



# IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXXVII  
October 29, 2014

NUMBER 9  
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## PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

### CITATION of Administrative Rules

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

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

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

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

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

## Schedule for Rule Making 2014

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

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
11	Wednesday, November 5, 2014	November 26, 2014
12	Wednesday, November 19, 2014	December 10, 2014
13	Wednesday, December 3, 2014	December 24, 2014

**PLEASE NOTE:**

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, November 18, 2014, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

### **AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**

Low pathogenic avian influenza tests for turkey and chicken flocks, 64.187 Notice **ARC 1704C** ..... 10/29/14

### **COLLEGE STUDENT AID COMMISSION[283]**

EDUCATION DEPARTMENT[281]\*"umbrella"

Update of commission address, 5.12(5) Filed **ARC 1684C** ..... 10/29/14

Availability of records; update of commission address, 6.3(1), 6.12, 7.10 Notice **ARC 1689C** ..... 10/29/14

Federal family education loan programs; state of Iowa scholarship program; Iowa guaranteed loan payment program; accelerated career education grant program, rescind chs 10, 11, 15, 19 Notice **ARC 1690C** ..... 10/29/14

Skilled workforce shortage tuition grant program—financial need, 23.1(1) Notice **ARC 1688C** ..... 10/29/14

Rural Iowa primary care loan repayment program, 24.1 to 24.3, 24.4(2), 24.5 Filed **ARC 1685C** ..... 10/29/14

Rural Iowa advanced registered nurse practitioner and physician assistant loan repayment program, 25.1 to 25.5 Filed **ARC 1686C** ..... 10/29/14

### **CREDIT UNION DIVISION[189]**

COMMERCE DEPARTMENT[181]\*"umbrella"

Credit union investments, 1.4, 17.2, 17.5, 17.8(2), 17.9(4), 17.14, 17.16 Filed **ARC 1678C** ..... 10/15/14

### **ECONOMIC DEVELOPMENT AUTHORITY[261]**

Apprenticeship training program, ch 12 Notice **ARC 1692C** ..... 10/29/14

Redevelopment tax credits program for brownfield and grayfield sites, amendments to ch 65 Notice **ARC 1693C** ..... 10/29/14

Strategic infrastructure program, ch 118 Notice **ARC 1691C** ..... 10/29/14

### **EDUCATION DEPARTMENT[281]**

Secondary credit for non-high school students, 12.5(4)"l" Filed **ARC 1663C** ..... 10/15/14

Adult education and literacy programs, ch 23 Notice **ARC 1672C** ..... 10/15/14

Workforce training and economic development funds, ch 27 Filed **ARC 1662C** ..... 10/15/14

Specified time period for summertime coaching activities, 36.15(6)"b" Notice **ARC 1673C** ..... 10/15/14

School bus driver's authorization—physical fitness, 43.15 Filed **ARC 1661C** ..... 10/15/14

Iowa vocational rehabilitation services, amendments to ch 56 Notice **ARC 1676C** ..... 10/15/14

Research-based educational and instructional models for students of limited English proficiency; professional development, 60.2, 60.3 Notice **ARC 1675C** ..... 10/15/14

Standards for practitioner and administrator preparation programs, 79.2, 79.10 to 79.17, 79.20, 79.21 Notice **ARC 1674C** ..... 10/15/14

### **HUMAN SERVICES DEPARTMENT[441]**

Continuation of benefits pending outcome of appeal; implementation of limited benefit plan (LBP) or FIP ineligibility period; PROMISE JOBS records retention; update of references to GED, 7.9, 41.25(11), 93.2(2), 93.4(4), 93.7(1), 93.8, 93.10, 93.11(4) Filed **ARC 1694C** ..... 10/29/14

Standards for crisis response services, amendments to ch 24 Filed **ARC 1660C** ..... 10/15/14

Mental health and disability services—data submission to determine Medicaid offset for counties, amendments to ch 25 Filed **Emergency After Notice** **ARC 1671C** ..... 10/15/14

Iowa health and wellness plan; accountable care organizations, 74.1, 74.2(2), 74.5, 74.6, 74.8, 74.10 to 74.12, 77.51 Filed **ARC 1698C** ..... 10/29/14

Area education agency personnel providing services under Medicaid—update of cross reference, 77.28(4) Notice **ARC 1707C** ..... 10/29/14

Prior authorization for high-technology radiology procedures, 78.28(11) Filed **ARC 1696C** ..... 10/29/14

Reimbursement rate for primary care services, 79.1(2), 79.1(7)"c" Filed **ARC 1699C** ..... 10/29/14

Disproportionate share payments to hospitals, 79.1(5) Filed **ARC 1697C** ..... 10/29/14

Medical assistance program—sanctions, program integrity, 79.2, 79.3(2)"c," 79.14(3) Filed **ARC 1695C** ..... 10/29/14

Nursing facilities—preadmission screening and resident review process, 81.1, 81.3, 81.6, 81.7(2), 81.10, 81.11(1), 81.13(14), 81.22(2) Notice **ARC 1683C** ..... 10/15/14

Child care centers and child development homes—record check process, 109.1, 109.6(6), 110.7(3) Notice **ARC 1705C** ..... 10/29/14

Foster and adoptive parent preservice training, 117.1, 117.2, 200.4(4) Notice **ARC 1706C** ..... 10/29/14

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

Elder group homes and adult day services programs—informal conference process to contest department's final findings, 67.12 to 67.14 Filed **ARC 1701C**..... 10/29/14  
 Respite care services, 69.39 Filed **ARC 1667C**..... 10/15/14

**INSURANCE DIVISION[191]**

COMMERCE DEPARTMENT[181]"umbrella"

Notification—termination of relationship between navigator entity and individual navigator, 85.9(4) Filed **ARC 1710C**..... 10/29/14

**IOWA FINANCE AUTHORITY[265]**

Low-income housing tax credit program—qualified allocation plans, 12.1 to 12.4 Filed **ARC 1700C**..... 10/29/14

**LABOR SERVICES DIVISION[875]**

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Recording and reporting regulations, 4.3 Notice **ARC 1677C**..... 10/15/14  
 Federal occupational safety and health standards—adoption by reference, 10.20, 26.1 Notice **ARC 1687C**..... 10/29/14

**MEDICINE BOARD[653]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Pain management standards of practice—discussion with patient about safe operation of vehicles, 13.2 Notice **ARC 1708C**..... 10/29/14

**NATURAL RESOURCE COMMISSION[571]**

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Removal of aquatic vegetation near boat docks and in pathways to open water, 54.5 Filed **ARC 1703C**..... 10/29/14  
 Fishing regulations; trotlines, 81.1 to 81.3, rescind ch 85 Filed **ARC 1702C**..... 10/29/14

**PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Military service and veteran reciprocity, ch 20 Notice **ARC 1668C**..... 10/15/14  
 Barbering—licensure, mentoring program, 21.9(1), 21.12(2), 23.1, 23.2, 23.10(3), 23.16 Filed **ARC 1680C**..... 10/15/14  
 Physical and occupational therapist assistants—licensure, continuing education, 200.4(3), 203.2(1), 203.3(2), 207.2(1), 207.3(2) Filed **ARC 1659C**..... 10/15/14

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 Biodiesel production refund; individual income, corporation income and franchise taxes; renewable energy tax credit for replacement tax, amendments to chs 12, 38, 40 to 43, 46, 49, 52, 58, 70 Filed **ARC 1665C**..... 10/15/14  
 Solar energy system tax credit for individual income, corporation income and franchise taxes, 42.48, 52.44, 58.22 Filed **ARC 1666C**..... 10/15/14  
 Compressed natural gas, liquefied natural gas, and motor fuel tax rates, 67.1, 67.3(5), 67.21(1), 68.2, 69.1, 69.2, 69.5 to 69.9 Notice **ARC 1681C**..... 10/15/14  
 Candy subject to sales and use tax, 231.4(2) Filed **ARC 1664C**..... 10/15/14

**TREASURER OF STATE[781]**

Required public funds custodial agreement provisions, 15.1(3), 15.2 Filed **ARC 1709C**..... 10/29/14

**VOTER REGISTRATION COMMISSION[821]**

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## ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

Senator Mark Chelgren  
819 Hutchinson  
Ottumwa, Iowa 52501

Senator Thomas Courtney  
2609 Clearview  
Burlington, Iowa 52601

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

Senator Pam Jochum  
2368 Jackson Street  
Dubuque, Iowa 52001

Senator Roby Smith  
2036 East 48th Street  
Davenport, Iowa 52807

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

Representative Jeff Smith  
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Waukee, Iowa 50263

Representative Guy Vander Linden  
1610 Carbonado Road  
Oskaloosa, Iowa 52577

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

**EDUCATION DEPARTMENT[281]**

Adult education and literacy programs, ch 23 IAB 10/15/14 <b>ARC 1672C</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	November 4, 2014 2 to 3 p.m.
Specified time period for summertime coaching activities, 36.15(6)“b” IAB 10/15/14 <b>ARC 1673C</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	November 4, 2014 1 to 2 p.m.
Iowa vocational rehabilitation services, amendments to ch 56 IAB 10/15/14 <b>ARC 1676C</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	November 4, 2014 11 a.m. to 12 noon
Research-based educational and instructional models for students of limited English proficiency, 60.2, 60.3 IAB 10/15/14 <b>ARC 1675C</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	November 4, 2014 9 to 10 a.m.
Standards for practitioner and administrator preparation programs, 79.2, 79.10 to 79.17, 79.20, 79.21 IAB 10/15/14 <b>ARC 1674C</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	November 4, 2014 10 to 11 a.m.

**LABOR SERVICES DIVISION[875]**

Recording and reporting regulations, 4.3 IAB 10/15/14 <b>ARC 1677C</b>	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	November 5, 2014 2:30 p.m. (If requested)
Federal occupational safety and health standards—adoption by reference, 10.20, 26.1 IAB 10/29/14 <b>ARC 1687C</b>	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	November 19, 2014 9 a.m. (If requested)

**MEDICINE BOARD[653]**

Pain management standards of practice—discussion with patient about safe operation of vehicles, 13.2 IAB 10/29/14 <b>ARC 1708C</b>	Suite C 400 S.W. 8th St. Des Moines, Iowa	November 18, 2014 1 p.m.
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**PROFESSIONAL LICENSURE DIVISION[645]**

Military service and veteran reciprocity, ch 20 IAB 10/15/14 <b>ARC 1668C</b>	Fifth Floor Professional Licensure Conference Room Lucas State Office Bldg. Des Moines, Iowa	November 4, 2014 10 to 11 a.m.
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The following list will be updated as changes occur.

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

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

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

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## ARC 1704C

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 163.1(1) and 163.6(2), the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 64, “Infectious and Contagious Diseases,” Iowa Administrative Code.

The proposed amendments reduce the number of required low pathogenic avian influenza tests for large turkey flocks and broiler and layer chicken flocks. Commercial turkey operations with 1,000 or more turkeys would have the number of preslaughter tests reduced from 15 to 6 blood samples and the number of slaughter tests reduced from 20 to 6 blood samples. Commercial chicken operations of 10,000 or more birds would have their required number of blood sample tests reduced to 11. The proposed amendments also clarify that the routine serologic testing required for laying chickens and pre-lay pullets is 11 birds per barn per year. These reductions in the number of tests conform the state testing requirements to the current testing requirements in the USDA Code of Federal Regulations.

Any interested persons may make written suggestions or comments on the proposed amendments on or before November 18, 2014. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by e-mail to [Margaret.Thomson@IowaAgriculture.gov](mailto:Margaret.Thomson@IowaAgriculture.gov).

The proposed amendments are subject to the Department’s general waiver provision.

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

These amendments are intended to implement Iowa Code section 163.1.

The following amendments are proposed.

ITEM 1. Amend paragraphs **64.187(1)“a”** and **“b”** as follows:

*a. Preslaughter/movement testing.* A minimum of ~~15~~ six blood samples per flock may be collected and forwarded to an approved laboratory for LPAI testing within 21 days prior to depopulation or movement; or

*b. Slaughter/disposal testing.* ~~Twenty~~ Six blood samples per flock shall be collected at slaughter/disposal and forwarded to an approved laboratory for LPAI testing.

ITEM 2. Amend paragraph **64.187(2)“a”** as follows:

*a. Preslaughter/disposal/movement testing.* ~~Fifteen~~ Eleven blood samples shall be collected and forwarded to an approved laboratory for LPAI testing within 30 days prior to depopulation or disposal of spent hens or movement of pre-lay pullets to another farm.

ITEM 3. Amend paragraph **64.187(2)“c”** as follows:

*c. Routine serologic testing.* A test for LPAI of 11 birds per barn during a 12-month period ~~should~~ shall be included collected and forwarded.

ITEM 4. Amend paragraphs **64.187(3)“a”** and **“b”** as follows:

*a. Preslaughter testing.* ~~Twenty~~ Eleven blood samples may be collected and forwarded to an approved laboratory for LPAI testing within 21 days prior to depopulation; or

*b. Slaughter/disposal testing.* ~~Twenty~~ Eleven blood samples shall be collected at slaughter/disposal and forwarded to an approved laboratory for LPAI testing.

**ARC 1689C****COLLEGE STUDENT AID COMMISSION[283]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 261.3, the Iowa College Student Aid Commission hereby gives Notice of Intended Action to amend Chapter 6, “Public Records and Fair Information Practices,” and Chapter 7, “Uniform Rules for Waivers,” Iowa Administrative Code.

The rules in Chapter 6 describe the Commission’s procedures for providing public records and describe fair information practices. These proposed amendments update the Commission’s address as identified by a regular review of the administrative rules and identify the availability of records to the public.

The rules in Chapter 7 describe the Commission’s uniform rules for waivers. These proposed amendments update the Commission’s address as identified by a regular review of the administrative rules.

Interested persons may submit comments orally or in writing by 4:30 p.m. on or before November 18, 2014, to the Executive Director, Iowa College Student Aid Commission, 430 East Grand Avenue, Third Floor, Des Moines, Iowa 50309-1920; fax (515)725-3401.

The Commission does not intend to grant waivers under the provisions of these rules.

After analysis and review of this rule making, the Commission finds that there is no impact on jobs.

These amendments are intended to implement Iowa Code chapter 261.

The following amendments are proposed.

ITEM 1. Amend subrule 6.3(1) as follows:

**6.3(1) Location of record.** A request for access to a record should be directed to the Executive Director, Iowa College Student Aid Commission, ~~200 Tenth Street, Fourth Floor~~ 430 East Grand Avenue, Third Floor, Des Moines, Iowa ~~50309-3609~~ 50309-1920. If a request for access to a record is misdirected, commission personnel will promptly forward the request to the appropriate person.

ITEM 2. Amend rule 283—6.12(17A,22) as follows:

**283—6.12(17A,22) Availability of records.** This rule lists the commission records which are open to the public, those which are confidential, and those which are partially open and partially confidential.

Commission records are listed by category, according to the legal basis for confidential treatment (if any). The commission administers federally funded programs, as well as state programs, and is authorized by Iowa Code section 22.9 to enforce confidentiality standards for federal law and regulations as are required for receipt of the funds. A single record may contain information from several categories.

The chart indicates whether the record contains personally identifiable information, and indicates the legal authority for confidentiality and for the collection of personally identifiable information.

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

Abbreviations are used in the chart as follows:

Code	Meaning	Code	Meaning
O	The records are open for public inspection.	O/C	The record is partially open and partially confidential.
C	The records are confidential and are not open to public inspection.	O/E	The record is partially open to the public and partially exempt from disclosure.
E	The record is exempt from mandatory disclosure to members of the public.	PI	<del>Personally identifiable information.</del>
		<u>O/E/C</u>	<u>The record is partially open to the public, partially exempt from disclosure, and partially confidential and not open to the public.</u>
<u>E/C</u>	<u>The record is exempt from mandatory disclosure to the public and is confidential and not open to public inspection.</u>	NA	Not applicable.

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
Records of Commission, Advisory Council, and Committees	O/E	Iowa Code 21.5	No	NA
Rule Making	O	NA	No	NA
Declaratory Ruling Records	O/C	Iowa Code 22.7	No	NA
Rules and Policy Manuals	O	NA	No	NA
General Correspondence	O/E/C	Iowa Code 22.7	Yes	NA
Publications <ul style="list-style-type: none"> <li>• General</li> <li>• GSL</li> <li>• Scholarship</li> </ul>	O	NA	No	NA
Statistical Reports	O	NA	No	NA
Staff Reports	O	NA	No	NA
Financial & Administrative Records	O/E/C	Iowa Code 22.7	Yes	NA
Registration and Approval Records	O	NA	No	NA
Contracts and Interagency Agreements	O/C	Iowa Code 22.7(3)	No	NA
Scaled Bids Prior to Public Opening	C	Iowa Code 22.3 <sub>2</sub> and 22.7 and 72.3	No	NA
Appeal Records	O/C	Iowa Code 22.7	Yes	NA
Litigation Files	O/E/C	Iowa Code 22.7	Yes	NA
Privileged Communication and Products of Attorneys Representing the Commission	E/C	Iowa Code 22.7, Iowa Code of Professional Responsibility for Lawyers, Canon 4	No	NA
Individual Applicant/Recipient Records (such as those collected under the Iowa Tuition Grant and Iowa Vocational-Technical Tuition Grant Programs)	<u>C</u>	<u>Iowa Code 22.7</u>	<u>Yes</u>	<u>P.L. 89-329</u>
<del>•Guaranteed Student Loans (GSL)</del>	<del>E</del>	<del>Iowa Code 22.7</del>	<del>Yes</del>	<del>P.L. 89-329</del>
<del>•Parents Loans for Students (PLUS)</del>	<del>E</del>	<del>Iowa Code 22.7</del>	<del>Yes</del>	<del>Sec. 428[b-e]</del>
<del>•Supplementary Loans to Students</del>	<del>E</del>	<del>Iowa Code 22.7</del>	<del>Yes</del>	<del>Sec. 488[e]</del>
<del>•Iowa Tuition Grants</del>	<del>E</del>	<del>Iowa Code 22.7</del>	<del>Yes</del>	<del>Iowa Code 261-10</del>
<del>•State of Iowa Scholarship</del>	<del>E</del>	<del>Iowa Code 22.7</del>	<del>Yes</del>	<del>Iowa Code 261-2(4)</del>
<del>•Iowa Vocational-Technical Tuition Grant</del>	<del>E</del>	<del>Iowa Code 22.7</del>	<del>Yes</del>	<del>Iowa Code 261-17</del>
<del>•Paul Douglas Scholarship</del>	<del>E</del>	<del>Iowa Code 22.7</del>	<del>Yes</del>	<del>34 CFR Part 653.34</del>
<del>•Teacher Shortage Forgivable Loan</del>	<del>E</del>	<del>Iowa Code 22.7</del>	<del>Yes</del>	<del>Iowa Code 261-111</del>
<del>•Iowa Grant</del>	<del>E</del>	<del>Iowa Code 22.7</del>	<del>Yes</del>	<del>Iowa Code 261-97</del>
<del>•Osteopathic Physician Recruitment</del>	<del>E</del>	<del>Iowa Code 22.7</del>	<del>Yes</del>	<del>Iowa Code 261-19</del>
<del>•Accelerated Career Education Grant</del>	<del>E</del>	<del>Iowa Code 22.7</del>	<del>Yes</del>	<del>Iowa Code 261-22</del>
<del>•Iowa National Guard Educational Assistance</del>	<del>E</del>	<del>Iowa Code 22.7</del>	<del>Yes</del>	<del>Iowa Code 261-86</del>
<del>•Chiropractic Graduate Student Forgivable Loan</del>	<del>E</del>	<del>Iowa Code 22.7</del>	<del>Yes</del>	<del>Iowa Code 261-71</del>

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

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
• Gov. Terry E. Branstad Iowa State Fair Scholarship	C	Iowa Code 22.7	Yes	Iowa Code 261.24
• Claims	C	Iowa Code 22.7	Yes	P.L. 89-329
• Collections	C	Iowa Code 22.7	Yes	Sec. 428[b-c] and Sec. 488[c]
<u>State and Federal Program Records (such as those maintained under the Iowa Tuition Grant Program and the John R. Justice Student Loan Repayment Program)</u>	<u>O</u>	<u>NA</u>	<u>No</u>	<u>NA</u>
• Iowa Work Study	O	NA	No	NA
• Iowa Tuition Grant	O	NA	No	NA
• State of Iowa Scholarship	O	NA	No	NA
• Iowa Vocational Technical Tuition Grant	O	NA	No	NA
• GSL (EAGLE)	O	NA	No	NA
• Paul Douglas Scholarship	O	NA	No	NA
• Teacher Shortage Forgivable Loan	O	NA	No	NA
• Iowa Grant	O	NA	No	NA
• Osteopathic Physician Recruitment	O	NA	No	NA
• Accelerated Career Education Grant	O	NA	No	NA
• Iowa National Guard Educational Assistance	O	NA	No	NA
• Chiropractic Graduate Student Forgivable Loan	O	NA	No	NA
• Gov. Terry E. Branstad Iowa State Fair Scholarship	O	NA	No	NA
Applicant/Recipient Records may contain information from restricted sources:				
• Federal Tax Returns	C	Iowa Code 422.20	Yes	P.L. 89-329
• Iowa Dept. of Revenue	C	Iowa Code 422.20	Yes	Sec. 428[b-c]
• Education Records	C	Iowa Code 22.7	Yes	Sec. 488[c]

ITEM 3. Amend rule 283—7.10(261,ExecOrd11,17A) as follows:

**283—7.10(261,ExecOrd11,17A) Filing of petition.** A petition for a waiver must be submitted in writing to the commission's Executive Director, ~~200 Tenth Street, Fourth Floor, 430 East Grand Avenue, Third Floor, Des Moines, Iowa 50309-3609~~ 50309-1920.

**ARC 1690C**

## COLLEGE STUDENT AID COMMISSION[283]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 261.3, the Iowa College Student Aid Commission hereby gives Notice of Intended Action to rescind Chapter 10, “Federal Family Education Loan Programs,” Chapter 11, “State of Iowa Scholarship Program,” Chapter 15, “Iowa Guaranteed Loan Payment Program,” and Chapter 19, “Accelerated Career Education Grant Program,” Iowa Administrative Code.

Chapter 10 describes the procedures under which the Commission administered the Federal Family Education Loan Program, a program no longer administered by the Commission.

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

Chapter 11 provides rules for the State of Iowa Scholarship Program, which has not been funded since fiscal year 2005.

Chapters 15 and 19 provide rules for the Iowa Guaranteed Loan Payment Program and the Accelerated Career Education Grant Program. The programs were rescinded as a result of changes to Iowa Code sections 261.22 and 261.44 that were enacted in 2014 Iowa Acts, Senate File 2257.

Interested persons may submit comments orally or in writing by 4:30 p.m. on or before November 18, 2014, to the Executive Director, Iowa College Student Aid Commission, 430 East Grand Avenue, Third Floor, Des Moines, Iowa 50309-1920; fax (515)725-3401.

The Commission does not intend to grant waivers under the provisions of these rules.

After analysis and review of this rule making, the Commission finds that there is no impact on jobs.

This amendment is intended to implement Iowa Code chapter 261.

The following amendment is proposed.

Rescind and reserve **283—Chapter 10, Chapter 11, Chapter 15 and Chapter 19.**

**ARC 1688C**

**COLLEGE STUDENT AID COMMISSION[283]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 261.130, the Iowa College Student Aid Commission hereby gives Notice of Intended Action to amend Chapter 23, “Skilled Workforce Shortage Tuition Grant Program,” Iowa Administrative Code.

Proposed amendments to Chapter 23 clarify the definition of “financial need” under the program.

Interested persons may submit comments orally or in writing by 4:30 p.m. on or before November 18, 2014, to the Executive Director, Iowa College Student Aid Commission, 430 East Grand Avenue, Third Floor, Des Moines, Iowa 50309-1920; fax (515)725-3401.

The Commission does not intend to grant waivers under the provisions of these rules.

After analysis and review of this rule making, the Commission finds that there is no impact on jobs.

This amendment is intended to implement Iowa Code chapter 261.

The following amendment is proposed.

Amend subrule 23.1(1) as follows:

**23.1(1) Financial need.**

*a.* Financial need shall be evaluated annually on the basis of a confidential financial statement filed on a form designated by the commission. For the purposes of determining financial need, the commission has adopted the use of the Free Application for Federal Student Aid (FAFSA), a federal form used to calculate a formula developed by the U.S. Department of Education, the results of which are used to determine relative need known as expected family contribution. The FAFSA must be received by the processing agent by the date specified by the college student aid commission.

*b.* Financial need is defined as the greater of \$200 per semester or the equivalent or the difference between the total maximum federal Pell grant for the academic year for a full-time student with an expected family contribution of \$0 minus the Pell grant award received by the student minus the Iowa vocational-technical tuition grant received by the student cost of attendance, minus the eligible applicant’s expected family contribution, minus the federal Pell Grant received by the applicant, and minus the Iowa vocational-technical tuition grant received by the applicant. Awards will not exceed one-half of the average tuition and mandatory fees at Iowa community colleges and will not be less than \$200 per semester or the equivalent.

**ARC 1692C**

**ECONOMIC DEVELOPMENT AUTHORITY[261]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 15.106A and of 2014 Iowa Acts, House File 2460, section 19, subsection 6, the Economic Development Authority hereby gives Notice of Intended Action to adopt new Chapter 12, “Apprenticeship Training Program,” Iowa Administrative Code.

In 2014 Iowa Acts, House File 2460, the General Assembly authorized the Economic Development Authority to establish a program to provide financial assistance in the form of training grants to eligible registered apprenticeship training programs and provided for annual funding of up to \$3 million to the Authority for purposes of providing such assistance. The legislation directs the Authority to adopt rules for the implementation of the program. The rules proposed herein establish a program to provide financial assistance to apprenticeship training programs and describe the manner in which the Authority will implement and administer the program.

The Economic Development Authority Board approved this amendment on September 19, 2014, at the Board’s monthly meeting.

Any interested person may make written suggestions or comments on this proposed amendment on or before November 18, 2014. Paper materials with suggestions and comments may be directed to Timothy J. Whipple, Legal Counsel, 200 East Grand Avenue, Des Moines, Iowa 50309. Electronic submissions may be sent to [tim.whipple@iowa.gov](mailto:tim.whipple@iowa.gov).

After analysis and review, the Authority finds that this rule making would have a positive impact on jobs. The rules outline the process for expanding apprenticeship training programs in the state. Apprenticeship training is a proven method of on-the-job training that will help Iowa prepare for a globally competitive job market by upskilling Iowa workers in fields ranging from construction to information technology. The Iowa Department of Workforce Development has published wage information demonstrating that, in general, apprenticeship training programs result in better-paying jobs than other methods of training for the same occupation.

These rules are intended to implement 2014 Iowa Acts, House File 2460.

The following amendment is proposed.

Adopt the following **new** 261—Chapter 12:

CHAPTER 12  
APPRENTICESHIP TRAINING PROGRAM

**261—12.1(15,84GA,HF2460) Authority.** The authority for adopting rules establishing an apprenticeship training program is provided in 2014 Iowa Acts, House File 2460, section 19, [Iowa Code section 15B.3(6)] and in Iowa Code section 15.106A.

**261—12.2(15,84GA,HF2460) Purpose.** The purpose of the apprenticeship training program is to assist eligible apprenticeship programs by providing financial assistance in the form of training grants.

**261—12.3(15,84GA,HF2460) Definitions.**

“*Apprentice*” means a person who is at least 16 years of age, except where a higher minimum age is required by law, who is employed in an apprenticeable occupation, and is registered in Iowa with the U.S. Department of Labor, Office of Apprenticeship.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

*“Apprenticeable occupation”* means an occupation approved for apprenticeship by the U.S. Department of Labor, Office of Apprenticeship.

*“Apprenticeship program”* means a program registered with the U.S. Department of Labor, Office of Apprenticeship, which includes terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices, including the requirement for a written apprenticeship agreement.

*“Apprenticeship sponsor”* means an entity operating an apprenticeship program or an entity in whose name an apprenticeship program is being operated, which is registered with or approved by the U.S. Department of Labor, Office of Apprenticeship.

*“Authority”* means the economic development authority created in Iowa Code section 15.105.

*“Financial assistance”* means assistance provided only from the funds, rights, and assets legally available to the authority and includes but is not limited to assistance in the forms of grants, loans, forgivable loans, and royalty payments.

*“Fund”* means the apprenticeship training program fund created in 2014 Iowa Acts, House File 2460, section 19 [Iowa Code section 15B.3].

*“Lead apprenticeship sponsor”* means a trade organization, labor organization, employer association, or other incorporated entity representing a group of apprenticeship sponsors.

*“Program”* means the apprenticeship training program established pursuant to this chapter.

*“Total instructional hours”* means the total instructional hours reported by an apprenticeship sponsor or lead apprenticeship sponsor. “Total instructional hours” does not mean the minimum federal standard for instructional hours.

*“Training year”* means the most recent calendar year.

**261—12.4(15,84GA, HF2460) Annual appropriations—amount of assistance available—standard contract—use of funds.**

**12.4(1)** The authority will provide financial assistance under the program from moneys appropriated for purposes of the program pursuant to Iowa Code section 15.342A as amended by 2014 Iowa Acts, House File 2460, section 13, and 2014 Iowa Acts, House File 2460, section 3.

**12.4(2)** The total amount of assistance available for a fiscal year will be the amount authorized by law as described in subrule 12.4(1) less an amount equal to 2 percent of the moneys in the fund appropriated to the authority for administrative purposes.

**12.4(3)** The authority will disburse funds to an apprenticeship sponsor or lead apprenticeship sponsor only after approval of a completed application and execution of a contract between the apprenticeship sponsor or lead sponsor and the authority. The authority shall have sole discretion in determining whether an applicant has provided all necessary information as required under this chapter. The authority will prepare a standard contract for the program to be executed by each eligible applicant. Each executed contract will provide for an amount of financial assistance in the form of a training grant as determined pursuant to rule 261—12.6(15,84GA, HF2460). All changes or amendments to the standard contract shall be at the authority’s sole discretion. All such changes shall be consistent with the requirements of 2014 Iowa Acts, House File 2460, sections 17 to 21, [Iowa Code chapter 15B] and of this chapter. The authority will notify apprenticeship sponsors and lead apprenticeship sponsors by the end of a calendar year of any standard contract changes for the upcoming application period.

**12.4(4)** Financial assistance received by an apprenticeship sponsor or lead apprenticeship sponsor under this rule shall be used only for the cost of conducting and maintaining an apprenticeship program. The authority may require an apprenticeship sponsor or lead apprenticeship sponsor to provide any information reasonably necessary to verify the use of program funds.

**261—12.5(15,84GA, HF2460) Eligibility for assistance.** An eligible apprenticeship sponsor or lead apprenticeship sponsor may apply to the authority for assistance under the program. To be eligible, an applicant must meet all of the following requirements:

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

**12.5(1)** The applicant is an apprenticeship sponsor, or a lead apprenticeship sponsor, that is conducting an apprenticeship program registered with the U.S. Department of Labor, Office of Apprenticeship, through Iowa, for apprentices who will be employed at Iowa worksites.

**12.5(2)** The applicant provides all of the following information to the authority:

- a.* The federal apprentice registration number of each apprentice in the apprenticeship program.
- b.* The address and a description of the physical location where in-person training is conducted.
- c.* A certification of the apprenticeship sponsor's training standards as most recently approved by the U.S. Department of Labor, Office of Apprenticeship, or, in the case of a lead apprenticeship sponsor, a representative sample of participating members' training standards.
- d.* A certification of the apprenticeship sponsor's compliance review or quality assessment as most recently conducted by the U.S. Department of Labor, Office of Apprenticeship, unless the apprenticeship sponsor has not been subjected to a compliance review or quality assessment. In the case of a lead apprenticeship sponsor, a sampling of compliance reviews or quality assessments from participating members will be sufficient.
- e.* Any other information the authority reasonably determines is necessary.

**12.5(3)** The applicant shall apply on or before February 1 of each year in which funding is available. The application submitted by the applicant should reflect program information from the prior training year. Because all applications to the program must be received in order to determine the amount of financial assistance available under rule 261—12.6(15,84GA, HF2460), the authority will not accept applications on a continuous basis.

**261—12.6(15,84GA, HF2460) Determination of financial assistance grants.** The authority will provide financial assistance in the form of training grants to apprenticeship sponsors or lead apprenticeship sponsors. The maximum amount of financial assistance provided to an eligible apprenticeship sponsor or lead apprenticeship sponsor will be calculated in the following manner:

**12.6(1)** By determining the total amount of funding allocated for purposes of training grants for apprenticeship programs as described in rule 261—12.4(15,84GA, HF2460).

**12.6(2)** By adding together all of the following:

- a.* The total number of apprentices trained by all applying apprenticeship sponsors or lead apprenticeship sponsors during the most recent training year as calculated on the last day of the training year.
- b.* The total number of contact hours that apprenticeship instructors for all applying apprenticeship sponsors or lead apprenticeship sponsors spent in contact with apprentices during the most recent training year. For purposes of this paragraph, "contact hours" includes the time spent instructing apprentices in person or, in the case of a lead apprenticeship sponsor with programs totaling 100 or more total instructional hours, "contact hours" includes the time spent in online training if the total amount of online instruction does not account for more than 30 percent of the total instructional hours.

**12.6(3)** By adding together all of the following:

- a.* The total number of apprentices trained by a single applying apprenticeship sponsor or lead apprenticeship sponsor during the most recent training year as calculated on the last day of the training year.
- b.* The total number of contact hours that apprenticeship instructors for a single applying apprenticeship sponsor or lead apprenticeship sponsor spent in contact with apprentices during the most recent training year. For purposes of this paragraph, "contact hours" includes the time spent instructing apprentices in person or, in the case of a lead apprenticeship sponsor with programs totaling 100 or more total instructional hours, "contact hours" includes the time spent in online training if the total amount of online instruction does not account for more than 30 percent of the total instructional hours.

**12.6(4)** By determining the proportion, stated as a percentage, that a single applying apprenticeship sponsor's or lead apprenticeship sponsor's total calculated pursuant to subrule 12.6(3) bears to all applying apprenticeship sponsors' or lead apprenticeship sponsors' total calculated pursuant to subrule 12.6(2).

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

**12.6(5)** By multiplying the percentage calculated in subrule 12.6(4) by the amount determined in subrule 12.6(1).

**261—12.7(15,84GA,HF2460) Application submittal and review process.**

**12.7(1)** The authority will develop a standardized application and make the application available to applicants. To apply for assistance under the program, an applicant shall submit an application to the authority. Applications may be sent to the Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. Required forms and instructions are available by contacting the authority at that address or from the authority's Internet site at [www.iowaeconomicdevelopment.com](http://www.iowaeconomicdevelopment.com).

**12.7(2)** The director shall have final funding authority on applications for financial assistance under this program. Applications will be reviewed and processed for eligibility by the staff of the authority. The director of the authority will approve, defer or deny applications consistent with the requirements of this chapter.

**261—12.8(15,84GA,HF2460) Notice and reporting.**

**12.8(1)** *Notice of award.* Program applicants will be notified in writing of the funding decision, including any conditions and terms of the approval as may be required under the program.

**12.8(2)** *Reporting.* An applicant receiving assistance under the program shall submit any information reasonably requested by the authority in sufficient detail to permit the authority to prepare any reports required by the authority, the board, the general assembly or the governor's office.

These rules are intended to implement 2014 Iowa Acts, House File 2460.

**ARC 1693C****ECONOMIC DEVELOPMENT AUTHORITY[261]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 15.106A and of 2014 Iowa Acts, Senate File 2339, the Economic Development Authority hereby gives Notice of Intended Action to amend Chapter 65, “Brownfield and Grayfield Redevelopment,” Iowa Administrative Code.

In 2014 Iowa Acts, Senate File 2339, the General Assembly made changes to the Redevelopment Tax Credits Program for brownfield and grayfield sites. The amendments conform the rules to the legislative changes and implement the new program requirements.

The Economic Development Authority Board approved these amendments on September 19, 2014, at the Board's monthly meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before November 18, 2014. Paper materials with suggestions and comments may be directed to Timothy J. Whipple, Legal Counsel, 200 East Grand Avenue, Des Moines, Iowa 50309. Electronic submissions may be sent to [tim.whipple@iowa.gov](mailto:tim.whipple@iowa.gov).

After analysis and review of this rule making, the Authority finds that the amendments to the Redevelopment Tax Credits Program are likely to benefit the Iowa economy by helping more developers finance the redevelopment of underutilized existing infrastructure and by helping nonprofit organizations better finance redevelopment projects. The Iowa Department of Revenue has found that the program (1) increases the total assessed value of the redeveloped properties by more than 300 percent; (2) increases job creation at redeveloped properties by 139 percent; (3) and increases total wages at redeveloped properties by 119 percent.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

These amendments are intended to implement 2014 Iowa Acts, Senate File 2339.

The following amendments are proposed.

ITEM 1. Amend rule **261—65.1(15)** and subrules **65.3(1)**, **65.4(1)**, **65.11(1)** and **65.11(2)** by striking the term “redevelopment tax credit program” and inserting “redevelopment tax credits program” in lieu thereof.

ITEM 2. Adopt the following **new** definitions in rule **261—65.2(15)**:

“*Abandoned public building*” means a vertical improvement constructed for use primarily by a political subdivision of the state for a public purpose and whose current use is outdated or prevents a better or more efficient use of the property by the current owner. “Abandoned public building” includes vacant, blighted, obsolete, or otherwise underutilized property.

“*Political subdivision*” means a city, county, township, or school district.

“*Redevelopment tax credits program*” means the tax credits program administered pursuant to Iowa Code sections 15.293A and 15.293B.

“*Vertical improvement,*” “*improvement*” or “*improved*” means the same as defined in Iowa Code section 15J.2.

ITEM 3. Amend the following definitions in rule **261—65.2(15)**:

“*Grayfield site*” means an abandoned public building or an industrial or commercial property meeting that meets all of the following requirements:

1. Infrastructure on the property is outdated or prevents an efficient use of the property, including vacant, blighted, obsolete, or otherwise underutilized property.

2. Property improvements and infrastructure are at least 25 years old and one or more of the following conditions exist:

- Thirty percent or more of a building located on the property is available for occupancy and has been vacated or unoccupied for at least 12 months;
- Assessed value of improvements on the property has decreased by 25 percent or more;
- The property is used as a parking lot;
- Improvements on the property no longer exist.

“*Previously remediated or redeveloped*” means any prior remediation or redevelopment ~~at a brownfield or grayfield site~~, including development for which ~~an application for or an award of brownfield or grayfield tax credits under this chapter~~ has been made.

“*Redevelopment*” means construction or development activities associated with a qualifying redevelopment project that are undertaken either for the purpose of constructing new buildings or improvements at a site where formerly existing buildings have been demolished or for the purpose of rehabilitating, reusing or repurposing existing buildings or improvements. Redevelopment typically includes projects that result in the elimination of blighting characteristics as defined by Iowa Code section 403.2.

ITEM 4. Amend rule 261—65.6(15) as follows:

**261—65.6(15) Application and award procedures General procedural overview.**

**65.6(1)** Subject to availability of funds, applications to the brownfield redevelopment program will be accepted, reviewed and ~~rated~~ scored by economic development authority staff and by the advisory council on an annual basis. Brownfield redevelopment funds will be ~~awarded~~ scored on a competitive basis by the council, which will make recommendations on award amounts to the board.

**65.6(2)** Subject to availability of funds, applications to the redevelopment tax ~~credit~~ credits program for brownfields and grayfields will be accepted and reviewed by economic development authority staff and scored by the advisory council on ~~a monthly~~ an annual basis. For the fiscal year beginning July 1, 2014, applications must be received by March 1, 2015. For each fiscal year thereafter, applications will be accepted beginning on July 1 and must be received by September 1. Subject to the availability of funding, the authority may set additional application deadlines after September 1 and before the end of a fiscal year.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

**65.6(3)** Applications for all forms of financial assistance will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be provided with notice, in writing, to submit additional information. Recommendations from the advisory council will be submitted to the board. The board may approve, deny or defer an application.

**65.6(4)** Application forms for the brownfield redevelopment program and the redevelopment tax credits program for brownfields and grayfields are available upon request from Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. Additional information is available on the authority's Internet site at <http://www.iowaeconomicdevelopment.com>.

**65.6(5)** The authority may provide technical assistance as necessary to applicants. Authority staff may conduct on-site evaluations of proposed activities.

ITEM 5. Amend rule 261—65.7(15) as follows:

**261—65.7(15) Application to the brownfield redevelopment program—agreements.**

**65.7(1)** Every application for assistance shall include evidence of sponsorship and any other information the authority deems necessary in order to process and review the application. An application shall be considered received by the authority only when the authority deems it to be complete. Applications for assistance shall also include the following information:

*a.* A business plan. The business plan should, at a minimum, include a remediation plan, a project contact/applying agency, a project overview (which would include the background of the project area, goals and objectives of the project, and implementation strategy), and a project/remediation budget.

*b.* A statement of purpose describing the intended use of and proposed repayment schedule for any financial assistance received by the applicant.

**65.7(2)** The authority shall accept and review applications in conjunction with the council and the board. The council shall consider applications in the order complete applications are received and make application recommendations to the board. The council will score applications according to the application review criteria established pursuant to rule 261—65.9(15). The board shall approve or deny applications.

~~**65.7(3)** Upon review of the application for the redevelopment tax credit program for brownfields and grayfields, the authority may register the project under the program. If the authority registers the project, it shall, in conjunction with the council and the board, make a preliminary determination as to the maximum amount of the tax credit for which the investor qualifies. After registering the project, the authority shall issue a letter notifying the investor of successful registration under the program. The letter shall include the maximum amount of tax credit for which the investor has received preliminary approval and shall state that the amount is a preliminary determination only. The preliminary determination is not a contract, contract term, promise, guarantee, assurance, or representation of the actual tax credit the investor will receive or should expect to receive. The preliminary determination is a nonbinding figure, provided purely for the investor's and the authority's information and convenience, based on the authority's existing understanding and estimates related to the project. The amount of tax credit included on a certificate issued pursuant to this subrule shall be contingent upon completion of the requirements of subrules 65.7(4) to 65.7(6) and shall be based solely on completion and compliance with all terms and conditions of the contract pursuant to this rule, rule 261—65.10(15), and 2011 Iowa Code Supplement sections 15.293A and 15.293B.~~

~~**65.7(4)** **65.7(3)** Approved applicants shall enter into an agreement with the authority. The agreement for the redevelopment tax credit program for brownfields and grayfields shall specify the requirements necessary in order to receive tax credit and the maximum amount of tax credit available. The agreement for the brownfield redevelopment program shall specify the requirements necessary in order to receive benefits under the program.~~

~~**65.7(5)** Upon completion of a registered project under the redevelopment tax credit program for brownfields and grayfields, an audit of the project's qualifying expenses shall be completed by an independent certified public accountant licensed in the state of Iowa and shall be submitted to the authority.~~

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

~~65.7(6)~~ Upon written notification of project completion from the investor, the authority will review the independent audit, verify the amount of the qualifying investment and issue a redevelopment tax credit certificate to the investor in the amount of the tax credit for which the investor is entitled under its contract with the authority.

ITEM 6. Rescind rule 261—65.8(15) and adopt the following new rule in lieu thereof:

**261—65.8(15) Application to the redevelopment tax credits program—registration of projects—agreements.**

**65.8(1)** *System for application, review, registration, and authorization of projects.* The authority will administer a system for application, review, registration, and authorization of projects as described in this subrule and will only issue tax credit certificates pursuant to subrule 65.11(3).

a. The authority will accept and, in conjunction with the council, review applications for tax credits provided in Iowa Code section 15.293A and, with the approval of the council, make tax credit award recommendations regarding the applications to the board.

b. Applications for redevelopment tax credits will only be accepted during the established application period as provided in subrule 65.6(2).

c. Upon review of an application, the authority may register the project with the redevelopment tax credits program. If the authority registers the project, the authority may, in conjunction with the council, make a preliminary determination as to the amount of tax credit for which an award recommendation will be made to the board.

d. After registering the project, the authority will notify the investor of successful registration under the redevelopment tax credits program. The notification may include the amount of tax credit for which an award recommendation will be made to the board. If an award recommendation is included in the notification, such notification will include a statement that the award recommendation is a recommendation only. The amount of tax credit included on a tax credit certificate issued pursuant to this rule shall be contingent upon an award by the board and upon completion of the requirements in this rule.

e. (1) All completed applications will be reviewed and scored, pursuant to subrule 65.8(2), on a competitive basis by the council and the board. In reviewing and scoring applications, the council and the board may consider any factors the council and board deem appropriate for a competitive application process, including but not limited to the financial need, quality, and feasibility of a qualifying redevelopment project.

(2) For purposes of this rule:

1. “*Feasibility*” means the likelihood that the project will obtain the financing necessary to allow for full completion of the project and the likelihood that the proposed redevelopment or improvement that is the subject of the project will be fully completed.

2. “*Financial need*” means the difference between the total costs of the project less the total financing that will be received for the project.

3. “*Quality*” means the merit of the project after considering and evaluating its total characteristics and measuring those characteristics in a uniform, objective manner against the total characteristics of other projects that have applied for the tax credit provided in this chapter during the same established application period.

f. Upon reviewing and scoring all applications that are part of an annual application period, the board may award tax credits provided in this chapter.

g. If the applicant for a tax credit provided in this chapter has also applied to an agency of the federal government or to the authority, the board, or any other agency of state government for additional financial assistance, the authority, the council, and the board will consider the amount of funding to be received from such public sources when making a tax credit award pursuant to this rule.

h. An applicant that is unsuccessful in receiving a tax credit award during an established application period may make additional applications during subsequent application periods. Such applicants must submit a new application and must be competitively reviewed and scored in the same manner as other applicants in that same application period.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

**65.8(2) Scoring criteria.**

a. Each application for tax credits during each established application period will be scored according to criteria set forth in this paragraph. Points will be added together and the resulting score averaged with the scores of applications evaluated by all council members. Scoring criteria include:

- (1) The project's feasibility: 25 points.
- (2) The project's financial need: 25 points.
- (3) The project's quality: 25 points.
- (4) Whether the project was formerly registered under the program but did not receive an award: 25 points.

b. There is no minimum score required for a project to receive a recommendation for funding, but a higher score indicates that the council views a project more favorably. The council's funding recommendation will reflect its overall view of the project in relation to other applying projects.

**65.8(3) Required information.** An investor applying for a tax credit shall provide the authority with all of the following:

a. Information showing the total costs of the qualifying redevelopment project, including the costs of land acquisition, cleanup, and redevelopment.

b. Information about the financing sources of the investment which are directly related to the qualifying redevelopment project for which the investor is seeking approval for a tax credit, as provided in this chapter.

c. Any other information deemed necessary by the board and the council to review and score the application pursuant to this rule.

**65.8(4) Agreement required—recapture of credits.** If an investor is awarded a tax credit pursuant to this rule, the authority and the investor shall enter into an agreement concerning the qualifying redevelopment project. If the investor fails to comply with any of the requirements of the agreement, the authority may find the investor in default under the agreement and may revoke all or a portion of the tax credit award. The department of revenue, upon notification by the authority of an event of default, shall seek repayment of the value of any such tax credit already claimed in the same manner as provided in Iowa Code section 15.330, subsection 2.

**65.8(5) Project completion.** A registered project shall be completed within 30 months of the date the project was registered unless the authority provides additional time to complete the project. A project will not be provided more than 12 months of additional time. If the registered project is not completed within the time required, the project is not eligible to claim a tax credit pursuant to this chapter.

**65.8(6) Audit required.**

a. Upon completion of a registered project, an audit of the project, completed by an independent certified public accountant licensed in this state, must be submitted to the authority.

b. Upon review of the audit and verification of the amount of the qualifying investment, the authority will issue a tax credit certificate to the investor stating the amount of tax credit that the investor may claim.

ITEM 7. Amend subrule 65.11(4) as follows:

**65.11(4) Amount of tax credit.**

a. *Pro rata share.* The qualified investor may claim the amount based upon the pro rata share of the qualified investor's earnings from the partnership, limited liability company, S corporation, estate, or trust. ~~Any~~ Except as provided in paragraph 65.11(4) "b," any tax credit in excess of the qualified investor's liability for the tax year is not refundable but may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the qualified investor receives the tax credit.

b. *Refundability.* A tax credit in excess of the taxpayer's liability for the tax year is refundable if all of the following conditions are met:

- (1) The taxpayer is an investor making application for tax credits provided in this rule and is an entity organized under Chapter 504 and qualifying under Section 501(c)(3) of the Internal Revenue Code as an organization exempt from federal income tax under Section 501(a) of the Internal Revenue Code.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

(2) The taxpayer establishes during the application process described in this chapter that the requirement in subparagraph 65.11(4)“b”(1) is satisfied. The authority, when issuing a certificate to a taxpayer that meets the requirements in this paragraph 65.11(4)“b,” will indicate on the certificate that such requirements have been satisfied. A certificate indicating that it is refundable pursuant to this paragraph shall not also be transferred to another taxpayer unless all the requirements of this paragraph have been met.

~~b. c.~~ *Percentage.* The amount of the tax credit shall equal one of the following:

- (1) Twelve percent of the taxpayer’s qualifying investment in a grayfield site.
- (2) Fifteen percent of the taxpayer’s qualifying investment in a grayfield site if the qualifying redevelopment project meets the requirements of green development as defined in 261—65.2(15).
- (3) Twenty-four percent of the taxpayer’s qualifying investment in a brownfield site.
- (4) Thirty percent of the taxpayer’s qualifying investment in a brownfield site if the qualifying redevelopment project meets the requirements of green development as defined in 261—65.2(15).

~~e. d.~~ *Maximum credit per project.* The maximum amount of a tax credit for a qualifying investment in any one qualifying redevelopment project shall not exceed 10 percent of the maximum amount of tax credits available in any one fiscal year pursuant to paragraph 65.11(4)“~~d.~~”“e.”

~~d. e.~~ *Maximum credit total.* For the fiscal year beginning July 1, 2009, the maximum amount of tax credits issued by the authority shall not exceed \$1 million. For the fiscal year beginning July 1, 2011, ~~and for each subsequent fiscal year,~~ the maximum amount of tax credits issued by the authority shall be an amount determined by the board but not in excess of \$5 million. For the fiscal year beginning July 1, 2013, and for each subsequent fiscal year, the maximum amount of tax credits issued by the authority shall be an amount determined by the board but not in excess of the amount established pursuant to Iowa Code section 15.119.

ITEM 8. Amend subrule 65.11(5) as follows:

**65.11(5) *Claiming a tax credit.*** The qualified investor must ~~attach~~ include one or more tax credit certificate(s) ~~to~~ with the qualified investor’s tax return. A tax credit certificate shall not be used or ~~attached to~~ included with a return filed for a taxable year beginning prior to ~~July 1, 2009~~ the tax year listed on the certificate. The tax credit certificate or certificates ~~attached to~~ included with the qualified investor’s tax return shall be issued in the qualified investor’s name, expire on or after the last day of the taxable year for which the qualified investor is claiming the tax credit, and show a tax credit amount equal to or greater than the tax credit claimed on the qualified investor’s tax return.

**ARC 1691C**

**ECONOMIC DEVELOPMENT AUTHORITY[261]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 15.106A and of 2014 Iowa Acts, Senate File 2359, section 20, the Economic Development Authority hereby gives Notice of Intended Action to adopt new Chapter 118, “Strategic Infrastructure Program,” Iowa Administrative Code.

In 2014 Iowa Acts, Senate File 2359, the General Assembly authorized the Authority to implement a new Strategic Infrastructure Program. The rules establish a program to provide such assistance and describe the manner in which the Authority intends to implement and administer the program.

The Economic Development Authority Board approved this amendment on September 19, 2014, at the Board’s monthly meeting.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Any interested person may make written suggestions or comments on this proposed amendment on or before November 18, 2014. Paper materials with suggestions and comments may be directed to Timothy J. Whipple, Legal Counsel, 200 East Grand Avenue, Des Moines, Iowa 50309. Electronic submissions may be sent to [tim.whipple@iowa.gov](mailto:tim.whipple@iowa.gov).

After analysis and review of this rule making, the Authority finds that the new program is likely to create jobs and to substantially benefit the Iowa economy by helping develop commonly utilized assets that provide an advantage to one or more private sector entities or that create necessary physical infrastructure in the state. Such projects will include vertical improvement developments, facilities and equipment upgrades, or the redevelopment or repurposing of underutilized property or other assets. Each project funded will attract additional public or private sector investment and will result in broad-based prosperity in the state.

These rules are intended to implement 2014 Iowa Acts, Senate File 2359.

The following amendment is proposed.

Adopt the following **new** 261—Chapter 118:

CHAPTER 118  
STRATEGIC INFRASTRUCTURE PROGRAM

**261—118.1(15) Authority.** The authority for adopting rules establishing a strategic infrastructure program is provided in Iowa Code section 15.313 and in Iowa Code section 15.106A.

**261—118.2(15) Purpose.** The purpose of the strategic infrastructure program is to assist projects that develop commonly utilized assets that provide an advantage to one or more private sector entities or that create necessary physical infrastructure in the state, and such projects are not adequately provided by the public or private sectors.

**261—118.3(15) Definitions.**

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*Board*” means the members of the economic development authority appointed by the governor and in whom the powers of the authority are vested pursuant to Iowa Code section 15.105.

“*Council*” means the Iowa innovation council established pursuant to Iowa Code section 15.117A, or any panel or committee composed of members of the council.

“*Director*” means the director of the economic development authority.

“*Eligible project*” means a project meeting the requirements of rule 261—118.5(15).

“*Financial assistance*” means the same as defined in Iowa Code section 15.102.

“*Program*” means the strategic infrastructure program established in this chapter.

“*Strategic infrastructure*” means projects that develop commonly utilized assets that provide an advantage to one or more private sector entities or that create necessary physical infrastructure in the state, and such projects are not adequately provided by the public or private sectors. Such projects may include vertical improvement developments, facilities and equipment upgrades, or the redevelopment or repurposing of underutilized property or other assets, provided that each project is intended to attract additional public or private sector investment and result in broad-based prosperity in this state.

“*Vertical improvement*” means the same as defined in Iowa Code section 15J.2.

**261—118.4(15) Program description, disbursement of funds, and contract administration.**

**118.4(1) Program description.** The program established in this chapter provides financial assistance to certain strategic infrastructure projects. The board, after considering the recommendations made by the council, will determine which projects to fund and how much should be awarded to each project. The director and staff of the authority will collect and process applications from applicants, advise the council and the board as to the available program funding, and help evaluate whether a proposed project meets the requirements of the program. The council will review applications meeting the program requirements, score them according to the criteria described in rule 261—118.7(15), and make recommendations to the

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

board as to the completeness of applications and as to which projects to fund, how much to award to each project, and the type of financial assistance to be provided. While the council's recommendations are advisory and are not binding upon the board, the board will not take final action on an award unless the council has first considered the project, scored it, and made a recommendation. The board may approve an award for a project, decline to award a project, or refer a project back to the council for further review and recommendation.

**118.4(2) *Disbursement of funds.*** The authority will disburse funds to a project only after a complete application has been received, an award has been recommended by the council and approved by the board, a contract has been executed between the applicant and the authority, and all applicable conditions for disbursement have been met, including the submission of documentation pertaining to the eligible expenditures. Disbursement of funds under the contract will be on a reimbursement basis for expenses incurred by the applicant as provided under the contract.

**118.4(3) *Contract administration.*** The authority will prepare a contract for each project receiving an award from the board. The contract will reflect the terms of the award and may include other terms and conditions reasonably necessary for implementation of the program pursuant to this chapter. Substantial amendments to a contract must be approved by the board. The board may refer substantial amendments to the council for review and recommendation. Substantial amendments include the amount of financial assistance, the length of the contract, whether to terminate the contract, and the terms of a settlement following an event of default. Other changes or amendments to the contract may be negotiated by the authority with the approval of the director.

**261—118.5(15) Program eligibility and application requirements.** To be eligible for financial assistance under the program, an applicant shall meet all of the following requirements:

**118.5(1)** The applicant must describe in detail the nature, scope, design, and goals of the project, including the relationships of the entities and individuals involved, and in addition, the applicant must explain how the project fulfills the requirements of each of the subrules in this rule. The council and the board will use the description for purposes of scoring the project pursuant to rule 261—118.7(15).

**118.5(2)** The applicant must propose to develop a commonly utilized asset that either benefits one or more private sector entities or that creates necessary physical infrastructure in the state.

**118.5(3)** The applicant must propose to develop a project that is not adequately provided by the public or private sectors.

**118.5(4)** The applicant must propose a project that includes vertical infrastructure improvement developments, facilities and equipment upgrades, or the redevelopment or repurposing of underutilized property or other assets and must describe how and to what extent the project will attract additional public or private sector investment and how the project will result in broad-based prosperity in the state.

**118.5(5)** The applicant must describe the project's proposed financing structure, including the sources of funds and the proposed uses of the funds, and must propose the manner in which any financial assistance received under the program will be used.

**261—118.6(15) Application submittal and review process.**

**118.6(1)** The authority will develop a standardized application process and make information on applying available to applicants with eligible projects. To apply for assistance under the program, an applicant shall submit an application to the authority. Applications may be sent to the Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. Required forms and instructions are available by contacting the authority at that address. Other information may also be found on the authority's Internet site at [www.iowaeconomicdevelopment.com](http://www.iowaeconomicdevelopment.com).

**118.6(2)** The board has final decision-making authority on requests for financial assistance for this program. Applications will be accepted and processed by authority staff and reviewed and scored by the council. Applications will be reviewed in the order received by the authority. The authority and the board will consider applications on a continuing basis. The board will take final action on all applications for financial assistance; however, the authority may refuse to accept incomplete applications or may refuse to accept applications because of insufficient funds. The council will score applications according to

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

the criteria specified in rule 261—118.7(15). There is no minimum score required for funding under the program; however, a lower score indicates that the council views the project less favorably than a project with a higher score.

**261—118.7(15) Application scoring criteria.** When applications for financial assistance under the program are reviewed, the criteria below will be considered and the application scored as described. When scoring the application according to each of the criteria below, to the extent that a proposed project involves multiple public and private sector entities, for-profit and nonprofit organizations, and economic development and educational institutions, the council will review such partnerships as indicating that a commonly utilized asset is being proposed and therefore may award more points under each criterion. The criteria under which each application will be scored are:

**118.7(1)** The overall quality of the project, especially as reflected in the description and explanation submitted pursuant to subrule 118.5(1): 20 points.

For purposes of this subrule, the council will consider a project's estimated economic impact and the extent to which it contributes to the overall quality of the project. The council will also consider the structure of the proposed project and the nature of the partnerships proposed to be formed as part of the proposed project.

**118.7(2)** The extent to which the commonly utilized asset proposed by the project benefits one or more private sector entities and the extent to which the commonly utilized asset creates necessary physical infrastructure in the state: 20 points.

For purposes of this subrule, more points will be awarded to projects demonstrating greater benefits or benefits to more entities and to projects demonstrating more critical necessary physical infrastructure.

**118.7(3)** The extent to which the proposed project provides benefits that are not adequately provided by the public or private sectors: 20 points.

**118.7(4)** The importance of the vertical infrastructure improvement developments, facilities and equipment upgrades, or the redevelopment or repurposing of underutilized property or other assets that are proposed, the extent to which the proposed project will attract additional public or private sector investment, and the likelihood that the project will result in broad-based prosperity in the state: 20 points.

**118.7(5)** The sufficiency of the proposed project's financing structure, the feasibility of the sources of funds, and the appropriateness of the proposed uses of the funds: 20 points.

For purposes of this subrule, the council will consider a proposed project's overall financing gap and the total amount of funds leveraged from other sources.

**261—118.8(15) Notice of award and reporting.**

**118.8(1)** *Notice of award.* Successful applicants will be notified in writing of an award of financial assistance, including any conditions and terms of the award.

**118.8(2)** *Reporting.* An applicant receiving assistance under the program shall submit any information reasonably requested by the authority in sufficient detail to permit the authority to prepare any reports required by the authority, the board, the general assembly or the governor's office.

These rules are intended to implement Iowa Code section 15.313 as amended by 2014 Iowa Acts, Senate File 2359.

**ARC 1707C****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Iowa Administrative Code.

This amendment corrects a cross reference to Board of Educational Examiners rules in the Department’s rules regarding qualifications of Area Education Agency personnel providing psychological evaluations and counseling or psychotherapy services under the Medicaid program. The current cross reference is obsolete.

Any interested person may make written comments on the proposed amendment on or before November 18, 2014. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

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

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

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

The following amendment is proposed.

Amend paragraph **77.28(4)“a”** as follows:

*a.* Endorsed by the Iowa board of educational examiners as a school psychologist pursuant to ~~rule 282—15.11(272)~~ 282—subrule 27.3(3);

**ARC 1705C****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 109, “Child Care Centers,” and Chapter 110, “Child Development Homes,” Iowa Administrative Code.

These amendments streamline the current record check process for employees of child care centers and child development homes by aligning the process with the centralized process used for other areas within the Department. These amendments also align the process with Chapter 119 in regard to involvement by the requesting entities. A new definition of “requesting entity” is also proposed in these amendments.

Any interested person may make written comments on the proposed amendments on or before November 18, 2014. Comments should be directed to Harry Rossander, Bureau of Policy Coordination,

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

Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217). After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 234.6.

The following amendments are proposed.

ITEM 1. Adopt the following new definition of "Requesting entity" in rule **441—109.1(237A)**:

*"Requesting entity"* means an entity covered by these rules that is requesting an evaluation to determine if the person being evaluated can have involvement with child care. The requesting entity must be a child care facility as defined in Iowa Code chapter 237A.

ITEM 2. Amend paragraph **109.6(6)"b"** as follows:

*b. Authorization.* A requesting entity shall request a record check evaluation prior to the employment of a person subject to record checks. The person subject to record checks shall complete Form 595-1396, the DHS Criminal History Record Check Form B, and any other forms required by the department of public safety to authorize the release of records.

ITEM 3. Amend paragraph **109.6(6)"g"** as follows:

*g. Evaluation required.* For all other transgressions, and as requested under subparagraph 109.6(6)"f"(2), the department shall notify the ~~affected person and the licensee~~ requesting entity that an evaluation shall be conducted to determine whether prohibition of the person's involvement with child care is warranted.

(1) ~~The person with the transgression shall complete and return Form 470-2310, the Record Check Evaluation, within ten calendar days of the date on the form. The requesting entity shall provide the form and any other documents to the department within ten calendar days of the date on the form. The department shall use the information the person with the transgression provides on this form to assist in the evaluation. Failure of the person with the transgression to complete and the requesting entity to return this form by the specified date shall result in denial or revocation of the license or denial of employment. The department shall not process evaluations that are not signed by the person subject to an evaluation.~~

(2) No change.

(3) ~~In an evaluation, the department shall consider all of the following factors:~~

- ~~1. The nature and seriousness of the transgression in relation to the position sought or held.~~
- ~~2. The time elapsed since the commission of the transgression.~~
- ~~3. The circumstances under which the transgression was committed.~~
- ~~4. The degree of rehabilitation.~~
- ~~5. The likelihood that the person will commit the transgression again.~~
- ~~6. The number of transgressions committed by the person.~~

(3) The requesting entity may provide, or the department may request from the person subject to an evaluation or from the requesting entity, information to assist in performance of the evaluation that includes, but is not limited to, the following:

1. Documentation of criminal justice proceedings.
2. Documentation of rehabilitation.
3. Written employment references or applications.
4. Documentation of substance abuse education or treatment.
5. Criminal history records, child abuse information, and dependent adult abuse information from other states.
6. Documentation of the person's prior residences.

(4) ~~When a person subject to a record check has a transgression that has been determined in a previous evaluation not to warrant prohibition of the person's involvement with child care and has no subsequent transgressions, an exemption from reevaluation of the latest record check is authorized. The~~

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

~~person may commence employment with another child care facility in accordance with the department's previous evaluation. The exemption is subject to all of the following conditions:~~

~~1. 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.~~

~~2. Any restrictions placed on the person's employment by the department in the previous evaluation shall remain applicable in the person's subsequent employment.~~

~~3. The person subject to the record check has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer or the previous employer provides to the subsequent employer 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, the record check shall be reevaluated.~~

~~4. The subsequent employer may request a reevaluation of the record check and may employ the person while the reevaluation is being performed.~~

~~(4) Any person or agency that might have pertinent information regarding criminal or abuse history and rehabilitation of the prospective employee may be contacted.~~

~~(5) In an evaluation, the department shall consider all of the following factors:~~

~~1. The nature and seriousness of the transgression in relation to the position sought or held.~~

~~2. The time elapsed since the commission of the transgression.~~

~~3. The circumstances under which the transgression was committed.~~

~~4. The degree of rehabilitation.~~

~~5. The likelihood that the person will commit the transgression again.~~

~~6. The number of transgressions committed by the person.~~

~~(6) When a person subject to a record check has a transgression that has been determined in a previous evaluation not to warrant prohibition of the person's involvement with child care and has no subsequent transgressions, an exemption from reevaluation of the latest record check is authorized. The person may commence employment with another child care facility in accordance with the department's previous evaluation. The exemption is subject to all of the following conditions:~~

~~1. The person's 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.~~

~~2. Any restrictions placed on the person's employment by the department in the previous evaluation shall remain applicable in the person's subsequent employment.~~

~~3. The person subject to the record check has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer, or the previous employer provides to the subsequent employer 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, the record check shall be reevaluated.~~

~~4. The subsequent employer may request a reevaluation of the record check and may employ the person while the reevaluation is being performed.~~

ITEM 4. Amend paragraph **109.6(6)“h”** as follows:

*h. Evaluation decision.* Within 30 days of receipt of a completed ~~Form 470-2310~~, Record Check Evaluation, the department shall make a decision on the person's involvement with child care. The department has final authority in determining whether prohibition of the person's involvement with child care is warranted and in developing any conditional requirements and corrective action plan under this paragraph.

(1) The department shall mail to the ~~individual~~ requesting entity and the person on whom the evaluation was completed ~~Form 470-2386~~, the Record Check Decision, that explains the decision reached regarding the evaluation of the transgression ~~and Form 470-0602, Notice of Decision.~~

(2) to (4) No change.

ITEM 5. Amend paragraph **110.7(3)“b”** as follows:

*b. Authorization.* The person subject to record checks shall complete ~~Form 470-5143~~, the Iowa Department of Human Services Record Check Authorization Form; ~~Form DCI-45, Waiver Agreement~~;

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

Form FD-258, Federal Fingerprint Card; and any other forms required by the department of public safety to authorize the release of records.

ITEM 6. Amend subparagraph **110.7(3)“g”(1)** as follows:

(1) The person with the transgression shall complete and return ~~Form 470-2310~~, the Record Check Evaluation; form within ten calendar days of the date on the form. The department shall use the information the person with the transgression provides on this form to assist in the evaluation. Failure of the person with the transgression to complete and return this form within ten calendar days of the date on the form shall result in denial or revocation of the registration certificate.

ITEM 7. Amend paragraph **110.7(3)“h”** as follows:

*h. Evaluation decision.* The department has final authority in determining whether prohibition of the person's involvement with child care is warranted and in developing any conditional requirements or corrective action plan.

(1) Within 30 calendar days of receipt of a completed ~~Form 470-2310~~, Record Check Evaluation, the department shall make a decision on the person's involvement with child care.

(2) Within 30 calendar days of receipt of a completed ~~Form 470-2310~~, Record Check Evaluation, the department shall mail to the person subject to an evaluation ~~Form 470-2386~~, a Record Check Decision; that explains the decision reached regarding the evaluation of the transgression and ~~Form 470-4558~~; a Notice of Decision: Child Care.

(3) The department shall issue ~~Form 470-4558~~, a Notice of Decision: Child Care; prohibiting involvement with child care; when the person subject to an evaluation fails to complete the Record Check Evaluation; ~~Form 470-2310~~, within the ten-calendar-day time frame.

(4) and (5) No change.

**ARC 1706C**

## **HUMAN SERVICES DEPARTMENT[441]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 117, “Foster Parent Training,” and Chapter 200, “Adoption Services,” Iowa Administrative Code.

These amendments provide for a preservice training specific to Native American families to increase the number of licensed Native American families available for the placement of Native American children who come into the child welfare system.

The Department's recruitment and retention contractor has subcontracted with the Native Families for Native Children to use the new Trauma Informed Partnering for Safety and Permanence: Model Approach to Partnership in Parenting (TIPS-MAPP) curriculum as the preservice training for Native American families. The current rules specify at least 30 hours of the PS-MAPP preservice training curriculum. The TIPS-MAPP curriculum is an updated curriculum that incorporates trauma-informed care and Native American culture. In the future, the Department may change the 30-hour preservice training curriculum, such as this new TIPS-MAPP, and may make other changes to the 30-hour preservice training curriculum. For now, the amendments eliminate the name of the specific preservice training to allow the Department to choose a different preservice training without having to change the administrative rules.

Any interested person may make written comments on the proposed amendments on or before November 18, 2014. Comments should be directed to Harry Rossander, Bureau of Policy Coordination,

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

Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217). After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 237.5A.

The following amendments are proposed.

ITEM 1. Amend subrule 117.1(1) as follows:

**117.1(1) *Preservice training requirement.*** Each individual foster parent applicant shall complete the entire ~~“Partnering for Safety and Permanence: Model Approach to Partnership in Parenting”~~ (PS-MAPP) curriculum developed by the Child Welfare Institute 30-hour preservice training as approved by the foster family program manager.

*a.* Applicants shall complete PS-MAPP the 30-hour preservice training before receiving a license for the first time.

*b.* Applicants shall retake PS-MAPP the 30-hour preservice training if they do not complete the curriculum within 24 months after initially commencing it.

*c.* The department may waive the PS-MAPP preservice training requirement in whole or in part when the department finds that:

(1) The applicant has completed relevant training or has a combination of relevant training and experience that is an acceptable equivalent to all or a portion of the required preservice training; or

(2) There is good cause for the waiver based upon the circumstances of the child and the applicant.

ITEM 2. Amend subrule 117.1(2) as follows:

**117.1(2) *Preservice training program approval requirements.***

*a.* No change.

*b. Length.* The entire PS-MAPP preservice training program shall total at least 30 hours of contact between leaders and participants. The department's recruitment and retention contractor shall devise a procedure for applicants to make up any portions of the preservice training ~~which that~~ are missed.

*c. Instructors.* The program shall be team taught by at least one foster or adoptive parent and one casework staff person. All instructors shall be certified PS-MAPP leaders or as approved by the adult, children and family services division administrator or designee.

*d. to f.* No change.

*g. Training records.* A record of the applicants who begin and complete the training and of the training program evaluations shall be submitted to the recruitment and retention contractor at the end of each 30-hour PS-MAPP preservice training session.

ITEM 3. Amend rule 441—117.2(237), introductory paragraph, as follows:

**441—117.2(237) Required orientation.** All foster parent applicants shall attend orientation before attending PS-MAPP the 30-hour preservice training and before a foster child is placed in their home. Orientation shall not count toward the required 30 hours of preservice training.

ITEM 4. Amend paragraph **200.4(4)“a”** as follows:

*a.* Completion of at least 30 hours of ~~“Partnering for Safety and Permanence: Model Approach to Partnership in Parenting”~~ (PS-MAPP) preservice training and the self-study course, “Universal Precautions in Foster and Adoptive Family Homes,” before placement of a child. These training requirements apply to families who are adopting special needs children who are under the guardianship of the department.

(1) Foster parents licensed before December 31, 2002, who have been caring for a foster child in their home for at least six months and who have been selected to adopt that child may have their participation in adoption training waived by the service area manager or designee.

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

(2) Relatives who have cared for a related child for at least six months and who have been selected to adopt that related child may have their participation in the ~~PS-MAPP~~ preservice training waived by the service area manager or designee.

(3) The department may waive the ~~PS-MAPP~~ 30-hour preservice training requirement in whole or in part when the department finds that:

1. The applicant has completed relevant training or has a combination of relevant training and experience that is an acceptable equivalent to all or a portion of the required preservice training; or

2. There is good cause for the waiver based upon the circumstances of the child and the applicant.

(4) If the adoptive parents are accepting placement of a child who is at high risk of becoming or is HIV positive, they shall also complete the “Caring for Children With HIV” course.

(5) Applicants must retake ~~PS-MAPP~~ the 30-hour preservice training if the adoption approval process is not completed within 24 months after ~~PS-MAPP~~ the preservice training is initially completed.

**ARC 1687C**

## **LABOR SERVICES DIVISION[875]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 88.5, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 10, “General Industry Safety and Health Rules,” and Chapter 26, “Construction Safety and Health Rules,” Iowa Administrative Code.

Earlier this year, the U.S. Department of Labor, Occupational Safety and Health Administration, (federal OSHA) made significant updates to the occupational safety and health standards concerning electrical protective equipment and electrical power generation, distribution and transmission. On September 24, 2014, federal OSHA published corrections to the recently adopted standards, and with this Notice of Intended Action, the Iowa Labor Commissioner proposes to adopt those corrections.

The principal reasons for adoption of these amendments are to implement legislative intent, protect the safety and health of Iowa workers, and make Iowa’s regulations current and consistent with federal regulations. Pursuant to Iowa Code subsection 88.5(1) and 29 CFR 1953.5, Iowa must adopt changes to the federal occupational safety and health standards.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on November 18, 2014, a public hearing will be held on November 19, 2014, at 9 a.m. in the Capitol View Room, 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than November 19, 2014, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to [kathleen.uehling@iwd.iowa.gov](mailto:kathleen.uehling@iwd.iowa.gov).

No variance procedures are included in this rule making. Variance procedures are set forth in 875—Chapter 5.

After analysis and review of this rule making, no impact on jobs will occur.

These amendments are intended to implement Iowa Code section 88.5 and 29 CFR 1953.5.

The following amendments are proposed.

LABOR SERVICES DIVISION[875](cont'd)

ITEM 1. Amend rule **875—10.20(88)** by inserting the following at the end thereof:  
79 Fed. Reg. 56960 (September 24, 2014)

ITEM 2. Amend rule **875—26.1(88)** by inserting the following at the end thereof:  
79 Fed. Reg. 56960 (September 24, 2014)

**ARC 1708C**

## **MEDICINE BOARD[653]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 147.76 and 272C.2, the Board of Medicine hereby proposes to amend Chapter 13, “Standards of Practice and Principles of Medical Ethics,” Iowa Administrative Code.

The purpose of Chapter 13 is to establish standards of medical practice for medical physicians and osteopathic physicians. The proposed amendments address a National Transportation Safety Board recommendation that states adopt guidance for physicians to discuss with patients the effects that patients’ medical conditions and the medication they use may have on their ability to safely operate a vehicle in any mode of transportation.

The Board approved this Notice of Intended Action during a regularly scheduled meeting on October 3, 2014.

Any interested person may present written comments on the proposed amendments not later than 4:30 p.m. on November 18, 2014. Such written materials should be sent to Mark Bowden, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or sent by e-mail to [mark.bowden@iowa.gov](mailto:mark.bowden@iowa.gov).

There will be a public hearing on November 18, 2014, at 1 p.m. at the Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

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

These amendments are intended to implement Iowa Code chapters 147, 148 and 272C.

The following amendments are proposed.

ITEM 1. Renumber subrule **13.2(8)** as **13.2(9)**.

ITEM 2. Adopt the following **new** subrule 13.2(8):

**13.2(8) Ability to safely operate a vehicle.** Physicians who prescribe controlled substances for pain management shall discuss with patients the effects their medical conditions and medication use may have on their ability to safely operate a vehicle in any mode of transportation.

## **TREASURER OF STATE**

### **Notice—Public Funds Interest Rates**

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions JoAnn Johnson, Superintendent of Banking James M. Schipper, and Auditor of State Mary Mosiman have established today the following rates of interest for public obligations and special assessments. The usury rate for October is 4.50%.

TREASURER OF STATE(cont'd)

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants .....	Maximum 6.0%
74A.4 Special Assessments .....	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Financial Institutions as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective October 9, 2014, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days .....	Minimum .05%
32-89 days .....	Minimum .05%
90-179 days .....	Minimum .05%
180-364 days .....	Minimum .05%
One year to 397 days .....	Minimum .05%
More than 397 days .....	Minimum .10%

These are minimum rates only. All time deposits are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

**ARC 1684C****COLLEGE STUDENT AID COMMISSION[283]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 261.3, the Iowa College Student Aid Commission hereby adopts an amendment to Chapter 5, "Contested Cases," Iowa Administrative Code.

The rules in Chapter 5 describe the Commission's contested case procedures. This amendment updates the Commission's address as identified by a regular review of the administrative rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 20, 2014, as **ARC 1579C**. The adopted amendment is identical to that published under Notice of Intended Action.

The Commission does not intend to grant waivers under the provisions of this rule.

This amendment was adopted during the September 26, 2014, meeting of the Iowa College Student Aid Commission.

After analysis and review of this rule making, the Commission finds that there is no impact on jobs.

This amendment is intended to implement Iowa Code chapter 261.

This amendment will become effective December 3, 2014.

The following amendment is adopted.

Amend subrule 5.12(5) as follows:

**5.12(5) Proof of mailing.** Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or 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 College Student Aid Commission, ~~200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609~~ 430 East Grand Avenue, Third Floor, Des Moines, Iowa 50309-1920, 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)

[Filed 9/30/14, effective 12/3/14]

[Published 10/29/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/14.

**ARC 1685C****COLLEGE STUDENT AID COMMISSION[283]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 261.113, the Iowa College Student Aid Commission hereby adopts amendments to Chapter 24, "Rural Iowa Primary Care Loan Repayment Program," Iowa Administrative Code.

The amendments to Chapter 24 reflect changes to Iowa Code section 261.113 that were enacted in 2014 Iowa Acts, Senate File 2347, sections 2, 16 and 17.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 20, 2014, as **ARC 1586C**. The adopted amendments are identical to those published under Notice of Intended Action.

The Commission does not intend to grant waivers under the provisions of these rules.

These amendments were adopted during the September 26, 2014, meeting of the Iowa College Student Aid Commission.

After analysis and review of this rule making, the Commission finds that there could be a positive impact on jobs. This rule making provides incentives for primary care physicians to practice in designated service commitment areas in Iowa.

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

These amendments are intended to implement Iowa Code chapter 261.

These amendments will become effective on December 3, 2014.

The following amendments are adopted.

ITEM 1. Amend rule 283—24.1(261) as follows:

**283—24.1(261) Rural Iowa primary care loan repayment program.** The rural Iowa primary care loan repayment program is a state-supported and administered loan repayment program for students who agree to practice as physicians in service commitment areas for ~~60~~ five consecutive ~~months~~ years and meet the requirements of these rules.

ITEM 2. Amend rule **283—24.2(261)**, definition of “Eligible loan,” as follows:

“*Eligible loan*” means the physician’s total subsidized, unsubsidized, and consolidated Federal Stafford Loan amount under the Federal Family Education Loan Program, ~~or the~~ Federal Direct Loan Program, federal Graduate PLUS Loan, or federal Perkins Loan, including principal and interest. Only the outstanding portion of a federal consolidation loan that was used to repay an eligible subsidized or unsubsidized Federal Stafford Loan qualifies for loan repayment.

ITEM 3. Amend rule 283—24.3(261) as follows:

**283—24.3(261) Eligibility requirements.**

**24.3(1)** An eligible university will recommend up to ten applicants to the commission for loan repayment benefits. Priority will be given to students who are Iowa residents upon enrolling in the eligible university. The criteria used by the state board of regents to determine residency for tuition purposes, Iowa Administrative Code rule 681—1.4(262), are adopted for this program. ~~Fifty percent~~ The percentage of the agreements shall to be entered into by students attending each eligible university shall be evenly divided.

*a.* The commission will annually determine and communicate the number of recommendations that can be funded at each eligible university.

*b.* If fewer than ~~one-half of the total~~ recommendations in 24.3(1) “*a*” are fulfilled by students at one eligible university, the commission may obtain additional recommendations from the other eligible university to award the remaining agreements.

**24.3(2)** An applicant must enter into an agreement with the commission ~~when~~ during the applicant begins curriculum applicant’s final year of study leading to a doctor of medicine or osteopathy degree.

**24.3(3)** An applicant must ~~remain~~ be enrolled on a full-time basis ~~in each term of enrollment~~ and graduate with a doctor of medicine or osteopathy degree from an eligible university. The commission may waive the full-time enrollment requirement for a temporary time frame only in the instance of a leave of absence approved by an eligible university. The applicant must request a waiver from the commission in writing.

**24.3(4)** An applicant must apply for, enter, and complete a residency program in Iowa.

**24.3(5)** Within nine months of graduating from the residency program, an applicant must receive a permanent license to practice medicine and surgery or osteopathic medicine and surgery in the state of Iowa and engage in full-time practice, as defined by the service commitment area, of medicine and surgery or osteopathic medicine and surgery specializing in family medicine, pediatrics, psychiatry, internal medicine, or general surgery for a period of ~~60~~ five consecutive ~~months~~ years in a service commitment area.

**24.3(6)** An applicant must annually complete and return to the commission an ~~affidavit of full-time enrollment at an eligible university and, when applicable, an annual~~ affidavit of acceptance into and completion of residency programs and acceptance of and completion of employment obligations in a service commitment area.

**24.3(7)** Prior to or upon engagement in full-time employment in a service commitment area, the physician must contract with a service commitment area to provide a nonrefundable \$20,000 contribution for deposit in the rural Iowa primary care trust fund. Payment must be received by the commission from a service commitment area prior to payment of any loan repayment awards.

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

**24.3(8)** Failure by the applicant to meet all eligibility requirements under this rule and in the agreement will result in forfeiture of all remaining unpaid payments.

ITEM 4. Amend subrule 24.4(2) as follows:

**24.4(2)** The maximum award will be paid to the physician's eligible loan holder in five equal installments, upon successful completion of each of five 12-month employment obligations. Failure to complete all, or any portion, of the ~~60-consecutive-month~~ five-consecutive-year employment obligation will result in the forfeiture of all remaining unpaid payments. A physician who fails to meet the requirements of these rules may also be subject to repayment of moneys advanced by the service commitment area as provided in any contract between the physician and the service commitment area.

ITEM 5. Amend rule 283—24.5(261) as follows:

**283—24.5(261) Waivers.**

**24.5(1)** *Service commitment area.* The commission may waive the requirement that the physician practice in the same service commitment area for ~~all 60 months~~ five years. The physician must request a waiver from the commission in writing.

**24.5(2)** *Full-time employment.* The commission may waive the requirement that the physician be employed full-time if the physician demonstrates exceptional circumstances. The physician must request a waiver from the commission in writing. If a waiver request is granted by the commission, the agreement will be amended to provide an allowance for part-time employment. The ~~60-month~~ five-year employment obligation will be proportionally extended to ensure the physician is employed in a service commitment area for the equivalent of ~~60~~ five full-time ~~months~~ years.

**24.5(3)** and **24.5(4)** No change.

ITEM 6. Amend **283—Chapter 24**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 261.113 as amended by 2014 Iowa Acts, Senate File 2347.

[Filed 9/30/14, effective 12/3/14]

[Published 10/29/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/14.

**ARC 1686C**

**COLLEGE STUDENT AID COMMISSION[283]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 261.114, the Iowa College Student Aid Commission hereby adopts amendments to Chapter 25, "Rural Iowa Advanced Registered Nurse Practitioner and Physician Assistant Loan Repayment Program," Iowa Administrative Code.

The amendments to Chapter 25 reflect changes to Iowa Code section 261.114 that were enacted in 2014 Iowa Acts, Senate File 2347, sections 2, 18 and 19.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 20, 2014, as **ARC 1587C**. These amendments are identical to those published under Notice of Intended Action.

The Commission does not intend to grant waivers under the provisions of these rules.

After analysis and review of this rule making, the Commission finds that there could be a positive impact on jobs. This rule making provides incentives to physician assistants and advanced registered nurse practitioners to practice in designated service commitment areas in Iowa.

These amendments are intended to implement Iowa Code chapter 261.

These amendments will become effective on December 3, 2014.

The following amendments are adopted.

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

ITEM 1. Amend rule 283—25.1(261) as follows:

**283—25.1(261) Rural Iowa advanced registered nurse practitioner and physician assistant loan repayment program.** The rural Iowa advanced registered nurse practitioner and physician assistant loan repayment program is a state-supported and administered loan repayment program for applicants who agree to practice as advanced registered nurse practitioners or physician assistants in service commitment areas for ~~60~~ five consecutive months ~~years~~ and meet the requirements of these rules.

ITEM 2. Amend rule **283—25.2(261)**, definitions of “Advanced registered nurse practitioner,” “Eligible loan” and “Eligible university,” as follows:

“*Advanced registered nurse practitioner*” means an individual who graduated from a ~~doctorate of nursing practice degree~~ graduate-level credential program at an eligible university, holds a practitioner’s license to practice as an advanced registered nurse practitioner pursuant to Iowa Code chapter 152, and is employed in the practice of nursing in an eligible service commitment area.

“*Eligible loan*” means the advanced registered nurse practitioner’s or physician assistant’s total subsidized, unsubsidized, and consolidated Federal Stafford Loan amount under the Federal Family Education Loan Program, ~~or the Federal Direct Loan Program,~~ federal Graduate PLUS Loan, or federal Perkins Loan, including principal and interest. Only the outstanding portion of a federal consolidation loan that was used to repay an eligible subsidized or unsubsidized Federal Stafford Loan qualifies for loan repayment.

“*Eligible university*” means ~~either the State University of Iowa Carver College of Medicine or Des Moines University College of Health Sciences~~ a college or university that meets the requirements of Iowa Code section 261.2, subsection 11, and is an institution of higher learning under the control of the state board of regents or an accredited private institution as defined in Iowa Code section 261.9. An eligible university must complete and return the forms to the commission to participate in the program.

ITEM 3. Adopt the following **new** definition in rule **283—25.2(261)**:

“*Surplus funds*” means funding available after the maximum award has been obligated to all recommended applicants in accordance with rule 283—25.3(261).

ITEM 4. Amend rule 283—25.3(261) as follows:

**283—25.3(261) Eligibility requirements.**

**25.3(1)** The commission will annually determine and communicate the number of physician assistant and advanced registered nurse practitioner recommendations that can be funded ~~in each physician assistant studies degree program or doctorate of nursing practice degree program~~ at each eligible university. The intent of this determination will be to ensure that an equal number of students in each program at an eligible ~~university~~ universities are able to enter into an agreement. Priority will be given to applicants who are Iowa residents upon enrolling in the eligible university. The criteria used by the state board of regents to determine residency for tuition purposes, Iowa Administrative Code rule 681—1.4(262), are adopted for this program. If fewer than the maximum number of ~~recommendations of students in either a physician assistant studies degree program or doctorate of nursing practice degree program~~ physician assistants or advanced registered nurse practitioners are recommended at ~~one~~ an eligible university, the commission may obtain additional recommendations from the other eligible ~~university~~ universities to award the remaining agreements.

**25.3(2)** An applicant must enter into an agreement with the commission ~~when~~ during the applicant begins ~~curriculum~~ applicant’s final year of study leading to a ~~doctor of nursing practice degree or a master’s degree in physician assistant studies~~ eligibility for licensure as an advanced registered nurse practitioner or physician assistant.

**25.3(3)** An applicant must ~~remain~~ be enrolled on a full-time basis ~~in each term of enrollment~~ and graduate from an eligible university with a doctor of nursing practice degree or a master’s degree in physician assistant studies from an eligible university graduate-level credential that qualifies the applicant to work as a physician assistant or advanced registered nurse practitioner. The commission may waive the full-time enrollment requirement for a temporary time frame only in the instance of

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

a leave of absence approved by an eligible university. The applicant must request a waiver from the commission in writing.

**25.3(4)** Within nine months of graduating ~~with a doctor of nursing practice degree or a master's degree in physician assistant studies~~ from an eligible university, an applicant must receive a permanent license to practice nursing or to work as a physician assistant in the state of Iowa and engage in full-time practice, as defined by the service commitment area, as a an advanced registered nurse practitioner or physician assistant for a period of ~~60~~ five consecutive months ~~years~~ in a service commitment area.

**25.3(5)** An applicant must annually complete and return to the commission an affidavit ~~of full-time enrollment at an eligible university and, when applicable, an affidavit of completion of the employment obligation in a service commitment area.~~

**25.3(6)** Prior to or upon engagement in full-time employment in a service commitment area, the advanced registered nurse practitioner or physician assistant must contract with the service commitment area to provide a nonrefundable \$2,000 contribution for deposit in the rural Iowa advanced registered nurse practitioner and physician assistant trust fund. Payment must be received by the commission from the service commitment area prior to payment of any loan repayment awards to the advanced registered nurse practitioner or physician assistant.

**25.3(7)** Failure by the applicant to meet all eligibility requirements under these rules and in the agreement will result in forfeiture of all remaining unpaid payments.

ITEM 5. Amend rule 283—25.4(261) as follows:

**283—25.4(261) Awarding of funds.**

**25.4(1)** Prior to accepting an offer of employment, the advanced registered nurse practitioner or physician assistant must notify the commission of the service commitment area in which the advanced registered nurse practitioner or physician assistant will be employed, and the commission will verify the eligibility of the service commitment area.

**25.4(2)** The maximum award will be paid to the advanced registered nurse ~~practitioner~~ practitioner's or physician assistant's eligible loan lender in ~~one installment~~ five equal installments, upon successful completion of ~~the 60-month~~ each of the five 12-month ~~employment obligation~~ obligations. Failure to complete all, or any portion, of the ~~60-consecutive-month~~ five-consecutive-year employment obligation will result in the forfeiture of all remaining unpaid payments. An advanced registered nurse practitioner or physician assistant who fails to meet the requirements of these rules may also be subject to repayment of moneys advanced by the service commitment area as provided in any contract between the advanced registered nurse practitioner or physician assistant and the service commitment area.

**25.4(3)** No loan repayment amounts will be paid until the service commitment area provides the nonrefundable \$2,000 contribution for deposit into the rural Iowa advanced registered nurse practitioner and physician assistant trust fund.

**25.4(4)** If surplus funds are available, the commission will accept applications from physician assistants and advanced registered nurse practitioners practicing full-time in service commitment areas. Recipient selections shall be evenly divided between physician assistants and advanced registered nurse practitioners, to the extent possible. If surplus funds are not sufficient to fund all applicants, physician assistant and advanced registered nurse practitioner applicants will be prioritized by Iowa residency status, full-time employment status, individuals working in a federally designated Health Professional Shortage Area (HPSA) or a Governor's Designated Rural Health Clinic county, total eligible student loan debt (highest receiving priority), and application date (earliest submitted receiving priority). Recipients will enter into agreements with the commission, and payments will be made in accordance with subrules 25.4(2) and 25.4(3).

ITEM 6. Amend rule 283—25.5(261) as follows:

**283—25.5(261) Waivers.**

**25.5(1)** *Service commitment area.* The commission may waive the requirement that the advanced registered nurse practitioner or physician assistant practice in the same service commitment area for all

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

~~60 months~~ five years. The advanced registered nurse practitioner or physician assistant must request a waiver from the commission in writing.

**25.5(2) Full-time employment.** The commission may waive the requirement that the advanced registered nurse practitioner or physician assistant be employed full-time if the advanced registered nurse practitioner or physician assistant demonstrates exceptional circumstances. The advanced registered nurse practitioner or physician assistant must request a waiver from the commission in writing. If a waiver request is granted by the commission, the agreement will be amended to provide an allowance for part-time employment. The ~~60-month~~ five-year employment obligation will be proportionally extended to ensure the advanced registered nurse practitioner or physician assistant is employed in a service commitment area for the equivalent of ~~60~~ five full-time ~~months~~ years.

**25.5(3) and 25.5(4)** No change.

ITEM 7. Amend **283—Chapter 25**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 261.114 as amended by 2014 Iowa Acts, Senate File 2347.

[Filed 9/30/14, effective 12/3/14]

[Published 10/29/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/14.

**ARC 1694C**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 217.6, 249A.4, and 239B.4(6), the Department of Human Services amends Chapter 7, "Appeals and Hearings," Chapter 41, "Granting Assistance," and Chapter 93, "PROMISE JOBS Program," Iowa Administrative Code.

These amendments clarify when benefits or services can continue pending the outcome of an appeal. Applicable rules in Chapter 7 were revised based on the implementation of the Affordable Care Act, and the rules became effective March 1, 2014. However, it has been discovered that the rule regarding continuation of benefits or services is unclear and needs to be further defined.

These amendments also update policies that allow the Department to implement a new ineligibility period for accessing Family Investment Program (FIP) benefits with an electronic access card at a prohibited location when certain criteria are met to include when an appeal is filed within ten days of the receipt of the notice implementing the intended action.

In addition, these amendments update policies that allow the Department to implement a new limited benefit plan (LBP) when certain criteria are met to include when an appeal is filed within ten days of the receipt of the notice implementing the intended action.

These amendments also change the requirement in the PROMISE JOBS record retention policy to reflect that records shall be retained for three years instead of five years.

These amendments replace references to "general education development" and "GED" with "high school equivalency" and "high school equivalency diploma (HSED)."

Finally, these amendments remove a reference that allows PROMISE JOBS to void a limited benefit plan when verification of work hours is received within ten days of the effective date of the LBP.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1588C** on August 20, 2014.

The Department received comments from one respondent during the comment period. The comments and the Department's responses are as follows:

The respondent stated that the proposed amendments would allow the Department to discontinue benefits during a timely filed appeal when the appellant failed to return a complete review form. The respondent also stated that it is not clear from the language which program or benefits the change affects

HUMAN SERVICES DEPARTMENT[441](cont'd)

and that it seems logical that the change would affect Food Assistance when a recertification is due and certain medical assistance programs under similar circumstances.

The respondent requested that the Department make clear in the amendments which programs the amendments would affect. The respondent asked the Department to ensure that the rules for each of the affected programs reflect that benefits will cease if a complete review form is not returned by the participant/recipient. Finally, the respondent asked the Department to ensure that each participant/recipient is notified in the Notice of Decision when benefits are awarded or started and is informed in written materials and trainings that continuation of benefits is contingent upon completion and submission of review forms.

The Department responds that in accordance with 7 CFR 273.14(a), "No household may participate beyond the expiration of the certification period assigned in accordance with §273.10(f) without a determination of eligibility for a new period. The state agency must establish procedures for notifying households of expiration dates, providing application forms, scheduling interviews, and recertifying eligible households prior to the expiration of certification periods. Households must apply for recertification and comply with interview and verification requirements."

In addition, 7 CFR 273.15(k) states that, "If a household requests a fair hearing within the period provided by the notice of adverse action, as set forth in §273.13, and its certification period has not expired, the household's participation in the program shall be continued on the basis authorized immediately prior to the notice of adverse action, unless the household specifically waives continuation of benefits."

For Food Assistance, a person is approved or certified for a specific time period. When the initial certification period is established, the person receives a Notice of Decision specifying the time period for which the person is eligible. At the end of the certification period, a new eligibility determination must be completed. The provisions of paragraph 7.9(2)"b" clearly state that assistance will not continue when benefits were time-limited through a certification period. The recertification form clearly tells the recipient that if the recipient does not return the review form, Food Assistance benefits will end. No other notice is provided to the recipient when the recipient fails to return a complete review form. The proposed amendment to paragraph 7.9(2)"d" does not apply to Food Assistance.

The amendment to subrule 7.9(2) applies to the Family Investment Program (FIP) and certain Medicaid coverage groups when the participant fails to return a complete review form. If this happens, the Department cannot establish ongoing eligibility and the participant's assistance is canceled. The respondent requested that the Department ensure the rules for each program reflect that benefits will cease if a complete review form is not returned by the participant. The relevant rules to accommodate the respondent's request already exist and can be found at subrule 40.27(4) and paragraph 75.52(4)"b."

The respondent requested that continuation of benefits information be provided to the participant. The Department responds that when a Notice of Decision is issued indicating that assistance is canceled for failure to return a complete review form, it clearly tells the participant that the participant can get benefits again if the information is provided by the fourteenth day of the following month.

All Notices of Decision state on the back of the form that participants may keep their benefits until an appeal is final or through the end of the certification period, as long as the appeal is filed within ten calendar days of the date the notice is received or before the date the decision goes into effect. The Notice of Decision clearly tells participants how to continue their benefits, as long as they meet all other eligibility requirements.

The Department is required to advise each applicant and recipient of the right to appeal when any adverse action is taken. Written notification shall be given of the right to request a hearing, the procedure for requesting a hearing, the right to be represented by others at the hearing unless otherwise specified by statute or federal regulations and provision for payment of legal fees, if any. The Department is not required to provide written notification regarding continuation of benefits in written materials, other than in the Notice of Decision and in participant trainings.

The respondent stated that the proposed amendment to paragraph 93.7(1)"e" would do away with the ability of PROMISE JOBS to void a limited benefit plan (LBP) if the participant provides verification of work hours by the tenth day following the effective date of the LBP, that imposing an LBP without

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

allowing the participant to rectify a mistake is harsh, unreasonable, and not required by law, and that there is no reasoning or justification given for removing this portion of the rule. The respondent asked that the Department rescind the proposed amendment.

The Department responds that there was a February 1, 2014, rule change, which no longer allows PROMISE JOBS to void a limited benefit plan if the participant provides verification of hours of employment or other activities by the tenth day following the effective date of the LBP. The Department unintentionally neglected to remove a reference to the provision when the provision became obsolete.

The Department is required to notify the participant in writing of the requirement to provide verification of hours of employment or other activities by the tenth calendar day of the month following the month that participation begins. If the participant does not provide the verification by the due date, the Department is required to send a written reminder, allowing the participant an additional five working days to submit the verification. Failure to provide the verification by the due date on the written reminder results in cancellation of FIP assistance under an LBP.

The Department has adopted the amendment in paragraph 93.7(1)“e” to remove the obsolete reference that allowed PROMISE JOBS to void a limited benefit plan when verification of work hours is received within ten days of the effective date of the LBP.

No changes were made by the Department to these amendments as the result of the comments received from the respondent. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on October 8, 2014.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217). After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 217.6, 249A.4, and 239B.4(6).

These amendments will become effective January 1, 2015.

The following amendments are adopted.

ITEM 1. Amend subrule 7.9(1) as follows:

~~7.9(1) When assistance continues. Assistance shall not be suspended, reduced, restricted, or canceled, nor shall a license, registration, certification, approval, or accreditation be revoked, or other proposed adverse action be taken pending a final decision on an appeal when:~~

~~a. Assistance, subject to paragraph 7.9(1)“b,” shall not be suspended, reduced, restricted, or canceled, nor shall a license, registration, certification, approval, or accreditation be revoked or other proposed adverse action be taken pending a final decision on an appeal when:~~

~~a- (1) An appeal is filed within the timely notice period: before the effective date of the intended action; or~~

~~b- (2) The appellant requests a hearing within ten days from receipt of a notice of cancellation or reduction of food assistance, family investment program, or medical assistance suspending, reducing, restricting, or canceling benefits, based on the completed report form, including: or services.~~

~~(1) Review/Recertification Eligibility Document, Form 470-2881, 470-2881(S), 470-2881(M), or 470-4083(MS).~~

~~(2) Medicaid Review, Form 470-3118, 470-3118(S), 470-3118(M), or 470-3118(MS).~~

The date on which the notice is received is considered to be five days after the date on the notice, unless the beneficiary shows that the beneficiary did not receive the notice within the five-day period.

~~e- b.~~ If it is determined at a hearing that the issue involves only federal or state law or policy, assistance will be immediately discontinued.

ITEM 2. Amend subrule 7.9(2) as follows:

~~7.9(2) When assistance does not continue. The adverse action appealed to suspend, reduce, restrict, or cancel assistance; revoke a license, registration, certification, approval, or accreditation; or take Assistance shall be suspended, reduced, restricted, or canceled; a license, registration, certification, approval, or accreditation shall be revoked; and other proposed action may be implemented shall be taken pending a final decision on appeal when:~~

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

~~a. An appeal is not filed within the timely notice period before the effective date of the intended action or within ten days from the date notice is received. The date on which notice is received is considered to be five days after the date on the notice, unless the beneficiary shows that the beneficiary did not receive the notice within the five-day period.~~

~~b. Benefits or services were time-limited through a certification period or prior authorization for which notice was given when established or for which adequate notice was provided.~~

~~c. The appellant directs the worker in writing to proceed with the intended action.~~

~~d. Adverse action was taken because the appellant failed to return a complete review form.~~

ITEM 3. Amend subrule 7.9(5) as follows:

**7.9(5) Recovery of assistance when a new limited benefit plan is established.** Assistance issued pending the final decision of the appeal is not subject to recovery when a new limited benefit plan period is established. A new limited benefit plan period shall be established when the department is affirmed in a timely appeal of the establishment of the limited benefit plan. All of the following conditions shall exist:

~~a. The appeal is filed within the timely notice period of the notice of decision or notice of action establishing the beginning date of the LBP, either:~~

~~(1) Before the effective date of the intended action on the notice of decision or notice of action establishing the beginning date of the LBP, or~~

~~(2) Within ten days from the date on which a notice establishing the beginning date of the LBP is received. The date on which notice is received is considered to be five days after the date on the notice, unless the beneficiary shows that the beneficiary did not receive the notice within the five-day period.~~

~~b. Assistance is continued pending the final decision of the appeal.~~

~~c. The department's action is affirmed.~~

ITEM 4. Amend subrule 7.9(6) as follows:

**7.9(6) Recovery of assistance when a new ineligibility period is established for the use of an electronic access card at a prohibited location.** Assistance issued pending the final decision of the appeal is not subject to recovery when a new ineligibility period is established for the use of an electronic access card at a prohibited location. A new ineligibility period pursuant to 441—subrule 41.25(11) shall be established when the department is affirmed in a timely an appeal of the establishment of an ineligibility period for the use of an electronic access card at a prohibited location. All of the following conditions shall exist:

~~a. The appeal is filed within the timely notice period of the notice of decision establishing the beginning date of the ineligibility period, either:~~

~~(1) Before the effective date of the intended action on the notice of decision or notice of action establishing the beginning date of the ineligibility period, or~~

~~(2) Within ten days from the date on which a notice establishing the beginning date of the ineligibility period is received. The date on which notice is received is considered to be five days after the date on the notice, unless the beneficiary shows that the beneficiary did not receive the notice within the five-day period.~~

~~b. Assistance is continued pending the final decision of the appeal.~~

~~c. The department's action is affirmed.~~

ITEM 5. Amend paragraph **41.25(11)“e”** as follows:

~~e. A new period of ineligibility shall be established when:~~

~~(1) A recipient timely appeals the notice of decision establishing the ineligibility period, files an appeal either:~~

~~1. Before the effective date of the intended action on the notice of decision or notice of action establishing the beginning date of the ineligibility period, or~~

~~2. Within ten days from the date on which a notice establishing the beginning date of the ineligibility period is received. The date on which notice is received is considered to be five days after the date on the notice, unless the beneficiary shows that the beneficiary did not receive the notice within the five-day period;~~

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

- (2) Assistance is continued pending the final decision of the appeal;<sub>2</sub> and
- (3) The department's action is affirmed.

Assistance issued pending the final decision of an appeal is not subject to recovery pursuant to 441—subrule 7.9(6).

ITEM 6. Amend paragraph **93.2(2)“b”** as follows:

*b. Record keeping.* All PROMISE JOBS agencies shall maintain PROMISE JOBS participant case files and records for at least ~~five~~ three years, in either paper or electronic format. Records shall be maintained for longer than ~~five~~ three years if any litigation, audit, or claim is started and not resolved during that period. In these instances, the records must be retained for ~~five~~ three years after the litigation, audit, or claim is resolved. Case files must be disposed of in accordance with applicable federal requirements pertaining to confidentiality.

ITEM 7. Amend subparagraph **93.4(4)“b”(5)** as follows:

(5) Educational activities, including high school completion, ~~general education development (GED)~~ high school equivalency diploma (HSED) certification, adult basic education (ABE), English as a second language (ESL) training, vocational training, or postsecondary training up to and including a baccalaureate degree, as described in rule 441—93.8(239B).

ITEM 8. Amend subparagraph **93.4(4)“c”(1)** as follows:

(1) Participants aged 16 to 19 who are not parents and who have not completed high school shall be strongly encouraged to participate in educational activities to obtain a high school diploma or the equivalent. A high school education is recognized as important to achieving self-sufficiency. Participants shall be given information on the earning power of people with a high school education compared to those who do not so that participants are able to make an informed choice. If high school or ~~GED~~ high school equivalency completion is not included in a teenager's FIA, other FIA activities shall be required. High school or ~~GED~~ high school equivalency completion shall be proposed and reconsidered at the next FIA review.

ITEM 9. Amend paragraph **93.7(1)“e”** as follows:

*e. Failure to provide verification.* Failure to provide verification of work hours after receiving a written reminder will result in a limited benefit plan. ~~PROMISE JOBS can void the limited benefit plan if the participant provides verification of work hours by the tenth day following the effective date of the limited benefit plan.~~

ITEM 10. Amend subparagraph **93.8(1)“a”(3)** as follows:

(3) For participants attending high school or ~~GED~~ high school equivalency activities, adult basic education or English as a second language, the vocational goal is to improve employability by successfully completing the activity.

ITEM 11. Amend paragraph **93.8(3)“e”** as follows:

*e. High school or ~~GED~~ high school equivalency completion.* Any participant who does not have a high school diploma or ~~GED~~ high school equivalency diploma (HSED) shall be encouraged to obtain a diploma. A participant who is 18 years of age or older may be approved to return to regular high school only when the participant can graduate within one year of the normal graduation date. ~~GED~~ High school equivalency or high school courses and other types of vocational training may run concurrently.

ITEM 12. Amend subparagraph **93.8(3)“h”(1)** as follows:

(1) A participant with no postsecondary education may be approved for training resulting in a certificate of program completion or an academic degree, such as an associate or baccalaureate degree. Participants who have not completed a high school education or ~~GED~~ received a high school equivalency diploma (HSED) may be required to do so before courses leading to an associate degree or higher are approved.

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

ITEM 13. Amend paragraph **93.8(6)“d”** as follows:

*d. Training expenses.* Participants enrolled in high school or high school equivalency completion, ~~GED~~, ABE, ESL, or postsecondary vocational training may be eligible for payment of the following expenses of training when required for participation, subject to limits in subrule 93.11(4):

(1) to (6) No change.

ITEM 14. Amend paragraph **93.8(6)“e”** as follows:

*e. Direct education costs.* Participants enrolled in high school or high school equivalency completion, ~~GED~~, ABE, ESL, or short-term training programs of 29 weeks or less may also be eligible for payment for direct education costs, including:

(1) to (6) No change.

ITEM 15. Amend subparagraph **93.10(1)“a”(2)** as follows:

(2) PROMISE JOBS shall allow a participant five working days from the date notice is mailed to appear for an FIA activity or work-site assignment or to provide medical documentation, ~~verification of hours of participation~~, employment verification, or any other verification, except as otherwise specified in 93.10(2).

ITEM 16. Amend subparagraph **93.10(2)“b”(3)** as follows:

(3) EXCEPTION: If the participant is under age 20 and in high school or ~~GED~~ high school equivalency classes, the participant may verify the hours by completing and submitting the PROMISE JOBS Time and Attendance Report monthly. The training provider does not need to sign the form.

ITEM 17. Amend subparagraph **93.11(4)“a”(1)** as follows:

(1) Tuition payments for high school or high school equivalency completion, ~~GED~~, ABE, ESL, or short-term training programs of 29 weeks or less shall not exceed the rate charged by the Iowa community college located nearest the participant's residence which offers a course or program comparable to the one in which the participant plans to enroll. If an Iowa community college does not offer a comparable program, the maximum tuition rate payment shall not exceed the Iowa resident rate charged by the out-of-state area school located nearest the participant's residence.

[Filed 10/8/14, effective 1/1/15]

[Published 10/29/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/14.

**ARC 1698C**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 74, “Iowa Health and Wellness Plan,” and Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Iowa Administrative Code.

On January 1, 2014, the Iowa Health and Wellness Plan began providing medical assistance to low-income Iowans between the ages of 19 and 64 who meet the following eligibility criteria: income not exceeding 133 percent of the Federal Poverty Level (FPL) for family size, not eligible for any other full Medicaid group or Medicare, not pregnant, and dependent children of the applicant or member covered by minimum essential coverage.

These amendments clarify the policies and processes of the program. Amendments include: how the Healthy Behaviors Program works, how premiums will be charged, the medically exempt determination process, the appeals process, and the standards for Accountable Care Organizations to become Medicaid providers.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1618C** on September 3, 2014. The Department received no comments from the public on the proposed amendments during the comment period.

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

The Department did make technical changes to the amendments published under Notice of Intended Action. In Item 9, the Department modified paragraph 74.11(2)“d,” introductory paragraph and subparagraph (1), to add a form number and correct an incorrect address. The paragraphs now read as follows:

“*d. Billing and payment.* Form 470-5285, Iowa Health and Wellness Plan Billing Statement, shall be used for billing and collection.

“(1) Method of payment. Members shall submit monthly contribution payments to the following address: Iowa Medicaid Enterprise, Iowa Health and Wellness Plan Monthly Contributions, P.O. Box 14485, Des Moines, Iowa 50306-3485.”

In addition, in Item 11, an implementation sentence, which was inadvertently omitted in the proposed amendments, has been added to new rule 441—77.51(249A).

The Council on Human Services adopted these amendments on October 8, 2014.

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

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

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

These amendments will become effective January 1, 2015.

The following amendments are adopted.

ITEM 1. Amend the following definitions in rule **441—74.1(249A,85GA,SF446)**:

“*Accountable care organization*” means a risk-bearing, integrated health care organization characterized by a payment and care delivery model that ties provider reimbursement to quality metrics and reductions in the total cost of care for an attributed population of patients. An accountable care organization shall be qualified pursuant to rule 441—77.51(249A).

“*Enrollment period*” means the 12-month period for which Iowa Health and Wellness plan eligibility is ~~initially~~ established.

“*Essential health benefits*” means the essential health benefits defined by ~~the Secretary of the United States Department of Health and Human Services pursuant to Section 1302(b) of the Patient Protection and Affordable Care Act, Public Law 111-148 at 42 U.S.C. § 18022.~~

ITEM 2. Rescind the definition of “Exempt individuals” in rule **441—74.1(249A,85GA,SF446)**.

ITEM 3. Adopt the following **new** definitions in rule **441—74.1(249A,85GA,SF446)**:

“*Caretaker relative*” means a relative listed in 441—subrule 75.55(1).

“*Medical home*” means a provider contracted with the department through Form 470-5177, Agreement for Participation as a Patient Manager in the Iowa Health and Wellness Plan (Wellness Plan).

“*Medically exempt individual*” means an individual exempt from mandatory enrollment in an alternative benefit plan pursuant to 42 CFR § 440.315 as amended on July 15, 2013.

ITEM 4. Amend subrule 74.2(2) as follows:

**74.2(2) Parents or caretakers of dependent children.** All ~~dependent~~ children under the age of 21 living with a parent or other caretaker relative who will be claimed as a dependent by the parent or caretaker relative for state or federal income tax purposes must be enrolled in Medicaid, in the Children’s Health Insurance Program (CHIP), or in other minimum essential coverage as a condition of the parent’s or other caretaker relative’s eligibility for Iowa Health and Wellness Plan benefits.

ITEM 5. Amend rule 441—74.5(249A,85GA,SF446) as follows:

**441—74.5(249A,85GA,SF446) Enrollment period.**

**74.5(1) Effective dates of eligibility.** Iowa Health and Wellness Plan eligibility shall be effective on the first day of the month ~~following the month~~ of application or the first day of the month all eligibility requirements are met, whichever is later. The enrollment period shall continue for 12 consecutive months unless the member is disenrolled in accordance with the provisions of rule 441—74.8(249A,85GA,SF446).

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~74.5(2) *Retroactive enrollment.* Care provided before enrollment. No payment shall be made for medical care received before the effective date of enrollment. Medical assistance shall be available for all or any of the three months preceding the month in which an application is filed in accordance with 441—subrule 76.13(2).~~

~~74.5(3) *Reinstatement.* Enrollment for the Iowa Health and Wellness Plan may be reinstated without a new application in accordance with 441—subrule 76.12(2).~~

~~74.5(4) *Presumptive eligibility.* The enrollment period of 12 consecutive months shall not apply to individuals temporarily enrolled in Medicaid based on a presumptive eligibility determination by a qualified entity in accordance with rules 441—76.7(249A) and 441—76.13(249A).~~

ITEM 6. Amend rule 441—74.6(249A,85GA,SF446) as follows:

**441—74.6(249A,85GA,SF446) Reporting changes.**

**74.6(1) *Reporting requirements.*** As a condition of ongoing enrollment, a member shall report any of the following changes no later than ten calendar days after the change takes place:

- a. The member enters a nonmedical institution, including but not limited to a penal institution.
- b. The member abandons Iowa residency.
- c. The member turns 65.
- d. The member becomes entitled or enrolled in Medicare Part A or Part B or both.
- e. ~~The member's dependent child loses minimum essential coverage.~~ A child under the age of 21 living with the member loses minimum essential coverage, if the member is the child's parent or other caretaker relative and will claim the child as a dependent for state or federal income tax purposes.
- f. The member's countable income increases in a manner that must be reported according to the requirements of rule 441—76.15(249A).
- g. The member is confirmed pregnant.

**74.6(2) *Untimely report.*** When a change is not timely reported as required by this rule, any program expenditures for care or services provided when the member was not eligible shall be considered an overpayment and be subject to recovery from the member in accordance with rule 441—75.28(249A) and 441—Chapter 11. Program expenditures may include, but are not limited to, premiums and capitation payments.

**74.6(3)** No change.

ITEM 7. Amend rule 441—74.8(249A,85GA,SF446) as follows:

**441—74.8(249A,85GA,SF446) Terminating enrollment.** Iowa Health and Wellness Plan enrollment shall end when any of the following ~~occurs~~ occurs:

1. to 7. No change.
8. ~~The member's dependent child loses minimum essential coverage.~~ A child under the age of 21 living with the member loses minimum essential coverage, if the member is the child's parent or other caretaker relative and will claim the child as a dependent for state or federal income tax purposes.
9. No change.
10. The member ~~becomes~~ reports that she is pregnant.
11. No change.
12. The member does not pay monthly contributions as required by subrule 74.11(2).

ITEM 8. Amend rule 441—74.10(249A,85GA,SF446) as follows:

**441—74.10(249A,85GA,SF446) Right to appeal.**

**74.10(1)** Decisions and actions by the department regarding eligibility or services provided under this chapter may be appealed pursuant to 441—Chapter 7. ~~Coverage decisions and actions by participating marketplace choice plans shall be appealed through the plans' grievance and appeal processes. A provider requesting a hearing on behalf of a member must have the prior express written consent of the member or the member's lawfully appointed guardian. Notwithstanding any contrary provision in 441—Chapter 7, no hearing will be granted unless the provider submits a document~~

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

providing the member's consent to the request for a state fair hearing. The document must specifically inform the member that protected health information (PHI) may be discussed at the hearing and may be made public in the course of the hearing and subsequent administrative and judicial proceedings. The document must contain language that indicates the member's knowledge of the potential for PHI to become public and that the member knowingly, voluntarily, and intelligently consents to the provider's bringing the state fair hearing on the member's behalf.

74.10(2) Members will not be entitled to an appeal hearing if the sole basis for denying or limiting services is discontinuance of the program pursuant to rule 441—74.14(249A,85GA,SF446).

74.10(3) Coverage decisions and actions by participating marketplace choice plans must first be appealed through the plan's internal appeal process and through the external review process pursuant to Iowa Administrative Code 191—Chapter 76. After a member has exhausted the member's rights under the external review process, the member may appeal a decision or action pursuant to 441—Chapter 7. Appeal requests made pursuant to 441—Chapter 7 shall result in a change from benefits and service delivery under subrule 74.12(2) to benefits and service delivery under subrule 74.12(1). Benefits and service delivery under subrule 74.12(1) shall remain in effect for the remainder of the member's eligibility period.

ITEM 9. Amend rule 441—74.11(249A,85GA,SF446) as follows:

**441—74.11(249A,85GA,SF446) Financial participation.**

74.11(1) Copayment. Payment for nonemergency use of a hospital emergency department shall be subject to a ~~\$10~~ an \$8 copayment by the member, which shall be subtracted from the Iowa Health and Wellness Plan payment otherwise due to the provider. This copayment will be waived during ~~the first year of the Iowa Health and Wellness Plan~~ calendar year 2014.

74.11(2) Monthly contributions. ~~Reserved.~~ Members enrolled in the Iowa Health and Wellness Plan with household income at or above 50 percent of the federal poverty level are required to pay monthly contributions pursuant to this rule.

a. Monthly contribution amount. The monthly contribution amount for each member is based on the countable income of the member's household, determined pursuant to rule 441—75.70(249A), as a percentage of the federal poverty level (FPL) for the household. Monthly contribution amounts are as follows:

(1) For a member with household income between 50 and 100 percent of the FPL, \$5;

(2) For a member with household income above 100 percent of the FPL, \$10.

b. Waiver during the first year of enrollment. The monthly contribution will be waived during the member's first 12 months of continuous enrollment.

c. Monthly contribution exemptions. A member shall be exempt from monthly contribution payments when any of the following circumstances apply:

(1) The member completed healthy behaviors pursuant to subrule 74.11(4) in the previous enrollment period.

(2) The member is determined to be a medically exempt individual pursuant to subrule 74.12(3).

(3) The member has access to cost-effective, employer-sponsored coverage and is enrolled in the health insurance premium payment program pursuant to 441—Chapter 75.

(4) The member is exempt from premiums pursuant to 42 CFR 447.56(a)(1)(x) as an Indian who is eligible to receive or has received an item or service furnished by an Indian health care provider or through referral under contract health services.

(5) The member claims a hardship exemption indicating that payment of the monthly contribution will be a financial hardship. The member may claim a hardship exemption by telephoning the call center designated by the department or by submitting a written statement to the address designated by the department. The member's hardship exemption must be received or postmarked within five working days after the monthly contribution due date. If the hardship exemption request is not made in a timely manner, the exemption shall not be granted.

d. Billing and payment. Form 470-5285, Iowa Health and Wellness Plan Billing Statement, shall be used for billing and collection.

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

(1) Method of payment. Members shall submit contribution payments to the following address: Iowa Medicaid Enterprise, Iowa Health and Wellness Plan Monthly Contributions, P.O. Box 14485, Des Moines, Iowa 50306-3485.

(2) Due date. When the department notifies a member of the amount of the monthly contribution, the member shall pay any monthly contributions due in accordance with the following:

1. The monthly contribution for each month is due on the last calendar day of the month that the monthly contribution is to cover.

2. If the last calendar day falls on a weekend or state or federal holiday, payment is due on the first working day following the weekend or holiday.

3. Monthly contribution payments must be received or postmarked by the due date.

(3) Application of payment. The department shall apply monthly contributions payments received to the oldest unpaid month in the current enrollment period. When monthly contributions for all months in the enrollment period have been paid, the department shall hold any excess and apply it to any months for which eligibility is subsequently established.

e. Failure to pay monthly contributions.

(1) An Iowa wellness plan member who fails to pay the assessed monthly contributions and who does not qualify for a monthly contribution exemption pursuant to subrule 74.11(2) shall owe the monthly contribution to the department as an unpaid premium subject to recovery in accordance with rule 441—75.28(249A). A member shall have no less than 90 days from the due date to pay any unpaid monthly contribution before the unpaid amount shall be subject to recovery.

(2) A marketplace choice plan member who fails to pay the assessed monthly contribution and who does not qualify for a monthly contribution exemption pursuant to subrule 74.11(2) shall have the member's eligibility terminated. In addition, the unpaid monthly contribution shall be subject to recovery in accordance with rule 441—75.28(249A) as an unpaid premium.

1. A member shall have no less than 90 days from the due date to pay any unpaid monthly contribution before eligibility will be terminated or the unpaid amount will be subject to recovery.

2. A member whose eligibility is terminated due to nonpayment of monthly contributions must reenroll for Medicaid benefits pursuant to 441—Chapter 76.

f. Refund of monthly contributions.

(1) Monthly contributions paid for any period shall be refunded if the member qualified for a monthly contribution exemption pursuant to paragraph 74.11(2) "c" or when a member's Iowa Health and Wellness Plan coverage is terminated for the following reasons:

1. The member is no longer eligible for coverage in the Iowa Health and Wellness Plan; or

2. The member dies.

(2) The amount of any refund shall be offset by any outstanding monthly contributions owed.

(3) The refund shall be paid within two calendar months.

74.11(3) Aggregate annual limits on copayments and monthly contributions. The total aggregate annual amount of copayments and monthly contributions for an individual shall not exceed 5 percent of the household's countable annual income determined pursuant to rule 441—75.70(249A).

74.11(4) Healthy behaviors. An Iowa Health and Wellness Plan member who completes a wellness examination and health risk assessment during any enrollment year shall have monthly contributions waived in the subsequent enrollment year.

a. A wellness examination must be performed by a medical provider and must assess a member's overall physical health consistent with standard clinical guidelines for preventive physical examinations and as defined by the department.

b. A health risk assessment must be one of the following:

(1) An "Assess My Health" assessment offered through the department;

(2) An assessment offered by a managed care plan through which the member is receiving Iowa Health and Wellness Plan benefits; or

(3) An assessment offered by a qualified health plan through which the member is receiving Iowa Health and Wellness Plan benefits.

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

ITEM 10. Amend rule 441—74.12(249A,85GA,SF446) as follows:

**441—74.12(249A,85GA,SF446) Benefits and service delivery.** Covered benefits and the service delivery method shall be determined by the member's countable income and health status.

**74.12(1) Iowa wellness plan services.** Iowa Health and Wellness Plan members with countable income that does not exceed 100 percent of the federal poverty level shall be enrolled in the Iowa wellness plan unless the member is determined by the department to be ~~an~~ a medically exempt individual. The department shall provide the member with a medical assistance eligibility card identifying the member as eligible for Iowa wellness plan services.

*a.* Covered Iowa wellness plan services are essential health benefits, all other benefits required pursuant to 42 U.S.C. § 1396u-7(b)(1)(B), including prescription drugs, and dental services consistent with 441—Chapter 78, and habilitation services consistent with rule 441—78.27(249A).

*b.* The Iowa ~~Health and Wellness Plan~~ wellness plan provider network shall include all providers enrolled in the medical assistance program, including all participating accountable care organizations.

*c.* Members enrolled in the Iowa wellness plan shall be subject to enrollment in managed care, other than PACE programs, pursuant to 441—Chapter 88. In addition to reimbursement for managed care pursuant to 441—Chapter 88, the department may provide care coordination fees, performance incentive payments, or shared savings arrangements for medical homes and accountable care organizations serving members enrolled in the Iowa ~~Health and Wellness Plan~~ wellness plan.

*d.* When the member does not choose a primary medical provider, the department shall assign the member to a primary medical provider in accordance with the Medicaid managed health care mandatory enrollment provisions specified in 441—subrule 88.3(7) for mandatory enrollment counties and in accordance with quality data available to the department.

*e.* Dental services shall be provided through a contract with one or more commercial dental plans. The department may restrict member access to those entities with which the department contracts. The dental plan or plans shall provide the member with a dental card identifying the member as eligible for dental services.

**74.12(2) Marketplace choice plan services.** Iowa Health and Wellness Plan members with countable income between 101 percent and 133 percent of the federal poverty level shall be enrolled in a marketplace choice plan unless the member is determined by the department to be ~~an~~ a medically exempt individual. Marketplace choice coverage shall be provided through designated qualified health plans available on the health insurance marketplace. Covered services not provided by the marketplace choice plan will be provided by the medical assistance program. Individuals who have been determined eligible for the marketplace choice plan, but who have not yet been enrolled in a marketplace choice plan, shall receive fee-for-service coverage under the Iowa wellness plan until they choose or are assigned to a marketplace choice plan.

*a.* Upon enrollment, a member shall choose a qualified health plan from those designated by the department to provide coverage to Iowa ~~Health and Wellness Plan~~ marketplace choice plan members.

*b.* When the member does not select a qualified health plan pursuant to notice of the need to do so, the department will select a plan, enroll the member, and notify the member of the assigned plan.

*c.* The department shall pay premiums to designated qualified health plans participating on the health insurance marketplace to buy coverage for eligible Iowa ~~Health and Wellness Plan~~ marketplace choice plan members. The department shall begin payment of the member's premiums for the first month of enrollment ~~through the Iowa Health and Wellness Plan in the qualified health plan~~. The qualified health plan shall provide the member with an insurance card identifying the member as an enrollee of the plan. The department shall provide the member with a medical assistance eligibility card ~~identifying the member as eligible for the marketplace choice plan~~ for covered medical services not provided by the qualified health plan.

*d.* Covered services are all benefits, including essential health benefits, provided by the designated qualified health plan on the health insurance marketplace, including prescription drugs. ~~Dental services shall be provided through a contract with a commercial dental plan with covered services consistent with 441—Chapter 78.~~ Services not covered by the qualified health plan, but covered pursuant to the

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

marketplace choice 1115 waiver or the marketplace choice state plan will be covered by the Medicaid program.

*e.* Dental services shall be provided through a contract with one or more commercial dental plans with covered services consistent with 441—Chapter 78. The department may restrict member access to those entities with which the department contracts. The dental plan or plans shall provide the member with a dental card identifying the member as eligible for dental services.

**74.12(3)** *Exempt Medically exempt individuals.* An Iowa Health and Wellness Plan member who has been determined by the department to be ~~an~~ a medically exempt individual shall be given the choice of the benefits and service delivery method provided by the Iowa wellness plan or receiving benefits and services pursuant to 441—Chapter 78.

*a.* A member may attest to being a medically exempt individual by submitting a completed Form 470-5194.

*b.* A provider with a current National Provider Identifier number, an employee of the department of human services, a designee of the department of corrections, a qualified health plan, or a mental health and disability services region established pursuant to Iowa Code sections 331.388 to 331.399 may refer a member for a medically exempt individual determination by submitting a completed Form 470-5196, Medically Exempt Attestation and Referral Form.

*c.* Upon receipt of Form 470-5194 or 470-5196, the Iowa Medicaid enterprise shall determine whether the member qualifies as a medically exempt individual in accordance with 42 CFR § 440.315 as amended on July 15, 2013.

**74.12(4)** No change.

ITEM 11. Adopt the following new rule 441—77.51(249A):

**441—77.51(249A) Accountable care organizations.** Subject to the requirements of this rule, a designated provider may participate in the medical assistance program as an accountable care organization (ACO).

**77.51(1) ACO qualifications.** ACO entities must meet the following requirements for participation as an ACO:

*a.* An ACO must be a Medicaid-enrolled provider. An ACO must complete enrollment in accordance with rule 441—79.14(249A).

*b.* The ACO shall execute a provider participation agreement in accordance with rule 441—79.6(249A).

*c.* An ACO must complete Form 470-5264, Iowa Wellness Plan ACO Readiness Application. The department reserves the right to approve the application.

*d.* The department and ACO shall enter into an agreement on Form 470-5218, Iowa Medicaid Accountable Care Organization (ACO) Agreement. The ACO shall comply with all requirements as identified in Form 470-5218.

*e.* The department reserves the right to restrict ACO enrollment so that the mixture of enrolled ACOs best matches the needs of the Medicaid member population.

**77.51(2) Member selection.** Medicaid members eligible for services from providers attributed to an ACO shall be required to choose their providers in accordance with 441—subrules 88.3(2) and 88.3(7). This rule is intended to implement Iowa Code section 249A.4.

[Filed 10/8/14, effective 1/1/15]

[Published 10/29/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/14.

**ARC 1696C****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

This amendment addresses requirements for prior authorization (PA) of high-technology radiology procedures to ensure appropriate uses of these more expensive diagnostic imaging tests. A PA requirement for these procedures was implemented by the Iowa Medicaid Enterprise (IME) in 2010. At that time, it was determined that a specific rule was not necessary on the basis that existing PA rules provided authority for the additional requirement related to high-tech radiology procedures. However, it has now been determined that a specific rule is more appropriate. Complaints regarding the process or inappropriate decisions have largely diminished as providers have become more familiar with the process of seeking PA approvals for these high-technology radiology procedures.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1620C** on September 3, 2014. The Department received no comments during the comment period. This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on October 8, 2014.

This amendment does not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217). After analysis and review of this rule making, no impact on jobs has been found.

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

This amendment will become effective January 1, 2015.

The following amendment is adopted.

Adopt the following **new** subrule 78.28(11):

**78.28(11)** High-technology radiology procedures.

*a.* Except as provided in paragraph 78.28(11)“*b*,” the following radiology procedures require prior approval:

- (1) Magnetic resonance imaging (MRIs);
- (2) Computed tomography (CTs), including combined abdomen and pelvis CT scans;
- (3) Computed tomographic angiographs (CTAs);
- (4) Positron emission tomography (PETs); and
- (5) Magnetic resonance angiography (MRAs).

*b.* Notwithstanding paragraph 78.28(11)“*a*,” prior authorization is not required when any of the following applies:

- (1) Radiology procedures are billed on a CMS 1500 claim for places of service “hospital inpatient” (POS 21) or “hospital emergency room” (POS 23), or on a UB04 claim with revenue code 45X;
- (2) The member has Medicare coverage;
- (3) The member received notice of retroactive Medicaid eligibility after receiving a radiology procedure at a time prior to the member's receipt of such notice (see paragraph 78.28(11)“*e*”); or
- (4) A radiology procedure is ordered or requested by the department of human services, a state district court, law enforcement, or other similar entity for the purposes of a child abuse/neglect investigation, as documented by the provider.

*c.* Prior approval will be granted if the procedure requested meets the requirements of 441—subrule 79.9(2), based on diagnosis, symptoms, history of illness, course of treatment, and treatment plan, as documented by the provider requesting prior approval.

*d.* Required requests for prior approval of radiology procedures must be submitted through the online system operated by the department's contractor for prior approval of high-technology radiology procedures.

*e.* Services are billed for members with retroactive eligibility.

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

(1) When a member has received notice of retroactive Medicaid eligibility after receiving a radiology procedure for a date of service prior to the member's receipt of such notice and otherwise requiring prior approval pursuant to this rule, a retroactive authorization request must be submitted on Form 470-0829, Request for Prior Authorization, before any claim for payment is submitted.

(2) Payment will be authorized only if the prior approval criteria were met and the service was provided to the member prior to the retroactive eligibility notification, as documented by the provider requesting retroactive authorization.

(3) Retroactive authorizations will not be granted when sought for reasons other than a member's retroactive Medicaid eligibility. Examples of such reasons include, but are not limited to, the following:

1. The provider was unaware of the high-technology radiology prior authorization requirement.
2. The provider was unaware that the member had current Medicaid eligibility or coverage.
3. The provider forgot to complete the required prior authorization process.

[Filed 10/8/14, effective 1/1/15]

[Published 10/29/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/14.

**ARC 1699C****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

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

These amendments extend the primary care physician (PCP) rate increase required by the Health Care and Education Reconciliation Act of 2010 (HCERA), Section 1202 (Public Law 111-152) (42 U.S.C. § 1396a(a)(13)(C)), that sunsets on December 31, 2014, and that allows qualified PCPs to receive the greater of the Medicare rate or Medicaid rate for a specified set of medical payment codes. These amendments "freeze" the Medicare rate in effect in 2014. Qualified PCPs will be paid the greater of the annual Medicaid rate or the 2014 Medicare rate for the specified codes.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1617C** on September 3, 2014.

The Department received comments from one respondent during the comment period. Those comments and the Department's response are as follows:

**Comment:** The respondent expressed strong support for Iowa's decision to extend the Medicaid primary care payment increase. The respondent cited burdens to providers and members that would occur if Iowa had not chosen to continue this payment increase.

**Response:** As the respondent did not request that the proposed amendments be revised, no changes have been made to the amendments.

These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on October 8, 2014.

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

According to the Centers for Medicare and Medicaid Services, "the overall benefit of this rule is the expected increase in provider participation [in Medicaid] by primary care physicians resulting in better access to primary and preventive health services by Medicaid beneficiaries." 77 Fed. Reg. 66670 (Nov. 6, 2012). On that basis, there will continue to be a positive impact on private-sector jobs and employment opportunities for primary care physicians and associated personnel.

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

These amendments will become effective January 1, 2015.

The following amendments are adopted.

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

ITEM 1. Amend subrule **79.1(2)**, “Physicians (doctors of medicine and osteopathy)” provider category, as follows:

Provider category	Basis of reimbursement	Upper limit
Physicians (doctors of medicine or osteopathy)	Fee schedule. See 79.1(7) “a”	Fee schedule in effect 6/30/13 plus 1%.
Anesthesia services	Fee schedule	Fee schedule in effect 6/30/13 plus 1%.
Physician-administered drugs	Fee schedule	Fee schedule in effect 6/30/13 plus 1%.
Qualified primary care services furnished in 2013 or 2014	See 79.1(7) “c”	Rate provided by 79.1(7) “c”

ITEM 2. Amend paragraph **79.1(7)“c”** as follows:

*c. Payment for primary care services furnished in 2013 or 2014.* To the extent required by 42 U.S.C. § 1396a(a)(13)(C), primary care services furnished in calendar years year 2013 or 2014 by a qualified primary care physician or under the supervision of a qualified primary care physician shall be paid as provided pursuant to subparagraphs (1) to (4) and (6) of this paragraph (79.1(7) “c”). Primary care services furnished on or after January 1, 2015, by a qualified primary care physician or under the supervision of a qualified primary care physician shall be paid as provided pursuant to subparagraphs (1) to (3), (5), and (7) of this paragraph (79.1(7) “c”).

(1) to (3) No change.

(4) Primary care services rendered in calendar year 2013 or 2014. Primary care services rendered in calendar year 2013 or 2014 that are eligible for payment pursuant to this rule shall be paid at the greater of:

1. to 3. No change.

4. If there is no applicable rate under Medicare Part B, the rate specified in a fee schedule established and announced by the federal Centers for Medicare and Medicaid Services, pursuant to 42 CFR § 447.405(A)(a)(1).

(5) Primary care services rendered on or after January 1, 2015. Primary care services rendered on or after January 1, 2015, that are eligible for payment pursuant to this rule shall be paid at the greater of:

1. The otherwise applicable Iowa Medicaid rate;

2. The applicable rate under Medicare Part B in effect for services rendered on January 1, 2014;

3. The rate that would be applicable under Medicare Part B, in effect for services rendered on January 1, 2014, if the conversion factor under 42 U.S.C. § 1395w-4(d) were the conversion factor for 2009; or

4. If there is no applicable rate under Medicare Part B, the rate specified in a fee schedule established and announced by the federal Centers for Medicare and Medicaid Services, pursuant to 42 CFR § 447.405(a)(1), and in effect on June 30, 2014.

~~(5)~~ (6) Notwithstanding the foregoing provisions of this paragraph (79.1(7) “c”), payment for the administration of vaccines provided under the Vaccines for Children Program in calendar years year 2013 or 2014 shall be limited to the lesser of:

1. The regional maximum administration fee under the Vaccines for Children Program; or

2. The applicable Medicare fee schedule rate for HCPCS code 90460 (or, if higher, the Medicare fee schedule rate for HCPCS code 90460 that would apply if the conversion factor under 42 U.S.C. § 1395w-4(d) were the conversion factor for 2009).

(7) Notwithstanding the foregoing provisions of this paragraph (79.1(7) “c”), payment for the administration of vaccines provided under the Vaccines for Children Program on or after January 1, 2015, shall be the lesser of:

1. The regional maximum administration fee under the Vaccines for Children Program in effect on June 30, 2014; or

HUMAN SERVICES DEPARTMENT[441](cont'd)

2. The applicable Medicare fee schedule rate in effect on June 30, 2014, for HCPCS code 90460 (or, if higher, the Medicare fee schedule rate for HCPCS code 90460 rate that would apply if the conversion factor under 42 U.S.C. § 1395w-4(d) were the conversion factor for 2009).

[Filed 10/8/14, effective 1/1/15]

[Published 10/29/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/14.

**ARC 1697C**

## **HUMAN SERVICES DEPARTMENT[441]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4 and 2014 Iowa Acts, chapter 1140, sections 54 and 65, the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments address disproportionate share hospital (DSH) payments and require that only hospitals in Iowa, including children's hospitals, may qualify for DSH payments. The amendments also remove the requirement that a children's hospital must be a "voting" member of the National Association of Children's Hospitals and Related Institutions and, in turn, require that a children's hospital only be a member of this association.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1619C** on September 3, 2014. The Department received no comments during the comment period. These amendments are identical to those filed under Notice of Intended Action.

The Council on Human Services adopted these amendments on October 8, 2014.

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

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

These amendments are intended to implement Iowa Code section 249A.4 and 2014 Iowa Acts, chapter 1140, section 54.

These amendments will become effective January 1, 2015.

The following amendments are adopted.

ITEM 1. Amend paragraph **79.1(5)"a,"** definition of "Children's hospitals," as follows:

"*Children's hospitals*" shall mean hospitals with inpatients predominantly under 18 years of age. For purposes of qualifying for disproportionate share payments from the graduate medical education and disproportionate share fund, a children's hospital is defined as a duly licensed hospital that:

1. Either provides services predominantly to children under 18 years of age or includes a distinct area or areas that provide services predominantly to children under 18 years of age, and
2. Is a voting member of the National Association of Children's Hospitals and Related Institutions for dates of service prior to October 1, 2014, or a member of the National Association of Children's Hospitals and Related Institutions for dates of service on or after October 1, 2014.

ITEM 2. Amend subparagraph **79.1(5)"m"(2)** as follows:

(2) Hospitals that qualify for disproportionate share payment based on the definition established by their state's Medicaid agency for the calculation of the Medicaid inpatient utilization rate will be eligible to receive disproportionate share payments according to paragraph 79.1(5)"y<sub>2</sub>" for dates of service prior to October 1, 2014. Out-of-state hospitals do not qualify for disproportionate share payments for dates of service on or after October 1, 2014.

ITEM 3. Amend subparagraph **79.1(5)"m"(3)** as follows:

(3) ~~If a hospital qualifies for reimbursement for direct medical education or indirect medical education under Medicare guidelines, it shall be reimbursed according to paragraph 79.1(5)"y."~~

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

Out-of-state hospitals do not qualify for direct medical education or indirect medical education payments pursuant to paragraph 79.1(5) "y."

ITEM 4. Amend paragraph **79.1(5)"y"** as follows:

y. *Graduate medical education and disproportionate share fund.* Payment shall be made to hospitals in Iowa qualifying for direct medical education, indirect medical education, or disproportionate share payments directly from the graduate medical education and disproportionate share fund. The requirements to receive payments from the fund, the amounts allocated to the fund, and the methodology used to determine the distribution amounts from the fund are as follows:

(1) to (9) No change.

(10) Qualifying for disproportionate share as a children's hospital. A licensed hospital qualifies for disproportionate share payments as a children's hospital if the hospital provides services predominantly to children under 18 years of age or includes a distinct area or areas providing services predominantly to children under 18 years of age, ~~is a voting member of the National Association of Children's Hospitals and Related Institutions,~~ and has Medicaid utilization and low-income utilization rates of 1 percent or greater for children under 18 years of age at the time of admission in all distinct areas of the hospital where services are provided predominantly to children under 18 years of age. In addition, the hospital must be a voting member of the National Association of Children's Hospitals and Related Institutions for dates of service prior to October 1, 2014, or a member of the National Association of Children's Hospitals and Related Institutions for dates of service on or after October 1, 2014.

A hospital wishing to qualify for disproportionate share payments as a children's hospital for any state fiscal year beginning on or after July 1, 2002, must provide the following information to the Iowa Medicaid enterprise provider cost ~~audits~~ audit and rate setting unit within 20 business days of a request by the department:

1. Base year cost reports.
2. Medicaid claims data for children under the age of 18 at the time of admission to the hospital in all distinct areas of the hospital where services are provided predominantly to children under 18 years of age.
3. Other information needed to determine a disproportionate share rate encompassing the periods used to determine the disproportionate share rate and distribution amounts.

[Filed 10/8/14, effective 1/1/15]

[Published 10/29/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/14.

**ARC 1695C**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

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

The landscape of Medicaid fraud, waste and abuse has changed and continues to evolve. A number of statutes and rules have changed rapidly in recent years at both the federal and state levels. The Department needs to clarify and make more explicit current policy. These amendments are in keeping with the 2010 United States Patient Protection and Affordable Care Act.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1621C** on September 3, 2014.

The Department received comments from two respondents during the comment period. The comments and the Department's responses are as follows:

**Comment 1:** This comment was received from two respondents. With regard to the proposed revision of subrule 79.2(8), the respondents recommended clarification of the phrase "within a reasonable time

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

frame.” The respondents stated that the withholding or suspension of payment is such a significant issue, that it is only fair that the person be notified as soon as possible. The respondents further recommended that notification be provided prior to any withholding or suspension of payment.

**Response 1:** Federal law requires that a state Medicaid agency send notice of suspension of program payments within five days of a payment suspension for a credible allegation of fraud (CAF) (42 CFR §455.23(b)(1)(i)). The Department will continue to comply with this federal requirement. In practice, the Department regularly mails the notice of payment suspension on the same day that the suspension is imposed. However, federal law contemplates that a five-day delay may be appropriate in some cases. Mailing the notice of payment suspension prior to the actual imposition of the payment suspension may impact the Department’s ability to protect Medicaid funds against fraud, waste or abuse if the provider receives advance notice of the payment suspension prior to implementation of the suspension. In cases not related to a CAF, the Department will send the notice of payment suspension within ten days of the payment suspension and has revised subrule 79.2(8) to read as follows:

“**79.2(8) Suspension or withholding of payments.** The department may withhold payments on pending and subsequently received claims in an amount reasonably calculated to approximate the amounts in question due to a sanction, incorrect payment, civil monetary penalty, or other adverse action and may also suspend payment or participation pending a final determination. If the department withholds or suspends payments, it shall notify the person in writing within the time frames prescribed by federal law for cases related to a credible allegation of fraud, and within ten days for all other cases.”

**Comment 2:** With regard to the proposed revision to paragraph 79.14(3)“d,” the respondent expressed concern that providers with a minor drug offense may be disenrolled from the Medicaid program.

**Response 2:** At the outset, the Department would note that a stricter version of this provision is presently found in subparagraph 79.2(3)“c”(2) and paragraph 79.2(3)“d”; the amendments in Item 3 and Item 8 move the provision from paragraph 79.2(3)“d” to paragraph 79.14(3)“d” and thereby change both the nature of the exclusion and its scope. With respect to the nature of the exclusion, presently such persons and their affiliated corporations are subject to mandatory termination (permanent exclusion), which under federal law also requires exclusion from Medicare and all other state Medicaid programs. Because the provision has been moved to paragraph 79.14(3)“d,” the exclusion is now a disenrollment, which lacks these federal collateral consequences. With respect to scope, disenrollment is now limited to persons owning, controlling, or directing 5 percent or more of a corporation and to controlled substance offenses incurred within the last five years.

In addition, the intent of the amendments is to provide the Department with the ability to protect Iowa’s most frail members from an agency owned by someone whose recent activity places the member at risk of medication theft or financial abuse.

The Council on Human Services adopted these amendments on October 8, 2014.

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

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

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

These amendments will become effective January 1, 2015.

The following amendments are adopted.

ITEM 1. Amend subrule **79.2(1)**, definitions of “Suspension of payments” and “Withholding of payments,” as follows:

“*Suspension of payments*” means the temporary cessation of payments due a person until the resolution of ~~the~~ a matter in dispute between ~~the~~ a person and the department.

“*Withholding of payments*” means a reduction or adjustment of the amounts paid to a person on pending and subsequently submitted bills for purposes of offsetting ~~overpayments previously~~ payments made to, received by, or in the possession of a person.

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

ITEM 2. Amend subrule 79.2(2) as follows:

**79.2(2) Grounds for sanctions.** The department may impose sanctions against any person when appropriate. Appropriate grounds for the department to impose sanctions include, but are not limited to, the following:

*a. to k.* No change.

*l.* Breaching any settlement or similar agreement with the department, or failing to abide by the terms of any agreement with any other entity relating to, or arising out of, the state medical assistance program.

*m. to v.* No change.

*w.* Billing for services provided by an excluded, nonenrolled, ~~sanctioned~~ terminated, suspended, or otherwise ineligible provider or person.

*x. and y.* No change.

ITEM 3. Amend subrule 79.2(3) as follows:

**79.2(3) Sanctions.**

*a.* No change.

*b.* The withholding of ~~payments~~ a payment or a recoupment of medical assistance funds is not, in itself, a sanction. Overpayments, civil monetary penalties, and interest ~~charged~~ may also be withheld from ~~future payments to the provider~~ without ~~imposing~~ imposition of a sanction.

*c.* Mandatory suspensions and terminations.

(1) No change.

(2) ~~Termination is mandatory when a person pleads guilty or nolo contendere to, or is convicted of, any crime punishable by a term of imprisonment greater than five years, any crime of violence, any controlled substance offense, or any crime involving an allegation of dishonesty.~~ Termination is also mandatory upon entry of final judgment, in the Iowa district court or a federal district court of the United States, of liability of the person in a false claims action.

(3) No change.

(4) Upon notification from the U.S. Department of Justice, the Iowa department of justice, the department of inspections and appeals, or a similar agency, that a person has failed to respond to a civil investigative demand or other subpoena in a timely manner as set forth in governing law and the demand or other subpoena itself, the department shall immediately suspend the person from participation and suspend all payments to the person. The suspension and payment suspension shall end upon notification that the person has responded to the demand in full.

~~*d.* Notwithstanding any previous successful enrollment in the medical assistance program, the person's passing of any background check by the department or any other entity, or similar prior approval for participation as a provider in the medical assistance program, in whole or in part, termination from the medical assistance program is mandatory when, in the case of a natural person, the person has within the last five years been listed on any dependent adult abuse registry, child abuse registry, or sex offender registry or, in the case of a corporation or similar entity, 5 percent or more of the corporation or similar entity is owned by a person who has within the last five years been listed on any dependent adult abuse registry, child abuse registry, or sex offender registry.~~

ITEM 4. Amend subrule 79.2(4) as follows:

**79.2(4) Imposition and extent of sanction.**

~~*a.*~~ The department shall consider the totality of the circumstances in determining the sanctions to be imposed. The factors the department may consider include, but are not limited to:

~~(1) *a.*~~ Seriousness of the offense.

~~(2) *b.*~~ Extent of violations.

~~(3) *c.*~~ History of prior violations.

~~(4) *d.*~~ Prior imposition of sanctions.

~~(5) *e.*~~ Prior provision of provider education (technical assistance).

~~(6) *f.*~~ Provider willingness to obey program rules.

~~(7) *g.*~~ Whether a lesser sanction will be sufficient to remedy the problem.

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

~~(8)~~ h. Actions taken or recommended by peer review groups or licensing boards.

~~b.~~ A ground for sanction may precede enrollment in the medical assistance program, the person's passing of a background check, or similar prior approval for participation as a provider in the medical assistance program. The mere fact of an enrollment, a person's passing of a background check, or another approval is not relevant to the sanction decision.

~~c.~~ Upon certification from the U.S. Department of Justice or the Iowa department of justice that a provider has failed to respond to a civil investigative demand in a timely manner as set forth in Iowa Code chapter 685 and the demand itself, the department shall immediately suspend the provider from participation and suspend all payments to the provider. The suspension and payment suspension shall end upon certification that the provider has responded to the demand in full.

ITEM 5. Amend paragraph 79.2(7)"a" as follows:

a. Any order of sanction shall be in writing and include the name of the person subject to sanction, identify the ground for the sanction and its effective date, and be sent to the person's last-known address. If the department sanctions a provider, the order of sanction shall also include the national provider identification number of the provider and be sent to the provider's last address on file within the medical assistance program. Proof of mailing to such address shall be conclusive evidence of proper service of the sanction upon the provider. The department of inspections and appeals is not required to comply with the additional notification provisions of 441—paragraph 7.10(7) "c" for appeals certified for hearing under this chapter.

ITEM 6. Amend subrule 79.2(8) as follows:

~~79.2(8) Suspension or withholding of payments pending a final determination. Where the department has notified a provider of any sanction, overpayment, civil monetary penalty, or other adverse action, the~~ The department may withhold payments on pending and subsequently received claims in an amount reasonably calculated to approximate the amounts in question or due to a sanction, incorrect payment, civil monetary penalty, or other adverse action and may also suspend payment or participation pending a final determination. Where If the department intends to withhold or suspend withholds or suspends payments, it shall notify the provider person in writing within the time frames prescribed by federal law for cases related to a credible allegation of fraud, and within ten days for all other cases.

ITEM 7. Amend subparagraph 79.3(2)"c"(3) as follows:

(3) Service documentation. The record for each service provided shall include information necessary to substantiate that the service was provided and shall include the following:

1. and 2. No change.

3. The complete time of the service, including the beginning and ending time if the service is billed on a time-related basis. For those non-time-related services billed using Current Procedural Terminology (CPT) codes, the total time of the service shall be recorded, rather than the beginning and ending time.

4. to 9. No change.

ITEM 8. Amend subrule 79.14(3) as follows:

**79.14(3)** Program integrity information requirements.

a. No change.

b. The Iowa Medicaid enterprise may deny enrollment to a provider applicant or disenroll a current provider that has any affiliation as set forth in this rule if the department determines that the affiliation poses a risk of fraud, waste, or abuse. Such denial or disenrollment is appealable under 441—Chapter 7 but, notwithstanding any provision to the contrary in that chapter, the provider shall bear the burden to prove by clear and convincing evidence that the affiliation does not pose any risk of fraud, waste, or abuse. The Iowa Medicaid enterprise shall deny enrollment to or shall immediately disenroll any person that the Iowa Medicaid enterprise, Medicare, or any other state Medicaid program has ever terminated under rule 441—79.2(249A) or a similar provision and shall deny enrollment to any person presently suspended from participation, or who would be subject to a suspension, under paragraph 79.2(3) "c." Further, a

HUMAN SERVICES DEPARTMENT[441](cont'd)

person sanctioned under rule 441—79.2(249A) or a similar provision may not manage consumer choices option (CCO) funds for a member.

c. For purposes of this rule, the term “direct or indirect affiliation” includes but is not limited to relationships between individuals, business entities, or a combination of the two. The term includes but is not limited to direct or indirect business relationships that involve:

- (1) A compensation arrangement;
- (2) An ownership arrangement;
- (3) Managerial authority over any member of the affiliation;
- (4) The ability of one member of the affiliation to control or influence any other; or
- (5) The ability of a third party to control or influence any member of the affiliation.

d. Notwithstanding any previous successful enrollment in the medical assistance program, the passing of any background check by the department or any other entity, or similar prior approval for participation as a provider in the medical assistance program, in whole or in part, disenrollment from the medical assistance program is mandatory when, in the case of a corporation or similar entity, 5 percent or more of the corporation or similar entity is owned, controlled, or directed by a person who (1) has within the last five years been listed on any dependent adult abuse registry, child abuse registry, or sex offender registry; (2) has pled guilty or nolo contendere to, or was convicted of, any crime punishable by a term of imprisonment greater than five years; (3) has, within the last five years, pled guilty or nolo contendere to, or was convicted of, any controlled substance offense; (4) has, within the last ten years, pled guilty or nolo contendere to, or was convicted of, any crime involving an allegation of dishonesty punishable by a term of imprisonment greater than one year but not more than five years; or (5) within the last ten years, has on more than one occasion pled guilty or nolo contendere to, or was convicted of, any crime involving an allegation of dishonesty.

[Filed 10/8/14, effective 1/1/15]

[Published 10/29/14]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/14.

## ARC 1701C

### INSPECTIONS AND APPEALS DEPARTMENT[481]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 231B.2(1) and 231D.2(2), the Department of Inspections and Appeals hereby amends Chapter 67, “General Provisions for Elder Group Homes, Assisted Living Programs and Adult Day Services,” Iowa Administrative Code.

The amendments implement changes resulting from legislation in 2014 Iowa Acts, House File 2365, which establishes an informal conference process for elder group homes and adult day services programs. The legislation gives elder group homes and adult day services programs the opportunity to contest the Department’s final findings in an informal conference with an independent reviewer. The informal conference provisions in 2014 Iowa Acts, House File 2365, mirror legislation passed for assisted living programs in 2013 Iowa Acts, Senate File 394. The implementation of these amendments will allow for a consistent process between these three types of providers for informally contesting the Department’s final findings.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 3, 2014, as **ARC 1616C**. No comments were received on the proposed amendments.

These amendments have been changed since publication under Notice of Intended Action. New Item 9 has been added to amend subparagraph 67.14(2)“c”(3) for consistency with amendments to rule 481—67.14(17A,231C,85GA,SF394) that change “assisted living program” to “program.” Subsequent items have been renumbered accordingly.

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

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

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

These amendments are intended to implement Iowa Code sections 231B.2(1) and 231D.2(2) and 2014 Iowa Acts, House File 2365.

These amendments shall become effective January 1, 2015.

The following amendments are adopted.

ITEM 1. Rescind and reserve rule ~~481—67.12(17A,231B,231D)~~.

ITEM 2. Amend rule ~~481—67.13(17A,231C,85GA,SF394)~~, catchwords, as follows:

~~481—67.13(17A,231B,231C,231D,85GA,SF394 HF2365) Assisted living programs—exit~~ **Exit interview, final report, plan of correction.**

ITEM 3. Amend subrule 67.13(1) as follows:

**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.

ITEM 4. Amend rule ~~481—67.14(17A,231C,85GA,SF394)~~, introductory paragraph, as follows:

~~481—67.14(17A,231B,231C,231D,85GA,SF394 HF2365) Assisted living programs—response~~ **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.

ITEM 5. Amend subrule 67.14(1) as follows:

**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~~ a 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.

ITEM 6. Amend subrule 67.14(2), introductory paragraph, as follows:

**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.

ITEM 7. Amend subparagraph **67.14(2)“b”(2)** as follows:

(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.

ITEM 8. Amend subparagraph **67.14(2)“c”(2)** as follows:

(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.

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

ITEM 9. Amend subparagraph **67.14(2)“c”(3)** as follows:

(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.

ITEM 10. Amend subparagraph **67.14(2)“c”(4)** as follows:

(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.

ITEM 11. Amend subparagraph **67.14(2)“d”(3)** as follows:

(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.

ITEM 12. Amend paragraph **67.14(3)“a”** as follows:

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.

ITEM 13. Amend paragraph **67.14(3)“b”** as follows:

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.

[Filed 10/8/14, effective 1/1/15]

[Published 10/29/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/14.

**ARC 1710C**

**INSURANCE DIVISION[191]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 505.8(19) and 522D.10, the Insurance Division hereby amends Chapter 85, “Regulation of Navigators,” Iowa Administrative Code.

Chapter 85 contains the rules regulating the licensing and conduct of health care navigators in the state of Iowa. Subrule 85.9(4) requires navigator entities to provide the Division with information regarding the termination of a navigator entity's relationship with an individual navigator. The navigator entity must notify the Commissioner of Insurance if the individual navigator is terminated for cause. The navigator entity must notify the Division when the navigator entity is no longer recognized as a navigator by the U.S. Department of Health and Human Services. The Division is the state agency charged with regulating navigators, and this amendment enables the Division to maintain accurate records about who is acting as a navigator within the state.

Notice of Intended Action for this amendment was published in the August 20, 2014, Iowa Administrative Bulletin as **ARC 1592C**. The Division held a public hearing on September 9, 2014, at 2:30 p.m. No one attended the hearing. The Division received one comment in favor of the proposed subrule; however, the commenter suggested language changes for the sake of clarity and requested additional prohibitions on navigators. The Division accepted the suggested changes to the subrule, which are reflected herein, but declined to add the requested additional enumerated prohibited acts to the navigator rules as the Division believes that the suggested prohibitions are currently covered by the existing rules.

The Division adopted this amendment on September 26, 2014.

INSURANCE DIVISION[191](cont'd)

Compliance with the adopted subrule will begin on December 3, 2014, in order to allow implementation of the new subrule during the 2015 health insurance open enrollment period.

This amendment is not expected to have any significant impact on jobs.

This amendment is intended to implement Iowa Code sections 505.8(19) and 522D.10.

This amendment will become effective December 3, 2014.

The following amendment is adopted.

Adopt the following **new** subrule 85.9(4):

**85.9(4)** A navigator entity shall notify the division in writing, within 30 days, when a relationship is terminated with an individual navigator who was formally retained, employed, or affiliated with, or worked for or in conjunction, or as a part of a consortium, with that navigator entity. The notification submitted by the navigator entity shall indicate if the termination was for cause and if the reason was one of the reasons set forth in Iowa Code section 522D.7. The navigator entity shall comply with Iowa Code section 522D.8 and, upon request, furnish to the commissioner or authorized representative additional information, documents, records or other data pertaining to the termination or activity of the individual navigator.

[Filed 10/10/14, effective 12/3/14]

[Published 10/29/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/14.

**ARC 1700C**

## **IOWA FINANCE AUTHORITY[265]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 16.5(1)“r,” 16.52 and 17A.3(1)“b,” the Iowa Finance Authority hereby amends Chapter 12, “Low-Income Housing Tax Credits,” Iowa Administrative Code.

These amendments replace the current qualified allocation plan (QAP) for the Low-Income Housing Tax Credit Program with two qualified allocation plans, one for 9 percent tax credits and another for 4 percent tax credits, both of which are incorporated by reference in rule 265—12.1(16).

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 20, 2014, as **ARC 1585C**. The Authority received public comment on the QAP and made certain changes to the QAP based on those comments. The only changes to the amendments published under Notice were in rules 265—12.1(16) and 265—12.2(16) and reflect the change in the date subsequent to which no amendments or additions to the QAPs are included. The date was changed from July 9, 2014, to October 8, 2014.

The Iowa Finance Authority adopted these amendments on October 8, 2014.

After analysis and review of this rule making, the impact on jobs is expected to be consistent with the impact of previous years' QAPs. The Low-Income Housing Tax Credit Program has a substantial positive impact on job creation in Iowa with many jobs created annually in the construction, finance, and property management fields, among others.

These amendments are intended to implement Iowa Code sections 16.5(1)“r,” 16.52, 17A.12, and 17A.16 and Internal Revenue Code Section 42.

These amendments will become effective on December 3, 2014.

The following amendments are adopted.

ITEM 1. Amend rule 265—12.1(16) as follows:

**265—12.1(16) Qualified allocation plan plans.** ~~The qualified allocation plan entitled Iowa Finance Authority Low-Income Housing Tax Credit Program 2014 Qualified Allocation Plan shall be the qualified allocation plan for the allocation of 2014 low income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.52. The qualified allocation plan is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules~~

IOWA FINANCE AUTHORITY[265](cont'd)

17.4(2) and 17.12(2). The qualified allocation plan does not include any amendments or editions created subsequent to October 2, 2013.

**12.1(1) Four percent qualified allocation plan.** The qualified allocation plan entitled Iowa Finance Authority Low-Income Housing Tax Credit Program 4% Qualified Allocation Plan (“4% QAP”) shall be the qualified allocation plan for the allocation of 4 percent low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.52. The 4% QAP is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2). The 4% QAP does not include any amendments or editions created subsequent to October 8, 2014.

**12.1(2) Nine percent qualified allocation plan.** The qualified allocation plan entitled Iowa Finance Authority Low-Income Housing Tax Credit Program 2015 Qualified Allocation Plan (“9% QAP”) shall be the qualified allocation plan for the allocation of 9 percent low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.52. The 9% QAP is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2). The 9% QAP does not include any amendments or editions created subsequent to October 8, 2014.

ITEM 2. Amend rule 265—12.2(16) as follows:

~~**265—12.2(16) Location of copies of the plan plans.** The qualified allocation plan can be reviewed and copied in its entirety on the authority’s Web site at <http://www.iowafinanceauthority.gov>. Copies of the qualified allocation plan, application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library and shall be available on the authority’s Web site. The plan incorporates by reference IRC Section 42 and the regulations in effect as of October 2, 2013. Additionally, the plan incorporates by reference Iowa Code section 16.52. These documents are available from the state law library, and information about these statutes, regulations and rules is on the authority’s Web site.~~

**12.2(1) 4% QAP.** The 4% QAP can be reviewed and copied in its entirety on the authority’s Web site at <http://www.iowafinanceauthority.gov>. Copies of the 4% QAP, application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library and shall be available on the authority’s Web site. The 4% QAP incorporates by reference IRC Section 42 and the regulations in effect as of October 8, 2014. Additionally, the 4% QAP incorporates by reference Iowa Code section 16.52. These documents are available from the state law library, and information about these statutes, regulations and rules is on the authority’s Web site.

**12.2(2) 9% QAP.** The 9% QAP can be reviewed and copied in its entirety on the authority’s Web site at <http://www.iowafinanceauthority.gov>. Copies of the 9% QAP, application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library and shall be available on the authority’s Web site. The 9% QAP incorporates by reference IRC Section 42 and the regulations in effect as of October 8, 2014. Additionally, the 9% QAP incorporates by reference Iowa Code section 16.52. These documents are available from the state law library, and information about these statutes, regulations and rules is on the authority’s Web site.

ITEM 3. Rescind and reserve rules **265—12.3(16)** and **265—12.4(16)**.

[Filed 10/8/14, effective 12/3/14]

[Published 10/29/14]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/14.

**ARC 1703C****NATURAL RESOURCE COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455A.5(6)“a,” 461A.35, and 461A.41, the Natural Resource Commission hereby amends Chapter 54, “Restrictions on Introduction and Removal of Plant Life,” Iowa Administrative Code.

These amendments allow dock permittees more flexibility in removing aquatic vegetation without a permit around boat docks and when creating boating pathways to open water. Recent efforts by the Department of Natural Resources (Department) to improve water quality have been very successful, and much of this success is due to the Department’s Lake Restoration Program. Clear water is a benefit of improved water quality, but it may result in the growth of dense-rooted aquatic plant life. Lake users are very pleased with lake restoration efforts and the good water clarity that results from those efforts. However, some dock permittees, including private individuals as well as cities and counties, are faced with excessive growth of rooted aquatic plants around boat docks and in pathways to open water. The Department has received complaints from dock permittees requesting that action be taken to streamline the process for removing such vegetation.

These amendments are intended to give dock permittees additional justification to remove aquatic vegetation without a permit, thereby reducing the Department’s administrative time in reviewing and issuing such permits, and to remove the vegetation in a manner that does not harm water quality or aquatic life.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 6, 2014, as **ARC 1564C**. Public hearings were held on August 28, 2014, and on September 4, 2014. No one attended the hearing in Des Moines on September 4; six people attended the August 28 hearing in Ventura. Those attending gave approval to the proposed amendments but wanted to know more about aquatic herbicides and grass carp as means to control vegetation. Department staff stated that the Department wants to take a conservative approach and that these alternatives may be considered in the future. Staff explained that the Department does not have the resources needed to treat areas around private docks; the danger of some chemicals to people, aquatic life and water quality; and concerns about chemical application by individuals or certified applicators. Attendees were not aware of an aquatic mower available on the market and were directed to a manufacturer’s Web site. The adopted amendments do allow for the use of this type of mower. Staff explained that even though grass carp are effective in controlling vegetation, they, at the same time, cause negative impacts to water quality.

After analysis and review of this rule making, no impact on jobs should result.

These amendments are intended to implement Iowa Code sections 455A.5(6)“a,” 461A.35, and 461A.41.

These amendments shall become effective December 3, 2014.

The following amendments are adopted.

ITEM 1. Amend subrule 54.5(1) as follows:

**54.5(1) Permits.**

*a.* The department may issue permits for the introduction and removal of aquatic plants in public waters. To be considered for a permit under this rule, applicants shall use the department’s application form for sovereign lands construction permits, as described in rule 571—13.9(455A,461A,462A), and shall complete all relevant information on that application form. Applicants shall also provide any additional information as may be necessary, as described in rule 571—13.10(455A,461A). The term of the permit shall be stated in the permit. Permits are nontransferable and shall be subject to reevaluation upon expiration. Permits may be issued for between one and five years.

*b.* Cities and counties in Iowa may use chemicals, including pesticides and herbicides, to remove aquatic vegetation from water intake structures. However, such cities and counties shall be required to obtain a permit under this rule and rules in 567—Chapter 66, as may be required, for such activities.

## NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 2. Amend subrule 54.5(5) as follows:

**54.5(5) Exceptions.**

~~a. Activities accomplished by the department or its agents to introduce or remove aquatic vegetation in public waters shall be deemed appropriate and shall not be subject to the permit requirements of this rule provided the activity is in the public interest and the activity does not constitute one of the prohibited activities described in 571—subrule 13.6(2). A dock permittee whose dock meets rule 571—16.4(461A,462A), 571—16.6(461A,462A), or 571—16.7(461A,462A) may remove aquatic vegetation without a permit if the aquatic vegetation:~~

~~(1) Creates a hazardous or detrimental condition in the boating area around the dock, or~~

~~(2) Covers a minimum of 75 percent of the boating area around the dock.~~

~~b. Cities and counties in Iowa may use chemicals, including pesticides and herbicides, to remove aquatic vegetation from water intake structures. However, such cities and counties shall be required to obtain a permit under this rule and rules in 567—Chapter 66, as may be required, for such activities.~~

~~b. A dock permittee meeting one of the exceptions in paragraph 54.5(5)“a” must verify at inspection that the dock meets the criteria for a Class I, Class II or Class III dock permit and is limited to the following:~~

~~(1) Removal of vegetation in a 20-foot radius around the dock;~~

~~(2) Removal of a hazardous or detrimental condition when it interferes with safe boating passage and is located within the boating area around the dock;~~

~~(3) Creation of a 15-foot-wide boating pathway utilizing a direct route from the dock to open water;~~

~~(4) Adherence to the requirement to leave the vegetation in place or collect and compost it on land that is owned, leased or otherwise subject to use by the dock permittee and is adjacent to the removal area;~~

~~(5) Removal of the vegetation by hand-cutting, hand-pulling, hand-raking or mechanical cutting devices, excluding automated plant control devices that disturb the bottom substrate.~~

~~c. Aquatic vegetation located in public waters may be removed by persons without a permit under this rule only after the department, in its sole discretion, determines and evidences in writing that a hazard or other detrimental condition exists and the proposed mitigative activity is appropriate. Such activity shall be limited only to the work required to address the immediate hazard or other detrimental activity. Any removal allowed by this rule shall conform to the requirements enumerated by the department regarding such removal, or the removal shall be deemed an unauthorized action resulting in damage to public waters. Persons proposing to remove hazards must contact a local department official and request an exception to a permit. The department official shall inspect the hazard or detrimental condition and provide written authorization to proceed or shall require the person to apply for a permit under this rule.~~

[Filed 10/10/14, effective 12/3/14]

[Published 10/29/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/14.

**ARC 1702C**

**NATURAL RESOURCE COMMISSION[571]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455A.5(6)“a,” 481A.38, 481A.39, 481A.67, 481A.73, 481A.74, and 481A.76, the Natural Resource Commission hereby amends Chapter 81, “Fishing Regulations,” and rescinds Chapter 85, “Trotlines,” Iowa Administrative Code.

The purposes of this rule making are as follows:

1. Modify the language in subrule 81.2(1) regarding fishing for muskellunge on the Okoboji lakes to make the subrule easier to read and to change the season to make it consistent with language for the Iowa/Minnesota border muskellunge season. (See Item 2.)

## NATURAL RESOURCE COMMISSION[571](cont'd)

2. Establish special walleye length limits by posting signs and remove Black Hawk Lake from the list of lakes that have additional restrictions on walleye fishing. First, to maximize fishing opportunities without harming the walleye population, the Commission is removing from subrule 81.2(3) the daily bag limit of three for walleye at Black Hawk Lake and replacing it with a daily bag limit of five. Second, paragraph 81.2(3)“b” will give staff from the Department of Natural Resources (DNR) the flexibility to manage walleye populations in the same manner as it does black bass. For years, the DNR has established black bass length limits by posting length limit signs at lakes. Anglers are not only familiar with this approach, but it has proven to be a successful management methodology. (See Item 3.)

3. Modify the fishing regulations on Iowa/Minnesota border lakes. The Iowa/Minnesota border transects five lakes. Fisheries professionals from both states work together to manage these sport fisheries. Changes to subrule 81.2(6) will sustain quality fishing opportunities on these lakes. In addition to specifying new bag and possession limits for numerous species such as crappie, sunfish, and white bass, this amendment will reduce the walleye, largemouth bass, and smallmouth bass daily bag limit from six to three. (See Item 5.) The walleye daily bag limit is consistent with the existing walleye bag limit of nearby Spirit and East and West Okoboji Lakes; Upper and Lower Gar Lakes; and Minnewashta Lake. The largemouth and smallmouth bass daily bag limit is consistent with Iowa’s existing statewide daily bag limit for bass. Therefore, although there will be a reduction in daily bag limits, the limits are consistent with other Iowa locations and will ensure that fishing opportunities on the border lakes are sustained into the future. This will also provide a clear standard to anglers who fish at both border lakes and Okoboji lakes. The Minnesota DNR is also in the process of proposing these same rule changes.

4. Prohibit snagging and bow and arrow and spear fishing at specified Clear Lake and Lost Island Lake locations, as well as at the Lower Gar Lake outlet. The DNR and its partners have made significant investments to restore water quality, aquatic habitats and water-based recreational opportunities at Clear Lake (approximately \$13 million) and Lost Island Lake (approximately \$1.5 million). Carp are a major contributor to poor water quality, and significant portions of these restoration dollars included methods to eliminate or reduce adult carp reproduction in wetlands adjacent to these lakes. There is evidence that anglers catch carp at outflow areas in these lakes and release them into the wetlands (rather than back into the lake). Evidence includes finding arrow-injured/scarred carp in the wetlands. In other words, human behavior is allowing the carp to bypass the physical barriers constructed to prevent carp movement into the wetlands. Significantly, the addition of even just a few spawning carp into the wetlands can produce millions of carp in a year that could return to the lake, minimizing the success of costly restoration efforts. Bow fishers are also leaving their catch to rot at the sites at which the fish are caught. These dead fish create undesirable conditions for other anglers. In sum, prohibiting snagging and bow and arrow and spear fishing at the locations listed in new paragraph “b” of subrule 81.2(11) will protect water quality as well as ensure an enjoyable environment for other anglers.

Similarly, invasive silver and bighead carp species invaded the Iowa Great Lakes during the 2010 floods. To prevent future invasions, the DNR constructed an electric fish barrier at the outlet area of Lower Gar Lake. Fencing and signage safety measures were implemented around the barrier even though it was designed to pose minimum risk to public safety. Bow fishers are bypassing these safety and access measures and are putting themselves at risk. To eliminate the threat of angler injury at this location, the Commission is restricting snagging and bow and arrow and spear fishing around the fish barrier. (See Item 6.)

5. Remove hand fishing as a legal means of take for all rough fish (e.g., common carp). This change will make the rules consistent between rough fish and sport fish (hand fishing for sport fish is already illegal). (See Item 6.)

6. Establish the harvest of paddlefish on the Missouri and Big Sioux Rivers. The amendment to paragraph 81.2(4)“e” implements regulations governing the harvest of paddlefish on the Missouri and Big Sioux Rivers, including the number of annual paddlefish fishing licenses that may be issued. This amendment is intended to implement 2014 Iowa Acts, Senate File 2198, signed by Governor Branstad on April 3, 2014. (See Items 1 and 4.)

7. Rescind Chapter 85. New rule 571—81.3(481A) contains the list of designated areas in the state where anglers may use trotlines or throw lines. This list was previously found in Chapter 85, but it is not

## NATURAL RESOURCE COMMISSION[571](cont'd)

necessary to have two chapters of administrative rules on fishing regulations. Therefore, the rescission of Chapter 85 is adopted, and its content is merged into Chapter 81. (See Item 8.) In addition to moving the list into Chapter 81, the Mississippi River in Allamakee, Clayton, Dubuque, and Jackson Counties is being designated as an approved trotline stream segment. This designation was always intended but was not done in prior rule making due to staff oversight. (See Item 7.)

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 6, 2014, as **ARC 1565C**. Public hearings were held on August 28, 2014, and on September 2, 3 and 4, 2014. A total of 12 people attended the four public hearings, and three comments were received by telephone or e-mail. Two comments supported the paddlefish fishing season but requested that the DNR consider removing the 200-yard no snagging restriction on Missouri River tributaries during the paddlefish fishing season and extend paddlefish snagging during the open season on each tributary to its Interstate 29 bridge. Three comments supported the no snagging, spearing and bow and arrow restriction in Item 6, paragraph 81.2(11)“b,” and one comment opposed this restriction at the Lower Gar Lake outlet. Six people supported all proposed changes.

These amendments have been changed since they were published under Notice of Intended Action. Based on public input, the DNR recommends allowing anglers to fish for paddlefish on each Missouri River tributary to where it intersects its Interstate 29 bridge. The proposed amendment to subrule 81.2(4) in Item 4 allowed paddlefish fishing only on designated reaches of the Big Sioux and Missouri Rivers, and it did not specifically identify a fishing boundary line for Missouri River tributaries. The proposed amendment to paragraph 81.2(4)“a” would have caused the paragraph to read: “There shall be no open season in any Missouri River and Big Sioux River tributary streams within 200 yards immediately upstream of its confluence.” In response, two anglers requested that the DNR extend the area open to paddlefish fishing from the confluence of each Missouri River tributary to its Interstate 29 bridge. They stated that judging a tributary confluence boundary is difficult and having an obvious and permanent boundary, such as an Interstate 29 bridge, would be beneficial. Biologically there is no impact to the paddlefish population if the boundary is set at all tributary Interstate 29 bridges. DNR Law Enforcement Bureau staff agree that the rule would be easier to enforce with the change suggested by the commenters. Paragraphs 81.2(4)“a,” “b” and “e” in Item 4 and subparagraph 81.2(11)“a”(8) in Item 6 have been revised accordingly.

The DNR also recommends limiting an angler to one valid paddlefish fishing license and unused tag per year. Department staff noticed when preparing for the public hearings that the number of paddlefish fishing licenses per angler was not identified in the proposed amendment to subrule 81.2(4). Proposed subparagraph 81.2(4)“b”(4) states that licenses are available on a first-come, first-served basis which would permit an angler to purchase as many licenses as wanted until the prescribed quota is filled. The DNR’s original intent was to limit an angler to one paddlefish fishing license per year in order to create an equitable system which provides the most fishing opportunities. Therefore, a sentence has been added to subparagraph 81.2(4)“b”(4) in Item 4 to clarify the limitation. Department staff believe that eventually the number of applications will exceed the quota limit and lead the DNR to establish a drawing system that assigns preference points similar to the North Dakota Fish and Game Department process.

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

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.67, 481A.73, 481A.74, and 481A.76.

These amendments shall become effective December 3, 2014.

The following amendments are proposed.

## NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 1. Amend rule 571—81.1(481A) as follows:

**571—81.1(481A) Seasons, territories, daily bag limits, possession limits, and length limits.**

KIND OF FISH	INLAND WATERS OF THE STATE				BOUNDARY RIVERS
	OPEN SEASON	DAILY BAG LIMIT	POSSESSION LIMIT	MINIMUM LENGTH LIMITS	MISSISSIPPI RIVER MISSOURI RIVER BIG SIOUX RIVER
Rock Sturgeon	Closed	0	0	0	Same as inland waters
Shovelnose Sturgeon	Continuous	None	None	None	Same as inland waters except no harvest allowed in the Big Sioux River and aggregate daily bag limit 10, aggregate possession limit 20, in the Missouri River
Paddlefish*	Continuous	2	4	None	Mississippi River—Same as inland waters except for an open season and length limit in the Mississippi River See; see below* Missouri and Big Sioux Rivers—Special regulations; see below*
Yellow Perch	Continuous	25	50	None	Same as inland waters except no bag or possession limit in the Missouri River
Trout	Continuous	5	10	None*	Same as inland waters
Catfish*	Continuous	8 Lakes 15 Streams	30	None	Same as inland waters except no bag or possession limit in the Mississippi River
Black Bass (Largemouth Bass) (Smallmouth Bass) (Spotted Bass)	Continuous	3 In Aggregate	6	See below*	Continuous open season; aggregate daily bag limit 5, aggregate possession limit 10 See below*
Combined Walleye, Sauger and Saugeye	Continuous*	5*	10*	None*	Continuous open season; aggregate daily bag limit 6, aggregate possession limit 12; except aggregate daily bag limit 4, aggregate possession limit 8, in the Big Sioux and Missouri Rivers See below*
Northern Pike	Continuous*	3	6	None	Continuous open season; daily bag limit 5, possession limit 10; except daily bag limit 6, possession limit 12, in the Big Sioux River

## NATURAL RESOURCE COMMISSION[571](cont'd)

KIND OF FISH	INLAND WATERS OF THE STATE				BOUNDARY RIVERS
	OPEN SEASON	DAILY BAG LIMIT	POSSESSION LIMIT	MINIMUM LENGTH LIMITS	MISSISSIPPI RIVER MISSOURI RIVER BIG SIOUX RIVER
Muskellunge or Hybrid Muskellunge	Continuous*	1	1	40"	Same as inland waters
Crappie	Continuous	25*	None	None	Same as inland waters except 50 in possession
Bluegill	Continuous	25*	None	None	Same as inland waters except in aggregate with pumpkinseed on the Mississippi River
All other fish species*	Continuous	None	None	None	See below*
Frogs (except Bullfrogs)	Continuous	48	96	None	Same as inland waters
Bullfrogs ( <i>Rana Catesbeiana</i> )	Continuous	12	12	None	Same as inland waters

\*Also see 571—81.2(481A), Exceptions.

ITEM 2. Amend subrule 81.2(1) as follows:

**81.2(1)** Exception closed season. In Lakes West Okoboji and East Okoboji and Spirit Lake, there shall be a closed season on walleye beginning February 15 each year. The annual opening for walleye in these three lakes shall be the first Saturday in May. In these three lakes there shall be ~~a closed an~~ an open season on muskellunge and tiger muskie ~~beginning December 1 each year. The annual opening for muskellunge and tiger muskie in these three lakes shall be May 21 the following year from May 21 through November 30.~~

ITEM 3. Amend subrule 81.2(3) as follows:

**81.2(3)** Walleye.

*a. Lakes West Okoboji, East Okoboji, Spirit, Upper Gar, Minnewashta, and Lower Gar Lakes in Dickinson County, and Storm Lake in Buena Vista County, Clear Lake in Cerro Gordo County, and Big Creek Lake in Polk County.* ~~A 17-inch to 22-inch protected-slot length limit shall apply. Walleye less than 17 inches in length and walleye greater than 22 inches in length may be harvested. The daily bag limit shall be three, with a possession limit of six. No more than one walleye greater than 22 inches in length may be taken per day.~~

*b. Clear Lake, Cerro Gordo County.* ~~A 14-inch minimum length limit shall apply. The daily bag limit shall be three, with a possession limit of six. No more than one walleye greater than 22 inches in length may be taken per day.~~

*c. Black Hawk Lake, Sac County.* ~~A 15-inch minimum length limit shall apply. The daily bag limit shall be three, with a possession limit of six.~~

*d. Big Creek Lake, Polk County.* ~~A 15-inch minimum length limit shall apply. The daily bag limit shall be three, with a possession limit of six. No more than one walleye greater than 20 inches in length may be taken per day.~~

*b. Length limits.* Length limits shall apply on walleye in public waters that have length limits posted or published.

*e. c. Mississippi River.* A 15-inch minimum length limit shall apply. All walleye from 20 inches to 27 inches in length that are caught from Mississippi River Pools 12 through 20 must be immediately released alive. No more than one walleye greater than 27 inches in length may be taken per day from Pools 12 through 20.

## NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 4. Amend subrule 81.2(4) as follows:

**81.2(4)** Paddlefish snagging is permitted in all waters of the state designated in rule 571—81.1(481A), except as follows:

*a.* There shall be no open season above the Interstate 29 bridge in the Missouri River and Big Sioux River, nor in any tributary of these streams this stream within 200 yards immediately upstream of its a tributary confluence with the Missouri and Big Sioux Rivers.

*b.* Snagging for paddlefish on the Missouri and Big Sioux Rivers is limited to Iowa waters only, beginning in the Big Sioux River below the Interstate 29 bridge to the Big Sioux River's confluence with the Missouri River and in the Missouri River, including all backwaters and sloughs and any tributary of the Missouri River at its confluence and extending below its Interstate 29 bridge, beginning at the Big Sioux River confluence and extending to the Hamburg Landing boat ramp.

(1) There shall be an open season from March 1 through April 15.

(2) Snagging hours are from sunrise to sunset.

(3) The bag limit is one paddlefish per paddlefish fishing license.

(4) The paddlefish fishing license quota is 950 for resident anglers and 50 for nonresident anglers.

No one shall apply for more than one license per year. Licenses shall be issued on a first-come, first-served basis. The purchase period to obtain a paddlefish fishing license shall be from December 15 through January 31. No duplicate license or transportation tag shall be issued after the start of the season.

(5) Each angler who fishes for paddlefish on the Missouri and Big Sioux Rivers shall have a valid paddlefish fishing license and unused tag. Anglers possessing a paddlefish fishing license and unused tag shall snag fish for the purpose of catching paddlefish only. All snagged fish except for a legal paddlefish taken into possession shall immediately be released alive.

(6) Immediately upon an angler's taking into possession a legal paddlefish, a valid current year transportation tag issued with the license shall be visibly attached to the fish's lower jaw. The tag must be attached in such a manner that it cannot be removed without mutilating or destroying the tag. An angler shall not possess a paddlefish fishing license or transportation tag issued to another angler or tag a paddlefish with a transportation tag issued to another angler. The transportation tag shall be attached before the carcass can be moved in any manner from the place of harvest. The transportation tag shall remain affixed to the paddlefish until the paddlefish is processed for consumption. The paddlefish shall remain intact except for the snout in front of the eye until the fish reaches the final processing place. For the purposes of this subrule, the "final processing place" is defined as the angler's residence or the location where consumption occurs. The transportation tag shall be proof of possession of the carcass by the above-mentioned licensee. During the closed season, the possession of paddlefish on the Missouri and Big Sioux Rivers is prohibited unless the paddlefish are legally taken in Nebraska or South Dakota.

(7) No hooks larger than 5/0 treble or measuring more than 1¼ inches in length when two of the hook points are placed on a ruler are permitted when snagging.

(8) A gaffe hook or other penetrating device may not be used as an aid in the landing of a snagged fish.

*b. c.* Snagging for paddlefish on the Mississippi River is restricted to the area within 500 yards below the navigation dams and their spillways. No hooks larger than 5/0 treble or measuring more than 1¼ inches in length when two of the hook points are placed on a ruler are permitted when snagging. The open season on the Mississippi River is the period from March 1 through April 15.

*e. d.* Snagging Except during the Missouri and Big Sioux Rivers open paddlefish fishing season, snagging for paddlefish is not permitted at any time in those areas where snagging is prohibited as a method of take as listed in subrule 81.2(11).

*d. e.* On the Mississippi River, a 33-inch maximum length limit shall apply; any paddlefish measuring 33 inches or more when measured from the front of the eye to the natural unaltered fork of the tail must immediately be released alive. On the Missouri and Big Sioux Rivers and on each Missouri River tributary from its confluence and extending to below its Interstate 29 bridge, a 35-inch to 45-inch protected-slot limit shall apply; a paddlefish measuring 35 inches to 45 inches when measured from the front of the eye to the natural unaltered fork of the tail shall immediately be released alive. To measure

## NATURAL RESOURCE COMMISSION[571](cont'd)

a paddlefish, the angler shall use a flexible tape and measure along and over the center line contour of the fish while it is lying flat.

ITEM 5. Amend subrule 81.2(6) as follows:

**81.2(6)** Exception border lakes. In Little Spirit Lake, Dickinson County; Iowa and Tuttle (Okamanpedan) Lakes, Emmet County; Burt (Swag) Lake, Kossuth County; and Iowa Lake, Osceola County, the following ~~shall apply~~ species have a continuous open season and daily bag and possession limits as set forth below:

- a. Walleye—daily bag and possession limit ~~six~~ three;
- b. Northern pike—daily bag and possession limit three;
- c. Largemouth and smallmouth bass—daily bag and possession limit ~~six~~ three;
- d. Channel catfish—daily bag and possession limit eight. ~~Open season on the above fish shall be the Saturday nearest May 1 to February 15 each year.~~
- e. Yellow perch, white bass, and sunfish—daily bag and possession limit 30, and crappie daily bag and possession limit 15. ~~There is a continuous open season on these species.~~ 25;
- f. Crappie species—combined daily bag and possession limit 25;
- g. Sunfish (bluegill, pumpkinseed, green sunfish, orangespotted sunfish, longear sunfish, warmouth, and hybrids)—combined daily bag and possession limit 25;
- h. White bass, yellow bass, bullhead, common carp, bowfin, suckers, sheepshead, buffalo, gar and quillback—no daily bag or possession limit;
- i. Muskellunge—daily bag and possession limit one. Open season shall be May 21 through November 30. A 40-inch minimum length limit shall apply on all border lakes;
- f.j. Spears and bow and arrow may be used to take carp, buffalo, ~~dogfish~~ bowfin, gar, sheepshead, and quillback carpsucker ~~from sunrise to sunset during the period from the first Saturday in May to February 15 each year in the above lakes.~~ with a continuous open season;
- k. All species not listed above are subject to the inland regulations of the state and have a continuous open season.

ITEM 6. Amend subrule 81.2(11) as follows:

**81.2(11)** Method of take. Artificial light may be used in the taking of any fish. The following species of fish may be taken by ~~hand fishing~~, snagging, spearing, and bow and arrow: common carp, bighead carp, grass carp, silver carp, black carp, bigmouth buffalo, smallmouth buffalo, black buffalo, quillback carpsucker, highfin carpsucker, river carpsucker, spotted sucker, white sucker, shorthead redhorse, golden redhorse, silver redhorse, sheepshead, shortnose gar, longnose gar, dogfish, gizzard shad, and goldfish. All other species of fish not hooked in the mouth, except paddlefish legally taken by snagging, must be returned to the water immediately with as little injury as possible. A fish is foul hooked when caught by a hook in an area other than in the fish's mouth. Snagging is defined as the practice of jerking any type of hook or lure, baited or unbaited, through the water with the intention of foul hooking fish. No hook larger than a 5/0 treble hook or measuring more than 1¼ inches in length when two of the hook points are placed on a ruler are permitted when snagging. Exceptions to snagging as a method of take are as follows:

- a. No snagging is permitted in the following areas:
  - ~~1-~~ (1) Des Moines River from directly below Saylorville Dam to the Southeast 14th Street bridge in Des Moines.
  - ~~2-~~ (2) Cedar River in Cedar Rapids from directly below the 5 in 1 Dam under I-380 Interstate 380 to the 1st Avenue bridge.
  - ~~3-~~ (3) Cedar River in Cedar Rapids from directly below the "C" Street Roller Dam to 300 yards downstream.
  - ~~4-~~ (4) Iowa River from directly below the Coralville Dam to 300 yards downstream.
  - ~~5-~~ (5) Chariton River from directly below Lake Rathbun Dam to 300 yards downstream.
  - ~~6-~~ (6) Spillway area from directly below the Spirit Lake outlet to the confluence at East Okoboji Lake.

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~~7. (7)~~ Northeast bank of the Des Moines River from directly below the Ottumwa Dam, including the catwalk, to the Jefferson Street Bridge. Snagging from the South Market Street Bridge is also prohibited.

~~8. (8)~~ Missouri River, and Missouri River tributary beginning at its confluence and extending below its Interstate 29 bridge and the Big Sioux River from the I-29 Interstate 29 bridge to the confluence with the Missouri River with the exception of snagging paddlefish and only paddlefish during the open season.

~~9. (9)~~ Des Moines River from directly below the Hydroelectric Dam (Big Dam) to the Hawkeye Avenue Bridge in Fort Dodge.

~~10. (10)~~ Des Moines River from directly below the Little Dam to the Union Pacific Railroad Bridge in Fort Dodge.

~~11. Clear Lake and Ventura Marsh from the Ventura Grade, Jetty and Bridge.~~

~~12. (11)~~ Skunk River from directly below Oakland Mills Dam to the downstream end of the 253rd Street boat ramp.

*b.* No snagging, bow and arrow fishing, or spearing of fish is permitted in the following areas:

(1) Clear Lake and Ventura Marsh from the Ventura Grade, Jetties and Bridge.

(2) Lost Island Lake Inlet within 300 feet of the concrete culvert and metal fish barrier.

(3) Lost Island Lake Outlet within 300 feet of the outlet structure and metal fish barrier.

(4) Barringer Slough Outlet within 300 feet of the outlet and metal fish barrier.

(5) The outlet area of Lower Gar Lake beginning at 230th Avenue and extending downstream to the signed Iowa Great Lakes Sanitary District property line.

ITEM 7. Adopt the following **new** rule 571—81.3(481A):

**571—81.3(481A) Trotlines and throw lines.**

**81.3(1)** *Where permitted.* It shall be lawful to use trotlines or throw lines in all rivers and streams of the state, except in Mitchell, Howard, Winneshiek, Allamakee, Fayette, Clayton, Delaware, Dubuque, and Jackson Counties. Trotlines or throw lines may be used in the above nine counties in the following stream segments: Mississippi River; Maquoketa River, mouth to Backbone State Park Dam; North Fork Maquoketa River, mouth to Jones-Dubuque County line; Turkey River, mouth to the Elkader Dam; and Upper Iowa River, mouth to the first dam upstream in Winneshiek County.

**81.3(2)** *Removal of lines.* All trotlines and parts thereof shall be removed from the shore when they are not being actively fished. A trotline shall be considered actively fished if at least once daily the trotline is left with at least one baited hook in the water.

ITEM 8. Rescind and reserve **571—Chapter 85.**

[Filed 10/10/14, effective 12/3/14]

[Published 10/29/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/14.

**ARC 1709C**

**TREASURER OF STATE[781]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 12B.10C, the Treasurer of State hereby amends Chapter 15, "Required Public Funds Custodial Agreement Provisions," Iowa Administrative Code.

Iowa Code section 12B.10C directs the Treasurer of State to adopt rules in consultation with the Attorney General. These amendments are necessary to address stakeholder comments.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 3, 2014, as **ARC 1613C**. No public comments were received. These amendments are identical to those published under Notice.

## TREASURER OF STATE[781](cont'd)

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

These amendments are intended to implement Iowa Code chapter 12B.

These amendments will become effective December 3, 2014.

The following amendments are adopted.

ITEM 1. Amend subrule 15.1(3) as follows:

**15.1(3)** A public unit may only enter into a public funds custodial agreement if the custodian is a ~~state or national bank that is located in the state of Iowa and has a safekeeping or trust department~~ the trust or safekeeping department of a national or state bank located in the state of Iowa that lawfully possesses and exercises fiduciary powers under applicable federal laws or the laws of the state of Iowa. Notwithstanding the foregoing, the treasurer of state may exercise its discretion under Iowa Code section 12C.4 to enter into public funds custodial agreements with a custodian located outside the state of Iowa. Each public unit that enters into a public funds custodial agreement shall require the inclusion in the public funds custodial agreement those provisions contained in rule 781—15.2(12B) of this chapter or substantially equivalent provisions.

ITEM 2. Amend rule 781—15.2(12B) as follows:

**781—15.2(12B) Required provisions for inclusion in public funds custodial agreements.** All public funds custodial agreements shall be in writing and shall include the following provisions:

**15.2(1)** The custodian shall represent and warrant that it lawfully possesses and exercises fiduciary powers under applicable federal laws or the laws of the state of Iowa, unless such custodian is located out of state and is used by the treasurer of state for purposes permitted in Iowa Code section 12C.4, and that it has the resources and expertise to act as the custodian of public funds or any security or document of ownership or title evidencing public funds investments and to perform its responsibilities under the public funds custodial agreement.

**15.2(2)** The scope of duties and services to be performed by the custodian shall be described in detail satisfactory to the public unit and shall include, as applicable, custodial, settlement, collection of income and investment proceeds, reporting, and securities valuation services.

**15.2(3)** The custodian shall agree to provide the public unit with written confirmation of its custody, on behalf of the public unit, of all assets subject to the public funds custodial agreement.

**15.2(4)** The custodian shall agree to segregate the public fund's assets from the custodian's own assets and to maintain records adequate to describe the public unit's ownership of or beneficial interest in the assets held by the custodian.

**15.2(5)** ~~The custodian shall agree to maintain and make available to the public unit, its employees and its designees accurate, current, and complete records that sufficiently and properly document the custodian's performance under the public funds custodial agreement, including records that document all fees and other amounts charged and all transactions occurring during the term of the agreement. The custodian shall, at a minimum, agree to allow the public unit or its designees, at no charge, to access, examine and audit any directly pertinent records of the custodian relating to or created as a result of the public funds custodial agreement.~~ The custodian shall agree to maintain adequate records regarding a description of the assets, all receipts, deliveries and locations of assets, together with a current inventory thereof, all purchases and sales, all receipts and disbursements of cash and all debits and credits pertaining to transactions relating to the assets, including but not limited to interest payments. The custodian shall agree to conduct periodic inspections in order to verify the accuracy of the inventory, including the securities, if any, held by a subcustodian.

**15.2(6)** ~~If the custodian proposes to use a subcustodian to perform any services in connection with the public funds custodial agreement, the custodian shall agree to take appropriate action to recover losses incurred by the public unit as a result of the acts or omissions of any subcustodian. The custodian shall agree that all records of investment transactions relating to the public funds custodial agreement and the services provided thereunder, regardless of who performs the services, shall be considered records of the public unit and open to inspection and examination by the public unit, its employees and its designees. To the extent records of investment transactions are maintained by affiliates of the custodian,~~

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the custodian shall agree to be responsible to obtain any such records that are in the possession of its affiliates upon reasonable request of the public unit. The custodian shall agree to make all records of investment transactions relating to the public funds custodial agreement and the services provided thereunder available upon reasonable request for inspection and audit by the public unit, its employees or designees, and to allow these records or excerpts of these records to be copied and removed to facilitate the audit or to comply with public records requirements.

~~15.2(7)~~ The custodian shall settle all transactions on a payment versus delivery settlement basis except those specifically exempted in the agreement or unless such settlement is not market practice or unless otherwise directed by the public unit. If the custodian proposes to use an affiliated subcustodian or other affiliated agent to perform any services in connection with the public funds custodial agreement, the custodian shall agree that it shall be responsible for the acts and omissions of such affiliates as though the acts and omissions of the affiliates were the acts and omissions of the custodian.

~~15.2(8)~~ The custodian shall agree that it will receive all assets purchased by or for the public unit from the persons through or from whom the same were purchased, and only upon receipt thereof (delivery versus payment basis) pay, out of the assets held on account of the public unit, the total amount payable for the purchase as set forth in the instructions received by the custodian. The custodian shall agree to secure possession of all investment instruments that are the subject of or are the underlying obligations for any repurchase agreement.

~~15.2(9)~~ The custodian shall agree that it will transfer assets for sale pursuant to instructions delivered to the custodian only upon receipt of the total amount payable to the public unit in connection with the settlement of the transaction, provided that the same conforms to the total amount payable to the public unit as shown in the instructions with respect to such sale. No assets may be delivered out of the account of the public unit without full payment (no "free deliveries" of investment securities shall be permitted).

~~15.2(8)~~ ~~15.2(10)~~ If a public unit has engaged an investment advisor or investment manager, the public funds custodial agreement must limit the authority of the investment manager or advisor to authorizing a sale or purchase of an investment on a delivery versus payment basis pursuant to an instruction procedure which is consistent with the requirements of the public funds custodial agreement and the internal control policies of the public unit. The public funds custodial agreement shall not permit an investment manager or investment advisor to deliver, transfer, or move cash or securities to another account, location or entity.

~~15.2(9)~~ ~~15.2(11)~~ The delivery, transfer or movement of cash or securities held in custody for the public unit (except for trades on a delivery versus payment basis) shall only be made pursuant to instructions given to the custodian by the public unit, its employees or designees, consistent with the internal controls established by the public unit.

~~15.2(10)~~ ~~15.2(12)~~ The public funds custodial agreement shall specify in satisfactory detail the procedures for instructions to be furnished to the custodian in connection with the sales or purchases of securities and the delivery, transfer or movement of cash or securities held in the custody account. The instruction provisions must be consistent with the internal control policies established by the public unit. These procedures must specify the individual or individuals authorized to issue instructions, the scope of their authority, require current specimen signatures of authorized individuals to be maintained by the custodian and require written instructions to be furnished to the custodian. If oral instructions are permitted, the procedures or protocol for them must be specified in detail and must address verification and confirmation procedures and follow-up written instructions required by the custodian and the public unit.

~~15.2(11)~~ ~~15.2(13)~~ The public funds custodial agreement shall require the custodian to furnish a monthly report describing in satisfactory detail the inventory of the account and transaction history during the preceding month and other reports at such times as may be adequate to satisfy the public unit's internal control procedures for reconciliation. In addition, the custodian shall, to the extent not prohibited by law, provide written notice to the public unit (~~within a time period acceptable to the public unit~~) within 30 days of the custodian's receipt of an audit by an independent or internal auditor or regulatory authority which indicates that there is a material weakness in the custodian's internal control structure or receipt of a regulatory order or sanction which relates to the type of work performed under the public funds custodial

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agreement. The custodian shall include in the written notice a detailed description of the comment or sanction and any curative measures which the custodian proposes to take in response thereto.

~~15.2(12)~~ **15.2(14)** The public funds custodial agreement shall not provide for the compensation of the custodian based on investment performance.

~~15.2(13)~~ **15.2(15)** The custodian shall agree to comply with all applicable federal, state, and local laws and rules when performing within the scope of the public funds custodial agreement.

~~15.2(14)~~ **15.2(16)** At a minimum, the custodian shall agree to exercise the standard of care expected of a professional custodian of public funds in holding, maintaining and servicing the public fund's assets and cash and in performing the custodian's duties and obligations under the public funds custodial agreement.

[Filed 10/10/14, effective 12/3/14]

[Published 10/29/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/14.

AGENCY	RULE	DELAY
Economic Development Authority[261]	31.1 to 31.20 [IAB 9/17/14, <b>ARC 1626C</b> ]	Effective date of October 22, 2014, delayed 70 days by the Administrative Rules Review Committee at its meeting held October 14, 2014. [Pursuant to §17A.4(7)]
Human Services Department[441]	110.5(1)“a” [IAB 10/1/14, <b>ARC 1636C</b> ]	Effective date of January 1, 2015, delayed 70 days by the Administrative Rules Review Committee at its meeting held October 14, 2014. [Pursuant to §17A.4(7)]