's chart. The facility shall be responsible for secure storage of items. They shall be returned to the resident promptly upon request or upon discharge from the facility. (II)

65.25(16) *Sharing rooms.* Residents, including spouses staying in the same facility, shall be permitted to share a room, if available, if requested by both parties, unless reasons to the contrary are in the IPP. Reasons for denial shall be documented in the resident's record. (II)

65.25(17) *Choice of physician and pharmacy.* Each resident shall be permitted free choice of a physician and a pharmacy. The facility may require the pharmacy selected to use a drug distribution system compatible with the system currently used by the facility. (II)

This rule is intended to implement Iowa Code section 135C.14 and Iowa Code chapter 235E.

[**ARC 1205C**, IAB 12/11/13, effective 1/15/14; **ARC 1204C**, IAB 12/11/13, effective 1/15/14]

481—65.26(135C) Incompetent residents. Each facility shall provide that all rights and responsibilities of incompetent residents devolve to the legal guardian when a hearing has been held and the resident is judged incompetent in accordance with state law. (II)

A facility is not absolved from advising incompetent residents of their rights to the extent the resident is able to understand them. The facility shall also advise the legal guardian, if any, and acquire a statement indicating an understanding of resident's rights. (II)

This rule is intended to implement Iowa Code sections 135C.14(8) and 135C.24.

481—65.27(135C) County care facilities. In addition to these rules, county care facilities licensed as intermediate care facilities for persons with mental illness must also comply with department of human services rules 441—Chapter 37. Violation of any standard established by the department of human services is a Class II violation pursuant to 481—56.2(135C).

This rule is intended to implement Iowa Code section 227.4.

481—65.28(135C) Violations. Classification of violations is I, II and III, determined by the division using the provisions in 481—Chapter 56, "Fining and Citations," to enforce a fine to cite a facility.

481—65.29(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.

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 *"a"* through *"j"* of this rule. (I, II, III)

65.29(1) 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.

65.29(2) Approval of the state fire marshal shall be obtained before approval of the department will be considered.

65.29(3) 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 61. (I, II, III)

481—65.30(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. A facility which chooses to provide respite care services must meet the following requirements related to respite care services and must be licensed as a health care facility.

65.30(1) A facility which chooses to provide respite care services is not required to obtain a separate license or pay a license fee.

65.30(2) Rules regarding involuntary discharge or transfer rights do not apply to residents who are being cared for under a respite care contract.

65.30(3) The facility shall have a contract with each resident in the facility. When the resident is there for respite care services, the contract shall specify the time period during which the resident 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 specifically state the resident may be involuntarily discharged while being considered as a respite care resident. The contract shall meet other requirements for contracts between a health care facility and resident, except the requirements concerning the holding and charging for a bed when a resident is hospitalized or leaves the facility temporarily for recreational or therapeutic reasons.

65.30(4) Respite care services shall not be provided by a facility to persons requiring a level of care which is higher than the level of care the facility is licensed to provide.

These rules are intended to implement Iowa Code sections 135C.2(6), 135C.4, 135C.6(2), 135C.6(3), 135C.7, 135C.8, 135C.14, 135C.16(2), 135C.23, 135C.24, 135C.25, 135C.31, and 227.4.

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CHAPTER 66
BOARDING HOMES

481—66.1(83GA,SF484) Definitions.

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

"Affiliated person or entity" means an individual operating as a sole proprietorship who is related within the third degree of consanguinity to the boarding home owner or lessee; or a business entity with common ownership or with 25 percent or more ownership by the boarding home owner or lessee.

"Assistance" means aid or help.

"Boarding home" means a premises used by its owner or lessee for the purpose of letting rooms for rental to three or more persons not related within the third degree of consanguinity to the owner or lessee where supervision or assistance with activities of daily living is provided to such persons. A boarding home does not include a facility, home, or program otherwise subject to licensure or regulation by the department of human services, the department of inspections and appeals, or the department of public health.

"Commencing operations" means the date on which a premises becomes a boarding home by renting to a third individual who meets the requirements pursuant to the definition of "boarding home."

"Department" means the department of inspections and appeals.

"Director" means the director of the department of inspections and appeals.

"Known" means information that an owner, a lessee, or a manager possesses without seeking additional information from tenants.

"Lessee" means a person who leases the boarding home from its owner.

"Multidisciplinary team" means a team consisting of members of various departments as is appropriate for an investigation. The team may include employees of the department of inspections and appeals, the department of human services, the state fire marshal and the division of criminal investigation of the department of public safety, the department of justice, or other local, state, and federal agencies.

"Premises" means a room and the structure of which it is a part and facilities and appurtenances to it and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant.

"Preponderance of the evidence" means that the evidence, considered and compared with the evidence opposed to it, produces the belief in a reasonable mind that the allegations are more likely true than not true. A "preponderance of the evidence" standard does not require that the investigator personally witnessed the alleged violation.

"Probable cause" means a reasonable suspicion to believe that a boarding home is in violation of 2009 Iowa Acts, Senate File 484, sections 3 to 6 [Iowa Code chapter 135O], licensing or other regulatory requirements of the department of human services, department of inspections and appeals, or department of public health; or that dependent adult abuse of any individual living in the boarding home has occurred or is occurring.

"Responsible party" means the individual designated on the registration of a boarding home as the department's primary contact.

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

"Supervision" means oversight necessary to prevent accidents or ensure the health, safety, and welfare of the tenant.

"Third degree of consanguinity" means the following relatives of the owner or lessee: spouse, children, parents, siblings or half-siblings, grandchildren, grandparents, uncles, aunts, nephews, nieces, great-grandparents, and great-grandchildren.

[**ARC 8243B**, IAB 10/21/09, effective 1/1/10]

481—66.2(83GA,SF484) Registration of boarding homes.

66.2(1) A boarding home shall file a statement of registration with the department.

a. Boarding homes in operation on January 1, 2010, or after shall register with the department within 60 days of commencing operations.

b. Boarding homes in operation prior to January 1, 2010, shall register with the department no later than March 1, 2010.

66.2(2) The statement of registration may be submitted electronically via an Internet-based system; by mail to the Department of Inspections and Appeals, Health Facilities Division, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by fax to (515)242-5022.

66.2(3) The registrant shall include, at a minimum, the following information on the statement of registration:

a. Name(s) of the owner, lessee, and manager, as applicable;

b. Number of rooms available for rent and maximum number of tenants for the entire boarding home;

c. Location of the boarding home, including street address, city, and ZIP code;

d. Contact information for the owner, lessee, and manager, including telephone number, mailing address, and E-mail address;

e. Occupant loads as calculated in accordance with the building and fire codes as adopted by the applicable jurisdictions;

f. Whether the building is equipped with a fire sprinkler system;

g. Whether the building is equipped with a centralized kitchen in which meals are prepared; and

h. Name of the responsible party. The department will send all notices regarding the boarding home to the responsible party.

66.2(4) Failure to file a statement of registration in a timely manner may result in a penalty of no more than $500.

66.2(5) The boarding home shall notify the department of any changes to the information on the initial statement of registration within 30 days of when the change occurs, including cessation of operation. Changes shall be submitted in the manner described in subrule 66.2(2).

[**ARC 8243B**, IAB 10/21/09, effective 1/1/10]

481—66.3(83GA,SF484) Occupancy reports. See rule 481—66.1(83GA,SF484) for the definition of "known."

66.3(1) Each boarding home shall file an occupancy report annually with the department.

a. For new boarding home registrations, an occupancy report shall be filed along with the initial statement of registration. The occupancy report that accompanies the initial statement of registration shall provide information as of the last day of the preceding month.

b. After the initial registration, registrants shall submit a completed occupancy report by January 31 of each year with information current as of December 31 of the preceding year.

66.3(2) The occupancy report may be submitted electronically via an Internet-based system; by mail to the Department of Inspections and Appeals, Health Facilities Division, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by fax to (515)242-5022.

66.3(3) The owner or lessee shall include, at a minimum, the following information on the occupancy report. If the owner or lessee is unable to answer the question because the owner or lessee does not have such information, the owner or lessee shall indicate such on the report.

a. Current number of rooms occupied;

b. Current number of tenants residing in the boarding home;

c. If applicable, date of last fire inspection and any deficiencies noted and how such deficiencies have been corrected;

d. If known, the number of tenants receiving Medicaid;

e. If known, the number of tenants receiving food assistance benefits (EBT cards);

f. If known, the number of tenants receiving other types of state assistance and the types of state assistance received;

g. Types of services provided or arranged by the owner, lessee, manager or an affiliated person or entity; frequency of services by type; and the name and contact information of the person or entity providing or arranging such services;

h. Any assistance or supervision provided to tenants by the owner, lessee or manager;

i. Method of rent payments, such as cash, check, or state assistance; and

j. If known, the number of tenants with a power of attorney, guardian or conservator.

[**ARC 8243B**, IAB 10/21/09, effective 1/1/10]

481—66.4(83GA,SF484) Complaints.

66.4(1) *Complaints.*

a. The process for filing a complaint is as follows:

(1) Any person with a concern regarding the operation of a boarding home may file a complaint with the Department of Inspections and Appeals, Complaint/Incident Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083, or by use of the complaint hotline, telephone 1-877-686-0027. The Web site address is https://dia-hfd.iowa.gov/DIA_HFD/Home.do.

(2) When the nature of the complaint is outside the department's authority, the department shall forward the complaint to the appropriate investigatory entity.

(3) If other state agencies receive a complaint that relates to boarding homes, the agencies shall forward the complaint to the department.

b. The department shall act on anonymous complaints unless the department determines that the complaint is intended to harass the boarding home or is without a reasonable basis. If the department, upon preliminary review, determines that the complaint is intended to harass or is without a reasonable basis, the department may dismiss the complaint.

66.4(2) *Content of complaint reports.* The complaint shall include as much of the following information as possible: the complainant's name, address and telephone number; the complainant's relationship to the boarding home and tenant; and the reason for the complaint. The complainant's name shall be confidential information and shall not be released by the department.

66.4(3) *Time frames for investigation of complaints.* Upon receipt of a complaint made in accordance with this rule, the department shall make a preliminary review of the complaint to determine if probable cause exists to investigate the complaint. If probable cause exists, an investigation of the boarding home shall be initiated, as provided in rule 481—66.5(83GA,SF484), within 45 working days. If there is the likelihood of immediate danger, the department shall initiate an investigation of the boarding home within 2 working days of receipt of the complaint. If there is an allegation of harm, the department shall initiate an investigation of the boarding home within 20 working days of receipt of the complaint.

66.4(4) *Submission of all complaints to core multidisciplinary team.* A copy of all complaints and the department's initial determination whether to investigate the complaint shall be sent to the core multidisciplinary agencies: the department of human services, the state fire marshal of the department of public safety, and the department of justice. If the department has determined not to initiate an investigation, the members of the core multidisciplinary team may recommend the initiation of, and the department shall initiate, an investigation.

66.4(5) *Standard for determining whether a complaint is substantiated.* The department shall apply a preponderance of the evidence standard in determining whether a complaint is substantiated.

66.4(6) *Notification of the boarding home or alleged boarding home of results of investigation.* The department shall notify the boarding home or alleged boarding home, in writing, of the final report of the complaint investigation.

66.4(7) *Notification of the complainant of results of investigation.* The complainant, if known, shall be notified of the final findings of a complaint investigation. The complainant, if known, shall also be notified if the department determines not to investigate a complaint and shall receive an explanation of the department's decision.

[**ARC 8243B**, IAB 10/21/09, effective 1/1/10]

481—66.5(83GA,SF484) Investigations.

66.5(1) *Initiation of investigations.* Investigations may be initiated because of a complaint or other information received by the department or upon referral from other agencies. If the department determines there is probable cause to believe that a boarding home is an unregistered boarding home or that a registered boarding home is not in compliance with state, federal or local statutes or rules, an investigation shall be initiated.

66.5(2) *Evaluation of allegations and formation of initial multidisciplinary team.* If an investigation is initiated, the department shall evaluate the allegations to determine which local, state, and federal agencies to include in the initial multidisciplinary team. The department shall notify the agencies of the investigation and the allegations associated with the investigation. The department shall be the lead agency for the investigation unless the multidisciplinary team determines otherwise.

66.5(3) *Addition of other agencies.* The lead agency for the investigation may add other local, state, and federal agencies to the multidisciplinary team as is determined necessary. As a component of the coordinated interagency approach, all members of the multidisciplinary team shall share investigative findings.

66.5(4) *Final findings.* Each agency shall prepare final findings regarding the agency's investigation and submit these findings to the lead agency. The lead agency shall then prepare a consolidated final findings report, which shall be maintained by the department pursuant to the state's document retention policy.

66.5(5) *Post-investigation actions.* The agencies on the multidisciplinary team shall meet to determine the action to be taken as a result of the investigation. Each agency on the multidisciplinary team shall maintain the agency's individual report pursuant to the state's document retention policy. Investigative findings that are confidential under other state, federal, or local requirements shall not be included in the final report.

66.5(6) *Notification of law enforcement.* If the multidisciplinary team believes a criminal violation has occurred or is occurring, the lead agency shall notify the appropriate law enforcement entities.

[**ARC 8243B**, IAB 10/21/09, effective 1/1/10]

481—66.6(83GA,SF484) Penalties. The director shall consider the following when determining whether to assess a penalty for violation of 2009 Iowa Acts, Senate File 484, sections 3 to 6 [Iowa Code chapter 135O], or rules adopted pursuant to 2009 Iowa Acts, Senate File 484, sections 3 to 6 [Iowa Code chapter 135O], and when determining the amount of the penalty:

1. The duration of the noncompliance;
2. The nature of the noncompliance;
3. The response of the owner or lessee upon notification of noncompliance;
4. The number of tenants affected; and
5. The impact to the tenants.

[**ARC 8243B**, IAB 10/21/09, effective 1/1/10]

481—66.7(83GA,SF484) Public and confidential information.

66.7(1) *Public disclosure.* The following records are open and available for inspection:

a. Registration forms and accompanying materials;

b. Final findings of investigations, unless otherwise confidential by law, such as investigative findings of the division of criminal investigation of the department of public safety or dependent adult abuse investigations; and

c. Official notices of penalties.

66.7(2) *Confidential information.* Confidential information includes the following:

a. Information that does not comprise a final finding resulting from a complaint investigation or other investigation of the multidisciplinary team and its individual members;

b. Names of all complainants;

c. Names of tenants of a boarding home, identifying personal or medical information, copies of documentation appointing a legal representative, and the address of anyone other than an owner or lessee; and

d. Social security or employer identification numbers (EIN).

66.7(3) *Redaction of confidential information.* If a record normally open for inspection contains confidential information, the confidential information shall be redacted prior to an agency's providing the record for inspection.

66.7(4) *Searchable database of all registered boarding homes.* The department shall maintain a searchable database of all registered boarding homes on the health facilities division's Web site at https://dia-hfd.iowa.gov/DIA_HFD/Home.do.

[**ARC 8243B**, IAB 10/21/09, effective 1/1/10]

These rules are intended to implement 2009 Iowa Acts, Senate File 484.

[Filed ARC 8243B (Notice ARC 8047B, IAB 8/26/09), IAB 10/21/09, effective 1/1/10]

CHAPTER 67
GENERAL PROVISIONS FOR ELDER GROUP HOMES, ASSISTED LIVING PROGRAMS, AND ADULT DAY SERVICES

481—67.1(231B,231C,231D) Definitions. The following definitions apply to this chapter and to 481—Chapters 68, 69, and 70.

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

"Ambulatory" or *"ambulation"* means physically and cognitively able to walk without aid of another person.

"Applicable requirements" means Iowa Code chapters 135C, 231B, 231C, 231D, 235B, 235E, and 562A, this chapter, and 481—Chapters 68, 69, and 70, as applicable, and includes any other applicable administrative rules and provisions of the Iowa Code.

"Applicant or certificate holder" means the owner and operator of a program. If a program is operated under an operating agreement, both the owner and the operator are the applicant or certificate holder. If a program is leased, the lessee is the applicant or certificate holder.

"Assignment" means the distribution of work for which each staff member, regardless of certification or licensure status, is responsible during a given work period and includes a nurse directing an individual to do something the individual is already authorized to do.

"Assistance" means aid to a tenant who self-directs or participates in a task or activity or who retains the mental or physical ability, or both, to participate in a task or activity. Cueing of the tenant regarding a particular task or activity shall be construed to mean the tenant has participated in the task or activity.

"Blueprint" means copies of all completed drawings, schedules, and specifications that have been certified, sealed, and signed by an Iowa-licensed architect or Iowa-licensed engineer of record. The department may allow electronic transfer of blueprints pursuant to policy.

"Certified staff" means certified nursing assistants (CNAs) and certified medication assistants (CMAs) employed by the program.

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

"Department" means the department of inspections and appeals.

"Director" means the director of the department of inspections and appeals.

"Direct supervision" means the provision of guidance and oversight of a delegated nursing task through the physical presence of the licensed nurse to observe and direct certified and noncertified staff.

"Elope" means that a tenant who has impaired decision-making ability leaves the program without the knowledge or authorization of staff.

"Global Deterioration Scale" or *"GDS"* means the seven-stage scale for assessment of primary degenerative dementia developed by Dr. Barry Reisberg.

"Health care professional" means a physician, physician assistant, registered nurse or advanced registered nurse practitioner licensed in Iowa by the respective licensing board.

"Health-related care" means services provided by a registered nurse or a licensed practical nurse, on a part-time or intermittent basis, and services provided by other licensed health care professionals, on a part-time or intermittent basis. "Health-related care" includes nurse-delegated assistance.

"Human service professional" means an individual with a bachelor's degree in a human service field including, but not limited to: human services, gerontology, social work, sociology, psychology, or family science. Two years of experience in a human service field may be substituted for up to two years of the required education. For example, an individual with an associate's degree in a human service field and two years of experience in a human service field is a human service professional.

"Impaired decision-making ability" means a lack of capacity to make safe and prudent decisions regarding one's own routine safety as determined by the program manager or nurse or means having a GDS score of four or above.

"Independent reviewer" means an attorney licensed in the state of Iowa who is not currently and has not been employed by the department in the past eight years, or has not appeared in front of the department on behalf of a health care facility in the past eight years. Preference shall be given to an attorney with background knowledge, experience or training in long-term care.

"Indirect supervision" means the provision of guidance and oversight of a delegated nursing task through means other than direct supervision, including written and verbal communication.

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

"Medication setup" means assistance with various steps of medication administration to support a tenant's autonomy, which may include but is not limited to routine prompting, cueing and reminding, opening containers or packaging at the direction of the tenant, reading instructions or other label information, or transferring medications from the original containers into suitable medication dispensing containers, reminder containers, or medication cups.

"Modification" means any addition to or change in physical dimensions or structure, except as incidental to the customary maintenance of the physical structure of the program's facility.

"Monitoring" means an on-site evaluation of a program, a complaint investigation, or a program-reported incident investigation performed by the department to determine compliance with applicable requirements. A monitor who performs a monitoring for the department shall be a registered nurse, human service professional, or another person with program-related expertise.

"Noncertified staff" means unlicensed and uncertified personnel employed by the program.

"Nurse delegation" means the action of a registered nurse, advanced registered nurse practitioner, or licensed practical nurse to direct competent certified and noncertified staff to perform selected nursing tasks in selected situations. The decision of a nurse to delegate is based on the delegation process, including assessment, planning, implementation, supervision, and evaluation of the tenant, nursing tasks, personnel, and the situation. The nurse, as a licensed professional, retains accountability for the delegation process and the decision to delegate. Licensed practical nurses may delegate within the scope of their license with the supervision of a registered nurse.

"Occupancy agreement" or *"contractual agreement"* means a written contract entered into between a program and a tenant that clearly describes the rights and responsibilities of the program and the tenant and other information required by applicable requirements. An occupancy agreement may include a separate signed lease and signed service agreement.

"Part-time or intermittent care" means licensed nursing services and professional therapies that are provided no more than 5 days per week; or licensed nursing services and professional therapies that are provided 6 or 7 days per week for a temporary period of time with a predictable end within 21 days; or licensed nursing services and professional therapies that do not exceed 28 hours per week or, for adult day services, 4 hours per day and are provided in combination with nurse-delegated assistance with medications or activities of daily living.

"Personal care" means assistance with the essential activities of daily living which may include but are not limited to transferring, bathing, personal hygiene, dressing, and grooming that are essential to the health and welfare of a tenant.

"Physician extender" means nurse practitioners, clinical nurse specialists, and physician assistants.

"Preponderance of the evidence" means that the evidence, considered and compared with the evidence opposed to it, produces the belief in a reasonable mind that the allegations are more likely true than not true.

"Program" means one or more of the following, as applicable: an elder group home as defined in Iowa Code section 231B.1 and 481—Chapter 68, an assisted living program as defined in Iowa Code section 231C.1 and 481—Chapter 69, or adult day services as defined in Iowa Code section 231D.1 and 481—Chapter 70.

"Program staff" means all employees of the program, regardless of certification or licensure status.

"Qualified professional" means a facility plant engineer familiar with the type of program being provided, or a licensed plumbing, heating, cooling, or electrical contractor who furnishes regular service to such equipment.

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

"Regulatory insufficiency" means a violation of an applicable requirement.

"Remodeling" means a modification of any part of an existing building, an addition of a new wing or floor to an existing building, or a conversion of an existing building.

"Routine" means more often than not or on a regular customary basis.

"Self-administration" means a tenant's taking personal responsibility for all phases of medication except for any component assigned to the program under medication setup, and may include the tenant's use of an automatic pill dispenser.

"Service plan" means the document that defines all services necessary to meet the needs and preferences of a tenant, whether or not the services are provided by the program or other service providers.

"Significant change" means a major decline or improvement in the tenant's status which does not normally resolve itself without further interventions by staff or by implementing standard disease-related clinical interventions that have an impact on the tenant's mental, physical, or functional health status.

"Substantial compliance" means a level of compliance with applicable requirements such that any identified regulatory insufficiency poses no greater risk to tenant health or safety than the potential for causing minimal harm.

"Tenant" means an individual who receives services through a program. In the context of adult day services, "tenant" means a participant as defined in 481—Chapter 70.

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

"Tenant's legal representative" means a person appointed by the court to act on behalf of a tenant or a person acting pursuant to a power of attorney. In the context of adult day services, "tenant's legal representative" means a participant's legal representative as defined in 481—Chapter 70.

"Waiver" means action taken by the department that suspends in whole or in part the requirements or provisions of a rule.

[**ARC 8174B**, IAB 9/23/09, effective 1/1/10; **ARC 0961C**, IAB 8/21/13, effective 9/25/13; **ARC 1055C**, IAB 10/2/13, effective 1/1/14]

481—67.2(231B,231C,231D) Program policies and procedures, including those for incident reports. A program's policies and procedures must meet the minimum standards set by applicable requirements. The program shall follow the policies and procedures established by a program. All programs shall have policies and procedures related to the reporting of incidents including allegations of dependent adult abuse.

67.2(1) The program's policies and procedures on incident reports, at a minimum, shall include the following:

a. The program shall have available incident report forms for use by program staff.

b. An incident report shall be in detail and shall be provided on an incident report form.

c. The person in charge at the time of the incident shall prepare and sign the report.

d. The incident report shall include statements from individuals, if any, who witnessed the incident.

e. All accidents or unusual occurrences within the program's building or on the premises that affect tenants shall be reported as incidents.

f. A copy of the completed incident report shall be kept on file on the program's premises for a minimum of three years.

67.2(2) The program's policies and procedures on allegations of dependent adult abuse shall be consistent with Iowa Code chapter 235E and rules adopted pursuant to that chapter and, at a minimum, shall include:

a. Reporting requirements for staff and employees, and

b. Requirements that the victim and alleged abuser be separated.

[**ARC 8174B**, IAB 9/23/09, effective 1/1/10]

481—67.3(231B,231C,231D) Tenant rights. All tenants have the following rights:

67.3(1) To be treated with consideration, respect, and full recognition of personal dignity and autonomy.

67.3(2) To receive care, treatment and services which are adequate and appropriate.

67.3(3) To receive respect and privacy in the tenant's medical care program. Personal and medical records shall be confidential, and the written consent of the tenant shall be obtained for the records' release to any individual, including family members, except as needed in case of the tenant's transfer to a health care facility or as required by law or a third-party payment contract.

67.3(4) To be free from mental and physical abuse.

67.3(5) To receive from the manager and staff of the program a reasonable response to all requests.

67.3(6) To associate and communicate privately and without restriction with persons and groups of the tenant's choice, including the tenant advocate, on the tenant's initiative or on the initiative of the persons or groups at any reasonable hour.

67.3(7) To manage the tenant's own financial affairs unless a tenant's legal representative has been appointed for the purpose of managing the tenant's financial affairs.

67.3(8) To present grievances and recommend changes in program policies and services, personally or through other persons or in combination with others, to the program's staff or person in charge without fear of reprisal, restraint, interference, coercion, or discrimination.

[**ARC 8174B**, IAB 9/23/09, effective 1/1/10]

481—67.4(231B,231C,231D) Program notification to the department. The director or the director's designee shall be notified within 24 hours, or the next business day, by the most expeditious means available:

67.4(1) Of any accident causing major injury. For the purposes of this rule, "major injury" shall also mean a substantial injury.

a. "Major injury" shall be defined as any injury which:

(1) Results in death; or

(2) Requires admission to a higher level of care for treatment, other than for observation; or

(3) Requires consultation with the attending physician, designee of the physician, or physician extender who determines, in writing on a form designated by the department, that an injury is a "major injury" based upon the circumstances of the accident, the previous functional ability of the tenant, and the tenant's prognosis.

b. The following are not reportable accidents:

(1) An ambulatory tenant who falls when neither the program nor its employees have culpability related to the fall, even if the tenant sustains a major injury; or

(2) Spontaneous fractures; or

(3) Hairline fractures.

67.4(2) When damage to the program is caused by a natural or other disaster.

67.4(3) When there is an act that causes major injury to a tenant or when a program has knowledge of a pattern of acts committed by the same tenant on another tenant that results in any physical injury. For the purposes of this subrule, "pattern" means two or more times within a 30-day period.

67.4(4) When a tenant elopes from a program.

67.4(5) When a tenant attempts suicide, regardless of injury.

67.4(6) When a fire occurs in a program and the fire requires the notification of emergency services, requires full or partial evacuation of the program, or causes physical injury to a tenant.

67.4(7) When a defect or failure occurs in the fire sprinkler or fire alarm system for more than 4 hours in a 24-hour period. (This reporting requirement is in addition to the requirement to notify the state fire marshal.)

NOTE: Additional reporting requirements are created by other rules and statutes, including but not limited to Iowa Code chapters 235B and 235E, which require reporting of dependent adult abuse.
[**ARC 8174B**, IAB 9/23/09, effective 1/1/10]

481—67.5(231B,231C,231D) Medications. Each program shall follow its own written medication policy, which shall include the following:

67.5(1) The program shall not prohibit a tenant from self-administering medications.

67.5(2) A tenant shall self-administer medications unless:

a. The tenant or the tenant's legal representative delegates in the occupancy agreement or signed service plan any portion of medication setup to the program.

b. The tenant delegates medication setup to someone other than the program.

c. The program assumes partial control of medication setup at the direction of the tenant. The medication plan shall not be implemented by the program unless the program's registered nurse deems it appropriate under applicable requirements, including those in Iowa Code section 231C.16A and subrule 67.9(4). The program's registered nurse must agree to the medication plan.

67.5(3) A tenant shall keep medications in the tenant's possession unless the tenant or the tenant's legal representative, if applicable, delegates in the occupancy agreement or signed service plan partial or complete control of medications to the program. The service plan shall include the tenant's choice related to storage.

67.5(4) When a tenant has delegated medication administration to the program, the program shall maintain a list of the tenant's medications. If the tenant self-administers medications, the tenant may choose to maintain a list of medications in the tenant's apartment or to disclose a current list of medications to the program for the purpose of emergency response. If the tenant discloses a medication list to the program in case of an emergency, the tenant remains responsible for the accuracy of the list.

67.5(5) When medication setup is delegated to the program by the tenant, staff via nurse delegation may transfer medications from the original prescription containers or unit dosing into medication reminder boxes or medication cups.

67.5(6) When medications are administered traditionally by the program:

a. The administration of medications shall be provided by a registered nurse, licensed practical nurse or advanced registered nurse practitioner registered in Iowa or by certified and noncertified staff in accordance with subrule 67.9(4) or a physician assistant (PA) in accordance with 645—Chapter 327. Injectable medications shall be administered as permitted by Iowa law by a registered nurse, licensed practical nurse, advanced registered nurse practitioner, physician, pharmacist, or physician assistant (PA).

b. Medications shall be kept in a locked place or container that is not accessible to persons other than employees responsible for the administration or storage of such medications.

c. The program shall maintain a list of each tenant's medications and document the medications administered.

67.5(7) Narcotics protocol shall be determined by the program's registered nurse.
[**ARC 8174B**, IAB 9/23/09, effective 1/1/10; **ARC 0961C**, IAB 8/21/13, effective 9/25/13; **ARC 1050C**, IAB 10/2/13, effective 11/6/13]

481—67.6(231B,231C,231D) Another business or activity located in a program.

67.6(1) A business or activity serving persons other than tenants of a program is allowed in a designated part of the physical structure in which the program is located if the other business or activity meets the requirements of applicable state and federal codes, administrative rules, and federal regulations.

67.6(2) A business or activity conducted in the designated part of the physical structure in which the program is located shall not interfere with the use of the program by tenants or with services provided to tenants or disturb tenants.

67.6(3) A business or activity conducted in the designated part of the physical structure in which the program is located shall not reduce access, space, services, or staff available to tenants or necessary to meet the needs of tenants.
[**ARC 8174B**, IAB 9/23/09, effective 1/1/10]

481—67.7(231B,231C,231D) Waiver of criteria for retention of a tenant in the program.

67.7(1) *Time-limited waiver.* Upon receipt of a program's request for waiver of the criteria for retention of a tenant, the department may grant a waiver of the criteria under applicable requirements for a time-limited basis. Absent extenuating circumstances, a waiver of the criteria for retention of a tenant is limited to a period of six months or less.

67.7(2) *Waiver petition procedures.* The following procedures shall be used to request and to receive approval of a waiver from criteria for the retention of a tenant:

a. A program shall submit the waiver request on a form and in a manner designated by the department as soon as it becomes apparent that a tenant exceeds retention criteria pursuant to an evaluation by a health care or human service professional.

b. The department shall respond in writing to a waiver request within 15 working days of receipt of all required documentation. In consultation with the program, the department may take an additional 15 working days to report its determination regarding the waiver request.

c. The program shall provide to the department within 5 working days written notification of any changes in the condition of the tenant as described in the approved waiver request.

67.7(3) *Factors for consideration for waiver of criteria for retention of a tenant.* In addition to the criteria established in Iowa Code subsection 17A.9A(2), the following factors may be demonstrative in determining whether the criteria for issuance of a waiver have been met.

a. It is the informed choice of the tenant or the tenant's legal representative, if applicable, to remain in the program;

b. The program is able to provide the staff necessary to meet the tenant's service needs in addition to the service needs of the other tenants;

c. The department shall only issue a waiver if the waiver will not jeopardize the health, safety, security or welfare of the tenant, program staff, or other tenants; and

d. The tenant has been diagnosed with a terminal illness and has been admitted to hospice, and the tenant exceeds the criteria for retention and admission for a temporary period of less than six months. A terminal diagnosis means the tenant is within six months of the end of life.

67.7(4) *Conditional waiver.* A conditional waiver may be granted contingent upon the department's receipt of additional information or performance of monitoring.

a. If a waiver has been in effect for six months, a monitoring shall be conducted to determine whether the tenant meets the criteria to continue on a waiver.

b. The department may seek additional information during the period to determine if a waiver should be granted.
[**ARC 8174B**, IAB 9/23/09, effective 1/1/10]

481—67.8(231B,231C,231D) All other waiver requests. Waiver requests relating to topics other than retention of a tenant in a program shall be filed in accordance with 481—Chapter 6.
[**ARC 8174B**, IAB 9/23/09, effective 1/1/10]

481—67.9(231B,231C,231D) Staffing.

67.9(1) *Number of staff.* A sufficient number of trained staff shall be available at all times to fully meet tenants' identified needs.

67.9(2) *Emergency procedures.* All program staff shall be able to implement the accident, fire safety, and emergency procedures.

67.9(3) *Training documentation.* The program shall have training records and staffing schedules on file and shall maintain documentation of training received by program staff, including training of certified and noncertified staff on nurse-delegated procedures.

67.9(4) *Nurse delegation procedures.* The program's registered nurse shall ensure certified and noncertified staff are competent to meet the individual needs of tenants. Nurse delegation shall, at a minimum, include the following:

a. The program's newly hired registered nurse shall within 60 days of beginning employment as the program's registered nurse document a review to ensure that staff are sufficiently trained and competent in all tasks that are assigned or delegated.

b. Within 30 days of beginning employment, all program staff shall receive training by the program's registered nurse(s).

c. Training for noncertified staff shall include, at a minimum, the provision of activities of daily living and instrumental activities of daily living.

d. Certified and noncertified staff shall receive training regarding service plan tasks (e.g., wound care, pain management, rehabilitation needs and hospice care) in accordance with medical or nursing directives and the acuity of the tenants' health, cognitive or functional status.

e. The program's registered nurse(s) shall provide direct or indirect supervision of all certified and noncertified staff as necessary in the professional judgment of the program's registered nurse and in accordance with the needs of the tenants and certified and noncertified staff.

f. Services shall be provided to tenants in accordance with the training provided.

g. The program shall have in place a system by which certified or noncertified staff communicate in writing occurrences that differ from the tenant's normal health, functional and cognitive status. The program's registered nurse or designee shall train certified and noncertified staff on reporting to the program's registered nurse or designee and documenting occurrences that differ from the tenant's normal health, functional and cognitive status. The written communication required by this paragraph shall be retained by the program for a period of not less than three years, and shall be accessible to the department upon request.

h. In the absence of the program's registered nurse due to vacation or other temporary circumstances, the nurse assuming the duties of the program's registered nurse shall have access to staff training in relation to tenant needs.

67.9(5) *Prohibited services.* A program staff member shall not be designated as attorney-in-fact, guardian, conservator, or representative payee for a tenant unless the program staff member is related to the tenant by blood, marriage, or adoption.

[**ARC 8174B**, IAB 9/23/09, effective 1/1/10; **ARC 0961C**, IAB 8/21/13, effective 9/25/13; **ARC 0963C**, IAB 8/21/13, effective 9/25/13]

481—67.10(17A,231B,231C,231D) Monitoring.

67.10(1) *Frequency of monitoring.* The department shall monitor a certified program at least once during the program's certification period.

67.10(2) *Accessibility of records and program areas.* All records and areas of the program deemed necessary to determine compliance with the applicable requirements shall be accessible to the department for purposes of monitoring.

67.10(3) *Standard for determining whether a regulatory insufficiency exists.* The department shall use a preponderance-of-the-evidence standard when determining whether a regulatory insufficiency exists. A preponderance-of-the-evidence standard does not require that the monitor shall have personally witnessed the alleged violation.

[**ARC 8174B**, IAB 9/23/09, effective 1/1/10; **ARC 1055C**, IAB 10/2/13, effective 1/1/14]

481—67.11(231B,231C,231D) Complaint and program-reported incident report investigation procedure.

67.11(1) *Complaints.* The process for filing a complaint is as follows:

a. Any person with concerns regarding the operation or service delivery of a program may file a complaint with the Department of Inspections and Appeals, Complaints Unit, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; by use of the complaint hotline, 1-877-686-0027; by facsimile sent to (515)281-7106; or through the Web site address: https://dia-hfd.iowa.gov/DIA_HFD/Home.do.

b. When the nature of the complaint is outside the department's authority, the department shall forward the complaint or refer the complainant, if known, to the appropriate investigatory entity.

c. The complainant shall include as much of the following information as possible in the complaint: the complainant's name, address and telephone number; the complainant's relationship to the program or tenant; and the reason for the complaint. The complainant's name shall be confidential information and shall not be released by the department. The department shall act on anonymous complaints unless the department determines that the complaint is intended to harass the program. If the department, upon preliminary review, determines that the complaint is intended as harassment or is without reasonable basis, the department may dismiss the complaint.

67.11(2) *Program-reported incident reports.* When the program is required pursuant to applicable requirements to report an incident, the program shall make the report to the department via:

a. The Web-based reporting tool accessible from the following Internet site, https://dia-hfd.iowa.gov/DIA_HFD/Home.do, under the "Complaints" tab;

b. Mail by sending the complaint to the Department of Inspections and Appeals, Complaints Unit, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083;

c. The complaint hotline, 1-877-686-0027; or

d. Facsimile sent to (515)281-7106.

67.11(3) *Time frames for investigation of complaints or program-reported incident reports.* Upon receipt of a complaint or program-reported incident report made in accordance with this rule, the department shall conduct a preliminary review of the complaint or report to determine if a potential regulatory insufficiency has occurred. If a potential regulatory insufficiency exists, the department shall institute a monitoring of the program within 20 working days unless there is the possibility of immediate danger, in which case the department shall institute a monitoring of the program within 2 working days of receipt of the complaint or incident report.

67.11(4) *Standard for determining whether a complaint is substantiated.* The department shall apply a preponderance-of-the-evidence standard in determining whether or not a complaint or program-reported incident report is substantiated.

67.11(5) *Notification of program and complainant.* The department shall notify the program and, if known, the complainant of the final report regarding the complaint investigation.

67.11(6) *Notification of accrediting entity.* In addition, for any credible report of alleged improper or inappropriate conduct or conditions within an accredited program, the department shall notify the accrediting entity by the most expeditious means possible of any actions taken by the department with respect to certification enforcement.

67.11(7) *Notification of complainant when complaint not investigated.* The department shall notify the complainant, if known, if the department does not investigate a complaint. The reasons for not investigating the complaint shall be included in the notification.

[**ARC 8174B**, IAB 9/23/09, effective 1/1/10; **ARC 1055C**, IAB 10/2/13, effective 1/1/14]

481—67.12(17A,231B,231D) Adult day services and elder group homes—preliminary report, plan of correction and request for reconsideration.

67.12(1) *Preliminary report.* When a regulatory insufficiency is found, a preliminary report detailing the insufficiency shall be sent by the department to the adult day services program or elder group home within 10 working days. The department may send the report electronically or by certified mail.

67.12(2) *Plan of correction.* Within 10 working days following receipt of the preliminary report, the adult day services program or elder group home shall submit a plan of correction to the department.

a. *Contents of plan.* The plan of correction shall include:

(1) Elements detailing how the program will correct each regulatory insufficiency;

(2) The date by which the regulatory insufficiency will be corrected;

(3) What measures will be taken to ensure the problem does not recur;

(4) How the program plans to monitor performance to ensure compliance; and

(5) Any other required information.

The date by which the regulatory insufficiency will be corrected shall not exceed 30 days following the date of the exit interview without approval of the department.

b. *Review of plan.* The department shall review the plan of correction within 10 working days of receipt. The department may request additional information or suggest revisions to the plan. Once an acceptable plan of correction has been received, the department shall issue a final report within 10 working days and shall determine whether any enforcement action related to the program's continued certification is necessary.

67.12(3) *Request for reconsideration.* Within 10 working days of receiving the preliminary report, the adult day services program or elder group home may submit a request for reconsideration in response to a regulatory insufficiency. Regardless of whether a request for reconsideration is submitted, a plan of correction must be submitted.

a. The request may include additional information to support the request for reconsideration.

b. The department shall review the request for reconsideration and additional information and determine whether to withdraw or modify the regulatory insufficiency.

c. The department shall accept a request for reconsideration if the additional information submitted by the program shows by a preponderance of the evidence that the regulatory insufficiency did not exist at the time of the monitoring.

d. The department's decision regarding a request for reconsideration shall be reflected in the final report.

67.12(4) *Final report.* The final report shall be issued after the plan of correction and request for reconsideration have been considered. The department shall issue a final report regarding a monitoring whether or not any regulatory insufficiency is found. The final report may be delivered to the applicant or certificate holder by electronic or certified mail, or by personal service.

67.12(5) *Appeal of final report.* The final report and the civil penalty, if assessed, may be appealed. A written notice of appeal and request for hearing shall be delivered to the department within 30 days after the mailing or service of notice.

67.12(6) *Hearings.* Hearings shall be conducted by the administrative hearings division of the department pursuant to Iowa Code chapter 17A and 481—Chapter 10.

67.12(7) *Monitoring revisit.* The department may conduct a monitoring revisit to ensure that the plan of correction has been implemented and the regulatory insufficiency has been corrected. The department may issue a regulatory insufficiency for failure to implement the plan of correction. A monitoring revisit by the department shall review the program prospectively from the date of the plan of correction to determine compliance.

[**ARC 8174B**, IAB 9/23/09, effective 1/1/10; **ARC 1055C**, IAB 10/2/13, effective 1/1/14]

481—67.13(17A,231C,85GA,SF394) Assisted living programs—exit interview, final report, plan of correction.

67.13(1) *Exit interview.* The department shall provide an exit interview in person or by telephone at the conclusion of a monitoring, during which the department shall inform the assisted living program's representative of all issues and areas of concern related to insufficient practices. A second exit interview shall be provided if the department identifies additional issues or areas of concern. The program shall have 2 working days from the date of the exit interview to submit additional or rebuttal information to the department.

67.13(2) *Final report.* The department shall issue the final report of a monitoring within 10 working days after completion of the on-site monitoring or the receipt by the department of additional or rebuttal information, by personal service, electronically or by certified mail. The department shall issue a final report regarding a monitoring whether or not any regulatory insufficiency is found.

67.13(3) *Plan of correction.* Within 10 working days following receipt of the final report, the program shall submit a plan of correction to the department.

a. *Contents of plan.* The plan of correction shall include:

(1) Elements detailing how the program will correct each regulatory insufficiency;

(2) The date by which the regulatory insufficiency will be corrected;

(3) What measures will be taken to ensure the problem does not recur;

(4) How the program plans to monitor performance to ensure compliance; and

(5) Any other required information.

The date by which the regulatory insufficiency will be corrected shall not exceed 30 days from receipt of the final report pursuant to subrule 67.13(2) without approval of the department.

b. Review of plan. The department shall review the plan of correction within 10 working days. The department may request additional information or suggest revisions to the plan.

67.13(4) *Monitoring revisit.* The department may conduct a monitoring revisit to ensure that the plan of correction has been implemented and the regulatory insufficiency has been corrected. The department may issue a regulatory insufficiency for failure to implement the plan of correction. A monitoring revisit by the department shall review the program prospectively from the date of the plan of correction to determine compliance.

[**ARC 8174B**, IAB 9/23/09, effective 1/1/10; **ARC 1055C**, IAB 10/2/13, effective 1/1/14]

481—67.14(17A,231C,85GA,SF394) Assisted living programs—response to final report. Within 20 working days after the issuance of the final report and assessment of civil penalty, if any, the assisted living program shall respond in the following manner.

67.14(1) *If not contesting final report.* If the program does not desire to seek an informal conference or contest the final report and civil penalty, if assessed, the program shall remit to the department of inspections and appeals the amount of the civil penalty, if assessed. If an assisted living program has been assessed a civil penalty, the civil penalty shall be reduced by 35 percent if the requirements of subrule 67.17(5) are met.

67.14(2) *Informal conference.* If the assisted living program desires to contest the final report and civil penalty, if assessed, and request an informal conference, the assisted living program shall notify the department of inspections and appeals in writing that it desires to contest the final report and civil penalty and request in writing an informal conference with an independent reviewer.

a. Request for informal conference. The request for an informal conference must be in writing and include the following:

(1) Identification of the regulatory insufficiency(ies) being disputed;

(2) The type of informal conference requested: face-to-face or telephone conference; and

(3) A request for monitor's notes for the regulatory insufficiencies being disputed, if desired.

b. Submission of documentation. The program shall submit the following within 10 working days from the date of the program's written request for an informal conference:

(1) The names of those who will be attending the informal conference, including legal counsel; and

(2) Documentation supporting the assisted living program's position. The assisted living program must highlight or use some other means to identify written information pertinent to the disputed regulatory insufficiency(ies). Supporting documentation that is not submitted with the request for an informal conference will not be considered, except as otherwise permitted by the independent reviewer upon good cause shown. "Good cause" means substantial or adequate grounds for failing to submit documentation in a timely manner. In determining whether the program has shown good cause, the independent reviewer shall consider what circumstances kept the program from submitting the supporting documentation within the required time frame.

c. Face-to-face or telephone conference. A face-to-face or telephone conference, if requested, will be scheduled to occur within 10 working days of the receipt of the written request, all supporting documentation and the plan of correction required by subrule 67.13(3).

(1) Failure to submit supporting documentation will not delay scheduling.

(2) The conference will be scheduled for one hour. The assisted living program will informally present information and explanation concerning the contested regulatory insufficiency(ies). The department will have time to respond to the assisted living program's presentation. Due to the confidential nature of the conference, attendance may be limited.

(3) If additional information is requested by the independent reviewer during the informal conference, the assisted living program will have 2 working days to deliver the additional materials to the independent reviewer.

(4) When extenuating circumstances preclude a face-to-face conference, a telephone conference will be held or the assisted living program may be given one opportunity to reschedule the face-to-face conference.

d. *Results.* The results of the informal conference will generally be sent within 10 working days after the date of the informal conference, or within 10 working days after the receipt of additional information, if requested.

(1) The independent reviewer may affirm or may modify or dismiss the regulatory insufficiency and civil penalty. The independent reviewer shall state in writing the specific reasons for the affirmation, modification or dismissal of the regulatory insufficiency.

(2) The department will issue an amended (changes in factual content) or corrected (changes in typographical/data errors) final report if changes result from the informal conference.

(3) The assisted living program must submit to the department a new plan of correction for the amended or corrected report within 10 calendar days from the date of the letter conveying the results of the conference.

(4) If the informal conference results in dismissal of a regulatory insufficiency for which a civil penalty was assessed, the corresponding civil penalty will be rescinded.

67.14(3) *Procedure after informal conference.* After the conclusion of an informal conference:

a. If the assisted living program does not desire to further contest an affirmed or modified final report, the assisted living program shall, within 5 working days after receipt of the written decision of the independent reviewer, remit to the department of inspections and appeals the civil penalty, if assessed.

b. If the assisted living program does desire to further contest an affirmed or modified final report, the assisted living program shall, within 5 working days after receipt of the written decision of the independent reviewer, notify the department of inspections and appeals in writing that it desires to formally contest the final report.

67.14(4) *Appeals.* Formal hearings shall be conducted by the administrative hearings division pursuant to Iowa Code chapter 17A and 481—Chapter 10.

[**ARC 8174B**, IAB 9/23/09, effective 1/1/10; **ARC 1055C**, IAB 10/2/13, effective 1/1/14]

481—67.15(17A,231B,231C,231D) Denial, suspension or revocation of a certificate.

67.15(1) *Notice and request for hearing.* The denial, suspension or revocation of a certificate shall be effected by delivering to the applicant or certificate holder by restricted certified mail or by personal service a notice setting forth the particular reasons for such actions. A denial, suspension or revocation shall be effective 30 days after certified mailing or personal service of the notice, unless the applicant or certificate holder gives the department written notice requesting a hearing within the 30-day period. If a timely request for hearing is made, the notice shall be deemed suspended pending the outcome of the hearing, unless subrule 67.15(3) or 67.15(4) applies. If an enforcement action has been implemented immediately in accordance with subrule 67.15(3) or 67.15(4), the enforcement action remains in effect regardless of a request for hearing.

67.15(2) *Hearings.* Hearings shall be conducted by the administrative hearings division of the department of inspections and appeals pursuant to Iowa Code chapter 17A and 481—Chapter 10.

67.15(3) *Immediate suspension of a certificate.* When the department finds that an imminent danger to the health or safety of tenants of a program exists which requires action on an emergency basis, the department may direct removal of all tenants from the program and suspend the certificate or require additional remedies to ensure the ongoing safety of the program's tenants prior to a hearing.

67.15(4) *Immediate imposition of enforcement action.* When the department finds that an imminent danger to the health or safety of tenants exists which requires action on an emergency basis, the department may immediately impose a conditional certificate and accompanying conditions upon the program in lieu of immediate suspension of the certificate and removal of the tenants from the program

if the department finds that tenants' health and safety would still be protected. The program may request a hearing, but the immediate enforcement action remains in effect regardless of the request for hearing.
[**ARC 1055C**, IAB 10/2/13, effective 1/1/14]

481—67.16(17A,231B,231C,231D) Conditional certification.

67.16(1) *Conditional certification.* In lieu of denial, suspension or revocation of a certificate, the department may issue a conditional certificate for a period of up to one year. Notwithstanding subrule 67.15(4), a conditional certificate shall be issued only when regulatory insufficiencies pose no greater risk to tenant health or safety than the potential for causing minimal harm.

a. The department shall specify the reasons for the conditional certificate in the notice issuing the conditional certificate.

b. The department may place conditions upon a certificate, such as requiring additional training; restriction of the program from accepting additional tenants for a period of time; or any other action or combination of actions deemed appropriate by the department.

c. Failure by the program to adhere to the plan of correction or conditions placed on the certificate may result in suspension or revocation of the conditional certification and may result in further enforcement action as available under applicable requirements.

d. A program must be in substantial compliance with applicable requirements before the removal of a conditional certificate by the department. Prior to lifting a conditional certificate, the department may conduct a monitoring to verify substantial compliance. Once the program is in substantial compliance with applicable requirements, the department shall lift the conditional certificate.

67.16(2) *Appeal of conditional certificate.* A written request for hearing must be received by the department within 30 days after the mailing or service of notice. The conditional certificate shall not be suspended pending the hearing. Hearings shall be conducted by the administrative hearings division of the department of inspections and appeals pursuant to Iowa Code chapter 17A and 481—Chapter 10.
[**ARC 1055C**, IAB 10/2/13, effective 1/1/14]

481—67.17(17A,231B,231C,231D) Civil penalties.

67.17(1) *When civil penalties may be issued.* Civil penalties may be issued when the director finds that any of the following has occurred:

a. A program that does not comply with applicable requirements and the noncompliance results in imminent danger or a substantial probability of resultant death or physical harm to a tenant may be assessed a civil penalty of not more than $10,000.

b. A program that continues to fail or refuses to comply with applicable requirements within prescribed time frames established by the department or approved by the department in the program's plan of correction and the noncompliance has a direct relationship to the health, safety, or security of tenants may be assessed a civil penalty of not more than $5,000.

c. A program that prevents, interferes with or attempts to impede in any way any duly authorized representative of the department in the lawful enforcement of applicable requirements may be assessed a civil penalty of not more than $1,000.

d. A program that discriminates or retaliates in any way against a tenant, tenant's family, or an employee of the program who has initiated or participated in any proceeding authorized by Iowa Code chapter 231B, 231C or 231D and the corresponding administrative rules may be assessed a civil penalty of not more than $5,000.

67.17(2) *Duplicate civil penalties prohibited.* The department shall not impose duplicate civil penalties on a program for the same set of facts and circumstances.

67.17(3) *Factors in determining the amount of a civil penalty.* The department shall consider the following factors when determining the amount of a civil penalty:

a. The frequency and length of time the regulatory insufficiency occurred (i.e., whether the regulatory insufficiency was an isolated or a widespread occurrence, practice, or condition);

b. The past history of the program as it relates to the nature of the regulatory insufficiency (the department shall not consider more than the current certification period and the immediately previous certification period);

c. The culpability of the program as it relates to the reasons the regulatory insufficiency occurred;

d. The extent of any harm to the tenants or the effect on the health, safety, or security of the tenants which resulted from the regulatory insufficiency;

e. The relationship of the regulatory insufficiency to any other types of regulatory insufficiencies which have occurred in the program;

f. The actions of the program after the occurrence of the regulatory insufficiency, including when corrective measures, if any, were implemented and whether the program notified the director as required;

g. The accuracy and extent of records kept by the program which relate to the regulatory insufficiency, and the availability of such records to the department;

h. The rights of tenants to make informed decisions;

i. Whether the program made a good-faith effort to address a high-risk tenant's specific needs and whether the evidence substantiates this effort.

67.17(4) *Civil penalties due.* The civil penalty shall be paid to the department within 30 days following the program's receipt of the final report and demand letter. The program may appeal in accordance with rule 481—67.12(17A,231B,231D) or 481—67.14(17A,231C,85GA,SF394). If the program appeals, the civil penalty shall be deemed suspended until the appeal is resolved.

67.17(5) *Reduction of civil penalty amount by 35 percent.* If an assisted living program has been assessed a civil penalty, the civil penalty shall be reduced by 35 percent if both of the following requirements are met:

a. The program does not request a formal hearing pursuant to rule 481—67.12(17A,231B,231D) or 481—67.14(17A,231C,85GA,SF394), or withdraws its request for formal hearing within 30 calendar days of the date that the civil penalty was assessed; and

b. The civil penalty is paid and payment is received by the department within 30 calendar days of receipt of the final report.

[**ARC 1055C**, IAB 10/2/13, effective 1/1/14]

481—67.18(17A,231B,231C,231D) Judicial review. Judicial review shall be conducted pursuant to Iowa Code chapter 17A and 481—Chapter 10.

[**ARC 1055C**, IAB 10/2/13, effective 1/1/14]

481—67.19(135C,231B,231C,231D) Criminal, dependent adult abuse, and child abuse record checks.

67.19(1) *Definitions.* The following definitions apply for the purposes of this rule.

"Background check" or *"record check"* means criminal history, child abuse and dependent adult abuse record checks.

"Direct services" means services provided through person-to-person contact. "Direct services" excludes services provided by individuals such as building contractors, repair workers, or others who are in a program for a very limited purpose, who are not in the program on a regular basis, and who do not provide any treatment or services for residents, patients, tenants, or participants of the provider.

"Employed in a program" or *"employment within a program"* means all of the following, if the provider is regulated by the state or receives any federal or state funding:

1. An employee of an assisted living program certified under Iowa Code chapter 231C, if the employee provides direct services to consumers;

2. An employee of an elder group home certified under Iowa Code chapter 231B, if the employee provides direct services to consumers;

3. An employee of an adult day services program certified under Iowa Code chapter 231D, if the employee provides direct services to consumers.

"Employee" means any individual who is paid, either by the program or any other entity (i.e., temporary agency, private duty, Medicare/Medicaid or independent contractors).

"Evaluation" means review by the department of human services to determine whether a founded child abuse, dependent adult abuse or criminal conviction warrants the person's being prohibited from employment in a program.

"Indirect services" means services provided without person-to-person contact such as those provided by administration, dietary, laundry, and maintenance.

"Program," for purposes of this rule, means all of the following, if the provider is regulated by the state or receives any federal or state funding:

1. An assisted living program certified under Iowa Code chapter 231C;
2. An elder group home certified under Iowa Code chapter 231B; and
3. An adult day services program certified under Iowa Code chapter 231D.

67.19(2) *Explanation of "crime."* For purposes of this rule, the term "crime" does not include offenses under Iowa Code chapter 321 classified as simple misdemeanor or equivalent simple misdemeanor offenses from another jurisdiction.

67.19(3) *Requirements for employer prior to employing an individual.* Prior to employment of a person in a program, the program shall request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks of the person in this state.

a. Informing the prospective employee. A program shall ask each person seeking employment by the program, "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime other than a simple misdemeanor offense relating to motor vehicles and laws of the road under Iowa Code chapter 321 or equivalent provisions in this state or any other state?" The person shall also be informed that a background check will be conducted. The person shall indicate, by signature, that the person has been informed that the background check will be conducted.

b. Conducting a background check. The program may access the single contact repository (SING) to perform the required background check. If the SING is used, the program shall submit the person's maiden name, if applicable, with the background check request. If SING is not used, the program must obtain a criminal history check from the department of public safety and a check of the child and dependent adult abuse registries from the department of human services.

c. If a person considered for employment has been convicted of a crime. If a person being considered for employment in a program has been convicted of a crime under a law of any state, the department of public safety shall notify the program that upon the request of the program the department of human services will perform an evaluation to determine whether the crime warrants prohibition of the person's employment in the program.

d. If a person considered for employment has a record of founded child abuse or dependent adult abuse. If a department of human services child or dependent adult abuse record check shows that a person being considered for employment in a program has a record of founded child or dependent adult abuse, the department of human services shall notify the program that upon the request of the program the department of human services will perform an evaluation to determine whether the founded child or dependent adult abuse warrants prohibition of employment in the program.

e. Employment pending evaluation. The program may employ a person for not more than 60 calendar days pending the completion of the evaluation by the department of human services if all of the following apply. The 60-day period begins on the first day of the person's employment.

(1) The person is being considered for employment other than employment involving the operation of a motor vehicle;

(2) The person does not have a record of founded child or dependent adult abuse;

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

(4) The program has requested an evaluation to determine whether the crime warrants prohibition of the person's employment.

67.19(4) *Validity of background check results.* The results of a background check conducted pursuant to this rule shall be valid for a period of 30 calendar days from the date the results of the background check are received by the program.

67.19(5) *Employment prohibition.* A person who has committed a crime or has a record of founded child or dependent adult abuse shall not be employed in a program unless an evaluation has been performed by the department of human services.

67.19(6) *Transfer of an employee to another program owned or operated by the same person.* If an employee transfers from one program to another program owned or operated by the same person, without a lapse in employment, the program is not required to request additional criminal and child and dependent adult abuse record checks of that employee.

67.19(7) *Transfer of ownership of a program.* If the ownership of a program is transferred, at the time of transfer the background check required by this rule shall be performed for each employee for whom there is no documentation that such background check has been performed. The program may continue to employ such employee pending the performance of the background check and any related evaluation.

67.19(8) *Change of employment—person with criminal or abuse record—exception to record check evaluation requirements.* A person with a criminal or abuse record who is or was employed by a certified program and is hired by another certified program shall be subject to the background check.

a. A reevaluation of the latest record check is not required, and the person may commence employment with the other certified program if the following requirements are met:

(1) The department of human services previously performed an evaluation concerning the person's criminal or abuse record and concluded the record did not warrant prohibition of the person's employment;

(2) The latest background check does not indicate a crime was committed or founded abuse record was entered subsequent to the prior evaluation;

(3) The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed;

(4) Any restrictions placed on the person's employment in the previous evaluation by the department of human services and still applicable shall remain applicable in the person's subsequent employment; and

(5) The person subject to the background check has maintained a copy of the previous evaluation and provided it to the subsequent employer, or the previous employer provides the previous evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, a current record check evaluation shall be performed.

b. For purposes of this subrule, a position is "substantially the same or has the same job responsibilities" if the position requires the same certification, licensure, or advanced training. For example, a licensed nurse has substantially the same or the same job responsibilities as a director of nursing; a certified nurse aide does not have substantially the same or the same job responsibilities as a licensed nurse.

c. The subsequent employer must maintain the previous evaluation in the employee's personnel file for verification of the exception to the requirement for a record check evaluation.

d. The subsequent employer may request a reevaluation of the background check and may employ the person while the reevaluation is being performed, even though an exemption under paragraph 67.19(8)*"a"* may be authorized.

67.19(9) *Employee notification of criminal convictions or founded abuse after employment.* If a person employed by an employer that is subject to this rule is convicted of a crime or has a record of founded child or dependent adult abuse entered in the abuse registry after the person's employment application date, the person shall inform the employer of such information within 48 hours of the criminal conviction or entry of the record of founded child or dependent adult abuse.

a. The employer shall act to verify the information within 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.

b. If the information is verified, the program shall follow the requirements of paragraphs 67.19(3)*"c"* and *"d."*

c. The employer may continue to employ the person pending the performance of an evaluation by the department of human services.

d. A person who is required by this subrule to inform the person's employer of a conviction or entry of an abuse record and fails to do so within the required period commits a serious misdemeanor under Iowa Code section 135C.33.

e. The employer may notify the county attorney for the county where the employer is located of any violation or failure by an employee to notify the employer of a criminal conviction or entry of an abuse record within the period required under this subrule.

67.19(10) *Program receipt of credible information that an employee has been convicted of a crime or founded for abuse.* If the program receives credible information, as determined by the program, from someone other than the employee, that the employee has been convicted of a crime or a record of founded child or dependent adult abuse has been entered in the abuse registry after employment, and the employee has not informed the employer of the information within the time required by subrule 67.19(9), the program shall take the following actions:

a. The program shall act to verify credible information within 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.

b. If the information is verified, the program shall follow the requirements of paragraphs 67.19(3)*"c"* and *"d."*

67.19(11) *Proof of background checks for temporary employment agencies and contractors.* Proof of background checks may be kept in the files maintained by temporary employment agencies and contractors. Facilities may require temporary employment agencies and contractors to provide a copy of the result of the background checks. Copies of such results shall be made available to the department upon request.

This rule is intended to implement Iowa Code sections 231B.2(1), 231C.3(1), 231D.2(2), and 135C.33 and 2013 Iowa Acts, Senate File 347.

[**ARC 0963C**, IAB 8/21/13, effective 9/25/13; **ARC 1547C**, IAB 7/23/14, effective 8/27/14]

481—67.20(17A,231C,231D) Emergency removal of tenants. If the department determines that the health or safety of tenants is in jeopardy and the tenants need to be removed from the program, the department shall use the following procedures to ensure a safe and orderly transfer.

67.20(1) The department shall notify the department of human services, the tenant advocate, the appropriate area agency on aging, and other agencies as necessary and appropriate:

a. To alert them to the need to transfer tenants from a program;

b. To request assistance in identifying alternative programs or other appropriate settings; and

c. To contact the tenants and their legal representatives or family members, if applicable, and others as appropriate, including health care professionals.

67.20(2) The department shall notify the program of the immediate need to transfer tenants and of any assistance available, in coordination with the appropriate parties under subrule 67.20(1).

67.20(3) The department, in conjunction with other agencies as necessary and appropriate, shall proceed with the transfer of tenants.

[**ARC 8174B**, IAB 9/23/09, effective 1/1/10; **ARC 1055C**, IAB 10/2/13, effective 1/1/14]

481—67.21(231C) Nursing assistant work credit.

67.21(1) A person who is certified as a nursing assistant, including a medication aide, and who is supervised by a registered nurse may submit information to the department to obtain credit toward

maintaining certification for working in a program. A program may add an employee to the direct care worker registry by calling (515)281-4077 or by registering through the health facilities division Web site at https://dia-hfd.iowa.gov/DIA_HFD/Home.do, under the "Documents" tab.

67.21(2) A program shall complete and submit to the department a direct care worker registry application for each certified nursing assistant who works in the program. A registered nurse employed by the program shall supervise the nursing assistant. The application may be obtained by telephone at (515)281-4077 or via the health facilities division Web site at https://dia-hfd.iowa.gov/DIA_HFD/Home.do, under the "Documents" tab.

67.21(3) A program shall complete and submit to the department a direct care worker registry quarterly employment report whenever a change in the employment of a certified nursing assistant occurs. The report form may be obtained by telephone at (515)281-4077 or via the health facilities division Web site at https://dia-hfd.iowa.gov/DIA_HFD/Home.do, under the "Documents" tab.

[**ARC 8174B**, IAB 9/23/09, effective 1/1/10; **ARC 1055C**, IAB 10/2/13, effective 1/1/14]

481—67.22(231B,231C,231D) Public or confidential information.

67.22(1) *Public information.*

a. Public disclosure of findings. The program shall post a notice stating that copies of the final report resulting from a monitoring are available via the department's Web site at https://dia-hfd.iowa.gov/DIA_HFD/Home.do. The program shall post the notice in a prominent location on the premises of the program. Copies shall also be available upon request from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083; telephone (515)281-6325.

b. Open records. The following records are open records available for inspection:

(1) Certification applications, certification status, and accompanying materials;

(2) Final findings of state monitorings, including a monitoring that results from a complaint or program-reported incident;

(3) Reports from the state fire marshal;

(4) Plans of correction submitted by a program;

(5) Official notices of certification sanctions, including enforcement actions;

(6) Findings of fact, conclusions of law, decisions and orders issued pursuant to rules 481—67.10(17A,231B,231C,231D), 481—67.12(17A,231B,231C,231D), and 481—67.13(17A,231B, 231C,231D);

(7) Waivers, including the department's approval and denial letter and any letter requesting the waiver.

67.22(2) *Confidential information.* Confidential information includes the following:

a. Information that does not comprise a final report resulting from a monitoring, complaint investigation, or program-reported incident investigation. Information which does not comprise a final report may be made public in a legal proceeding concerning a denial, suspension or revocation of certification;

b. Names of all complainants;

c. Names of tenants of a program, identifying medical information, copies of documentation appointing a legal representative, and the address of anyone other than an owner or operator; and

d. Social security numbers or employer identification numbers (EIN).

67.22(3) *Redaction of confidential information.* If a record normally open for inspection contains confidential information, the confidential information shall be redacted before the records are provided for inspection.

[**ARC 8174B**, IAB 9/23/09, effective 1/1/10; **ARC 1055C**, IAB 10/2/13, effective 1/1/14]

481—67.23(231B,231C,231D) Training related to Alzheimer's disease and similar forms of irreversible dementia. Rescinded **ARC 1547C**, IAB 7/23/14, effective 8/27/14.

These rules are intended to implement Iowa Code chapters 231B, 231C as amended by 2013 Iowa Acts, Senate File 394, and 231D.

[Filed ARC 8174B (Notice ARC 7877B, IAB 6/17/09), IAB 9/23/09, effective 1/1/10]

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CHAPTER 68
ELDER GROUP HOMES

481—68.1(231B) Definitions. In addition to the definitions in 481—Chapter 67 and Iowa Code chapter 231B, the following definitions apply.

"Applicable requirements" means Iowa Code chapter 231B, this chapter and 481—Chapter 67 and includes any other applicable administrative rules and provisions of the Iowa Code.

"Committee" means a resident advocate committee established by 321—Chapter 9.

"Elder" means a person 60 years of age or older.

"Elder group home" or *"EGH"* means a single-family residence that is operated by a person who is providing room, board, and personal care and may provide health-related services to three through five elders who are not related to the person providing the service within the third degree of consanguinity or affinity and that is staffed by an on-site manager 24 hours per day seven days per week.

"Household occupant" means a tenant and all others who reside in the EGH.

"In the proximate area" means located within a five minutes or less response time.

"Maximal assistance with activities of daily living" means routine total dependence on staff for the performance of a minimum of four activities of daily living for a period that exceeds 21 days.

"Medically unstable" means that a tenant has a condition or conditions:

1. Indicating physiological frailty as determined by the program's staff in consultation with a physician or physician extender;
2. Resulting in two or more significant hospitalizations within a consecutive three-month period for more than observation; and
3. Requiring supervision by a registered nurse more than once a week of the tenant for more than 21 days.

For example, a tenant who has a condition such as congestive heart failure which results in two or more significant hospitalizations during a quarter and which requires that the tenant receive frequent supervision may be considered medically unstable.

"On-site manager" means the person on duty responsible for direct supervision or provision of tenant care. The on-site manager may be any household occupant over 18 years of age, except a tenant, who is qualified to perform the necessary duties.

"Personal care provider" means an individual who, in return for remuneration, assists with the essential activities of daily living which the tenant can perform personally only with difficulty.

"Program" means an elder group home.

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

"Unmanageable verbal abuse" means repeated verbalizations against tenants or staff that persist despite all interventions and that negatively affect the program. "Unmanageable verbal abuse" includes but is not limited to threats, frequent use of profane language, or unwelcome sexually oriented remarks.

"Usable floor space" means open floor space that is not under fixtures, furniture or other barriers and is available for walking or wheelchair use.

[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.2(231B) Program certification and posting requirements.

68.2(1) *Certification requirements.* A program may obtain certification by meeting all applicable requirements. For the purpose of these rules, certification is equivalent to licensure.

68.2(2) *Posting requirements.* A program's current certificate shall be visibly displayed within the designated operation area of the program. In addition, the latest monitoring report, state fire marshal report, and food establishment inspections report issued pursuant to Iowa Code chapter 137F shall be made available to the public by the program upon request.

[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.3(231B) Certification—application process.

68.3(1) The applicant shall complete an application packet obtained from the department. Application materials may be obtained from the health facilities division Web site at https://dia-hfd.iowa.gov/DIA_HFD/Home.do; by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

68.3(2) The applicant shall submit one copy of the completed application and all supporting documentation to the department at the above address at least 90 calendar days prior to the expected date of beginning operation.

68.3(3) The appropriate fee as stated in Iowa Code section 231B.17 shall accompany each application and be payable by check or money order to the Department of Inspections and Appeals. Fees are nonrefundable.

68.3(4) The department shall consider the application when all supporting documents and fees are received.

[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.4(231B) Certification—application content. An application for certification or recertification of an EGH shall include the following:

68.4(1) A list that includes the names, addresses, and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 5 percent equity interest in the program. The program shall notify the department of any changes in the list within ten working days of the change.

68.4(2) A statement affirming that the individuals listed in subrule 68.4(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

68.4(3) A statement disclosing whether any of the individuals listed in subrule 68.4(1) have or have had an ownership interest in an assisted living program, adult day services program, elder group home, home health agency, licensed health care facility as defined in Iowa Code section 135C.1 or licensed hospital as defined in Iowa Code section 135B.1, or a boarding home as defined in 2009 Iowa Acts, Senate File 484, section 3 (to be codified as Iowa Code Supplement section 135O.1), which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

68.4(4) The policy and procedure for evaluation of each tenant. A copy of the evaluation tool or tools to be used to identify the functional, cognitive and health status of each tenant shall be included.

68.4(5) The policy and procedure for service plans.

68.4(6) The policy and procedure for addressing medication needs of tenants.

68.4(7) The policy and procedure for accidents and emergency response.

68.4(8) The policies and procedures for food service, including those relating to staffing, nutrition, menu planning, therapeutic diets, and food preparation, service and storage.

68.4(9) The policy and procedure for transportation.

68.4(10) The policy and procedure for staffing and training.

68.4(11) The policy and procedure for emergencies, including natural disasters. The policy and procedure shall include an evacuation plan and procedures for notifying legal representatives in emergency situations as applicable.

68.4(12) The policy and procedure for managing risk and upholding tenant autonomy when tenant decision making results in poor outcomes for the tenant or others.

68.4(13) The policy and procedure for reporting incidents including dependent adult abuse as required in rule 481—67.2(231B,231C,231D).

68.4(14) The tenant occupancy agreement and all attachments.

68.4(15) If the program contracts for personal care or health-related care services from a certified home health agency, a mental health center or a licensed health care facility, a copy of that entity's current license or certification.

68.4(16) A copy of the state license for the entity that provides food service, whether the entity is the program or an outside entity or a combination of both.

68.4(17) The fee set forth in Iowa Code section 231B.17.

[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.5(231B) Initial certification process.

68.5(1) Upon receipt of all completed documentation, including state fire marshal approval and structural and evacuation review approval, the department shall determine whether or not the proposed program meets applicable requirements.

68.5(2) If, based upon the review of the complete application including all required supporting documents, the department determines the proposed program meets the requirements for certification, a provisional certification shall be issued to the program to begin operation and accept tenants.

68.5(3) Within 180 calendar days following issuance of provisional certification, the department shall conduct a monitoring to determine the program's compliance with applicable requirements.

68.5(4) If a regulatory insufficiency is identified as a result of the monitoring, the process in rule 481—67.10(17A,231B,231C,231D) shall be followed.

68.5(5) The department shall make a final certification decision based on the results of the monitoring and review of an acceptable plan of correction.

68.5(6) The department shall notify the program of a final certification decision within 10 working days following the finalization of the monitoring report or receipt of an acceptable plan of correction, whichever is applicable.

68.5(7) If the decision is to continue certification, the department shall issue a full two-year certification effective from the date of the original provisional certification.

[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.6(231B) Expiration of program certification.

68.6(1) Unless conditionally issued, suspended or revoked, certification of a program shall expire at the end of the time period specified on the certificate.

68.6(2) The department shall send recertification application materials to each program at least 120 calendar days prior to expiration of the program's certification.

[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.7(231B) Recertification process. To obtain recertification, a program shall:

68.7(1) Submit one copy of the completed application, including the information required in rule 481—68.4(231B), associated documentation, and the recertification fee as listed in Iowa Code section 231B.17 to the department at the address stated in subrule 68.3(1) at least 90 calendar days prior to the expiration of the program's certification. The program need not submit policies and procedures that have been previously submitted to the department and remain unchanged. The program shall provide a list of the policies and procedures that have been previously submitted and are not being resubmitted.

68.7(2) Submit additional documentation that each of the following has been inspected and found to be maintained in conformance with the manufacturer's recommendations and nationally recognized standards: heating system, cooling system, water heater, electrical system, plumbing, sewage system, artificial lighting, and ventilation system; and, if located on site, garbage disposal, kitchen appliances, washing machines and dryers, and elevators.

[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.8(231B) Notification of recertification.

68.8(1) The department shall review the application and associated documentation and fees. If the application is incomplete, the department shall contact the program to request the additional information.

After all finalized documentation is received, including state fire marshal approval, the department shall determine the program's compliance with applicable requirements.

68.8(2) The department shall conduct a monitoring of the program between 60 and 90 days prior to expiration of the program's certification.

68.8(3) If a regulatory insufficiency is identified as a result of the monitoring, the process in rule 481—67.10(17A,231B,231C,231D) shall be followed.

68.8(4) If no regulatory insufficiency is identified as a result of the monitoring, the department shall issue a report of the findings with the final recertification decision.

68.8(5) If the decision is to recertify, the department shall issue the program a two-year certification effective from the date of the expiration of the previous certification.

68.8(6) If the decision is to deny recertification, the department shall issue a notice of denial and provide the program the opportunity for a hearing pursuant to rule 481—67.13(17A,231B,231C,231D).

68.8(7) If the department is unable to recertify a program through no fault of the program, the department shall issue to the program a time-limited extension of certification of no longer than one year.

[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.9(231B) Listing of all certified programs. The department shall maintain a list of all certified programs, which is available online at https://dia-hfd.iowa.gov/DIA_HFD/Home.do, under the "Entities Book" tab.

[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.10(231B) Transfer of certification.

68.10(1) Certification, unless conditionally issued, suspended or revoked, may be transferable to a new owner of a program. If the program's certification has been conditionally issued, the new owner must receive approval from the department prior to transfer of the certification.

68.10(2) The new owner is required to notify the department in writing within 30 calendar days prior to the change in ownership. The notice shall include assurance that the new owner meets all applicable requirements for programs.

68.10(3) The department may conduct a monitoring within 90 days following a change in the program's ownership or management corporation to ensure that the program complies with applicable requirements. If a regulatory insufficiency is found, the department shall take any necessary enforcement action authorized by applicable requirements.

[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.11(231B) Cessation of program operation.

68.11(1) If a certified program ceases operation, which includes seeking decertification, at any time prior to expiration of the program's certification, the program shall submit the certificate to the department. The program shall provide, at least 90 days in advance of cessation, which includes seeking decertification, unless there is some type of emergency, written notification to the department and the tenant advocate of the date on which the program will cease operation, which includes seeking decertification.

68.11(2) If a certified program plans to cease operation, which includes seeking decertification, at the time the program's certification expires, the program shall provide written notice of this fact to the department and the tenant advocate at least 90 days prior to expiration of the certification.

68.11(3) At the time a program decides to cease operation, which includes seeking decertification, the program shall submit a plan to the department and make arrangements for the safe and orderly transfer or transition of all tenants within the 90-day period specified by subrule 68.11(2).

68.11(4) The department may conduct a monitoring during the 90-day period to ensure the safety of tenants during the transfer process or transition process.

68.11(5) The department may conduct an on-site visit to verify that the program has ceased operation as a certified program in accordance with the notice provided by the program.

68.11(6) When a program ceases operation, which includes seeking decertification, tenant advocates shall be allowed by the program to privately meet with tenants to provide education and service options.
[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.12(231B) Occupancy agreement.

68.12(1) The occupancy agreement shall be in 12-point type or larger, shall be written in plain language using commonly understood terms and shall be easy for the tenant or the tenant's legal representative to understand.

68.12(2) In addition to the requirements of Iowa Code section 231B.5, the written occupancy agreement shall include, but not be limited to, the following information in the body of the agreement or in the supporting documents and attachments:

a. The telephone number for filing a complaint with the department.

b. The telephone number for the office of the tenant advocate.

c. The telephone number for reporting dependent adult abuse.

d. A copy of the program's statement on tenants' rights.

e. A statement that the program will notify the tenant at least 90 days in advance of any planned program cessation, which includes voluntary decertification, except in cases of emergency.

f. A copy of the program's admission and transfer criteria.

68.12(3) The occupancy agreement shall be reviewed and updated as necessary to reflect any change in services or financial arrangements.

68.12(4) A copy of the occupancy agreement shall be provided to the tenant or the tenant's legal representative, if any, and a copy shall be kept by the program.

68.12(5) A copy of the most current occupancy agreement shall be made available to the general public upon request. The basic marketing material shall include a statement that a copy of the occupancy agreement is available to all persons upon request.
[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.13(231B) Evaluation of tenant.

68.13(1) *Evaluation prior to occupancy.* A program shall evaluate each prospective tenant's functional, cognitive and health status prior to the tenant's signing the occupancy agreement and becoming a household occupant to determine the tenant's eligibility for the program, including whether the services needed are available. The cognitive evaluation shall utilize a scored, objective tool. When the score from the cognitive evaluation indicates moderate cognitive decline and risk, the Global Deterioration Scale shall be used at all subsequent intervals, if applicable. If the tenant subsequently returns to the tenant's mildly cognitively impaired state, the program may discontinue the GDS and revert to a scored cognitive screening tool. The evaluation shall be conducted by a health care professional or human service professional.

68.13(2) *Evaluation within 30 days of occupancy and with significant change.* A program shall evaluate each tenant's functional, cognitive and health status within 30 days of occupancy. A program shall also evaluate each tenant's functional, cognitive and health status as needed with significant change, but not less than annually, to determine the tenant's continued eligibility for the program and to determine any changes to services needed. The evaluation shall be conducted by a health care professional or human service professional. A licensed practical nurse may complete the evaluation via nurse delegation when the tenant has not exhibited a significant change.
[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.14(231B) Criteria for admission and retention of tenants.

68.14(1) *Persons who may not be admitted or retained.* A program shall not knowingly admit or retain a tenant who:

a. Is bed-bound; or

b. Requires routine, one-person assistance with standing, transfer or evacuation; or

c. Is dangerous to self or other tenants or staff, including but not limited to a tenant who:

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

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

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

e. Is under the age of 18; or

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

g. Has unmanageable incontinence on a routine basis despite an individualized toileting program; or

h. Is medically unstable; or

i. Requires maximal assistance with activities of daily living; or

j. Is physically or mentally unable to immediately and without aid of another travel a normal path to safety, including the ascent and descent of stairs from the tenant's bedroom or bathroom.

68.14(2) *Disclosure of additional occupancy and transfer criteria.* A program may have additional occupancy or transfer criteria if the criteria are disclosed in the written occupancy agreement prior to the tenant's occupancy.

68.14(3) *Assistance with transfer from the program.* A program shall provide assistance to a tenant and the tenant's legal representative, if applicable, to ensure a safe and orderly transfer from the program when the tenant exceeds the program's criteria for admission and retention.

[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.15(231B) Involuntary transfer from the program.

68.15(1) *Program initiation of transfer.* If a program initiates the involuntary transfer of a tenant and the action is not the result of a monitoring, including a complaint investigation or program-reported incident investigation, by the department and if the tenant or tenant's legal representative contests the transfer, the following procedures shall apply:

a. The program shall notify the tenant or tenant's legal representative, in accordance with the occupancy agreement, of the need to transfer the tenant and of the reason for the transfer and shall include the contact information for the tenant advocate.

b. The program shall immediately provide to the tenant advocate, by certified mail, a copy of the notification and notify the tenant's treating physician, if any.

c. Pursuant to statute, the tenant advocate shall offer the notified tenant or tenant's legal representative assistance with the program's internal appeal process. The tenant or tenant's legal representative is not required to accept the assistance of the tenant advocate.

d. If, following the internal appeal process, the program upholds the transfer decision, the tenant or tenant's legal representative may utilize other remedies authorized by law to contest the transfer.

68.15(2) *Transfer pursuant to results of monitoring or complaint or program-reported incident investigation by the department.* If one or more tenants are identified as exceeding the admission and retention criteria for tenants and need to be transferred as a result of a monitoring or a complaint or program-reported incident investigation conducted by the department, the following procedures shall apply:

a. *Notification of the program.* Within 20 working days of the monitoring or complaint or program-reported incident investigation, the department shall notify the program, in writing, of the identification of any tenant who exceeds admission and retention criteria.

b. *Notification of others.* Each identified tenant, the tenant's legal representative, if applicable, and other providers of services to the tenant shall be notified of their opportunity to provide responses including: specific input, written comment, information, and documentation directly addressing any agreement or disagreement with the identification. All responses shall be provided to the department within 10 days of receipt of the notice.

c. *Program agreement with the department's finding.* If the program agrees with the department's finding and the program begins involuntary transfer proceedings, the program's internal appeal process in subrule 68.15(1) shall be utilized for appeals.

d. *Program disagreement with the department's finding.* If the program does not agree with the department's finding that the tenant exceeds admission and retention criteria, the program may collect and submit all responses to the department, including those from other interested parties. In the program's response, the program shall identify the tenant, list the known responses from others, and note the program's agreement or disagreement with the responses from others. The program's response shall be submitted to the department within 10 working days of the receipt of the notice. Submission of a response does not eliminate the applicable requirements including submission of a plan of correction under 481—subrule 67.10(5). Other persons may also submit information directly to the department.

(1) Consideration of response. Within 10 working days of receipt of the program's response for each identified tenant, the department shall consider the response and make a final finding regarding the continued retention of a tenant.

(2) Amending the regulatory insufficiency. If the department's determination is to amend the regulatory insufficiency based on the response, the department shall modify the report of findings.

(3) Retaining regulatory insufficiency. If the department retains the regulatory insufficiency, the department shall review the plan of correction in accordance with this chapter and 481—Chapter 67. The department shall notify the program of the opportunity to appeal the report findings as they relate to the admission and retention decision. In addition, the department shall provide to the tenant or the tenant's legal representative the contact information for the tenant advocate. A copy of the final report shall also be sent to the tenant advocate.

(4) Effect of the filing of an appeal. If an appeal is filed, the tenant who exceeds admission and retention criteria shall be allowed to continue living in the EGH until all administrative appeals have been exhausted. Appeals filed that relate to the tenant's exceeding admission and retention criteria shall be heard within 30 days of receipt, and appropriate services to meet the tenant's needs shall be provided during that period of time.

(5) Request for waiver of criteria for retention of a tenant in a program. To allow a tenant to remain in the program, the program may request a waiver of criteria for retention of a tenant pursuant to rule 481—67.7(231B,231C,231D) from the department within 10 working days of the receipt of the report.

[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.16(231B) Tenant documents.

68.16(1) Documentation for each tenant shall be maintained by the program and shall include:

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

b. Application forms;

c. The initial evaluations and updates;

d. A nutritional assessment as necessary;

e. The initial individual service plan and updates;

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

g. A signed authorization for the tenant to receive emergency medical care as necessary;

h. A signed managed risk policy and signed managed risk consensus agreements, if any;

i. When any personal or health-related care is delegated to the program, the medical information sheet; documentation of health professionals' orders, such as those for treatment, therapy, and medication; and nurses' notes written by exception;

j. Medication lists, which shall be maintained in conformance with 481—subrule 67.5(4);

k. Advance health care directives as applicable;

l. A complete copy of the tenant's occupancy agreement, including any updates;

m. A written acknowledgment that the tenant or the tenant's legal representative, if applicable, has been fully informed of the tenant's rights;

n. A copy of guardianship, durable power of attorney for health care, power of attorney, or conservatorship or other documentation of a legal representative;

o. Incident reports involving the tenant, including but not limited to those related to medication errors, accidents, falls, and elopements (such reports shall be maintained by the program but need not be included in the tenant's medical record);

p. A copy of waivers of admission or retention criteria, if any;

q. When the tenant is unable to advocate on the tenant's own behalf or the tenant has multiple service providers, including hospice care providers, accurate documentation of the completion of routine personal or health-related care is required on task sheets. If tasks are doctor-ordered, the tasks shall be part of the medication administration records (MARs); and

r. Authorizations for the release of information, if any.

68.16(2) The program records relating to a tenant shall be retained for a minimum of three years after the transfer or death of the tenant.

68.16(3) All records shall be protected from loss, damage and unauthorized use.

[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.17(231B) Service plans.

68.17(1) A service plan shall be developed for each tenant based on the evaluations conducted in accordance with subrules 68.13(1) and 68.13(2) and shall be designed to meet the specific service needs of the individual tenant. The service plan shall subsequently be updated at least annually and whenever changes are needed.

68.17(2) Prior to the tenant's signing the occupancy agreement and becoming a household occupant, a preliminary service plan shall be developed by a health care professional or human service professional in consultation with the tenant and, at the tenant's request, with other individuals identified by the tenant, and, if applicable, with the tenant's legal representative. All persons who develop the plan and the tenant or the tenant's legal representative shall sign the plan.

68.17(3) When a tenant needs personal care or health-related care, the service plan shall be updated within 30 days of the tenant's occupancy and as needed with significant change, but not less than annually.

a. If a significant change triggers the review and update of the service plan, the updated service plan shall be signed and dated by all parties.

b. If a significant change does not exist, the program may, after nurse review, add minor discretionary changes to the service plan without a comprehensive evaluation and without obtaining signatures on the service plan.

c. If a significant change relates to a recurring or chronic condition, a previous evaluation and service plan of the recurring condition may be utilized without new signatures being obtained. For example, with chronic exacerbation of a urinary tract infection, nurse review is adequate to institute the previously written evaluation and service plan.

68.17(4) The service plan shall be individualized and shall indicate, at a minimum:

a. The tenant's identified needs and preferences for assistance;

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

c. The service provider(s), if other than the program, including but not limited to providers of hospice care, home health care, occupational therapy, and physical therapy; and

d. Preferences, if any, of the tenant or the tenant's legal representative for nursing facility care, if the need for nursing facility care presents itself during the elder group home occupancy.

[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.18(231B) Nurse review. If a tenant does not receive personal or health-related care, but an observed significant change in the tenant's condition occurs, a nurse review shall be conducted. If a tenant receives personal or health-related care, the program shall provide for a registered nurse or a licensed practical nurse via nurse delegation:

68.18(1) To monitor, at least every 90 days, or after a significant change in the tenant's condition, any tenant who receives program-administered prescription medications for adverse reactions to the medications and to make appropriate interventions or referrals, and to ensure that the prescription

medication orders are current and that the prescription medications are administered consistent with such orders; and

68.18(2) To ensure that health care professionals' orders are current for tenants who receive health care professional-directed care from the program; and

68.18(3) To assess and document the health status of each tenant, to make recommendations and referrals as appropriate, and to monitor progress relating to previous recommendations at least every 90 days and whenever there are changes in the tenant's health status; and

68.18(4) To provide the program with written documentation of the activities under the service plan, as set forth in rule 481—68.17(231B), showing the time, date and signature.

NOTE: Refer to Table A at the end of this chapter. If the program does not provide personal or health-related care to a tenant, nurse review is not required.

[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.19(231B) Staffing. In addition to the general staffing requirements in rule 481—67.9 (231B,231C,231D), the following requirements apply to staffing in programs.

68.19(1) The program shall be staffed by an on-site manager 24 hours per day, seven days per week.

68.19(2) Personal care providers shall have completed, at minimum, a home care aide training program that meets the requirements and criteria established in 641—Chapter 80.

68.19(3) The owner or management corporation of the program is responsible for ensuring that all personnel employed by or contracting with the program receive training appropriate to assigned tasks and target population.

68.19(4) Personal care providers and nursing staff may be employed by the program or obtained through a contract with a home health agency or other service provider. Regardless of the source, the staff must meet all applicable requirements.

[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.20(231B) Managed risk policy and managed risk consensus agreements. The program shall have a managed risk policy. The managed risk policy shall be provided to the tenant along with the occupancy agreement. The managed risk policy shall include the following:

68.20(1) An acknowledgment of the shared responsibility for identifying and meeting the needs of the tenant and the process for managing risk and for upholding tenant autonomy when tenant decision making results in poor outcomes for the tenant or others; and

68.20(2) A consensus-based process to address specific risk situations. Program staff and the tenant shall participate in the process. The result of the consensus-based process may be a managed risk consensus agreement. The managed risk consensus agreement shall include the signature of the tenant and the signatures of all others who participated in the process. The managed risk consensus agreement shall be included in the tenant's file.

[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.21(231B) Transportation. When transportation services are provided directly or under contract with the program:

68.21(1) The vehicle shall be accessible and appropriate to the tenants who use it, with consideration for any physical disabilities and impairments.

68.21(2) Every tenant transported shall have a seat in the vehicle, except for a tenant who remains in a wheelchair during transport.

68.21(3) Vehicles shall have adequate seat belts and securing devices for ambulatory and wheelchair-using passengers.

68.21(4) Wheelchairs shall be secured when the vehicle is in motion.

68.21(5) During loading and unloading of a tenant, the driver shall be in the proximate area of the tenants in a vehicle.

68.21(6) The driver shall have a valid and appropriate Iowa driver's license or commercial driver's license as required by law for the vehicle being utilized for transport. If the driver is licensed in another

state, the license shall be valid and appropriate for the vehicle being utilized for transport. The driver shall meet any state or federal requirements for licensure or certification for the vehicle operated.
[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.22(231B) Identification of veteran's benefit eligibility.

68.22(1) Within 30 days of a tenant's participation in an elder group home that receives reimbursement through the medical assistance program under Iowa Code chapter 249A, the program shall ask the tenant or the tenant's personal representative whether the tenant is a veteran or whether the tenant is the spouse, widow, or dependent of a veteran and shall document the response.

68.22(2) If the program determines that the tenant may be a veteran or the spouse, widow, or dependent of a veteran, the program shall report the tenant's name along with the name of the veteran, if applicable, as well as the name of the contact person for this information, to the Iowa department of veterans affairs. When appropriate, the program may also report such information to the Iowa department of human services.

68.22(3) If a tenant is eligible for benefits through the U.S. Department of Veterans Affairs or other third-party payor, the program first shall seek reimbursement from the identified payor source before seeking reimbursement from the medical assistance program established under Iowa Code chapter 249A.
[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.23(231B) Resident advocate committees. Resident advocate committees for EGHs shall be governed by 321—Chapter 9 unless otherwise required in this chapter.

68.23(1) *Committee placement.* A resident advocate committee shall be established by the commission on aging for each program certified in accordance with this chapter.

68.23(2) *Committee visitations.* The committee shall visit the program assigned to it within one month of the admission of the first tenant as well as a minimum of once and maximum of four times annually thereafter.
[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.24(231B) Life safety—emergency policies and procedures and structural safety requirements.

68.24(1) The program shall submit to the department and follow written emergency policies and procedures, which shall include the following:

a. An emergency plan, which shall include procedures for natural disasters (identify where the plan is located for easy reference);

b. Fire safety procedures;

c. Other general or personal emergency procedures;

d. Provisions for amending or revising the emergency plan;

e. Provisions for periodic training of all employees;

f. Procedures for fire drills;

g. Regulations regarding smoking;

h. Monitoring and testing of smoke-control systems;

i. Tenant evacuation procedures; and

j. Procedures for reporting and documentation.

68.24(2) The program's structure and procedures and the facility in which a program is located shall meet the requirements adopted for elder group homes in administrative rules promulgated by the state fire marshal. Approval of the state fire marshal indicating that the building is in compliance with these requirements is necessary for certification of a program.

68.24(3) The program shall have the means to control the maximum temperature of water at sources accessible by a tenant to prevent scalding and shall control the maximum water temperature for tenants with cognitive impairment or dementia or at a tenant's request.
[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.25(231B) Structural standards.

68.25(1) The EGH shall be safe, sanitary, well-ventilated, and properly lighted, heated, and cooled; and shall comply with all applicable state and local housing ordinances for family residences and with fire safety rules promulgated by the state fire marshal.

68.25(2) In addition to meeting the requirements in subrule 68.25(1), the EGH shall meet the following standards:

a. General.

(1) The home, furnishings and fixtures shall be clean, in good repair and appropriate for the tenants.

(2) Stairways shall have handrails of a circumference, length, texture, strength and stability that can reasonably be expected to provide tenant support.

(3) A functioning light shall be provided in each room, stairway and exit; all light bulbs shall be protected from breakage or removal with appropriate covers.

(4) The yard, fire exits and exterior steps shall be kept free of obstructions and shall be accessible and appropriate to the condition of the tenants.

(5) There shall be at least 150 square feet of common living space and sufficient furniture in the home to accommodate the recreational and socialization needs of all the tenants at one time; common space shall not be located in the basement or garage, unless such space was constructed for that purpose. Additional common living space may be required if wheelchairs, walkers or other durable medical equipment is to be accommodated. For an EGH constructed or remodeled after July 1, 2005, there shall be 300 square feet of usable floor space.

(6) Interior and exterior doorways used by tenants shall be wide enough to accommodate wheelchairs and walkers if tenants with impaired mobility are in residence.

(7) Hot and cold water at each tub, shower, and sink shall be in sufficient supply to meet the needs of the tenants and staff.

(8) Grab bars shall be present for each toilet, tub and shower. Access to toilet and bathing facilities shall be barrier-free. Toilet and bathing facilities shall provide individual privacy.

(9) A telephone shall be available and accessible for tenants' use in a manner that allows for privacy for all calls.

b. Safety.

(1) All combustion appliances shall be used and maintained properly and shall be inspected annually by a qualified technician for carbon monoxide emissions and any other hazards to health and safety;

(2) Extension cord wiring shall not be used in place of permanent electrical fixtures or outlets.

c. Sanitation requirements.

(1) A public water supply shall be utilized if available. If a nonmunicipal water source is used, the owner or on-site manager must show documentation from the state laboratory that the water supply is potable and is tested as required by the rules of the environmental protection commission of the department of natural resources.

(2) Septic tanks or other nonmunicipal wastewater disposal systems shall be in good working order and shall comply with state and local regulations for wastewater treatment.

(3) Garbage and refuse shall be suitably stored and disposed of by a sanitation company providing service in the area.

(4) If laundry service is provided, soiled linens and clothing shall be stored in containers in an area separate from food storage, kitchen and dining areas.

(5) Sanitation for household pets and other domestic animals shall be adequate to prevent health and safety hazards.

(6) There shall be adequate control of insects and rodents.

(7) Reasonable and prudent precautions for infection control shall be taken, including washing hands and exposed portions of arms with soap and hot water immediately before engaging in food preparation and meal service and before and after providing personal care.

(8) There shall be at least one toilet and one sink for every four household occupants. A minimum of one sink and toilet is required on each floor occupied by tenants. A sink shall be located near each

toilet. For an EGH constructed or remodeled after July 1, 2005, there shall be at least one toilet and one sink for every two household occupants, with a minimum of one toilet and one sink on each floor occupied by tenants.

(9) At least one tub or shower is required for each six household occupants. For an EGH constructed or remodeled after July 1, 2005, there shall be at least one tub or one shower for every four household occupants.

d. Bedroom requirements.

(1) Each tenant bedroom shall:

1. Have a door that opens directly to a hallway or common use area without passage through another bedroom or common bathroom;

2. Be adequately ventilated, heated, cooled and lighted;

3. Have at least 70 square feet of usable floor space, excluding any area where a sloped ceiling does not allow a person to stand upright. For an EGH constructed or remodeled after July 1, 2005, each tenant bedroom shall have at least 100 square feet of usable floor space;

4. Provide individual privacy and be occupied by one tenant, unless an alternative arrangement is agreed to in the occupancy agreement by the tenant or the tenant's legal representative;

5. Be on ground level for tenants with impaired mobility;

6. Be in sufficiently close proximity to the on-site manager to ensure that tenants are able to alert the on-site manager to nighttime needs or emergencies, or be equipped with a call system.

(2) Owners, operators, on-site managers, their family members, and personal care providers shall not use as bedrooms areas that are designated as living areas or as tenant bedrooms;

(3) Common living space and tenant bedrooms shall not be used for storage areas.

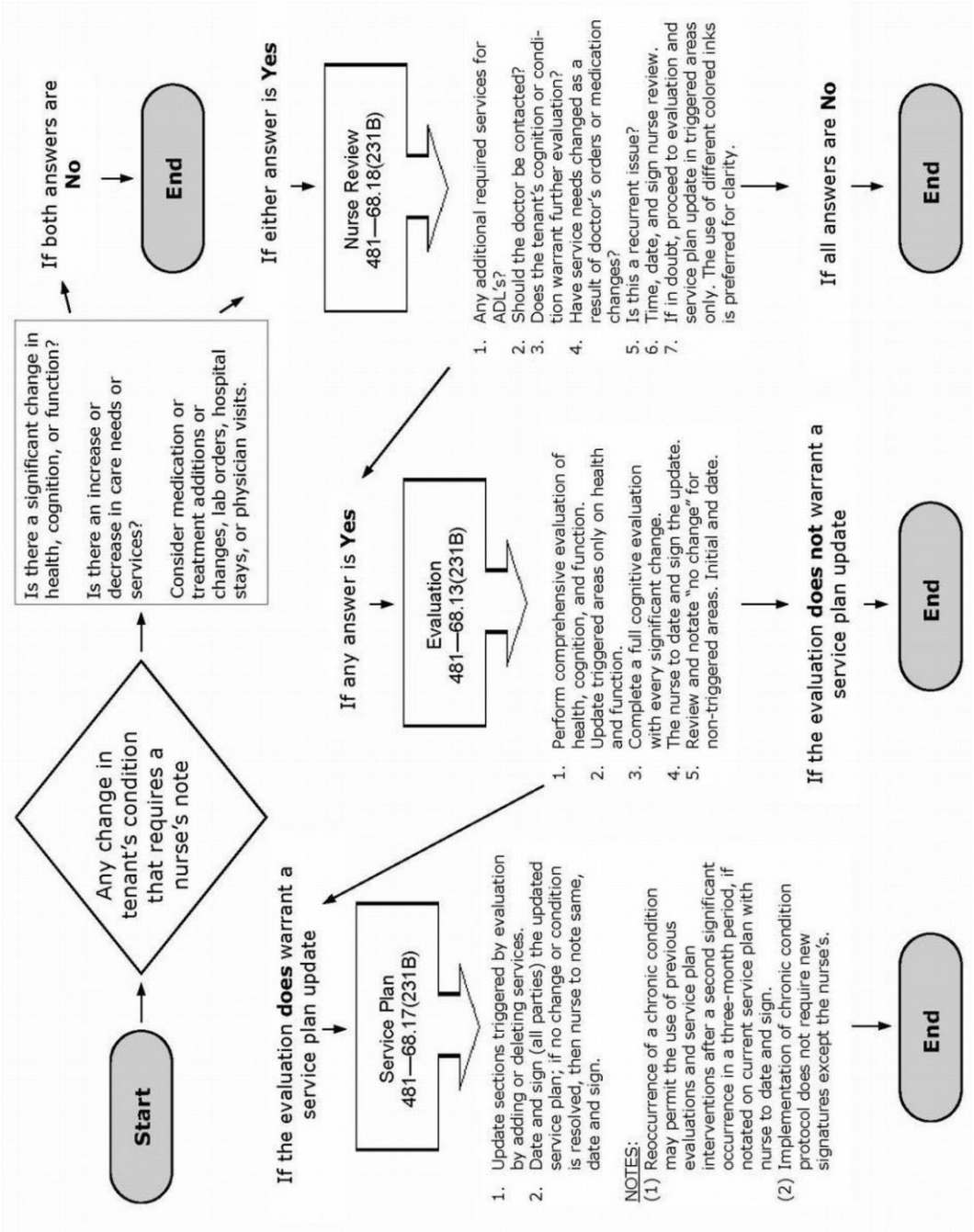
[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

481—68.26(231B) Landlord and tenant Act. Iowa Code chapter 562A, the uniform residential landlord and tenant Act, shall apply to all EGHs under this chapter.

[**ARC 8175B**, IAB 9/23/09, effective 1/1/10]

These rules are intended to implement Iowa Code chapter 231B.

Table A



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CHAPTER 69
ASSISTED LIVING PROGRAMS

481—69.1(231C) Definitions. In addition to the definitions in 481—Chapter 67 and Iowa Code chapter 231C, the following definitions apply.

"Accredited" means that the program has received accreditation from an accreditation entity recognized in subrule 69.14(1).

"Applicable requirements" means Iowa Code chapter 231C, this chapter, and 481—Chapter 67 and includes any other applicable administrative rules and provisions of the Iowa Code.

"Assisted living" or *"program"* means provision of housing with services, which may include but are not limited to health-related care, personal care, and assistance with instrumental activities of daily living, to three or more tenants in a physical structure which provides a homelike environment. "Assisted living" also includes encouragement of family involvement, tenant self-direction, and tenant participation in decisions that emphasize choice, dignity, privacy, individuality, shared risk, and independence. "Assisted living" includes the provision of housing and assistance with instrumental activities of daily living only if personal care or health-related care is also included. "Assisted living" includes 24 hours per day response staff to meet scheduled and unscheduled or unpredictable needs in a manner that promotes maximum dignity and independence and provides supervision, safety, and security.

"CARF" means the Commission on Accreditation of Rehabilitation Facilities.

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

"Dementia-specific assisted living program" means an assisted living program certified under this chapter that:

1. Serves fewer than 55 tenants and has 5 or more tenants who have dementia between Stages 4 and 7 on the Global Deterioration Scale, or
2. Serves 55 or more tenants and 10 percent or more of the tenants have dementia between Stages 4 and 7 on the Global Deterioration Scale, or
3. Holds itself out as providing specialized care for persons with dementia, such as Alzheimer's disease, in a dedicated setting.

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

"In the proximate area" means located within a five minutes or less response time.

"Maximal assistance with activities of daily living " means routine total dependence on staff for the performance of a minimum of four activities of daily living for a period that exceeds 21 days.

"Medically unstable" means that a tenant has a condition or conditions:

1. Indicating physiological frailty as determined by the program's staff in consultation with a physician or physician extender;
2. Resulting in three or more significant hospitalizations within a consecutive three-month period for more than observation; and
3. Requiring frequent supervision of the tenant for more than 21 days by a registered nurse.

For example, a tenant who has a condition such as congestive heart failure which results in three or more significant hospitalizations during a quarter and which requires that the tenant receive frequent supervision may be considered medically unstable.

"Nonaccredited" means that the program has been certified under the provisions of this chapter but has not received accreditation from an accreditation entity recognized in subrule 69.14(1).

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

"Unmanageable verbal abuse" means repeated verbalizations against tenants or staff that persist despite all interventions and that negatively affect the program. "Unmanageable verbal abuse" includes but is not limited to threats, frequent use of profane language, or unwelcome sexually oriented remarks.
[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.2(231C) Program certification. A program may obtain certification by meeting all applicable requirements. In addition, a program may be voluntarily accredited by a recognized accreditation entity. For the purpose of these rules, certification is equivalent to licensure.

69.2(1) *Posting requirements.* A program's current certificate shall be visibly displayed within the designated operation area of the program. In addition, the latest monitoring report, state fire marshal report, and food establishment inspections report issued pursuant to Iowa Code chapter 137F shall be made available to the public by the program upon request.

69.2(2) *Dementia-specific programs and door alarms.* If a program meets the definition of a dementia-specific assisted living program during two sequential certification monitorings, the program shall meet all requirements for a dementia-specific program, including the requirements set forth in rule 481—69.30(231C), subrules 69.29(2) and 69.29(4), paragraph 69.35(1)*"d,"* and subrule 69.32(2), which includes the requirements relating to door alarms.
[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.3(231C) Certification of a nonaccredited program—application process.

69.3(1) The applicant shall complete an application packet obtained from the department. Application materials may be obtained from the health facilities division Web site at https://dia-hfd.iowa.gov/DIA_HFD/Home.do; by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

69.3(2) The applicant shall submit one copy of the completed application and all supporting documentation to the department at the above address at least 90 calendar days prior to the expected date of beginning operation.

69.3(3) The appropriate fee as stated in Iowa Code section 231C.18 shall accompany each application and be payable by check or money order to the Department of Inspections and Appeals. Fees are nonrefundable.

69.3(4) The department shall consider the application when all supporting documents and fees are received.
[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.4(231C) Nonaccredited program—application content. An application for certification or recertification of a nonaccredited program shall include the following:

69.4(1) A list that includes the names, addresses, and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 5 percent equity interest in the program. The program shall notify the department of any changes in the list within ten working days of the change.

69.4(2) A statement affirming that the individuals listed in subrule 69.4(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

69.4(3) A statement disclosing whether any of the individuals listed in subrule 69.4(1) have or have had an ownership interest in an assisted living program, adult day services program, elder group home, home health agency, licensed health care facility as defined in Iowa Code section 135C.1 or licensed hospital as defined in Iowa Code section 135B.1, or a boarding home as defined in 2009 Iowa Acts, Senate File 484, section 3 (to be codified as Iowa Code Supplement section 135O.1), which has been closed in any state due to removal of program, agency, or facility licensure, certification, or registration or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect.

69.4(4) The policy and procedure for evaluation of each tenant. A copy of the evaluation tool or tools to be used to identify the functional, cognitive and health status of each tenant shall be included.

69.4(5) The policy and procedure for service plans.

69.4(6) The policy and procedure for addressing medication needs of tenants.

69.4(7) The policy and procedure for accidents and emergency response.

69.4(8) The policies and procedures for food service, including those relating to staffing, nutrition, menu planning, therapeutic diets, and food preparation, service and storage.

69.4(9) The policy and procedure for activities.

69.4(10) The policy and procedure for transportation.

69.4(11) The policy and procedure for staffing and training.

69.4(12) The policy and procedure for emergencies, including natural disasters. The policy and procedure shall include an evacuation plan and procedures for notifying legal representatives in emergency situations as applicable.

69.4(13) The policy and procedure for managing risk and upholding tenant autonomy when tenant decision making results in poor outcomes for the tenant or others.

69.4(14) The policy and procedure for reporting incidents including dependent adult abuse as required in rule 481—67.2(231B,231C,231D).

69.4(15) The policy and procedure related to life safety requirements for a dementia-specific program as required by subrule 69.32(2).

69.4(16) The tenant occupancy agreement and all attachments.

69.4(17) If the program contracts for personal care or health-related care services from a certified home health agency, a mental health center or a licensed health care facility, a copy of that entity's current license or certification.

69.4(18) A copy of the state license for the entity that provides food service, whether the entity is the program or an outside entity or a combination of both.

69.4(19) The fee set forth in Iowa Code section 231C.18.

[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.5(231C) Initial certification process for a nonaccredited program.

69.5(1) Upon receipt of all completed documentation, including state fire marshal approval and structural and evacuation review approval, the department shall determine whether or not the proposed program meets applicable requirements.

69.5(2) If, based upon the review of the complete application including all required supporting documents, the department determines the proposed program meets the requirements for certification, a provisional certification shall be issued to the program to begin operation and accept tenants.

69.5(3) Within 180 calendar days following issuance of provisional certification, the department shall conduct a monitoring to determine the program's compliance with applicable requirements.

69.5(4) If a regulatory insufficiency is identified as a result of the monitoring, the process in rule 481—67.10(17A,231B,231C,231D) shall be followed.

69.5(5) The department shall make a final certification decision based on the results of the monitoring and review of an acceptable plan of correction.

69.5(6) The department shall notify the program of a final certification decision within 10 working days following the finalization of the monitoring report or receipt of an acceptable plan of correction, whichever is applicable.

69.5(7) If the decision is to continue certification, the department shall issue a full two-year certification effective from the date of the original provisional certification.

[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.6(231C) Expiration of the certification of a nonaccredited program.

69.6(1) Unless conditionally issued, suspended or revoked, certification of a program shall expire at the end of the time period specified on the certificate.

69.6(2) The department shall send recertification application materials to each program at least 120 calendar days prior to expiration of the program's certification.
[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.7(231C) Recertification process for a nonaccredited program. To obtain recertification, a program shall:

69.7(1) Submit one copy of the completed application, including the information required in rule 481—69.4(231C), associated documentation, and the recertification fee as listed in Iowa Code section 231C.18 to the department at the address stated in subrule 69.3(1) at least 90 calendar days prior to the expiration of the program's certification. The program need not submit policies and procedures that have been previously submitted to the department and remain unchanged. The program shall provide a list of the policies and procedures that have been previously submitted and are not being resubmitted.

69.7(2) Submit additional documentation that each of the following has been inspected by a qualified professional and found to be maintained in conformance with the manufacturer's recommendations and nationally recognized standards: heating system, cooling system, water heater, electrical system, plumbing, sewage system, artificial lighting, and ventilation system; and, if located on site, garbage disposal, kitchen appliances, washing machines and dryers, and elevators.
[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.8(231C) Notification of recertification for a nonaccredited program.

69.8(1) The department shall review the application and associated documentation and fees. If the application is incomplete, the department shall contact the program to request the additional information. After all finalized documentation is received, including state fire marshal approval, the department shall determine the program's compliance with applicable requirements.

69.8(2) The department shall conduct a monitoring of the program between 60 and 90 days prior to expiration of the program's certification.

69.8(3) If a regulatory insufficiency is identified as a result of the monitoring, the process in rule 481—67.10(17A,231B,231C,231D) shall be followed.

69.8(4) If no regulatory insufficiency is identified as a result of the monitoring, the department shall issue a report of the findings with the final recertification decision.

69.8(5) If the decision is to recertify, the department shall issue the program a two-year certification effective from the date of the expiration of the previous certification.

69.8(6) If the decision is to deny recertification, the department shall issue a notice of denial and provide the program the opportunity for a hearing pursuant to rule 481—67.13(17A,231B,231C,231D).

69.8(7) If the department is unable to recertify a program through no fault of the program, the department shall issue to the program a time-limited extension of certification of no longer than one year.
[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.9(231C) Certification or recertification of an accredited program—application process.

69.9(1) An applicant for certification or recertification of a program accredited by a recognized accrediting entity shall:

a. Submit a completed application packet obtained from the department. Application materials may be obtained from the health facilities division Web site at https://dia-hfd.iowa.gov/DIA_HFD/Home.do; by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

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

c. Apply for certification or recertification within 90 calendar days following verification of compliance with life safety requirements pursuant to this chapter.

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

e. Submit the appropriate fees as set forth in Iowa Code section 231C.18.

69.9(2) The department shall not consider an application until it is complete and includes all supporting documentation and the appropriate fees.
[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.10(231C) Certification or recertification of an accredited program—application content. An application for certification or recertification of an accredited program shall include the following:

69.10(1) A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 5 percent equity interest in the program. The program shall notify the department of any changes in the list within ten working days of the change.

69.10(2) A statement affirming that the individuals listed in subrule 69.10(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

69.10(3) A statement disclosing whether any of the individuals listed in subrule 69.10(1) have or have had an ownership interest in a program, adult day services program, elder group home, home health agency, licensed health care facility as defined under Iowa Code section 135C.1 or licensed hospital as defined under Iowa Code section 135B.1 or a boarding home as defined in 2009 Iowa Acts, Senate File 484, section 3 (to be codified as Iowa Code Supplement section 135O.1), which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

69.10(4) A copy of the current accreditation outcome from the recognized accrediting entity.
[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.11(231C) Initial certification process for an accredited program.

69.11(1) Within 20 working days of receiving all finalized documentation, including state fire marshal approval, the department shall determine and notify the accredited program whether or not the accredited program meets applicable requirements and whether or not certification will be issued.

69.11(2) If the decision is to certify, a certification shall be issued for the term of the accreditation not to exceed three years, unless the certification is conditionally issued, suspended or revoked by either the department or the recognized accrediting entity.

69.11(3) If the decision is to deny certification, the department shall provide the applicant an opportunity for hearing in accordance with rule 481—67.13(17A,231B,231C,231D).

69.11(4) Unless conditionally issued, suspended or revoked, certification for a program shall expire at the end of the time period specified on the certificate.
[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.12(231C) Recertification process for an accredited program.

69.12(1) The department shall send recertification application materials to each program at least 120 calendar days prior to expiration of the program's certification.

69.12(2) To obtain recertification, an accredited program shall submit one copy of the completed application, associated documentation, and the administrative fee as stated in Iowa Code section 231C.18 to the department at the address stated in subrule 69.9(1) at least 90 calendar days prior to the expiration of the program's certification.

69.12(3) Within 20 working days of receiving all finalized documentation, including state fire marshal approval, the department shall determine the program's compliance with applicable requirements and make a recertification decision.

69.12(4) The department shall notify the accredited program within 10 working days of the final recertification decision.

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

b. If the decision is to deny recertification, the department shall provide the applicant an opportunity for hearing in accordance with rule 481—67.13(17A,231B,231C,231D).

69.12(5) If the department is unable to recertify a program through no fault of the program, the department shall issue to the program a time-limited extension of certification of no longer than one year.

[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.13(231C) Listing of all certified programs. The department shall maintain a list of all certified programs, which is available online at https://dia-hfd.iowa.gov/DIA_HFD/Home.do under the "Entities Book" tab.

[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.14(231C) Recognized accrediting entity.

69.14(1) The department designates CARF as a recognized accrediting entity for programs.

69.14(2) To apply for designation by the department as a recognized accrediting entity for programs, an accrediting entity shall submit a letter of request, and its standards shall, at minimum, meet the applicable requirements for programs.

69.14(3) The designation shall remain in effect for as long as the accreditation standards continue to meet, at minimum, the applicable requirements for programs.

69.14(4) An accrediting entity shall provide annually to the department, at no cost, a current edition of the applicable standards manual and survey preparation guide, and training thereon, within 120 working days after the publications are released.

[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.15(231C) Requirements for an accredited program. Each accredited program that is certified by the department shall:

69.15(1) Provide the department a copy of all survey reports including outcomes, quality improvement plans and annual conformance to quality reports generated or received, as applicable, within ten working days of receipt of the reports.

69.15(2) Notify the department by the most expeditious means possible of all credible reports of alleged improper or inappropriate conduct or conditions within the program and any actions taken by the accrediting entity with respect thereto.

69.15(3) Notify the department immediately of the expiration, suspension, revocation or other loss of the program's accreditation.

[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.16(231C) Maintenance of program accreditation.

69.16(1) An accredited program shall continue to be recognized for certification by the department if both of the following requirements are met:

a. The program complies with the requirements outlined in rule 481—69.15(231C).

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

69.16(2) A program that does not maintain its voluntary accreditation status must become certified by the department prior to any lapse in accreditation.

69.16(3) A program that does not maintain its voluntary accreditation status and is not certified by the department prior to any lapse in voluntary accreditation shall cease operation as a program.

[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.17(231C) Transfer of certification.

69.17(1) Certification, unless conditionally issued, suspended or revoked, may be transferable to a new owner of a program. If the program's certification has been conditionally issued, the new owner must receive approval from the department prior to transfer of the certification.

69.17(2) The new owner is required to notify the department in writing within 30 calendar days prior to the change in ownership. The notice shall include assurance that the new owner meets all applicable requirements for programs.

69.17(3) The department may conduct a monitoring within 90 days following a change in the program's ownership or management corporation to ensure that the program complies with applicable requirements. If a regulatory insufficiency is found, the department shall take any necessary enforcement action authorized by applicable requirements.

[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.18(231C) Structural and life safety reviews of a building for a new program.

69.18(1) Before a building is constructed or remodeled for use in a new program, the department shall review the blueprints for compliance with requirements pursuant to this chapter. Construction or remodeling includes new construction, remodeling of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

69.18(2) A program applicant shall submit to the department blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in Iowa Code section 231C.18 to the Department of Public Safety, State Fire Marshal Division, 215 E. 7th Street, Third Floor, Des Moines, Iowa 50319.

69.18(3) Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

69.18(4) The department shall review the blueprints and notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

69.18(5) The Iowa-licensed architect or Iowa-licensed engineer shall respond to the department to state how any noncompliance will be resolved.

69.18(6) Upon final notification by the department that the blueprints meet structural and life safety requirements, construction or remodeling of the building may commence.

69.18(7) The department shall schedule an on-site visit of the building site with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the construction or remodeling process to ensure compliance with the approved blueprints. Any noncompliance must be resolved prior to approval for certification.

[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.19(231C) Structural and life safety review prior to the remodeling of a building for a certified program.

69.19(1) Before a building for a certified program is remodeled, the department shall review the blueprints for compliance with requirements set forth in rule 481—69.35(231C). Remodeling includes modification of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

69.19(2) A certified program shall submit to the department blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in Iowa Code section 231C.18 to the Department of Public Safety, State Fire Marshal Division, 215 E. 7th Street, Third Floor, Des Moines, Iowa 50319.

69.19(3) Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

69.19(4) The department shall review the blueprints within 20 working days of receipt and immediately notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

69.19(5) The Iowa-licensed architect or Iowa-licensed engineer shall respond to the department in 20 working days to state how any noncompliance will be resolved.

69.19(6) Upon final notification by the department that the blueprints meet structural and life safety requirements, remodeling of the building may commence.

69.19(7) The department shall schedule an on-site visit of the building with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the remodeling process to ensure compliance

with the approved blueprints. Any noncompliance must be resolved prior to approval for continued certification or recertification of the program.
[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.20(231C) Cessation of program operation.

69.20(1) If a certified program ceases operation, which includes seeking decertification, at any time prior to expiration of the program's certification, the program shall submit the certificate to the department. The program shall provide, at least 90 days in advance of cessation, which includes seeking decertification, unless there is some type of emergency, written notification to the department and the tenant advocate of the date on which the program will cease operation, which includes seeking decertification.

69.20(2) If a certified program plans to cease operation, which includes seeking decertification, at the time the program's certification expires, the program shall provide written notice of this fact to the department and the tenant advocate at least 90 days prior to expiration of the certification.

69.20(3) At the time a program decides to cease operation, which includes seeking decertification, the program shall submit a plan to the department and make arrangements for the safe and orderly transfer or transition of all tenants within the 90-day period specified by subrule 69.20(2).

69.20(4) The department may conduct a monitoring during the 90-day period to ensure the safety of tenants during the transfer process or transition process.

69.20(5) The department may conduct an on-site visit to verify that the program has ceased operation as a certified program in accordance with the notice provided by the program.

69.20(6) When a program ceases operation, which includes seeking decertification, tenant advocates shall be allowed by the program to privately meet with tenants to provide education and service options.
[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.21(231C) Occupancy agreement.

69.21(1) The occupancy agreement shall be in 12-point type or larger, shall be written in plain language using commonly understood terms and shall be easy for the tenant or the tenant's legal representative to understand.

69.21(2) In addition to the requirements of Iowa Code section 231C.5, the written occupancy agreement shall include, but not be limited to, the following information in the body of the agreement or in the supporting documents and attachments:

a. The telephone number for filing a complaint with the department.

b. The telephone number for the office of the tenant advocate.

c. The telephone number for reporting dependent adult abuse.

d. A copy of the program's statement on tenants' rights.

e. A statement that the tenant landlord law applies to assisted living programs.

f. A statement that the program will notify the tenant at least 90 days in advance of any planned program cessation, which includes voluntary decertification, except in cases of emergency.

69.21(3) The occupancy agreement shall be reviewed and updated as necessary to reflect any change in services or financial arrangements.

69.21(4) A copy of the occupancy agreement shall be provided to the tenant or the tenant's legal representative, if any, and a copy shall be kept by the program.

69.21(5) A copy of the most current occupancy agreement shall be made available to the general public upon request. The basic marketing material shall include a statement that a copy of the occupancy agreement is available to all persons upon request.
[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.22(231C) Evaluation of tenant.

69.22(1) *Evaluation prior to occupancy.* A program shall evaluate each prospective tenant's functional, cognitive and health status prior to the tenant's signing the occupancy agreement and taking occupancy of a dwelling unit in order to determine the tenant's eligibility for the program, including whether the services needed are available. The cognitive evaluation shall utilize a scored, objective

tool. When the score from the cognitive evaluation indicates moderate cognitive decline and risk, the Global Deterioration Scale shall be used at all subsequent intervals, if applicable. If the tenant subsequently returns to the tenant's mildly cognitively impaired state, the program may discontinue the GDS and revert to a scored cognitive screening tool. The evaluation shall be conducted by a health care professional or human service professional.

69.22(2) *Evaluation within 30 days of occupancy and with significant change.* A program shall evaluate each tenant's functional, cognitive and health status within 30 days of occupancy. A program shall also evaluate each tenant's functional, cognitive and health status as needed with significant change, but not less than annually, to determine the tenant's continued eligibility for the program and to determine any changes to services needed. The evaluation shall be conducted by a health care professional or human service professional. A licensed practical nurse may complete the evaluation via nurse delegation when the tenant has not exhibited a significant change.

[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.23(231C) Criteria for admission and retention of tenants.

69.23(1) *Persons who may not be admitted or retained.* A program shall not knowingly admit or retain a tenant who:

a. Is bed-bound; or

b. Requires routine, two-person assistance with standing, transfer or evacuation; or

c. Is dangerous to self or other tenants or staff, including but not limited to a tenant who:

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

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

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

e. Is under the age of 18; or

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

g. Has unmanageable incontinence on a routine basis despite an individualized toileting program; or

h. Is medically unstable; or

i. Requires maximal assistance with activities of daily living.

69.23(2) *Disclosure of additional occupancy and transfer criteria.* A program may have additional occupancy or transfer criteria if the criteria are disclosed in the written occupancy agreement prior to the tenant's occupancy.

69.23(3) *Assistance with transfer from the program.* A program shall provide assistance to a tenant and the tenant's legal representative, if applicable, to ensure a safe and orderly transfer from the program when the tenant exceeds the program's criteria for admission and retention.

[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.24(231C) Involuntary transfer from the program.

69.24(1) *Program initiation of transfer.* If a program initiates the involuntary transfer of a tenant and the action is not the result of a monitoring, including a complaint investigation or program-reported incident investigation, by the department and if the tenant or tenant's legal representative contests the transfer, the following procedures shall apply:

a. The program shall notify the tenant or tenant's legal representative, in accordance with the occupancy agreement, of the need to transfer the tenant and of the reason for the transfer and shall include the contact information for the tenant advocate.

b. The program shall immediately provide to the tenant advocate, by certified mail, a copy of the notification and notify the tenant's treating physician, if any.

c. Pursuant to statute, the tenant advocate shall offer the notified tenant or tenant's legal representative assistance with the program's internal appeal process. The tenant or tenant's legal representative is not required to accept the assistance of the tenant advocate.

d. If, following the internal appeal process, the program upholds the transfer decision, the tenant or tenant's legal representative may utilize other remedies authorized by law to contest the transfer.

69.24(2) *Transfer pursuant to results of monitoring or complaint or program-reported incident investigation by the department.* If one or more tenants are identified as exceeding the admission and retention criteria for tenants and need to be transferred as a result of a monitoring or a complaint or program-reported incident investigation conducted by the department, the following procedures shall apply:

a. *Notification of the program.* Within 20 working days of the monitoring or complaint or program-reported incident investigation, the department shall notify the program, in writing, of the identification of any tenant who exceeds admission and retention criteria.

b. *Notification of others.* Each identified tenant, the tenant's legal representative, if applicable, and other providers of services to the tenant shall be notified of their opportunity to provide responses including: specific input, written comment, information, and documentation directly addressing any agreement or disagreement with the identification. All responses shall be provided to the department within 10 days of receipt of the notice.

c. *Program agreement with the department's finding.* If the program agrees with the department's finding and the program begins involuntary transfer proceedings, the program's internal appeal process in subrule 69.24(1) shall be utilized for appeals.

d. *Program disagreement with the department's finding.* If the program does not agree with the department's finding that the tenant exceeds admission and retention criteria, the program may collect and submit all responses to the department, including those from other interested parties. In the program's response, the program shall identify the tenant, list the known responses from others, and note the program's agreement or disagreement with the responses from others. The program's response shall be submitted to the department within 10 working days of the receipt of the notice. Submission of a response does not eliminate the applicable requirements, including submission of a plan of correction under 481—subrule 67.10(5). Other persons may also submit information directly to the department.

(1) Consideration of response. Within 10 working days of receipt of the program's response for each identified tenant, the department shall consider the response and make a final finding regarding the continued retention of a tenant.

(2) Amending the regulatory insufficiency. If the department's determination is to amend the regulatory insufficiency based on the response, the department shall modify the report of findings.

(3) Retaining regulatory insufficiency. If the department retains the regulatory insufficiency, the department shall review the plan of correction in accordance with this chapter and 481—Chapter 67. The department shall notify the program of the opportunity to appeal the report findings as they relate to the admission and retention decision. In addition, the department shall provide to the tenant or the tenant's legal representative the contact information for the tenant advocate. A copy of the final report shall also be sent to the tenant advocate.

(4) Effect of the filing of an appeal. If an appeal is filed, the tenant who exceeds admission and retention criteria shall be allowed to continue living at the program until all administrative appeals have been exhausted. Appeals filed that relate to the tenant's exceeding admission and retention criteria shall be heard within 30 days of receipt, and appropriate services to meet the tenant's needs shall be provided during that period of time.

(5) Request for waiver of criteria for retention of a tenant in a program. To allow a tenant to remain in the program, the program may request a waiver of criteria for retention of a tenant pursuant to rule 481—67.7(231B,231C,231D) from the department within 10 working days of the receipt of the report.

[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.25(231C) Tenant documents.

69.25(1) Documentation for each tenant shall be maintained by the program and shall include:

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

b. Application forms;

c. The initial evaluations and updates;

d. A nutritional assessment as necessary;

e. The initial individual service plan and updates;

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

g. A signed authorization for the tenant to receive emergency medical care as necessary;

h. A signed managed risk policy and signed managed risk consensus agreements, if any;

i. When any personal or health-related care is delegated to the program, the medical information sheet; documentation of health professionals' orders, such as those for treatment, therapy, and medication; and nurses' notes written by exception;

j. Medication lists, which shall be maintained in conformance with 481—subrule 67.5(4);

k. Advance health care directives as applicable;

l. A complete copy of the tenant's occupancy agreement, including any updates;

m. A written acknowledgment that the tenant or the tenant's legal representative, if applicable, has been fully informed of the tenant's rights;

n. A copy of guardianship, durable power of attorney for health care, power of attorney, or conservatorship or other documentation of a legal representative;

o. Incident reports involving the tenant, including but not limited to those related to medication errors, accidents, falls, and elopements (such reports shall be maintained by the program but need not be included in the tenant's medical record);

p. A copy of waivers of admission or retention criteria, if any;

q. When the tenant is unable to advocate on the tenant's own behalf or the tenant has multiple service providers, including hospice care providers, accurate documentation of the completion of routine personal or health-related care is required on task sheets. If tasks are doctor-ordered, the tasks shall be part of the medication administration records (MARs); and

r. Authorizations for the release of information, if any.

69.25(2) The program records relating to a tenant shall be retained for a minimum of three years after the transfer or death of the tenant.

69.25(3) All records shall be protected from loss, damage and unauthorized use.

[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.26(231C) Service plans.

69.26(1) A service plan shall be developed for each tenant based on the evaluations conducted in accordance with subrules 69.22(1) and 69.22(2) and shall be designed to meet the specific service needs of the individual tenant. The service plan shall subsequently be updated at least annually and whenever changes are needed.

69.26(2) Prior to the tenant's signing the occupancy agreement and taking occupancy of a dwelling unit, a preliminary service plan shall be developed by a health care professional or human service professional in consultation with the tenant and, at the tenant's request, with other individuals identified by the tenant, and, if applicable, with the tenant's legal representative. All persons who develop the plan and the tenant or the tenant's legal representative shall sign the plan.

69.26(3) When a tenant needs personal care or health-related care, the service plan shall be updated within 30 days of the tenant's occupancy and as needed with significant change, but not less than annually.

a. If a significant change triggers the review and update of the service plan, the updated service plan shall be signed and dated by all parties.

b. If a significant change does not exist, the program may, after nurse review, add minor discretionary changes to the service plan without a comprehensive evaluation and without obtaining signatures on the service plan.

c. If a significant change relates to a recurring or chronic condition, a previous evaluation and service plan of the recurring condition may be utilized without new signatures being obtained. For example, with chronic exacerbation of a urinary tract infection, nurse review is adequate to institute the previously written evaluation and service plan.

69.26(4) The service plan shall be individualized and shall indicate, at a minimum:

a. The tenant's identified needs and preferences for assistance;

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

c. The service provider(s), if other than the program, including but not limited to providers of hospice care, home health care, occupational therapy, and physical therapy;

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

e. Preferences, if any, of the tenant or the tenant's legal representative for nursing facility care, if the need for nursing facility care presents itself during the assisted living program occupancy.

[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.27(231C) Nurse review. If a tenant does not receive personal or health-related care, but an observed significant change in the tenant's condition occurs, a nurse review shall be conducted. If a tenant receives personal or health-related care, the program shall provide for a registered nurse or a licensed practical nurse via nurse delegation:

69.27(1) To monitor, at least every 90 days, or after a significant change in the tenant's condition, any tenant who receives program-administered prescription medications for adverse reactions to the medications and to make appropriate interventions or referrals, and to ensure that the prescription medication orders are current and that the prescription medications are administered consistent with such orders; and

69.27(2) To ensure that health care professionals' orders are current for tenants who receive health care professional-directed care from the program; and

69.27(3) To assess and document the health status of each tenant, to make recommendations and referrals as appropriate, and to monitor progress relating to previous recommendations at least every 90 days and whenever there are changes in the tenant's health status; and

69.27(4) To provide the program with written documentation of the activities under the service plan, as set forth in rule 481—69.26(231C), showing the time, date and signature.

NOTE: Refer to Table A at the end of this chapter. If the program does not provide personal or health-related care to a tenant, nurse review is not required.

[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.28(231C) Food service.

69.28(1) The program shall provide or coordinate with other community providers to provide a hot or other appropriate meal(s) at least once a day or shall make arrangements for the availability of meals.

69.28(2) Meals and snacks provided by the program but not prepared on site shall be obtained from or provided by an entity that meets the standards of state and local health laws and ordinances concerning the preparation and serving of food.

69.28(3) Menus shall be planned to provide the following percentage of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences based on the number of meals provided by the program:

a. A minimum of 33⅓ percent if the program provides one meal per day;

b. A minimum of 66⅔ percent if the program provides two meals per day; and

c. One hundred percent if the program provides three meals per day.

69.28(4) Therapeutic diets may be provided by a program. If therapeutic diets are provided, they shall be prescribed by a physician, physician assistant, or advanced registered nurse practitioner. A current copy of the Iowa Simplified Diet Manual published by the Iowa Dietetic Association shall be available and used in the planning and serving of therapeutic diets. A licensed dietitian shall be responsible for writing and approving the therapeutic menu and for reviewing procedures for food preparation and service for therapeutic diets.

69.28(5) Personnel who are employed by or contract with the program and 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.

a. In addition to the requirements above, a minimum of one person directly responsible for food preparation shall have successfully completed a state-approved food protection program by:

(1) Obtaining certification as a dietary manager; or

(2) Obtaining certification as a food protection professional; or

(3) Successfully completing 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.

b. If the person is in the process of completing a course or certification listed in paragraph *"a,"* the requirement relating to completion of a state-approved food protection program shall be considered to have been met.

69.28(6) Programs engaged in the preparation and service of meals and snacks shall meet the standards of state and local health laws and ordinances pertaining to the preparation and service of food and shall be licensed pursuant to Iowa Code chapter 137F. The department will not require the program to be licensed as a food establishment if the program limits food activities to the following:

a. All main meals and planned menu items must be prepared offsite and transferred to the program kitchen for service to tenants.

b. Baked goods that do not require temperature control for safety and single-service juice or milk may be stored in the program's kitchen and provided as part of a continental breakfast.

c. Ingredients used for food-related activities with tenants may be stored in the program's kitchen. Tenant activities may include the preparation and cooking of food items in the program's kitchen if the activity occurs on an irregular or sporadic basis and the items prepared are not part of the program's menu.

d. Appropriately trained staff may prepare in the program's kitchen individual quantities of tenant-requested menu-substitution food items that require limited or no preparation, such as peanut butter or cheese sandwiches or a single-service can of soup. The food items necessary to prepare the menu substitution may be stored in the program's kitchen. These food items may not be cooked in the program's kitchen but may be reheated in a microwave. A two- or four-slice toaster may be used for tenant-requested menu-substitution items, but no bare-hand contact is permitted.

e. Tenants may take food items left over from a meal back to their apartments. The program may not store leftovers in the program's kitchen.

f. Warewashing may be done in the program's kitchen as long as the program utilizes a commercial dishwasher and documents daily testing of sanitizer chemical ppm and proper water temperatures. Verification by the department of these practices may be conducted during on-site visits.

69.28(7) Programs may have an on-site dietitian. Programs may secure menus and a dietitian through other methods.

[**ARC 8176B**, IAB 9/23/09, effective 1/1/10; **ARC 1376C**, IAB 3/19/14, effective 4/23/14]

481—69.29(231C) Staffing. In addition to the general staffing requirements in rule 481—67.9(231B,231C,231D), the following requirements apply to staffing in programs.

69.29(1) Each tenant shall have access to a 24-hour personal emergency response system that automatically identifies the tenant in distress and can be activated with one touch.

69.29(2) In lieu of providing access to a personal emergency response system, a program serving one or more tenants with cognitive disorder or dementia shall follow a system, program, or written staff procedures that address how the program will respond to the emergency needs of the tenant(s).

69.29(3) The owner or management corporation of the program is responsible for ensuring that all personnel employed by or contracting with the program receive training appropriate to assigned tasks and target population.

69.29(4) A dementia-specific assisted living program shall have one or more staff persons who monitor tenants as indicated in each tenant's service plan. The staff shall be awake and on duty 24

hours a day on site and in the proximate area. The staff shall check on tenants as indicated in the tenants' service plans.

69.29(5) All programs employing a new program manager after January 1, 2010, shall require the manager within six months of hire to complete an assisted living management class whose curriculum includes at least six hours of training specifically related to Iowa rules and laws on assisted living programs. Managers who have completed a similar training prior to January 1, 2010, shall not be required to complete additional training to meet this requirement.

69.29(6) All programs employing a new delegating nurse after January 1, 2010, shall require the delegating nurse within six months of hire to complete an assisted living manager class or assisted living nursing class whose curriculum includes at least six hours of training specifically related to Iowa rules and laws on assisted living. A minimum of one delegating nurse from each program must complete the training. If there are multiple delegating nurses and only one delegating nurse completes the training, the delegating nurse who completes the training shall train the other delegating nurses in the Iowa rules and laws on assisted living. As of January 1, 2011, all programs shall have a minimum of one delegating nurse who has completed the training described in this subrule.

[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.30(231C) Dementia-specific education for program personnel.

69.30(1) All personnel employed by or contracting with a dementia-specific program shall receive a minimum of eight hours of dementia-specific education and training within 30 days of either employment or the beginning date of the contract, as applicable.

69.30(2) The dementia-specific education or training shall include, at a minimum, the following:

a. An explanation of Alzheimer's disease and related disorders;

b. The program's specialized dementia care philosophy and program;

c. Skills for communicating with persons with dementia;

d. Skills for communicating with family and friends of persons with dementia;

e. An explanation of family issues such as role reversal, grief and loss, guilt, relinquishing the care-giving role, and family dynamics;

f. The importance of planned and spontaneous activities;

g. Skills in providing assistance with instrumental activities of daily living;

h. The importance of the service plan and social history information;

i. Skills in working with challenging tenants;

j. Techniques for simplifying, cueing, and redirecting;

k. Staff support and stress reduction; and

l. Medication management and nonpharmacological interventions.

69.30(3) All personnel employed by or contracting with a dementia-specific program shall receive a minimum of two hours of dementia-specific continuing education annually. Direct-contact personnel shall receive a minimum of eight hours of dementia-specific continuing education annually.

69.30(4) An employee or contractor who provides documentation of completion of a dementia-specific education or training program within the past 12 months shall be exempt from the education and training requirement of subrule 69.30(1).

69.30(5) Dementia-specific training shall include hands-on training and may include any of the following: classroom instruction, Web-based training, and case studies of tenants in the program.

[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.31(231C) Managed risk policy and managed risk consensus agreements. The program shall have a managed risk policy. The managed risk policy shall be provided to the tenant along with the occupancy agreement. The managed risk policy shall include the following:

69.31(1) An acknowledgment of the shared responsibility for identifying and meeting the needs of the tenant and the process for managing risk and for upholding tenant autonomy when tenant decision making results in poor outcomes for the tenant or others; and

69.31(2) A consensus-based process to address specific risk situations. Program staff and the tenant shall participate in the process. The result of the consensus-based process may be a managed risk

consensus agreement. The managed risk consensus agreement shall include the signature of the tenant and the signatures of all others who participated in the process. The managed risk consensus agreement shall be included in the tenant's file.
[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.32(231C) Life safety—emergency policies and procedures and structural safety requirements.

69.32(1) The program shall submit to the department and follow written emergency policies and procedures, which shall include the following:

a. An emergency plan, which shall include procedures for natural disasters (identify where the plan is located for easy reference);

b. Fire safety procedures;

c. Other general or personal emergency procedures;

d. Provisions for amending or revising the emergency plan;

e. Provisions for periodic training of all employees;

f. Procedures for fire drills;

g. Regulations regarding smoking;

h. Monitoring and testing of smoke-control systems;

i. Tenant evacuation procedures; and

j. Procedures for reporting and documentation.

69.32(2) An operating alarm system shall be connected to each exit door in a dementia-specific program. A program serving a person(s) with cognitive disorder or dementia, whether in a general or dementia-specific setting, shall have:

a. Written procedures regarding alarm systems and appropriate staff response when a tenant's service plan indicates a risk of elopement or a tenant exhibits wandering behavior.

b. Written procedures regarding appropriate staff response if a tenant with cognitive disorder or dementia is missing.

69.32(3) The program's structure and procedures and the facility in which a program is located shall meet the requirements adopted for assisted living programs in administrative rules promulgated by the state fire marshal. Approval of the state fire marshal indicating that the building is in compliance with these requirements is necessary for certification of a program.

69.32(4) The program shall have the means to control the maximum temperature of water at sources accessible by a tenant to prevent scalding and shall control the maximum water temperature for tenants with cognitive impairment or dementia or at a tenant's request.
[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.33(231C) Transportation. When transportation services are provided directly or under contract with the program:

69.33(1) The vehicle shall be accessible and appropriate to the tenants who use it, with consideration for any physical disabilities and impairments.

69.33(2) Every tenant transported shall have a seat in the vehicle, except for a tenant who remains in a wheelchair during transport.

69.33(3) Vehicles shall have adequate seat belts and securing devices for ambulatory and wheelchair-using passengers.

69.33(4) Wheelchairs shall be secured when the vehicle is in motion.

69.33(5) During loading and unloading of a tenant, the driver shall be in the proximate area of the tenants in a vehicle.

69.33(6) The driver shall have a valid and appropriate Iowa driver's license or commercial driver's license as required by law for the vehicle being utilized for transport. If the driver is licensed in another state, the license shall be valid and appropriate for the vehicle being utilized for transport. The driver shall meet any state or federal requirements for licensure or certification for the vehicle operated.

69.33(7) Each vehicle shall have a first-aid kit, fire extinguisher, safety triangles and a device for two-way communication.
[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.34(231C) Activities.

69.34(1) The program shall provide appropriate activities for each tenant. Activities shall reflect individual differences in age, health status, sensory deficits, lifestyle, ethnic and cultural beliefs, religious beliefs, values, experiences, needs, interests, abilities and skills by providing opportunities for a variety of types and levels of involvement.

69.34(2) Activities shall be planned to support the tenant's service plan and shall be consistent with the program statement and occupancy policies.

69.34(3) A written schedule of activities shall be developed at least monthly and made available to tenants and their legal representatives.

69.34(4) Tenants shall be given the opportunity to choose their levels of participation in all activities offered in the program.
[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.35(231C) Structural requirements.

69.35(1) *General requirements.*

a. The structure of the program shall be designed and operated to meet the needs of the tenants.

b. The buildings and grounds shall be well-maintained, clean, safe and sanitary.

c. Programs shall have private dwelling units with a single-action, lockable entrance door.

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

e. The structure in which a program is housed shall be built, at a minimum, of Type V (111) construction as provided in Section 22.3.1.3.3 and Sections 6.2.1A to 6.2.2 of NFPA 101, Life Safety Code, 2003 edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169-7471, or as required in administrative rules promulgated by the state fire marshal.

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

69.35(2) *Programs certified prior to July 4, 2001.* Facilities for programs certified prior to July 4, 2001, shall meet the following requirements:

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

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

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

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

69.35(3) *New construction built on or after July 4, 2001.* Programs operated in new construction built on or after July 4, 2001, shall meet the following requirements:

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

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

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

d. Each dwelling unit shall contain a bathroom, including but not limited to a toilet, sink and bathing facilities. A program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or remove the sink or bathing facility

water control and shall disable or remove the water control if its presence presents a danger to the health and safety of the tenant.

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

f. Self-closing doors are not required for individual dwelling units, whether in a general or dementia-specific setting, unless the authority with jurisdiction determines that the level of hazard has increased to require the installation of closure hardware (for example, presence of a stove, range or oven).

69.35(4) *Structure being converted to or remodeled for use by a program on or after July 4, 2001.* A program operating in a structure that was converted or remodeled for use for a program on or after July 4, 2001, shall meet the following requirements:

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

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

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

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

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

f. Each sleeping room shall have a minimum of 5.7 square feet of operable window. Waiver of this requirement may be granted by the state fire marshal or designee.

[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.36(231C) Dwelling units in dementia-specific programs. Dementia-specific programs are exempt from the requirements in subrules 69.35(2) to 69.35(4) as follows:

69.36(1) For a program built in a family or neighborhood design:

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

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

69.36(2) Dementia-specific programs may choose not to provide bathing facilities in the dwelling units.

[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.37(231C) Landlord and tenant Act. Iowa Code chapter 562A, the uniform residential landlord and tenant Act, shall apply to programs under this chapter.

[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.38(83GA,SF203) Identification of veteran's benefit eligibility.

69.38(1) Within 30 days of a tenant's admission to an assisted living program that receives reimbursement through the medical assistance program under Iowa Code chapter 249A, the program shall ask the tenant or the tenant's personal representative whether the tenant is a veteran or whether the tenant is the spouse, widow, or dependent of a veteran and shall document the response.

69.38(2) If the program determines that the tenant may be a veteran or the spouse, widow, or dependent of a veteran, the program shall report the tenant's name along with the name of the veteran, if applicable, as well as the name of the contact person for this information, to the Iowa department of veterans affairs. When appropriate, the program may also report such information to the Iowa department of human services.

69.38(3) If a tenant is eligible for benefits through the U.S. Department of Veterans Affairs or other third-party payor, the program first shall seek reimbursement from the identified payor source before seeking reimbursement from the medical assistance program established under Iowa Code chapter 249A.

[**ARC 8176B**, IAB 9/23/09, effective 1/1/10]

481—69.39(231C) 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 individual" means an individual receiving respite care services. An assisted living program which chooses to provide respite care services must meet the following requirements related to respite care services and must be certified as an assisted living program.

69.39(1) *Length of stay.* Respite care services shall 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 in the program.

69.39(2) *No separate certificate.* An assisted living program that chooses to provide respite care services is not required to obtain a separate certificate or pay a certification fee.

69.39(3) *Assessment.* The program nurse shall conduct an assessment of the respite care individual prior to the respite care individual's stay. The assessment shall be documented and shall include, at a minimum:

a. Safety and supervision needs;

b. Medical needs;

c. Dietary needs; and

d. Bowel and bladder function.

69.39(4) *Written direction to staff.* The program nurse shall document the care needs of the respite care individual based on the assessment conducted pursuant to subrule 69.39(3) and provide the documentation to staff.

69.39(5) *Involuntary termination of respite care services.* The program may terminate the respite care services for a respite care individual. Rule 481—69.24(231C) shall not apply. The program shall make proper arrangements for the welfare of the respite care individual prior to involuntary termination of respite care services, including notification of the respite care individual's family or legal representative.

69.39(6) *Contract.* The program shall have a contract with each respite care individual. The contract shall, at a minimum, include the following:

a. The time period during which the individual will be considered to be receiving respite care services, not to exceed 30 consecutive days.

b. A description of all fees, charges, and rates for respite care services, and any additional and optional services and their related costs.

c. A statement that respite care services may be involuntarily terminated. Rule 481—69.24(231C) shall not apply.

d. Identification of the party responsible for payment of fees and identification of the respite care individual's legal representative, if any.

e. Identification of emergency contacts, including but not limited to the respite care individual's family member(s) and physician.

f. A statement that all respite care individual information shall be maintained in a confidential manner to the extent required under state and federal law.

g. The refund policy, if applicable.

h. A statement regarding billing and payment procedures.

69.39(7) *Admission to program.*

a. A respite care individual shall not be considered an admission to the program.

b. A respite care individual shall be included in the program's census.

c. The program shall not enter into multiple 30-day contracts with a respite care individual in order to lengthen the respite care individual's stay in the program.

d. If a respite care individual remains in the program beyond 30 consecutive days and is eligible for admission, the department shall consider the individual a tenant in the program. The program shall follow all requirements for admission to the program.

69.39(8) *Level of care criteria.* Respite care individuals must meet the criteria found in subrule 69.23(1) for admission and retention of tenants. Respite care services shall not be provided by an assisted

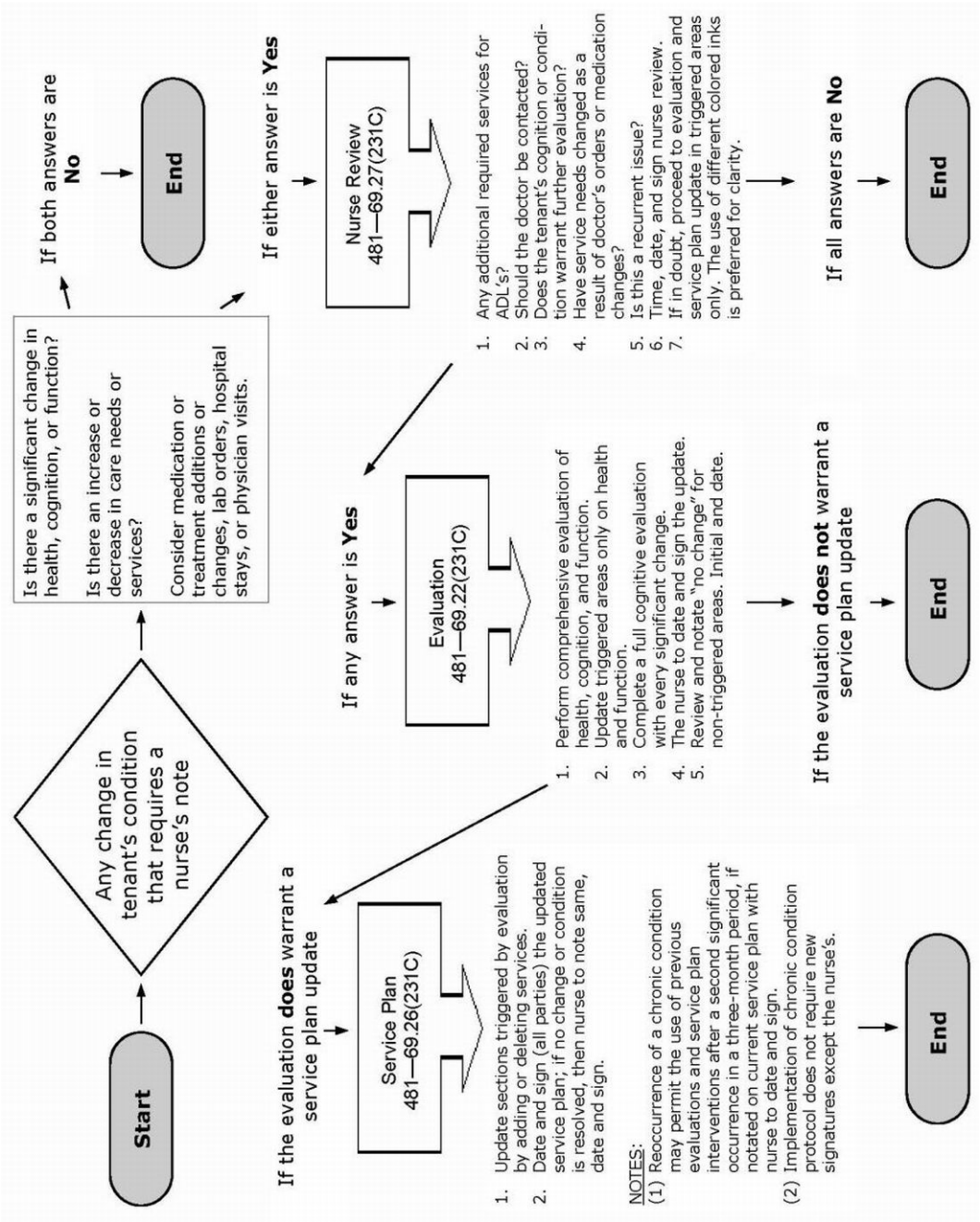
living program to persons requiring a level of care which is higher than the level of care the program is certified to provide.

69.39(9) *Accessibility by the department.* The department shall have the same access to respite care services records as provided in 481—subrule 67.10(2).

[**ARC 1667C**, IAB 10/15/14, effective 11/19/14]

These rules are intended to implement Iowa Code chapter 231C.

Table A



[Filed ARC 8176B (Notice ARC 7878B, IAB 6/17/09), IAB 9/23/09, effective 1/1/10]
[Filed ARC 1376C (Notice ARC 1291C, IAB 1/22/14), IAB 3/19/14, effective 4/23/14]
[Filed ARC 1667C (Notice ARC 1511C, IAB 6/25/14), IAB 10/15/14, effective 11/19/14]

CHAPTER 70
ADULT DAY SERVICES

481—70.1(231D) Definitions. In addition to the definitions in 481—Chapter 67 and Iowa Code chapter 231D, the following definitions apply.

"Accredited" means that the program has received accreditation from an accreditation entity recognized in subrule 70.14(1).

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

"Applicable requirements" means Iowa Code chapter 231D, this chapter, and 481—Chapter 67 and includes any other applicable administrative rules and provisions of the Iowa Code.

"CARF" means the Commission on Accreditation of Rehabilitation Facilities.

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

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

"Dementia-specific adult day services program" means an adult day services program certified under this chapter that:

1. Serves fewer than 55 participants and has 5 or more participants who have dementia between Stages 4 and 7 on the Global Deterioration Scale, or
2. Serves 55 or more participants and 10 percent or more of the participants have dementia between Stages 4 and 7 on the Global Deterioration Scale, or
3. Holds itself out as providing specialized care for persons with dementia, such as Alzheimer's disease, in a dedicated setting.

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

"Maximal assistance with activities of daily living" means routine total dependence on staff for the performance of a minimum of four activities of daily living for a period that exceeds 21 days.

"Medically unstable" means that a participant has a condition or conditions:

1. Indicating physiological frailty as determined by the program's staff in consultation with a physician or physician extender;
2. Resulting in three or more significant hospitalizations within a consecutive three-month period for more than observation; and
3. Requiring frequent supervision of the participant for more than 21 days by a registered nurse.

For example, a participant who has a condition such as congestive heart failure which results in three or more significant hospitalizations during a quarter and which requires that the participant receive frequent supervision may be considered medically unstable.

"Nonaccredited" means that the program has been certified under the provisions of this chapter but has not received accreditation from the accreditation entity recognized in subrule 70.14(1).

"Participant" means an individual who is the recipient of services provided by an adult day services program.

"Participant's legal representative" means a person appointed by the court to act on behalf of a participant, or a person acting pursuant to a power of attorney.

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

"Unmanageable verbal abuse" means repeated verbalizations against participants or staff that persist despite all interventions and negatively affect the program. "Unmanageable verbal abuse" includes but is not limited to threats, frequent use of profane language, or unwelcome sexually oriented remarks.

"Visiting day(s)" means up to 16 hours in a two-day period during which a person may visit a program prior to admission for the purpose of assessing eligibility for the program and personal satisfaction.
[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.2(231D) Program certification. A program may obtain certification by meeting all applicable requirements. In addition, a program may be voluntarily accredited by a recognized accreditation entity. For the purpose of these rules, certification is equivalent to licensure.

70.2(1) *Posting requirements.* A program's current certificate shall be visibly displayed within the designated operation area of the program. In addition, the latest monitoring report, state fire marshal report, and food establishment inspections report issued pursuant to Iowa Code chapter 137F shall be made available to the public by the program upon request.

70.2(2) *Dementia-specific programs and door alarms.* If a program meets the definition of a dementia-specific adult day services program during two sequential certification monitorings, the program shall meet all requirements for a dementia-specific program, including the requirements set forth in rule 481—70.30(231D) and in subrule 70.32(2), which includes the requirements relating to door alarms.
[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.3(231D) Certification of a nonaccredited program—application process.

70.3(1) The applicant shall complete an application packet obtained from the department. Application materials may be obtained from the health facilities division Web site at https://dia-hfd.iowa.gov/DIA_HFD/Home.do; by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

70.3(2) The applicant shall submit one copy of the completed application and all supporting documentation to the department at the above address at least 90 calendar days prior to the expected date of beginning operation.

70.3(3) The appropriate fee as stated in Iowa Code section 231D.4 shall accompany each application and be payable by check or money order to the Department of Inspections and Appeals. Fees are nonrefundable.

70.3(4) The department shall consider the application when all supporting documents and fees are received.
[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.4(231D) Nonaccredited program—application content. An application for certification or recertification of a nonaccredited program shall include the following:

70.4(1) A list that includes the names, addresses, and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 5 percent equity interest in the program. The program shall notify the department of any changes in the list within ten working days of the change.

70.4(2) A statement affirming that the individuals listed in subrule 70.4(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

70.4(3) A statement disclosing whether any of the individuals listed in subrule 70.4(1) have or have had an ownership interest in an adult day services program, assisted living program, elder group home, home health agency, licensed health care facility as defined in Iowa Code section 135C.1 or licensed hospital as defined in Iowa Code section 135B.1 or a boarding home as defined in 2009 Iowa Acts, Senate File 484, section 3 (to be codified as Iowa Code Supplement section 135O.1), which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect.

70.4(4) The policy and procedure for evaluation of each participant. A copy of the evaluation tool or tools to be used to identify the functional, cognitive and health status of each participant shall be included.

70.4(5) The policy and procedure for service plans.

70.4(6) The policy and procedure for addressing medication needs of participants.

70.4(7) The policy and procedure for accidents and emergency response.

70.4(8) The policies and procedures for food service, including those relating to staffing, nutrition, menu planning, therapeutic diets, and food preparation, service and storage.

70.4(9) The policy and procedure for activities.

70.4(10) The policy and procedure for transportation.

70.4(11) The policy and procedure for staffing and training.

70.4(12) The policy and procedure for emergencies, including natural disasters. The policy and procedure shall include an evacuation plan and procedures for notifying legal representatives in emergency situations as applicable.

70.4(13) The policy and procedure for managing risk and upholding participant autonomy when participant decision making results in poor outcomes for the participant or others.

70.4(14) The policy and procedure for reporting incidents including dependent adult abuse as required in rule 481—67.2(231B,231C,231D).

70.4(15) The policy and procedure related to life safety requirements for a dementia-specific program as required by subrule 70.32(2).

70.4(16) The participant contractual agreement and all attachments.

70.4(17) If the program contracts for personal care or health-related care services from a certified home health agency, a mental health center or a licensed health care facility, a copy of that entity's current license or certification.

70.4(18) A copy of the state license for the entity that provides food service, whether the entity is the program or an outside entity or a combination of both.

70.4(19) The fee set forth in Iowa Code section 231D.4.

[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.5(231D) Initial certification process for a nonaccredited program.

70.5(1) Upon receipt of all completed documentation, including state fire marshal approval and structural and evacuation review approval, the department shall determine whether the proposed program meets applicable requirements.

70.5(2) If, based upon the review of the complete application, including all required supporting documents, the department determines the proposed program meets the requirements for certification, a provisional certification shall be issued to the program to begin operation and accept participants.

70.5(3) Within 180 calendar days following issuance of provisional certification, the department shall conduct a monitoring to determine the program's compliance with applicable requirements.

70.5(4) If a regulatory insufficiency is identified as a result of the monitoring, the process in rule 481—67.10(17A,231B,231C,231D) shall be followed.

70.5(5) The department shall make a final certification decision based on the results of the monitoring and review of an acceptable plan of correction.

70.5(6) The department shall notify the program of a final certification decision within 10 working days following the finalization of the monitoring report or receipt of an acceptable plan of correction, whichever is applicable.

70.5(7) If the decision is to continue certification, the department shall issue a full two-year certification effective from the date of the original provisional certification.

[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.6(231D) Expiration of the certification of a nonaccredited program.

70.6(1) Unless conditionally issued, suspended or revoked, certification of a program shall expire at the end of the time period specified on the certificate.

70.6(2) The department shall send recertification application materials to each program at least 120 calendar days prior to expiration of the program's certification.
[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.7(231D) Recertification process for a nonaccredited program. To obtain recertification, a program shall:

70.7(1) Submit one copy of the completed application, including the information required in rule 481—70.4(231D), associated documentation, and the recertification fee as listed in Iowa Code section 231D.4 to the department at the address stated in subrule 70.3(1) at least 90 calendar days prior to the expiration of the program's certification. The program need not submit policies and procedures that have been previously submitted to the department and remain unchanged. The program shall provide a list of the policies and procedures that have been previously submitted and are not being resubmitted.

70.7(2) Submit additional documentation that each of the following has been inspected by a qualified professional and found to be maintained in conformance with the manufacturer's recommendations and nationally recognized standards: heating system, cooling system, water heater, electrical system, plumbing, sewage system, artificial lighting, and ventilation system; and, if located on site, garbage disposal, kitchen appliances, washing machines and dryers, and elevators.
[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.8(231D) Notification of recertification for a nonaccredited program.

70.8(1) The department shall review the application and associated documentation and fees. If the application is incomplete, the department shall contact the program to request the additional information. After all finalized documentation is received, including state fire marshal approval, the department shall determine the program's compliance with applicable requirements.

70.8(2) The department shall conduct a monitoring of the program between 60 and 90 days prior to expiration of the program's certification.

70.8(3) If a regulatory insufficiency is identified as a result of the monitoring, the process in rule 481—67.10(17A,231B,231C,231D) shall be followed.

70.8(4) If no regulatory insufficiency is identified as a result of the monitoring, the department shall issue a report of the findings with the final recertification decision.

70.8(5) If the decision is to recertify, the department shall issue the program a two-year certification effective from the date of the expiration of the previous certification.

70.8(6) If the decision is to deny recertification, the department shall issue a notice of denial and provide the program the opportunity for a hearing pursuant to rule 481—67.13(17A,231B,231C,231D).

70.8(7) If the department is unable to recertify a program through no fault of the program, the department shall issue to the program a time-limited extension of certification of no longer than one year.
[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.9(231D) Certification or recertification of an accredited program—application process.

70.9(1) An applicant for certification or recertification of a program accredited by a recognized accrediting entity shall:

a. Submit a completed application packet obtained from the department. Application materials may be obtained from the health facilities division Web site at https://dia-hfd.iowa.gov/DIA_HFD/Home.do; by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

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

c. Apply for certification or recertification within 90 calendar days following verification of compliance with life safety requirements pursuant to this chapter.

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

e. Submit the appropriate fees as set forth in Iowa Code section 231D.4.

70.9(2) The department shall not consider an application until it is complete and includes all supporting documentation and the appropriate fees.
[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.10(231D) Certification or recertification of an accredited program—application content. An application for certification or recertification of an accredited program shall include the following:

70.10(1) A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 5 percent equity interest in the program. The program shall notify the department of any changes in the list within ten working days of the change.

70.10(2) A statement affirming that the individuals listed in subrule 70.10(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

70.10(3) A statement disclosing whether any of the individuals listed in subrule 70.10(1) have or have had an ownership interest in an adult day services program, assisted living program, elder group home, home health agency, licensed health care facility as defined under Iowa Code section 135C.1 or licensed hospital as defined under Iowa Code section 135B.1 or a boarding home as defined in 2009 Iowa Acts, Senate File 484, section 3 (to be codified as Iowa Code Supplement section 135O.1), which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect.

70.10(4) A copy of the current accreditation outcome from the recognized accrediting entity.
[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.11(231D) Initial certification process for an accredited program.

70.11(1) Within 20 working days of receiving all finalized documentation, including state fire marshal approval, the department shall determine and notify the accredited program whether the accredited program meets applicable requirements and whether certification will be issued.

70.11(2) If the decision is to certify, a certification shall be issued for the term of the accreditation not to exceed three years, unless the certification is conditionally issued, suspended or revoked by either the department or the recognized accrediting entity.

70.11(3) If the decision is to deny certification, the department shall provide the applicant an opportunity for hearing in accordance with rule 481—67.13(17A,231B,231C,231D).

70.11(4) Unless conditionally issued, suspended or revoked, certification for a program shall expire at the end of the time period specified on the certificate.
[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.12(231D) Recertification process for an accredited program.

70.12(1) The department shall send recertification application materials to each program at least 120 calendar days prior to expiration of the program's certification.

70.12(2) To obtain recertification, an accredited program shall submit one copy of the completed application, associated documentation, and the administrative fee as stated in Iowa Code section 231D.4 to the department at the address stated in subrule 70.9(1) at least 90 calendar days prior to the expiration of the program's certification.

70.12(3) Within 20 working days of receiving all finalized documentation, including state fire marshal approval, the department shall determine the program's compliance with applicable requirements and make a recertification decision.

70.12(4) The department shall notify the accredited program within 10 working days of the final recertification decision.

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

b. If the decision is to deny recertification, the department shall provide the applicant an opportunity for hearing in accordance with rule 481—67.13(17A,231B,231C,231D).

70.12(5) If the department is unable to recertify a program through no fault of the program, the department shall issue to the program a time-limited extension of certification of no longer than one year.

[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.13(231D) Listing of all certified programs. The department shall maintain a list of all certified programs, which is available online at https://dia-hfd.iowa.gov/DIA_HFD/Home.do, under the "Entities Book" tab.

[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.14(231D) Recognized accrediting entity.

70.14(1) The department designates CARF as a recognized accrediting entity for programs.

70.14(2) To apply for designation by the department as a recognized accrediting entity for programs, an accrediting entity shall submit a letter of request, and its standards shall, at minimum, meet the applicable requirements for programs.

70.14(3) The designation shall remain in effect for as long as the accreditation standards continue to meet, at minimum, the applicable requirements for programs.

70.14(4) An accrediting entity shall provide annually to the department, at no cost, a current edition of the applicable standards manual and survey preparation guide, and training thereon, within 120 working days after the publications are released.

[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.15(231D) Requirements for an accredited program. Each accredited program that is certified by the department shall:

70.15(1) Provide the department a copy of all survey reports including outcomes, quality improvement plans and annual conformance to quality reports generated or received, as applicable, within ten working days of receipt of the reports.

70.15(2) Notify the department by the most expeditious means possible of all credible reports of alleged improper or inappropriate conduct or conditions within the program and any actions taken by the accrediting entity with respect thereto.

70.15(3) Notify the department immediately of the expiration, suspension, revocation or other loss of the program's accreditation.

[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.16(231D) Maintenance of program accreditation.

70.16(1) An accredited program shall continue to be recognized for certification by the department if both of the following requirements are met:

a. The program complies with the requirements outlined in rule 481—70.15(231D).

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

70.16(2) A program that does not maintain its voluntary accreditation status must become certified by the department prior to any lapse in accreditation.

70.16(3) A program that does not maintain its voluntary accreditation status and is not certified by the department prior to any lapse in voluntary accreditation shall cease operation as a program.

[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.17(231D) Transfer of certification.

70.17(1) Certification, unless conditionally issued, suspended or revoked, may be transferable to a new owner of a program. If the program's certification has been conditionally issued, the new owner must receive approval from the department prior to transfer of the certification.

70.17(2) The new owner is required to notify the department in writing within 30 calendar days prior to the change in ownership. The notice shall include assurance that the new owner meets all applicable requirements for programs.

70.17(3) The department may conduct a monitoring within 90 days following a change in the program's ownership or management corporation to ensure that the program complies with applicable requirements. If a regulatory insufficiency is found, the department shall take any necessary enforcement action authorized by applicable requirements.

[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.18(231D) Structural and life safety reviews of a building for a new program.

70.18(1) Before a building is constructed or remodeled for use in a new program, the department shall review the blueprints for compliance with requirements pursuant to this chapter. Construction or remodeling includes new construction, remodeling of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

70.18(2) A program applicant shall submit to the department blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in Iowa Code section 231D.4 to the Department of Public Safety, State Fire Marshal Division, 215 E. 7th Street, Third Floor, Des Moines, Iowa 50319.

70.18(3) Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

70.18(4) The department shall review the blueprints and notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

70.18(5) The Iowa-licensed architect or Iowa-licensed engineer shall respond to the department to state how any noncompliance will be resolved.

70.18(6) Upon final notification by the department that the blueprints meet structural and life safety requirements, construction or remodeling of the building may commence.

70.18(7) The department shall schedule an on-site visit of the building site with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the construction or remodeling process to ensure compliance with the approved blueprints. Any noncompliance must be resolved prior to approval for certification.

[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.19(231D) Structural and life safety review prior to the remodeling of a building for a certified program.

70.19(1) Before a building for a certified program is remodeled, the department shall review the blueprints for compliance with requirements set forth in rule 481—70.35(231D). Remodeling includes modification of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

70.19(2) A certified program shall submit to the department blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in Iowa Code section 231D.4 to the Department of Public Safety, State Fire Marshal Division, 215 E. 7th Street, Third Floor, Des Moines, Iowa 50319.

70.19(3) Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

70.19(4) The department shall review the blueprints within 20 working days of receipt and immediately notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

70.19(5) The Iowa-licensed architect or Iowa-licensed engineer shall respond to the department in 20 working days to state how any noncompliance will be resolved.

70.19(6) Upon final notification by the department that the blueprints meet structural and life safety requirements, remodeling of the building may commence.

70.19(7) The department shall schedule an on-site visit of the building with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the remodeling process to ensure compliance with the approved blueprints. Any noncompliance must be resolved prior to approval for continued certification or recertification of the program.
[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.20(231D) Cessation of program operation.

70.20(1) If a certified program ceases operation, which includes seeking decertification, at any time prior to expiration of the program's certification, the program shall submit the certificate to the department. The program shall provide, at least 90 days in advance of cessation, which includes seeking decertification, unless there is some type of emergency, written notification to the department of the date on which the program will cease operation, which includes seeking decertification.

70.20(2) If a certified program plans to cease operation, which includes seeking decertification, at the time the program's certification expires, the program shall provide written notice of this fact to the department at least 90 days prior to expiration of the certification.

70.20(3) At the time a program decides to cease operation, which includes seeking decertification, the program shall submit a plan to the department and make arrangements for the safe and orderly discharge or transition of all participants within the 90-day period specified by subrule 70.20(2).

70.20(4) The department may conduct a monitoring during the 90-day period to ensure the safety of participants during the discharge process or transition process.

70.20(5) The department may conduct an on-site visit to verify that the program has ceased operation as a certified program in accordance with the notice provided by the program.
[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.21(231D) Contractual agreement.

70.21(1) The contractual agreement shall be in 12-point type or larger, shall be written in plain language using commonly understood terms and shall be easy for the participant or the participant's legal representative to understand.

70.21(2) In addition to the requirements of Iowa Code section 231D.17, the written contractual agreement shall include, but not be limited to, the following information in the body of the agreement or in the supporting documents and attachments:

a. The telephone number for filing a complaint with the department.

b. The telephone number for reporting dependent adult abuse.

c. A copy of the program's statement on participants' rights.

d. A statement that the program will notify the participant at least 90 days in advance of any planned program cessation, which includes voluntary decertification, except in cases of emergency.

e. A copy of the program's admission and discharge criteria.

70.21(3) The contractual agreement shall be reviewed and updated as necessary to reflect any change in services or financial arrangements.

70.21(4) A copy of the contractual agreement shall be provided to the participant or the participant's legal representative, if any, and a copy shall be kept by the program.

70.21(5) A copy of the most current contractual agreement shall be made available to the general public upon request. The basic marketing material shall include a statement that a copy of the contractual agreement is available to all persons upon request.
[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.22(231D) Evaluation of participant.

70.22(1) *Evaluation prior to participation.* A program shall evaluate each prospective participant's functional, cognitive and health status prior to the participant's signing the contractual agreement and participating in the program, with the exception of visiting day(s), to determine the participant's eligibility for the program, including whether the services needed are available. The cognitive

evaluation shall be appropriate to the population served. When the cognitive evaluation indicates moderate cognitive decline and risk, the Global Deterioration Scale shall be used at all subsequent intervals, if applicable. If the participant subsequently returns to the participant's mildly cognitively impaired state, the program may discontinue the GDS and revert to a scored cognitive screening tool. The evaluation shall be conducted by a health care professional or human service professional.

70.22(2) *Evaluation within 30 days of participation and with significant change.* A program shall evaluate each participant's functional, cognitive and health status within 30 days of the participant's beginning participation in the program. A program shall also evaluate each participant's functional, cognitive and health status as needed with significant change, but not less than annually, to determine the participant's continued eligibility for the program and to determine any changes to services needed. The evaluation shall be conducted by a health care professional or human service professional. A licensed practical nurse may complete the evaluation via nurse delegation when the participant has not exhibited a significant change.

70.22(3) *Requirements for visiting day(s).* Evaluation of the participant is not required during visiting day(s), but the program shall provide the participant or the participant's legal representative with a written explanation of the expectations for the visiting day(s).

[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.23(231D) Criteria for admission and retention of participants.

70.23(1) *Persons who may not be admitted or retained.* A program shall not knowingly admit or retain a participant who:

a. Requires routine, three-person assistance with standing, transfer or evacuation; or

b. Is dangerous to self or other participants or staff, including but not limited to a participant who:

(1) Despite intervention chronically elopes, is sexually or physically aggressive or abusive, or displays unmanageable verbal abuse; or

(2) Is in an acute stage of alcoholism, drug addiction, or mental illness; or

c. Is under the age of 18.

70.23(2) *Disclosure of additional participation and discharge criteria.* A program may have additional participation or discharge criteria if the criteria are disclosed in the written contractual agreement prior to the participant's participation in the program.

70.23(3) *Assistance with discharge from the program.* A program shall provide assistance to a participant and the participant's legal representative, if applicable, to ensure a safe and orderly discharge from the program when the participant exceeds the program's criteria for admission and retention.

[**ARC 8177B**, IAB 9/23/09, effective 1/1/10; **ARC 1547C**, IAB 7/23/14, effective 8/27/14]

481—70.24(231D) Involuntary discharge from the program.

70.24(1) *Program initiation of discharge.* If a program initiates the involuntary discharge of a participant and the action is not the result of a monitoring, including a complaint investigation or program-reported incident investigation, by the department and if the participant or participant's legal representative contests the discharge, the following procedures shall apply:

a. The program shall notify the participant or participant's legal representative, in accordance with the contractual agreement, of the need to discharge the participant and of the reason for the discharge.

b. If, following the internal appeal process, the program upholds the discharge decision, the participant or participant's legal representative may utilize other remedies authorized by law to contest the discharge.

70.24(2) *Discharge pursuant to results of monitoring or complaint or program-reported incident investigation by the department.* If one or more participants are identified as exceeding the admission and retention criteria for participants and need to be discharged as a result of a monitoring or a complaint or program-reported incident investigation conducted by the department, the following procedures shall apply:

a. *Notification of the program.* Within 20 working days of the monitoring or complaint or program-reported incident investigation, the department shall notify the program, in writing, of the identification of any participant who exceeds admission and retention criteria.

b. *Notification of others.* Each identified participant, the participant's legal representative, if applicable, and other providers of services to the participant shall be notified of their opportunity to provide responses including: specific input, written comment, information, and documentation directly addressing any agreement or disagreement with the identification. All responses shall be provided to the department within 10 days of receipt of the notice.

c. *Program agreement with the department's finding.* If the program agrees with the department's finding and the program begins involuntary discharge proceedings, the program's internal appeal process in subrule 70.24(1) shall be utilized for appeals.

d. *Program disagreement with the department's finding.* If the program does not agree with the department's finding that the participant exceeds admission and retention criteria, the program may collect and submit all responses to the department, including those from other interested parties. In the program's response, the program shall identify the participant, list the known responses from others, and note the program's agreement or disagreement with the responses from others. The program's response shall be submitted to the department within 10 working days of the receipt of the notice. Submission of a response does not eliminate the applicable requirements, including submission of a plan of correction under 481—subrule 67.10(5). Other persons may also submit information directly to the department.

(1) Consideration of response. Within 10 working days of receipt of the program's response for each identified participant, the department shall consider the response and make a final finding regarding the continued retention of a participant.

(2) Amending the regulatory insufficiency. If the department's determination is to amend the regulatory insufficiency based on the response, the department shall modify the report of findings.

(3) Retaining regulatory insufficiency. If the department retains the regulatory insufficiency, the department shall review the plan of correction in accordance with this chapter and 481—Chapter 67. The department shall notify the program of the opportunity to appeal the report findings as they relate to the admission and retention decision.

(4) Effect of the filing of an appeal. If an appeal is filed, the participant who exceeds admission and retention criteria shall be allowed to continue to participate in the program until all administrative appeals have been exhausted. Appeals filed that relate to the participant's exceeding admission and retention criteria shall be heard within 30 days of receipt, and appropriate services to meet the participant's needs shall be provided during that period of time.

(5) Request for waiver of criteria for retention of a participant in a program. To allow a participant to continue to participate in the program, the program may request a waiver of criteria for retention of a participant pursuant to rule 481—67.7(231B,231C,231D) from the department within 10 working days of the receipt of the report.

[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.25(231D) Participant documents.

70.25(1) Documentation for each participant shall be maintained by the program and shall include:

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

b. Application forms;

c. The initial evaluations and updates;

d. A nutritional assessment as necessary;

e. The initial individual service plan and updates;

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

g. A signed authorization for the participant to receive emergency medical care as necessary;

h. A signed managed risk policy and signed managed risk consensus agreements, if any;

i. When any personal or health-related care is delegated to the program, the medical information sheet; documentation of health professionals' orders, such as those for treatment, therapy, and medication; and nurses' notes written by exception;

j. Medication lists, which shall be maintained in conformance with 481—subrule 67.5(4);

k. Advance health care directives as applicable;

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

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

n. A copy of guardianship, durable power of attorney for health care, power of attorney, or conservatorship or other documentation of a legal representative;

o. Incident reports involving the participant, including but not limited to those related to medication errors, accidents, falls, and elopements (such reports shall be maintained by the program but need not be included in the participant's medical record);

p. A copy of waivers of admission or retention criteria, if any;

q. When the participant is unable to advocate on the participant's own behalf or the participant has multiple service providers, including hospice care providers, accurate documentation of the completion of routine personal or health-related care is required on task sheets. If tasks are doctor-ordered, the tasks shall be part of the medication administration records (MARs); and

r. Authorizations for the release of information, if any.

70.25(2) The program records relating to a participant shall be retained for a minimum of three years after the discharge or death of the participant.

70.25(3) All records shall be protected from loss, damage and unauthorized use.

[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.26(231D) Service plans.

70.26(1) A service plan shall be developed for each participant based on the evaluations conducted in accordance with subrules 70.22(1) and 70.22(2) and shall be designed to meet the specific service needs of the individual participant. The service plan shall subsequently be updated at least annually and whenever changes are needed.

70.26(2) Prior to the participant's signing the contractual agreement and participating in the program, a preliminary service plan shall be developed by a health care professional or human service professional in consultation with the participant and, at the participant's request, with other individuals identified by the participant, and, if applicable, with the participant's legal representative. All persons who develop the plan and the participant or the participant's legal representative shall sign the plan.

70.26(3) When a participant needs personal care or health-related care, the service plan shall be updated within 30 days of the participant's participation and as needed with significant change, but not less than annually.

a. If a significant change triggers the review and update of the service plan, the updated service plan shall be signed and dated by all parties.

b. If a significant change does not exist, the program may, after nurse review, add minor discretionary changes to the service plan without a comprehensive evaluation and without obtaining signatures on the service plan.

c. If a significant change relates to a recurring or chronic condition, a previous evaluation and service plan of the recurring condition may be utilized without new signatures being obtained. For example, with chronic exacerbation of a urinary tract infection, nurse review is adequate to institute the previously written evaluation and service plan.

70.26(4) The service plan shall be individualized and shall indicate, at a minimum:

a. The participant's identified needs and preferences for assistance;

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

c. The service provider(s), if other than the program, including but not limited to providers of hospice care, home health care, occupational therapy, and physical therapy; and

d. For participants who are unable to plan their own activities, including participants with dementia, planned and spontaneous activities based on the participant's abilities and personal interests.
[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.27(231D) Nurse review. If a participant does not receive personal or health-related care, but an observed significant change in the participant's condition occurs, a nurse review shall be conducted. If a participant receives personal or health-related care, the program shall provide for a registered nurse or a licensed practical nurse via nurse delegation:

70.27(1) To monitor, at least every 90 days, or after a significant change in the participant's condition, any participant who receives program-administered prescription medications for adverse reactions to the medications and to make appropriate interventions or referrals, and to ensure that the prescription medication orders are current and that the prescription medications are administered consistent with such orders; and

70.27(2) To ensure that health care professionals' orders are current for participants who receive health care professional-directed care from the program; and

70.27(3) To assess and document the health status of each participant, to make recommendations and referrals as appropriate, and to monitor progress relating to previous recommendations at least every 90 days and whenever there are changes in the participant's health status; and

70.27(4) To provide the program with written documentation of the activities under the service plan, as set forth in rule 481—70.26(231D), showing the time, date and signature.

NOTE: Refer to Table A at the end of this chapter. If the program does not provide personal or health-related care to a participant, nurse review is not required.
[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.28(231D) Food service.

70.28(1) The program shall provide or coordinate with other community providers to provide a hot or other appropriate meal(s) at least once a day or shall make arrangements for the availability of meals, unless otherwise noted in the contractual agreement.

70.28(2) Meals and snacks provided by the program but not prepared on site shall be obtained from or provided by an entity that meets the standards of state and local health laws and ordinances concerning the preparation and serving of food.

70.28(3) Menus shall be planned to provide the following percentage of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences based on the number of meals provided by the program:

a. A minimum of 33⅓ percent if the program provides one meal per day;

b. A minimum of 66⅔ percent if the program provides two meals per day; and

c. One hundred percent if the program provides three meals per day.

70.28(4) Therapeutic diets may be provided by a program. If therapeutic diets are provided, they shall be prescribed by a physician, physician assistant, or advanced registered nurse practitioner. A current copy of the Iowa Simplified Diet Manual published by the Iowa Dietetic Association shall be available and used in the planning and serving of therapeutic diets. A licensed dietitian shall be responsible for writing and approving the therapeutic menu and for reviewing procedures for food preparation and service for therapeutic diets.

70.28(5) Personnel who are employed by or contract with the program and 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.

a. In addition to the requirements above, a minimum of one person directly responsible for food preparation shall have successfully completed a state-approved food protection program by:

(1) Obtaining certification as a dietary manager; or

(2) Obtaining certification as a food protection professional; or

(3) Successfully completing 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.

b. If the person is in the process of completing a course or certification listed in paragraph *"a,"* the requirement relating to completion of a state-approved food protection program shall be considered to have been met.

70.28(6) Programs engaged in the preparation and service of meals and snacks shall meet the standards of state and local health laws and ordinances pertaining to the preparation and service of food and shall be licensed pursuant to Iowa Code chapter 137F. The department will not require the program to be licensed as a food establishment if the program limits food activities to the following:

a. All main meals and planned menu items must be prepared offsite and transferred to the program kitchen for service to participants.

b. Baked goods that do not require temperature control for safety and single-service juice or milk may be stored in the program's kitchen and provided as part of a continental breakfast.

c. Ingredients used for food-related activities with participants may be stored in the program's kitchen. Participant activities may include the preparation and cooking of food items in the program's kitchen if the activity occurs on an irregular or sporadic basis and the items prepared are not part of the program's menu.

d. Appropriately trained staff may prepare in the program's kitchen individual quantities of participant-requested menu-substitution food items that require limited or no preparation, such as peanut butter or cheese sandwiches or a single-service can of soup. The food items necessary to prepare the menu substitution may be stored in the program's kitchen. These food items may not be cooked in the program's kitchen but may be reheated in a microwave. A two- or four-slice toaster may be used for participant-requested menu-substitution items, but no bare-hand contact is permitted.

e. Warewashing may be done in the program's kitchen as long as the program utilizes a commercial dishwasher and documents daily testing of sanitizer chemical ppm and proper water temperatures. Verification by the department of these practices may be conducted during on-site visits.

70.28(7) Programs may have an on-site dietitian. Programs may secure menus and a dietitian through other methods.

[**ARC 8177B**, IAB 9/23/09, effective 1/1/10; **ARC 1376C**, IAB 3/19/14, effective 4/23/14]

481—70.29(231D) Staffing. In addition to the general staffing requirements in rule 481—67.9(231B,231C,231D), the following requirements apply to staffing in programs.

70.29(1) No fewer than two staff persons who monitor participants shall be awake and on duty during all hours of operation when two or more participants are participating in the program.

70.29(2) The owner or management corporation of the program is responsible for ensuring that all personnel employed by or contracting with the program receive training appropriate to assigned tasks and target population.

70.29(3) A program that serves one or more participants with cognitive disorders or dementia shall follow written procedures that address how the program will respond to the emergency needs of the participants.

[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.30(231D) Dementia-specific education for program personnel.

70.30(1) All personnel employed by or contracting with a dementia-specific program shall receive a minimum of eight hours of dementia-specific education and training within 30 days of either employment or the beginning date of the contract, as applicable.

70.30(2) The dementia-specific education or training shall include, at a minimum, the following:

a. An explanation of Alzheimer's disease and related disorders;

b. The program's specialized dementia care philosophy and program;

c. Skills for communicating with persons with dementia;

d. Skills for communicating with family and friends of persons with dementia;

e. An explanation of family issues such as role reversal, grief and loss, guilt, relinquishing the care-giving role, and family dynamics;

f. The importance of planned and spontaneous activities;

g. Skills in providing assistance with instrumental activities of daily living;

h. The importance of the service plan and social history information;

i. Skills in working with challenging participants;

j. Techniques for simplifying, cueing, and redirecting;

k. Staff support and stress reduction; and

l. Medication management and nonpharmacological interventions.

70.30(3) All personnel employed by or contracting with a dementia-specific program shall receive a minimum of two hours of dementia-specific continuing education annually. Direct-contact personnel shall receive a minimum of eight hours of dementia-specific continuing education annually.

70.30(4) An employee or contractor who provides documentation of completion of a dementia-specific education or training program within the past 12 months shall be exempt from the education and training requirement of subrule 70.30(1).

70.30(5) Dementia-specific training shall include hands-on training and may include any of the following: classroom instruction, Web-based training, and case studies of participants in the program.
[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.31(231D) Managed risk policy and managed risk consensus agreements. The program shall have a managed risk policy. The managed risk policy shall be provided to the participant along with the contractual agreement. The managed risk policy shall include the following:

70.31(1) An acknowledgment of the shared responsibility for identifying and meeting the needs of the participant and the process for managing risk and for upholding participant autonomy when participant decision making results in poor outcomes for the participant or others; and

70.31(2) A consensus-based process to address specific risk situations. Program staff and the participant shall participate in the process. The result of the consensus-based process may be a managed risk consensus agreement. The managed risk consensus agreement shall include the signature of the participant and the signatures of all others who participated in the process. The managed risk consensus agreement shall be included in the participant's file.
[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.32(231D) Life safety—emergency policies and procedures and structural safety requirements.

70.32(1) The program shall submit to the department and follow written emergency policies and procedures, which shall include the following:

a. An emergency plan, which shall include procedures for natural disasters (identify where the plan is located for easy reference);

b. Fire safety procedures;

c. Other general or personal emergency procedures;

d. Provisions for amending or revising the emergency plan;

e. Provisions for periodic training of all employees;

f. Procedures for fire drills;

g. Regulations regarding smoking;

h. Monitoring and testing of smoke-control systems;

i. Participant evacuation procedures; and

j. Procedures for reporting and documentation.

70.32(2) An operating alarm system shall be connected to each exit door in a dementia-specific program. A program serving a person(s) with cognitive disorder or dementia, whether in a general or dementia-specific setting, shall have:

a. Written procedures regarding alarm systems and appropriate staff response when a participant's service plan indicates a risk of elopement or a participant exhibits wandering behavior.

b. Written procedures regarding appropriate staff response if a participant with cognitive disorder or dementia is missing.

70.32(3) The program's structure and procedures and the facility in which a program is located shall meet the requirements adopted for adult day services programs in administrative rules promulgated by the state fire marshal. Approval of the state fire marshal indicating that the building is in compliance with these requirements is necessary for certification of a program.

70.32(4) The program shall have the means to control the maximum temperature of water at sources accessible by a participant to prevent scalding and shall control the maximum water temperature for participants with cognitive impairment or dementia or at a participant's request.

[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.33(231D) Transportation. When transportation services are provided directly or under contract with the program:

70.33(1) The vehicle shall be accessible and appropriate to the participants who use it, with consideration for any physical disabilities and impairments.

70.33(2) Every participant transported shall have a seat in the vehicle, except for a participant who remains in a wheelchair during transport.

70.33(3) Vehicles shall have adequate seat belts and securing devices for ambulatory and wheelchair-using passengers.

70.33(4) Wheelchairs shall be secured when the vehicle is in motion.

70.33(5) During loading and unloading of a participant, the driver shall be in the proximate area of the participants in a vehicle.

70.33(6) The driver shall have a valid and appropriate Iowa driver's license or commercial driver's license as required by law for the vehicle being utilized for transport. If the driver is licensed in another state, the license shall be valid and appropriate for the vehicle being utilized for transport. The driver shall meet any state or federal requirements for licensure or certification for the vehicle operated.

70.33(7) Each vehicle shall have a first-aid kit, fire extinguisher, safety triangles and a device for two-way communication.

[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.34(231D) Activities.

70.34(1) The program shall provide appropriate activities for each participant. Activities shall reflect individual differences in age, health status, sensory deficits, lifestyle, ethnic and cultural beliefs, religious beliefs, values, experiences, needs, interests, abilities and skills by providing opportunities for a variety of types and levels of involvement.

70.34(2) Activities shall be planned to support the participant's service plan and shall be consistent with the program statement and participation policies.

70.34(3) A written schedule of activities shall be developed at least monthly and made available to participants and their legal representatives.

70.34(4) Participants shall be given the opportunity to choose their levels of participation in all activities offered in the program.

[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.35(231D) Structural requirements.

70.35(1) The structure, equipment and physical environment of the program shall be designed and operated to meet the needs of the participants. The building, grounds and equipment shall be well-maintained, clean, safe and sanitary.

70.35(2) There shall be at least one toilet for every ten participants and staff members.

70.35(3) Toilets and bathing and toileting appliances shall be equipped for use by participants with multiple disabilities.

70.35(4) There shall be a ratio of at least one hand-washing sink for every two toilets. The sink(s) shall be proximate to the toilets. Hand-washing facilities shall be readily accessible to participants and staff.

70.35(5) Shower and tub areas, if provided, shall be equipped with grab bars and slip-resistant surfaces.

70.35(6) Signaling emergency call devices shall be installed or placed in all bathroom areas, restroom stalls and showers, if any.

70.35(7) A telephone shall be available to participants to make and receive calls in a private manner and for emergency purposes.

70.35(8) A storage area(s) shall be provided for storage of program supplies and participants' possessions, which shall be stored in such a manner that, when not in use, will prevent personal injury to participants and staff.

70.35(9) The program shall provide a separate area to permit privacy for evaluations and to isolate participants who become ill.

70.35(10) The program shall meet other building and public safety codes, including:

a. The Americans with Disabilities Act.

b. Applicable regulations of the Occupational Safety and Health Administration.

c. Rules pertaining to accessibility contained in the state building code in 661—Chapter 302 and provisions of the state building code relating to persons with disabilities.

d. Other applicable provisions of the state building code and local building codes.

70.35(11) The program shall meet the requirements in subrule 70.32(4).

[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

481—70.36(231D) Identification of veteran's benefit eligibility.

70.36(1) Within 30 days of a participant's participation in an adult day services program that receives reimbursement through the medical assistance program under Iowa Code chapter 249A, the program shall ask the participant or the participant's personal representative whether the participant is a veteran or whether the participant is the spouse, widow or dependent of a veteran and shall document the response.

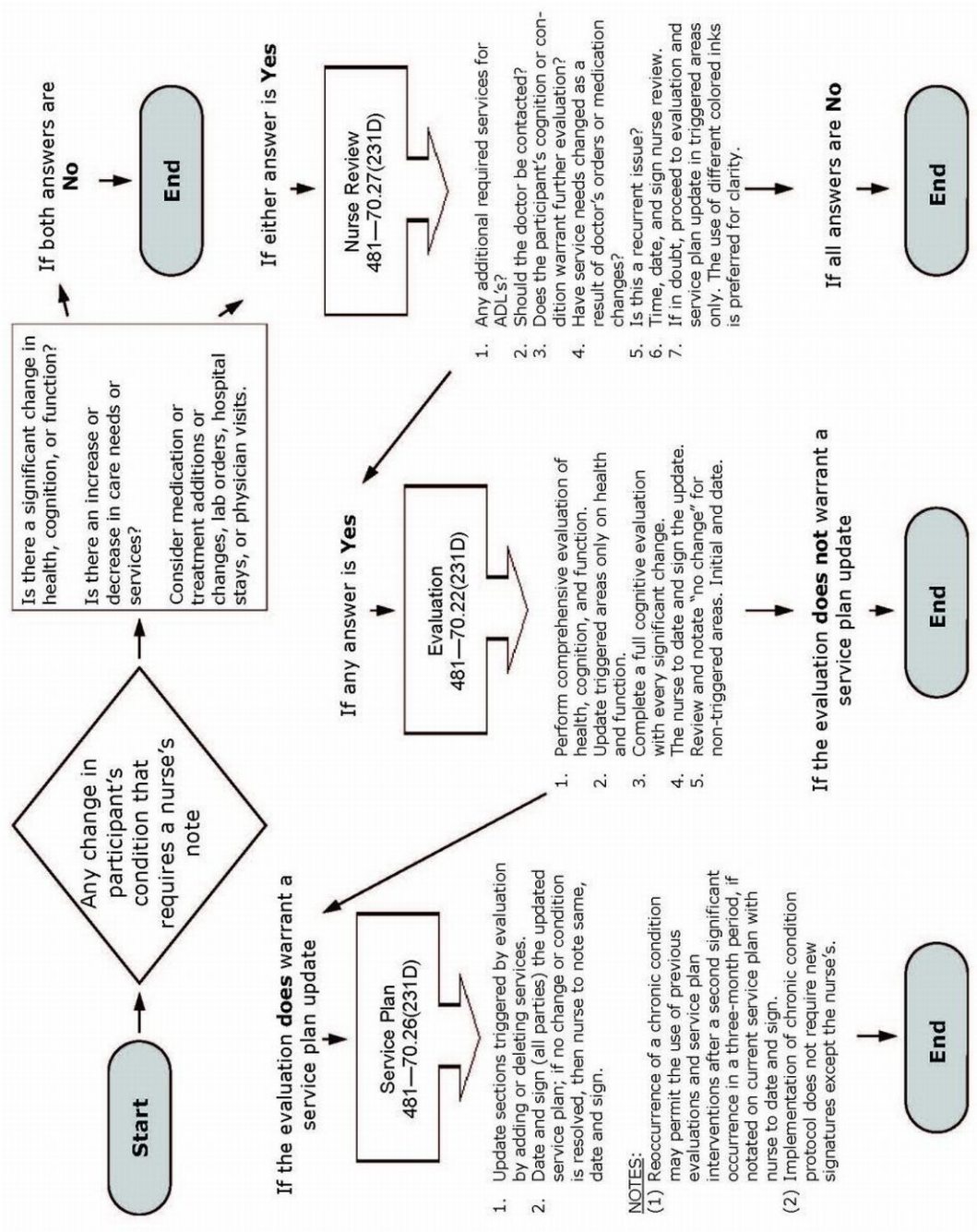
70.36(2) If the program determines that the participant may be a veteran or the spouse, widow, or dependent of a veteran, the program shall report the participant's name along with the name of the veteran, if applicable, as well as the name of the contact person for this information, to the Iowa department of veterans affairs. When appropriate, the program may also report such information to the Iowa department of human services.

70.36(3) If a participant is eligible for benefits through the U.S. Department of Veterans Affairs or other third-party payor, the program first shall seek reimbursement from the identified payor source before seeking reimbursement from the medical assistance program established under Iowa Code chapter 249A.

[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

These rules are intended to implement Iowa Code chapter 231D.

Table A



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[Filed ARC 1376C (Notice ARC 1291C, IAB 1/22/14), IAB 3/19/14, effective 4/23/14]
[Filed ARC 1547C (Notice ARC 1472C, IAB 5/28/14), IAB 7/23/14, effective 8/27/14]

CHAPTER 71
OVERPAYMENT RECOVERY UNIT

Rescinded IAB 4/7/10, effective 5/12/10; see 481—Ch 90

CHAPTER 72
PUBLIC ASSISTANCE
FRONT END INVESTIGATIONS

481—72.1(10A) Definitions.

"Client" means any person who has made an application for or is receiving public assistance from the department of human services (hereafter known as DHS).

"Collateral contact" means a reliable source other than the client knowledgeable about information relative to pertinent public assistance case factors.

"Department" means the Iowa department of inspections and appeals.

"Overpayment" means the dollar amount of public assistance specified by DHS rules which is subject to recovery.

"Pertinent public assistance case factors" means information considered necessary by DHS to verify the household composition, income and assets on referred cases.

"Public assistance" means the family investment program, food stamps, medical assistance, state supplementary assistance and refugee cash assistance.

"Referral" means a request to investigate pertinent public assistance case factors on error-prone cases. The request shall be made by DHS for help from the department on the referral for front end investigation form.

"Refusal to cooperate" by client means the client has failed to attend a scheduled interview without prior notification to the investigator, or to provide information, or to assist in the gathering of information about pertinent public assistance case factors with the department investigator.

481—72.2(10A) Referrals. Client-caused errors in public assistance benefits arise primarily from three areas: household composition, income and assets. A flexible list of error-prone indicators in those three areas has been identified. One or more indicators must be present for a referral to the department investigator. A current copy is available from the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

The department investigator is responsible for investigating referrals to:

1. Determine whether information supplied to DHS by the client is complete and correct regarding pertinent public assistance case factors;
2. Serve as a deterrent against benefit issuance resultant from fraudulent applications submitted by DHS clients;
3. Identify client-caused overpayments for recovery;
4. Assist in reducing public assistance program error rates.

481—72.3(10A) Investigation procedures. Procedures for investigations may include, but are not limited to, the following steps:

72.3(1) The department investigators shall inform the client of their involvement in the client's case by sending an introductory letter.

72.3(2) Client information may be verified by using:

a. Property verification to identify possible property ownership.

b. Postmaster statement to verify current address.

c. Motor vehicle information to identify possible vehicle ownership.

72.3(3) If a face-to-face interview is necessary, an appointment letter is sent to the client.

a. Prior to the interview, the client will be informed of the purpose of the investigation, the types of information being investigated, what their responsibilities are in terms of cooperating in the investigation, and the consequences of refusal to cooperate in the investigation.

b. During the interview with the department investigator, the client may be asked to sign a form authorizing the department to contact collateral sources to verify pertinent public assistance case factors. At least one of the following forms will be attached to the authorization:

(1) Landlord questionnaire,

(2) Mortgage questionnaire,
(3) Earned income questionnaire,
(4) Financial institution questionnaire,
(5) General questionnaire.

c. The client shall be provided a copy of the signed authorization form and any other forms identified as necessary at the time of the interview. The authorization form and attached form(s) will be explained during the interview and are offered as a courtesy to the client. The client-signed authorization is not required for a department investigator to secure collateral information related to pertinent public assistance case factors.

d. The director of the department or the director's designee may issue subpoenas in order to secure data that is deemed pertinent public assistance case factor information.

72.3(4) The DHS client file may be reviewed by the department investigator.

72.3(5) Collateral contacts will be used to collect information by the department investigator. The information supplied by the client may be subject to further verification by the department investigator.

72.3(6) The director of the department or the director's designee shall determine that all investigations conducted by the department investigator are related to pertinent public assistance case factors.

72.3(7) If the client has previously received public assistance benefits and a discrepancy(s) is present, the investigation may continue to determine whether an overissuance of benefits has been made. However, clients who have never received benefits and withdraw their application or are denied benefits will not be subject to continued investigation.

481—72.4(10A) Findings. The department investigator shall report and provide documentation of the findings of the investigation, including client noncooperation, to DHS using the transmittal A form. The department's investigation is closed upon submission of the transmittal A form to the referral source and cannot be reopened prior to the receipt of a new or updated referral for front end investigation form.

DHS shall report the case action taken and any determination of overpayment or intentional program violation referral to the department using the transmittal B form. All decisions about DHS public assistance eligibility will be made by DHS. The client will need to clarify any discovered discrepancies with DHS. Refusal to cooperate will result in DHS taking action to deny or cancel public assistance benefits. Future public assistance application(s) will not be considered for approval until cooperation with the department investigator is completed. The department investigator shall comply with all laws, rules and regulations with respect to confidentiality.

These rules are intended to implement Iowa Code sections 10A.104(5), 10A.104(6), 10A.105, 10A.402(7), 17A.3(1)*"b,"* and 22.11.

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[Filed 1/3/91, Notice 10/31/90—published 1/23/91, effective 2/27/91]

CHAPTER 73
MEDICAID FRAUD CONTROL BUREAU

[Prior to 10/7/87, 481—Chapter 6, "Medicaid Provider Audits"]

The purpose of this chapter is to define steps which may be taken by the department of inspections and appeals to ensure that provider payments for Medicaid services and supplies are made in accordance with provider manual and Medicaid rules.

481—73.1(10A) Definitions.

"Abuse" means provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care.

"Authorized representative" within the context of these rules means that person appointed to carry out audit or investigative procedures, including assigned auditors, investigators, or agents contracted for specific audits or investigative procedures.

"Bureau" means the Medicaid fraud control bureau.

"Claim" means a tangible and legible history which documents the criteria established for clinical records as set forth in rule 441—79.3(249A).

"Confidence level" means the probability that an overpayment or underpayment rate determined from a random sample of charges is less than or equal to the rate that exists in the universe from which the sample was drawn.

"Customary and prevailing" means (1) the most consistent charge by a Medicaid provider for a given service and (2) a fee within the range of usual charges for a given service billed by most providers with similar training and experience in the state of Iowa.

"Extrapolation" means that the total amount of overpayment or underpayment will be estimated by using sample data meeting the confidence level requirement.

"Fiscal agent" means an organization which processes and pays claims on behalf of the department of human services.

"Fiscal record" means a tangible and legible history which documents the criteria established for fiscal records as set forth in human services rule 441—79.3(249A).

"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some authorized benefit to the person or some other person. It includes any act that constitutes fraud under applicable federal or state law.

"Generally accepted auditing procedures" means those procedures published in Standards for Audit of Governmental Organizations, Programs, Activities & Functions, 1972 edition, by the Comptroller General of the United States.

"Overpayment" means any payment or portion of a payment made to a provider which is incorrect according to the laws and rules applicable to the Medicaid program and which results in a payment greater than that to which the provider is entitled.

"Procedure code" means the identifier which describes medical services performed or the supplies, drugs or equipment provided.

"Provider" means an individual, firm, corporation, association, or institution which provides or has been approved to provide goods or services to someone receiving state medical assistance.

"Random sample" means a systematic (or every nth unit) sample for which each item in the universe has an equal probability of being selected.

"Underpayment" means any payment or portion of a payment not made to a provider for services delivered to eligible recipients according to the laws and rules applicable to the Medicaid program and to which the provider is entitled.

"Universe" means all items (claims), submitted by a specific provider for payment during a specific time period, from which a random sample will be drawn.

481—73.2(10A) Complaints. Complaints are received in writing or verbally from any source. The department may acknowledge in writing receipt of a complaint.

Each complaint is recorded in a log and assigned a number. Complaints received and logged include as much of the following information as possible:

1. Case number,
2. Provider name, address, telephone and identification number,
3. Referral source,
4. Date complaint received,
5. Allegation.

481—73.3(10A) Investigative procedures. Initial complaints are reviewed and evaluated by an investigator or auditor to determine whether the provider and the recipient participate in the Medicaid program.

73.3(1) The investigator or auditor conducts a preliminary review. A written summary of the preliminary review is prepared and submitted to an evaluation team made up of:

Bureau chief,
Legal counsel,
Investigator, and
Auditor.

73.3(2) The evaluation team determines further disposition of the complaint. Options available to the bureau include, but are not limited to:

a. Referring the complaint to other affected agencies,
b. Assigning the case to an investigator or auditor, for review, audit or investigation,
c. Determining no action be taken.

481—73.4(10A) Audit of clinical and fiscal records by the department.

73.4(1) Authorized representatives of the department shall have the right, upon proper identification, and using generally accepted auditing procedures, to review the clinical and fiscal records of the provider to determine whether:

a. Claims for goods or services have been accurately paid.
b. The provider has furnished the services to Medicaid recipients.
c. The provider has retained clinical and fiscal records which substantiate claims submitted for payment during the audit period.

73.4(2) Records generated and maintained by the department of human services, its fiscal agent, or by the department of inspections and appeals may be used by auditors or investigators and in all proceedings relative to audits or investigations conducted.

481—73.5(10A) Who shall be reviewed, audited, or investigated. Any Medicaid provider may be reviewed, audited, or investigated at any time at the discretion of the department.

481—73.6(10A) Auditing and investigative procedures. The department will select the appropriate method of conducting an audit or investigation and will protect the confidential nature of the records being reviewed. The provider may be required, by administrative subpoena, to furnish records to the department. The provider may select the method of delivering any requested records to the department.

73.6(1) Audit or investigative procedures may include, but are not limited to, the following:

a. Comparing clinical and fiscal records with each claim.
b. Interviewing recipients of services, and employees of providers.
c. Examining third party payment records.
d. Comparing Medicaid charges with private patient charges to determine that the charge to Medicaid is not more than the customary and prevailing fee. Records of privately paying patients will be requested by subpoena.

73.6(2) Use of statistical sampling techniques. The department's procedures for auditing Medicaid providers may include the use of random sampling and extrapolation. When this procedure is used, all sampling will be performed within acceptable statistical methods, yielding not less than a 95 percent confidence level. Findings of the sample will be extrapolated to the universe for the audit period.

a. The audit or investigative findings generated through the audit or investigative procedures shall constitute prima facie evidence in all department proceedings of the number and amount of requests for payment as submitted by the provider.

b. When the department's audit or investigative findings have been generated through the use of sampling and extrapolation, and the provider disagrees with the findings, the burden of proof of compliance rests with the provider. The provider may present evidence to show that the sample was invalid. The evidence may include a 100 percent audit of the universe of provider records used by the department in the drawing of the department's sample. Any such audit must:

(1) Be arranged and paid for by the provider,

(2) Be conducted by a certified public accountant,

(3) Demonstrate that bills and records not reviewed in the department's sample were in compliance with program regulations, and

(4) Be submitted to the department with all supporting documentation.

481—73.7(10A) Actions based on audit or investigative findings.

73.7(1) The department shall report the results of an audit or investigation of provider records to concerned parties consistent with applicable rules.

73.7(2) When fraud is found, the department shall refer to an agency empowered to prosecute as provided for in Iowa Code sections 10A.402(7) and 249A.5.

73.7(3) When error or abuse is found the department will refer to DHS.

481—73.8(10A) Confidentiality. All material and information compiled during the audit or investigative procedure is confidential in accordance with Iowa Code section 10A.105.

481—73.9(10A) Appeal by provider of care. Collection decisions are made by DHS. Providers may appeal decisions of the department according to rules in human services 441—Chapter 7.

These rules are intended to implement Iowa Code sections 10A.105, 10A.402(7), and 249A.5.

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[Filed 9/18/87, Notice 7/29/87—published 10/7/87, effective 11/11/87]

CHAPTER 74
ECONOMIC ASSISTANCE FRAUD BUREAU

481—74.1(10A) Definitions.

"Investigator" means anyone searching for information on behalf of the division of investigations in the department.

"Warrant" means a check drawn on state funds in payment of public assistance. The warrant is issued by department of human services (DHS).

481—74.2(10A) Responsibilities. The economic assistance fraud bureau is responsible for investigating, assembling, and reporting information about recipients of any DHS economic assistance and other investigations as provided for in Iowa Code chapter 10A.

481—74.3(10A) Procedures. Procedures are based on the destination of the information gathered.

74.3(1) An investigation requested because of public assistance overpayment and received from the recoupment section may include the following steps.

a. The recipient file is sent to the department by DHS.

b. An interview may be conducted with anyone who may have knowledge pertinent to the case.

c. An interview with the individual being investigated may be conducted when the Miranda warning is used; the individual shall be requested to sign a statement of rights and acknowledgment and waiver (Form 427-042). This form explains the rights of the individual and is signed by the investigator and the subject of the investigation.

d. Assembled information may be presented to the appropriate county attorney.

e. The economic assistance fraud bureau may use all investigative evidence-gathering procedures, including administrative subpoena, which are in compliance with appropriate city, county, state and federal laws, rules, and regulations. Information collected about recipients of public assistance is confidential and will not be released during an investigation to anyone not involved in the investigation.

74.3(2) Lost or stolen warrants are investigated by the economic assistance fraud bureau when a written request is received from DHS. The results of the investigation are returned to DHS.

a. The decision to issue or withhold a second warrant is made by DHS.

b. If a warrant is not replaced and someone is to be prosecuted, the department prepares information for the appropriate county attorney.

c. Specific procedures followed by both the department and DHS staff are contained in "Lost/Stolen Warrant Replacement Procedures" agreed to by department and DHS staff. A copy is available upon request through the Director's Office, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319.

481—74.4(10A) Investigations. Investigations may be conducted before a license or permit is issued when requested by the alcoholic beverages division of the department of commerce.

74.4(1) The material gathered is confidential and will be returned to the alcoholic beverages division.

74.4(2) Inquiries relative to these investigations must be sent to alcoholic beverages division.

481—74.5(10A) Executive branch investigations. Conduct investigations as requested by agencies, commissions and boards within the executive branch of state government.

These rules are intended to implement Iowa Code sections 10A.105, 10A.402(7), 17A.13 and 22.11.

[Filed 9/18/87, Notice 7/29/87—published 10/7/87, effective 11/11/87]

CHAPTER 75
DIVESTITURE UNIT

PREAMBLE

This chapter provides for the establishment of a debt for medical assistance due to a transfer of assets for less than fair market value. These rules allow the department of inspections and appeals to establish a debt against a person who receives transferred assets from a Medicaid applicant or recipient within 60 months prior to an application for medical assistance if the applicant is approved for Medicaid. The debt is established against the transferee in an amount equal to the medical assistance provided, but not in excess of the fair market value of the assets transferred.

481—75.1(10A) Definitions.

"Department" means the department of inspections and appeals.

"Fair market value" means the price for which property or an item could have been sold on the open market at the time of transfer.

"Medical assistance" means "medical assistance," "additional medical assistance," "discretionary medical assistance" or "Medicare cost sharing" as each is defined in Iowa Code section 249A.2 which is provided to a person pursuant to Iowa Code chapter 249A and Title XIX of the federal Social Security Act.

"Property" means both tangible and intangible property, real property and personal property.

"Transfer" means the disposal of property for less than fair market value through gifting, sale or any transfer or assignment of a legal or equitable title or interest in property.

"Transferee" means the person who receives a transfer or assignment of a legal or equitable title or interest in property for less than fair market value.

"Transferor" means the person who makes a transfer of a legal or equitable title or interest in property for less than fair market value.

481—75.2(10A) Referral process. The department shall establish a case when the divestiture unit of the department receives a referral form from the department of human services (DHS). The referral shall specify which assets have been divested, the transferor, the transferee(s), the date of the transfer, if known, and any other relevant information.

481—75.3(10A) Referral review. The divestiture unit shall review the referral and determine whether the department shall proceed with a case to establish a medical assistance debt.

481—75.4(10A) Investigation. A divestiture unit investigator shall conduct an investigation and collect evidence for each case as needed.

481—75.5(10A) Organizing information. The divestiture unit investigator shall compile and organize all case information and evidence in a case file. Once the appropriate information has been investigated and collected, the investigator shall refer the case file to the individual in the divestiture unit responsible for issuing notices to the transferee.

481—75.6(10A) Computation of debt. The divestiture unit shall prepare all computations of the medical assistance debt due and owing.

481—75.7(10A) Issuing notices. The divestiture unit shall issue a notice establishing and demanding payments of an accrued or accruing debt due and owing to the department of human services. The notice shall be served upon the transferee in accordance with the rules of civil procedure. The notice shall include all of the following:

75.7(1) *Amount of debt.* The amount of medical assistance provided to the transferor to date which creates the debt.

75.7(2) *Computation of debt.* A computation of the debt due and owing.

75.7(3) *Demand for payment.* A demand for immediate payment of the debt.

75.7(4) *Request for informal conference.*

a. A statement that if the transferee desires to discuss the notice, the transferee, within 10 days after being served, may contact the department and request an informal conference.

b. A statement that if a conference is requested, the transferee has until 10 days after the date set for the conference or until 20 days after the date of service of the original notice, whichever is later, to send a written request to the department for a hearing in the district court.

c. A statement that after the holding of the conference, the department may issue a new notice to be sent to the transferee by first-class mail addressed to the transferee at the transferee's last-known address or, if applicable, to the transferee's attorney at the last-known address of the transferee's attorney.

d. A statement that if the department issues a new notice, the transferee has until 10 days after the date of mailing of the new notice or until 20 days after the date of service of the original notice, whichever is later, to send a written request for a hearing to the department.

75.7(5) *Request for hearing without informal conference.* A statement that if the transferee objects to all or any part of the original notice and no conference is requested, the transferee has until 20 days after the date of service of the original notice to send a written response to the department setting forth any objections and requesting a hearing in the district court.

75.7(6) *Collection action.* A statement that as soon as the district court order is entered, the property of the transferee is subject to collection action including, but not limited to, wage withholding, garnishment, attachment of a lien, issuance of a distress warrant, and execution.

75.7(7) *Responsibilities of transferee.* A statement that the transferee must send written notice to the department of any change of address or employment.

75.7(8) *Questions.* A statement that if the transferee has any questions concerning the transfer of assets, the transferee should contact the department or consult an attorney.

75.7(9) *Other information.* Other information as the department finds appropriate.

481—75.8(10A) Conducting informal conferences. If the transferee requests a conference within the appropriate time period, the department shall conduct an informal conference with the transferee regarding the medical assistance debt accrued and accruing.

481—75.9(10A) Failure to timely request hearing.

75.9(1) *Order entered by department.* If a timely written request for a hearing is not received by the department, the department may enter an order in accordance with the latest notice. The order is final, and action by the department to enforce and collect upon the order may be taken from the date of the issuance of the order. The transferee shall be sent a copy of the order by first-class mail addressed to the transferee at the transferee's last-known address or, if applicable, to the transferee's attorney at the last-known address of the transferee's attorney.

75.9(2) *Order.* The order shall specify all of the following:

a. The amount to be paid with directions as to the manner of payment.

b. The amount of the debt accrued and accruing.

c. Notice that the property of the transferee is subject to collection action including, but not limited to, wage withholding, garnishment, attachment of a lien, issuance of a distress warrant, and execution.

481—75.10(10A) District court hearing.

75.10(1) *Certification.* If a timely written request for a hearing is received, the department shall certify the matter to the district court in the county where the transferee resides. If the transferee resides in another state, the department shall certify the matter to the district court in the county in which the transferor resides. The certification shall include true copies of the original notice, the return of service, any request for an informal conference, any subsequent notices, the written request for hearing, and true copies of any administrative orders previously entered.

75.10(2) *Hearing request by department.* The department may also request a hearing on its own motion regarding the determination of a debt, at any time prior to entry of an administrative order.

75.10(3) *Notice of hearing time and location.* The district court shall set the matter for hearing and notify the parties of the time and place of hearing.

75.10(4) *Default order.* If a party fails to appear at the hearing, upon a showing of proper notice to the party, the district court may find the party in default and enter an appropriate order.

481—75.11(10A) Filing and docketing of the order. A true copy of an order entered by the department pursuant to this rule, along with a true copy of the return of service, if applicable, shall be filed in the office of the clerk of the district court in the county in which the transferee resides or, if the transferee resides in another state, in the office of the district court in the county in which the transferor resides.

The department order shall be presented, ex parte, to the district court for review and approval. Unless defects appear on the face of the order or on the attachments, the district court shall approve the order. The approved order shall have all force, effect, and attributes of a docketed order or decree of the district court.

Upon filing, the clerk shall enter the order in the judgment docket.

481—75.12(10A,22) Confidentiality. All information compiled during the investigative or collection process is confidential in accordance with Iowa Code section 10A.105. Any request for information should be sent to the department of human services.

These rules are intended to implement Iowa Code sections 10A.104(7), 10A.105(2), 10A.402(7), and 22.11.

[Filed 3/31/95, Notice 1/4/95—published 4/26/95, effective 5/31/95]

CHAPTERS 76 to 89
Reserved

CHAPTER 90
PUBLIC ASSISTANCE DEBT RECOVERY UNIT

[Prior to 4/7/10, see 481—Ch 71]

PREAMBLE

These rules define the department's policies regarding the recovery of public assistance debts. See also Iowa Administrative Code 441—Chapter 11, "Collection of Public Assistance Debts."

481—90.1(10A) Definitions. For the purposes of this chapter, the following definitions apply:

"Active case" means a household that is receiving public assistance.

"Allotment reduction" means an amount withheld from a financial or food assistance benefit. More specifically, "grant reduction" refers to the family investment program (FIP) and to refugee cash assistance (RCA), and "benefit reduction" refers to the food assistance (FA) program.

"Debt" means the dollar amount of public assistance, by program, received by or on behalf of a person or provider in excess of that allowed by law, rules, or regulations for any given month(s); or the dollar amount of public assistance unlawfully transferred or obtained in violation of program rules; or the dollar amount of unpaid IowaCare personal financial responsibility obligations.

"Debtor" means any person who has been determined by DHS or by the department to be responsible for the repayment of a particular public assistance debt.

"Department" means the department of inspections and appeals.

"DHS" means the department of human services.

"Economic assistance fraud bureau" means the economic assistance fraud bureau of the department of inspections and appeals.

"FA" means the food assistance program as defined in rule 441—65.1(234).

"FIP" means the family investment program described in 441—Chapters 40 to 46.

"Notice of debt" means a notice that informs the debtor that a debt in a public assistance program has occurred. The notice identifies the debt amount, the dates on which the debt was incurred, the cause of the debt, and the options the debtor has to repay the debt. (See 441—Chapter 11.)

"Offsetting" means the repayment of a debt by setoff of a state warrant or setoff of state income tax refunds or federal tax refunds and federal payments.

"Public assistance" means any program that DHS administers that confers a financial, medical, or food assistance benefit.

"RCA" means refugee cash assistance described in 441—Chapter 60.

"Recovery" means the repayment of a debt by direct cash payment from the debtor, by allotment reduction, by offsetting, or by garnishment of wages or assets.

"Repayment agreement" means an agreement entered into voluntarily between the department and the debtor for the repayment of a debt. Agreements are made on Form 470-0495, Agreement to Pay a Debt, or on a notice of debt listed in 441—subrule 11.2(2). The repayment agreement, whether Form 470-0495 or a notice of debt, tells the amount and program(s) overpaid and gives the debtor a choice of repayment methods. Failure to return the repayment agreement may result in further collection actions.

"Title XIX divestiture" means a debt against a person who receives transferred assets from a Medicaid applicant or recipient within five years prior to an application for medical assistance if the applicant is approved for medical assistance (Medicaid) or a transfer impacting the recovery or payment of a medical assistance (Medicaid) debt.

[**ARC 8656B**, IAB 4/7/10, effective 5/12/10]

481—90.2(10A) Recovery process. The recovery process begins when data is successfully entered on the DHS overpayment recovery system and a notice of debt is issued to the debtor. The data specifies which public assistance program(s) is owed a debt.

[**ARC 8656B**, IAB 4/7/10, effective 5/12/10]

481—90.3(10A) Records. The recovery unit maintains an account for each debt that has occurred for a debtor. The account is filed under the debtor's name and includes information maintained pursuant to rule 441—11.2(217).
[**ARC 8656B**, IAB 4/7/10, effective 5/12/10]

481—90.4(10A) Review. The recovery unit reviews the record and additional information provided in the DHS overpayment recovery system to determine whether a referral for suspected fraud will be made to the economic assistance fraud bureau. The referral criteria include client errors that are over $1,000 per claim.
[**ARC 8656B**, IAB 4/7/10, effective 5/12/10]

481—90.5(10A) Debt repayment. A notice of debt or Form 470-0495, Agreement to Pay a Debt, is used to initiate payments of a debt. The minimum rate of payment is determined by each program (unless set by a court order) and is negotiated by the debtor and recovery unit. All recoveries are transmitted to the DHS cashier. Payments are made directly in cash by the debtor except as otherwise provided in this rule. The amount of allotment reduction for an agency error shall be different from the amount of allotment reduction for a client error.

90.5(1) *Active cases—PROMISE JOBS program.* For payment reduction for the PROMISE JOBS program, the debtor must provide written permission to effectuate a FIP reduction.

90.5(2) *Active cases—FIP, RCA, FA.* Allotment reduction shall be used, except that cash payment pursuant to a repayment agreement may be used when the repayment amount exceeds the amount that may be collected by allotment reduction. For the food assistance program, debt repayment may also be made in accordance with subrule 90.5(3).

90.5(3) *Food assistance program with electronic benefit balances.* Food assistance payments may be made by returning electronic benefits to pay the debt.
[**ARC 8656B**, IAB 4/7/10, effective 5/12/10]

481—90.6(10A) Further collection action. If complete repayment has not been received by the methods described in rule 481—90.5(10A), further collection action may be taken. This action includes, but is not limited to, the following:

90.6(1) *For all debts.*

a. Debts of $5,000 or less, small claims court action.

b. Debts of more than $5,000, referral to the attorney general for district court action.

c. State income tax refund offset in accordance with 441—Chapter 11 and Iowa Code section 8A.504.

d. The filing of a claim in a debtor's estate or bankruptcy proceedings.

e. Garnishment of wages or assets.

f. Setoff of a state warrant.

g. Distress warrants.

h. Liens.

90.6(2) *For food assistance debts.* In addition to the above actions, federal offsets (taxes, federal payments) may be used for the collection of food assistance debts in accordance with rule 441—11.5(234).
[**ARC 8656B**, IAB 4/7/10, effective 5/12/10]

481—90.7(10A) Appeal rights. If a notice of debt or other notice of adverse action is received by the debtor and the debtor wishes to contest the debt, an appeal is submitted to the recovery unit or to DHS. If an appeal is submitted, the recovery process is suspended until conclusion of the appeal process outlined in 481—Chapter 10 and 441—Chapter 7.
[**ARC 8656B**, IAB 4/7/10, effective 5/12/10]

481—90.8(10A) Data processing systems matches. The recovery unit compares information with other data processing systems to identify the location, resources, or income of a debtor. Part or all of a data

processing system is used. The recovery unit uses, but is not limited to using, the data processing systems of the following entities:

1. Social Security Administration,
2. Department of workforce development,
3. Department of revenue,
4. Department of administrative services,
5. Department of transportation (driver's license and motor vehicle registration), and
6. Department of human services.

[**ARC 8656B**, IAB 4/7/10, effective 5/12/10]

481—90.9(10A) Confidentiality. The confidentiality of records is in accordance with 441—Chapter 9, "Public Records and Fair Information Practices."

[**ARC 8656B**, IAB 4/7/10, effective 5/12/10]

These rules are intended to implement Iowa Code sections 10A.108 and 10A.402.

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CHAPTERS 91 to 99
Reserved

GAMES OF SKILL, CHANCE, BINGO AND RAFFLES

CHAPTER 100
ADMINISTRATION

[Prior to 12/17/86, Revenue Department[730], Ch 91]
[Prior to 11/18/87, Racing and Gaming Division[195]]
[Prior to 6/14/89, Racing and Gaming Division[491], Ch 20]

481—100.1(10A,99B) Definitions. Definitions in this chapter apply to all gambling rules.

"Active in Iowa" means that the primary place for conducting legal activities or transactions is the state of Iowa. Maintaining a checking account, listing a telephone number or conducting minor business in Iowa is not considered being active in Iowa.

"Bingo distributor" means an individual or entity supplying either equipment or supplies to users licensed to conduct bingo in the state of Iowa.

"Bingo manufacturer" means any entity which originally produces bingo equipment and supplies for use by organizations or individuals licensed to conduct bingo in the state of Iowa. The process of collating and assembling bingo packets from previously manufactured goods is not considered manufacturing.

"Bingo supplies and equipment" means a machine, display board, monitor, card, bingo paper, or any other implement or provision used in the conduct of the game of bingo licensed pursuant to Iowa Code chapter 99B.

"Calendar raffle" means a grid which denotes the days, weeks and months of a year and from which prizes are awarded on different dates.

"Casino gambling" means the house provides a banker, dealer, croupier or a specially designed table; and gamblers play against the house.

"Dedicated" means that the net receipts shall be used to benefit citizens of Iowa. An educational scholarship granted to a citizen of this state may be used in a college or university outside of Iowa when a citizen of Iowa benefits. When funds are spent outside of Iowa, the purpose must qualify and the funds must benefit an indefinite number of Iowans.

"Department" means the department of inspections and appeals.

"Director" means the director of the department of inspections and appeals or authorized assistants and employees.

"Educational, civic, public, charitable, patriotic, or religious use" is defined in Iowa Code section 99B.7(3), paragraph *"b."*

"Fair" means an annual fair or exposition held by the Iowa state fair board or any fair held by a county or district fair or agricultural society under the provisions of Iowa Code chapter 174.

"Location" means the space, building, or room which is used by a licensee to conduct gambling. All spaces, buildings or rooms which the licensee uses, owns, rents or controls which are adjacent to the gambling space are included. Any area accessible through a common doorway is part of the gambling location, no matter who uses, owns, rents or controls the area.

"Merchandise" means a tangible, usable product which has its own value. A merchandise gift certificate exchangeable only for merchandise is acceptable. The merchandise prize cannot be purchased by the person conducting the game. Iowa lottery tickets or shares sold pursuant to Iowa Code chapter 99E are merchandise.

"Place of business" means the primary office, warehouse, store, building or structure where goods, wares, merchandise or services are offered for sale, or where any taxable amusement is conducted.

"Political party organization" means a group affiliated with and authorized by a political party. This includes a state, county or district central committee or an auxiliary group or committee appointed for a special purpose such as fund-raising. Political action committees are not eligible for gambling licenses.

"Premises" means location.

"Pyramid" or *"build up"* means a game in which a prize must be returned in order to play another game or to be eligible for another bigger prize, or a game in which a prize must be forfeited if a later game is lost.

"Responsible party" means the person identified on the license application as the contact person. The responsible person is expected to have a general knowledge of Iowa gambling laws and rules. This person is deemed to be an agent of the organization until the department is notified otherwise in writing.

This rule is intended to implement Iowa Code chapter 99B.

481—100.2(99B) Licensing. Before the sale of any bingo equipment or supplies to a licensee by a bingo manufacturer or bingo distributor, or before any gambling may occur, a gambling license application must be approved by the department.

Gambling is restricted to the location applied for by the qualified organization and approved by the department. A license may be transferred to a different location only after application by the licensee and approval by the department. Permission for temporary off-site use of a license may be granted upon request to the department.

Application forms are available from the Social and Charitable Gambling Unit, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083, or by calling (515)281-6848. A short-form application for school district boards of directors is also available from the department.

Licenses are valid for two years after the date issued. Exceptions are:

1. The 14-consecutive-day amusement sponsor's license;
2. The 14-consecutive-day qualified organization license;
3. The one-year amusement concession license;
4. The 12-hour annual game night license;
5. The fair raffle license, which shall be valid for the length of the fair;
6. The 90-day qualified organization raffle license;
7. The 180-day qualified organization raffle license;
8. The one-year statewide raffle license.

100.2(1) A timely application must be received at least 30 days before the beginning date requested. Applications not timely filed may be returned. The department shall make a good faith effort to process applications and grant licenses before requested dates.

100.2(2) There are 11 types of gambling licenses:

a. One-year license for an amusement concession described in 481—Chapter 101;

b. Fourteen-day sponsor's license for a carnival, bazaar, centennial or celebration as described in 481—Chapter 101;

c. Two-year license for social gambling in beer and liquor establishments described in 481—Chapter 102;

d. Two-year license for social gambling in public places described in 481—Chapter 102;

e. License for fair raffle conducted by a bona fide fair or qualified organization described in rules 100.50(99B) to 100.52(99B);

f. License for an annual game night described in rules 100.60(99B) to 100.63(99B);

g. Two-year license for a qualified organization described in 481—Chapters 100 and 103;

h. Limited 14-day license for a qualified organization described in 481—Chapters 100 and 103;

i. Limited 90-day license for a qualified organization for raffles only, as described in 481—Chapter 100;

j. Limited 180-day license for a qualified organization for raffles only, as described in 481—Chapter 100; and

k. One-year statewide raffle license described in 481—Chapter 100.

100.2(3) A game or occasion shall not occur until a license is issued by the department. The license shall be prominently displayed at the gambling location. An authorization number to operate may be issued to an applicant until a license is issued.

This rule is intended to implement Iowa Code sections 99B.2 and 99B.7.

481—100.3(99B) License requirements. The following standards are used to determine whether a gambling license is issued. These standards do not apply to licensure as a bingo manufacturer or a bingo distributor. These are not considered all-inclusive.

100.3(1) A credit reference is required and must be exemplary.

There must be no outstanding state tax liabilities.

The applicant for a two-year qualified organization license must either possess or have made application for a sales tax permit.

100.3(2) Each applicant shall notify the chief of police, county sheriff or designee for each locality in which gambling is anticipated when an application is submitted. The signature of a local law enforcement official is required on each application to affirm notification. Amusement concessionaires may obtain endorsement from the sponsor of an event in which the concessionaire will operate.

100.3(3) No one who has more than two delinquent quarterly gambling reports in the last year shall be licensed. A quarterly report is delinquent if it is received by the department more than 30 days after the last day of the calendar quarter.

100.3(4) No one involved in an organization which has a revocation pending will be granted a license similar to the one revoked.

No one who has a gambling license currently under six-month revocation may be granted any gambling license during the period of revocation. There shall be no current revocation of either a gambling or a liquor license for the location named on an application.

100.3(5) No applicant shall have been convicted of or pled guilty to a criminal violation of the Iowa gambling law.

100.3(6) Violation of gambling law or the Iowa alcoholic beverage control Act (Iowa Code chapter 123) affects whether a gambling license is issued.

a. The applicant may have no more than two convictions or guilty pleas of serious or aggravated misdemeanors in the last two years. This includes any combination of serious or aggravated misdemeanors.

b. No liquor license shall have been suspended within the last 12 months because of a conviction or guilty plea to a criminal violation of the Iowa alcoholic beverage control Act (Iowa Code chapter 123).

c. No liquor license shall have been revoked because of a conviction or guilty plea to a criminal violation of the Iowa alcoholic beverage control Act.

d. No applicant shall have been convicted of a felony, federal or state, within five years of the date of the application. In order to have an application considered, citizenship rights must have been restored.

100.3(7) The department shall be satisfied of the good moral character of each applicant, including all officers, partners, agents, or directors of an organization.

a. A license shall not be issued to an organization if an officer, partner, agent, or director of the organization has been associated, directly or indirectly, with the conduct of bingo or the management or handling of bingo funds, of an organization currently under investigation, audit, revocation or suspension.

b. A license shall not be issued if any officer, partner, agent, director of an organization, or person associated with bingo, is involved in a dispute concerning the conduct of bingo, the use of bingo funds, or other allegations relating to bingo.

c. A license shall not be issued to an organization at a location that has experienced a dispute, not resolved to the satisfaction of the department, concerning the conduct of bingo by the owner or lessee of the location.

100.3(8) Any qualified organization conducting gambling activities must be one of the following types of organizations:

a. The organization is tax-exempt under Section 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code, as defined in Iowa Code section 422.3. A letter of determination from the IRS must be attached to the application, or proof of filing IRS Form 1023 or 1024 may be accepted if the department is satisfied that the organization is eligible;

b. The organization is an agency or instrumentality of the United States government, this state, or a political subdivision of this state; or

c. The organization is a parent-teacher organization or booster club that is recognized as a fund-raiser and supporter for a school district organized pursuant to Iowa Code chapter 274 or for a school within the school district. A notarized letter signed by the president of the board of directors, the superintendent of the school district, or a principal of a school within that school district must accompany the application.

100.3(9) An organization must have been in existence at least five years in order to be eligible for a two-year license. However, if an organization is a local chapter of a national organization, and the local chapter has been in existence for two years, the local chapter may obtain a license by supplying evidence to the department that the national organization has been in existence the required five-year time period.

This rule is intended to implement Iowa Code sections 99B.1(21), 99B.2, 99B.16, and chapter 123.

481—100.4(99B) Participation. No one who conducts a game of skill, game of chance or raffle may participate in the game or raffle. No employee of anyone who conducts a game of skill, game of chance or raffle may participate during any occasion in which the employee works.

This rule is intended to implement Iowa Code sections 99B.7(1)*"b"* and 99B.7(1)*"n."*

481—100.5(99B) Posted rules. House rules shall be posted on a sign near the front of the playing area.

1. The sign shall be at least 30 inches by 30 inches.
2. Permanent letters 3 inches high shall proclaim "Rules of the Game."
3. Rules shall be in large, easily readable print and shall include:

- The name and mailing address of the licensee;
- Price to play; and
- House rules for the game.

This rule is intended to implement Iowa Code section 99B.1(20).

481—100.6(99B) Prizes. Prizes are governed by the following standards:

100.6(1) Maximum prizes or limits are:

a. *Concession licensees.*

Games of skill and games of chance	$50 in merchandise
Bingo	$50 in merchandise

b. *Qualified organizations.*

Games of skill and games of chance	$1,000 in merchandise
Small raffles	aggregate value of all prizes up to and including $10,000 in cash and merchandise
Annual raffles	aggregate value of all prizes must exceed $10,000 in merchandise
Raffles at a fair	aggregate value of all prizes up to and including $1,000 in merchandise
Real property raffle in lieu of annual raffle	aggregate value of real property must exceed $10,000
Annual raffles at a fair	aggregate value of all prizes must exceed $1,000 in cash and merchandise
Single bingo game	up to $100 cash or merchandise
Bingo jackpots	$800 cash or merchandise

See 481—subrule 103.6(6) for exception for a bingo jackpot game.

c. *Social gambling.* An individual shall not win or lose more than $50 in a 24-hour period.

d. *Annual game night.* An individual shall not spend more than $250 for entrance fees and wagers. There is no limit on winning.

100.6(2) If merchandise such as scholarships, airline tickets and other similar items is awarded as prizes, the merchandise shall not be converted to cash by the donor or provider. Winning lottery tickets or shares awarded as prizes may be converted to cash pursuant to lottery rules and statutes. Prizes awarded in games in which there are multiple winners are to be shared in equal proportion among the winners. However, it is permissible to round to the nearest dollar. A person shall not be required to return cash or a merchandise prize won in one game in order to play a subsequent game, nor can a person be required to play in one game in order to play in a subsequent game. No prize may be displayed which cannot be won in a single game.

This rule is intended to implement Iowa Code sections 99B.3 and 99B.7.

481—100.7(10A,99B) Records. Gambling records, maintained separately from all other records, shall be kept current. (See Table A[1])

100.7(1) A record of prizes awarded shall contain the following information:

a. Prizes of $100 or less:

(1) Date,

(2) Number or name and description of game,

(3) Value of each prize.

b. Prizes of more than $100:

(1) Date,

(2) Name, address and social security number of each winner,

(3) Value of prize,

(4) Any amount withheld for state income tax (required of prizes of more than $600),

(5) Any amount withheld for federal income tax (deduction of 20 percent federal withholding taxes is required on cash prizes over $1,000).

Records shall be maintained for three years for review by the department.

100.7(2) Records of expenses and dedicated and distributed money are required. A book may be maintained which contains both. If this method is chosen, expense information shall be separate and distinct from information about dedicated and distributed money. Each subject must be in a clearly labeled section.

a. The name, address, date, purpose and amount dedicated to another person or organization shall be available for review.

b. If dedicated funds are used by the licensee, the date, purpose and amount must be recorded.

c. Receipts used for expenses shall be recorded. The record must show:

(1) The date,

(2) The amount,

(3) The purpose, and

(4) To whom paid.

d. Invoices or bills for expenses must be maintained. Advertising copy and invoices must be retained for verification.

Records shall be maintained for three years for review by the department.

This rule is intended to implement Iowa Code sections 99B.2 and 422.16.

[1] See forms at end of Chapter 103

481—100.8(10A,99B) Inspections. A representative of the department shall be admitted immediately upon request to gambling premises, with or without notice. Records shall be made available to the department or any law enforcement officer when requested. Department employees shall receive any requested assistance needed to complete inspection of records.

This rule is intended to implement Iowa Code section 99B.2(2).

481—100.9(99B) Reports. Qualified organizations and those who have annual game night or fair raffle licenses are required to file reports explained in this rule.

100.9(1) The quarterly report of a public school district shall include all transactions of any group operating under the license.

100.9(2) Quarterly reports are submitted on a calendar-quarter basis. The quarterly report form is provided by the department.

a. The first quarter is January 1 to March 31;

b. The second quarter is April 1 to June 30;

c. The third quarter is July 1 to September 30;

d. The fourth quarter is October 1 to December 31.

Reports written on forms provided by the department are due 30 days after the end of the quarter. When the due date is on Saturday, Sunday or a legal holiday, the report is due the next business day. Subrule 100.13(5) contains further specific information.

The department may require a qualified organization to submit records of specific occasions with the quarterly report.

This rule is intended to implement Iowa Code sections 99B.2(4) and 99B.16.

481—100.10(99B) Extension of time to file quarterly report. A 30-day extension may be granted for good cause shown by a licensee. The following are examples of what may be considered good cause:

1. Death or serious illness of the responsible person; or
2. A prolonged unavoidable absence of the responsible person.

This rule is intended to implement Iowa Code sections 99B.2 and 99B.7.

481—100.11(10A,422) State and local option sales tax. Gross receipts from gambling are subject to state and local option sales tax with the following exceptions:

1. Gambling activities conducted by a city or county are exempt from state and local option sales tax; and
2. Fair raffle tickets sold pursuant to Iowa Code section 99B.5 are exempt from state and local option sales tax.

Tax information may be obtained from the Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 422.42.

481—100.12(10A,17A,99B) Appeal rights. Any decision of the department may be appealed in accordance with procedures set out in Iowa Administrative Code 481—Chapter 10. When an appeal is received, the status of the license is governed by the following standards:

100.12(1) When an application is not timely or sufficient, a license may not be issued until a final hearing decision.

100.12(2) A license remains effective until a final decision is issued if the denied renewal application was timely and sufficient.

100.12(3) No license will be issued when a new application is denied.

This rule is intended to implement Iowa Code section 99B.2.

481—100.13(99B) Penalties. Gambling licenses may be revoked for a period of two years. Exceptions are noted. The licensee shall have ceased doing business during the minimum continuous period of revocation. After the period of revocation, application must be submitted for a new license to be issued. An applicant shall prove deficiencies have been corrected.

When a license issued under Iowa Code chapter 99B or 123 is revoked and the license applied to a specific location, no one may have a gambling license for that location until the entire revocation period elapses.

The following criteria determine the period of revocation:

100.13(1) Failure to timely dedicate or distribute 75 percent of net receipts may result in revocation for a period of not longer than 60 days for each violation. Each failure is one violation.

100.13(2) Failure to dedicate or distribute 75 percent of net receipts within ten days following written notification by the department may result in revocation for at least 90 days for each violation. Each failure is one violation.

100.13(3) Failure to use dedicated receipts for purposes specified in Iowa Code section 99B.7(3)*"b"* may result in revocation for at least one year for each violation. Each failure is one violation.

100.13(4) Donating receipts knowing that the receipts will not be used for purposes specified in Iowa Code section 99B.7(3)*"b"* may result in revocation for at least one year for each violation. Each donation is one violation.

100.13(5) Failure to file a timely report for a quarter in which gambling activities were conducted may result in revocation for a period no longer than 30 days for a violation. The revocation shall continue until the report is filed, but not longer than two years. Each untimely report is one violation.

100.13(6) Intentionally filing a false or fraudulent gambling report or application may result in a revocation of two years for any violation.

100.13(7) The operation, either directly or indirectly, of a bingo occasion by the owner of a building leased or rented for bingo purposes may result in a revocation of two years for any violation.

100.13(8) The operation, either directly or indirectly, of a bingo occasion by an individual who sells bingo equipment or supplies may result in a revocation of two years for any violation.

100.13(9) A license is revoked for a minimum of one year for the following:

a. Games conducted are not in compliance with Iowa Code chapter 99B or 481—Chapters 100 to 103;

b. Fraudulent games are held;

c. Unauthorized expenses are paid;

d. Authorized expenses are unreasonable; or

e. Bingo occasions are longer than allowable limits.

100.13(10) A license is revoked for a maximum of two years for the following:

a. Records are not adequate or do not comply with rules;

b. Records are not made available for inspection or audit;

c. A license issued under the Iowa alcoholic beverage control Act is suspended because of conviction or guilty plea to a criminal violation of Iowa alcoholic beverage control Act;

d. Violation of any gambling statute or rule occurs on licensed premises;

e. An individual who sells bingo supplies or equipment is involved directly or indirectly in the operation of bingo games or in the control or use of bingo funds in the licensee's bingo checking or savings accounts; or

f. An owner or lessor of a building rented or leased for operation of bingo games is involved directly or indirectly in the conduct of bingo or in the control or use of bingo funds in the licensee's bingo checking or savings accounts.

100.13(11) Revocation of a gambling license is permanent when a license issued under Iowa alcoholic beverage control Act is revoked because of conviction of or guilty plea to a criminal violation of the:

a. Iowa gambling law, or

b. Iowa alcoholic beverage control Act.

100.13(12) If the division issued a final revocation order prior to July 1, 1984, the revocation is permanent. Final revocation orders issued by the division after June 30, 1984, shall not exceed two years. See Attorney General Opinion Williams to Bair, August 7, 1984.

The date of a final revocation order is the date of the director's order or the date the administrative law judge's order becomes final.

100.13(13) The director of the department may use discretion to set the length of revocation for a violation not set out specifically in gambling rules or statutes.

This rule is intended to implement Iowa Code section 99B.7.

481—100.14 to **100.29** Reserved.

QUALIFIED ORGANIZATION
[Prior to 9/5/90, see 481—Ch 103]

481—100.30(99B) License requirements. The following are in addition to requirements in rule 100.3(99B):

100.30(1) An organization must be active in Iowa at least five years before a two-year license is issued. If the organization is a local chapter of a national organization which has existed at least five years, a license may be granted. The organization must prove the required period of existence. Examples of evidence which may be used for proof are articles of incorporation, a national charter, bylaws, newspaper articles or bank records.

100.30(2) Rent for gambling locations is subject to the following requirements:

a. The rent may not be related to nor be a percentage of the receipts.

b. The licensee may terminate any lease or rental agreement without paying a penalty or forfeiting money or a deposit. Damage deposit money is excepted.

c. No person receiving rent for a bingo location, either directly or indirectly, may be involved in, participate in, or be associated with the operation of bingo games.

100.30(3) A letter of determination of tax-exempt status from the Internal Revenue Service shall be attached to the application to prove tax-exempt eligibility.

100.30(4) Political candidates, parties or nonparty political organizations must supply verification as follows:

a. From the secretary of state;

b. From the Iowa campaign finance disclosure commission; or

c. From the county auditor.

Political action committees are not eligible for gambling licenses.

This rule is intended to implement Iowa Code sections 99B.2(1), 99B.7(1)*"m,"* 99B.7(2)*"a,"* and 99B.12(2)*"a."*

481—100.31(99B) Annual game night. Rescinded IAB 8/1/07, effective 7/13/07; see 481—Chapter 107.

481—100.32(99B) Raffles. A valid raffle shall only occur during the period of the license. The license must be in effect before promotions for the raffle can begin. The gambling event begins when the first ticket is sold and ends when winning numbers are drawn. Calendar raffles do not comply with raffle criteria and are not allowed.

100.32(1) A licensee may conduct an unlimited number of small raffles during a license period. Cash or merchandise prizes may be awarded. Individual prizes or aggregate prizes for one small raffle may not exceed $10,000 in value. Raffle winners cannot be required to be present to win. The prize may be a single item or several items. The cost to play is not limited.

100.32(2) An annual raffle (also referred to as a large raffle) may be held once per calendar year with prizes, including real property or merchandise, having a combined value greater than $10,000. The cost to play is not limited. If a raffle licensee holds a statewide raffle license, the licensee may hold not more than eight raffles per calendar year at which real property or one or more merchandise prizes having a combined value of more than $10,000 may be awarded. Each such raffle held under a statewide license shall be held in a separate county. Withholding requirements are explained in department of revenue 701—subrule 46.1(1).

100.32(3) If a prize is merchandise, its value shall be determined by the purchase price paid by the organization or donor.

100.32(4) A qualified organization licensee may hold one real property raffle per calendar year in lieu of an annual raffle. The department shall conduct a special audit to verify compliance with the following requirements:

a. The licensee has submitted a real property raffle license application and a fee of $100 to the department.

b. The license is prominently displayed at the drawing area.

c. The real property was acquired by gift or donation or has been owned by the licensee for a period of at least five years.

d. Receipts from the raffle are kept in a separate financial account.

e. A cumulative report for the raffle on a form determined by the department and 1 percent of gross receipts are submitted to the department within 60 days of the raffle drawing. The payment of 1 percent of the gross receipts shall be made payable to the Iowa Department of Inspections and Appeals.

f. All other requirements of Iowa Code sections 99B.2 and 99B.7 are met.

100.32(5) A licensee may offer raffle tickets for sale at a discounted rate if the discount is applied in a nondiscriminatory manner. The discount must be available to all persons throughout the duration of the raffle and must be posted on all promotional material.

100.32(6) A ticket, coupon, or card shall not be used as a door prize or given to a participant of a raffle, game of bingo, or game of chance if the use of the ticket, coupon, or card would change the odds of winning for participants of the raffle, game of bingo, or game of chance.

This rule is intended to implement Iowa Code sections 99B.1(21), 99B.1(22) and 99B.7(1).

481—100.33(99B) Expenses. Reasonable expenses shall not exceed 25 percent of the net receipts.

100.33(1) No expense item shall be allowed without a proper receipt, paid invoice or canceled check and shall not be paid from an outside source. The burden of proof is on the licensee to show that all expenses were incurred exclusively and directly as a result of the gambling activity. An expense will not be considered reasonable if the amount charged significantly exceeds the prevailing rate or average retail cost of the item or service purchased.

100.33(2) Expenses allowed within the 25 percent limit are:

a. The license fee;

b. Rent of building or equipment;

c. Taxes (other than state and local sales tax paid on gross receipts);

d. Promotion expense;

e. Major equipment purchases;

f. Overhead expenses;

g. Worker compensation; and

h. Other expenses incurred exclusively and directly as a result of the gambling activity.

This rule is intended to implement Iowa Code section 99B.7(3)*"c."*

481—100.34(99B) Nature and dedication of net receipts. At least 75 percent of net receipts shall be dedicated and distributed to educational, civic, public, charitable, patriotic or religious uses in this state.

100.34(1) The following examples illustrate methods to determine net receipts, allowable expense, and the amount required to be dedicated and distributed.

EXAMPLE 1

When sales tax is not included in gross receipts, it need not be deducted to arrive at net receipts.

Gross receipts for quarter (excluding sales tax)	$100,000
Amount awarded as prizes	$ 20,000
Net receipts	$ 80,000
Minimum dedicated and distributed (75 percent of net receipts)	$ 60,000
Maximum expenses (25 percent of net receipts)	$ 20,000

EXAMPLE 2

When sales tax is included in gross receipts, it is deducted to arrive at net receipts.

Gross receipts for quarter (including sales tax)	$105,000
Amount awarded as prizes	$ 20,000
Sales tax	$ 5,000
Net receipts	$ 80,000
Minimum dedicated and distributed (75 percent of net receipts)	$ 60,000
Maximum expenses (25 percent of net receipts)	$ 20,000

At least 75 percent of the net receipts received during the quarter shall be distributed no later than 30 days following the end of each calendar quarter unless permission to do otherwise is requested in writing and granted by the department.

100.34(2) If a licensee receives at least 90 percent of its total income in a calendar year from charitable gambling activities, at least 75 percent of the licensee's net receipts must be distributed to an unrelated entity by March 31 of the following year for educational, civic, public, charitable, patriotic, or religious uses. An unrelated entity is one having a separate state charter and tax identification number. The following examples illustrate methods to determine if at least 75 percent of a licensee's income must be distributed to an unrelated entity.

EXAMPLE 3

Charitable gambling income:	
Gross income from raffles	$ 20,000
Gross income from bingo	$ 60,000
Gross income from other games of skill or chance	$ 5,000
Total charitable gambling income	$ 85,000
Other income:	
Donations	$ 13,000
Interest income	$ 1,000
Membership dues	$ 1,000
Total other income	$ 15,000
Total income:	$100,000
Percentage of total income derived from charitable gambling	85%

This licensee is required to distribute at least 75 percent of its net receipts to either a related or unrelated entity.

EXAMPLE 4

Charitable gambling income:	
Gross income from raffles	$ 30,000
Gross income from bingo	$ 60,000
Gross income from other games of skill or chance	$ 5,000
Total charitable gambling income	$ 95,000
Other income:	

Donations	$ 3,000
Interest income	$ 1,000
Membership dues	$ 1,000
Total other income	$ 5,000
Total income:	$100,000
Percentage of total income derived from charitable gambling	95%

This licensee is required to distribute at least 75 percent of its net receipts only to an unrelated entity.

This rule is intended to implement Iowa Code sections 99B.1(16), 99B.1(18), 99B.1(24), 99B.7(3), and 99B.7(4).

481—100.35(99B) Extension of time to dedicate net receipts. The department may grant a qualified organization an extension of time to dedicate net receipts. The following conditions must be met for an extension of time to be granted:

1. The request must be in writing and be received by the department no later than the due date of the quarterly return;
2. The request must provide a reason to hold the net receipts and state for what purpose the funds will be used;
3. The request must contain an estimated date of use;
4. The request must state that the fund will be kept separate from all other funds; and
5. The request must include:

- The financial institution in which the fund is located,
- The account number of the fund, and
- The person responsible for managing the fund.

100.35(1) If a request for an extension of time to dedicate net receipts is granted by the department, a detailed analysis of all transactions affecting the fund during the extension shall be recorded on each quarterly report affected.

100.35(2) Failure to provide the required information shall cause termination of the extension. All proceeds shall then be dedicated within 72 hours.

100.35(3) A licensee who is granted an extension and thereafter loses the license shall expend the fund immediately and notify the department in writing.

This rule is intended to implement Iowa Code section 99B.2(4).

481—100.36(10A,22) Confidentiality. Information collected by the department to license and audit gambling operations in Iowa is public information.

This rule is intended to implement Iowa Code section 22.11.

481—100.37 to **100.49** Reserved.

RAFFLES CONDUCTED AT A FAIR
[Prior to 9/5/90, see 481—101.8(99B)]

481—100.50(99B) Raffles conducted at a fair. Each raffle begins when the first ticket is sold and ends when winning numbers are drawn. The raffle shall be conducted within the duration of the fair.

100.50(1) Rules for a raffle must be posted in the same manner as those for a game of skill or game of chance. See rule 100.5(99B).

100.50(2) Raffle winners shall not be required to be present to win.

481—100.51(99B) Raffle prizes at a fair. Cash prizes shall not be awarded and merchandise prizes shall not be repurchased. An unlimited number of raffles may be conducted. An unlimited number of people may win in a raffle. No one may win more than $1,000 in merchandise. A gift certificate prize shall not be redeemed for cash.

481—100.52(99B) Exceptions for an annual raffle. A fair sponsor or a qualified organization, but not both, may hold one raffle per calendar year at a fair for which the cost per chance or ticket is unlimited and for which cash prizes may be awarded.

100.52(1) The value of prizes in this raffle shall be greater than $1,000. The value is the purchase price paid by the fair sponsor or qualified organization.

100.52(2) The conductor of the game shall deduct state income tax from cash prizes in excess of $600. Tax withheld shall be remitted to the department of revenue on behalf of the winner. See Iowa department of revenue 701—subrule 46.1(1). The deduction of 20 percent federal withholding taxes on all cash prizes over $1,000 is also required and shall be remitted to the Internal Revenue Service.

Rules 100.50(99B) to 100.52(99B) are intended to implement Iowa Code sections 99B.1(22), 99B.5, 99B.21, and 422.16.

481—100.53 to **100.79** Reserved.

ANNUAL GAME NIGHT

[Prior to 9/5/90, see 481—Ch 105]

Rescinded IAB 8/1/07, effective 7/13/07; see 481—Ch 107.

BINGO MANUFACTURERS AND DISTRIBUTORS

481—100.80(99B) Bingo manufacturers and distributors. Bingo manufacturers and distributors as defined in rule 481—100.1(10A,99B) are required to obtain a license when conducting business within the state of Iowa.

481—100.81(99B) Bingo manufacturer and distributor licenses. Any manufacturer or distributor of bingo equipment or supplies must be licensed prior to any sale in Iowa.

100.81(1) The license is issued for a one-year period beginning July 1 of each year. The license expires June 30 of each year regardless of the date of procuring the license.

100.81(2) To obtain a bingo manufacturer's or a bingo distributor's license, the applicant shall:

a. Submit a $1,000 fee for a manufacturer's license or a $500 fee for a distributor's license;

b. Comply with the requirements for distributors or manufacturers in Iowa Code chapter 99B, administrative rules of the department, and other applicable state or federal laws;

c. Complete an application for a license. The department may require detailed information concerning the business structure and operation of the applicant;

d. List all owners, officers, and board members of the business; and

e. List all names under which the applicant will conduct business in the state of Iowa.

481—100.82(99B) Bingo supplies and equipment. Products sold within this state to a gambling license holder shall meet the following requirements:

100.82(1) Products must be manufactured by an Iowa-licensed manufacturer and the seller must be an Iowa-licensed distributor.

100.82(2) Products shall be supplies and equipment which are used in connection with the game of bingo as defined in Iowa Code section 99B.1. The following are noninclusive characteristics of the game of bingo to which products must conform:

a. Cards or playing faces shall have spaces marked in horizontal and vertical rows. Each space shall be designated by number, letter, or combination of numbers and letters.

b. Balls or objects used to select spaces which are to be covered on the card or playing face must bear numbers, letters, or a combination of numbers and letters corresponding to the system used on the spaces of the cards or playing faces.

c. The bingo machine must contain a receptacle where objects or balls are placed and from which the objects or balls representing the space to be covered are selected. The selection of the balls or objects by the bingo machine must be by chance and may be either manual or mechanical.

100.82(3) Products sold in Iowa must have the manufacturer's name imprinted on the supplies or equipment.

Rules 100.80(99B) to 100.82(99B) are intended to implement Iowa Code sections 99B.7(7) and 99B.7A.

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CHAPTER 101
AMUSEMENT CONCESSIONS

[Prior to 12/17/86, Revenue Department[730], Ch 92]
[Prior to 11/18/87, Racing and Gaming Division[195]]
[Prior to 6/14/89, Racing and Gaming Division[490], Ch 21]

481—101.1(99B) License requirements. No games shall be conducted until an application is approved and a license is issued by the department. A gambling license is required for each amusement concession game. The name and description of the game shall be attached to the application.

Application and license requirements are found in rules 481—100.2(99B) and 100.3(99B).

101.1(1) A carnival, bazaar, centennial or celebration sponsored by a bona fide civic group, service club or merchants group may be issued a license which allows the sponsor of the event to conduct all games permitted for 14 consecutive calendar days. Anyone other than the sponsor who conducts a game must apply for a license and pay the fee shown on the application.

101.1(2) The location of an amusement concession shall comply with requirements in Iowa Code section 99B.4.

This rule is intended to implement Iowa Code section 99B.4.

481—101.2(99B) Prizes. All prizes shall be merchandise. The value of any prize shall not exceed $50. Small merchandise prizes may be exchanged for a prize of greater value if the value of the exchanged prize does not exceed $50. A prize which cannot be obtained shall not be displayed.

This rule is intended to implement Iowa Code section 99B.3.

481—101.3(99B) Conducting games. The object of each game must be attainable and possible to perform under the rules of the game by an average individual. The possible results shall not be hidden, as in a punchboard or pull-tab which conceals numbers. The cost to play each game shall not exceed $3.

Iowa Code section 99B.3 prohibits raffles at any licensed amusement concession.

This rule is intended to implement Iowa Code section 99B.3.

481—101.4(99B) Posted rules. Rules for each game shall be clearly posted on a sign at least 30 inches by 30 inches.

This rule is intended to implement Iowa Code section 99B.3.

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CHAPTER 102
SOCIAL GAMBLING

[Prior to 12/17/86, Revenue Department[730], Ch 93]
[Prior to 11/18/87, Racing and Gaming Division[195]]
[Prior to 6/14/89, Racing and Gaming Division[490], Ch 22]
[Prior to 9/5/90, see 481—Chapters 102 and 104]

481—102.1(99B) License requirements. Premises which have a Class "A," Class "B," Class "C," or Class "D" liquor control license or Class "B" beer permit shall have a social gambling license in order to allow gambling between individuals or sports betting pools on the premises. Social gambling shall not be conducted until an application is approved and a license is issued by the department. The license fee is $150.

102.1(1) Except as provided in Iowa Code sections 99B.11 and 99B.12, a social gambling license is required in order to allow gambling between individuals of any age in a public place that does not serve beer or liquor. The license fee is $100. Sports betting pools are not allowed under this license.

102.1(2) The license is valid for two years from the date issued and shall be prominently displayed on the premises.

102.1(3) The licensee is responsible for compliance by participants.

This rule is intended to implement Iowa Code sections 99B.6 and 99B.9.

481—102.2(99B) Participation allowed. Social gambling may occur only between two or more people who are together for purposes other than gambling. A social relationship must exist beyond that apparent in the gambling situation.

102.2(1) The licensee and the licensee's agents or employees shall not sponsor, conduct or promote any game. They may participate the same as any other participant under a social gambling license where beer or liquor is sold. They may not participate under a social gambling license in a public place. For purposes of this chapter, sports betting pools are not considered games.

102.2(2) Prices charged for goods or services shall not vary between customers who are gambling and those who are not.

102.2(3) No person under 21 years of age may participate in social gambling where beer or liquor is sold.

102.2(4) Sports betting pools are allowed only in licensed establishments where beer or liquor is sold and must conform to Iowa Code section 99B.6(7). No participant may wager more than $5 and the maximum winnings to all participants from the pool shall not exceed $500.

102.2(5) No participant may win or lose more than a total of $50 in cash or other consideration during any period of 24 consecutive hours.

102.2(6) No person may be required to pay a participation charge, cover charge or other charge for the privilege of participating in or observing gambling.

This rule is intended to implement Iowa Code sections 99B.6 and 99B.9.

481—102.3(99B) Permissible games.

102.3(1) Card and parlor games in the following list may be played:

1. Poker,
2. Pinochle,
3. Pitch,
4. Gin rummy,
5. Bridge,
6. Euchre,
7. Hearts,
8. Cribbage,
9. Dominoes,
10. Checkers,
11. Chess,

12. Backgammon,
13. Darts, or
14. Pool.

102.3(2) Bookmaking shall not occur. Games in the following list are unlawful:

1. Punchboard,
2. Pushcard,
3. Pull-tab,
4. Slot machine,
5. Craps,
6. Chuck-a-luck,
7. Roulette,
8. Klondike,
9. Blackjack,
10. Chemin de fer,
11. Baccarat,
12. Faro,
13. Equality, or
14. Three card monte.

With the exception of poker, games customarily played in a gambling casino for which the house provides a banker, dealer or croupier, or which require a specially designed table shall not be allowed.

This rule is intended to implement Iowa Code sections 99B.1(23) and 99B.12(2).

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[1] This history transferred in IAC 9/5/90 from 481—Chapter 104, applicable to "Gambling in Public Places."

CHAPTER 103
BINGO

[Prior to 12/17/86, Revenue Department[730], Ch 94]
[Prior to 11/18/87, Racing and Gaming Division[195]]
[Prior to 6/14/89, Racing and Gaming Division[491], Ch 23]
[Prior to 9/5/90, this chapter was entitled "Qualified Organization"]

481—103.1(10A,99B) Definitions. Definitions in rule 100.1(10A,99B) are incorporated by reference in this chapter.

The following definitions apply to all qualified organizations where bingo is played.

"Bingo occasion" is a single gathering or a single session during which successive bingo games are played. A bingo occasion shall not last longer than four hours.

"Cash" is any legal tender of the United States.

"Category" means the name given to a particular type of playing face to distinguish one from another.

"Limited license" is a 14-day license issued only to a qualified organization. There are no limits on the number of games played or occasions held, except that a bingo occasion may be conducted only once per each seven consecutive calendar days under this license.

"Merchandise" prizes are tangible goods, scholarships, antique coins, airline tickets or similar items. Iowa lottery tickets are merchandise. Animals are not merchandise and shall not be awarded as prizes.

"Playing face" means the grid on which a player marks numbers and letters called as the game progresses.

"Qualified organization" is a licensed, tax-exempt body which dedicates 75 percent of the receipts of bingo games for purposes listed in Iowa Code section 99B.7(3)*"b."*

This rule is intended to implement Iowa Code section 99B.7.

481—103.2(10A,99B) License. Licenses are issued for two years or 14 days. Licenses issued for 14 days are called limited licenses. Under a 14-day license, a bingo occasion may be conducted only once per each seven consecutive calendar days during the period specified in the license. Before any organization may conduct bingo games or occasions, an application must be approved by the department. The license shall be prominently displayed and is valid only at the gambling location named.

Bingo occasions are restricted to the location applied for by the qualified organization and approved by the department. A license may be transferred to a different location only after application by the licensee and approval by the department.

Application forms are available from the Social and Charitable Gambling Unit, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083, or by calling (515)281-6848. A short-form application for school district boards of directors is available from the department.

Examples of various circumstances that affect whether a license is granted are:

1. Qualified organization X applies for and is issued a two-year license to conduct bingo occasions at 313 Cherry Street, Des Moines, Iowa. The license is effective from August 1, 1981, to July 31, 1983. On October 1, 1981, qualified organization Y applies for a 14-day limited license to conduct bingo at the same location. The license is approved and issued because a limited license can be issued for the same location used for a two-year bingo license.

2. ABC qualified organization applies for and is issued a two-year qualified organization license to conduct bingo at 1002 West 2nd Avenue in Jones Town, Iowa. The license is effective from October 1, 1981, to September 30, 1983. On November 15, 1981, EFG qualified organization applies for a two-year qualified organization license for the same location. A license may be issued to EFG organization for the same location during the same period to conduct any games of chance, games of skill or raffles. EFG organization shall not conduct bingo at the location.

3. Hometown community school district applies for and is issued a two-year qualified organization license to conduct games of skill, games of chance and raffles at the grade school building. The license is effective from September 1, 1981, to August 31, 1983. During the time that the Hometown school

license is in effect, the school-sponsored pep club applies for a 14-day limited license to conduct games of skill at the grade school building. The school-sponsored pep club may be issued a limited license for the same location during the same time. Under this example, the school-sponsored pep club would not be required to obtain a separate license, because school-affiliated organizations may operate separate events under a school district's two-year license.

This rule is intended to implement Iowa Code section 99B.7.

481—103.3(99B) Bingo occasion. A qualified organization may conduct only three bingo occasions per week, but not more than 14 occasions per month, under a two-year qualified organization license. A week starts on Sunday and ends on Saturday. An occasion begins when the first ball is called and shall end no more than four hours later.

103.3(1) No admission fee may be charged. However, a person may be required to purchase one game for $1 or less to enter the room where bingo is being played.

103.3(2) At the end of each occasion, the person conducting the games shall announce both the gross receipts and the use to which the net receipts will be dedicated and distributed.

103.3(3) Senior citizen organizations named and defined in this subrule may request the following exceptions:

- More than 14 occasions may be held in one month.
- More than three occasions may be held in one week.
- Occasions may last longer than four hours.

a. A senior citizen is a person who is 60 years of age or older.

b. A senior citizen center is a facility which maintains a contract with the local area agency on aging. It is a multipurpose or activity center, provides a broad range of services designed for senior citizens and is open to all senior citizens without financial restrictions. A qualified organization which is a senior citizen center shall be controlled by the senior citizens served by the center.

c. A senior citizen housing project is a facility of at least ten residential units acquired or constructed by a governmental entity or a charitable organization to provide housing to senior citizens. A qualified organization which is a senior citizen housing project shall be controlled by a resident council which consists of at least five members selected in a democratic manner by the residents.

d. A senior citizen group home is a facility built or acquired by a governmental entity or a charitable organization. It must be exempt under Section 501(c) of the Internal Revenue Code, have one or more buildings, consist of at least ten private rooms or apartments, and be 75 percent occupied by senior citizens. Other units may be occupied by handicapped persons without respect to age. A qualified organization which is a senior citizen group home shall be controlled by a residents council which has at least five members selected in a democratic manner by the residents.

e. To conduct bingo occasions under the exceptions allowed to senior citizen organizations, a qualified organization must satisfy the department that it qualifies for the exception. The organization must:

(1) Be recognized as a senior citizens' center, a senior citizens' housing project, or a senior citizens' group home;

(2) Conduct bingo occasions for at least one month within the limitations on hours and number of occasions required by this rule and Iowa Code section 99B.7(1)*"c"* prior to requesting the exception;

(3) Submit, upon request, records of daily activities referred to in paragraphs *"f"* and *"g"*; and

(4) Verify that the majority of patrons at the organization's bingo occasions also participate in other activities of the senior citizens' center or are residents of the housing project or group home.

f. A qualified organization which is a senior citizens' center shall maintain, for each bingo occasion conducted, a record showing:

(1) The total number of players; and

(2) A list of all senior citizen players who participate in activities of the senior citizens' center other than bingo, including specific activities and dates of participation.

g. A qualified organization which is a senior citizens' housing project or group home shall maintain, for each bingo occasion conducted, a record showing:

(1) The total number of players; and

(2) A list of all players who are residents of the housing project or group home.

h. An organization qualifying for the exception shall review its daily records of participation on a monthly basis. If the majority of the patrons during the previous calendar month do not meet the participation or residence requirement, the organization shall no longer qualify for the exception.

i. A senior citizen organization which no longer qualifies for the exception shall adhere to the limits on hours and number of occasions required of other organizations until it can reestablish eligibility for the exception. Within seven days after becoming aware of its disqualification, the organization shall notify the department in writing that it no longer qualifies for the exception.

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

a. Participants in the bingo occasion are not charged to enter the premises where bingo is conducted.

b. Participants in the bingo occasion are not charged to play.

c. Any prize awarded at the bingo occasion shall be donated.

d. The bingo occasion is conducted as an activity and not for fundraising purposes.

This rule is intended to implement Iowa Code section 99B.7(1)*"c."*

481—103.4(99B) Game of bingo. Each game shall meet all the elements of the definition in Iowa Code section 99B.1(4) to be a legal game of bingo. Games ordinarily considered bingo may be played.

103.4(1) A fair and legal game shall meet at least all of the following criteria:

a. No player may be required to buy a packet or to play one game in order to play another game;

b. The game requires an announcer or caller;

c. Numbers shall be announced so all players can hear clearly;

d. A free space is allowed;

e. The game proceeds as the caller selects and announces the numbers. If a caller miscalls a number or misreads a ball, only the number on the ball may be used. Miscalled numbers are invalid;

f. House rules may require that a player have the last number called for a bingo. If not posted in the house rules, the player is not required to have the last number called.

g. Each game ends when it is determined that a player has covered the announced pattern of spaces. The caller or another worker shall verify the numbers on winning cards. The caller checks for additional bingos and officially closes the game.

103.4(2) Activities on the following list are not allowed:

a. Video bingo and games of chance such as barnyard bingo;

b. Free numbers. A free space may be given;

c. Concealed numbers on a playing face; or

d. Rescinded IAB 9/29/04, effective 11/3/04.

103.4(3) Any player may request that all numbers drawn and all numbers not drawn be verified when the winning card or cards are verified. Numbers shall be verified in the presence of the member in charge and the caller. The player who requested verification may observe the count.

103.4(4) The cost to play each game shall not exceed $1. Cards or games may be sold only within the premises of the bingo occasion. The cost for each packet, playing face, or tear sheet shall be the same for each participant, i.e., the cost for an opportunity to play shall be equal. Players may pay for games with cash or, at the option of the licensee, checks.

a. All cards or games shall be assigned a price.

b. The price shall be posted. Cards may be sold only for the posted price.

c. Rescinded IAB 5/1/91, effective 6/5/91.

d. Free games shall not be given.

e. Bingo games allowing for a trade-in of a bingo card during a bingo game for not more than fifty cents per trade-in may be allowed.

103.4(5) Cards for each category shall be distinctly marked. Each shall be easy to distinguish from all others.

a. Bingo games or cards may be printed on only one side.

b. In each game, the bingo operator must ensure that duplicate playing faces are not sold.

This rule is intended to implement Iowa Code sections 99B.1(5), 99B.3(1) and 99B.7(1).

481—103.5(99B) State and house rules. Iowa administrative rules and specific house rules must be readily available to every bingo player. The house has discretion regarding reserved seating and age restrictions for children to play, but must post such restrictions in the house rules.

103.5(1) A copy of these rules, 481—Chapter 103, "Bingo," shall be maintained at every bingo location during every bingo occasion. Bingo players who request it shall have the opportunity to read the administrative rules.

103.5(2) House rules shall be posted on a sign near the front of the playing area.

a. The sign shall be at least 30 inches by 30 inches.

b. Permanent letters 3 inches high shall proclaim "Rules of the Game."

c. Rules shall be in large, easily readable print and shall include:

(1) The name and mailing address of the licensee;

(2) Prices to play; and

(3) House rules for the game.

1. House rules shall include how to indicate "bingo" to halt the game, collect a prize, and verify winners' names and addresses.

2. Reserved seating may be observed if the house so chooses and posts the information.

3. People of any age are allowed to play bingo. The house may choose to restrict children of certain ages, as long as the restriction is posted in the house rules.

103.5(3) The following information shall be correctly posted before the beginning of each occasion:

a. Description of each game to be played;

b. Price of each game;

c. Prize for each game; and

d. Jackpot rules, if any.

EXAMPLE: Single bingo $1 per game, $50 payout.

This rule is intended to implement Iowa Code section 99B.1(20).

481—103.6(99B) Prizes. Cash or merchandise prizes awarded for each game shall not exceed $100 in value. Jackpot games are excepted and are governed by standards in subrule 103.6(6). The amount of the prize shall be announced before the beginning of each game.

103.6(1) Prizes shall be recorded each occasion on the daily bingo summary (see Table A[1]) as they are paid by listing the number of the game; the pattern required to win; the type, color, and series of cards used in the game; and the amount of the prize. The name, address, and social security number of each jackpot winner is required.

NOTE: Prizes of more than $600 require the deduction of 5 percent withholding taxes, plus any applicable local option or school taxes, for the state of Iowa. See 103.6(6), paragraph *"g."*

103.6(2) A ticket, coupon, or card shall not be used as a door prize or given to a participant of a raffle, game of bingo, or game of chance if the use of the ticket, coupon, or card would change the odds of winning for participants of the raffle, game of bingo, or game of chance.

103.6(3) Prizes awarded in games with more than one winner shall be shared equally. It is permissible to round to the nearest dollar.

103.6(4) Merchandise such as scholarships, airline tickets and other similar items awarded as prizes shall not be converted to cash by the donor or provider. Winning lottery tickets or shares awarded as prizes may be converted to cash pursuant to lottery rules and statutes. An animal shall not be awarded as a prize for persons participating in a game or fair event.

103.6(5) A player shall not be required to return cash or a merchandise prize won in one game in order to play a subsequent game. Players shall not be required to play in one game in order to play in a subsequent game.

103.6(6) No more than two jackpot games may be played during a 24-hour period as follows:

a. An organization is limited to two jackpot games.

b. The jackpot starting prize shall not exceed $300 in cash or actual retail value of merchandise.

c. The jackpot prize shall not increase more than $200 after each jackpot game. The maximum prize shall not be greater than $1,000 for the first jackpot game and shall not be greater than $2,500 for the second jackpot game.

d. The jackpot prize shall not decrease until it is won.

e. If a jackpot is not won in the specified number of calls, the game reverts to a regular game with a prize of $100 or less.

f. Each jackpot game shall begin again at no more than $300.

g. Cash prizes over $600 require the deduction of 5 percent withholding tax, plus any applicable local option or school tax. This tax is to be withheld by the organization conducting the game. The amount deducted shall be remitted to the Iowa department of revenue on behalf of the prize winner.

This rule is intended to implement Iowa Code sections 99B.7(1), 99B.21, 422.16 and 717D.2.

[1] See forms at end of this chapter.

481—103.7(10A,99B) Workers.

103.7(1) Each organization must have a responsible party listed on the application. The responsible party must be an active member of the organization and should be familiar with the requirements of the Iowa law and be aware of the bingo activities of the organization.

103.7(2) Volunteers must be actively participating members of the licensed organization or must participate in an organization to which money will be dedicated.

103.7(3) Rescinded IAB 7/24/02, effective 7/5/02.

103.7(4) Persons conducting bingo and paid workers shall not play during an occasion in which they work. A person conducting bingo includes: persons overseeing the bingo games, persons controlling and accounting for the occasion's net receipts, persons directing the work of bingo workers, and any persons having management or oversight responsibilities.

103.7(5) The following people shall not work during a bingo occasion:

a. The lessor of the building; or

b. Anyone who sells bingo equipment or supplies to that licensee.

This rule is intended to implement Iowa Code section 99B.7(1)*"b."*

481—103.8(99B) Expenses. Expenses incurred exclusively and directly as a result of bingo shall not exceed 25 percent of net receipts. Reasonable expenses within the 25 percent limit are:

1. The license fee;
2. Withholding, unemployment or social security taxes;
3. Promotion cost;
4. Equipment and supply purchases;
5. Rent for bingo occasion;
6. Utilities for bingo occasion; and
7. Wages paid for bingo workers.

Expense items are allowed only when receipts or a paid invoice and canceled check are available for review by the department.

103.8(1) When the annual gross exceeds $10,000, expenses shall be paid from a bingo checking account. The licensee shall prove that all expenses were incurred exclusively and directly as a result of bingo.

103.8(2) Expenses are not reasonable if the amount charged substantially exceeds the current rate or average retail cost of items or services purchased.

This rule is intended to implement Iowa Code section 99B.7.

481—103.9(99B) Location. Bingo may be conducted on premises either owned or leased by the qualified organization. All buildings in which bingo is conducted must meet state or local standards for occupancy and safety. The name of the licensee shall be posted on the sign of each building or location where bingo occasions are held. A name which is closely associated with the licensee and which clearly identifies the lawful uses of the proceeds may also be used. Generic-type names, such as "Nelson Street Bingo" or "Uncle Bob's Bingo," shall not be used.

1. The rent shall not be related to nor be a percentage of the receipts.
2. The licensee may terminate any lease or rental agreement without paying a penalty or forfeiting money or a deposit. Damage deposit money is excepted.
3. Alcoholic beverages may be served in a bingo location if that location possesses a beer permit or liquor license.
4. The lessor of the building shall not participate in conducting bingo.
5. During a bingo occasion, the lessor shall not sell any beverage, food or any other merchandise in the area in which bingo is played.
6. Only one licensed organization may hold bingo occasions at a location. However, the following exception applies: A 14-day limited licensee may hold bingo occasions at the same location.

This rule is intended to implement Iowa Code section 99B.7.

481—103.10(10A,99B) Concessions. Rescinded IAB 7/24/02, effective 7/5/02.

481—103.11(10A,725) Advertising. An organization may advertise bingo or any gambling activities legal under Iowa law.

This rule is intended to implement Iowa Code section 725.12.

481—103.12(10A,99B) Equipment. Equipment shall be used as it is intended by the manufacturer.

103.12(1) A licensed organization shall conduct bingo games only with equipment it owns or borrows from another qualified organization. Use of equipment for which the licensed organization pays consideration directly or indirectly under the guise of a service charge is prohibited. No licensed organization may loan or borrow equipment, goods, or services in exchange for supplies. Equipment may not be rented or leased. This does not prohibit the purchase of equipment on contract.

No one who sells bingo equipment or supplies may participate in conducting bingo directly or indirectly.

103.12(2) Equipment used to conduct bingo must be maintained in good repair and sound working condition. No equipment shall be altered to create an advantage for anyone. Play shall progress so all players have an equal opportunity to win. Balls drawn must be the same size, shape, weight and balance. The container in which balls are held shall promote fair play. Balls shall tumble and circulate freely within the container during bingo games. All 75 balls must be in the container before each game begins. Verification of all 75 balls is required when requested by a participant.

This rule is intended to implement Iowa Code section 99B.13.

481—103.13(99B) Records. Each qualified organization which conducts bingo occasions shall record specific information. Records shall be current so the department may review them at any time. The following records are required for each bingo occasion:

103.13(1) The daily bingo summary (see Table A[1]) shall be a record of the following:

a. The name of each worker;
b. The social security number of paid workers;
c. Compensation of any worker;
d. The number of players present; and

e. A list of all games played including a description of each game, the cost to play each game, the number and category of bingo cards used for each game and the prize or prizes paid in each game. The summary shall also include the totals for the occasion of the gross receipts, prizes awarded and the jackpot prize amounts.

The daily bingo summary must be signed by a caller and another member of the organization.

Records shall be maintained for three years for review by the department.

103.13(2) An organization having $100,000 or more in bingo gross receipts per year must also comply with the following for each bingo occasion:

a. Daily Bingo Summary—CASH CONTROL (Table B[1])

This form must show:

(1) Gross receipts, adjustments, the prize payouts and net receipts for each game played;

(2) The total net receipts, total cash counted, the overage or shortage, and the total amount to be deposited for the occasion; and

(3) Shall be signed and dated by two members of the organization.

This form should correspond with the Daily Bingo Inventory Usage Form. See suggested form in Table B[1].

b. Daily Bingo Inventory Usage (Table C[1])

This form must show:

(1) For each game the category, serial number and quantity of the sheets or games sold, the cost (price) per unit, and the gross receipts;

(2) If packets are purchased preassembled, the number of packets sold, the cost (price) per packet, and the gross receipts must be recorded;

(3) If packets are assembled by the organization, the number of each category and serial number used in the packet must be recorded separately;

(4) Each hard card must be receipted. The number of cards sold, the cost (price) per card, and the gross receipts must be recorded for each game in which hard cards are sold.

c. Receipting and Log of Hard Cards Sold (Table D[1])

(1) Each hard card sold shall be receipted. Roll tickets may be used for this purpose. All tickets on a roll must be preprinted and consecutively numbered by the manufacturer. Each ticket on a roll shall represent the same specific amount of money. If another method is used in receipting hard cards, all information and controls provided by the roll-ticket method must be maintained.

(2) A log shall be maintained listing the date each roll of tickets is purchased by the licensee, the color, the dollar value of the tickets, the beginning ticket number and the number of tickets on that roll. The log shall also show the date and number of tickets used and value of each ticket for each occasion.

(3) The licensee shall record in its daily or occasion records, the color, the value, and the number of tickets issued as a receipt from each separate roll of tickets used.

Records shall be maintained for three years for review by the department.

103.13(3) Records of expenses and dedicated and distributed money are required. A disbursements journal (Table E[1]) may be maintained which contains both. If this method is chosen, expense information required by rule 103.8(99B) shall be separate and distinct from information about dedicated and distributed money. Each subject must be in a clearly labeled section.

a. The name, address, date, check number and amounts dedicated to another person or organization shall be available for review.

b. Receipts used by the licensed organization shall be recorded. The record must show:

(1) The date,

(2) The amount,

(3) Check number,

(4) The purpose, and

(5) The recipient.

Records shall be maintained for three years for review by the department.

The format in Table E[1] is suggested for expenses and for dedicated and distributed bingo receipts.

103.13(4) An employee record of people compensated for work (Table F[1]) at a bingo occasion shall be maintained which shows:

a. The name, address, social security number;

b. Dates of employment;

c. Times and number of hours worked;

d. Wages paid;

e. Amounts withheld; and

f. Check number.

The records must specifically identify for which bingo occasion an employee was compensated. Compensation is anything of value given to a person in exchange for services rendered in connection with a gambling occasion. Table F[1] is an example.

Records shall be maintained for three years for review by the department.

103.13(5) An inventory list of the number of playing faces owned by the licensed organization is required.

The inventory shall be updated each month.

Records shall be maintained for three years for review by the department.

This rule is intended to implement Iowa Code sections 99B.2 and 99B.16.

[1] See forms at end of this chapter.

481—103.14(10A,99B) Bingo checking account. A qualified organization whose bingo occasions exceed $10,000 in annual gross receipts shall maintain a separate bingo checking account. The checking account shall be established within one day of attaining $10,000.

103.14(1) Bingo receipts, less the amount awarded as cash prizes, shall be deposited in the bingo checking account on the same or the next business day after the occasion. Other funds shall not be deposited in the bingo account. Interest earned on deposits in a bingo checking or savings account shall be treated the same as proceeds of bingo occasions.

EXCEPTION: Limited funds of the organization may be deposited to pay initial or unexpected emergency expenses. The amount of nonbingo funds deposited in the bingo account shall not exceed $750. Records shall be kept which identify this money.

103.14(2) Funds from bingo accounts shall be withdrawn by check. Checks shall be preprinted.

a. The following information shall be printed on the face of the check:

(1) Organization name,

(2) Consecutive numbers,

(3) The words "bingo account," and

(4) The organization's gambling license number.

The nature of the payment is to be written on the face of each check or share draft as it is drawn. Each check shall be made payable to a person or an organization and be signed by an authorized representative of the licensee. A check shall not be made payable to "cash," "bearer," or any fictitious payee. Table G[1] shows a sample check.

b. All checks, including void and voided checks, shall be kept and accounted for.

103.14(3) Checks may be drawn on the bingo account for only the following purposes:

a. To pay necessary and reasonable expenses incurred in connection with bingo. Wages must be paid by check.

b. To disburse net proceeds of bingo for qualified purposes as required by law.

c. To transfer proceeds from bingo to a bingo savings account pending disbursement for a qualified purpose.

d. To withdraw initial or emergency funds deposited in the account.

e. To pay prizes.

103.14(4) A check shall be drawn on the bingo account in both of the following events:

a. One qualified organization satisfies the dedication requirement by donating funds to another organization over which the licensed organization has no control; or

b. A qualified organization licensee is satisfying the dedication requirement by spending funds to further the charitable, educational, religious, public, patriotic or civic purposes of its own organization.

103.14(5) A qualified organization licensee shall not transfer funds from the bingo checking account to any other checking account of the organization.

A flowchart for a bingo checking account is shown on Table H[1].

This rule is intended to implement Iowa Code sections 99B.2(3) and 99B.7(1)*"p."*

[1] See forms at end of this chapter.

481—103.15(10A,99B) Bingo savings account. When an organization places bingo receipts in any savings account, bingo funds shall be separate and recognizable from all other funds of the same organization. All funds in a bingo savings account shall be transferred into that account from a bingo checking account. Funds shall be transferred back to the bingo checking account before they are spent.

This rule is intended to implement Iowa Code sections 99B.2(3) and 99B.7(1)*"p."*

481—103.16(10A,99B) Reports. Each organization which conducts bingo shall submit a report of all transactions for each calendar quarter. The quarterly report form shall be provided by the department.

1. The first quarter is from January 1 to March 31;
2. The second quarter is from April 1 to June 30;
3. The third quarter is from July 1 to September 30;
4. The fourth quarter is from October 1 to December 31.

Reports written on forms provided by the department are due 30 days after the end of the quarter. When the due date is on Saturday, Sunday, or a legal holiday, the report is due the next business day. 481—subrule 100.8(2) contains further specific information.

The department may require a qualified organization to submit records of specific occasions with the quarterly report.

All transactions of any school group or parent support group using a district license shall be on the quarterly report.

This rule is intended to implement Iowa Code sections 99B.2(4) and 99B.16.

481—103.17(10A,99B) Inspections and audits. Licensed organizations may be inspected or audited by a representative of the department at any reasonable time.

This rule is intended to implement Iowa Code sections 10A.302 and 99B.2(2).

481—103.18(10A,99B) Penalties. Failure to comply with the law and these rules may cause a gambling license to be revoked. Criminal violations are governed by Iowa Code sections 99B.2(2), 99B.2(4), 99B.2(5), 99B.7(6), 99B.9(4), 99B.15, and 99B.16.

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[Filed 9/9/04, Notice 8/4/04—published 9/29/04, effective 11/3/04]

NOTE: See forms on following pages.

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS

DATE: _____

TABLE A

DAILY BINGO SUMMARY

Daily Cash Control Form users enter total only

TODAYS BINGO RECEIPTS				TODAYS BINGO CASH PRIZES		
Game or Packet	# Sold	Cost/Unit	Receipts	Game	Game pattern	Prize/prizes Paid

Adjustments (+ or -)	_____	Total Cash Prizes Paid **	_____
Gross Receipts *	_____		
State Sales Tax	_____		
Local Option Tax (if applicable)	_____	TOTAL IN ATTENDANCE:	_____
Total Gross Receipts (after tax)	_____		

Jackpot Game Played - $ _____ in _____ numbers. Jackpot Prize Paid Today $ _____ .

COMPENSATED WORKERS

Name	S.S. #	Rate of Pay	# Hours	Total Paid	Check #

Total Compensation $ _____

DAILY RECAP

* Gross Receipts $ _____

** Less Cash Prizes $ _____

Total Deposit $ _____

SIGNATURES: _____ Date _____

_____ Date _____

Iowa Department of Inspections and Appeals

Social and Charitable Gambling Program

TABLE B

Daily Bingo Summary—CASH CONTROL

Date: _____ Licensee's Name: _____

City: _____ State: _____

	(1) Gross Receipts	Voids Overrings	Adjusted Gross Receipts	Prize Payouts	Net Receipts
EARLY BIRDS					
REGULAR HARD CARDS					
PACKETS					
JACKPOT					
SPEEDBALL					
OTHER _____					
_____					
_____					
_____					
_____					
_____					
_____					
_____					
_____					
_____					
LATE BIRDS					
TOTAL					
			Plus Payouts by Check		
			Equals Net Cash		
			Equals Cash Counted		
			+ or - Cash over/short		
JACKPOT PRIZE $_____ IN _____ NUMBERS			Equals Cash Deposit		

Instructions

(1) Gross Receipts per Inventory Usage Form (not cash)

(2) Attach copy of Deposit Receipt

Prepared by: _____

(Name) (Date)

Bingo Manager: _____

(Name) (Date)

Iowa Department of Inspections and Appeals

Social and Charitable Gambling Program

Daily Bingo Summary—INVENTORY USAGE

TABLE C

Date	Licensee's Name	
Address	City	State

Game: _____ _____ Cards Per Sheet _____ Sheets per $ _____

Series No.							
Color							
Ending No. Sold							
(-) Beginning No.							
(+) Add 1							
(-) No. Issued							
(-) No. Returned						TOTAL	
(-) No. Sold							
(X) $ Cost Per Unit							
(-) Gross Receipts							*

Game: _____ _____ Cards Per Sheet _____ Sheets per $ _____

Series No.							
Color							
Ending No. Sold							
(-) Beginning No.							
(+) Add 1							
(-) No. Issued							
(-) No. Returned						TOTAL	
(-) No. Sold							
(X) $ Cost Per Unit							
(-) Gross Receipts							*

* This amount to be inserted in Column 1 on the Cash Control Form

TABLE D

HARD CARD TICKET LOG

INVENTORY

Licensee Name _____

Important: Log must be kept by ticket value and color

TICKET VALUE _____ TICKET COLOR _____

Date Purchased or Used	Beginning Number	Ending Number	Number of Tickets Purchased or Used	Number of Tickets Remaining

TICKET VALUE _____ TICKET COLOR _____

Date Purchased or Used	Beginning Number	Ending Number	Number of Tickets Purchased or Used	Number of Tickets Remaining

TICKET VALUE _____ TICKET COLOR _____

Date Purchased or Used	Beginning Number	Ending Number	Number of Tickets Purchased or Used	Number of Tickets Remaining

DISBURSEMENTS JOURNAL

TABLE E

DISBURSEMENT DETAIL - List **all checks or drafts**, including voided checks or drafts, issued since the last report. The first check or draft listed should be the first number following the last check or draft listed on the last report. Use this page and, if necessary, attach a separate sheet following the same format

Check or Draft Number	Amount	Payee Name	Item Description
XXXXXXXX		Use this line for service charges of financial institutions	
101 P	50.00	Bingo winner's name	Prize- game #1
102 D	100.00	Name of Recipient	Charitable Donation
103 E	62.00	Name of Bingo Supplier	Bingo Supplies

EMPLOYEE RECORD
OF
COMPENSATED PEOPLE
TABLE F

Name _____

Address _____

Social Security Number _____

Times and number of hours worked _____

Wage per hour _____

Total wages paid, taxes withheld, and check # _____

_____

Occasion Date _____

Number of players at this occasion _____

LICENSEE _____

SUBMITTED BY _____

EMPLOYEE RECORD
OF
COMPENSATED PEOPLE
TABLE F

Name _____

Address _____

Social Security Number _____

Times and number of hours worked _____

Wage per hour _____

Total wages paid, taxes withheld, and check # _____

_____

Occasion Date _____

Number of players at this occasion _____

LICENSEE _____

SUBMITTED BY _____

TABLE G

CHECK INFORMATION REQUIREMENTS

BINGO ACCOUNT
SAINT THOMAS CHURCH
132 MAIN STREET
DES MOINES, IOWA 50309
License # 7-77-000234-001

491

_____20_____

Pay To The
Order Of _____ $ _____

_____DOLLARS

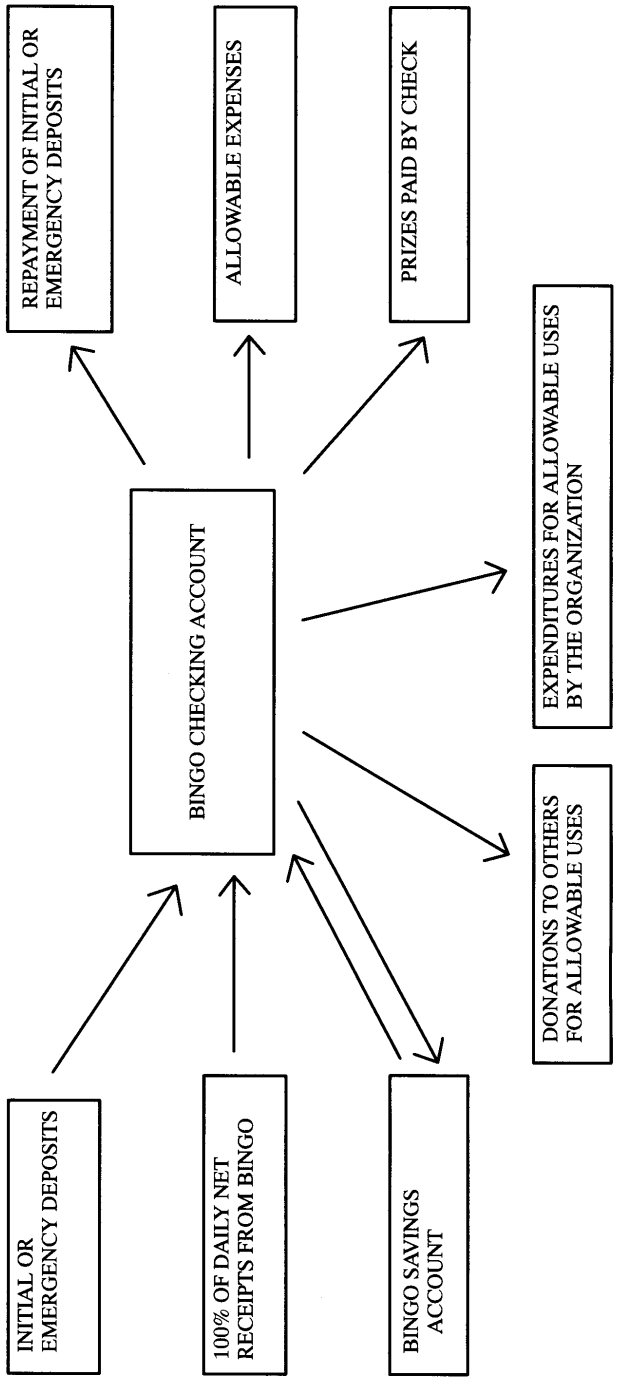
Memo_____
187900227⑆:156

_____

CHECKS MUST BE SEQUENTIALLY NUMBERED
"BINGO ACCOUNT" MUST APPEAR ON THE CHECKS
THE GAMBLING LICENSE NUMBER MUST APPEAR ON THE CHECKS
"MEMO" SECTION MUST INDICATE THE REASON THE CHECK WAS WRITTEN

TABLE H

BINGO BANK ACCOUNT FLOWCHART



CHAPTER 104
GENERAL PROVISIONS FOR ALL AMUSEMENT DEVICES

481—104.1(10A,99B) Definitions. Definitions in rule 481—100.1(10A,99B) and 481—105.1(10A,99B) are incorporated by reference in this chapter.

The following definitions apply to the possession and use of amusement devices.

"Amusement device" means an electrical and mechanical device possessed and used in accordance with Iowa Code section 99B.10. An amusement device is not a game of skill or chance as defined in Iowa Code section 99B.1, a gambling device, or a device that plays poker, blackjack, or keno. Roulette wheels, slot machines, and other devices specified in Iowa Code section 725.9 as gambling devices are not amusement devices.

"Gambling device" means a device possessed or used or designed to be used for gambling and includes, but is not limited to: roulette wheels, klondike tables, punchboards, faro layouts, keno layouts, numbers tickets, slot machines, push cards, jar tickets, pull-tabs, and video machines or other devices that do not comply with Iowa Code section 99B.10.

"Knock-off switch" means a mechanism or other method that releases free games or credits accumulated toward the award of merchandise.

"Prize" means a ticket(s) or token(s) that is dispensed by an amusement device as an award for use and that is worth up to $5 in merchandise.

"Slot machine" means a mechanical, electronic, or video gambling device into which a player deposits coins, tokens or currency and from which certain credits, tickets, tokens or coins are paid out when a particular, random configuration of symbols appears on the reels, simulated reels, or screen of the device. The slot machine may have a lever, buttons, or other means to activate or stop the play.

481—104.2(99B) Device restrictions. An amusement device, except for an amusement device which shall be registered pursuant to 2007 Iowa Acts, Senate File 510, section 2(1)*"f,"* may be owned, possessed, or offered for use by any person at any location. All amusement devices shall comply with all of the following:

1. The device must be electrical, which includes both electronic and video, or mechanical, or a combination of both.
2. The device shall not be designed or adapted to issue or pay coins or currency.
3. The device may be designed or adapted to award free games without additional consideration.
4. The device may be designed or adapted to award merchandise or tickets or tokens redeemable for merchandise not to exceed a retail value of more than $5 per play or game.
5. The device may be designed or adapted to issue tickets or tokens, but not coins or currency. However, the device shall not be designed or adapted to issue tickets or tokens that may be used to play any device or game.
6. The device shall not have a "knock-off" switch to release either free games or credits awarded by the device. However, credits may be released by the insertion of coins, currency, or tokens to activate a new game. Free games may only be utilized for playing the device and may not be released in any other manner.
7. The device shall not be capable of being altered to enable a person using the device to increase or decrease the chances to win a game or other prize by paying more than is ordinarily required to play the game.
8. The device must be designed or adapted to accept only coins, currency, or tokens to play the game. However, the device shall not be designed or adapted to accept tokens that have been awarded as a prize.
9. The device must be registered if it meets the registration requirements set forth in rule 481—104.5(99B).

481—104.3(99B) Prohibited games/devices. The following games or devices are not permitted:

1. Devices that pay coins or currency.

2. Gambling games permitted in Iowa Code chapter 99F, such as slot machines and roulette wheels, or any similar device.

3. Any machine that does not conform to the requirements in these rules or Iowa Code section 99B.10.

4. Any machine designed or resembling a machine which is normally used for casino-type gambling.

5. Amusement devices designed or adapted to facilitate gambling.

NOTE: This rule does not prohibit the possession of antique slot machines when possessed pursuant to Iowa Code chapter 725.

481—104.4(99B) Prizes. Prizes may be awarded for use of an amusement device.

104.4(1) Merchandise with a retail value of no more than $5 per transaction may be awarded.

104.4(2) One or more free games may be awarded by the device.

104.4(3) If the device is designed or adapted to issue tickets or tokens, the following apply:

a. Tickets or tokens awarded by an amusement device shall not be used to purchase or play a game.

b. Tickets or tokens shall not be redeemed for coins or currency.

c. Tickets or tokens may be redeemed for merchandise if the retail value of the merchandise does not exceed $5 per transaction.

d. Tickets or tokens may be accumulated to purchase merchandise not greater than $5 per transaction in retail value.

e. Tickets or tokens may be redeemed for food and beverage if the combined value of the food and beverage does not exceed $5 per transaction.

f. If the entire amount of the ticket or token issued by the amusement device is not redeemed for merchandise, the balance shall not be redeemed for cash.

g. Tickets or tokens shall only be redeemed on the premises where the amusement device is located and only for merchandise sold in the normal course of business on the premises.

104.4(4) Merchandise prizes shall not be repurchased.

481—104.5(99B) Registration. An amusement device must be registered if it meets the registration requirements set forth in 2007 Iowa Acts, Senate File 510, section 2(1)*"f."* Additional licenses under Iowa Code chapter 99B are not required.

481—104.6(99B) Violations. Failure to comply with the limitations imposed on the use and possession of amusement devices in Iowa Code section 99B.10 as amended by 2007 Iowa Acts, Senate File 510, section 2, constitutes unlawful gambling, which may result in the following consequences. Additional consequences apply for registered amusement devices pursuant to 481—Chapter 105 and Iowa Code section 99B.10 as amended by 2007 Iowa Acts, Senate File 510, section 2.

1. Conviction for illegal gambling under the provisions of Iowa Code chapter 725.

2. Forfeiture of property under the provisions of Iowa Code chapter 809.

These rules are intended to implement Iowa Code section 99B.10.

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[Filed 12/17/03, Notice 10/29/03—published 1/7/04, effective 2/11/04[1]]
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[Filed 10/5/07, Notice 8/29/07—published 10/24/07, effective 11/28/07]

[1] February 11, 2004, effective date of 104.1, definition of "prize," 104.3"5," 104.4(3)*"f"* and *"g,"* and 104.6"1" delayed 70 days by the Administrative Rules Review Committee at its meeting held February 9, 2004.

CHAPTER 105
REGISTERED AMUSEMENT DEVICES

481—105.1(10A,99B) Definitions. The definitions in rule 481—104.1(10A,99B) are incorporated by reference in this chapter. In addition, the following definitions apply to the possession and use of registered amusement devices.

"Amusement device registration availability" means a registration position which becomes available when a distributor or owner is going out of business, fails to renew a registration by the renewal due date, has an electrical and mechanical device seized by law enforcement and the seizure is upheld through a forfeiture hearing or when any other legal order has been issued which pertains to violations of Iowa Code chapter 99B, 123, or 123A.

"Counting mechanism" means an appliance that tallies the volume of business of an individual amusement device.

"Distributes" means to deliver, to provide or to otherwise make available in Iowa amusement devices required to be registered in accordance with these rules.

"Distributor" means, for the purposes of Iowa Code sections 99B.10, 99B.10A, and 99B.10B, any person who owns electrical and mechanical amusement devices that are registered as provided in Iowa Code section 99B.10(4) and that are offered for use at more than a single location or premises.

"Manufacturer" means, for the purposes of Iowa Code sections 99B.10, 99B.10A, and 99B.10B, any person engaged in business in this state that originally produces an electrical and mechanical amusement device required to be registered under Iowa Code section 99B.10(4) or produces individual components for use in such a device.

"Manufacturer's representative" means, for the purposes of Iowa Code sections 99B.10, 99B.10A, and 99B.10B, any person engaged in business in this state that promotes or sells electrical and mechanical amusement devices required to be registered under Iowa Code section 99B.10(4) or promotes or sells individual components for use in such devices on behalf of a manufacturer of such devices or components. An agreement between the manufacturer's representative and the manufacturer may be in place, but is not necessary.

"Operation" means that a registered amusement device is made available for use by the public or made available for use on the premises of a charitable organization.

"Organization" means an entity that meets the requirements of Iowa Code section 99B.7(1)*"m."*

"Owner" means, for the purposes of Iowa Code sections 99B.10A and 99B.10B, any person that owns an operable electrical and mechanical amusement device required to be registered under 2007 Iowa Acts, Senate File 510, section 2(1)*"f."* An owner that operates for profit is allowed up to two machines at a single location. An owner that meets the requirements of Iowa Code section 99B.7(1)*"m"* is allowed up to four machines at a single location.

"Person" means a person as defined by Iowa Code section 4.1.

"Premises" means a location where one or more registered amusement devices are available for public use.

"Prize" means a ticket(s) or token(s) that is dispensed by a registered amusement device as an award for use and that is worth up to $5 in merchandise.

"Registered amusement device" means an electrical and mechanical amusement device in operation subject to registration by the department pursuant to 2007 Iowa Acts, Senate File 510, section 2(1)*"f,"* and includes both the external and internal components. Any change in the registered amusement device, including the external and internal components of the registered amusement device, constitutes a new registered amusement device for which registration by the owner is required. The word "change" as used herein does not include repairs or replacement of parts that do not change or alter the operation of the device as originally registered by the owner. If the repairs or replacement parts alter the operation of the device as originally registered, then the device must be reregistered before it is made available for operation.

"Responsible party," as listed on the amusement device registration, means the owner of the amusement device(s).

"Security mechanism" means an appliance which prevents a person from operating an electrical and mechanical amusement device by not allowing the acceptance of money until action is taken by the owner or owner's designee to allow the person to operate the device.

481—105.2(99B) Registered amusement device restrictions. Each registered amusement device shall only be located on premises for which a Class "A," Class "B," Class "C," special Class "C," or Class "D" liquor control license or a Class "B" or a Class "C" beer permit has been issued pursuant to Iowa Code chapter 123.

105.2(1) The number of electrical and mechanical amusement devices registered by the department shall not exceed 6,928, the total number of devices registered by the department as of April 28, 2004.

105.2(2) The department shall not initially register an electrical and mechanical amusement device that is required to be registered pursuant to 2007 Iowa Acts, Senate File 510, section 2(1)*"f,"* to an owner for a location for which only a Class "B" or a Class "C" beer permit has been issued pursuant to Iowa Code chapter 123 on or after April 28, 2004.

105.2(3) An owner or distributor at a location for which only a Class "B" or a Class "C" beer permit has been issued pursuant to Iowa Code chapter 123 shall not relocate an amusement device registered as provided in this chapter to a location other than the location of the device on April 28, 2004, and shall not transfer, assign, sell, or lease an amusement device as provided in this chapter to another person for which only a Class "B" or a Class "C" beer permit has been issued pursuant to Iowa Code chapter 123 after April 28, 2004.

EXAMPLE 1: An electrical and mechanical amusement device is registered with the department and is located at a convenience store that has a Class "C" beer permit.

1. If the amusement device needs to be repaired, the owner may repair it without losing the registration position or buying a new registration tag. A repair constitutes any changes to a device as long as the type of game and the number of devices in a location is not changed.
2. If the amusement device needs to be replaced because it is defective, it must be replaced with the same game in order to keep the registration position.
3. The amusement device cannot be moved from one location to another under a Class "B" or a Class "C" beer permit, even if the number of registered devices at a location does not change.
4. If a location with a Class "B" or a Class "C" beer permit had only one amusement device registered on April 28, 2004, the maximum number of devices allowed at that location shall be one.

105.2(4) Rescinded IAB 8/29/07, effective 9/1/07.

105.2(5) Each registered amusement device at a location for which only a Class "B" or a Class "C" beer permit has been issued pursuant to Iowa Code chapter 123 shall include on the amusement device a security mechanism which prevents a person from operating the amusement device by not allowing the acceptance of money until the machine is activated by the owner or owner's designee. A sign shall be posted stating that a person must be 21 years of age or older to operate the registered amusement device.

EXAMPLE 2: A patron in a convenience store tries to put money in an amusement device, but the amusement device will not take the money. The patron approaches the person working behind the counter, who then asks the patron for an ID. If the patron is 21 years of age or older, the amusement device is activated, thereby allowing the patron to play the amusement device. The security mechanism shall be immediately reactivated once the patron has finished playing the amusement device.

105.2(6) The registered amusement device shall be registered in accordance with these rules and shall comply with all of the requirements of Iowa Code section 99B.10 as amended by 2007 Iowa Acts, Senate File 510, section 2, this chapter, 481—Chapter 104, and any other applicable laws or rules.

105.2(7) The registered amusement device shall not be designed or adapted to facilitate gambling, nor shall the device be capable of playing poker, blackjack, or keno.

105.2(8) If the department, or the department's designee, determines that a registered amusement device is not in compliance with the requirements of this chapter or any other provision of Iowa law, the device may be subject to seizure, and any registration associated with the device, including the registration of the manufacturer, manufacturer's representative, distributor, or owner, may be revoked.

105.2(9) A person owning or leasing a registered amusement device shall not advertise or promote the availability of the amusement device to the public as anything other than an electrical and mechanical amusement device. Situations that constitute advertising and promoting include, but are not limited to, posted signs, newspaper/magazine advertisements, radio and television advertisements, word of mouth and Internet posting.

105.2(10) If there is no amusement device registration availability, a person may be included on a waiting list for an amusement device registration position.

a. A person shall appear on the waiting list only once for a single registration position.

b. A person may be added to the waiting list by using the Web-based amusement device registration system located at https://dia.iowa.gov/gmms/.

c. A person may request to be added to the waiting list by calling or writing the department at Department of Inspections and Appeals, Social and Charitable Gaming Unit, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; (515)281-6848.

d. The department shall maintain the waiting list in chronological order with the person requesting addition to the waiting list first being first on the list.

e. When a registration position becomes available, the department shall notify the first person on the waiting list of the amusement device registration availability. If multiple positions become available, the department may notify as many persons on the waiting list as there are available positions.

f. The department shall notify the person on the waiting list of the amusement device registration availability by mail or by E-mail if the person has provided an E-mail address.

g. The person on the waiting list shall have ten days from the time the notification was sent to submit a registered amusement device application and the fee.

h. If the person does not submit the registration application, fee and proof of purchase within ten days, the person shall forfeit the position on the waiting list and shall be removed from the waiting list.

105.2(11) An initial amusement device registration shall only be allowed at a location that has a Class "A," Class "B," Class "C," special Class "C," or Class "D" liquor control license issued pursuant to Iowa Code chapter 123.

EXAMPLE 3: An amusement device is located in a bar that has the appropriate liquor license. On April 28, 2004, this location had only one amusement device. An additional amusement device may be added to this location.

1. If the amusement device needs to be repaired, it may be repaired without the loss of the device's registration position.

2. If the amusement device is defective and needs to be replaced, it can be replaced with the same game under the original registration without the incurring of additional charges.

3. If the amusement device is replaced with a new amusement device that has a different game, before the device is moved to the premises, the process for initial registration shall be followed pursuant to this chapter and Iowa Code chapter 99B as amended by 2007 Iowa Acts, Senate File 510. The replacement of the amusement device creates an amusement device registration availability, and the position will be offered to the next person on the waiting list pursuant to this rule.

105.2(12) If a person purchases an amusement device that is registered with the department, the registration tag, if available, must be removed from the purchased amusement device and returned to the department. The department shall be notified in writing within ten calendar days of the change in ownership of any amusement device. The purchased device shall be removed from the inventory of the original owner, thus creating a registration position on the waiting list. The purchaser must apply for a registration position on the waiting list for the device.

105.2(13) An amusement device that is registered with the department and located in a warehouse may be placed in a location that has a Class "A," Class "B," Class "C," special Class "C," or Class "D" liquor license issued pursuant to Iowa Code chapter 123. Such a device may also be used as a replacement device.

105.2(14) The registration application for all new amusement devices must be accompanied by the receipt, invoice, or bill of sale containing the seller's name, company name, and address, transaction date, and motherboard serial number.

481—105.3(99B) Prohibited registered amusement devices. The following devices are prohibited:

1. Amusement devices registered in violation of statutory or regulatory requirements governing such devices.
2. Registered amusement devices that are prohibited by 481—104.3(99B).
3. Any registered amusement device that does not conform to the requirements in these rules or Iowa Code chapter 99B.
4. Any registered amusement device designed or adapted to facilitate gambling.

481—105.4(99B) Prizes. Prizes may be awarded for use of a registered amusement device, but only in conformance with 481—104.4(99B). All prizes awarded must be in conformance with each of the requirements imposed by 481—104.4(99B).

481—105.5(99B) Registration by a manufacturer, manufacturer's representative, distributor, or an owner that operates for profit. A person engaged in business in Iowa as a manufacturer, a manufacturer's representative, a distributor, or an owner that operates for profit shall be registered with the department prior to engaging in business in Iowa. A person shall register under each of the categories that apply to the business to be conducted in Iowa and shall pay the designated fee for each category of registration.

105.5(1) Each person that registers with the department shall pay an annual registration fee as follows:

a. For a manufacturer or manufacturer's representative, $2,500, effective upon renewal.

b. For a distributor, $5,000, effective upon renewal.

c. For an owner of no more than two electrical and mechanical amusement devices registered as provided in Iowa Code section 99B.10(4) at a single location or premises that is not an organization that meets the requirements of Iowa Code section 99B.7(1)*"m,"* $2,500. The registration fee shall be effective immediately.

105.5(2) Registration forms are available from the Department of Inspections and Appeals, Social and Charitable Gaming Unit, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083, or by telephone at (515)281-6848.

105.5(3) If registration information changes, the person shall notify the department in writing of the changes within ten calendar days.

105.5(4) Registration fees are nonrefundable.

481—105.6(99B) Registration of registered amusement devices. Each owner of an amusement device subject to registration by the department pursuant to Iowa Code section 99B.10(4) shall obtain a registration. A registration issued pursuant to Iowa Code chapter 99B is required to offer a registered amusement device for use.

105.6(1) Each owner of an amusement device subject to the registration requirements imposed by this chapter shall register the device before it is made available for operation.

105.6(2) In the event a registration position is not open, the distributor's or owner's name may be placed on the department's waiting list. The distributor or owner will be notified by the department when a position is available and the distributor's name or owner's name reaches the top of the waiting list. Upon the distributor's or owner's completion of the application form and payment of the required fee, the department shall issue a registration tag valid for one year from the date of issuance.

a. Application forms are available from the Department of Inspections and Appeals, Amusement Devices, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083. The application form shall contain all information required by the department.

b. Prior to placement of the amusement device for public use, the registration tag shall be prominently displayed on the front of the registered amusement device in such a manner as to be clearly visible to the general public.

c. Any changes to the information provided on the application, including but not limited to changes in ownership, registered amusement device location, and the cessation of business in this

state, shall be reported to the department in writing or electronically within ten calendar days of the occurrence of any of the above events.

d. Registration fees are nonrefundable.

105.6(3) A registered amusement device must be obtained from a manufacturer, a manufacturer's representative or a distributor that is registered with the department pursuant to Iowa Code section 99B.10A. For new machines, proof of purchase, which includes the seller's name, company name, and address, must accompany the application for registration of the machine.

The owner of the registered amusement device shall exercise due diligence in ensuring that the amusement device is in compliance with these rules and all laws governing such devices. Upon request by the department or the department's designee, any manufacturer, manufacturer's representative or distributor registered with the department, or any owner of a registered device, shall permit the inspection of any amusement device and shall make available for inspection all records, documents, and agreements pertaining to the amusement device.

105.6(4) An organization that meets the requirements of Iowa Code section 99B.7(1)*"m"* shall not permit or offer for use more than four registered amusement devices at any single premises. Organizations that meet the Iowa Code section 99B.7(1)*"m"* requirements under Section 501(c) of the Internal Revenue Code shall provide a copy of the exemption approval letter from the Internal Revenue Service. All other persons shall not permit or offer for use more than two registered amusement devices at any single premises. The single premises where the registered amusement device(s) is located shall have a Class "A," Class "B," Class "C," special Class "C," or Class "D" liquor control license or a Class "B" or a Class "C" beer permit issued pursuant to Iowa Code chapter 123. New registrations shall not be issued to devices to be located at premises with Class "B" or Class "C" beer permits.

105.6(5) Each electrical and mechanical amusement device required to be registered pursuant to Iowa Code section 99B.10 as amended by 2007 Iowa Acts, Senate File 510, section 2, shall include on the amusement device a counting mechanism.

a. The department of inspections and appeals and the department of public safety shall notify the distributor, owner, or qualified organization in advance to have access to the information provided by the counting mechanism.

b. The counting mechanism shall be at least six digits in length and shall cumulatively count the total amounts inserted in the device during game play. If the mechanism being used tallies in dollars and cents, at least six digits must be used for the dollar amount. The counting mechanism shall not be able to be reset.

c. The counting mechanism shall be equipped with a battery backup, or an equivalent, and shall be capable of accurately maintaining all required information for 30 days after power is discontinued from the device.

105.6(6) Each electrical and mechanical device required to be registered pursuant to Iowa Code section 99B.10 at a location for which only a Class "B" or a Class "C" beer permit has been issued pursuant to Iowa Code chapter 123 shall include on the device a security mechanism that prevents the device from being operated by a person until action is taken by the owner or owner's designee to allow the person to operate the device.

481—105.7(99B) Violations. Failure to comply with the limitations imposed on the use and possession of registered amusement devices in Iowa Code chapter 99B may result in the following:

1. Conviction for illegal gambling may result under the provisions of Iowa Code chapter 725.
2. Suspension or revocation of a wine or beer permit or of a liquor license may result under the provisions of Iowa Code chapter 123.
3. Property may be forfeited under the provisions of Iowa Code chapter 809.
4. Violation of any laws pertaining to gambling may result in revocation of a registration.
5. The department may revoke a registration or refuse to issue a registration for cause.
6. A registration may be revoked if the registrant or agent of the registrant violates or permits a violation of Iowa Code chapter 99B.

7. A registration may be revoked upon the violation of any rule adopted by the department under this chapter.

8. A registration may be revoked if the registrant or an agent of the registrant engages in any act or omission that would have permitted the department to refuse to issue a registration under Iowa Code chapter 99B.

9. The registration of a registered amusement device may be revoked upon evidence of noncompliance with any laws or rules governing such devices.

10. A person under the age of 21 shall not participate in the operation of an electrical and mechanical amusement device. A person who violates the provisions of Iowa Code section 99B.10C(1) commits a scheduled violation under Iowa Code section 805.8C(4).

11. A person owning or leasing an electrical and mechanical amusement device who knowingly allows a person under the age of 21 to participate in the operation of an electrical and mechanical amusement device or a person who knowingly participates in the operation of an electrical and mechanical amusement device with a person under the age of 21 is guilty of a simple misdemeanor.

The period for revocation or refusal to issue or both shall not exceed two years.

481—105.8(10A,99B) Appeal rights. Decisions to refuse to issue a registration or to revoke a registration by the department may be appealed in accordance with the procedures set out in 481—Chapter 10. The refusal to issue a registration or the notice of revocation shall be in writing and state the specific grounds for the action. When an appeal is received, the status of the registration is governed by the following standards:

105.8(1) No registration will be issued when a new application is denied.

105.8(2) A previously issued registration remains effective until a final agency decision is issued.

481—105.9(10A,99B,82GA,SF510) Procedure for denial, revocation, or suspension of a registration.

105.9(1) The department may revoke, suspend, or deny a registration issued pursuant to Iowa Code section 99B.10A as amended by 2007 Iowa Acts, Senate File 510, sections 3 and 4, for cause following 30 days' written notice delivered by certified mail, return receipt requested, or by personal service and an opportunity for hearing pursuant to 481—105.8(10A,99B).

105.9(2) If the registrant has not requested a hearing within the prescribed time period, the department may affirm, modify or set aside the department's proposed action in the department's final written decision.

105.9(3) The department may suspend a registration prior to a hearing if the director determines that the public integrity of the registered activity is compromised or that there is a risk to public health, safety, or welfare.

105.9(4) The department may rescind the notice of revocation, suspension, or denial at any point prior to hearing when the department becomes satisfied that the reasons for revocation, suspension, or denial have been or will be removed.

105.9(5) The department shall send by certified mail, return receipt requested, or shall serve personally upon the applicant or registrant a copy of the department's final decision.

105.9(6) The department shall revoke a registration for ten years if a registrant awards cash prizes in violation of 2007 Iowa Acts, Senate File 510, section 2(1)*"b."*

105.9(7) If the department finds cause for denial of a registration, the applicant shall not reapply for registration of an amusement device for two years.

105.9(8) If the department finds cause for revocation or suspension, the department shall suspend or revoke the registration for a period not to exceed two years.

105.9(9) If the department's final action revokes a registration for paying out cash prizes, the department shall send written notification of the revocation to the alcoholic beverage division of the department of commerce. The notification may be sent electronically.

105.9(10) In addition to the suspension or revocation, a registrant that allows an individual under the age of 21 to operate an electrical or mechanical amusement device may also be fined for a scheduled violation pursuant to Iowa Code sections 805.8C(4) and 805.8C(5).

481—105.10(99B) Reports. Each distributor, owner, or qualified organization that owns amusement devices shall annually submit a report of the volume of business activity for each device by location and a cumulative total for all locations.

105.10(1) The report forms are available from the Department of Inspections and Appeals, Social and Charitable Gaming Unit, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083. The report form shall contain all information required by the department of inspections and appeals to accurately determine the volume of business activity for each device. Information collected by the department as part of the reporting process shall be considered confidential pursuant to 481—paragraph 5.13(1)*"c."*

105.10(2) Distributors, owners, and qualified organizations may also complete the report form electronically at the following Web site: https://dia.iowa.gov/gmms.

105.10(3) The reports are due July 31. When the due date falls on Saturday, Sunday or a legal holiday, the report is due on the next business day. The reporting period begins July 1 and ends the following June 30.

105.10(4) Records pertaining to the volume of business of the amusement device shall be maintained for a period of five years and shall be made available upon request to representatives of the department or the department's designee.

481—105.11(99B) Criteria for approval or denial of a registration.

105.11(1) The department shall consider the following factors in determining whether to approve or deny an application for registration of an amusement device, a manufacturer, a distributor, an owner, or a manufacturer's representative:

a. The applicant and responsible person's history of compliance with Iowa Code sections 99B.10, 99B.10A and 99B.10B as amended by 2007 Iowa Acts, Senate File 510, and with other gambling laws and rules.

b. Other factors the department deems appropriate.

105.11(2) The department shall deny a registration application if:

a. The location of the device when placed in operation is not a premises with a Class "A," Class "B," Class "C," special Class "C," or Class "D" liquor control license.

b. The applicant owes back taxes or fees to the state of Iowa.

c. An amusement device registration availability position is not available.

d. For any other reason, the department deems denial of the registration appropriate.

105.11(3) The period for refusal to issue a registration shall not exceed two years.

481—105.12(10A,99B) Suspension or revocation of a registration. If a registrant or the person responsible for the amusement device violates the law, including Iowa Code chapter 99B as amended by 2007 Iowa Acts, Senate File 510, 481—Chapter 104, this chapter, or any other laws or administrative rules, the registrant's registration may be suspended or revoked.

Examples of violations of law or rules include: awarding cash prizes, redeeming tokens or tickets for more than $5 of merchandise in a transaction, allowing a person less than 21 years of age to use a registered amusement device, moving an amusement device without updating its registration to the new location, allowing an amusement device in a location without the appropriate liquor control license, and failing to file an annual report.

These rules are intended to implement Iowa Code chapter 99B as amended by 2007 Iowa Acts, Senate File 510.

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CHAPTER 106
CARD GAME TOURNAMENTS BY VETERANS ORGANIZATIONS

481—106.1(10A,99B) Definitions. For the purposes of this chapter, the following definitions apply:

"Card game" means only poker, pinochle, pitch, gin rummy, bridge, euchre, hearts, or cribbage.

"Card game tournament" or *"tournament"* means a series of card games held by a licensee during a consecutive period of time of not more than 24 hours and not held as part of an annual game night licensed pursuant to Iowa Code section 99B.8.

"Department" means the department of inspections and appeals.

"Educational, civic, public, charitable, patriotic, or religious use" is as defined in Iowa Code section 99B.7(3), paragraph *"b."*

"Licensee" means a qualified organization representing veterans that is licensed to hold card game tournaments.

"Merchandise" means a tangible, usable product which has its own value. A merchandise gift certificate exchangeable only for merchandise is acceptable. Iowa lottery tickets or shares sold pursuant to Iowa Code chapter 99G are merchandise. The value of the ticket or share is the price of the ticket or share as established by the Iowa lottery authority pursuant to Iowa Code chapter 99G.

"Premises" means the space, building or room that is used by a licensee to conduct card game tournaments. All spaces, buildings or rooms that the licensee uses, owns, rents, or controls which are adjacent to the gambling space are included. Any area accessible through a common doorway is part of the gambling location, no matter who uses, owns, rents or controls the area.

"Pyramid" or *"build up"* means a game in which a prize must be returned in order to play another game or to be eligible for another bigger prize, or a game in which the prize must be forfeited if a later game is lost.

"Qualified organization representing veterans" means any licensed organization representing veterans, which is a post, branch, or chapter of a national association of veterans of the armed forces of the United States which is a federally chartered corporation, dedicates the net receipts of a game of skill, game of chance, or raffle as provided in Iowa Code section 99B.7, is exempt from federal income taxes under Section 501(c)(19) of the Internal Revenue Code as defined in Iowa Code section 422.3, has an active membership of not less than 12 persons, and does not have a self-perpetuating governing body and officers.

"Self-perpetuating governing body" means a governing body in which the members of the governing body are appointed by the governing body itself and are not elected by the membership of the organization. For example, if an organization has a board of directors as the governing body and the board of directors appoints the new or successor members of the board, it is a self-perpetuating governing body.

481—106.2(99B) Licensing. Before any card game tournament may occur, a license application must be approved by the department. Licenses are issued for one year and are called veterans card game tournament licenses.

106.2(1) An applicant shall submit a license application including required documentation and the $100 license fee. The applicant shall submit the license application at least 30 days in advance of the first event requiring the license.

106.2(2) A license application is available from the Department of Inspections and Appeals, Social and Charitable Gambling Unit, Lucas State Office Building, 321 E. 12th St., Des Moines, Iowa 50319-0083; by calling (515)281-6848; or on line at the department's Web site: www.dia.iowa.gov.

106.2(3) The license application shall include the following:

a. Documentation which demonstrates that the applicant has held regular meetings of the organization on the premises for the last eight months; and

b. A copy of the Internal Revenue Service determination letter showing the organization is exempt from federal income taxes under Internal Revenue Code Section 501(c)(19).

106.2(4) If the license application is incomplete, the license application and license fee shall be returned to the applicant with an explanation of the reason(s) the application was returned.

481—106.3(99B) Card game tournament. Licensees conducting tournaments shall comply with all of the following:

106.3(1) Each card game shall be conducted in a fair and honest manner and shall not be operated on a build-up or pyramid basis.

106.3(2) Every participant in a tournament must be given the same chance of winning the tournament. Second-chance entries or multiple entries are prohibited.

106.3(3) The licensee shall conduct each tournament and shall not contract with or permit another person to conduct the tournament or any card game during the tournament.

106.3(4) No person shall receive or have any fixed or contingent right to receive, directly or indirectly, any profit, remuneration, or compensation from or related to a game in a card game tournament, except any amount which the person may win as a participant on the same basis as the other participants.

106.3(5) The licensee shall not hold more than two card game tournaments per month.

106.3(6) The licensee shall not hold a tournament within seven calendar days of another tournament conducted by the licensee.

106.3(7) The licensee shall be allowed to hold only one card game tournament during any period of 24 consecutive hours, starting from the time the tournament begins.

106.3(8) At the conclusion of each tournament, the person conducting the tournament shall announce the gross receipts received; the total amount of money withheld for expenses; the total amount to be dedicated for educational, civic, public, charitable, patriotic, or religious uses; and the amount withheld for state taxes.

106.3(9) A tournament held under an annual game night license shall not count toward the licensee's limit of one card game tournament per week.

106.3(10) The licensee shall limit the number of participants to the occupancy limit of the premises.

106.3(11) Participation in tournaments shall be limited to the qualified organization's members and guests as required in 2007 Iowa Acts, Senate File 414, section 1. Participants shall be at least 21 years of age.

481—106.4(99B) Required postings.

106.4(1) The veterans card game tournament license shall be prominently displayed in the playing area during tournaments.

106.4(2) Tournament rules shall be posted on a sign in the tournament playing area before the tournament begins. The sign shall be at least 30 inches by 30 inches, and the rules shall be easily readable. The sign shall include the following:

a. In permanent letters 3 inches high, the words "Tournament Rules";
b. Card games and the rules of each card game;
c. Participation fees;
d. Prize(s) for each card game and tournament;
e. How winners will be determined; and
f. Any other tournament rules.

481—106.5(99B) Prizes and cost to participate. Cash or merchandise prizes may be awarded for each card game tournament. A licensee shall distribute the prizes awarded on the day the prizes are won. Merchandise prizes shall not be repurchased by the licensee. Only prizes that can be won shall be displayed in the tournament playing area. Pets as defined in Iowa Code section 717E.1 are prohibited as prizes for card game tournaments. The amount of the prize(s) and the participation fee are dependent upon the number of guests each member of the licensee is allowed.

106.5(1) *Tournaments with members and one guest per member.* Tournaments that allow members of the qualified organization and only one guest per member are restricted to the following:

a. The cost to participate shall be no more than $100 for each participant, with each participant paying the same amount;

b. Total prizes of cash and merchandise shall be no more than $1,000; and

c. A single participant shall win no more than $500 during the tournament.

106.5(2) *Tournaments with members and unlimited number of guests.* Tournaments that allow members of the qualified organization and an unlimited number of guests per member are restricted to the following:

a. The cost to participate shall be no more than $25 for each participant, with each participant paying the same amount;

b. Total prizes of cash and merchandise shall be no more than $300; and

c. A single participant shall win no more than $200 during the tournament.

481—106.6(99B) Restrictions. The person conducting the card game tournament shall:

106.6(1) Hold only one license under this chapter and 2007 Iowa Acts, Senate File 414, section 1.

106.6(2) Have no ownership interest in another person who has been issued a card game tournament license.

106.6(3) Have, directly or indirectly, an interest in the ownership or profits of another person who has been issued a card game tournament license to conduct games under this chapter and 2007 Iowa Acts, Senate File 414, section 1.

481—106.7(99B) Qualified expenses limitation. The licensee may withhold no more than 5 percent of the gross receipts from each tournament for qualified expenses.

106.7(1) Qualified expenses include but are not limited to the purchase of supplies and materials used in conducting card games.

106.7(2) Any money collected for expenses and any interest earned and not used by the end of the calendar year shall be donated for educational, civic, public, charitable, patriotic, or religious uses.

106.7(3) The licensee shall attach to the fourth quarterly report of the calendar year a receipt for any donation made and an explanation of how the donation will be used.

481—106.8(99B) Records. The licensee shall keep a journal of the following for each tournament: date of the tournament, amount of gross receipts, amount given out as prizes, expenses, amount collected for taxes, and the amount collected as revenue.

106.8(1) Tournament records shall be maintained separately from all other records and shall be kept current.

106.8(2) A record of prizes awarded for each tournament shall contain the following information:

a. Date of the tournament;

b. Number of people who played, including a breakdown by members and guests;

c. Name and description of each card game played;

d. Name, address, and social security number of each winner;

e. Type of each prize (i.e., merchandise or cash) and the value of each prize.

106.8(3) Records shall be maintained by the licensee for three years for review by the department.

106.8(4) The licensee shall certify that the receipts of all tournaments, less reasonable expenses, charges, fees, taxes, and deductions, will either be distributed as prizes to participants or will be dedicated and distributed to educational, civic, public, charitable, patriotic, or religious uses.

106.8(5) Records of expenses and dedicated and distributed money are required. A book may be maintained which contains both, provided that expense information is separate and distinct from information about dedicated and distributed money. Each subject shall be in a clearly labeled section.

a. The name, address, date, purpose and amount dedicated to another person or organization shall be available for review.

b. If dedicated funds are used by the licensee, the date, purpose and amount must be recorded.

c. Receipts used for expenses shall be recorded. The record must show:

(1) The date;

(2) The amount;
(3) The purpose; and
(4) To whom paid.

d. Invoices or bills for expenses must be maintained. Advertising copy and invoices must be retained for verification.

106.8(6) A compensation record for each member who is compensated for work at a tournament shall be maintained. Each record must show:

a. The name, address, and social security number of the member;
b. Dates of employment;
c. Times and number of hours worked;
d. Wages paid;
e. Amounts withheld;
f. Check number; and
g. Description of work completed.

In addition, the record must specifically identify for which card game tournament a member was compensated. Compensation is anything of value given to a member in exchange for services rendered in connection with a tournament. Compensation to members for services rendered shall be reasonable for the amount of time worked and the work completed. To determine reasonableness, the department shall use the minimum wage and the Iowa wage data of the U.S. Department of Labor, Bureau of Labor Statistics. Compensation records shall be maintained by the licensee for three years for review by the department.

481—106.9(99B) State and local option sales tax. Gross receipts from tournaments are subject to state and local option sales tax.

106.9(1) Each licensee shall withhold sales tax from gross receipts. The sales tax shall be sent to the department of revenue, along with a copy of the quarterly report as required by the department. The tax and sales tax returns shall be sent to the department of revenue as required by the department of revenue.

106.9(2) Tax information may be obtained from the Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319; 1-800-367-3388; www.state.ia.us/tax.

481—106.10(99B) Inspections. A representative of the department or law enforcement shall be admitted immediately upon request to the licensee's premises, with or without notice. All records, bank records, deposits, receipts, quarterly reports, cash control documents, expense records, and other documents pertaining to card game tournaments shall be made available to the department or any law enforcement officer when requested. The licensee shall provide to any department representative or law enforcement officer any assistance requested in completing an inspection of records.

481—106.11(99B) Quarterly reports. Licensees must file quarterly reports with the department.

106.11(1) Quarterly reports are submitted on a calendar-quarter basis.

a. The first quarter is January 1 to March 31;
b. The second quarter is April 1 to June 30;
c. The third quarter is July 1 to September 30;
d. The fourth quarter is October 1 to December 31.

106.11(2) Quarterly reports must be completed on the forms determined by the department. Quarterly reports are due 30 calendar days after the end of the quarter. When the due date falls on a Saturday, Sunday or legal holiday, the report is due on the next business day.

106.11(3) The quarterly report form may be obtained by calling the department at (515)281-6848 or printed from: http://www.dia.iowa.gov/page10.html.

481—106.12(99B) Penalties. The department may deny, suspend, or revoke a license if the department finds that an applicant, licensee, or an agent of the licensee violated or permitted a violation of a provision of this chapter or a departmental rule adopted pursuant to Iowa Code chapter 17A.

106.12(1) Failure to file a timely quarterly report may result in suspension or revocation of a license for a period of no longer than 30 days per violation. Each untimely report is one violation. Each month the report is not filed constitutes a violation. The suspension or revocation shall continue until the report is filed, but not longer than one year.

106.12(2) A person under 21 years of age who participates in a card game tournament in violation of this chapter and 2007 Iowa Acts, Senate File 414, section 1(2)*"c,"* is deemed to violate the legal age for gambling wagering provisions under Iowa Code section 725.19, subsection 1.

106.12(3) The department shall revoke, for a period of one year, the license of a licensee if the licensee knowingly permits a person under the age of 21 years to participate in a card game tournament.

481—106.13(99B) Revocation, suspension, or denial of license.

106.13(1) The department may revoke, suspend, or deny a license issued pursuant to Iowa Code section 99B.8 as amended by 2007 Iowa Acts, Senate File 414, for cause following 30 days' written notice delivered via certified mail, return receipt requested, or personal service and an opportunity for hearing.

106.13(2) If the licensee or applicant has not requested a hearing within the prescribed time period, the department may affirm, modify or set aside the department's proposed action in the department's final written decision.

106.13(3) If the licensee or applicant requests a hearing, the hearing shall be held in accordance with procedures in 481—Chapter 10.

106.13(4) The department may suspend a license prior to a hearing if the director determines the public integrity of the licensed activity is compromised or there is a risk to public health, safety, or welfare.

106.13(5) The department may rescind the notice of revocation, suspension, or denial at any point prior to hearing when the department becomes satisfied that the reasons for revocation, suspension, or denial have been or will be removed.

106.13(6) The department shall send certified mail, return receipt requested, or serve personally upon the applicant or licensee a copy of the department's final decision.

106.13(7) If the department finds cause for denial of a license, the applicant shall not reapply for the veterans card game tournament license for two years.

106.13(8) If the department finds cause for revocation or suspension, the department shall suspend or revoke the license for a period not to exceed two years.

106.13(9) A license remains effective until a final decision is issued.

106.13(10) No license will be issued when a new application is denied.

These rules are intended to implement Iowa Code sections 99B.2, 99B.14, 99B.16, 422.16 and 717E.2 and 2007 Iowa Acts, Senate File 414.

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CHAPTER 107
GAME NIGHTS

[Prior to 8/1/07, see 481—100.31(99B) and 481—100.60(99B) to 481—100.63(99B)]

481—107.1(10A,99B) Definitions. In addition to definitions found in 481—Chapter 100, the following definitions apply to annual game nights.

"Any other person" means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity except an eligible qualified organization, qualified organization, or school.

"Dedicated" means the net receipts shall be used for educational, civic, public, charitable, patriotic, or religious uses in this state. "Educational, civic, public, charitable, patriotic, or religious uses" includes uses that benefit a society for the prevention of cruelty to animals or animal rescue league; uses that benefit persons either by bringing them under the influence of education or religion or by relieving them from disease, suffering, or constraint, or by erecting or maintaining public buildings or works or otherwise lessening the burden of government; and uses that benefit any bona fide nationally chartered fraternal or military veterans' corporation or organization which operates in Iowa a clubroom, post, dining room, or dance hall, but does not include the erection, acquisition, improvement, maintenance, or repair of real, personal or mixed property unless it is used for one or more of the uses stated in Iowa Code section 99B.7(3)*"b."* "Public uses" specifically includes dedication of net receipts to political parties as defined in Iowa Code section 43.2. "Charitable uses" includes uses that benefit persons who are the victims of loss of home or household possessions as a result of explosion, fire, flood, or storm when the loss is uncompensated by insurance, and uses that benefit persons suffering from a seriously disabling disease or injury which causes severe loss of income or incurs extraordinary medical expense when the loss or expense is uncompensated by insurance.

"Eligible qualified organization" means any of the following:

1. A qualified organization representing veterans means any licensed organization which is a post, branch, or chapter of a national association of veterans of the armed forces of the United States that is a federally chartered corporation, and which dedicates the net receipts of a game of skill, game of chance, or raffle as provided in Iowa Code section 99B.7, is exempt from federal income taxes under Section 501(c)(19) of the Internal Revenue Code as defined in Iowa Code section 422.3, has an active membership of not less than 12 persons, and does not have a self-perpetuating governing body and officers.

2. A qualified organization representing emergency services providers means volunteer firefighters, emergency medical care providers, emergency rescue technicians, and reserve peace officers.

3. A qualified organization that is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code and that has conducted an annual game night during the period beginning January 1, 2001, and ending December 31, 2006.

"Qualified organization" means an organization also licensed under Iowa Code section 99B.7.

"School" means an organization within a public school or private school accredited by the state board of education.

481—107.2(99B) Restrictions on game nights.

107.2(1) An annual game night is restricted to the location applied for by the qualified organization or eligible qualified organization and approved by the department.

107.2(2) A game night shall not be conducted at a location of a licensed amusement concession as defined in Iowa Code section 99B.1 or fair as defined in 99B.1 during the fair.

107.2(3) A game night shall be held for no longer than 16 consecutive hours.

481—107.3(99B) Applications. Application forms are available from the following Web site: http://www.dia.iowa.gov/page10.html; or by writing to the Department of Inspections and Appeals,

Social and Charitable Gambling Unit, Lucas State Office Building, 3rd Floor, 321 E. 12th St., Des Moines, Iowa 50319-0083; or by telephoning (515)281-6848.

481—107.4(99B) Games. Games of skill, games of chance including Bingo and raffles, and card games may lawfully be conducted during a game night meeting the requirements of this chapter and Iowa Code chapter 99B. The following restrictions apply:

1. Slot machines are not allowed.
2. Social gambling, which includes games held pursuant to Iowa Code sections 99B.6 and 99B.12, is not permitted during a game night.
3. No other gambling activity may be engaged in at the premises during a game night.

481—107.5(99B) Sponsors. A game night may be sponsored by a school, a qualified organization, an eligible qualified organization, or any other person as defined in 107.1(10A,99B). The license(s) required, participation fees permitted, participants allowed, prizes awarded, reports required, and frequency allowed depend upon the sponsor of the game night.

107.5(1) *Schools.* The following provisions apply to schools as defined in 107.1(10A,99B). Schools are not required to have a license if all of the following are complied with:

a. *Approval.* Public school organizations must receive approval for the game night from the board of directors, and private school organizations must receive approval for the game night from authorities in charge.

b. *Participants.* Only students shall be allowed to participate in game nights sponsored by organizations of public and private schools.

c. *Participation fees.* No participation fees are allowed. Students may use only play money for the game night.

d. *Prizes.* No restrictions or limits are placed upon prizes.

e. *Reports.* No reports are required for schools holding game nights pursuant to this subrule.

f. *Frequency.* There is no restriction on the frequency of game nights for schools.

107.5(2) *Qualified organization.* The following apply to a qualified organization as defined in rule 107.1(10A,99B).

a. *License.* The organization must be licensed under Iowa Code section 99B.7 and submit an application for an annual game night license along with the $25 annual game night license fee. An annual game night license must be issued by the department prior to the commencement of the annual game night.

b. *Participation fees.* The sponsor may charge an entrance fee or a fee to participate in the games, and the participants may wager their own funds. No participant may expend more than a total of $250 for entrance fee, game participation fees, and wagers.

c. *Participants.* No restrictions are placed upon who may participate.

d. *Prizes.* The organization may award only merchandise prizes. The value of prizes shall not exceed $10,000. The organization shall not repurchase prizes. If gift cards are used as prizes, the gift card must be redeemable for merchandise only and not cash.

e. *Reports.* The organization must complete a quarterly report as required by rule 107.6(99B).

f. *Frequency.* An organization may hold only one game night per year.

NOTE: A qualified organization that held an annual game night between January 1, 2001, and December 31, 2006, and is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code may apply as an eligible qualified organization.

107.5(3) *Eligible qualified organization.* The following apply to an eligible qualified organization as defined in rule 107.1(10A,99B).

a. *License.* The organization must be licensed under Iowa Code section 99B.7 and submit an application for an annual game night license along with the $25 annual game night license fee. An annual game night license must be issued by the department prior to the commencement of the annual game night.

b. *Participation fees.* The sponsor may charge an entrance fee or a fee to participate in the games, and the participants may wager their own funds. No participant may expend more than a total of $250 for entrance fee, game participation fees, and wagers.

c. *Participants.* No restrictions are placed upon who may participate.

d. *Prizes.* The organization may award cash or merchandise prizes. The total value of all the cash and merchandise prizes shall not exceed $10,000. A participant shall win no more than a total of $5,000 in cash and merchandise. The organization shall not repurchase prizes.

e. *Reports.* The organization must complete a quarterly report as required by rule 107.6(99B).

f. *Frequency.* An organization may hold only one game night per year.

107.5(4) *Any other person.* The following apply to "any other person" as defined in rule 107.1(10A,99B).

a. *License.* The person must be licensed under Iowa Code section 99B.7 and submit an application for an annual game night license along with the $25 annual game night license fee. An annual game night license must be issued by the department prior to the commencement of the annual game night.

b. *Participation fees.* The sponsor may not charge an entrance fee or participation fee for participation in games. The sponsor shall not receive any consideration directly or indirectly, other than goodwill.

c. *Participants.* A bona fide social or employment relationship must exist between the participants and the sponsor.

d. *Prizes.* No restrictions or limits are placed upon prizes.

e. *Reports.* No reports are required.

f. *Frequency.* The person may hold only one game night per year.

481—107.6(99B) Reports and dedication of funds for qualified and eligible qualified organizations.

107.6(1) *Reports.* Qualified organizations and eligible qualified organizations are required to submit quarterly reports to the department on department forms. An eligible qualified organization that conducts an annual game night shall submit a quarterly report only for the quarter in which the annual game night is held. If an annual game night continues into a new quarter, the entire game night shall be deemed to be conducted in the quarter in which the game night ends. EXAMPLE: If an annual game night begins at 6 p.m. March 31 and ends at 6 a.m. April 1, the entire game night shall be reported on the second quarter report. Quarterly reports are submitted on a calendar-quarter basis as follows:

a. The first quarter is January 1 to March 31;

b. The second quarter is April 1 to June 30;

c. The third quarter is July 1 to September 30;

d. The fourth quarter is October 1 to December 31.

Reports shall be submitted on forms prescribed by the department within 30 days after the end of the quarter. When the due date is on Saturday, Sunday or a legal holiday, the report shall be due the next business day. The quarterly report form can be printed from www.dia.iowa.gov/page10.html or obtained by telephoning the department at (515)281-6848.

107.6(2) *Records.* The department may require a qualified organization to submit additional records with the quarterly report or any other time.

107.6(3) *Dedicated receipts.* Dedicated net receipts are to be used for educational, civic, public, charitable, patriotic, or religious uses as defined in rule 107.1(10A,99B). The qualified organization or eligible qualified organization shall:

a. Distribute at least 75 percent of the net receipts to a dedicated purpose;

b. Distribute all the net receipts. "Net receipts" means the receipts of all games and participation fees less prizes and taxes. Other expenses (expenses other than prizes and taxes) shall not be greater than 25 percent of net receipts.

481—107.7(422) State and local option sales tax. Gross receipts from gambling are subject to state and local option sales tax, except for cities and counties. Tax information may be obtained from the Department of Revenue, Hoover State Office Building, Des Moines, IA 50319.

These rules are intended to implement Iowa Code sections 99B.2(4), 99B.7, 99B.7B, 99B.8, and 423.2 as amended by 2007 Iowa Acts, Senate File 414.

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