IOWA ADMINISTRATIVE BULLETIN

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PUBLISHED UNDER AUTHORITY OF IOWA CODE SECTIONS 2B.5 AND 17A.6

PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action 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"]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike through letters~~ indicate deleted material.

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CITATION of Administrative Rules

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

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

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

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

Schedule for Rule Making
2007

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 27 '06	Jan. 17 '07	Feb. 6 '07	Feb. 21 '07	Feb. 23 '07	Mar. 14 '07	Apr. 18 '07	July 16 '07
Jan. 12	Jan. 31	Feb. 20	Mar. 7	Mar. 9	Mar. 28	May 2	July 30
Jan. 26	Feb. 14	Mar. 6	Mar. 21	Mar. 23	Apr. 11	May 16	Aug. 13
Feb. 9	Feb. 28	Mar. 20	Apr. 4	Apr. 6	Apr. 25	May 30	Aug. 27
Feb. 23	Mar. 14	Apr. 3	Apr. 18	Apr. 20	May 9	June 13	Sept. 10
Mar. 9	Mar. 28	Apr. 17	May 2	May 4	May 23	June 27	Sept. 24
Mar. 23	Apr. 11	May 1	May 16	***May 16***	June 6	July 11	Oct. 8
Apr. 6	Apr. 25	May 15	May 30	June 1	June 20	July 25	Oct. 22
Apr. 20	May 9	May 29	June 13	June 15	July 4	Aug. 8	Nov. 5
May 4	May 23	June 12	June 27	***June 27***	July 18	Aug. 22	Nov. 19
May 16	June 6	June 26	July 11	July 13	Aug. 1	Sept. 5	Dec. 3
June 1	June 20	July 10	July 25	July 27	Aug. 15	Sept. 19	Dec. 17
June 15	July 4	July 24	Aug. 8	Aug. 10	Aug. 29	Oct. 3	Dec. 31
June 27	July 18	Aug. 7	Aug. 22	***Aug. 22***	Sept. 12	Oct. 17	Jan. 14 '08
July 13	Aug. 1	Aug. 21	Sept. 5	Sept. 7	Sept. 26	Oct. 31	Jan. 28 '08
July 27	Aug. 15	Sept. 4	Sept. 19	Sept. 21	Oct. 10	Nov. 14	Feb. 11 '08
Aug. 10	Aug. 29	Sept. 18	Oct. 3	Oct. 5	Oct. 24	Nov. 28	Feb. 25 '08
Aug. 22	Sept. 12	Oct. 2	Oct. 17	Oct. 19	Nov. 7	Dec. 12	Mar. 10 '08
Sept. 7	Sept. 26	Oct. 16	Oct. 31	Nov. 2	Nov. 21	Dec. 26	Mar. 24 '08
Sept. 21	Oct. 10	Oct. 30	Nov. 14	***Nov. 14***	Dec. 5	Jan. 9 '08	Apr. 7 '08
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Dec. 12	Jan. 2 '08	Jan. 22 '08	Feb. 6 '08	Feb. 8 '08	Feb. 27 '08	Apr. 2 '08	June 30 '08
Dec. 26	Jan. 16 '08	Feb. 5 '08	Feb. 20 '08	Feb. 22 '08	Mar. 12 '08	Apr. 16 '08	July 14 '08

PRINTING SCHEDULE FOR IAB

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23	**Friday, April 20, 2007**	**May 9, 2007**
24	**Friday, May 4, 2007**	**May 23, 2007**
25	**Wednesday, May 16, 2007**	**June 6, 2007**

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*****

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Legislative Services Agency
Miller Building
Des Moines, IA 50319
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Renewable fuel infrastructure program, 314.5 IAB 4/11/07 **ARC 5834B**	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	May 1, 2007 2 p.m.
EDUCATION DEPARTMENT[281]		
Library and media programs, 12.2, 12.3 IAB 3/28/07 **ARC 5789B**	State Board Room Grimes State Office Bldg. Des Moines, Iowa	April 17, 2007 3 to 4:30 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Minor water main construction permits, 40.3(1), 40.4, 43.3(3) IAB 3/28/07 **ARC 5795B**	Conf. Rm., Water Supply Office Suite I 401 SW 7th St. Des Moines, Iowa	April 19, 2007 10 a.m.
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Securities regulation, ch 50 IAB 4/11/07 **ARC 5835B**	Lobby Conference Room 330 Maple St. Des Moines, Iowa	May 15, 2007 9:30 a.m.
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]		
IPERS benefits, amendments to chs 3, 4, 8, 9, 11, 12, 14, 16, 17 IAB 3/28/07 **ARC 5804B**	7401 Register Dr. Des Moines, Iowa	April 17, 2007 9 a.m.
LABOR SERVICES DIVISION[875]		
Discrimination against employees; occupational safety and health standards, 9.16, 10.20 IAB 4/11/07 **ARC 5839B**	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	May 4, 2007 1:30 p.m.
New installations and safety tests, 71.2(2), 72.1 IAB 3/28/07 **ARC 5790B**	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	April 18, 2007 10 a.m. (If requested)
Blood-borne disease testing, 173.54, 177.5(11) IAB 4/11/07 **ARC 5829B**	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	May 4, 2007 9 a.m. (If requested)
NATURAL RESOURCE COMMISSION[571]		
Use of nontoxic shot on wildlife areas, 51.10 IAB 3/28/07 **ARC 5802B** **(ICN Network)**	Contact (515)281-5918 or visit the department's Web site at www.iowadnr.com for list of 18 ICN hearing locations.	April 19, 2007 6:30 to 9 p.m.

NATURAL RESOURCE COMMISSION[571] (Cont'd)

Wildlife refuges—restrictions, 52.1(2)"a" IAB 3/28/07 **ARC 5801B** **(ICN Network)**	Contact (515)281-5918 or visit the department's Web site at www.iowadnr.com for list of 18 ICN hearing locations.	April 19, 2007 6:30 to 9 p.m.
Waterfowl and coot hunting seasons, 91.1, 91.3, 91.4(2), 91.5(1), 91.6 IAB 3/28/07 **ARC 5800B** **(ICN Network)**	Contact (515)281-5918 or visit the department's Web site at www.iowadnr.com for list of 18 ICN hearing locations.	April 19, 2007 6:30 to 9 p.m.
Game harvest reporting and landowner-tenant registration, 95.1(1), 95.2 IAB 3/28/07 **ARC 5799B** **(ICN Network)**	Contact (515)281-5918 or visit the department's Web site at www.iowadnr.com for list of 18 ICN hearing locations.	April 19, 2007 6:30 to 9 p.m.
Wild turkey spring hunting, 98.2(3), 98.9(2), 98.10, 98.11(1) IAB 3/28/07 **ARC 5798B** **(ICN Network)**	Contact (515)281-5918 or visit the department's Web site at www.iowadnr.com for list of 18 ICN hearing locations.	April 19, 2007 6:30 to 9 p.m.
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Cottontail rabbit and squirrel seasons, 107.1, 107.3 IAB 3/28/07 **ARC 5796B** **(ICN Network)**	Contact (515)281-5918 or visit the department's Web site at www.iowadnr.com for list of 18 ICN hearing locations.	April 19, 2007 6:30 to 9 p.m.

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Liquefied petroleum gas, 51.100 to 51.102, ch 226 IAB 3/28/07 **ARC 5805B**	Third Floor Conference Rm. Wallace State Office Bldg. Des Moines, Iowa	May 2, 2007 10:30 a.m.
Certification of automatic fire extinguishing system contractors, 275.3 IAB 4/11/07 **ARC 5836B** (See also **ARC 5837B** herein)	Third Floor Conference Rm. Wallace State Office Bldg. Des Moines, Iowa	May 2, 2007 11 a.m.

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

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

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

Other autonomous agencies which were not included in the original reorganization legislation as "umbrella" agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

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ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[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 15.104, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 314, "Renewable Fuel Infrastructure Program Administration," Iowa Administrative Code.

On December 21, 2006, the Iowa Economic Development Board (IEDB) approved the filing of an emergency rule making that impacted the administration of the Renewable Fuel Infrastructure programs. The amendment established the length of a cost-share grant agreement to be five years and clarified the waiver requirement. This amendment became effective on December 21, 2006.

Grantees must use the infrastructure exclusively to store and dispense the type of renewable fuel approved by the Renewable Fuel Infrastructure Board (RFIB) for no less than five years. If a grantee ceases use of the approved fuel during this five-year period, the grantee must either pay back the grant award plus an additional 25 percent penalty or seek a waiver of the repayment requirements from the RFIB. The rules provide for an automatic waiver of the obligation to repay grant funds plus any penalty to all grant recipients that satisfy the terms and conditions of their cost-share grant agreements including, but not limited to, the five-year exclusive use of the renewable fuel requirement. A grant recipient seeking a waiver during the time period in which a cost-share grant agreement is in effect must submit a written waiver request to the RFIB. The rules currently do not specify what criteria will be used by the RFIB when it acts on a waiver request.

At the February 2, 2007, meeting of the Administrative Rules Review Committee, concerns were expressed about the need for criteria that would be used to grant or deny a waiver request. Committee members asked that the RFIB and the IEDB consider adopting general criteria that would guide the RFIB when acting on rule waiver requests.

The RFIB met telephonically on March 6, 2007, and reviewed proposed rule waiver criteria. The RFIB voted unanimously to approve the proposed rule waiver criteria and to recommend to the IEDB that it submit a Notice of Intended Action to propose these criteria. On March 15, 2007, the IEDB accepted the recommendation of the RFIB and approved the filing of these proposed amendments.

Public comments concerning the proposed amendments will be accepted until 5 p.m. on May 1, 2007. Interested persons may submit written or oral comments by contacting Melanie Johnson, General Counsel, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4862.

A public hearing to receive comments about the proposed amendments will be held on May 1, 2007, at 2 p.m. at the above address in the IDED main conference room.

These amendments are intended to implement 2006 Iowa Acts, chapter 1142, sections 28 to 34.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 314.5(4) as follows:

314.5(4) Duration of grant agreement; repayment or board waiver.

a. The duration of a cost-share grant agreement shall be five years from the date of submission of verified documentation of project completion.

b. Grantees shall not use the infrastructure to store and dispense motor fuel other than the type approved by the board, unless one of the following applies: (1) the grantee is granted a waiver by the board, or (2) the grantee pays back the moneys awarded with an additional 25 percent penalty. ~~A grant recipient seeking a waiver during the time period in which a cost-share agreement is in effect shall submit a written waiver request to the board. The board hereby grants a waiver of the obligation to repay grant funds plus any penalty to all grant recipients that satisfy the terms and conditions of their cost-share grant agreements, including, but not limited to, the five-year exclusive use of renewable fuel requirement.~~

ITEM 2. Adopt **new** subrule 314.5(5) as follows:

314.5(5) Waiver criteria. The board may waive repayment of grant funds plus the 25 percent penalty. A grant recipient seeking a waiver during the time period in which a cost-share agreement is in effect shall submit a written waiver request to the board. The board will consider waiver requests under the following circumstances:

a. Transition provision for awards made prior to December 21, 2006. A grant recipient that received an award prior to December 21, 2006, and signed a cost-share agreement contract that included the five-year exclusive use of renewable fuel requirement has up to 60 days after [insert the effective date of this subrule] to request that the board rescind the contract and receive a permanent waiver of the 25 percent penalty. Any grant funds disbursed shall be paid back, the 25 percent penalty will be waived, and the contract will be terminated.

b. Permanent waiver (no repayment and no 25 percent penalty).

(1) Waiver due to completion of contract obligations. The board hereby grants a waiver of the obligation to repay grant funds plus any penalty to all grant recipients that satisfy the terms and conditions of their cost-share grant agreements including, but not limited to, the five-year exclusive use of renewable fuel requirement.

(2) Waiver due to demonstration of good cause (no repayment and no 25 percent penalty). A grant recipient may request a permanent waiver during the time period in which a cost-share grant agreement is in effect if the grant recipient can demonstrate good cause for failure to continue using the approved renewable fuel. "Good cause" includes, but is not limited to, events such as the following:

1. Permanent business closure due to bankruptcy.

2. Permanent closure of underground or aboveground storage tanks.

(3) Waiver due to demonstration of financial hardship (repayment on a sliding scale and no 25 percent penalty). A grant recipient may seek a permanent waiver of exclusive use of the approved renewable fuel during the time period in which a cost-share agreement is in effect due to financial hardship. The grant recipient must demonstrate that continu-

ing to dispense the renewable fuel at a project site will cause a financial hardship. A request for waiver due to financial hardship shall include documentation to show a "good faith" effort to market the fuel, specifically the most recent six-month history of gallons of approved renewable fuel sold by month, marketing/advertising efforts, retail price comparison of E-85 to E-10 (or regular gasoline) or of biodiesel to regular diesel. If a waiver is granted, the 25 percent penalty will not be assessed, but the grant funds will be repaid as follows:

1. Months 1 through 10 of contract, 100 percent of grant amount.

2. Months 11 through 60 of contract, 2 percent of grant amount for each month remaining on contract.

c. Temporary waiver (temporary suspension of repayment and 25 percent penalty). A grant recipient may request a temporary suspension of the obligation to use only the approved renewable fuel and a temporary waiver of the repayment plus penalty requirement. A grant recipient may request that the board grant a temporary waiver provided all of the following criteria are met:

(1) For not less than six months from the effective date of a cost-share agreement, the grant recipient dedicates equipment to the marketing or retailing of the approved renewable fuel or to both the marketing and retailing.

(2) If, after six months, the grant recipient determines that market forces are not allowing for advantageous sales of the approved renewable fuel, the grant recipient may request a six-month extension and waiver to the dedication of the renewable fuels equipment.

(3) The temporary waiver shall be preceded by documentation of the previous six-month sales history and marketing attempts.

(4) A temporary waiver may be continued for not more than four six-month intervals. Intervals may be consecutive or intermittent as the board deems necessary based on review of the documentation submitted by the grant recipient in support of its waiver request.

(5) Each six-month temporary waiver will result in an extension to the overall contract period by the same amount of time as the equipment was not used as intended.

(6) If a state executive order suspending the Iowa Renewable Fuel Standard (RFS) schedule is issued, the RFIB may or may not grant a temporary waiver of use of the equipment for a specific approved renewable fuel. If a waiver is granted, the RFIB will determine the length of time of the waiver and such waiver will pertain to all grant recipients without need to apply. Such a wavier will not extend the contract period.

ARC 5838B

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 170, "Child Care Services," Iowa Administrative Code.

The proposed amendment clarifies the citizenship requirements for receipt of Child Care Assistance. Public Law 104-193 restricts the use of funds in federally assisted programs to persons who are citizens or nationals of the United States or who are "qualified aliens" as defined in federal law. The term "qualified aliens" includes children who are lawfully admitted for permanent residence; who are granted asylum, conditional entry, or refugee status; who are paroled into the United States for at least one year; or who are Cuban or Haitian entrants, as well as children who have been battered or subjected to extreme cruelty in the United States by a parent or family member or whose deportation is being withheld under federal law.

Qualified aliens are not eligible for federally funded assistance for the first five years after their entry into the United States. Federal law grants exceptions to this five-year bar to assistance to children who are refugees or asylees, Cuban and Haitian entrants, certain Amerasian immigrants, dependents of persons who are veterans of the United States armed services or who are on active duty in the armed services, children who entered the United States before August 22, 1996, and children whose deportation is being withheld.

These requirements are similar to those in effect for the Family Investment Program. Applicants must attest to the citizenship or alien status of the children for whom assistance is being requested and provide documentation of the alien status of any children claimed as qualified aliens.

This amendment does not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217). A waiver of this rule would require the provision of 100 percent of state moneys for the funding of Child Care Assistance.

Any interested person may make written comments on the proposed amendment on or before May 2, 2007. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code section 237A.13.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule **170.2(2)** by adopting **new** paragraph **"d"** as follows:

d. Citizenship. As a condition of eligibility, the applicant shall attest to the child's citizenship or alien status by signing Form 470-3624 or 470-3624(S), Child Care Assistance Application, or Form 470-0462 or 470-0466, Health and Financial Support Application. Child care assistance payments may be made only for a child who:

(1) Is a citizen or national of the United States; or

(2) Is a qualified alien as defined at 8 U.S.C. Section 1641. The applicant shall furnish documentation of the alien status of any child declared to be a qualified alien. A child who is a qualified alien is not eligible for child care assistance for a period of five years beginning on the date of the child's entry into the United States with qualified alien status.

EXCEPTION: The five-year prohibition from receiving assistance does not apply to:

HUMAN SERVICES DEPARTMENT[441](cont'd)

1. Qualified aliens described at 8 U.S.C. Section 1613; or

2. Qualified aliens as defined at 8 U.S.C. Section 1641 who entered the United States before August 22, 1996.

ARC 5840B

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 235A.14(1), the Department of Human Services proposes to amend Chapter 175, "Abuse of Children," Iowa Administrative Code.

This amendment specifies the method to add or correct information in a child abuse assessment summary by completion of an addendum. Iowa Code section 232.71B requires the Department to complete an assessment summary within 20 business days of the receipt of a report of suspected child abuse. All information is not necessarily available to the Department or to the subjects of the report within that period. When more information becomes available after the summary is written, or when a review or contested case proceeding changes the findings of the assessment summary, it is the Department's practice to file a written addendum to the summary. Provisions for an addendum were removed from Chapter 175 in 1998. Restoration of this provision in the rules will make the Department's policy and practice clearer to the public, particularly to subjects of a report who are seeking changes to the child abuse assessment summary.

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

Any interested person may make written comments on the proposed amendment on or before May 2, 2007. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code sections 235A.14 and 235A.19.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule **175.26(1)** by adopting the following **new** paragraph **"h"**:

h. Addendum: An addendum to an assessment summary shall be completed within 20 business days when any of the following occur:

(1) New information becomes available that would alter the finding, conclusion, or recommendation of the summary.

(2) Substantive information that supports the finding becomes available.

(3) A subject who was not previously interviewed requests an interview to address the allegations of the case.

(4) A review or a final appeal decision modifies the summary.

ARC 5812B

HUMAN SERVICES DEPARTMENT[441]

Notice of Termination

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services terminates the rule making initiated by the Notice of Intended Action amending Chapter 182, "Family-Centered Services," Iowa Administrative Code, which was published in the Iowa Administrative Bulletin on January 31, 2007, as **ARC 5672B**.

The Council on Human Services has declined to adopt this amendment. Providers of family-centered parental counseling services will continue to be required to have a college degree. The Department plans to replace parental counseling and all other current family-centered services later this year with a new array of family-centered child welfare services, as proposed in the Notice of Intended Action published as **ARC 5699B** in the Iowa Administrative Bulletin on January 31, 2007.

ARC 5835B

INSURANCE DIVISION[191]

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 502.605(1), the Insurance Division hereby gives Notice of Intended Action to rescind Chapter 50, "Regulation of Securities Offerings and Those Who Engage in the Securities Business," Iowa Administrative Code, and adopt a new Chapter 50 with the same title.

Chapter 50 has undergone a complete review and rewriting of all current rules. Substantive revisions were made to many rules, in large part due to changes in Iowa Code chapter 502. As a result, existing Chapter 50 is being rescinded, and new Chapter 50 is proposed.

These securities rules have been reorganized. The framework of the current rules dates from the first set of rules adopted after the Uniform Securities Act was first adopted in Iowa in 1975. While some rules had been reserved, in recent years new rules were added after existing rules without regard to context. The proposed chapter will be divided into divisions that cover the following topics:

INSURANCE DIVISION[191](cont'd)

DIVISION I
DEFINITIONS AND ADMINISTRATION

DIVISION II
REGISTRATION OF BROKER-DEALERS AND AGENTS

DIVISION III
REGISTRATION OF INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES, AND FEDERAL COVERED ADVISERS

DIVISION IV
RULES COVERING ALL REGISTERED PERSONS

DIVISION V
REGISTRATION OF SECURITIES

DIVISION VI
EXEMPTIONS

DIVISION VII
FRAUD AND OTHER PROHIBITED CONDUCT

DIVISION VIII
VIATICAL SETTLEMENT INVESTMENT CONTRACTS

The language of the rules has also been updated and clarified. However, a few rules follow exactly some national models and thus have not been modified due to the need for uniformity of language from one state to the next.

Several of the current rules will not be readopted. Some rules have been eliminated because they contain outdated regulatory requirements. Other rules have been eliminated due to their inclusion in the substance of Iowa Code chapter 502. The rules that have been eliminated include:

191—50.20(502) Annual reports filed with the administrator (reducing regulatory requirements).

191—50.34(502) Agent exclusion (see agent exemption, Iowa Code section 502.402(1)"c").

191—50.45(502) Definition of offer (see Iowa Code section 502.202(17)).

191—50.46(502) Institutional buyer exemption (see new definition at Iowa Code section 502.102(11) and exemption at 502.202(13)).

191—50.47(502) National Securities Exchange—exemption (covered by National Securities Market Improvement Act of 1996 (NSMIA) and subsequent U.S. Securities and Exchange Commission (SEC) rule making).

191—50.54(502) Rankings or ratings of direct participation programs (no longer used).

Subrule 50.57(1) Periodic payment plans, and subrule 50.57(2) Master fund/feeder funds (preempted in accordance with NSMIA).

191—50.90(502) World class issuer exemption (see Iowa Code sections 502.202(3) and 502.202(5)).

191—50.93(502) Manual or electronically available information exemption (see Iowa Code section 502.202(2)).

191—50.98(502) Transition schedule for conversion to the CRD/IARD (no longer needed).

191—50.100(502) Definition of investment adviser representative of a federal covered adviser (see Iowa Code section 502.102(16)"c").

Several new rules are proposed. These rules include many new definitions in proposed rule 191—50.1(502), typically to explain acronyms commonly used in the securities industry. Proposed rule 191—50.3(502) provides a clear process for requesting an interpretive opinion. Proposed rule 191—50.43(502), based on a NASAA model rule, adds financial reporting requirements for investment advisers. Proposed rule 191—50.44(502) is intended to provide guidance to professionals regarding the extent of the "solely incidental" exclusion from the definition of "investment adviser." Proposed rule 191—50.88(502) provides filing requirements for nonprofit issuers. Proposed rule 191—50.102(502) denotes what constitutes fraudulent Iowa activities, and proposed rule 191—50.103(502) makes unlawful certain types of investment advisory contracts.

Many rules have also undergone substantial revisions or contain updated versions of national model language. These changes are included in subrule 50.10(8), paragraph 50.16(1)"bb," paragraphs 50.16(2)"f" through "h," and rules 191—50.38(502), 50.39(502), 50.40(502), 50.41(502), 50.42(502), and 50.67(502).

This chapter generally does not provide for waivers. Persons seeking waivers must petition the Division for a waiver in the manner set forth under 191—Chapter 4.

Any interested person may make written comments on the proposed chapter on or before May 16, 2007. Written comments may be sent to Craig Goettsch, Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments may also be submitted by fax to (515)281-3509 or electronically to craig.goettsch@iid.state.ia.us.

A public hearing will be held at the Lobby Conference Room of the Insurance Division at 9:30 a.m. on May 15, 2007, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. The Division is located at 330 Maple Street, Des Moines, Iowa.

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

These rules are intended to implement Iowa Code chapter 502.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind 191—Chapter 50 and adopt the following **new** chapter in lieu thereof:

CHAPTER 50
REGULATION OF SECURITIES OFFERINGS AND THOSE WHO ENGAGE IN THE SECURITIES BUSINESS

DIVISION I
DEFINITIONS AND ADMINISTRATION

191—50.1(502) Definitions. For the purposes of this chapter, the definitions in Iowa Code chapter 502 and the following definitions shall apply unless the context otherwise requires:

"Act" means Iowa Code chapter 502, the Iowa Uniform Securities Act (Blue Sky Law).

"Administrator" means the commissioner of insurance or the deputy administrator appointed under Iowa Code section 502.601.

"CCH NASAA Reports" means the official statements of policy of the North American Securities Administrators Association, Inc., printed by Commerce Clearing House, the official reporter for NASAA.

"CRD" means the Central Registration Depository.

"CSRU" means the Iowa child support recovery unit.

"FDIC" means the Federal Deposit Insurance Corporation.

INSURANCE DIVISION[191](cont'd)

"Form ADV" means Uniform Application for Investment Adviser Registration.

"Form ADV-H" means Notice of Hardship Application for Investment Adviser Registration.

"Form ADV-W" means Notice of Withdrawal from Registration as Investment Adviser.

"Form BD" means Uniform Application for Broker-Dealer Registration.

"Form BDW" means Uniform Request for Broker-Dealer Withdrawal.

"Form 1CP" means Agricultural Cooperative Notice of Sales of Notes or Evidences of Indebtedness.

"Form D" means Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption, and includes the Appendix.

"Form F-7" means Registration Statement Under the Securities Act of 1933, for registration of securities of certain Canadian issuers offered for cash upon the exercise of rights granted to existing security holders.

"Form F-8" means Registration Statement Under the Securities Act of 1933, for registration of securities of certain Canadian issuers to be issued in exchange offers or a business combination.

"Form F-9" means Registration Statement Under the Securities Act of 1933, for registration of certain investment grade debt or investment grade preferred securities of certain Canadian issuers.

"Form F-10" means Registration Statement Under the Securities Act of 1933, for registration of securities of certain Canadian issuers.

"Form NF" means Uniform Investment Company Notice Filing.

"Form S-1" means Registration Statement Under the Securities Act of 1933, for registration of securities for which no other form is authorized or prescribed.

"Form SB-2" means Registration Statement Under the Securities Act of 1933, for registration of securities to be sold to the public by small business issuers.

"Form U-1" means Uniform Application to Register Securities.

"Form U-2" means Uniform Consent to Service of Process.

"Form U-2A" means Uniform Corporate Resolution.

"Form U-4" means Uniform Application for Securities Industry Registration or Transfer.

"Form U-5" means Uniform Termination Notice for Securities Industry Registration.

"Form U-6" means Uniform Disciplinary Action Reporting Form.

"Form U-7" means Small Corporate Offering Registration Form.

"Form USR-1" means Investment Company Report of Sales.

"Gift" means a rendering of anything of value in return for which legal consideration of equal or greater value is not given and received.

"IARD" means the Investment Advisory Registration Depository.

"Immediate family" includes parent, mother-in-law, father-in-law, spouse, former spouse, brother, sister, brother-in-law, sister-in-law, son-in-law, daughter-in-law, child and stepchild. In addition, "immediate family" includes any other person who is supported, directly or indirectly, to a material extent by an agent.

"Investment contract" as used in Iowa Code section 502.102(28) includes:

1. Any investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor.

(1) "Common enterprise" in this definition means an enterprise in which the fortunes of the investor are tied to the efficacy of the efforts and successes of those seeking the investment or of a third party.

(2) "Profit" in this definition includes income or a return on the investment, including a fixed rate of return, dividends, other periodic payments, or the increased value of the investment; or

2. Any investment by which an offeree furnishes initial value to an offerer, and a portion of this initial value is subjected to the risks of the enterprise, and the furnishing of the initial value is induced by the offerer's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise, and the offeree does not exercise practical and actual control over the managerial decisions of the enterprise.

"Loan" means an agreement to advance property, including but not limited to money, in return for the promise that payment will be made for use of the property.

"NASAA" means the North American Securities Administrators Association, Inc.

"NASD" means the National Association of Securities Dealers.

"NASDAQ" means the NASDAQ Stock Market.

"NCUA" means the National Credit Union Association.

"NSMIA" means the National Securities Markets Improvement Act of 1996, Public Law 104-290.

"NYSE" means the New York Stock Exchange.

"OTC" means over the counter.

"SAI" means Statement of Additional Information.

"SEC" means the United States Securities and Exchange Commission as established pursuant to 15 U.S.C. Section 78(d).

"SOIF" means Solicitation of Interest Form.

This rule is intended to implement Iowa Code section 502.605(1).

191—50.2(502) Cost of audit or inspection.

50.2(1) A broker-dealer or investment adviser may be assessed the greater of a flat fee of $100 or the costs of salaries, travel, lodging, and meals directly attributable to an audit or inspection made pursuant to Iowa Code section 502.411(4). The assessment of costs of salaries, travel, lodging, and meals, if any, shall be determined in accordance with the department of administrative services (DAS) state accounting enterprise Accounting Policy and Procedures Manual in effect at the time of the audit or inspection.

50.2(2) The administrator shall notify the broker-dealer or investment adviser of the expenses attributable to the audit or inspection as soon as practicable.

50.2(3) Assessments collected by the administrator pursuant to this rule shall be remitted to the state treasury.

This rule is intended to implement Iowa Code section 502.411(4).

191—50.3(502) Interpretative opinions or no-action letters. Interested persons may request the administrator to issue an interpretative opinion pursuant to Iowa Code section 502.605(4). These requests will be answered by means of a no-action letter. Requests for confirmation of the availability of an exemption shall be answered in the same manner. The following procedure is recommended for the submission of such requests:

INSURANCE DIVISION[191](cont'd)

50.3(1) The request should be in writing and include the factual situation involved, a citation to the applicable part of the rule or statute, and the question sought to be answered. Any disclosure or informational materials which pertain to the issue should also be filed.

50.3(2) The administrator, or any person delegated under Iowa Code section 502.601(1), may respond to the request by determining to take or not to take a no-action position or by declining to reach a determination due to insufficient facts, conflicting case or administrative law or such other reasons as the administrator's discretionary power allows.

50.3(3) All no-action determinations shall be based upon the representations made by the requesting party in the letter and information filed, since any different facts or conditions might require a different conclusion. The no-action letter shall express the division's position on enforcement action only and shall not purport to express any legal conclusion on the questions presented. No determination shall take a position on whether or not any disclosure materials satisfactorily comply with the antifraud and civil liability sections of the Act.

50.3(4) A no-action determination issued under this rule may be provided to interested persons for a filing fee of $100.

This rule is intended to implement Iowa Code section 502.605(4).

191—50.4 to **50.9** Reserved.

DIVISION II
REGISTRATION OF BROKER-DEALERS AND AGENTS

191—50.10(502) Broker-dealer registrations, renewals, amendments, succession, and withdrawals.

50.10(1) An applicant for an initial registration to conduct business as a broker-dealer must:

a. File a current Form BD. If the applicant is a member of NASD, Form BD shall be filed with CRD. If the applicant is not a member of NASD, Form BD shall be manually signed and notarized and filed with the administrator;

b. File with the administrator copies of the applicant's most recent audited financial statements prepared by an independent certified public accountant in accordance with GAAP and including, at a minimum, a balance sheet, income statement and net capital calculation;

c. Pay a $200 filing fee. If the applicant is a member of NASD, the fee shall be remitted to the CRD. If the applicant is not a member of NASD, the fee shall be remitted to the administrator; and

d. File with the administrator a completed Iowa Broker-Dealer Affidavit form including:

(1) A signed and notarized statement indicating that the applicant engaged in no securities transactions with persons in Iowa prior to registration or, if applicable, identifying all past and current accounts of persons in Iowa; and

(2) A signed consent to service of process pursuant to Iowa Code section 502.611. The form may be obtained from the Iowa Securities and Regulated Industries Bureau, 340 Maple Street, Des Moines, Iowa 50319-0066, via E-mail at iowa.sec@iid.state.ia.us, or from the division Web site at http://www.iid.state.ia.us/division/securities.

50.10(2) No application for initial registration will be deemed complete for purposes of Iowa Code section 502.406(3) until the applicant has been approved as a member of NASD.

50.10(3) An applicant that is a member of the NASD and that seeks renewal of a broker-dealer registration shall comply with the renewal time frames established by the NASD for renewal on the CRD system and shall:

a. File with CRD an updated Form BD;

b. File with the administrator the renewal applicant's most recent audited financial statements if they were not previously submitted to the administrator pursuant to subrule 50.10(1);

c. Pay to the CRD a $200 renewal filing fee.

50.10(4) An applicant that is not a member of the NASD and that seeks renewal of a broker-dealer registration shall by November 30 of each year:

a. File with the administrator an updated Form BD, manually signed and notarized;

b. File with the administrator the renewal applicant's most recent audited financial statements if they were not previously submitted to the administrator pursuant to subrule 50.10(1);

c. Pay a $200 renewal filing fee, which shall be remitted to the administrator.

50.10(5) Failure to comply with the requirements of subrule 50.10(3) or 50.10(4) shall be deemed a request for withdrawal of the broker-dealer registration, and the registration will be terminated as of December 31 of the renewal year.

50.10(6) A registered broker-dealer that is an NASD member shall submit a withdrawal request by filing an accurate and complete Form BDW with CRD. A registered broker-dealer that is not an NASD member shall submit a withdrawal request by filing an accurate and complete Form BDW with the administrator.

50.10(7) For purposes of Iowa Code section 502.406(2), a correcting amendment to the information or a record contained in either an initial or renewal application shall be considered to be filed "promptly" with the administrator if filed within 30 days of the event necessitating the correcting amendment.

50.10(8) Succession and change in registration.

a. In the case of an organizational change, including a change in the state of incorporation or form of organization, not involving a material change in financial condition or management, a broker-dealer shall file all applicable amendments to Form BD.

b. In the case of an organizational change, including a change in the state of incorporation or form of organization, involving a material change in financial condition or management, a broker-dealer shall file a new application for registration pursuant to subrule 50.10(1). The filing must include the fee pursuant to paragraph 50.10(1)"c" and registration fees for all Iowa-registered agents.

c. In the case of a change in name, a broker-dealer shall file all applicable amendments to Form BD.

50.10(9) Upon the administrator's oral or written request, a broker-dealer shall provide to the administrator the broker-dealer's most recent financial reports, audited or unaudited, within two business days of the request. A broker-dealer may utilize express mail delivery or transmission via electronic means to comply with a request pursuant to this subrule. Financial reports not received by the filing deadline are subject to a late fee of $50 per day beyond the filing deadline, not to exceed an aggregate penalty of $500. Imposition of the late fee is not a reportable event. In the event of the broker-dealer's continued noncompliance, the administrator may also pursue sanctions authorized by Iowa Code section 502.412.

This rule is intended to implement Iowa Code section 502.411(2).

191—50.11(502) Principals. Every registered broker-dealer shall have at least two officers or partners registered

with NASD as principals, appropriate to the function(s) to be performed.

This rule is intended to implement Iowa Code section 502.406.

191—50.12(502) Agent and issuer registrations, renewals and amendments.

50.12(1) An applicant for registration as an Iowa-registered agent of an NASD or non-NASD member broker-dealer shall:

a. Pass one of the following NASD examinations: Series 1, 2, 6, 7, 11, 17, 22, 24, 26, 39, 40, 52, 53, or 62. In the event that an applicant for registration as an agent has received a waiver by the NASD of an NASD examination otherwise required by this paragraph, the NASD waiver will be accepted in lieu of the examination requirement;

b. Pass the NASD Series 63 or Series 66 examination;

c. File an accurate and complete Form U-4 with CRD; and

d. Pay a $30 filing fee to NASD if applying for registration as an agent of an NASD member broker-dealer, or to the administrator if applying for registration as an agent of a non-NASD member broker-dealer.

50.12(2) No application for an agent registration shall be considered for approval until all requirements of subrule 50.12(1), as applicable, are met. In the administrator's discretion, an applicant may be required to provide additional information regarding any aspect of the application. The application shall be considered incomplete until any such additional information is provided.

50.12(3) Renewals, amendments, and withdrawal requests.

a. A registered agent of an NASD member broker-dealer shall submit all renewals, renewal fees, amendments to Form U-4, and withdrawal requests to CRD. A withdrawal request shall be made by filing an accurate and complete Form U-5 with CRD.

b. A registered agent of a non-NASD member broker-dealer shall submit all renewals, renewal fees, amendments to Form U-4, and withdrawal requests to the administrator. A withdrawal request shall be made by filing an accurate and complete Form U-5 with the administrator.

50.12(4) An issuer seeking to employ persons as agents of the issuer within the meaning of Iowa Code section 502.102(2) must apply in writing to the administrator for such authority. The application shall include:

a. A statement of the issuer's intent to employ agents for the sale of its securities;

b. The name, address, social security number, and proof of satisfaction of subrule 50.12(1) for each agent;

c. A complete description of the subject securities;

d. A complete and accurate Form U-4; and

e. A $30 filing fee.

This rule is intended to implement Iowa Code section 502.406.

191—50.13(502) Agent continuing education requirements. Every registered agent shall comply with all applicable continuing education requirements adopted by NASD, NYSE, or any other self-regulatory agency. Failure to comply with any such requirements may be a basis for discipline pursuant to Iowa Code section 502.412(4)"n."

This rule is intended to implement Iowa Code section 502.411(8).

191—50.14(502) Broker-dealer record-keeping requirements.

50.14(1) Unless otherwise provided by an SEC order, each broker-dealer registered or required to be registered under the Act shall make, maintain and preserve books and records in compliance with SEC Rules 17a-3 (17 CFR 240.17a-3), 17a-4 (17 CFR 240.17a-4), 15c2-6 (17 CFR 240.15c2-6) and 15c2-11 (17 CFR 240.15c2-11).

50.14(2) To the extent that the SEC amends the above-referenced rules, broker-dealers complying with such rules as amended shall not be subject to enforcement action by the administrator for violating this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

This rule is intended to implement Iowa Code section 502.411(3).

191—50.15(502) Broker-dealer minimum financial requirements and financial reporting requirements.

50.15(1) Each broker-dealer registered or required to be registered under the Act shall comply with SEC Rules 15c3-1 (17 CFR 240.15c3-1), 15c3-2 (17 CFR 240.15c3-2), and 15c3-3 (17 CFR 240.15c3-3).

50.15(2) Each broker-dealer registered or required to be registered under the Act shall comply with SEC Rule 17a-11 (17 CFR 240.17a-11) and shall file with the administrator copies of annual audited financial reports and notices of financial deficiencies, as required under SEC Rules 17a-5(d) (17 CFR 240.17a-5(d)) and 17a-11 (17 CFR 240.17a-11).

50.15(3) To the extent that the SEC amends the above-referenced rules, broker-dealers complying with such rules as amended shall not be subject to enforcement action by the administrator for violations resulting solely from the broker-dealer's compliance with the amended rules.

This rule is intended to implement Iowa Code section 502.411(2).

191—50.16(502) Dishonest or unethical practices in the securities business.

50.16(1) Dishonest or unethical business practices by any person in the securities business, other than an agent, investment adviser, investment adviser representative, or federal covered investment adviser, as prohibited pursuant to Iowa Code section 502.412(4)"m" includes, but is not limited to, the following:

a. Engaging in any unreasonable and unjustifiable delay in delivering securities purchased by any customers or paying, upon request, free credit balances reflecting completed transactions of any customers;

b. Inducing in a customer's account trading which is excessive in size or frequency relative to the financial resources and character of the account;

c. Recommending to a customer the purchase, sale or exchange of any securities without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

d. Executing a transaction on behalf of a customer without authorization;

e. Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for executing the orders;

f. Executing any transaction in a margin account without securing from the customer a properly executed written

margin agreement prior to the initial transaction in the account;

g. Failing to segregate customers' free securities or securities held in safekeeping;

h. Hypothecating a customer's securities without having a lien on them unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as otherwise permitted by SEC rules;

i. Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

j. Failing to furnish on or before the transaction confirmation date a final prospectus, or, if a final prospectus is not available, a preliminary prospectus together with additional documents which include all information that would be set forth in the final prospectus, to a customer purchasing securities in an offering registered pursuant to Iowa Code section 502.303 or 502.304 or that is subject to a notice filing made pursuant to Iowa Code section 502.302. If the offering is not registered, the broker-dealer shall furnish those disclosure documents that are customarily available;

k. Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collecting moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, custody of securities or other services regarding the securities business;

l. Offering to buy from or sell to any person any security at a stated price unless the broker-dealer is prepared to purchase or sell the security at the stated price and under the conditions as stated at the time of the offer to buy or sell the security;

m. Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by any person for whom the broker-dealer is acting or with whom the broker-dealer is associated in the distribution, or any person controlled by, controlling or under common control with such broker-dealer;

n. Effecting any transaction in, or inducing the purchase or sale of, any security by any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, including but not limited to:

(1) Effecting any transaction in a security involving no change in the beneficial ownership thereof;

(2) Entertaining an order for the purchase or sale of any security knowing that an order or orders of substantially the same size have been or will be entered by or for the same or different parties at substantially the same time and price for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance regarding the market for the security. Nothing in this subparagraph shall prohibit a broker-dealer from entering bona fide agency cross transactions for the broker-dealer's customers;

(3) Effecting, alone or with one or more persons, a series of transactions in any security which creates actual or apparent active trading in a security or raising or depressing the price of the security for the purpose of inducing the purchase or sale of the security by others;

o. Guaranteeing a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for the customer;

p. Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind purporting to report any transaction as a purchase or sale of any security unless the broker-dealer believes that the transaction was a bona fide purchase or sale of such security, or purporting to quote the bid price or asked price for any security unless the broker-dealer believes that the quotation represents a bona fide bid for or offer of such security;

q. Using any advertising or sales presentation in a deceptive or misleading fashion including but not limited to a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure or flyer, or display by words, pictures, graphs or other medium designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

r. Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control of the issuer of any security before entering into any contract with or for a customer for the purchase or sale of the security. The existence of any control or affiliation shall be disclosed to the customer in writing prior to completion of the transaction;

s. Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether the securities were acquired by the broker-dealer as an underwriter, as a selling group member, or from a member participating in the distribution as an underwriter or selling group member;

t. Failing or refusing to furnish a customer, upon reasonable request, information to which the customer is entitled or to respond to a formal written request or complaint from the customer;

u. Failing or refusing to provide information requested in writing by the administrator within 14 days or a later time as prescribed by the administrator;

v. Extending credit to a customer in violation of the Securities Exchange Act of 1934 or the regulations of the Federal Reserve Board;

w. Engaging in acts or practices enumerated in rule 191—50.90(502);

x. Failing in the solicitation of a sale or purchase of an OTC non-NASDAQ security to promptly provide, upon the customer's request, the most current prospectus, the most recent periodic report filed pursuant to Section 13 of the Securities Exchange Act of 1934, or any other available research reports;

y. Marking any order tickets or confirmations as unsolicited when the transaction is solicited;

z. Failing to provide each customer, on no greater than a quarterly basis, a statement of account that, for all OTC non-NASDAQ equity securities in the account for which the firm has been a market maker during the reportable period, contains a value for each security based on the closing market bid on a date certain for any month in which activity has occurred in a customer's account;

aa. Failing to comply with any applicable provision of the NASD Conduct Rules or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC; and

bb. Engaging in or aiding in "boiler-room" operations or high-pressure tactics in connection with the promotion of speculative offerings or "hot issues" by means of an intensive

telephone campaign or unsolicited calls to persons not known by, nor having an account with, the agent or broker-dealer represented by the agent, where the prospective purchaser is encouraged to make a hasty decision to buy, irrespective of the purchaser's investment needs and objectives.

50.16(2) Dishonest or unethical practices by an agent in the securities business as prohibited pursuant to Iowa Code section 502.412(4)"m" include, but are not limited to, the following:

a. Lending money or securities to or borrowing money or securities from a customer or acting as a custodian for money, securities, or an executed stock power of a customer unless the customer is a member of the agent's immediate family and the act or practice is approved in advance by the agent's supervisory personnel;

b. Effecting securities transactions not recorded on the regular books or records of the broker-dealer the agent represents unless the transactions are authorized in writing by the broker-dealer prior to executing the transaction;

c. Establishing or maintaining an account containing fictitious information for the purpose of executing transactions otherwise prohibited;

d. Sharing, directly or indirectly, in profits or losses in any customer account without the written authorization of the customer and the broker-dealer the agent represents;

e. Dividing or otherwise splitting the agent's commissions, profits, or other compensation from the purchase or sale of securities with any person who is not registered as an agent for the same broker-dealer or for a broker-dealer under direct or indirect common control;

f. Soliciting or accepting a gift, directly or indirectly, from an unrelated customer that in the aggregate exceeds $250 in a calendar year. A gift accepted by an immediate family member from an unrelated customer shall be included in the aggregate limit. An agent shall not solicit or accept from a customer a gift transferred through a relative or third party to the agent's benefit that would have the effect of evading this paragraph;

g. Soliciting or accepting being named as a beneficiary, executor, or trustee in a will or trust of an unrelated customer;

h. Evading or otherwise negating the requirements of paragraph 50.16(2)"a," "f" or "g" by terminating the customer relationship for the purpose of soliciting or accepting a loan, gift, or being named as a beneficiary, executor or trustee in a will or trust that the agent is otherwise not permitted to solicit or accept. An agent is not in violation of this paragraph if the agent has made a bona fide termination of the customer relationship and conducted no securities-related business or other business for a period of three years with the customer; and

i. Engaging in conduct specified in subrule 50.16(1), paragraphs "b" to "f," "i," "j," "n" to "q," "u," and "w" to "aa."

This rule is intended to implement Iowa Code section 502.412(4)"m."

191—50.17(502) Rules of conduct.

50.17(1) Each broker-dealer, after executing and before completing each transaction with its customer, shall give or send the customer a written confirmation. A broker-dealer not registered pursuant to the Securities Exchange Act of 1934 shall provide a written confirmation including, at a minimum:

a. A description of the security purchased or sold, the date of the transaction, the price at which the security was purchased or sold and any commission charged;

b. A statement as to whether the broker-dealer was acting for its own account, as the agent for the customer, as the agent for some other person, or as the agent for both the customer and some other person;

c. When the broker-dealer is acting as an agent for the customer, the name of the person from whom the security was purchased or to whom it was sold or the fact that such information will be furnished upon the customer's request.

50.17(2) A broker-dealer registered pursuant to the Securities Exchange Act of 1934 shall comply with all requirements of the Securities Exchange Act of 1934 and its implementing rules regarding written confirmations.

50.17(3) Each broker-dealer shall establish written supervisory procedures and a system for applying those procedures which may reasonably be expected to prevent and detect any violations of Iowa Code chapter 502, its implementing rules, and any orders issued pursuant to it. Each broker-dealer shall designate and qualify a number of supervisory employees reasonable in relation to the number of its registered agents, offices, and transactions in Iowa.

50.17(4) Each broker-dealer whose principal office is located in Iowa shall have at least one partner, officer or registered agent employed on a full-time basis at its principal office.

This rule is intended to implement Iowa Code sections 502.411(3) and 502.412(4)"i."

191—50.18(502) Limited registration of Canadian broker-dealers and agents.

50.18(1) A Canadian broker-dealer may register under this rule if the broker-dealer:

a. Files with the administrator an application in the form required by the jurisdiction in which the broker-dealer has its principal office;

b. Files with the administrator a consent to service of process on Form U-2;

c. Is registered as a broker-dealer and is in good standing in the jurisdiction from which the broker-dealer is effecting transactions into Iowa and files with the administrator satisfactory evidence thereof;

d. Is a member of a self-regulatory organization or stock exchange in Canada; and

e. Pays a $200 filing fee.

50.18(2) An agent representing a Canadian broker-dealer registered under this rule in effecting transactions in securities in Iowa may register under this rule if the agent:

a. Files with the administrator an application in the form required by the jurisdiction in which the broker-dealer has its principal office;

b. Files with the administrator a consent to service of process;

c. Is registered and is in good standing in the jurisdiction from which the agent is effecting transactions into Iowa and files with the administrator satisfactory evidence thereof; and

d. Pays a $30 filing fee.

50.18(3) A Canadian broker-dealer that is resident in Canada and has no office or other physical presence in Iowa may, provided that the broker-dealer is registered under this rule, effect transactions in Iowa:

a. With or for a person from Canada temporarily residing in Iowa with whom the Canadian broker-dealer had a bona fide broker-dealer-client relationship before the person entered the United States;

b. With or for a person from Canada currently residing in Iowa whose transactions are in a self-directed, tax-advantaged retirement plan in Canada of which the person is the holder or contributor; or

c. With or through:

(1) The issuers of the securities involved in the transactions;

(2) Other registered broker-dealers;

(3) Banks, savings institutions, trust companies, insurance companies, or investment companies as the term is defined in the Investment Company Act of 1940;

(4) Pension or profit-sharing trusts; or

(5) Other financial institutions or institutional investors, whether acting on their own behalf or as trustees.

50.18(4) An agent registered pursuant to subrule 50.18(2) representing a Canadian broker-dealer registered pursuant to subrule 50.18(1) may effect all securities transactions that the broker-dealer is authorized by subrule 50.18(3) to effect.

50.18(5) If no denial order is in effect and no proceeding is pending pursuant to Iowa Code section 502.304, a registration filed pursuant to this rule becomes effective on the forty-fifth day after an application is filed, unless otherwise provided by order of the administrator.

50.18(6) A Canadian broker-dealer registered under this rule shall:

a. Maintain provincial or territorial registration and membership in a self-regulatory organization or stock exchange and remain in good standing in each;

b. Provide, upon the administrator's request, all books and records relating to its business in Iowa as a broker-dealer;

c. Promptly inform the administrator of any criminal action taken against the broker-dealer or of any finding or sanction imposed on the broker-dealer as a result of a self-regulatory or other regulatory action involving fraud, theft, deceit, misrepresentation, or like conduct; and

d. Disclose in writing to each of the broker-dealer's clients in Iowa that the broker-dealer and its agents are not subject to the full regulatory requirements of the Act.

50.18(7) An agent of a Canadian broker-dealer registered under this rule shall:

a. Maintain the agent's provincial or territorial registration and remain in good standing; and

b. Promptly inform the administrator of any criminal action taken against the agent or of any finding or sanction imposed on the agent as a result of a self-regulatory or other regulatory action involving fraud, theft, deceit, misrepresentation, or like conduct.

50.18(8) Renewal applications for Canadian broker-dealers and agents under this rule must be filed before December 1 each year and may be made by filing with the administrator the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer has its principal office or, if no such renewal application is required, the most recent application filed pursuant to paragraph 50.18(1)"a" or 50.18(2)"a."

50.18(9) Every applicant for registration or renewal registration pursuant to this rule shall pay the applicable fee for broker-dealers and agents as set forth in Iowa Code section 502.410.

50.18(10) A Canadian broker-dealer or agent registered under this rule and in compliance with paragraph 50.18(3)"c" is exempt from all the requirements of the Act, except for the antifraud sections and the requirements set out in this rule.

50.18(11) All transactions in securities effected between Canadian broker-dealers or agents registered under this rule and Canadian persons meeting the requirements of paragraph 50.18(3)"a" or "b" are exempt from Iowa Code sections 502.301 and 502.504.

This rule is intended to implement Iowa Code section 502.401(4).

191—50.19(502) Brokerage services by national and state banks.

50.19(1) A bank may, without registering as a broker-dealer, effect:

a. Transactions pursuant to Iowa Code section 502.102(4)"c"; or

b. Transactions permitted by order of the administrator.

50.19(2) A bank that has entered into a contract with an Iowa-registered broker-dealer may provide the following ministerial securities services without registering as a broker-dealer:

a. Provide bank customers and the public with a telephone number of the broker-dealer and provide telephone facilities on bank premises for customers and members of the public to use in contacting the broker-dealer;

b. Distribute literature to bank customers and members of the public about particular services provided by the broker-dealer, subject to the requirements of subrule 50.19(4);

c. Provide broker-dealer account applications to bank customers and members of the public and provide assistance in completing the forms. The disclosures required pursuant to subrule 50.19(4), in the form prescribed by subrule 50.19(5), shall be included on either the account application or an attachment to the application. If the disclosures are provided on an attachment to the application, both the application and attachment must be signed by the applicant. The bank may mail the completed account applications to a broker-dealer;

d. Assist bank customers wishing to transfer funds into and out of their bank accounts for securities transactions; and

e. Provide mailers to bank customers and members of the public and assist them in transmitting securities and securities documents to the broker-dealer.

50.19(3) A bank that has entered into a contract with an Iowa-registered broker-dealer may attempt to effect and effect securities transactions without registering as a broker-dealer if all of the following requirements are met:

a. Any bank employee who attempts to effect and effects securities transactions is a registered agent of the broker-dealer and:

(1) Has passed an acceptable subject matter examination pursuant to paragraph 50.12(1)"a";

(2) Has passed the NASD Series 63 or Series 66 examination;

(3) Is registered with NASD; and

(4) Is registered as an agent of the broker-dealer pursuant to rule 191—50.12(502).

b. If the broker-dealer provides securities services in an area of public access on the bank premises in which banking services are not provided, the bank requires that the broker-dealer clearly distinguish the area in which security services are provided. If securities services and banking services are provided in the same public area on the bank premises, there shall be a sign clearly identifying the broker-dealer providing the securities services.

c. The bank receives only the following types of compensation from the broker-dealer:

(1) Transaction-related compensation, subject to the restrictions provided by paragraph 50.19(7)"b";

(2) An administrative fee;

(3) Payments for compensation of employees jointly employed by the bank and the broker-dealer; and

(4) Lease payments.

INSURANCE DIVISION[191](cont'd)

50.19(4) A bank attempting to effect and effecting securities transactions pursuant to a contract with an Iowa-registered broker-dealer may distribute advertisements or promotional materials without registering as a broker-dealer if the advertisements or promotional materials clearly and prominently:

a. Identify the broker-dealer;

b. State in bold typeface that securities transactions and related earnings or profits are not insured by the FDIC;

c. State that the securities offered by the broker-dealer are not guaranteed by, nor are they obligations of, the bank; and

d. State that the bank and the broker-dealer are separate organizations.

50.19(5) The following or a similar statement printed in bold typeface and capital letters shall satisfy the disclosure requirements of subrule 50.19(4): [NAME OF BROKER-DEALER] IS NOT A BANK, AND SECURITIES OFFERED BY [NAME OF BROKER-DEALER] ARE NOT BACKED OR GUARANTEED BY ANY BANK NOR ARE THEY INSURED BY THE FDIC.

50.19(6) The disclosure requirements of subrule 50.19(4) shall not apply to radio or television advertisements not exceeding 30 seconds in length.

50.19(7) A bank shall not engage in the following securities activities:

a. Distribute prospectuses to bank customers or to members of the public regarding securities unless done so:

(1) In the exercise of trust functions permitted to banks;

(2) Pursuant to registration as a broker-dealer; or

(3) In the performance of securities activities as permitted by subrule 50.19(1), 50.19(2), or 50.19(3);

b. Allow registered joint bank and broker-dealer employees to split commissions or other transaction-related remuneration received from customers with unregistered bank employees;

c. Transmit account statements, confirmations, or other broker-dealer communications to bank customers or members of the public unless the communications contain a disclosure statement as required by subrule 50.19(4);

d. Permit bank employees who are not registered securities agents of the broker-dealer to receive or transmit orders to the broker-dealer from customers or the public, except as permitted by subrule 50.19(1); or

e. Permit bank employees who are not registered agents of the broker-dealer to perform securities functions directly involving customer contact, except as provided in subrules 50.19(1) and 50.19(2).

This rule is intended to implement Iowa Code sections 502.102(4)"c" and 502.401.

191—50.20(502) Broker-dealers having contracts with national and state banks.

50.20(1) A broker-dealer engaging in securities activities with banks as permitted by subrules 50.19(2) and 50.19(3) shall maintain for three years and make available to the administrator upon request the following records:

a. Copies of all advertisements and promotional literature disseminated by the bank and broker-dealer regarding securities services and products offered by the broker-dealer to bank customers and the public;

b. Copies of each contract executed between the bank and the broker-dealer which propose to sell securities to bank customers or the public;

c. Copies of new account forms to be completed by bank customers or members of the public who open an account with the broker-dealer;

d. A list of every bank employee who is a registered securities agent of the broker-dealer and the employee's social security number and CRD number; and

e. Copies of compliance and procedures manuals regarding the securities activities of the bank.

50.20(2) In addition to any responsibilities assumed pursuant to subrule 50.72(5), a broker-dealer engaging in securities transactions pursuant to a contract with a bank as permitted by subrules 50.19(2) and 50.19(3) shall not allow a person who is not an Iowa-registered securities agent of the broker-dealer to use the broker-dealer name, logo, or trademark on business cards or letterheads.

This rule is intended to implement Iowa Code sections 502.102(4)"c" and 502.401.

191—50.21(502) Brokerage services by credit unions, savings banks and savings and loan institutions.

50.21(1) A credit union, savings bank, or savings and loan institution may, without registering as a broker-dealer, effect:

a. Transactions pursuant to Iowa Code section 502.102(4)"c"; or

b. Transactions permitted by order of the administrator.

50.21(2) A credit union, savings bank, or savings and loan institution that has entered into a contract with an Iowa-registered broker-dealer may provide the following ministerial securities services without registering as a broker-dealer:

a. Provide customers and the public with a telephone number of the broker-dealer and provide telephone facilities on its premises for customers and members of the public to use in contacting the broker-dealer;

b. Distribute literature to its customers and members of the public about particular services provided by the broker-dealer, subject to the requirements of subrule 50.21(4);

c. Provide broker-dealer account applications to its customers and members of the public and provide assistance in completing the forms. The disclosures required pursuant to subrule 50.21(4) shall be included on either the account application or an attachment to the application. If the disclosures are provided on an attachment to the application, both the application and attachment must be signed by the applicant. The credit union, savings bank, or savings and loan institution may mail the completed account applications to a broker-dealer;

d. Assist its customers wishing to transfer funds into and out of their accounts for securities transactions; and

e. Provide mailers to its customers and members of the public and assist them in transmitting securities and securities documents to the broker-dealer.

50.21(3) A credit union, savings bank, or savings and loan institution that has entered into a contract with an Iowa-registered broker-dealer may attempt to effect and effect securities transactions without registering as a broker-dealer if all of the following requirements are met:

a. Any credit union, savings bank, or savings and loan institution employee who attempts to effect and effects securities transactions is a registered agent of the broker-dealer and:

(1) Has passed an acceptable subject matter examination pursuant to paragraph 50.12(1)"a";

(2) Has passed the NASD Series 63 or Series 66 examination;

(3) Is registered with NASD; and

(4) Is registered as an agent of the broker-dealer pursuant to rule 191—50.12(502).

b. If the broker-dealer provides securities services in an area of public access on the credit union, savings bank, or savings and loan institution premises in which credit union,

savings bank, or savings and loan institution services are not provided, the credit union, savings bank, or savings and loan institution requires that the broker-dealer clearly distinguish the area in which securities services are provided. If securities services and credit union, savings bank, or savings and loan institution services are provided in the same public area on the bank premises, there shall be a sign clearly identifying the broker-dealer providing the securities services.

c. The credit union, savings bank, or savings and loan institution receives only the following types of compensation from the broker-dealer:

(1) Transaction-related compensation, subject to the restrictions provided by paragraph 50.19(7)"b";

(2) An administrative fee;

(3) Payments for compensation of employees jointly employed by the credit union, savings bank, or savings and loan institution and the broker-dealer; and

(4) Lease payments.

50.21(4) Credit unions, savings banks, and savings and loan institutions attempting to effect and effecting securities transactions under contracts with Iowa-registered broker-dealers may distribute advertisements or promotional materials without registering as broker-dealers if the advertisements or promotional materials clearly and prominently:

a. Identify the broker-dealer.

b. Disclose in bold print that securities transactions and related earnings or profits are not insured by:

(1) The FDIC, in the case of savings banks and savings and loan institutions, or

(2) The NCUA, in the case of credit unions.

c. Disclose that securities offered by the broker-dealer are not guaranteed by, nor are they obligations of, the credit union, savings bank, or savings and loan institution.

d. Disclose that the credit union, savings bank, or savings and loan institution and the broker-dealer are separate organizations.

50.21(5) The following or a similar statement in bold print and capital letters will satisfy the disclosure requirements of subrule 50.21(4): [NAME OF BROKER-DEALER] IS NOT A [SAVINGS BANK, SAVINGS AND LOAN INSTITUTION, OR CREDIT UNION], AND SECURITIES OFFERED BY [NAME OF BROKER-DEALER] ARE NOT BACKED OR GUARANTEED BY ANY [SAVINGS BANK, SAVINGS AND LOAN INSTITUTION, OR CREDIT UNION] NOR ARE THEY INSURED BY THE [FDIC OR NCUA].

50.21(6) The disclosure requirements of subrule 50.21(4) shall not apply to radio or television advertisements not exceeding 30 seconds in length.

50.21(7) Credit unions, savings banks, and savings and loan institutions shall not:

a. Distribute prospectuses for securities to customers or to members of the public except:

(1) In the exercise of trust functions permitted to them;

(2) Pursuant to registration as a broker-dealer; or

(3) In the performance of securities activities as permitted by subrules 50.21(1) to 50.21(3); or

b. Engage in any of the activities proscribed if performed by an unregistered bank by paragraphs 50.19(7)"b" to "e."

This rule is intended to implement Iowa Code sections 502.102(4)"c" and 502.401.

191—50.22(502) Broker-dealers having contracts with credit unions, savings banks, and savings and loan institutions.

50.22(1) A broker-dealer engaging in securities activities with credit unions, savings banks, or savings and loan institutions as permitted by subrules 50.21(2) and 50.21(3) shall maintain for three years and make available to the administrator upon request the following records:

a. Copies of all advertisements and promotional literature disseminated by the credit union, savings bank, or savings and loan institution and the broker-dealer regarding securities services and products offered by the broker-dealer to credit union, savings bank, or savings and loan institution customers and the public;

b. Copies of each contract executed between the credit union, savings bank, or savings and loan institution and the broker-dealer which propose to sell securities to credit union, savings bank, or savings and loan institution customers or the public;

c. Copies of new account forms to be completed by credit union, savings bank, or savings and loan institution customers or members of the public who open an account with the broker-dealer;

d. A list of every credit union, savings bank, or savings and loan institution employee who is a registered securities agent of the broker-dealer and the employee's social security number and CRD number; and

e. Copies of compliance and procedures manuals regarding the securities activities of the credit union, savings bank, or savings and loan institution.

50.22(2) In addition to any responsibilities assumed pursuant to subrule 50.72(5), a broker-dealer engaging in securities transactions pursuant to a contract with a credit union, savings bank, or savings and loan institution as permitted by subrules 50.21(2) and 50.21(3) shall not allow a person who is not an Iowa-registered securities agent of the broker-dealer to use the broker-dealer name, logo, or trademark on business cards or letterheads.

This rule is intended to implement Iowa Code sections 502.102(4)"c" and 502.401.

191—50.23 to **50.29** Reserved.

DIVISION III
REGISTRATION OF INVESTMENT ADVISERS,
INVESTMENT ADVISER REPRESENTATIVES,
AND FEDERAL COVERED INVESTMENT ADVISERS

191—50.30(502) Electronic filing with designated entity.

50.30(1) Designation. Pursuant to Iowa Code sections 502.406 and 502.608(3)"a," the administrator designates the IARD operated by the NASD to receive and store filings and collect related fees from investment advisers on behalf of the administrator.

50.30(2) Use of IARD. Unless otherwise provided, all investment adviser applications, amendments, reports, notices, related filings and fees required to be filed with the administrator pursuant to the rules promulgated under the Act shall be filed electronically with and transmitted to IARD. The following additional conditions relate to such electronic filings:

a. Electronic signature. When a signature or signatures are required by the particular instructions of any filing to be made through IARD, a duly authorized signatory of the applicant, as required, shall affix the duly authorized signatory's electronic signature to the filing by typing the duly authorized signatory's name in the appropriate fields and submitting the filing to IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

b. When filed. Solely for purposes of a filing made through IARD, a document is considered filed with the administrator when all fees are received and the filing is accepted by IARD on behalf of the state.

INSURANCE DIVISION[191](cont'd)

This rule is intended to implement Iowa Code sections 502.102(8), 502.406 and 502.608(3)"a."

191—50.31(502) Investment adviser applications and renewals.

50.31(1) Investment adviser applications—required filings. The application for initial registration as an investment adviser shall be made by:

a. Filing Form ADV Part I with IARD;

b. Remitting the $100 filing fee to IARD pursuant to Iowa Code section 502.410(3); and

c. Filing Form ADV Part II with the administrator.

50.31(2) Investment adviser applications—discretionary filings. The administrator may require that an application for initial registration also include the following:

a. Financial statements as set forth in paragraph 50.42(1)"f" including, but not limited to, a copy of the balance sheet for the last fiscal year and, if the balance sheet is prepared as of a date more than 45 days from the date of the filing of the application, an unaudited balance sheet prepared in accordance with subrule 50.40(7);

b. A copy of the surety bond required pursuant to rule 191—50.41(502), if any; and

c. Any other information necessary for determining whether registration is appropriate.

50.31(3) Investment adviser renewals—required filings. Annual renewals by investment advisers shall be made by:

a. Filing an annual renewal registration with IARD; and

b. Remitting the $100 filing fee to IARD as required pursuant to Iowa Code section 502.410(3).

50.31(4) Investment adviser renewals—discretionary filings. The administrator may require the filing of a copy of the surety bond, if any, required pursuant to rule 191—50.41(502).

50.31(5) Completion of filing. An application for initial or renewal registration is considered filed for the purposes of Iowa Code section 502.406 when the required fee and all required submissions have been received by IARD and the administrator.

50.31(6) Updates and amendments. The investment adviser is under a continuing obligation to update information provided on Form ADV as follows:

a. An updated Form ADV must be filed with IARD within 90 days of the end of the investment adviser's fiscal year; and

b. Any amendment to Form ADV must be filed with IARD within 30 days of the event causing the required amendment.

50.31(7) Succession and change in registration.

a. In the case of an organizational change, including a change in the state of incorporation or form of organization, not involving a material change in financial condition or management, an investment adviser shall file all applicable amendments to Form ADV.

b. In the case of an organizational change, including a change in the state of incorporation or form of organization, involving a material change in financial condition or management, an investment adviser must file a new application for registration pursuant to subrule 50.31(1). The filing must include the fee pursuant to paragraph 50.31(1)"b" and registration fees for all Iowa-registered investment adviser representatives.

c. In the case of a change in name, an investment adviser shall file all applicable amendments to Form ADV.

This rule is intended to implement Iowa Code sections 502.102(8) and 502.406.

191—50.32(502) Application for investment adviser representative registration.

50.32(1) Designation. Pursuant to Iowa Code sections 502.406 and 502.608(3)"a," the administrator designates the CRD operated by the NASD to receive and store filings and collect related fees from investment adviser representatives on behalf of the administrator.

50.32(2) Initial application. The application for initial registration as an investment adviser representative made pursuant to Iowa Code section 502.406(1) shall be made by filing Form U-4 with the CRD. The following shall be submitted to the CRD with the application:

a. Proof of compliance by the investment adviser representative with the examination requirements of rule 191—50.33(502); and

b. If applicable, the $30 fee required pursuant to Iowa Code section 502.410(4).

50.32(3) Annual renewal. Annual renewals by investment adviser representatives shall be made by:

a. Filing an annual renewal registration with CRD; and

b. If applicable, remitting the $30 filing fee to CRD as required pursuant to Iowa Code section 502.410(4).

50.32(4) Completion of filing. An application for initial or renewal registration is considered filed for the purposes of Iowa Code section 502.406 when the required fee and all required submissions have been received by the CRD.

50.32(5) Updates, amendments, withdrawals and terminations. The investment adviser representative is under a continuing obligation to update information provided on Form U-4 as follows:

a. Any amendment to information provided on Form U-4 must be filed with CRD within 30 days of the event causing the required amendment; and

b. A withdrawal request or termination must be filed with CRD within 30 days of the event causing the necessity of a withdrawal request or termination. A withdrawal request shall be made by filing an accurate and complete Form U-5 with CRD.

This rule is intended to implement Iowa Code sections 502.102(8) and 502.406.

191—50.33(502) Examination requirements.

50.33(1) Except as exempted by subrule 50.33(2), a person applying to be registered as an investment adviser representative shall provide the administrator with proof that the person has obtained a passing score on one of the following examinations:

a. The Series 65 examination as implemented January 1, 2000; or

b. The Series 7 examination and Series 66 examination as implemented January 1, 2000. In the event that an applicant for registration as an investment adviser representative has received a waiver by the NASD of the Series 7 examination otherwise required by this paragraph, the NASD waiver will be accepted in lieu of the examination requirement.

50.33(2) Unless otherwise ordered by the administrator in connection with a violation of the Act, the following individuals shall be exempt from the examination requirements of subrule 50.33(1):

a. Any individual who is registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on or before January 19, 2000.

b. Any individual who is registered as an investment adviser or investment adviser representative in any jurisdiction in the United States after [insert the effective date of these rules], provided that the jurisdiction in which the investment

adviser or investment adviser representative is registered requires the passage of the examinations in subrule 50.33(1).

c. An individual who has not been registered as an investment adviser or investment adviser representative in any jurisdiction for a period of two years shall be required to comply with the examination requirements of this rule.

d. Any individual who currently holds one of the following professional designations:

(1) Certified Financial Planner or CFP designation awarded by the Certified Financial Planner Board of Standards, Inc.;

(2) Chartered Financial Consultant (ChFC) designation awarded by The American College, Bryn Mawr, Pennsylvania;

(3) Personal Financial Specialist (PFS) designation administered by the American Institute of Certified Public Accountants;

(4) Chartered Financial Analyst (CFA) designation granted by the Association for Investment Management and Research;

(5) Chartered Investment Counselor (CIC) designation granted by the Investment Counsel Association of America; or

(6) Any other professional designation recognized by order of the administrator.

This rule is intended to implement Iowa Code section 502.412(5).

191—50.34(502) Notice filing requirements for federal covered investment advisers.

50.34(1) Notice filing. The notice filing for a federal covered investment adviser pursuant to Iowa Code section 502.405 shall be filed with IARD on an executed Form ADV. A notice filing of a federal covered investment adviser shall be deemed filed for purposes of this subrule when Form ADV and the fee of $100 required pursuant to Iowa Code section 502.410(5) are received by IARD.

50.34(2) Portions of Form ADV not yet accepted by IARD. Until such time, if any, that IARD provides for the filing of Part II of Form ADV, Part II of Form ADV is required to be filed only upon the administrator's request. Part II of Form ADV shall be deemed filed for purposes of this subrule if a federal covered investment adviser provides Part II of Form ADV to the administrator within five days of any oral or written request.

50.34(3) Renewal. The annual renewal of the notice filing for a federal covered investment adviser pursuant to Iowa Code section 502.405 shall be filed with IARD. The renewal of the notice filing shall be deemed filed for purposes of this subrule when the $100 fee required pursuant to Iowa Code section 502.410(5) is accepted by IARD.

50.34(4) Updates and amendments. A federal covered investment adviser must file with IARD any amendments to the federal covered investment adviser's Form ADV.

This rule is intended to implement Iowa Code section 502.405.

191—50.35(502) Withdrawal of investment adviser registration. The application for withdrawal of registration as an investment adviser pursuant to Iowa Code section 502.409 shall be completed on Form ADV-W and filed with IARD.

This rule is intended to implement Iowa Code section 502.409.

191—50.36(502) Investment adviser disclosure statement.

50.36(1) Unless otherwise provided by order, an investment adviser, registered or required to be registered pursuant to Iowa Code section 502.403, shall furnish each advisory client and prospective advisory client with a written disclosure statement. The disclosure statement may be a copy of Part II of the investment adviser's Form ADV, written documents containing no less than the information contained in Part II of Form ADV, or any other form permitted by order of the administrator.

50.36(2) The written disclosure document shall be provided as follows:

a. An investment adviser shall deliver the written disclosure statement required by subrule 50.36(1) to an advisory client or prospective advisory client as follows:

(1) For all investment advisory services other than impersonal investment advisory services, not less than 48 hours prior to entering into an investment advisory contract with the client or prospective client or, alternatively, at the time of entering into the investment advisory contract, provided the advisory client has the right to terminate the contract without penalty within five business days after entering into the contract; and

(2) Without charge, on an annual basis thereafter or, alternatively, within seven days of a written request by the client, if the offer to provide the written disclosure statement upon request is provided to the advisory client in writing.

b. An advisory client receiving impersonal advisory services pursuant to a contract requiring a payment of $200 or more must be given the written offer to provide the written disclosure statement at the time of entering into the contract. An investment adviser is not required to provide the written disclosure statement to an advisory client receiving impersonal advisory services pursuant to a contract requiring a payment of less than $200.

50.36(3) An investment adviser rendering substantially different types of advisory services to different advisory clients may omit information required by Part II of Form ADV from the statement furnished to an advisory client or prospective advisory client if the omitted information applies only to a type of investment advisory service or fee which is not rendered or charged, or is proposed to be rendered or charged, to that client or prospective client.

50.36(4) Nothing in this rule shall relieve any investment adviser from any obligation under any other provision of the Act, its implementing rules, or other state or federal law to disclose any information to the investment adviser's advisory clients or prospective advisory clients.

50.36(5) For purposes of this rule:

a. "Contract for impersonal advisory services" includes any contract relating solely to the provision of investment advisory services:

(1) Through providing written material or making oral statements not purporting to meet the objectives or needs of specific individuals or accounts;

(2) Through issuing statistical information in which no opinion is expressed as to the investment merits of a particular security; or

(3) Any combination of (1) and (2).

b. The act of "entering into an investment advisory contract" does not include an extension or renewal of an investment advisory contract if there is no material change in the terms of the contract to be extended or renewed.

This rule is intended to implement Iowa Code section 502.411(7).

191—50.37(502) Cash solicitation.

50.37(1) Payment of a cash fee, directly or indirectly, by an investment adviser to a solicitor for solicitation activities shall constitute an act, practice, or course of conduct operat-

ing as a fraud or deceit upon a person, pursuant to Iowa Code section 502.502(2), if:

a. The solicitor:

(1) Is subject to an order issued by the administrator pursuant to Iowa Code section 502.412(4);

(2) Has been convicted of a felony or within the previous ten years has been convicted of a misdemeanor involving conduct described in Iowa Code section 502.412(4)"c"; or

(3) Is found by the administrator to have engaged or has been convicted of engaging in any of the conduct specified in Iowa Code section 502.505, 502.412(4)"b" or 502.412(4)"i"; has materially aided in violating Iowa Code section 502.412(4)"d"; or is subject to an order, judgment, or decree pursuant to Iowa Code section 502.412(4)"d" to "f."

b. The cash fee is not paid pursuant to a written agreement to which the investment adviser is a party. If the cash fee is paid pursuant to a written agreement, the written agreement must:

(1) Describe the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received for the solicitation activities;

(2) Contain an undertaking by the solicitor to perform the solicitor's duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Act and its implementing rules, as applicable; and

(3) Require that the solicitor, at the time of any solicitation activities for which compensation is paid or is to be paid by the investment adviser, provide the client with a current copy of the investment adviser's written disclosure statement required by subparagraph 50.36(2)"a"(2) or SEC Rule 204-3, if applicable, and a separate written disclosure statement as described in subrule 50.37(2). Prior to or upon entering into a written or oral investment advisory contract with a client, the investment adviser shall obtain a signed and dated acknowledgment of receipt by the client of the investment adviser's and solicitor's written disclosure statements. Additionally, the investment adviser shall make a bona fide effort to ascertain whether the solicitor has complied in all aspects with the written agreement, and shall have a reasonable basis for believing that the solicitor has complied.

c. The cash fee is paid to a solicitor:

(1) For solicitation activities regarding anything other than impersonal advisory services; or

(2) Who is a partner, officer, director, or employee of the investment adviser or is a partner, officer, director, or employee of a person who controls, is controlled by, or is under common control with the investment adviser without disclosure of the status of the solicitor as a partner, officer, director, or employee of the investment adviser or other person and of any affiliation between the investment adviser and the solicitor to the client at the time of solicitation or referral.

50.37(2) The separate written disclosure statement required to be furnished pursuant to subparagraph 50.37(1)"b"(3) shall contain the following information:

a. The name of the solicitor;

b. The name of the investment adviser;

c. The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

d. A statement that the solicitor will be compensated for the solicitor's solicitation services by the investment adviser;

e. The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and

f. The amount, if any, the client will be charged for the cost of obtaining the client's account in addition to the advisory fee, and the differential, if any, in advisory fees charged by the investment adviser if the differential is the result of the investment adviser's agreement to compensate the solicitor for soliciting or referring clients.

50.37(3) Nothing in this rule relieves any person of any fiduciary duty or other obligation to which the person may be subject pursuant to contract or law.

50.37(4) For the purpose of this rule:

"Client" includes any prospective client.

"Impersonal advisory services" means investment advisory services provided solely through written materials or oral statements not purporting to meet the objectives or needs of the specific client, statistical information containing no expressions of opinion as to the investment merits of particular securities, or any combination of the foregoing.

"Principal place of business" of an investment adviser for the purposes of this rule means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

"Solicitor" means any person who, directly or indirectly, solicits any client for or refers any client to an investment adviser.

50.37(5) An investment adviser shall retain a copy of each written agreement, acknowledgment and solicitor disclosure statement required by this rule in accordance with Iowa Code section 502.411(3) and paragraph 50.42(1)"o." However, an investment adviser registered in Iowa whose principal place of business is located outside Iowa shall not be subject to the record maintenance requirements of this subrule and the applicable provisions of paragraph 50.42(1)"o" if:

a. The investment adviser is registered or licensed as an investment adviser in the state in which the investment adviser maintains the investment adviser's principal place of business;

b. The investment adviser complies with the applicable books and records requirements of the state in which the investment adviser maintains the investment adviser's principal place of business; and

c. The provisions of this rule would require the investment adviser to maintain books or records in addition to those required by the laws of the state in which the investment adviser maintains the investment adviser's principal place of business.

This rule is intended to implement Iowa Code section 502.502(2).

191—50.38(502) Dishonest or unethical business practices of investment advisers and investment adviser representatives, or fraudulent or deceptive conduct by federal covered investment advisers. An investment adviser, investment adviser representative, or a federal covered investment adviser has a fiduciary duty to act for the benefit of its clients. The federal statutory and regulatory provisions referenced in this rule apply to investment advisers and federal covered investment advisers, to the extent permitted by the NSMIA. This rule applies to federal covered investment advisers to the extent that the alleged conduct is fraudulent, deceptive, or as otherwise prohibited by the NSMIA.

50.38(1) An investment adviser, investment adviser representative, or a federal covered investment adviser shall not engage in dishonest or unethical business practices or fraudulent and deceptive conduct including, but not limited to:

a. Recommending to a client to whom supervisory, management, or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client

on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser;

b. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order for a definite amount of a specified security shall be executed, or both;

c. Inducing in a client's account trading that is excessive in size or frequency compared to the financial resources, investment objectives, and character of the account;

d. Placing an order to purchase or sell a security for a client account without authority to do so;

e. Placing an order to purchase or sell a security for a client account upon instruction of a third party without first obtaining a written third-party trading authorization from the client;

f. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;

g. Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;

h. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;

i. Providing a report or recommendation to any advisory client prepared by someone other than the investment adviser without disclosing that fact. This prohibition does not apply when the investment adviser uses published research reports or statistical analyses to render advice or when an investment adviser orders such a report in the normal course of providing service;

j. Charging a client an unreasonable advisory fee;

k. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest regarding the investment adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including, but not limited to:

(1) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(2) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment adviser or its employees;

l. Guaranteeing a client that a specific result will be achieved (gain or no loss) as a result of the investment adviser's services;

m. Disclosing the identity, affairs, or investments of any client unless required by law to do so, or with the client's consent;

n. Taking any action, directly or indirectly, regarding securities or funds in which any client has any beneficial interest when the investment adviser is in violation of the custody requirements provided by rule 191—50.39(502);

o. Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses:

(1) The services to be provided;

(2) The term of the contract;

(3) The advisory fee;

(4) The formula for computing the fee;

(5) The amount of prepaid fee to be returned in the event of contract termination or nonperformance;

(6) Whether the contract grants discretionary power to the investment adviser; and

(7) That no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract;

p. Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information in violation of Section 204A of the Investment Advisers Act of 1940;

q. Entering into, extending, or renewing any advisory contract in violation of Section 205 of the Investment Advisers Act of 1940. This provision applies to all advisers and investment adviser representatives registered or required to be registered under this Act, notwithstanding whether such adviser or investment adviser representative would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940;

r. Providing in an advisory contract any condition, stipulation, or provisions which purport to bind any person to waive compliance with any provision of this Act or of the Investment Advisers Act of 1940 or any other practice contrary to Iowa Code section 502.509(12) or Section 215 of the Investment Advisers Act of 1940;

s. Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in violation of Section 206(4) of the Investment Advisers Act of 1940, regardless of whether the investment adviser or investment adviser representative is not registered or required to be registered pursuant to Section 203 of the Investment Advisers Act of 1940;

t. Engaging in conduct or any act, indirectly or through or by any other person, which is unlawful for such person to do directly under the provisions of this Act, its implementing rules, or order of the administrator;

u. Failing to disclose or providing incomplete disclosure to a client regarding any securities-related activities, or engaging in deceptive practices;

v. Soliciting or accepting a gift, directly or indirectly, from an unrelated customer that in the aggregate exceeds $250 in a calendar year. A gift accepted by an immediate family member from an unrelated client shall be included in the aggregate limit. An investment adviser shall not solicit or accept from a client a gift transferred through a relative or third party to the investment adviser's benefit that would have the effect of evading this paragraph;

w. Soliciting or accepting being named as a beneficiary, executor, or trustee in a will or trust of an unrelated customer; and

x. Evading or otherwise negating the requirements of paragraph 50.38(1)"f," "g," "v," or "w" by terminating the customer relationship for the purpose of soliciting or accepting a loan, gift, or being named as a beneficiary, executor or trustee in a will or trust that the agent is otherwise not permitted to solicit or accept. An investment adviser or investment adviser representative will not be in violation of this rule if the investment adviser or investment adviser representative has made a bona fide termination of the client relation-

ship and conducted no securities-related business or other business for a period of three years with the client.

50.38(2) Except as otherwise provided in subrule 50.38(3), it shall constitute a dishonest or unethical practice within the meaning of Iowa Code section 502.412(4)"m" for any investment adviser or investment adviser representative, directly or indirectly, to use any advertisement that does any one of the following:

a. Refers to any testimonial of any kind concerning the investment adviser or investment adviser representative or concerning any advice, analysis, report, or other service rendered by such investment adviser or investment adviser representative.

b. Refers to past specific recommendations of the investment adviser or investment adviser representative that were or would have been profitable to any person, except that an investment adviser or investment adviser representative may furnish or offer to furnish a list of all recommendations made by the investment adviser or investment adviser representative within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(1) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each such security.

(2) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list.

c. Represents that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to the use of any graph, chart, formula or device.

d. Represents that any report, analysis, or other service will be furnished for free or without charge, unless such report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation.

e. Represents that the administrator has approved any advertisement.

f. Contains any untrue statement of a material fact, or any statement that is otherwise false or misleading.

50.38(3) With respect to federal investment covered advisers, the provisions of this rule apply only to the extent permitted by Section 203A of the Investment Advisers Act of 1940.

50.38(4) For the purposes of this rule, the term "advertisement" shall include any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

a. Any analysis, report, or publication concerning securities.

b. Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell.

c. Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

d. Any other investment advisory service with regard to securities.

This rule is intended to implement Iowa Code section 502.412(4)"m."

191—50.39(502) Custody of client funds or securities by investment advisers.

50.39(1) Safekeeping required. An investment adviser registered or required to be registered pursuant to the Act will be deemed to have committed an unlawful and fraudulent, deceptive, or manipulative act, practice or course of business if the investment adviser has custody of client funds or securities unless:

a. The investment adviser promptly notifies the administrator in writing using Form ADV that the investment adviser has or may have custody.

b. A qualified custodian maintains client funds and securities:

(1) In a separate account for each client under each client's name;

(2) In accounts that contain only the investment adviser's client funds and securities under the investment adviser's name as agent or trustee for the clients; or

(3) The client, or the client's designated independent representative, is promptly notified in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained when the account is opened and following any changes to the information.

An investment adviser who intends to have custody of client funds or securities but is not able to utilize a "qualified custodian" as defined by paragraph 50.39(3)"c" must obtain approval from the administrator prior to taking custody and must comply with all of the applicable provisions of this rule including those provisions that are designated to be performed by a qualified custodian.

c. Account statements are sent:

(1) By a qualified custodian on no less than a quarterly basis to each client, or to the client's designated independent representative, whose funds or securities are kept in custody identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period. The investment adviser is not required to confirm the receipt of the account statements, but must have a reasonable belief that the qualified custodian is complying with this requirement; or

(2) By the investment adviser on no less than a quarterly basis to each client, or the client's designated independent representative, whose funds or securities are kept in custody identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period. An independent certified public accountant must verify all client funds and securities by actual examination at least once during each calendar year at a random time chosen by the accountant without prior notice or announcement to the investment adviser. The investment adviser shall direct the accountant to submit a copy of the auditor's report and financial statements to the administrator within 30 days after the completion of the examination, along with a letter indicating that the accountant examined the funds and securities and describing the nature and extent of the examination. The investment adviser shall also direct the accountant that the accountant is to directly notify the administrator in writing of any finding of a material discrepancy within one business day of the finding. The accountant may provide notice of the discrepancy to the admin-

istrator by either first-class mail or by electronic means followed by first-class mail; and

(3) By the investment adviser to each limited partner, member, or other beneficial owner, or the person's independent representative, if the investment adviser is a general partner of a limited partnership or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle.

d. An investment adviser who has custody as defined by subparagraph 50.39(3)"a"(3) and has fees directly deducted from client accounts provides the following safeguards:

(1) The investment adviser must obtain written authorization from the client to deduct advisory fees from the account held with the qualified custodian;

(2) Each time a fee is directly deducted from a client account, the investment adviser must concurrently:

1. Send the qualified custodian notice of the amount of the fee to be deducted from the client's account; and

2. Send the client an invoice itemizing the fee. The itemization must provide, at a minimum, the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee; and

(3) The investment adviser must notify the administrator in writing on Form ADV that the investment adviser intends to use the safeguards provided above.

e. An investment adviser who has custody as defined by subparagraph 50.39(3)"a"(3) and who does not meet the exception provided by paragraph 50.39(2)"c" complies, in addition to compliance with the safeguards set forth in paragraphs 50.39(1)"a" to "c," with the following:

(1) Engages an independent party to review all fees, expenses, and capital withdrawals from the pooled accounts;

(2) Sends to the independent party all invoices and receipts detailing the amount of the fees, expenses, or capital withdrawals and providing the method of calculation so that the independent party can determine that a payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement). The investment adviser shall direct the independent party to forward approval for payment of the invoice to the qualified custodian with a copy to the investment adviser; and

(3) Notifies the administrator in writing on Form ADV that the investment adviser intends to use the safeguards provided above.

For purposes of this paragraph, an "independent party" is a person that is engaged by the investment adviser to act as a monitor of the payment of fees, expenses, and capital withdrawals from the pooled investment; that does not control and is not controlled by or under common control with the investment adviser; and that does not have and has not had within the past two years a material business relationship with the investment adviser.

f. When a trust retains an investment adviser, investment adviser representative, or employee, director or owner of an investment adviser as trustee and the investment adviser acts as the investment adviser to that trust, the investment adviser:

(1) Notifies the administrator in writing that the investment adviser intends to use the safeguards provided in subparagraphs (2) and (3) below. Such notification is required to be given on Form ADV.

(2) Sends to the grantor of the trust, the attorney for the trust if it is a testamentary trust, the cotrustee (other than the investment adviser, investment adviser representative, or employee, director or owner of the investment adviser), or a defined beneficiary of the trust, at the same time that the investment adviser sends any invoice to the qualified custodian, an invoice showing the amount of the trustees' fee or investment management or advisory fee, the value of the assets on which the fees were based, and the specific manner in which the fees were calculated.

(3) Enters into a written agreement with a qualified custodian which specifies:

1. That the qualified custodian shall not deliver trust securities to the investment adviser, any investment adviser representative or employee, director or owner of the investment adviser, nor transmit any funds to the investment adviser, any investment adviser representative or employee, director or owner of the investment adviser, except that the qualified custodian may pay trustees' fees to the trustee and investment management or advisory fees to the investment adviser, provided that:

- The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the cotrustee (other than the investment adviser, investment adviser representative, or employee, director or owner of the investment adviser), or a defined beneficiary of the trust has authorized the qualified custodian in writing to pay the fees;
- The statements for the fees show the amount of the fees for the trustee and, in the case of statements for investment management or advisory fees, show the value of the trust assets on which the fee is based and the manner in which the fee was calculated; and
- The qualified custodian agrees to send to the grantor of the trust, the attorneys for a testamentary trust, the cotrustee (other than the investment adviser, investment adviser representative, or employee, director or owner of the investment adviser), or a defined beneficiary of the trust, at least quarterly, a statement of all disbursements from the account of the trust, including the amount of investment management fees paid to the investment adviser and the amount of trustee's fees paid to the trustee.

2. Except as otherwise set forth in the first bulleted paragraph below, that the qualified custodian may transfer funds or securities, or both, of the trust only upon the direction of the trustee (who may be the investment adviser, investment adviser representative, or employee, director or owner of the investment adviser), whom the investment adviser has duly accepted as an authorized signatory. The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the cotrustee (other than the investment adviser, investment adviser representative, or employee, director or owner of the investment adviser), or a defined beneficiary of the trust, must designate the authorized signatory for management of the trust. The direction to transfer funds or securities, or both, shall only be made:

- To a trust company, bank trust department or brokerage firm independent of the investment adviser for the account of the trust to which the assets relate;
- To the named grantors or to the named beneficiaries of the trust;
- To a third person independent of the investment adviser in payment of the fees or charges of the third person including, but not limited to the attorney's, accountant's, or qualified custodian's fees for the trust; and taxes, interest, maintenance or other expenses, if there is property other than securities or cash owned by the trust;
- To third persons independent of the investment adviser for any other purpose legitimately associated with the management of the trust; or
- To a broker-dealer in the normal course of portfolio purchases and sales, provided that the transfer is made on a

payment-against-delivery basis or a payment-against-trust receipt.

50.39(2) Exceptions.

a. Shares of mutual funds. With respect to the shares of an open-end company as it is defined by Section 5(a)(1) of the Investment Company Act of 1940, an investment adviser may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with subrule 50.39(1).

b. Certain privately offered securities. An investment adviser is not required to comply with subrule 50.39(1) with respect to securities that are:

(1) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(2) Uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and

(3) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

This exception is not available with respect to securities held for the account of a limited partnership, limited liability company, or other type of pooled investment vehicle unless the financial statements of the limited partnership, limited liability company, or other type of pooled investment vehicle are audited, the audited financial statements are distributed in compliance with paragraph 50.39(2)"c," and the investment adviser notifies the administrator in writing on Form ADV that the investment adviser intends to comply with this subrule.

c. Limited partnerships subject to annual audit. An investment adviser is not required to comply with paragraph 50.39(1)"c" with respect to the account of a limited partnership, limited liability company, or other type of pooled investment vehicle that is subject to audit at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners, members, or other beneficial owners within 120 days of the end of its fiscal year. The investment adviser must notify the administrator in writing on Form ADV that the investment adviser intends to comply with this paragraph.

d. Registered investment companies. An investment adviser is not required to comply with this rule with respect to the account of an investment company registered pursuant to the Investment Company Act of 1940.

e. Beneficial trusts. An investment adviser is not required to comply with this rule or the net worth and bonding requirements of rules 191—50.40(502), 191—50.41(502), and 191—50.43(502) if the investment adviser has custody solely because the investment adviser, investment adviser representative or employee, director or owner of the investment adviser is a trustee for a beneficial trust and if all of the following conditions are met for each trust:

(1) The beneficial owner of the trust is a parent, a grandparent, a spouse, a sibling, a child or a grandchild of the trustee, including "step" relationships;

(2) The investment adviser provides a written statement to each beneficial owner of the account setting forth a description of the requirements of subrule 50.39(1) and the reasons for noncompliance with the provisions of subrule 50.39(1);

(3) The investment adviser obtains from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement; and

(4) The investment adviser retains a copy of the documents required by subparagraphs (2) and (3) until the account is closed or the investment adviser is no longer trustee.

50.39(3) Definitions. For the purposes of this rule:

a. "Custody" means holding, directly or indirectly, client funds or securities, having any authority to obtain possession of client funds or securities, or having the ability to appropriate client funds or securities. "Custody" includes:

(1) Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in no case later than three business days following inadvertent receipt;

(2) Receipt of checks drawn by clients and made payable to unrelated third parties, the record of which is maintained by the investment adviser in compliance with paragraph 50.42(1)"v" unless forwarded to the third party within 24 hours of receipt;

(3) Any arrangement including, but not limited to, a general power of attorney pursuant to which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction; and

(4) Any capacity including, but not limited to, general partner of a limited partnership, managing member of a limited liability company, comparable position for another type of pooled investment vehicle, or trustee of a trust that gives the investment adviser or a person supervised by the investment adviser legal ownership of or access to client funds or securities.

b. "Independent representative" means a person who:

(1) Acts as agent for an advisory client including, in the case of a pooled investment vehicle, limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle, and who is by law or contract required to act in the best interest of the advisory client or the limited partners or members, or other beneficial owners;

(2) Does not control, is not controlled by, and is not under common control with the investment adviser; and

(3) Does not have and has not had within the past two years a material business relationship with the investment adviser.

c. "Qualified custodian" means the following independent institutions or entities that are not affiliated with the investment adviser by any direct or indirect common control and have not had a material business relationship with the investment adviser in the previous two years:

(1) A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;

(2) A registered broker-dealer holding client assets in customer accounts;

(3) A registered futures commission merchant registered pursuant to Section 4(f)(a) of the Commodity Exchange Act that is holding client funds and security futures or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon in customer accounts; and

(4) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

This rule is intended to implement Iowa Code section 502.411(5).

191—50.40(502) Minimum financial requirements for investment advisers.

50.40(1) An investment adviser registered or required to be registered under the Act who has custody of client funds or

securities shall maintain at all times a minimum net worth of $35,000 except:

a. An investment adviser that has custody solely due to direct fee deduction and that is also in compliance with the applicable safekeeping requirements of paragraph 50.39(1)"d" and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the net worth requirements of this rule;

b. An investment adviser having custody solely due to advising pooled investment vehicles and who is in compliance with the applicable safekeeping requirements of paragraph 50.39(1)"e" or 50.39(2)"c" and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the net worth requirements of this rule;

c. An investment adviser having custody solely due to meeting the definition of custody as defined by subparagraph 50.39(3)"a"(2) and who is in compliance with the applicable safekeeping requirements of rule 191—50.39(502) is not required to comply with the net worth requirements of this rule;

d. An investment adviser having custody solely by meeting the definition of custody as defined by subparagraph 50.39(3)"a"(3) and who is in compliance with the safekeeping requirements of rule 191—50.39(502) is not required to comply with the net worth requirements of this rule; and

e. An investment adviser having custody solely due to serving as a trustee and who is in compliance with the applicable safekeeping requirements of paragraph 50.39(1)"f" and the record-keeping requirements of subrule 50.42(4) is not required to comply with the net worth requirements of this rule.

50.40(2) An investment adviser registered or required to be registered pursuant to the Act who has discretionary authority over client funds or securities but does not have custody of the client funds or securities shall maintain a minimum net worth of $10,000 at all times.

50.40(3) An investment adviser registered or required to be registered pursuant to the Act who accepts payment of more than $500 from a client six or more months in advance of providing services shall maintain a positive net worth at all times.

50.40(4) Unless otherwise exempted, an investment adviser registered or required to be registered pursuant to the Act shall notify the administrator if the investment adviser's net worth is less than the minimum required. Notice must be filed in a report to the administrator no later than the close of business on the next business day following the decrease in net worth. Additionally, an investment adviser shall file by the close of business on the next business day a report with the administrator of the investment adviser's financial condition including, at a minimum, the following:

a. A trial balance of all ledger accounts;

b. A list of all client funds or securities which are not segregated;

c. A computation of the aggregate amount of client ledger debit balances; and

d. The total number of client accounts managed by the investment adviser.

50.40(5) The administrator may require the submission of a current appraisal for the purpose of establishing the worth of any asset.

50.40(6) An investment adviser that has its principal place of business in a state other than this state is not required to maintain the minimum capital required by this rule provided that the investment adviser is registered as an investment adviser in the state in which the investment adviser has its principal place of business and is in compliance with that state's laws regarding minimum capital requirements.

50.40(7) For purposes of this rule:

a. "Net worth" means an excess of assets over liabilities calculated in accordance with generally accepted accounting principles. The calculation of assets shall not include the following: prepaid expenses (except those prepaid expenses classified as assets under generally accepted accounting principles); deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, and all other assets of intangible nature; home(s), home furnishings, automobile(s), or any other personal items not readily marketable; advances or loans to stockholders or officers; and advances or loans to partners.

b. "Custody" means the same as defined in paragraph 50.39(3)"a."

c. An investment adviser shall not be deemed to be exercising discretion when the investment adviser places trade orders with a broker-dealer pursuant to a third-party trading agreement if:

(1) The investment adviser has executed a separate investment adviser contract exclusively with the investment adviser's client which acknowledges that a third-party trading agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account;

(2) The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser in fact does not exercise discretion with respect to the account; and

(3) A third-party trading agreement is executed between the client and a broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

This rule is intended to implement Iowa Code section 502.411(1).

191—50.41(502) Bonding requirements for investment advisers.

50.41(1) Every investment adviser registered or required to be registered under the Act having custody of or discretionary authority over client funds or securities shall be bonded in an amount determined by the administrator based upon the number of clients and the total assets under management of the investment adviser except:

a. An investment adviser that has custody solely due to direct fee deduction and that is also in compliance with the applicable safekeeping requirements of paragraph 50.39(1)"d" and the record-keeping requirements of rule 191—50.42(502) is not required to comply with bonding requirements of this rule;

b. An investment adviser who has custody or discretionary authority over client funds or securities who does not meet the minimum net worth standard provisions of subrules 50.40(1) and 50.40(2) must be bonded in the amount of the net worth deficiency rounded up to the nearest $5,000;

c. An investment adviser having custody solely due to advising pooled investment vehicles and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1)"e" and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the bonding requirements of this rule;

d. An investment adviser having custody solely due to meeting the definition of "custody" as defined by subparagraph 50.39(3)"a"(2) and who is in compliance with the ap-

plicable safekeeping requirements of rule 191—50.39(502) is not required to comply with the bonding requirements of this rule;

e. An investment adviser having custody solely by meeting the definition of "custody" as defined by subparagraph 50.39(3)"a"(3) and who is in compliance with the safekeeping requirements of rule 191—50.39(502) is not required to comply with the bonding requirements of this rule;

f. An investment adviser having custody solely due to serving as a trustee and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1)"f" and the record-keeping requirements of subrule 50.42(4) is not required to comply with the bonding requirements of this rule.

50.41(2) A bond required by this rule shall be issued by a company qualified to do business in this state in the form determined by the administrator and shall be subject to the claims of clients of the investment adviser regardless of the client's state of residence.

50.41(3) An investment adviser that has a principal place of business in a state other than Iowa is exempt from this rule provided that the investment adviser is registered as an investment adviser in the state in which the investment adviser has its principal place of business and is in compliance with that state's laws regarding bonding requirements.

50.41(4) For purposes of this rule, "custody" means the same as defined in paragraph 50.39(3)"a."

This rule is intended to implement Iowa Code section 502.411(5).

191—50.42(502) Record-keeping requirements for investment advisers.

50.42(1) An investment adviser registered or required to be registered pursuant to the Act shall make and keep true, accurate and current the following books, ledgers and records:

a. A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of any ledger entries.

b. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income, and expense accounts.

c. A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memorandum shall describe the terms and conditions of the order, instruction, modification or cancellation; identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; indicate whether discretionary power was exercised; and indicate the account for which entered, the date of entry, and, where applicable, the bank or broker-dealer by or through whom executed.

d. All checkbooks, bank statements, canceled checks and cash reconciliations of the investment adviser.

e. All invoices, bills, or statements of expenses or debts, or copies of those documents, relating to the investment adviser's business as an investment adviser regardless of whether the expense or debt is paid or unpaid.

f. All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the investment adviser's business as an investment adviser. For the purposes of this paragraph, "financial statements" means a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement, and a net worth computation, if applicable, as required by subrule 50.40(7).

g. Originals of all written communications received by and copies of all written communications sent by the investment adviser relating to:

(1) Any recommendation made or proposed to be made and any advice given or proposed to be given;

(2) Any receipt, disbursement, or delivery of funds or securities; or

(3) The placing or execution of any order to purchase or sell any security, except:

1. The investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser; and

2. The investment adviser is not required to keep a record of the names and addresses of persons to whom a notice, circular, or other advertisement offering any report, analysis, publication or other investment advisory service is sent if sent to more than ten persons; however, if the notice, circular, or other advertisement is distributed to persons named on any list, the investment adviser must retain with the copy of the notice, circular, or advertisement a memorandum describing the list and its source.

h. A list or other record of all accounts identifying the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

i. Copies of all powers of attorney and other documents granting discretionary authority by any client to the investment adviser.

j. Copies of each agreement entered into by the investment adviser with any client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

k. A file containing copies of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons not affiliated with the investment adviser and, if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including one in electronic media format recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum indicating the investment adviser's reasons for the recommendation.

l. A record of every transaction in a security in which the investment adviser or any advisory representative of the investment adviser has or by reason of any transaction acquires a direct or indirect beneficial ownership, except transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and transactions in securities which are direct obligations of the United States.

(1) The required record shall state, at a minimum, the title and amount of the security involved, the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition), the price at which the transaction was effected, and the name of the bank or broker-dealer with or through which the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or

indirect beneficial ownership in the security. A transaction must be recorded no later than ten days after the end of the calendar quarter in which the transaction was effected. An investment adviser shall not be in violation of this paragraph because of a failure to record securities transactions of an advisory representative if the investment adviser establishes that the investment adviser instituted adequate procedures and used reasonable diligence to promptly obtain reports of all transactions required by this paragraph to be recorded.

(2) For purposes of this paragraph, the following definitions shall apply:

"Advisory representative" means any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with the employee's duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:

1. Any person in a control relationship to the investment adviser;
2. Any affiliated person of a controlling person; and
3. Any affiliated person of an affiliated person.

"Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power results solely from an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company.

m. Notwithstanding the provisions of paragraph "l," when the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

(1) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; or

(2) Transactions in securities which are direct obligations of the United States.

The record shall state the title and amount of the security involved, the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition), the price at which it was effected, and the name of the broker-dealer or bank with or through which the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected. An investment adviser shall not be deemed to have violated the provisions of this subparagraph because of a failure to record securities transactions of an advisory representative if the investment adviser establishes that the investment adviser instituted adequate procedures and used reasonable diligence to promptly obtain reports of all transactions required to be recorded. The terms "advisory representative" and "control" shall mean the same as defined in paragraph "l."

n. A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with rule 191—50.36(502), and a record of the dates on which each written statement, amendment and revision was given or offered to be given to any client or any prospective client who subsequently becomes a client.

o. For each client that was obtained by the investment adviser by means of a solicitor to whom a cash fee was paid by the investment adviser:

(1) A copy of any written agreement relating to the payment of a cash fee to which the investment adviser is a party;

(2) A signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and

(3) A copy of the solicitor's written disclosure statement.

The written agreement, acknowledgment and solicitor disclosure statement will be deemed to be in compliance if such documents comply with Rule 275.206(4)-3 of the Investment Advisers Act of 1940.

p. All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations provided in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including electronic media, that is directly or indirectly circulated or distributed by the investment adviser to two or more persons (other than persons connected with the investment adviser). However, with respect to the performance of managed accounts only, the retention of all account statements reflecting all debits, credits, and other transactions in a client's account for the period of the statement, and the retention of all worksheets necessary to demonstrate the calculation of the performance or rate of return of the managed account shall satisfy the requirements of this paragraph.

q. A file containing copies of all written communications received or sent regarding any litigation or customer or client complaints involving the investment adviser or any investment adviser representative or employee.

r. The basis, in writing, for any recommendation or investment advice provided to an investment advisory client.

s. Copies of all written procedures regarding the supervision of the employees and investment adviser representatives that are reasonably designed to achieve compliance with securities laws and regulations.

t. A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self-regulatory organization pertaining to the investment adviser or investment adviser representatives, as defined by paragraph 50.42(1)"l," including but not limited to all applications, amendments, renewal filings, and correspondence.

u. Original copies signed by the lawful signatory of the investment adviser and the investment adviser representative of each initial Form U-4 and each U-4 Amendment to Disclosure Reporting Pages (DRPs).

v. For each transaction in which the investment adviser inadvertently held or obtained the client's securities or funds and returned them to the client within three business days or forwarded a third-party check within 24 hours, a ledger or list of all funds or securities held or obtained with the following information:

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(1) Issuer;
(2) Type of security and series;
(3) Date of issue;
(4) For debt instruments, the denomination, interest rate and maturity date;
(5) Certificate number, including alphabetical prefix or suffix;
(6) Name in which registered;
(7) Date submitted to the investment adviser;
(8) Date sent to client or sender;
(9) Form of delivery to client or sender, or copy of the form of delivery to client or sender; and
(10) Mail confirmation number, if applicable, or confirmation by client or sender of the return of the security or fund.

w. For each security exempted from the custody rules by paragraph 50.39(2)"b":
(1) A record showing the issuer's or current transfer agent's name, address, telephone number, and other applicable contract information pertaining to the party responsible for recording the client's interests in the securities; and
(2) A copy of any legend, shareholder agreement, or other agreement providing that the securities are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

50.42(2) In addition to the retention requirements of subrule 50.41(1), an investment adviser having custody of client funds or securities, as defined by paragraph 50.39(3)"a," shall retain the following records:

a. Copies of all documents executed by each client, including but not limited to a limited power of attorney, pursuant to which the investment adviser is authorized or permitted to withdraw a client's funds or securities;
b. A journal or other record for all accounts reflecting all purchases, sales, receipts, and deliveries of securities, including but not limited to certificate numbers, and all other debits and credits to the accounts;
c. A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase or sale, and all debits and credits;
d. Copies of confirmations of all transactions effected by or for the account of any client;
e. A record for each security in which any client has a position showing, at a minimum, the name of each client having an interest in the security, the amount of interest of each client in the security, and the location of each security;
f. A copy of each client's quarterly account statements as generated and delivered by the qualified custodian. Additionally, if the investment adviser generates a statement that is delivered to the client, the investment adviser shall retain copies of those statements along with information indicating the dates on which the statements were provided to the client;
g. If applicable, a copy of the special examination report, financial statements, and letter verifying the completion of and describing the nature and extent of an examination by an independent certified public accountant and documentation describing the nature and extent of the examination and a record regarding any findings of any material discrepancies found during the examination; and
h. If applicable, evidence of the client's designation of an independent representative.

50.42(3) An investment adviser deemed, pursuant to paragraph 50.39(2)"c," to have custody of client securities or funds because the investment adviser advises a pooled investment vehicle shall, in addition to any other applicable record retention requirements, keep the following records:

a. True, accurate, and current account statements;
b. If utilizing the exception provided by paragraph 50.39(2)"c," the date(s) of the audit, a copy of the audited financial statements, and evidence of the mailing of the audited financial statements to all limited partners, members, or other beneficial owners within 120 days of the end of the fiscal year;
c. If subject to paragraph 50.39(1)"e," a copy of the written agreement with the independent party reviewing all fees and expenses and describing the responsibilities of the independent third party and copies of all invoices and receipts showing approval by the independent third party for payment through the qualified custodian.

50.42(4) An investment adviser deemed, pursuant to paragraph 50.39(2)"e," to have custody because the investment adviser is acting as the trustee for a beneficial trust shall, in addition to any other applicable record retention requirements, retain the following records until the account is closed or the investment adviser is no longer acting as trustee:

a. A copy of the written statement provided to each beneficial owner of the account required pursuant to paragraph 50.39(2)"e"; and
b. A copy of the signed and dated statement from each beneficial owner acknowledging the receipt of the written statement pursuant to paragraph 50.39(2)"e."

50.42(5) Each investment adviser subject to subrule 50.42(1) that renders investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, retain the following records:

a. For each client, detailed information regarding the securities purchased and sold including, but not limited to, the date of the purchase or sale, the total dollar amount of the purchase or sale, and the price at which the security was purchased or sold.
b. For each security in which any client has a current position, the name of each client and current amount or interest of the client.

50.42(6) Records required to be retained pursuant to rule 191—50.42(502) shall be kept as follows:

a. Except as provided in paragraphs 50.42(6)"b" to "e," all records shall be maintained and preserved in a readily accessible location for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, with no less than the first two years being kept in the principal office of the investment adviser.
b. Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.
c. Books and records required to be retained pursuant to paragraphs 50.42(1)"k" and 50.42(1)"p" shall be maintained and preserved in a readily accessible location for a period of not less than five years from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media, with no less than the first two years being kept in the principal office of the investment adviser.
d. Books and records required to be retained pursuant to paragraphs 50.42(1)"q" to "v" shall be maintained and pre-

served in a readily accessible location for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, with no less than the first two years being kept in the principal office of the investment adviser, or the time period during which the investment adviser is registered or required to be registered in this state, whichever is less.

e. An investment adviser that has rendered or renders investment advisory services shall maintain the following records at the investment adviser's business location at all times during the applicable retention period:

(1) All records required to be preserved pursuant to paragraphs 50.42(1)"c," "g" to "j," "n," "o," and "q" to "s" and subrules 50.42(2) to 50.42(5); and

(2) All records required pursuant to paragraphs 50.42(1)"k" to "p" identifying the name of the investment adviser representative providing investment advice from that business location, or identifying the physical address, mailing address, electronic mailing address, or telephone number of the business location. The records will be maintained for the period described in paragraph 50.42(6)"a."

50.42(7) An investment adviser subject to subrule 50.42(1) that ceases to conduct or discontinues business as an investment adviser shall arrange for and be responsible for the retention of the records required to be retained pursuant to this rule for the applicable retention period. The investment adviser shall notify the administrator in writing prior to ceasing to conduct or discontinuing business as an investment adviser of the exact address where the books and records will be maintained during the retention period.

50.42(8) An investment adviser required to retain records pursuant to this rule may maintain the records in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical code, alphabetical code, or similar designation.

50.42(9) Record maintenance.

a. Pursuant to subrule 50.42(5), the records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser in:

(1) Paper or hard-copy form, as those records are kept in their original form; or

(2) Micrographic media, including microfilm, microfiche, or any similar medium; or

(3) Electronic storage media, including any digital storage medium or system, that meet the terms of this subrule.

b. The investment adviser must:

(1) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(2) Provide promptly any of the following that the administrator may request:

1. A legible, true, and complete copy of the record in the medium and format in which it is stored;

2. A legible, true, and complete printout of the record; and

3. Means to access, view, and print the records; and

(3) Separately store, for the time required for preservation of the original record, a duplicate copy of the record in any medium allowed by this subrule.

c. In the case of records created or maintained in electronic storage media, the investment adviser must establish and maintain procedures:

(1) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(2) To limit access to the records to properly authorized personnel and the administrator; and

(3) To reasonably ensure that any reproduction of a nonelectronic original record in electronic storage media is complete, true, and legible when retrieved.

50.42(10) Compliance with any substantially similar record-keeping requirements of rules 17a-3 [17 C.F.R. 240.17a-3] and 17a-4 [17 C.F.R. 240.17a-4] of the Securities Exchange Act of 1934 shall be deemed to be in compliance with this rule.

50.42(11) Every investment adviser that is registered or required to be registered in this state and that has its principal place of business in a state other than this state shall be exempt from the requirements of this rule, provided the investment adviser is properly registered in that state and is in compliance with that state's record-keeping requirements.

50.42(12) For purposes of this rule:

"Advisory representative" means any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with the employee's duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:

1. Any person in a relationship of control with the investment adviser;

2. Any person affiliated with a controlling person; and

3. Any person affiliated with an affiliated person.

"Control" means the power to exercise a controlling influence over the management or policies of a company, unless that power results solely from an official position with the company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control the company.

An investment adviser shall not be deemed to be exercising a discretionary power as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

"Investment adviser primarily engaged in a business or businesses other than advising investment advisory clients" means an investment adviser that for each of the most recent three fiscal years or for the period of time since organization, whichever is less, derives on an unconsolidated basis more than 50 percent of total sales and revenues and income (or loss) before income taxes and extraordinary items from business activities other than advising investment advisory clients.

"Investment supervisory services" means continuous advice regarding investment of funds provided to each client on the basis of the individual needs of the client.

"Solicitor" means any person or entity that for compensation acts as an agent of an investment adviser in referring potential clients.

This rule is intended to implement Iowa Code section 502.411(3).

191—50.43(502) Financial reporting requirements for investment advisers.

50.43(1) Every registered investment adviser that has custody of client funds or securities or requires payment of advisory fees six months or more in advance and in excess of $500 per client shall file with the administrator an audited

balance sheet as of the end of the investment adviser's fiscal year. Each balance sheet filed pursuant to this rule must be:

a. Examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles;

b. Audited by an independent certified public accountant; and

c. Accompanied by an opinion of the accountant as to the report of financial position, and by a note stating the principles used to prepare the audit, the basis of included securities, and any other explanations required for clarity.

50.43(2) Every registered investment adviser that has discretionary authority over client funds or securities, but not custody, shall file with the administrator a balance sheet, which need not be audited, but which must be prepared in accordance with generally accepted accounting principles and represented by the investment adviser or the person who prepared the statement as true and accurate, as of the end of the investment adviser's fiscal year.

50.43(3) The financial statements required by this rule shall be filed with the administrator within 90 days following the end of the investment adviser's fiscal year.

50.43(4) Every investment adviser that has its principal place of business in a state other than this state shall file only such reports as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's financial reporting requirements.

This rule is intended to implement Iowa Code section 502.411(2).

191—50.44(502) Solely incidental services by certain professionals.

50.44(1) General approach.

a. Certain professionals may rely on an exclusion from the definition of "investment adviser" contained in Iowa Code section 502.102(15)"b" for lawyers, accountants, engineers or teachers whose performance of investment advice is solely incidental to the practice of the person's profession. Whether the exclusion from the definition of "investment adviser" is available to a lawyer, accountant, engineer or teacher providing investment advisory services within the meaning of Iowa Code section 502.102(15)"b" depends upon the relevant facts and circumstances.

b. In general, the administrator will determine whether the investment advisory services provided and the fees charged are solely incidental to the total services provided to the individual client by comparing whether the aggregate of such fees and services is solely incidental to the aggregate of services provided to all clients. In addition, the administrator will take other relevant factors into consideration in determining the applicability of the exclusion including, but not limited to, whether the firm establishes a separate subsidiary, division, or other business entity to perform advisory services or maintains an investment adviser registration with the U.S. Securities and Exchange Commission under the Investment Advisers Act of 1940. In this context, the administrator would refer to U.S. Securities and Exchange Commission Release IA-1092 relating to the analogous exclusion in the Investment Advisers Act of 1940 which states that ". . . the exclusion . . . is not available . . . to a lawyer or accountant who holds himself out to the public as providing financial planning, pension consulting, or other financial advisory services. In such a case it would appear that the performance of investment advisory services by the person would not be solely incidental to his practice as a lawyer or accountant."

50.44(2) General versus specific advice. A lawyer, accountant, engineer or teacher, whether or not holding oneself out to the public as providing financial planning or other financial advisory services, who does not render advice with respect to investing in specific securities, types of securities, or categories of securities need not register as an investment adviser. Registration is not required when the securities advice provided to clients in this state is limited to a general recommendation that the client should be more aggressive or more conservative in securities investments, a general recommendation as to the percentage of the client's assets that should be in securities, or a general recommendation that the client pursue an income-producing or growth-oriented investment strategy, provided the recommendation does not identify specific securities, types of securities, or categories of securities. For the purpose of this subrule, the phrase "types of securities" means classes of securities in which the issuer is not specifically identified, such as common stock, preferred stock, options, warrants, bonds, and mutual funds, and the phrase "categories of securities" means general areas of securities investments where neither the issuer nor the types of securities are identified such a cyclical securities, automotive industry securities, international securities, and NYSE securities. Asset allocations recommendations, however, generally do include advice on types of securities.

EXAMPLE: An accountant provides clients accounting and financial planning services. No advice with respect to specific securities, types of securities, or categories of securities is provided. The accountant need not register as an investment adviser.

50.44(3) Professional does not hold self out as a financial planner. When the securities advice is provided by a lawyer, accountant, engineer, or teacher who does not hold oneself out to the public as providing financial planning or other financial advisory services, the availability of the exclusion from the definition of "investment adviser" contained in Iowa Code section 502.102(15)"b" for securities advice rendered solely incidental to the profession will depend on those factors set forth in paragraph 50.44(1)"b."

EXAMPLE A: An accountant who does not hold oneself out to the public as providing financial planning or other financial advisory services provides the client both accounting and financial planning services. The services involve advice with respect to specific securities, types of securities, or categories of securities. Whether the accountant is excluded from the definition of investment adviser depends on those factors set forth in paragraph 50.44(1)"b," including a comparison of the extent of the securities advisory services provided to any client as contrasted with the accounting services provided to that client. The comparison is measured by the compensation paid for each service.

EXAMPLE B: An accountant provides a client financial planning services only. The financial planning services involve advice with respect to specific securities, types of securities, or categories of securities. The accountant is not excluded from the definition of investment adviser and therefore must register as an investment adviser.

50.44(4) Professional holds self out as a financial planner.

a. If the investment advice provided by a lawyer, accountant, engineer, or teacher who holds oneself out to the public as providing financial planning or other financial advisory services is part of the financial plan being provided to a financial planning client, the professional cannot rely on the exclusion from the definition of "investment adviser" contained in Iowa Code section 502.102(15)"b" for investment advice rendered incidentally to the practice of the profession.

EXAMPLE: An accountant who holds oneself out to the public as providing financial planning or other financial advisory services provides the client both accounting and financial planning services. The financial planning services involve advice with respect to specific securities, types of securities, or categories of securities. The accountant is not excluded from the definition of investment adviser no matter how insignificantly the securities advice compares to the other financial planning advice or accounting services rendered.

b. When a lawyer, accountant, engineer, or teacher holding oneself out to the public as providing financial planning or other financial advisory services does not provide advice on specific securities, types of securities, or categories of securities as part of financial planning services but provides such advice in connection with the practice of the profession, in most instances the exclusion from the definition of investment adviser would be unavailable because the professional is holding oneself out as a financial planner or financial adviser. If, however, securities advice is not part of financial planning services and is both limited and isolated, the exclusion may still be available.

EXAMPLE: An accountant who holds oneself out to the public as providing financial planning or other financial advisory services provides clients both accounting and financial planning services. No securities advice is rendered as part of the financial planning services. Clients, on a few occasions, request the accountant's advice on investing in certain limited partnerships. The fees charged to such a client for the advice total only a small percentage of the fees charged to that client for accounting services provided. The accountant is excluded from the definition of investment adviser. The example presented is intentionally narrow in order to illustrate that once the accountant holds oneself out as a financial planner or financial adviser, even if the only securities advice provided for compensation is not part of the financial planning or advisory activities, only limited and isolated securities advice may be provided without registration as an investment adviser.

This rule is intended to implement Iowa Code section 502.102(15)"b."

191—50.45 to **50.49** Reserved.

DIVISION IV
RULES COVERING ALL REGISTERED PERSONS

191—50.50(502) Internet advertising by broker-dealers, investment advisers, broker-dealer agents, investment adviser representatives, and federal covered investment advisers.

50.50(1) Broker-dealers, investment advisers, broker-dealer agents, investment adviser representatives, and federal covered investment advisers who use the Internet, the World Wide Web, or similar proprietary or common carrier electronic systems (collectively described as the "Internet") to disseminate information regarding products and services through communications directed generally to anyone having access to the Internet and transmitted through posting on bulletin boards, displays on home pages or similar methods (hereinafter "Internet communications") will not be considered to be transacting business in Iowa pursuant to Iowa Code sections 502.401, 502.402, 502.403, 502.404, or 502.405 based solely on that communication, if:

a. The Internet communication contains a legend clearly stating that:

(1) The broker-dealer, investment adviser, broker-dealer agent, investment adviser representative, or federal covered investment adviser may only transact business in Iowa if first registered pursuant to or excluded or exempt from state broker-dealer, investment adviser, broker-dealer agent, or investment adviser representative registration requirements, or federal covered investment adviser notice requirement; and

(2) The broker-dealer, investment adviser, broker-dealer agent, investment adviser representative, or federal covered investment adviser will not effect or attempt to effect transactions in securities or render personalized investment advice for compensation absent compliance with Iowa broker-dealer, investment adviser, broker-dealer agent, or investment adviser representative registration requirements, or federal covered investment adviser notice requirement or applicable exemption or exclusion;

b. The Internet communication contains a mechanism, including but not limited to technical firewalls or other policies and procedures, to ensure that, prior to effecting or attempting to effect transactions with customers in Iowa or prior to direct communication with prospective customers or clients in Iowa, the broker-dealer, investment adviser, broker-dealer agent, or investment adviser representative is first registered in Iowa or, in the case of a federal covered investment adviser, has made a notice filing, or qualifies for an exemption or exclusion from registration requirements;

c. The Internet communication is limited to general information regarding products and services, and the broker-dealer, investment adviser, broker-dealer agent, investment adviser representative, or federal covered investment adviser does not effect or attempt to effect transactions in securities in Iowa or provide personalized investment advice for compensation; and

d. In the case of a broker-dealer agent or investment adviser representative:

(1) The agent's broker-dealer, investment adviser, or federal covered investment adviser affiliation is prominently disclosed within the Internet communication;

(2) The broker-dealer, investment adviser, or federal covered investment adviser with whom the agent or representative is affiliated reviews and approves the content of any Internet communication by the broker-dealer agent or investment adviser representative;

(3) The broker-dealer, investment adviser, or federal covered investment adviser with whom the agent or representative is associated first authorizes the dissemination of information on the particular products and services through the Internet communication; and

(4) The broker-dealer agent or investment adviser representative acts within the scope of the authority granted by the broker-dealer, investment adviser, or federal covered investment adviser in the dissemination of information through the Internet communication.

50.50(2) Nothing in this rule shall excuse broker-dealer, investment adviser, broker-dealer agent, investment adviser representative, and federal covered investment adviser compliance with applicable securities registration, notice filing, antifraud or related provisions.

50.50(3) Nothing in this rule shall be construed to affect the activities of any broker-dealer, investment adviser, broker-dealer agent, investment adviser representative, or federal covered investment adviser engaged in business in Iowa that is not subject to the jurisdiction of the administrator as a result of NSMIA.

This rule is intended to implement Iowa Code sections 502.401 to 502.405.

191—50.51(502) Consent to service.

50.51(1) Every consent appointing the administrator or successor to be an attorney to receive service of any lawful

process as required by Iowa Code section 502.611 shall be properly notarized and shall contain, at a minimum, the following information:

a. Name of the applicant;

b. Address of the applicant;

c. A statement as to whether the applicant is an issuer, broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser;

d. A statement that the consent is irrevocable;

e. A statement that the consent is valid as to any noncriminal suit, action or proceeding against the applicant or the successor, executor or administrator of the applicant which arises out of the Act; and

f. A statement that the applicant stipulates and agrees that service upon the administrator shall have the same validity as if served personally upon the applicant.

50.51(2) The information required by subrule 50.51(1) may be provided in a form provided by the administrator, Form U-2, or any other form as long as all required information is provided.

50.51(3) A broker-dealer, investment adviser, agent, investment adviser representative, federal covered investment adviser, or issuer may incorporate by reference any consent to service of process required to be filed pursuant to Iowa Code sections 502.302(1)"a," 502.302(3), 502.303(2), 502.304(2), 502.406(1) and 502.611, or the administrative rules implementing these sections.

This rule is intended to implement Iowa Code section 502.611.

191—50.52(252J) Denial, suspension or revocation of agent or investment adviser representative registration for failure to pay child support.

50.52(1) Upon receipt of a certificate of noncompliance from the CSRU for default on debts owed to or collected by the CSRU, the administrator shall issue a notice to a securities agent or investment adviser representative applicant or registrant that any pending application for registration will be denied or any current registration will be suspended or revoked 30 days after the date of the notice. The notice shall be served by restricted certified mail, return receipt requested, or by personal service as provided by the Iowa Rules of Civil Procedure, unless the applicant or registrant accepts service personally or through authorized counsel.

50.52(2) The administrator shall provide the applicant or registrant with a notice advising the applicant that:

a. The administrator intends to deny an application or to suspend or revoke a registration due to receipt of a certificate of noncompliance from the CSRU;

b. The applicant or registrant must contact the CSRU to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance;

c. Unless the CSRU furnishes a withdrawal of a certificate of noncompliance to the administrator within 30 days of issuance of the notice, the application shall be denied or the registration shall be suspended or revoked;

d. The applicant or registrant does not have a right to a hearing before the administrator, but may, pursuant to Iowa Code section 252J.9, request a court hearing within 30 days of provision of notice by the administrator;

e. The filing of an application for hearing with the district court will stay the proceedings of the division; and

f. A copy of the certificate of noncompliance.

50.52(3) The filing of an application for hearing with the district court under Iowa Code section 252J.9 automatically stays action of the administrator until the administrator is notified of the resolution of the application.

50.52(4) If the administrator does not receive a withdrawal of the certificate of noncompliance from the CSRU or a notice that an application for district court hearing has been filed, the administrator shall deny, suspend or revoke the application or registration 30 days after the notice prescribed in subrule 50.52(2) is issued.

50.52(5) Upon receiving a withdrawal of the certificate of noncompliance from the CSRU, the administrator shall immediately halt action to deny an application or suspend or revoke a registration. The applicant or registrant shall be notified that action has been halted. If the application has already been denied or if a registration has already been suspended or revoked, the applicant or former registrant shall reapply for registration. The application shall be granted if the individual is otherwise in compliance with applicable laws, rules, regulations and orders.

50.52(6) All application fees must be paid by the applicant before a registration will be issued after the administrator has denied, suspended, or revoked a registration pursuant to Iowa Code chapter 252J.

50.52(7) Notwithstanding any statutory confidentiality provision, the administrator may share information with the CSRU for the sole purpose of identifying applicants or registrants subject to enforcement pursuant to Iowa Code chapter 252J.

This rule is intended to implement Iowa Code chapter 252J.

191—50.53(261) Denial, suspension or revocation of agent or investment adviser representative registration for failure to pay debts owed to or collected by the college student aid commission.

50.53(1) Upon receipt of a certificate of noncompliance from the college student aid commission for defaults on debts owed to or collected by the commission, the administrator shall issue a notice to a securities agent or investment adviser representative applicant or registrant that any pending application for registration or any current registration will be denied, suspended or revoked 30 days after the date of the notice. The notice shall be served by restricted certified mail, return receipt requested, or by personal service as provided by the Iowa Rules of Civil Procedure, unless the applicant or registrant accepts service personally or through authorized counsel.

50.53(2) The administrator shall provide the applicant or registrant with a notice advising the applicant or registrant that:

a. The administrator intends to deny an application or suspend or revoke a registration due to receipt of a certificate of noncompliance from the college student aid commission;

b. The applicant or registrant must contact the college student aid commission to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance;

c. Unless the college student aid commission furnishes a withdrawal of a certificate of noncompliance to the administrator within 30 days of issuance of the notice, the application shall be denied or the registration shall be suspended or revoked;

d. The applicant or registrant does not have a right to a hearing before the administrator but may, pursuant to Iowa Code section 261.126, request a district court hearing within 30 days of provision of notice by the administrator;

e. The filing of an application for hearing with the district court will stay the proceedings of the division; and

f. A copy of the certificate of noncompliance.

50.53(3) The filing of an application for hearing with the district court under Iowa Code section 261.127 automatically

stays action of the administrator until the administrator is notified of the resolution of the application.

50.53(4) If the administrator does not receive a withdrawal of the certificate of noncompliance from the college student aid commission or a notice that an application for district court hearing has been filed, the administrator shall deny the application or suspend or revoke the registration 30 days after the notice prescribed in subrule 50.53(2) is issued.

50.53(5) If the administrator receives a withdrawal of the certificate of noncompliance from the college student aid commission, the administrator shall immediately halt action to deny, suspend or revoke an application or registration. The applicant or registrant shall be notified that action has been halted. If the application or registration has already been denied, suspended or revoked, the applicant or former registrant shall reapply for registration. The application shall be granted if the individual is otherwise in compliance with applicable laws, rules, regulations and orders.

50.53(6) All application fees must be paid by the applicant before a registration will be issued after the administrator has denied, suspended, or revoked a registration pursuant to Iowa Code section 261.126.

50.53(7) Notwithstanding any statutory confidentiality provision, the administrator may share information with the CSRU for the sole purpose of identifying applicants or registrants subject to enforcement pursuant to Iowa Code section 261.126.

This rule is intended to implement Iowa Code section 261.126.

191—50.54 to **50.59** Reserved.

DIVISION V
REGISTRATION OF SECURITIES

191—50.60(502) Registration and renewals of open-end management investment companies, unit investment trusts, and face amount certificate companies.

50.60(1) An application for registration of an open-end management investment company, unit investment trust, or face amount certificate company, including applications for registration of separate portfolios or classes of securities, must be accompanied by:

a. The appropriate filing fee;
b. Form U-1;
c. Form U-2;
d. Form U2A;
e. The latest prospectus; and
f. SAI.

50.60(2) Open-end management investment companies, unit investment trusts, and face amount certificate companies shall pay one of the following filing fees with each original registration statement application and renewal:

a. A fee of $1,000, which registers an indefinite amount of securities with an indefinite aggregate offering price for one year; or

b. A fee of $250, which registers a definite amount of securities with a $250,000 aggregate offering price for one year.

50.60(3) If the issuer or registrant paid a filing fee of $250 and if it sold:

a. Securities in the amount of $1,500,000 or more during the registration period, it must pay an additional $1,250 filing fee within 90 days after the registration statement expires; or

b. Securities in an amount less than $1,500,000 and more than $250,000 during the registration period, it must pay an additional one-tenth of 1 percent on the amount of securities sold in excess of $250,000 within 90 days after the registration statement expires.

50.60(4) Open-end management investment companies, unit investment trusts, and face amount certificate companies that pay filing fees of $1,000 pursuant to paragraph 50.60(2)"a" or additional filing fees of $1,250 pursuant to paragraph 50.60(3)"a" are exempt from the filing requirements of subrule 50.60(5).

50.60(5) Open-end management investment companies, unit investment trusts, and face amount certificate companies that pay filing fees of $250 but sell less than $1,500,000 of securities must file a Form NF sales report with the administrator within 90 days of expiration of the registration statement.

50.60(6) Each portfolio and each class of securities must be separately registered by the open-end management investment company, unit investment trust, or face amount certificate company.

50.60(7) An open-end management investment company, a unit investment trust, or a face amount certificate company renewing an effective registration statement containing multiple portfolios or classes of securities shall terminate the registration statement covering the period of its securities sales from its latest fiscal year-end through the last day before its anniversary renewal date by filing a Form NF registration application for each portfolio and each class of securities.

50.60(8) An open-end management investment company, unit investment trust, or face amount certificate company registration statement may be renewed by filing a renewal application with the administrator at least 10 days but no more than 30 days prior to the renewal date of the registration statement. Upon effectiveness, the administrator shall assign a new registration statement file number to each portfolio and to each class of securities.

This rule is intended to implement Iowa Code section 502.302.

191—50.61(502) Notice filings for investment company securities offerings.

50.61(1) Except as provided in subrule 50.61(5), no investment company that is registered under the Investment Company Act of 1940 or that has a currently filed registration statement under the Securities Act of 1933 is required to file with the administrator, either prior to the initial offer or after the initial offer in Iowa of a security which is a covered security under Section 18(b)(2) of the Securities Act of 1933, a copy of any document which is part of a federal registration statement filed with the SEC or is part of an amendment to such federal registration statement.

50.61(2) Prior to the initial offer of a federal covered security in Iowa, an investment company that is registered under the Investment Company Act of 1940 or that has filed a registration statement under the Securities Act of 1933 shall file with the administrator:

a. A notice of filing on Form NF;
b. A filing fee; and
c. A consent to service of process.

50.61(3) A notice of filing may be renewed prior to expiration by filing the following with the administrator:

a. A notice of filing on Form NF; and

b. Payment of the applicable fee under Iowa Code section 502.302(1)"a."

50.61(4) Amendments to notice filings are made on Form NF and are effective upon receipt by the administrator. Withdrawal or termination of a notice filing is made by filing Form NF or providing the administrator with notice of the

withdrawal or termination in a similar format. An amendment, withdrawal, or termination is effective upon receipt by the administrator of the required notice and all fees required by Iowa Code section 502.302(1)"a."

50.61(5) An investment company that is registered under the Investment Company Act of 1940 or that has filed a registration statement under the Securities Act of 1933 shall file, upon written request of the administrator and within the time period set forth in the request, a copy of any document identified in the request that is part of the federal registration statement filed with the SEC or part of an amendment to such federal registration statement.

50.61(6) An investment company that makes a notice filing under subrule 50.61(2) and that pays an initial $250 filing fee under Iowa Code section 502.302(1)"a" shall pay an additional $1,250 filing fee within 90 days after the notice filing's annual renewal date, or shall file on Form NF an annual or periodic report of the value of the federal covered securities offered or sold in Iowa, together with a filing fee of one-tenth of 1 percent of the amount of securities sold in excess of $250,000.

This rule is intended to implement Iowa Code section 502.302(1).

191—50.62(502) Registration of small corporate offerings.

50.62(1) Form U-7 may be obtained by contacting the Iowa Securities and Regulated Industries Bureau, 340 East Maple Street, Des Moines, Iowa 50319-0066, via E-mail at iowa.sec.@iid.state.ia.us, or from the division Web site at http://www.iid.state.ia.us/division/securities. Form U-7 has been developed under the Small Business Investment Incentive Act of 1980 which prescribes state and federal cooperation in furthering the policies of the Act: diminishing the burden of raising investment capital and minimizing interference with the business of capital formation.

50.62(2) To be eligible to use Form U-7, the issuer shall comply with each of the following requirements:

a. The issuer shall:

(1) Be a corporation or limited liability company organized under the laws of the United States or Canada, or any state, province, or territory or possession thereof, or the District of Columbia and have its principal place of business in one of the foregoing;

(2) Not be subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934;

(3) Not be an investment company registered or required to be registered under the Investment Company Act of 1940;

(4) Not be engaged in or propose to be engaged in petroleum exploration and production, mining, or other extractive industries;

(5) Not be a development stage company that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies or other entity or person; and

(6) Not be disqualified under subrule 50.62(3).

b. The offering price for common stock or common ownership interests (hereinafter, collectively referred to as "common stock"), the exercise price for options, warrants, or rights to common stock, or the conversion price for securities convertible into common stock must be greater than or equal to U.S. $1 per share or unit of interest. The issuer must agree with the administrator that the issuer will not split its common stock, or declare a stock dividend for two years after the effective date of the registration if such action has the effect of lowering the price below U.S. $1.

c. Commissions, fees or other remuneration for soliciting any prospective purchaser in connection with the offering in the state are only paid to persons who, if required to be registered or licensed, the issuer believes, and has reason to believe, are appropriately registered or licensed in the state.

d. Financial statements shall be prepared in accordance with either U.S. or Canadian generally accepted accounting principles. If appropriate, a reconciliation note should be provided. If the company has not conducted significant operations, statements of receipts and disbursements shall be included in lieu of statements of income. Interim financial statements may be unaudited. All other financial statements shall be audited by independent certified public accountants, provided, however, that if each of the following four conditions are met, such financial statements in lieu of being audited may be reviewed by independent certified public accountants in accordance with the Accounting and Review Service Standards promulgated by the American Institute of Certified Public Accountants or the Canadian equivalent:

(1) The company shall not have previously sold securities through an offering involving the general solicitation of prospective investors by means of advertising, mass mailings, public meetings, "cold call" telephone solicitation, or any other method directed toward the public;

(2) The company has not been previously required under federal, state, provincial or territorial securities laws to provide audited financial statements in connection with any sale of its securities;

(3) The aggregate amount of all previous sales of securities by the company (exclusive of debt financing with banks and similar commercial lenders) shall not exceed U.S. $1 million; and

(4) If the offering is a Rule 504 offering, the amount of the present offering does not exceed U.S. $1 million.

e. The offering shall be made in compliance with Rule 504 of Regulation D, Regulation A, or Section 3(a)(11) of the Securities Act of 1933.

f. The issuer shall comply with the General Instructions to SCOR in Part I of the NASAA SCOR Issuer's Manual.

50.62(3) Disqualifications.

a. Unless the administrator determines that it is not necessary under the circumstances that the disqualification under this subrule be applied, application for registration referred to in subrule 50.62(2) shall be denied if the issuer, any of its officers, directors, stockholders who own 10 percent or greater of the issuer, promoters, or selling agents, or any officer, director or partner of any selling agent:

(1) Has filed a registration statement which is subject to a currently effective stop order entered pursuant to any state or provincial securities laws within five years prior to the filing of the registration statement;

(2) Has been convicted, within five years prior to the filing of the registration statement, of any felony or misdemeanor in connection with the offer, purchase, or sale of securities, or of any felony involving fraud or deceit including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(3) Is currently subject to any state or provincial administrative enforcement order or judgment entered by that state's or province's securities administrator within five years prior to the filing of the registration statement;

(4) Is subject to any state or provincial administrative enforcement order or judgment in which fraud or deceit including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found, and the

order or judgment was entered within five years prior to the filing of the current application for registration;

(5) Is subject to any state or provincial administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities;

(6) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction that temporarily, preliminarily, or permanently restrains or enjoins such party from engaging in or continuing any conduct of practice in connection with the purchase or sale of any security, or involving the making of any false filing with the state, entered within five years prior to the filing of the registration statement; or

(7) Has violated the law of a foreign jurisdiction governing or regulating any aspect of the business of securities or banking or, within the past five years, has been the subject of an action of a securities regulator of a foreign jurisdiction denying, revoking or suspending the right to engage in the business of securities as a broker-dealer, agent or investment adviser or is the subject of an action of any securities exchange or self-regulatory organization operating under the authority of the securities regulator of a foreign jurisdiction suspending or expelling such person from membership in such exchange or self-regulatory organization.

b. The prohibitions of subparagraphs (1) to (3) and (5) of paragraph 50.62(3)"a" shall not apply if the person subject to the disqualification is duly registered or licensed to conduct securities-related business in the state or province in which the administrative order or judgment was entered against such person, or if the broker-dealer employing such person is registered or licensed in the state and the Form BD filed in the state discloses the order, conviction, judgment or decree relating to such person.

c. No person disqualified shall act in any capacity other than the capacity for which the person is registered or licensed.

d. Disqualification is automatically waived if the jurisdiction which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that registration be denied.

This rule is intended to implement Iowa Code section 502.304.

191—50.63(502) Streamlined registration for certain equity securities.

50.63(1) An equity security meeting the conditions of this rule may be registered pursuant to Iowa Code section 502.303 if all of the following conditions are satisfied, unless waived by the administrator, and except as provided by subrule 50.63(2):

a. The issuer must be a corporation organized under the laws of one of the states or possessions of the United States;

b. The offering price for common stock, the exercise price if the securities are options, warrants, or rights for common stock, or the conversion price if the securities are convertible into common stock must be equal to or greater than $5 per share;

c. The issuer of the security has (or will have upon completion of the offering) total assets exceeding $10 million;

d. The security will be offered under a firm underwriting;

e. The security is the subject of a registration statement filed on Form S-1 or Form SB-2 with the SEC; and

f. The registration statement filed with the administrator contains audited financial statements for each of the two most recently concluded fiscal years of its operations, and the audit for the most recent fiscal year does not include an auditor's report expressing substantial doubt about the issuer's ability to continue as a going concern.

50.63(2) Registration pursuant to this rule is not available if:

a. The issuer is a blind pool or other offering for which the specific business or properties cannot now be described; or

b. The issuer, a principal officer or a principal shareholder thereof, or a broker-dealer offering or selling the securities:

(1) Is subject to statutory disqualification, as defined by subparagraphs (A), (B), (C), or (D) of Section 3(a)(39) of the Securities Exchange Act of 1934;

(2) Has been convicted of any felony under federal or state law regarding the offer, purchase, or sale of any security, or any felony under federal or state law involving fraud or deceit in the ten years prior to the date of the offering;

(3) Is currently named in and subject to any order, judgment, or decree of any court of competent jurisdiction acting under federal or state law temporarily or permanently restraining or enjoining the person from engaging in or continuing any conduct or practice in connection with the offer, purchase, or sale of a security;

(4) Has filed a registration statement which is currently the subject of a stop order entered pursuant to any state's securities law within five years prior to the offering;

(5) Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the offering, or is currently subject to any state's administrative enforcement order or judgment in which fraud or deceit was found within five years prior to the offering; or

(6) Is currently subject to any state's administrative order or judgment prohibiting, denying, or revoking the use of any exemption from registration regarding the offer, sale, or purchase of any security, or involving the making of a false filing with the state within five years of the offering.

50.63(3) The unavailability of streamlined registration pursuant to this rule as a result of the disqualification of a party pursuant to paragraph 50.63(2)"b" may be waived by the administrator if the order, conviction, judgment or decree relating to the party's disqualification was disclosed in writing to the administrator and the administrator determines, based upon good cause shown, that the public interest no longer requires the party to be disqualified.

50.63(4) The administrator shall review a filing made pursuant to this rule within ten business days of receipt. Registration shall be effective upon review, or earlier if the administrator permits a shorter time frame, or comments explaining noncompliance will be promptly sent to the applicant.

50.63(5) The administrator shall not deny the effectiveness of a registration made pursuant to this rule based on subrule 50.67(13) or 50.67(15), or based upon the financial condition of the issuer under Iowa Code section 502.306(1)"h."

50.63(6) The following securities shall be the subject of a lockup with the managing underwriter for no less than 180 days, or a longer period if requested by the managing underwriter of the offering:

a. A security issued to a promoter within three years immediately preceding the offering or to be issued to a promoter for consideration substantially less than the offering price; or

b. A security issued to a promoter for a consideration other than cash, unless the registrant demonstrates that the

value of the noncash consideration received in exchange for the security is substantially equal to the offering price for the security.

A copy of the lockup agreement shall be filed with the administrator.

50.63(7) For purposes of this rule, a "promoter" is:

a. A person who, acting alone or in concert with one or more other persons, founds or organizes the business or enterprise of the issuer;

b. An officer or director owning securities of the issuer, or a person who owns, beneficially or of record, 10 percent or more of a class of securities of the issuer if the officer, director, or person acquires any of those securities in a non-arm's-length transaction within the three years prior to the filing of the registration statement pursuant to this rule; or

c. A member of the immediate family of a person described in paragraph "a" or "b" if the family member receives securities of the issuer from that person in a non-arm's-length transaction within the three years prior to the filing of the registration statement pursuant to this rule.

This rule is intended to implement Iowa Code section 502.303.

191—50.64(502) Registration of multijurisdictional offerings.

50.64(1) Pursuant to Iowa Code section 502.303(2), offerings filed on SEC Form F-7, Form F-8, Form F-9 or Form F-10 shall become effective the later of three days after filing, or the effective date with the SEC.

50.64(2) Pursuant to Iowa Code section 502.605(3), financial statements and financial information for offerings filed under subrule 50.64(1) shall comply with instructions provided with SEC Form F-7, Form F-8, Form F-9 or Form F-10.

50.64(3) In a Rights Offering, SEC Form F-7 will be accepted in lieu of any state form required to claim an exemption for any transaction pursuant to an offer to existing securities holders.

50.64(4) After the SEC has declared effective an issuer's Form F-8, Form F-9 or Form F-10 registration statement, a nonissuer transaction in any class of the issuer's securities is exempt from registration, whether or not the transaction is effected through a broker-dealer.

This rule is intended to implement Iowa Code sections 502.303(2) and 502.605(3).

191—50.65(502) Form of financial statements.

50.65(1) Except as otherwise provided by this rule, the balance sheet, statement of cash flows, and statement of income required by Iowa Code section 502.304(2)"q" shall be certified by an independent certified public accountant who shall also issue an opinion on the financial statements. The audit and opinion requirements may be waived by the administrator upon written application and for good cause shown.

50.65(2) The balance sheet, statement of cash flows, and statement of income provided for compliance with the four-month requirement of Iowa Code section 502.304(2)"q" need not be certified in accordance with subrule 50.40(1) if such certification was submitted for the last fiscal year prior to the application and the date of the financial statements subject to certification is not more than 12 months prior to the registration date.

This rule is intended to implement Iowa Code section 502.304.

191—50.66(502) Reports contingent to registration by qualification. In the administrator's discretion, a registration by qualification statement filed pursuant to Iowa Code section 502.304 may not become effective until one or both of the following are filed:

1. When the value, after its purchase, of certain property does or will constitute a material portion of the assets of the issuer or any other person whose financial condition is significant to the registration, the report of any appraiser or engineer; and

2. When the ownership of any such property is material to the registration, a signed opinion of legal counsel regarding ownership of any property.

This rule is intended to implement Iowa Code section 502.304(2A).

191—50.67(502) NASAA guidelines and statements of policy.

50.67(1) Overview of national models. In cooperation with the securities administrators of other states and with a view to effectuating a policy to achieve maximum uniformity of regulations regarding the registration of securities, registration and business practices of securities industry and investment advisory registrants, enforcement of antifraud laws and in the interest of streamlining the rules contained in Chapter 50, the administrator incorporates by reference the following guidelines and statements of policy promulgated by NASAA. This rule does not include any later amendments or editions of the incorporated matter.

The official reporter for NASAA statements of policy is the NASAA Reports volume printed by CCH. A copy of the CCH NASAA Reports is available to the public during regular business hours at the office of the administrator. Upon request, and for a reasonable fee not to exceed the cost of providing the service, the administrator will furnish to any person photostatic or other copies of the following NASAA guidelines and statements of policy. The office of the administrator is located at and requests may be mailed to the Iowa Securities and Regulated Industries Bureau, 340 Maple Street, Des Moines, Iowa 50319-0066; via E-mail at iowa.sec@iid.state.ia.us; or from the division Web site at http://www.iid.state.ia.us/division/securities. NASAA statements of policy may also generally be found at www.nasaa.org.

50.67(2) Registration of oil and gas programs. All oil and gas programs filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Oil and Gas Programs, which were initially adopted by the NASAA membership on September 22, 1976, as amended on October 12, 1977; October 31, 1979; April 23, 1983; July 1, 1984; September 3, 1987; September 14, 1989; and October 24, 1991; and published in CCH NASAA Reports at paragraph 2621.

50.67(3) Uniform disclosure guidelines—legend. All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Cover Legends as adopted by the NASAA membership on October 2, 2004, and published in CCH NASAA Reports at paragraph 1351.

50.67(4) Omnibus guidelines. All registrations of limited or general partnerships, joint ventures, unincorporated association, or similar organizations, other than a corporation formed and operated for the primary purpose of investment in and the operation of or gain from and interest in the assets to be acquired by such entity for which statements of policy have not been adopted by the NASAA membership, filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Omnibus Guidelines as adopted by the NASAA

membership on March 29, 1992, and published in CCH NASAA Reports at paragraph 2321.

50.67(5) Registration of commodity pool programs. All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Commodity Pool Programs as adopted by the NASAA membership on September 21, 1983, effective January 1, 1984, amended August 30, 1990, and published in CCH NASAA Reports at paragraph 1201.

50.67(6) Registration of equipment programs. All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Equipment Programs as adopted by the NASAA membership on November 20, 1986, effective January 1, 1987, amended April 22, 1988, and October 24, 1991, and published in CCH NASAA Reports at paragraph 1601.

50.67(7) Registration of real estate programs. All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Real Estate Programs as adopted by the NASAA membership September 29, 1993, and published in CCH NASAA Reports at paragraph 3601.

50.67(8) Registration of mortgage programs. All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Mortgage Programs as adopted by the NASAA membership on September 10, 1996, and published in CCH NASAA Reports, paragraph 701.

50.67(9) Real estate investment trusts. The registration of a real estate investment trust may be disallowed if it does not substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Real Estate Investment Trusts revised and adopted by the NASAA membership on September 29, 1993, and published in CCH NASAA Reports at paragraph 3401.

50.67(10) Corporate securities definitions. For securities registration purposes, the administrator adopts the various definitions set out in the NASAA Statement of Policy Regarding Corporate Securities Definitions as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and published in CCH NASAA Reports at paragraph 3812.

50.67(11) Impoundment of proceeds. When an impoundment of proceeds is necessary, it shall substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding the Impoundment of Proceeds as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and published in CCH NASAA Reports at paragraph 2154.

50.67(12) Loans and other material affiliated transactions. When there have been or will be loans or other material affiliated transactions, the transactions shall substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Loans and Other Material Affiliated Transactions as amended by the NASAA membership on April 27, 1997, and published in CCH NASAA Reports at paragraph 374.

50.67(13) Options and warrants. The issuance of options and warrants may be allowed by the administrator if the issuance is in substantial compliance, as determined by the administrator, with the NASAA Statement of Policy Regarding Options and Warrants as amended by the NASAA membership on November 17, 1997, and as amended September 28, 1999, and published in CCH NASAA Reports at paragraph 2801.

50.67(14) Preferred stock. A public offering of preferred stock may be allowed by the administrator if the offering substantially complies, as determined by the administrator, with the NASAA Statement of Policy Regarding Preferred Stock as amended by the NASAA membership on April 27, 1997, and published in CCH NASAA Reports at paragraph 3001.

50.67(15) Promotional shares. The registration of a security may include promotional shares if it substantially complies, as determined by the administrator, with the NASAA Statement of Policy Regarding Promotional Shares as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and published in CCH NASAA Reports at paragraph 3203.

50.67(16) Risk disclosure. All registrants of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Risk Disclosure as adopted by the NASAA membership on September 8, 2001, and published in CCH NASAA Reports at paragraph 1362.

50.67(17) Unsound financial condition. An issuer may be deemed to be in an unsound financial condition if it substantially meets, as determined by the administrator, the conditions provided within the NASAA Statement of Policy Regarding Unsound Financial Condition as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and published in CCH NASAA Reports at paragraph 3826.

50.67(18) Use of proceeds. The registration of a security may be disallowed if it does not substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Specificity in Use of Proceeds as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and published in CCH NASAA Reports at paragraph 3836.

50.67(19) Registration of asset-backed securities. All registrants of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Asset-Backed Securities as adopted by the NASAA membership on October 25, 1995, and published in CCH NASAA Reports at paragraph 501.

This rule is intended to implement Iowa Code sections 502.305(6) and 502.306(1).

191—50.68(502) Trust indenture requirements.

50.68(1) Evidence of indebtedness registered by coordination pursuant to Iowa Code section 502.303 shall be issued under a trust indenture meeting the requirements of the Trust Indenture Act of 1939, or if exempt therefrom, meeting the requirements of subrule 50.68(2).

50.68(2) Unless otherwise provided by the administrator, evidence of indebtedness registered by qualification under Iowa Code section 502.304 shall be issued under a trust indenture requiring, at a minimum:

a. There shall be at all times one or more trustees, at least one of which is a corporation organized and doing business under the laws of the United States or of any state authorized under such laws to exercise corporate trust powers and subject to supervision or examination by federal or state authority. If the administrator determines that the corporate trustee requirements may not be necessary for the protection of investors, the administrator may, upon such conditions as the administrator deems appropriate, waive such requirement and permit the trustee to be an individual or other person;

b. If the indenture requires or permits the appointment of one or more cotrustees in addition to a corporate trustee, then the rights, powers, duties, and obligations conferred or imposed upon and exercised or performed by the corporate trustee or the corporate trustee and cotrustee jointly, except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed such corporate trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations shall be exercised and performed by such cotrustees;

c. In the case of certificates of interest or participation, the trustee or trustees shall have the legal power to exercise all of the rights, powers, and privileges of a holder of a security or securities in which such certificates evidence an interest or participation; and

d. If any trustee has or acquires any conflicting interest, the trustee shall within 90 days of discovering the conflict in interest either eliminate the conflict or resign the position. If the trustee resigns, the resignation becomes effective upon the appointment of a successor by the obligor in accordance with the terms of the indenture agreement.

50.68(3) When the administrator deems appropriate for the protection of purchasers, the administrator may by order require any other provision of the Trust Indenture Act of 1939 to be included as an additional provision to the minimum requirements established by subrule 50.68(2), relating to the issuance of evidences of debt registered by qualification under Iowa Code section 502.304.

50.68(4) Subrule 50.68(2) does not apply to evidence of indebtedness which matures on or before one year from the date of issue or evidence of indebtedness with an aggregate amount not exceeding $500,000.

50.68(5) For purposes of this rule, "conflicting interest" is defined in accordance with Section 310(b)(1) of the Trust Indenture Act of 1939.

This rule is intended to implement Iowa Code sections 502.303 and 502.304.

191—50.69(502) Amendments to registration by qualification. A registration statement registered by qualification pursuant to Iowa Code section 502.304 is presumed to be reasonably current for purposes of Iowa Code section 502.305(9) if:

1. The issuer notifies the administrator in writing of any change in a material fact contained in the registration statement no later than 7 days after the issuer learns of the change; and

2. The issuer notifies the administrator in writing of the results of an annual audit or semiannual report no later than 14 days after receiving such audit results or semiannual report unless the results constitute a change in material fact subject to the provisions of paragraph "1."

This rule is intended to implement Iowa Code section 502.305(9).

191—50.70(502) Annual report to shareholders. During the period of time in which a registration statement is in effect, but in no event later than 120 days following the close of the fiscal year, the registrant shall distribute an annual report to all holders of securities purchased pursuant to the registration. The annual report shall contain, at a minimum, an audited balance sheet, an audited statement of income, and an audited statement of cash flows.

This rule is intended to implement Iowa Code section 502.305(9).

191—50.71(502) Delivery of prospectus. As a condition to registration by qualification pursuant to Iowa Code section 502.304, a prospectus containing the information required by Iowa Code section 502.304(2) shall be delivered to each person to which an offer is made, before or concurrently with the earliest of the following events:

1. The first offer made in a record to each person otherwise than by means of a public advertisement, by or for the account of the issuer or any other person on whose behalf the offering is made, or by any underwriter or broker-dealer offering part of an unsold allotment or subscription taken as a participant in the distribution;

2. The confirmation of any sale made by or for the account of the person;

3. The payment pursuant to any such sale; or

4. The delivery of the security pursuant to any such sale.

This rule is intended to implement Iowa Code section 502.304(5).

191—50.72(502) Advertisements.

50.72(1) The following advertising regarding the offer, sale or purchase of any security in Iowa is exempt from the filing requirements of Iowa Code section 502.504:

a. A prospectus published or circulated regarding an offering of a security registered pursuant to Iowa Code section 502.303 or 502.304 that is not yet effective, or an offering of a security for which a notice or application for exemption, including the prospectus, has been filed pursuant to Iowa Code section 502.201 or 502.202;

b. Advertising which provides information regarding only from whom a prospectus may be obtained, a description of the security offered for sale, the price of the security, or the names of broker-dealers having an interest in its sale;

c. Advertising published by a registered broker-dealer or investment adviser concerning the qualifications or business of the registrant, the general advisability of investing in securities or market quotations or other factual information relating to particular securities or issuers, provided the advertising contains no recommendation concerning the purchase or sale of a particular security; and

d. Any other advertising the administrator may specify by order.

50.72(2) All advertising required to be filed with the administrator by a registrant shall be filed prior to the date of use. All advertising required to be filed by a person other than a registrant shall be filed at least ten days prior to the date of use, or a shorter period if provided by the administrator. The advertising shall not be used in Iowa until the registrant receives approval from the administrator.

50.72(3) Sales literature of an investment company registered pursuant to the Investment Company Act of 1940 which is materially misleading within the meaning of rules or a statement of policy of the SEC constitutes false or misleading advertising as prohibited by Iowa Code section 502.504(2A).

50.72(4) False or misleading advertisements prohibited by Iowa Code section 502.504(2A) include, but are not limited to, the following:

a. Comparison charts or graphs showing a distorted, unfair, or unrealistic relationship between the issuer's past performance, progress, or success and that of another company, business, industry, or investment media;

b. Layout or format omitting information necessary to make the entire advertisement a fair and truthful representation;

c. Statements or representations without accreditation predicting future profit, success, appreciation, or perfor-

mance, or otherwise addressing the merit or potential of the securities;

d. Generalizations, generalized conclusions, opinions, representations, and general statements based upon a particular set of facts and circumstances unless those facts and circumstances are stated and modified or explained by additional facts or circumstances as are necessary to make the entire advertisement a full, fair, and truthful representation;

e. Sales kits or film clips, displays or exposures, which alone or by sequence and progressive compilation present a misleading impression of guaranteed or exaggerated potential, profit, safety, or return;

f. Distribution of any nonfactual or inaccurate data or material by words, pictures, charts, or graphs, or otherwise based upon conjectural, unfounded, extravagant, or flamboyant claims, assertions, or predictions, or upon excessive optimism; and

g. Any package or bonus deal, prize, gimmick, or similar inducement regarding the offer or sale of a security that is combined with or dependent upon the sale of some other product, contract, or service unless the combination has been fully disclosed and specifically described and identified in the advertisement.

50.72(5) Any business card or other advertisement containing the name of an agent shall:

a. Clearly designate the agent as a securities agent or registered representative of the broker-dealer, as applicable, and indicate clearly that the broker-dealer is a broker-dealer;

b. Contain no advertising other than agent name, office address, broker-dealer name, and broker-dealer logo or trademark on the business cards;

c. Provide the office address and telephone number of the location where the agent conducts securities business; and

d. Clearly state the business of that entity and the relationship of the agent to that entity if the name, logo or trademark of any business entity other than that of the broker-dealer appears on the business card or in an advertisement.

50.72(6) A firm employing a sales agent who is offering securities on its behalf is responsible for ensuring that the name of the broker-dealer is displayed on the agent's business cards as prominently as the individual's name.

50.72(7) For the purpose of this rule, "advertisement" means any written or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, or other electronic communications media, published regarding the offer, sale, or purchase of a security.

This rule is intended to implement Iowa Code section 502.504.

191—50.73 to **50.79** Reserved.

DIVISION VI
EXEMPTIONS

191—50.80(502) Uniform limited offering exemption.

50.80(1) This rule is the NASAA Uniform Limited Offering Exemption as adopted in September 1983, with amendments adopted through April 29, 1989, without any of the footnotes and may be cited as the "Uniform Limited Offering Exemption."

a. Nothing in this exemption is intended to or should be in any way construed as relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of Iowa Code chapter 502 and these rules.

b. In view of the objective of this rule and the purposes and policies underlying Iowa Code chapter 502, the exemption is not available to any issuer for any transaction which, although in technical compliance with this rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this rule.

c. Nothing in this rule is intended to relieve registered broker-dealers or agents from the due diligence, suitability, "know your customer" standards or any other requirements of law otherwise applicable to such registered persons.

50.80(2) Under the authority delegated to the administrator to promulgate rules by Iowa Code sections 502.203 and 502.605(1), the following transaction is exempt from the registration provisions of the Act:

a. Any offer or sale of securities offered or sold in compliance with the Securities Act of 1933, Regulation D, Rule 230.505, including any offer or sale made exempt by Rule 508(a), as made effective in Release No. 33-6389 and as amended by Release Nos. 33-6437, 33-6663, 33-6758, and 33-6825, and which satisfies all of the following:

(1) No commission, fee or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in Iowa unless the person is registered under Iowa Code section 502.406 or is exempt from registration as a broker-dealer by Iowa Code section 502.401(2).

(2) It is a defense to a violation of this subrule if the issuer sustains the burden of proof to establish that the issuer did not know, and in the exercise of reasonable care could not have known, that the person receiving a commission, fee, or other remuneration was not appropriately registered in Iowa.

b. No exemption under this rule is available for the securities of any issuer if any of the parties described in the Securities Act of 1933, Regulation A, Rule 230.262(a), (b), or (c):

(1) Has filed a registration statement subject to a currently effective registration stop order entered under any state's securities law within five years prior to filing the notice required under this exemption;

(2) Has been convicted, within five years prior to filing the notice required under this exemption, of any felony or misdemeanor regarding the offer, purchase or sale of any security or any felony involving fraud or deceit including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(3) Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to filing the notice required under this exemption, or is currently subject to any state's administrative enforcement order or judgment in which fraud or deceit including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to filing the notice required under this exemption;

(4) Is currently subject to any state administrative enforcement order or judgment prohibiting, denying, or revoking the use of any exemption from registration regarding the offer, purchase or sale of securities; or

(5) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or permanently restraining or enjoining the party from engaging in or continuing any conduct or practice regarding the purchase or sale of any security, or involving the making of any false filing with the state entered within five years prior to filing the notice required under this exemption.

INSURANCE DIVISION[191](cont'd)

(6) The disqualification of a person under paragraph 50.80(2)"b" may be waived by the administrator if the order, conviction, judgment or decree relating to the person's disqualification has been disclosed in writing to the administrator and the administrator has determined, for good cause shown, that the public interest no longer requires the person to be disqualified.

(7) It is a defense to a violation of this subrule if the issuer sustains the burden of proof to establish that the issuer did not know, and in the exercise of reasonable care could not have known, that a disqualification under this subrule existed.

c. The issuer shall file with the administrator a notice on Form D (17 CFR 239.500) not later than 15 days following the date of the first sale in Iowa. This notice shall be accompanied by:

(1) A copy of any written information furnished to investors;

(2) A Form U-2 consent to service of process; and

(3) A $100 filing fee.

d. Filing occurs on the earlier of:

(1) The date the notice is received by the administrator; or

(2) The date the documents are mailed with the United States Postal Service by registered or certified mail addressed to the administrator at the Iowa Securities and Regulated Industries Bureau, 340 Maple Street, Des Moines, Iowa 50319-0066.

e. In all sales to nonaccredited investors in Iowa, one of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that one of the following conditions is satisfied:

(1) The investment is suitable for the purchaser based upon facts, if any, disclosed by the purchaser regarding the purchaser's other security holdings, financial situation and needs. For this condition only, it is presumed that if the investment does not exceed 10 percent of the investor's net worth, it is suitable.

(2) The purchaser, either alone or with a purchaser's representative, has such knowledge and experience in financial and business matters that the purchaser is, or they are, capable of evaluating the merits and risks of the prospective investment.

50.80(3) The failure to comply with a term, condition or requirement of subparagraph 50.80(2)"a"(1), paragraph 50.80(2)"c" or paragraph 50.80(2)"e" will not result in loss of the exemption from the requirements of Iowa Code section 502.301 for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

a. The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity;

b. The failure to comply was insignificant regarding the offering as a whole; and

c. A good-faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of subparagraph 50.80(2)"a"(1), paragraph 50.80(2)"c" and paragraph 50.80(2)"e."

50.80(4) Where an exemption is established only through reliance upon subrule 50.80(3), the failure to comply is actionable under Iowa Code sections 502.603 and 502.604.

50.80(5) Transactions exempt under this rule may not be combined with offers and sales exempt under any other rule or provision of the Act. However, nothing in this limitation shall act as an election. Should for any reason the offer and sale fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.

50.80(6) The administrator may, by rule or order, increase the number of purchasers or waive any other conditions of this exemption.

This rule is intended to implement Iowa Code section 502.203.

191—50.81(502) Commissions on limited offerings. In addition to commissions or remunerations permitted by order, the administrator permits commissions under Iowa Code section 502.202(14) under the following conditions:

1. Commissions for the sale of the securities are paid only to broker-dealers registered with the administrator under the Act;

2. Commissions and all other expenses of the offering do not exceed 20 percent of the aggregate sales price of the securities proposed to be sold;

3. An offering document is made available to all offerees and purchasers at the time the first written offer is made, upon the confirmation of sale, when payment is made pursuant to the sale, or upon delivery of the security pursuant to the sale, whichever occurs first;

4. The offering document is provided to the administrator for review no less than 15 days prior to being made available to any prospective purchaser.

This rule is intended to implement Iowa Code section 502.202(14).

191—50.82(502) Notice filings for Rule 506 offerings.

50.82(1) An issuer offering a security that is a covered security pursuant to Section 18(b)(4)(D) of the Securities Act of 1933 shall submit no later than 15 days after the first sale of such federal covered security in Iowa:

a. A notice on Form D, including the Appendix;

b. A consent to service of process on Form U-2; and

c. A $100 filing fee, or a $250 fee for any late filing.

50.82(2) "SEC Form D," for the purposes of this rule, means the document, as adopted by the SEC and in effect on September 1, 1996, as may be amended by the SEC from time to time, entitled "FORM D: Notice of Sale of Securities pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption," including Part E and the Appendix.

This rule is intended to implement Iowa Code section 502.302(3).

191—50.83(502) Notice filings for agricultural cooperative associations.

50.83(1) An agricultural cooperative association issuing notes or other evidence of indebtedness shall notify the administrator in writing 30 days before the security is initially sold. Notification shall include:

a. The name of the issuer, the date of organization of the issuer, and the name of a contact person.

b. A description of the class of persons to whom the offer of securities will be made. If the offering is being made to certain persons or within a specified area, a description of such offerees or area shall be included.

c. A description of the type of security to be offered which includes information regarding interest and interest payment schedules, default, redemption, reinvestment, and other facts regarding the rights of holders that the issuer deems material to the offering.

d. Financial statements of the agricultural cooperative association including a balance sheet as of the end of its most recent fiscal year, prepared under generally accepted accounting principles and accompanied by an independent au-

ditor's report and any other audited financial statements of the association that are available. However, if the filing by the agricultural cooperative association is made within 90 days of the end of its most recent fiscal year and current audited financial statements are not yet available, the filing may consist of an audited balance sheet and other available audited financial statements for the previous fiscal year, prepared under generally accepted accounting principles and accompanied by an independent auditor's report. The agricultural cooperative association shall file an audited balance sheet and any other available audited financial statements for the most recent fiscal year end as soon as they become available, but in no event later than 90 days of the end of its fiscal year.

50.83(2) If, after the anniversary date of its initial notice filing, an agricultural cooperative association continues to issue notes or other evidence of indebtedness under its initial notice filing in order to maintain the exemption, the agricultural cooperative association shall on an annual basis file with the administrator an audited balance sheet and any other audited financial statements within 30 days of the anniversary of its initial notice filing. An agricultural cooperative association making its initial filing based upon a previous year's audited financial statements because of the unavailability of current audited financial statements shall consider its anniversary date to be the date on which the cooperative filed the audited financial statements for the most recent fiscal year. An agricultural cooperative association not issuing notes or other evidence of indebtedness after an anniversary date of its initial filing is not required to make any further filing of financial information as a condition of qualifying for the exemption from registration.

50.83(3) Form 1CP may be used to make the filing required by subrule 50.83(1). Form 1CP may be obtained by contacting the administrator at the Iowa Securities and Regulated Industries Bureau, 340 Maple Street, Des Moines, Iowa 50319-0066 or via E-mail at iowa.sec@iid.state.ia.us.

This rule is intended to implement Iowa Code section 502.201(8B)"b."

191—50.84(502) Unsolicited order exemption.

50.84(1) Any unregistered broker-dealer effecting a transaction under an unsolicited order or offer to buy and claiming an exemption from registration based solely upon Iowa Code section 502.202(6) shall obtain acknowledgment from the customer on or before the settlement date of the transaction that the transaction is unsolicited.

50.84(2) The acknowledgment shall take one of the following forms:

a. A confirmation statement, as required pursuant to subrule 50.84(1), displaying in bold print on the face of the statement the words "Unsolicited Order, Notify Immediately if Otherwise"; or

b. A signed statement from the customer acknowledging that the order was unsolicited and containing the name of the customer, the name of the securities involved, the number of securities involved in the transaction, the purchase price of the securities, the transaction date, and the total dollar amount, including commissions paid, of the transaction.

50.84(3) The customer will be presumed to have acknowledged that the transaction was unsolicited if the customer does not indicate otherwise on or before the settlement date.

50.84(4) A broker-dealer shall notify the administrator in writing that it is executing unsolicited orders in a security when both of the following conditions are met:

a. More than six unsolicited orders or offers to buy such security are received during any three consecutive business days; and

b. The broker-dealer is relying solely upon the exemption provided by Iowa Code section 502.202(6).

This rule is intended to implement Iowa Code section 502.202(6).

191—50.85(502) Solicitation of interest exemption.

50.85(1) An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus (or its equivalent) for such security is exempt from registration pursuant to Iowa Code section 502.301 if:

a. The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada, is engaged in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries, and is not a blind pool offering or other offering for which the specific business or properties cannot now be described.

b. The offerer intends to register the security in Iowa and conduct its offering pursuant to either Regulation A or Rule 504 of Regulation D, as promulgated by the SEC.

c. The offerer files with the administrator a SOIF along with any other materials to be used to conduct solicitations of interest including, but not limited to, the script of any broadcast to be made and a copy of any notice to be published no less than ten business days prior to the initial solicitation of interest.

d. The issuer files with the administrator all amendments to any materials filed pursuant to paragraph "c" or additional materials it proposes to use in conducting solicitations of interest, except for materials provided to a particular investor solely pursuant to a request by that investor, no less than five business days prior to use.

e. The offerer does not use any SOIF, script, advertisement, or other material which the administrator has ordered or notified the offerer may not be used for the purpose of solicitations of interest.

f. Except for scripted broadcasts and except to the extent necessary to obtain information needed to provide a SOIF, the offerer does not orally communicate with any prospective investor about the contemplated offering unless the investor is provided with the most current SOIF at or before the time of the communication or within five days after the communication.

g. The offerer does not solicit or accept money or a commitment to purchase securities during the solicitation of interest period.

h. The offerer does not make a sale until at least seven days after delivery to the purchaser of a final prospectus or delivery of a preliminary prospectus as provided by Iowa Code section 502.202(17).

50.85(2) Unless the offerer does not know, and in the exercise of reasonable care could not know, the exemption under this rule is not available for securities of an offerer, if any of the issuer's officers, directors, promoters, or 10 percent shareholders:

a. Have filed a registration statement which is the subject of a current effective registration stop order entered under any federal or state securities law within five years prior to filing the SOIF.

b. Have been convicted within five years prior to filing the SOIF of any felony or misdemeanor regarding the offer, purchase or sale of any security or any felony involving fraud

or deceit including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

c. Are currently subject to any federal or state administrative enforcement order or judgment entered by any state securities administrator or the SEC within five years prior to filing the SOIF in which fraud or deceit, including, but not limited to, the making of untrue statements of material facts and omitting to state material facts, was found.

d. Are subject to any federal or state administrative order or judgment prohibiting, denying, or revoking the use of any exemption from registration regarding the offer, purchase or sale of securities.

e. Are currently subject to any order, judgment, or decree of any court of competent jurisdiction entered within five years prior to filing the SOIF temporarily, preliminarily, or permanently restraining or enjoining the person or entity from engaging in or continuing any conduct or practice regarding the purchase or sale of any security or the making of any false filing with any state.

The disqualifications listed in this subrule shall not apply if the person or entity subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against the person or entity, or if the broker-dealer employing the person or entity is licensed or registered in Iowa and the Form BD filed with the administrator discloses the order, conviction, judgment, or decree. No person disqualified under this subrule may act in a capacity other than that for which the person is licensed or registered. Any disqualification caused by this subrule is automatically waived if the agency creating the disqualification determines for good cause shown that the exemption should not be denied.

50.85(3) The failure to comply with a term, condition or requirement of this rule shall not result in the loss of the exemption from the requirements of Iowa Code section 502.301 for an offer to a particular individual or entity if the offerer establishes all of the following:

a. The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and

b. The failure to comply was insignificant regarding the offering as a whole; and

c. A good-faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of this rule.

Where an exemption is established only through reliance upon subrule 50.84(2), the failure to comply is still actionable as a violation of the Act by the administrator under Iowa Code section 502.603 or 502.604.

50.85(4) The offerer shall comply with the following requirements:

a. Any published notice or script for broadcast and any printed material delivered apart from the SOIF, unless a SOIF containing the disclosures described below was previously delivered to the person, shall contain, at a minimum, the identity of the chief executive officer of the issuer, a brief and general description of the issuer's business and products, and the following disclosure printed in capital letters and boldface type at least as large as that used in the body of the printed materials:

(1) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED.

(2) NO SALES OF SECURITIES WILL BE MADE OR A COMMITMENT TO PURCHASE ACCEPTED UNTIL THE DELIVERY OF AN OFFERING CIRCULAR THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING.

(3) AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND.

(4) THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION UNDER FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE U.S. SECURITIES AND EXCHANGE COMMISSION AND IS REGISTERED IN IOWA.

b. All communications with prospective investors made in reliance upon this rule shall cease after a registration statement is filed with the administrator, and no sale may be made until at least 20 calendar days after the last communication made in reliance upon this rule.

c. A preliminary prospectus may be used with an offering for which indications of interest have been solicited under this rule only if the offering is conducted by a registered broker-dealer.

Failure to comply with the requirements of this subrule shall not result in losing the exemption from the requirements of Iowa Code section 502.301, but is a violation of the Act, is actionable by the administrator under Iowa Code section 502.603 or 502.604, and constitutes grounds for denying or revoking the exemption for specific transactions.

50.85(5) Upon written application by the offerer and for good cause shown, the administrator may waive any condition of the solicitation of interest exemption. Neither compliance nor attempted compliance with this rule, nor the absence of any objection or order by the administrator regarding an offer of securities made under this rule, constitutes a waiver of any condition of the rule or a confirmation by the administrator of the availability of the rule.

50.85(6) Offers made in reliance upon this rule shall not be integrated with subsequent offers or sales of securities registered in Iowa. Issuers on whose behalf indications of interest are solicited under this rule may not make offers or sales in reliance upon Iowa Code section 502.202(14) or rule 191—50.80(502) until at least 12 months after the last communication with a prospective investor made pursuant to this rule.

50.85(7) Nothing in this rule limits the application of Iowa Code section 502.401, 502.402, 502.501 or 502.509 to offers made in reliance upon this rule.

50.85(8) The administrator may review the materials filed under this rule. Materials filed, if reviewed, will be judged under antifraud principles. Any discussion in the offering documents of the potential rewards of the investment must be balanced by a discussion of the possible risks.

50.85(9) Any offer effected in violation of this rule may constitute an unlawful offer of an unregistered security for which civil liability attaches under Iowa Code section 502.501 et seq. Any misrepresentation or omission may also give rise to civil liability under the Act. A subsequent registration of the security does not cure the previous unlawful offer. Only a rescission offer made in compliance with the Act can effect a cure.

This rule is intended to implement Iowa Code section 502.202(17).

191—50.86(502) Internet offers exemption. Offers of securities made by, or on behalf of, issuers on or through the Internet are exempt from registration pursuant to Iowa Code sections 502.301 and 502.504 if:

1. The Internet offer states, directly or indirectly, that the securities are not being offered to Iowa residents; and

2. The Internet offer is not specifically directed to any person in Iowa by, or on behalf of, the issuer of the securities; and

3. No sales of the issuer's securities are made in Iowa as a result of the Internet offering until such time as the securities being offered have been registered under Iowa Code sections 502.301 and 502.504, and a final prospectus or Form U-7 is delivered to Iowa investors prior to such sales, or the issuer qualifies for the exemption provided in Iowa Code section 502.202(13).

This rule is intended to implement Iowa Code section 502.203.

191—50.87(502) Denial, suspension, revocation, condition, or limitation of limited offering transaction exemption. The administrator shall view the following as reasons for entering an order under Iowa Code section 502.204 to deny or revoke an exemption provided under Iowa Code section 502.202(14):

1. A public advertisement is used to promote the sale of securities for which such exemption is claimed; or

2. The offering is part of a registered offering under the Securities Act of 1933.

This rule is intended to implement Iowa Code section 502.204.

191—50.88(502) Nonprofit securities exemption.

50.88(1) Church extension funds or similar organizations making continuous offerings shall be exempt pursuant to Iowa Code section 502.201(7)"b" provided the issuer:

a. Applies for the exemption;

b. Files an offering circular and otherwise substantially complies with the NASAA Statement of Policy Regarding Church Extension Funds as adopted by the NASAA membership on April 17, 1994, and amended by the NASAA membership on April 18, 2004, and published in CCH NASAA Reports at paragraph 1951;

c. Files all sales and advertising literature;

d. Files a consent to service of process;

e. After authorization, may sell securities for a period of 12 months; and

f. Upon the expiration of the 12-month period in paragraph "e," files a renewal application that complies with the requirements of this subrule.

50.88(2) Church bonds and other one-time offerings for a single specific project shall be exempt pursuant to Iowa Code section 502.201(7)"a" provided the issuer:

a. Files a notice specifying the material terms of the offering that comply with the NASAA Statement of Policy Regarding Church Bonds as adopted by the NASAA membership on April 14, 2002, and published in CCH NASAA Reports at paragraph 1001; and

b. Files a consent to service of process.

This rule is intended to implement Iowa Code section 50.201(7).

191—50.89(502) Transactions with specified investors. The administrator grants the exemption for transactions with specified investors to the following persons:

50.89(1) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer.

50.89(2) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of the purchase exceeds $1 million.

50.89(3) Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

50.89(4) Any venture or seed capital company. For purposes of this subrule, a venture or seed capital company is a corporation, partnership or association that has been in existence for five years or whose net assets exceed $250,000 and whose primary business is investing in developmental stage companies or "eligible small business companies" as that term is defined in the regulations of the Small Business Administration.

This rule is intended to implement Iowa Code section 502.202(13).

191—50.90 to **50.99** Reserved.

DIVISION VII
FRAUD AND OTHER PROHIBITED CONDUCT

191—50.100(502) Fraudulent practices.

50.100(1) An issuer of securities registered under the Act, or any person who is an officer, director or controlling person of such issuer, is presumed to employ a "device, scheme or artifice to defraud" the purchasers of such securities under Iowa Code section 502.501(1) if such person applies, authorizes or causes to be applied any material part of the proceeds from the sale of such securities in any material way contrary to the purposes specified in the prospectus used in offering such securities and not reasonably related to the business of the issuer as described in the prospectus.

50.100(2) A broker-dealer or agent employing one or more of the following practices engages in an "act, practice, or course of business which operates or would operate as a fraud" under Iowa Code section 502.501(3):

a. Entering into any security transaction with a customer at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

b. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner.

c. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent possesses material, nonpublic information impacting the value of the security.

d. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objectives for some to sell and others to purchase the same security, at or about the same time, when the recommendation is not justified by the particular circumstances of each investor.

e. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (1) transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees, or (2) parking or withholding securities.

f. Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance including, but not limited to, the use of "boiler-room" tactics such as repeated or harassing unsolicited telephone calls or the use of fictitious or nominee accounts.

50.100(3) Although nothing in this rule precludes applying the general antifraud provisions to any person who en-

gages in practices similar to paragraphs "a" through "h" listed below, the listed practices apply only to soliciting a purchase or sale of OTC non-NASDAQ equity securities and excludes interests in direct participation programs and shares in open-end mutual funds:

a. Failing to disclose the entity's present bid and ask price of a particular security at the time of solicitation.

b. Failing to advise the customer, both at the time of solicitation and on confirmation, of the total of all charges and fees related to a specific securities transaction.

c. In connection with a principal transaction, failing to disclose, both at the time of solicitation and upon confirmation, a short inventory position in the entity's account of more than 5 percent of the issued and outstanding shares of that class of securities of the issuer, if the entity is a market maker at the time of solicitation.

d. Conducting sales contests in a particular security.

e. After a solicited purchase by a customer, failing or refusing, for a principal transaction, to promptly execute sell orders.

f. Refusing to sell existing securities held by the customer unless the customer executes a purchase transaction.

g. Soliciting a secondary market when there has not been a bona fide distribution in the primary market.

h. Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.

This list is not intended to be all-inclusive. Engaging in other conduct including, but not limited to, forgery, embezzlement, conversion, nondisclosure, incomplete disclosure or misstatement of material facts may also be deemed fraudulent.

This rule is intended to implement Iowa Code section 502.501.

191—50.101(502) Rescission offers.

50.101(1) Rescission offers made pursuant to Iowa Code section 502.510 shall be typed or printed and shall be captioned "RESCISSION OFFER" in boldface print or type. The rescission offer shall be delivered to each offeree personally or shall be sent by certified mail to the offeree's last-known address and shall contain the following information:

a. The name of the security which is the subject of the offer.

b. A reasonably detailed statement indicating why liability under Iowa Code section 502.509 may have arisen and fairly and adequately advising the offeree of the offeree's rights pursuant to the Act.

c. An offer to repurchase the security pursuant to Iowa Code section 502.510(1)"b" to "f," as applicable.

d. A statement that the offeree's right to bring an action under the Act may be lost unless the offeree accepts the offer within a specified period of time not less than 30 days after receiving the offer.

e. Sufficient information about the issuer and the security offered to permit the offeree to make an informed decision regarding acceptance of the rescission offer including, but not limited to, information about the issuer's organization and management, its operations and plan of business and its financial condition as shown by a current financial statement prepared under generally accepted accounting principles.

f. A form by which the offeree may accept the offer and a statement explaining that the offeree may accept the offer by returning the form to the offerer at the provided address by first-class mail, or any other type of mail.

g. In capital letters and boldface type at least as large as that used in the body of the printed materials, and placed immediately before the signature of the offerer, the following statement:

THIS IS A RESCISSION OFFER MADE PURSUANT TO IOWA CODE SECTION 502.510, A COPY OF WHICH IS ON FILE WITH THE IOWA SECURITIES AND REGULATED INDUSTRIES BUREAU. THE BUREAU MAKES NO RECOMMENDATION AS TO WHETHER THE OFFER SHOULD BE ACCEPTED OR REJECTED NOR HAS THE BUREAU PASSED UPON THE ADEQUACY OR ACCURACY OF THIS OFFER.

50.101(2) Prior to making a rescission offer pursuant to Iowa Code section 502.510, the offerer shall file with the administrator:

a. A copy of the rescission offer;

b. The names and addresses of all holders or sellers who are to receive the rescission offer; and

c. Financial statements proving that the offerer's assets are sufficient to meet its obligations should all offerees accept the rescission offer.

50.101(3) Rescission offers made pursuant to Iowa Code section 502.510 shall be tendered to all persons to whom liability exists or may exist pursuant to Iowa Code section 502.509.

50.101(4) A rescission offer may be accepted at any time during the period stated in the rescission offer even if an offeree previously rejected the offer.

50.101(5) Rescission offers are subject to the provisions of Iowa Code sections 502.501, 502.501A, 502.505, 502.506, and 502.506A.

50.101(6) The administrator may, in the administrator's discretion, require proof by the offerer of compliance with this rule and the terms of the rescission offer.

50.101(7) A proposal or making of a rescission offer shall not limit the administrator's administrative or enforcement authority provided by the Act.

This rule is intended to implement Iowa Code sections 502.509 and 502.510.

191—50.102(502) Fraudulent, deceptive or manipulative act, practice, or course of business in providing investment advice.

50.102(1) It shall constitute a fraudulent, deceptive or manipulative act, practice, or course of business for an investment adviser or an investment adviser representative acting as principal for such person's own account, knowingly to sell any security to or purchase any security from a client or, acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which the investment adviser is acting and obtaining the consent of the client to such transaction. The prohibitions of this subrule shall not apply to any transaction with a customer of a broker-dealer if such broker-dealer is not acting as an investment adviser in relation to such transaction.

50.102(2) It shall constitute a fraudulent, deceptive or manipulative act, practice, or course of business for an investment adviser or an investment adviser representative to fail to disclose to any client or prospective client all material facts regarding financial and disciplinary information as provided in 17 CFR Section 275.206(4)-4.

This rule is intended to implement Iowa Code section 502.502(2).

191—50.103(502) Investment advisory contracts.

50.103(1) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless the contract provides in writing all of the following:

a. That the investment adviser shall not be compensated on the basis of a share of capital gains or capital appreciation of the funds or any portion of the funds of the client.

b. That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract.

c. That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

50.103(2) The provisions of subrule 50.103(1) shall be construed consistent with Section 205(b) through (d) of the Investment Advisers Act of 1940.

50.103(3) The provisions of subrule 50.103(1) shall not prohibit compensation on the basis of a share of capital gains or capital appreciation of the funds or any portion of the funds of the client in compliance with the exemption in 17 CFR Section 275.205-3.

This rule is intended to implement Iowa Code section 502.502(3).

191—50.104 to **50.109** Reserved.

DIVISION VIII
VIATICAL SETTLEMENT INVESTMENT CONTRACTS

191—50.110(502) Application by viatical settlement investment contract issuers and registration of agents to sell viatical settlement investment contracts.

50.110(1) Under this rule, the term "viatical settlement investment contract issuer" includes, but is not limited to, any individual, company, corporation or other entity that offers or sells, directly or indirectly, viatical settlement investment contracts to investors.

50.110(2) A viatical settlement investment contract issuer employing agents in Iowa must make prior application to the administrator for this authority. The application shall be made by letter and shall include:

a. A statement of the issuer's intent to employ agents for the sale of its viatical settlement investment contracts; and

b. The name, address, social security number and proof of satisfaction of subrule 50.100(3) for each agent.

50.110(3) An applicant for registration as an Iowa-registered agent of an issuer of viatical settlement investment contracts shall file with the administrator:

a. Proof of obtaining a passing grade on the NASD Series 7 examination;

b. Proof of obtaining a passing grade on the NASD Series 63 examination;

c. An accurate, complete and signed Form U-4; and

d. A $30 filing fee.

This rule is intended to implement Iowa Code sections 502.102(2), 502.301 and 502.402.

191—50.111(502) Risk disclosure. Viatical settlement investment contract issuers and registered agents of issuers must provide specific, written disclosures of risk to Iowa investors at the time of the initial offer to sell a viatical settlement investment contract. These disclosures must be preceded by the following caption, which must be in bold, 16-point typeface:

IMPORTANT RISK DISCLOSURE INFORMATION—READ BEFORE SIGNING ANY VIATICAL SETTLEMENT INVESTMENT CONTRACT.

The disclosure must include, at a minimum, the following information:

1. That the actual annual rate of return on any viatical settlement investment contract is dependent upon an accurate projection of the viator's life expectancy and the actual date of the viator's death and that an annual "guaranteed" rate of return is not possible;

2. Whether, after purchasing the viatical settlement investment contract, the investor will be responsible for payment of premiums on the contract if the viator lives longer than projected and if the investor will be responsible for such premiums, the amount of the premium payment and any resulting negative effect on the investor's return;

3. Whether any premium payments on the contract have been escrowed and, if so, the date upon which the escrowed funds will be depleted, who is responsible for payment of premiums after depletion of the funds, and, if applicable, the amount of the premiums;

4. Whether any premium payments on the contract have been waived, whether the investor will be responsible for payment of the premiums if the insurer who wrote the policy terminates the waiver after purchase, and, if applicable, the amount of the premiums;

5. Whether the investor is responsible for payment of premiums on the contract if the viator returns to health and, if applicable, the amount of the premiums;

6. Whether the investor is entitled to all or part of the investor's investment under the contract if the viator's underlying policy is later determined to be null and void;

7. Whether the insurance policy is a group policy and, if so, the special risks associated with group policies including, but not limited to, whether the investor is responsible for payment of additional premiums if the policies are sold or converted;

8. Whether the insurance policy is term insurance and, if so, the special risks associated with term insurance including, but not limited to, whether the investor is responsible for additional premium costs if the viator continues the term policy at the end of the current term;

9. Whether the investor will be the beneficiary or owner of the insurance policy and, if the investor is the beneficiary, the special risks associated with beneficiary status;

10. Whether the insurance policy is contestable and, if so, the special risks associated with contestability including, but not limited to, the risk that the investor will have no claim or only a partial claim to death benefits should the insurer cancel the policy within the contestability period;

11. Who is making the projection of the viator's life expectancy, the information upon which the projection is based, and the relationship of the projection maker to the issuer;

12. Who is monitoring the viator's condition, how often the monitoring is done, how the date of death is determined, and how and when this information will be transmitted to the investor;

13. Whether the insurer who wrote the viator's underlying policy has any additional rights which could negatively affect or extinguish the investor's rights under the viatical settlement investment contract, what these rights are, and under what conditions these rights are activated;

14. That a viatical settlement investment contract is not a liquid investment and that there is no established secondary market for resale of these products by the investor;

15. That the investor will receive no returns (i.e., dividends and interest) until the viator dies; and

16. That the investor may lose all benefits or receive substantially reduced benefits if the insurer goes out of business during the term of the viatical investment.

This rule is intended to implement Iowa Code sections 502.102, 502.201(9E) and 502.301.

INSURANCE DIVISION[191](cont'd)

191—50.112(502) Advertising of viatical settlement investment contracts.

50.112(1) The issuer and agent shall file all viatical settlement investment contract advertisements with the administrator at least ten business days prior to the date of use or a shorter period as the administrator may permit. The administrator shall mark the advertisements with allowance for use or expressly disapprove them during this time frame. The advertisement shall not be used in Iowa until a copy thereof, marked with allowance for use, has been received from the administrator.

50.112(2) Viatical settlement investment contract advertisements shall contain no more than the following:

a. The name of the issuer;

b. The address and telephone number of the issuer;

c. A brief description of the security, including minimum purchase requirements and liquidity aspects;

d. If a rate of return is advertised, it must be stated as the annual average rate of return, with a disclaimer that this is an annual average rate of return, that individual investor rates of return will vary based upon the viator's projected and actual date of death, and that an annual rate of return on a viatical settlement investment contract cannot be guaranteed;

e. The name, address and telephone number of the agent of the issuer authorized to sell the viatical settlement investment contracts;

f. A statement that the advertisement is neither an offer to sell nor a solicitation of an offer to purchase and that any offer or solicitation may only be made by providing a disclosure document; and

g. How a copy of the disclosure document may be obtained.

50.112(3) Notwithstanding the provisions of rule 191—50.72(502), certain viatical settlement investment contract advertisements may be deemed false and misleading on their face by the administrator and are prohibited pursuant to Iowa Code sections 502.501 and 502.504. False and misleading viatical settlement investment contract advertisements include, but are not limited to, the following representations:

a. "Fully secured," "100% secured," "fully insured," "secure," "safe," "backed by rated insurance company(ies)," "backed by federal law," "backed by state law," or similar representations;

b. "No risk," "minimal risk," "low risk," "no speculation," "no fluctuation," or similar representations;

c. "Qualified or approved for IRA, Roth IRA, 401K, SEP, 403B, Keogh plans, TSA, other retirement account rollovers," "tax deferred," or similar representations;

d. "Guaranteed fixed return," "guaranteed annual return," "guaranteed principal," "guaranteed earnings," "guaranteed profits," "guaranteed investment," or similar representations;

e. "No sales charges or fees" or similar representations;

f. "High yield," "superior return," "excellent return," "high return," "quick profit," or similar representations;

g. "Perfect investment," "proven investment," or similar representations;

h. Purported favorable representations or testimonials about the benefits of viaticals as an investment, taken out of context from newspapers, trade papers, journals, radio or television programs, or any other form of print or electronic media.

50.112(4) For purposes of this rule, the term "advertisement" includes any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communications media, including filmstrips, motion pictures, and videos, published in connection with the offer or sale of a viatical settlement investment contract.

This rule is intended to implement Iowa Code sections 502.102, 502.301, and 502.504.

191—50.113(502) Duty to disclose. Issuers and agents equally share an affirmative duty to disclose all relevant and material information to prospective investors in viatical settlement investment contracts. The required disclosure is the registration statement required by Iowa Code section 502.304 which has been reviewed and made effective by the administrator.

This rule is intended to implement Iowa Code sections 502.102 and 502.201(9E).

ARC 5839B

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 9, "Discrimination Against Employees," and Chapter 10, "General Industry Safety and Health Rules," Iowa Administrative Code.

The first item proposes a rule which is similar to federal language and clarifies procedures for handling employee discrimination complaints. The second item proposes to adopt by reference changes to federal occupational safety and health standards affecting general industry. The standard revisions strengthen employee protections and reflect more current practices and technologies in the industry. The changes focus on safety in the design and installation of electric equipment in the workplace, including new requirements for ground-fault circuit interrupters, a new option for classifying and installing equipment in hazardous locations, and new provisions on wiring carnivals and similar installations.

The principal reasons for adoption of these amendments are to implement Iowa Code chapter 88, to protect the safety and health of Iowa's workers, and to make Iowa's rules more current and consistent with federal regulations. Pursuant to Iowa Code subsection 88.5(1)(a) and 29 Code of Federal Regulations 1953.5, Iowa must adopt the federal standards.

Written data, views, or arguments to be considered in adoption must be submitted no later than May 4, 2007, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iowa.gov.

A public hearing will be held on May 4, 2007, at 1:30 p.m. in the Stanley Room at Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa. The public will be given the opportunity to make oral statements and submit documents. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should telephone (515)242-5869 in advance to arrange access or other needed services.

These amendments are intended to implement Iowa Code section 88.5.

LABOR SERVICES DIVISION[875](cont'd)

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Adopt the following **new** rule:

875—9.16(88) Notice of determination. Iowa Code subsection 88.9(3) provides that within 90 days of the filing of a complaint, the commissioner is to notify a complainant whether prohibited discrimination occurred. This 90-day provision is considered to be directory in nature. While every effort will be made to notify complainants of the commissioner's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in Iowa Code subsection 88.9(3).

ITEM 2. Amend rule **875—10.20(88)** by inserting the following at the end thereof:

72 Fed. Reg. 7190 (February 14, 2007).

ARC 5829B

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 90A.7, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 173, "Professional Boxing," and Chapter 177, "Professional Shoot Fighting," Iowa Administrative Code.

The proposed changes eliminate a requirement for hepatitis A testing, add a requirement for hepatitis C testing, and require that blood test results be provided to the labor commissioner and to the ringside physician at least one week in advance of the event.

The purposes of these amendments are to protect the health of the public and implement legislative intent.

If requested by the close of business on May 3, 2007, a public hearing will be held on May 4, 2007, at 9 a.m. in the Stanley Room at 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)242-5869 in advance to arrange access or other needed services.

Interested persons may submit written data, views, or arguments to be considered in adoption no later than May 4, 2007, 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.

These amendments are intended to implement Iowa Code chapter 90A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 875—173.54(90A) as follows:

875—173.54(90A) Blood-borne disease testing. ~~Before a contest,~~ *At least one week before each event, the promoter shall submit to the labor commissioner and* ~~each boxer shall provide~~ to the ringside physician test results showing ~~the boxer~~ *that each contestant scheduled for the event* tested negative for the human immunodeficiency, ~~hepatitis A, and~~ hepatitis B, *and hepatitis C* viruses within the six-month period prior to the event. ~~Only results from laboratories certified in accordance with the federal Clinical Laboratory Improvement Act shall be accepted.~~ The contestant shall not participate and the physician shall notify the promoter that the contestant is prohibited from participating for medical reasons if any of the following occurs:

1. The ~~participant~~ *promoter* does not produce *timely* proof of testing;
2. The test results are positive;
3. The laboratory is not properly certified *in accordance with the federal Clinical Laboratory Improvement Act*;
4. The test was performed more than six months prior to the event; or
5. The test results are otherwise deficient.

ITEM 2. Amend subrule 177.5(11) as follows:

177.5(11) Blood-borne disease testing. ~~Before a contest,~~ *At least one week before each event, the promoter shall submit to the labor commissioner and* ~~each contestant shall provide~~ to the ringside physician test results showing ~~the~~ *that each* contestant *scheduled for the event* tested negative for the human immunodeficiency, ~~hepatitis A, and~~ hepatitis B, *and hepatitis C* viruses within the six-month period prior to the event. ~~Only results from laboratories certified in accordance with the federal Clinical Laboratory Improvement Act shall be accepted.~~ The contestant shall not participate and the physician shall notify the promoter that the contestant is prohibited from participating for medical reasons if any of the following occurs:

a. The ~~participant~~ *promoter* does not produce *timely* proof of testing;
b. The test results are positive;
c. The laboratory is not properly certified *in accordance with the federal Clinical Laboratory Improvement Act*;
d. The test was performed more than six months prior to the event; or
e. The test results are otherwise deficient.

ARC 5823B

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 125.7(4), the Department of Public Health hereby gives Notice of In-

PUBLIC HEALTH DEPARTMENT[641](cont'd)

tended Action to amend Chapter 157, "Standards for Substance Abuse Treatment and Assessment Programs and the Operating a Motor Vehicle While Intoxicated (OWI) Law," Iowa Administrative Code.

Recognizing the need to update the requirements while organizing the rules in a more understandable fashion, the Department has undertaken the task to review and update rules relating to substance abuse treatment and assessment programs and the OWI law. The Department also took this opportunity to make other changes primarily updating and correcting references to the Iowa Code and to federal regulations. The following paragraphs itemize the proposed changes:

Item 1 rescinds five definitions and adds four new definitions.

Item 2 amends rule 641—157.2(125) to specify that required substance abuse treatment shall be at a licensed substance abuse treatment program; adds new subrule 157.2(4) to specify how substance abuse treatment providers may provide the drinking drivers course; and makes other minor amendments to the language of the rule.

Item 3 amends rule 641—157.3(125) to specify how the substance abuse treatment provider shall report satisfactory completion of Iowa Code chapter 321J requirements, to clarify that programs shall abide by the Health Insurance Portability and Accountability Act (HIPAA) of 1996, and to make other minor amendments to the language of the rule.

Item 4 amends rule 641—157.4(125) to increase the maximum charge for screening and evaluation from $100 to $125 and to make other minor amendments to the language of the rule.

Item 5 amends rule 641—157.5(125) to make minor amendments to the language of the rule.

Item 6 amends rule 641—157.6(125) to specify that programs shall abide by HIPAA and to make other minor amendments to the language of the rule.

Item 7 amends rule 641—157.7(125) to specify that programs shall maintain records for a total of seven years, rather than five years, and to make other minor amendments to the language of the rule.

Item 8 amends rule 641—157.8(125) to make minor amendments to the language of the rule.

These rules are subject to waiver pursuant to 641—Chapter 178. For this reason the Department has not provided a specific provision for waiver of these particular rules.

Any interested person may make written comments on these rules on or before May 1, 2007, addressed to G. Dean Austin, Division of Behavioral Health and Professional Licensure, Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075; E-mail daustin@idph.state.ia.us.

Also, a public hearing will be held on Tuesday, May 1, 2007, from 1 to 2 p.m. in Room 517, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, the Department will ask those persons present to give their names and addresses for the record and to confine their remarks to the subject of the rules.

These amendments are intended to implement Iowa Code chapter 125.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **641—157.1(125)** as follows:

Rescind the definitions of "facility," "licensee," "shall," "should," and "staff."

Adopt the following **new** definitions in alphabetical sequence:

"Course for drinking drivers" means an approved course designed to inform the offender about drinking and driving and to encourage the offender to assess the offender's own drinking and driving behavior in order to select practical alternatives. Enrollment in the course is not limited to persons ordered to enroll, attend, and successfully complete the course required under Iowa Code sections 321J.1 and 321J.17. However, any person under the age of 18 who is required to attend the course for violation of Iowa Code section 321J.2 or 321J.17 must attend a course offered by a substance abuse treatment program licensed under Iowa Code chapter 125. Any instructional course for drinking drivers shall be approved by the department of education in consultation with the community colleges and substance abuse treatment programs licensed under Iowa Code chapter 125 and using the course of instruction detailed in 281—21.31(321J).

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996.

"Qualifying program" means a program which has a contract with the state of Iowa or the state's contracted managed care entity to provide substance abuse treatment using a sliding fee scale.

"Satisfactory completion of the drinking drivers course" means receiving at the completion of the course a grade from the course instructor of "C" or "2.0," or better.

ITEM 2. Amend rule 641—157.2(125) as follows:

641—157.2(125) Screening, evaluation, ~~and~~ treatment, *and drinking drivers course*. Persons who are ~~convicted of~~ *charged with* operating a motor vehicle while intoxicated (OWI), Iowa Code section 321J.2, and persons whose driver's license or nonresident operating privileges are revoked under Iowa Code chapter 321J shall be assigned to undergo a substance abuse evaluation and, if recommended, treatment *from a provider licensed by the department under Iowa Code chapter 125*.

157.2(1) Screening. The initial screening shall consist of a generally accepted standardized substance abuse screening instrument. In addition, *programs shall collect* information on blood alcohol content at time of arrest; history of other alcohol or drug-related arrests; history of alcohol/drug treatment; history of mental health problems and treatment; any OWI arrest that included personal injury or additional charge(s); and family history of substance abuse ~~shall be collected~~.

157.2(2) Evaluation. If the initial screening shows a potential for chemical dependency, then a further evaluation will be completed. This evaluation shall consist of further development of the six assessment dimensions outlined in the American Society of Addiction Medicine, Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition-*Revised*.

157.2(3) Treatment. Treatment ~~will~~ *shall* consist of a broad range of planned and continuing, inpatient, outpatient, *and* residential care services, including ongoing diagnostic evaluation, counseling, *and* medical, psychiatric, psychological, and social service care geared toward influencing the behavior of such individuals to achieve a state of rehabilitation. Individuals will be placed in the appropriate level of care *at a substance abuse treatment program licensed by the department under Iowa Code chapter 125* in accordance with

PUBLIC HEALTH DEPARTMENT[641](cont'd)

the American Society of Addiction Medicine, Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition-*Revised*.

157.2(4) *Drinking drivers course. Substance abuse treatment programs licensed by the department under Iowa Code chapter 125 may provide the drinking drivers course if the course curriculum is approved by the department of education under Iowa Code section 321J.22 and 281—21.31(321J).*

ITEM 3. Amend rule 641—157.3(125) as follows:

641—157.3(125) Screening, evaluation, ~~and~~ treatment, *and drinking drivers course* completion. ~~Substance~~ *The program shall report substance* abuse screening, assessment, evaluation and treatment completion ~~shall be reported~~ to the department of transportation and to the district court in accordance with Iowa Code sections 125.37, 125.84 and 125.86*;* ~~and~~ the federal confidentiality regulations, "Confidentiality of Alcohol and Drug Abuse Patient Records," 42 CFR, Part 2, effective June 9, 1987*; HIPAA; and other relevant provisions of federal and state law. The program shall report satisfactory completion of the drinking drivers course to the department of education in accordance with Iowa Code section 321J.22 and 281—21.31(321J); the federal confidentiality regulations, "Confidentiality of Alcohol and Drug Abuse Patient Records," 42 CFR, Part 2, effective June 9, 1987; HIPAA; and other relevant provisions of federal and state law.*

157.3(1) Reporting form. Programs shall report screening, evaluation, and treatment completion utilizing the form "Notice Iowa Code 321J—Confidential Medical Record." *Iowa substance abuse evaluation and treatment providers licensed by the department under Iowa Code chapter 125 shall submit this form online to the department of transportation using the department of transportation's 321J Web site, https://www.saeval.dot.state.ia.us.*

157.3(2) Primary treatment. Upon completion of primary treatment, programs shall report to the department of transportation and the courts that treatment has been completed.

157.3(3) Posttreatment results. If the court orders a posttreatment program, *the program shall report* progress and attendance ~~shall be reported~~ to the person's probation officer or otherwise as ordered by the court.

157.3(4) *Drinking drivers course. Substance abuse treatment programs licensed by the department under Iowa Code chapter 125 may provide the drinking drivers course and shall report satisfactory completion of the drinking drivers course to the department of education in accordance with Iowa Code section 321J.22 and 281—21.31(321J).*

ITEM 4. Amend rule 641—157.4(125) as follows:

641—157.4(125) Cost of evaluation and treatment.

157.4(1) Screening and evaluation. The *program shall charge no more than $125 for the* cost of screening and evaluation. ~~shall be no more than $100 and the~~ *The* individual *or the individual's insurance provider* shall be responsible for the costs of the screening and evaluation.

157.4(2) Treatment. ~~A~~ *Qualifying programs shall consider a* person admitted to the program pursuant to Iowa Code section 321J.3 who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part ~~shall be considered~~ *to be* a state patient and eligible for state-funded treatment as provided in Iowa Code section 125.44. ~~Programs should~~ *Qualifying programs shall* utilize ~~the department's statewide~~ *a* sliding fee schedule *approved by the department* to determine cost of treatment. There is no prohibition on any individual from paying in whole the cost of treatment.

157.4(3) Reimbursement. Programs shall be able to seek reimbursement of *the* cost of screening, evaluation and treatment ~~through~~ *from* an individual's insurance company, firm or corporation bound to pay, or *from* Medicaid for *an* individual *who is* eligible or enrolled *in Medicaid*.

ITEM 5. Amend rule 641—157.5(125) as follows:

641—157.5(125) Timeliness. ~~Substance~~ *The program shall conduct and complete substance* abuse evaluations and treatment ~~shall be conducted and completed as soon as possible~~ *at the program's earliest convenience*.

ITEM 6. Amend rule 641—157.6(125) as follows:

641—157.6(125) Confidentiality. Programs will abide by *the* federal regulations, "Confidentiality of Alcohol and Drug Abuse Patient Records," 42 CFR, Part 2*;* ~~and~~ Iowa Code section *125.37; HIPAA; and other relevant provisions of federal and state law.*

ITEM 7. Amend rule 641—157.7(125) as follows:

641—157.7(125) Records. ~~Records~~ *Programs* shall *maintain records* ~~be maintained~~ for a minimum of ~~five~~ *seven* years after discharge or completion of screening, evaluation, or treatment, and then ~~destroyed~~ *destroy* or ~~maintained~~ *maintain the records* based on *the* program's written policy and procedure.

ITEM 8. Amend rule 641—157.8(125) as follows:

641—157.8(125) Reciprocity. For a resident of a state other than Iowa or an Iowa resident obtaining evaluation or treatment outside the state, screening, evaluation or treatment services shall be provided by programs licensed or approved by that state's substance abuse authority. ~~The~~ *Programs shall submit the* results of the screening, evaluation and treatment ~~shall be submitted~~ to the Iowa department of public health, division of ~~substance abuse and health promotion~~ *behavioral health and professional licensure*, for review and reporting purposes to the Iowa department of transportation.

ARC 5824B

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health proposes to amend Chapter 173, "Contested Cases," Iowa Administrative Code.

The Department has some programs with statutory authority to issue subpoenas. This amendment outlines what needs to be included in the subpoena, the process for challenging a subpoena, and the process for resolving a challenge.

Any interested person may make written comments or suggestions on the proposed rule on or before May 1, 2007. Such written comments should be directed to Barb Nervig,

Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. E-mail may be sent to bnervig@idph.state.ia.us.

This amendment is intended to implement Iowa Code chapters 17A and 135.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind rule 641—173.14(17A) and adopt **new** rule 641—173.14(17A,135) in lieu thereof:

641—173.14(17A,135) Subpoenas.

173.14(1) Investigatory subpoenas.

a. The department may subpoena books, papers, records, and other real evidence which is necessary for the department to decide whether to institute a contested case proceeding. Each subpoena shall contain:

(1) The name and address of the person to whom the subpoena is directed;

(2) A description of the books, papers, records or other real evidence requested;

(3) The date, time and location for production, or inspection and copying;

(4) The time within which a motion to quash or modify the subpoena must be filed;

(5) The signature, address and telephone number of the division director or designee;

(6) The date of issuance;

(7) A return of service.

b. Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the department a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

c. Upon receipt of a timely motion to quash or modify a subpoena, the department may request an administrative law judge to issue a decision. Oral argument may be scheduled at the discretion of the administrative law judge. The administrative law judge may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

d. A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the department by serving on the department director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

e. If the person contesting the subpoena is not the person under investigation, the department's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the department's decision is not final for purposes of judicial review until either (1) the person is notified the investigation has been concluded with no formal action, or (2) there is a final decision in the case.

173.14(2) Issuance of subpoenas in a contested case.

a. Subpoenas issued in a contested case may compel the attendance of witnesses at a deposition or hearing, and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at a deposition or hearing, or may be issued separately. Subpoenas shall be issued by the department upon written request. In the absence of good cause, a request for a subpoena must be received at least three days before the scheduled hearing.

b. A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:

(1) The name, address and telephone number of the person requesting the subpoena;

(2) The name and address of the person to whom the subpoena shall be directed;

(3) The date, time and location at which the person shall be commanded to attend and give testimony;

(4) Whether the testimony is requested in connection with a deposition or hearing;

(5) A description of the books, papers, records or other real evidence requested;

(6) The date, time and location for production, or inspection and copying.

c. Each subpoena shall contain, as applicable:

(1) The caption of the case;

(2) The name, address and telephone number of the person who requested the subpoena;

(3) The name and address of the person to whom the subpoena is directed;

(4) The date, time and location at which the person is commanded to appear;

(5) Whether the testimony is commanded in connection with a deposition or hearing;

(6) A description of the books, papers, records or other real evidence the person is commanded to produce;

(7) The date, time and location for production, or inspection and copying;

(8) The time within which a motion to quash or modify the subpoena must be filed;

(9) The signature, address and telephone number of the division director or designee;

(10) The date of issuance;

(11) A return of service.

d. Unless a subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes, the division director or designee shall mail copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

e. Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the department a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

f. Upon receipt of a timely motion to quash or modify a subpoena, the department may request an administrative law judge to issue a decision. Oral argument may be scheduled at the discretion of the administrative law judge. The administrative law judge may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

g. A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the department by serving on the department director, either in person or by certified mail, a no-

tice of appeal within ten days after service of the decision of the administrative law judge.

ARC 5836B

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 100C.7, the State Fire Marshal hereby gives Notice of Intended Action to amend Chapter 275, "Certification of Automatic Fire Extinguishing System Contractors," Iowa Administrative Code.

Iowa Code chapter 100C establishes the Fire Extinguishing System Contractor Certification program in the Fire Marshal Division of the Department of Public Safety. Any person or firm which engages in layout, installation, repair, alteration, maintenance, or maintenance inspection of automated fire extinguishing systems is required to be certified. Certification is based upon the qualifications of a designated responsible managing employee. There are various endorsements available on the certification, which authorize the contractor to provided specific services for particular types of systems.

One form of endorsement authorizes contractors to install and service preengineered dry chemical or wet agent fire suppression systems. In order to qualify for this endorsement, the contractor's responsible managing employee is required, under current subrule 275.3(4), paragraph "c," to show evidence of both the training required by at least one manufacturer of a system which the contractor installs and of certification or training from a third party whose training is approved by the Fire Marshal. The subrule also provides that contractors may receive provisional certification with this endorsement by providing evidence of either sort of training. Prior to April 1, 2007, no evidence of training had been required to be provided for provisional certification.

The Fire Marshal Division has received numerous complaints about the training requirements, particularly the requirement that the responsible managing employee for a contractor installing or servicing preengineered dry chemical or wet agent systems must have training "required by a manufacturer." The Fire Marshal has concluded that the required third-party training is the key to ensure that contractors working on these systems are knowledgeable about them. Consequently, these amendments change the requirements for the endorsement to work on preengineered dry chemical or wet agent systems so that third-party training or certification approved by the Fire Marshal will be required for endorsement to install or service preengineered dry chemical or wet agent systems, but training "required by the manufacturer" will not be. However, it should be noted that training "required by a manufacturer" may be required by standards adopted by the Fire Marshal or under a local fire ordinance for these extinguishing systems.

Provisional certification will still be recognized on the basis of the responsible managing employee having received training "required by a manufacturer." Those who have received provisional certification based upon approved third-party training will now be recognized as having achieved full certification. There will be no cost to certificate holders for this change.

A public hearing on these proposed amendments will be held on May 2, 2007, at 11 a.m. in the third floor conference room, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail; by telephone at (515)281-5524; or by electronic mail to admrule@dps.state.ia.us, at least one day prior to the public hearing. Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated by 4:30 p.m. on May 2, 2007, or submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department office by 4:30 p.m. on May 2, 2007.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 5837B**. The content of that submission is incorporated by reference. The emergency amendments became effective on April 1, 2007.

These amendments are intended to implement Iowa Code chapter 100C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

April 1, 2006 — April 30, 2006	6.50%
May 1, 2006 — May 31, 2006	6.75%
June 1, 2006 — June 30, 2006	7.00%
July 1, 2006 — July 31, 2006	7.00%
August 1, 2006 — August 31, 2006	7.25%
September 1, 2006 — September 30, 2006	7.00%
October 1, 2006 — October 31, 2006	7.00%
November 1, 2006 — November 30, 2006	6.75%
December 1, 2006 — December 31, 2006	6.75%
January 1, 2007 — January 31, 2007	6.50%
February 1, 2007 — February 28, 2007	6.50%
March 1, 2007 — March 31, 2007	6.75%
April 1, 2007 — April 30, 2007	6.75%

ARC 5827B

UTILITIES DIVISION[199]

Notice of Intended Action

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

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

Pursuant to Iowa Code sections 17A.4 and 477C.4, the Utilities Board (Board) gives notice that on March 20, 2007, the Board issued an order in Docket No. RMU-07-2, In re: Change in Equipment Distribution Program Income Limit [199 IAC 37.3(8)], "Order Commencing Rule Making." The Board seeks public comment on a proposed amendment to 199 IAC 37.3(8).

Iowa Code section 477C.4 gives the Board the authority to establish and administer a program to distribute specialized telephone equipment for deaf, hard-of-hearing, and speech-impaired individuals. The Board has adopted rules for this equipment distribution program at 199 IAC 37, and 199 IAC 37.3(477C) contains the eligibility requirements for the program. One of these eligibility requirements is that applicants must have gross household income less than the limit set in subrule 37.3(8).

The income limit set in subrule 37.3(8) is based primarily on the Iowa median income published annually by the U.S. Bureau of the Census (Census Bureau), with an allowance to accommodate future increases in Iowa median income until the subrule is changed again. The income limit in subrule 37.3(8) was last changed in 2000. At that time, the subrule set an income limit of $57,000 for a family of four, with in creases or decreases of $9,000 for each family member above or below four. This income limit was based on a year 2000 Iowa median income for a family of four of $51,782, with an allowance to accommodate future increases expected to occur in the next several years. The most recent Iowa median income information published by the Census Bureau shows the Iowa median income for a family of four to be $65,575, based on 2005 inflation-adjusted dollars. Therefore, it is appropriate to update the income limit found in subrule 37.3(8).

The income limit in the subrule should be set at an amount high enough to reflect current Iowa median income and to accommodate expected future increases in Iowa median income for the next three or four years so that the subrule will not have to be changed every year. The Board notes that increases to the minimum wage have been proposed at the federal and state levels and there is no reason to believe that Iowa median income will not continue to rise as it has in the past. Therefore, the Board proposes to amend subrule 37.3(8) to increase the income limit to $70,000 for a family of four, with a corresponding increase or decrease of $8,000 for each family member above or below four. The change in the increment per family member from the current $9,000 to $8,000 is proposed because the amended subrule will more closely correspond to the current Iowa median income figures for various family sizes as published by the Census Bureau.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendment. The statement must be filed on or before May 1, 2007, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

If requested pursuant to Iowa Code section 17A.4(1)"b," or on its own motion after reviewing the statements, the Board will determine whether an opportunity for oral presentation should be provided.

The Board does not find it necessary to propose a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3(17A,474,476,78GA, HF2206) is applicable to this rule.

This amendment is intended to implement Iowa Code section 477C.4.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule 37.3(8) as follows:

37.3(8) An applicant's gross household income must be less than ~~$57,000~~ *$70,000* for a family of four. Household numbers above or below four will increase or decrease that amount in ~~$9,000~~ *$8,000* increments.

ARC 5813B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration, and Scope of Medical and Remedial Services," and Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments add home- and community-based habilitation services as a new category of services covered under Medicaid. Beginning in January 2007, Section 6086 of the Deficit Reduction Act of 2005, Public Law 109-171, allows states to cover home- and community-based long-term care services for Medicaid members with disabilities or chronic conditions. Using this option, the Department has worked with federal officials to design a new program to meet the nonrehabilitative service needs of Medicaid members who currently receive rehabilitation services for adults with chronic mental illness (also known as the "adult rehabilitation option" or "ARO").

Coverage for ARO services is being discontinued under rules recently adopted for remedial services. (See **ARC 5514B**, published in the Iowa Administrative Bulletin on November 8, 2006.) The Department determined that changes to coverage of remedial services were necessary in order to ensure that the state remains in compliance with federal Medicaid regulations on rehabilitative services. Many services formerly covered under the ARO program are now covered as remedial services. However, remedial services do not include supervision or habilitation components.

These amendments define the amount, duration, and scope of covered home- and community-based habilitation services and set the provider requirements and reimbursement methodology. Service components include home-based habilitation, day habilitation, prevocational habilitation, and supported employment (activities to find and maintain employment). Case management is a covered service for members who are not otherwise eligible for Medicaid case management services.

To be eligible for habilitation services, members shall have a history of psychiatric illness, risk factors indicating a need for continuing supports, and a need for one or more of the covered services as identified in a comprehensive service plan developed by an interdisciplinary team. Federal legislation limits the income for members receiving these services to 150 percent of the federal poverty level.

Home-based habilitation services may be provided wherever a member lives, including a residential care facility of 16 or fewer persons. A daily rate may be developed for home-based habilitation when the member needs services 14 or more hours per day.

Utilization is controlled by limiting the number of slots available in the program and by limiting units of service and rates. Reimbursement for services is based on a retrospective cost-related rate calculated for each provider and is subject to an upper limit. The nonfederal share of the cost of habilitation services will be the responsibility of the member's county of legal settlement, as is the case with ARO services.

These amendments were previously Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on January 3, 2007, as **ARC 5650B**. Notice of Intended Action to solicit comments on these amendments was published in the Iowa Administrative Bulletin as **ARC 5649B** on the same date. Fifteen persons submitted written comments on the rules. The Department held a public hearing, which was attended by 12 persons. In response to these comments, the Department has made the following changes to the amendments as previously adopted:

- Removed the definition of "minor incident" from subrule 77.25(1), the reporting requirements for minor incidents (paragraph 77.25(3)"c"), and references to major and minor incidents in subrule 77.25(3). The term "major incident" is amended to "incident," and numbered paragraph "6" in that definition is amended to read "Constitutes any prescription medication error." These changes make the rules consistent with accreditation requirements in 441—Chapter 24.
- Added the word "intervention" to numbered paragraph "3" in the definition of "incident" in subrule 77.25(1) to reflect the intention that all types of emergency intervention, including use of restraint, should trigger an incident report.
- Changed the minimum age for habilitation service providers in paragraph 75.25(2)"c" from 18 to 16 years of age, consistent with past practice in the home- and community-based waiver programs.
- Added to subrule 77.25(6) certification as a day habilitation provider under the mental retardation waiver and accreditation by either the International Center for Clubhouse Development or the Joint Commission on Accreditation of Healthcare Organizations as qualifying standards for provision of day habilitation services.
- Clarified paragraph 77.25(7)"a" to state that certification to provide supported community living services under the mental retardation or brain injury waiver qualifies a provider to provide home-based habilitation services.
- Clarified paragraph 77.25(8)"a" to state that CARF accreditation as either an organizational employment service provider or a community employment service provider is a qualifying standard for provision of prevocational habilitation.
- Added to subrule 77.25(8) accreditation by the International Center for Clubhouse Development and certification as a prevocational services provider under the mental retardation or brain injury waiver as qualifying standards for provision of prevocational habilitation.
- Added to subrule 77.25(9) accreditation by the Council on Quality and Leadership in Supports for People with Disabilities and accreditation by the International Center for Clubhouse Development as qualifying standards for provision of supported employment habilitation.
- Added to subparagraph 78.27(4)"a"(8) a requirement that the service plan for a member receiving home-based habilitation in a residential care facility shall address the member's opportunities for independence and community integration.
- Added the words "and community" to the first sentence in paragraph 78.27(7)"a" in the description of the locations where home-based habilitation services may be provided. The Department's intention was not to restrict this service only to the member's home.
- Added a cross reference to 441—Chapter 90 in subrule 78.27(12) to clarify the applicable definition of "chronic mental illness."
- Amended subrule 79.1(2) to increase the upper limits for home-based habilitation to $46.24 per hour and $104.92 per day.

- Amended subrules 79.1(2) and 79.1(24) to change the basis of reimbursement for day habilitation, prevocational habilitation, and supported employment activities to obtain a job from a fee schedule to a retrospective cost-related rate (to match the method used for home-based habilitation and supports to maintain employment).
- Clarified in subrule 79.1(2) and in the introductory paragraph of subrule 79.1(24) that the fee schedule for habilitation case management services is based on the rates set for the case management agency under paragraph 79.1(1)"d."
- Eliminated from subparagraph 79.1(24)"a"(5) the requirement that a job placement must continue at least 30 days to constitute a unit of service, consistent with past practice in the home- and community-based waiver programs.
- Added language to subparagraph 79.1(24)"b"(2) specifying that costs for a member's support needs may include travel, transportation, consulting, and instruction if identified in the member's comprehensive service plan. Costs for specific support needs shall not exceed $1570 per year, consistent with the policy in effect for the mental retardation waiver.
- Added to subparagraph 79.1(24)"b"(3) a requirement that a provider must submit a working trial balance with the cost report in order for the cost report to be considered complete.

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

The Council on Human Services adopted these amendments on March 14, 2007.

The Department finds that these amendments confer a benefit on providers by adding additional qualifying credentials, increasing the rate limits for home-based habilitation services, and allowing cost-related reimbursement for day habilitation, prevocational habilitation, and supported employment activities to obtain a job. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

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

These amendments became effective April 1, 2007.

The following amendments are adopted.

ITEM 1. Amend 441—Chapter 77 by adopting **new** rule 441—77.25(249A) as follows:

441—77.25(249A) Home- and community-based habilitation services. To be eligible to participate in the Medicaid program as an approved provider of home- and community-based habilitation services, a provider shall meet the general requirements in subrules 77.25(2), 77.25(3), and 77.25(4) and shall meet the requirements in the subrules applicable to the individual services being provided.

77.25(1) Definitions.

"Guardian" means a guardian appointed in probate or juvenile court.

"Incident" means an occurrence involving a member that:

1. Results in a physical injury to or by the member that requires a physician's treatment or admission to a hospital;
2. Results in someone's death;
3. Requires emergency intervention or mental health treatment for the member;
4. Requires the intervention of law enforcement;
5. Requires a report of child abuse pursuant to Iowa Code section 232.69 or a report of dependent adult abuse pursuant to Iowa Code section 235B.3; or
6. Constitutes any prescription medication error.

77.25(2) Organization and staff.

a. The prospective provider shall demonstrate the fiscal capacity to initiate and operate the specified programs on an ongoing basis.

b. The provider shall complete child abuse, dependent adult abuse, and criminal background screenings pursuant to Iowa Code section 249A.29 before employing a person who will provide direct care.

c. A person providing direct care shall be at least 16 years of age.

d. A person providing direct care shall not be an immediate family member of the member.

77.25(3) Incident reporting. The provider shall document incidents and shall make the incident reports and related documentation available to the department upon request. The provider shall ensure cooperation in providing pertinent information regarding incidents as requested by the department.

a. Report form. Each incident shall be recorded on an incident report form that is completed and signed by the staff person who was directly involved at the time of the incident or who first became aware of the incident. The report shall include the following information:

(1) The name of the member involved.
(2) The date and time the incident occurred.
(3) A description of the incident.
(4) The names of all provider staff and others who were present at the time of the incident or responded after becoming aware of the incident. The confidentiality of other members who are involved in the incident must be maintained by the use of initials or other means.
(5) The action that the staff took to handle the incident.
(6) The resolution of or follow-up to the incident.

b. Reporting procedure for incidents. When an incident occurs, provider staff shall notify the member or the member's legal guardian within 72 hours of the incident and shall distribute the completed incident report form as follows:

(1) Forward the report to the supervisor within 24 hours of the incident.
(2) Send a copy of the report to the member's Medicaid targeted case manager and the department's bureau of long-term care within 72 hours of the incident.
(3) File a copy of the report in a centralized location and make a notation in the member's file.

77.25(4) Restraint, restriction, and behavioral intervention. The provider shall have in place a system for the review, approval, and implementation of ethical, safe, humane, and efficient behavioral intervention procedures. All members receiving home- and community-based habilitation services shall be afforded the protections imposed by these rules when any restraint, restriction, or behavioral intervention is implemented.

a. The system shall include procedures to inform the member and the member's legal guardian of the restraint, restriction, and behavioral intervention policy and procedures at the time of service approval and as changes occur.

b. Restraint, restriction, and behavioral intervention shall be used only for reducing or eliminating maladaptive target behaviors that are identified in the member's restraint, restriction, or behavioral intervention program.

c. Restraint, restriction, and behavioral intervention procedures shall be designed and implemented only for the

benefit of the member and shall never be used as punishment, for the convenience of the staff, or as a substitute for a nonaversive program.

d. Restraint, restriction, and behavioral intervention programs shall be time-limited and shall be reviewed at least quarterly.

e. Corporal punishment and verbal or physical abuse are prohibited.

77.25(5) Case management. The department of human services, a county or consortium of counties, or a provider under subcontract to the department or to a county or consortium of counties is eligible to participate in the home- and community-based habilitation services program as a provider of case management services provided that the agency meets the standards in 441—Chapter 24.

77.25(6) Day habilitation. The following providers may provide day habilitation:

a. An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities to provide services that qualify as day habilitation under 441—subrule 78.27(8).

b. An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities to provide other services and began providing services that qualify as day habilitation under 441—subrule 78.27(8) since the agency's last accreditation survey. The agency may provide day habilitation services until the current accreditation expires. When the current accreditation expires, the agency must qualify under paragraph "a," "d," "g," or "h."

c. An agency that is not accredited by the Commission on Accreditation of Rehabilitation Facilities but has applied to the Commission within the last 12 months for accreditation to provide services that qualify as day habilitation under 441—subrule 78.27(8). An agency that has not received accreditation within 12 months after application to the Commission is no longer a qualified provider.

d. An agency that is accredited by the Council on Quality and Leadership in Supports for People with Disabilities.

e. An agency that has applied to the Council on Quality and Leadership in Supports for People with Disabilities for accreditation within the last 12 months. An agency that has not received accreditation within 12 months after application to the Council is no longer a qualified provider.

f. An agency that is accredited under 441—Chapter 24 to provide day treatment or supported community living services.

g. An agency that is certified by the department to provide day habilitation services under the home- and community-based services mental retardation waiver pursuant to rule 441—77.37(249A).

h. An agency that is accredited by the International Center for Clubhouse Development.

i. An agency that is accredited by the Joint Commission on Accreditation of Healthcare Organizations.

j. A residential care facility of more than 16 beds that is licensed by the Iowa department of inspections and appeals, was enrolled as a provider of rehabilitation services for adults with chronic mental illness before December 31, 2006, and has applied for accreditation through one of the accrediting bodies listed in this subrule.

(1) The facility must have policies in place by June 30, 2007, consistent with the accreditation being sought.

(2) A facility that has not received accreditation within 12 months after application for accreditation is no longer a qualified provider.

77.25(7) Home-based habilitation. The following agencies may provide home-based habilitation services:

a. An agency that is certified by the department to provide supported community living services under:

(1) The home- and community-based services mental retardation waiver pursuant to rule 441—77.37(249A); or

(2) The home- and community-based services brain injury waiver pursuant to rule 441—77.39(249A).

b. An agency that is accredited under 441—Chapter 24 to provide supported community living services.

c. An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities as a community housing or supported living service provider.

d. An agency that is accredited by the Council on Quality and Leadership in Supports for People with Disabilities.

e. An agency that is accredited by the Council on Accreditation of Services for Families and Children.

f. An agency that is accredited by the Joint Commission on Accreditation of Healthcare Organizations.

g. A residential care facility of 16 or fewer beds that is licensed by the Iowa department of inspections and appeals, was enrolled as a provider of rehabilitation services for adults with chronic mental illness before December 31, 2006, and has applied for accreditation through one of the accrediting bodies listed in this subrule.

(1) The facility must have policies in place by June 30, 2007, consistent with the accreditation being sought.

(2) A facility that has not received accreditation within 12 months after application for accreditation is no longer a qualified provider.

77.25(8) Prevocational habilitation. The following providers may provide prevocational services:

a. An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities as an organizational employment service provider or a community employment service provider.

b. An agency that is accredited by the Council on Quality and Leadership in Supports for People with Disabilities.

c. An agency that is accredited by the International Center for Clubhouse Development.

d. An agency that is certified by the department to provide prevocational services under:

(1) The home- and community-based services mental retardation waiver pursuant to rule 441—77.37(249A); or

(2) The home- and community-based services brain injury waiver pursuant to rule 441—77.39(249A).

77.25(9) Supported employment habilitation. The following agencies may provide supported employment services:

a. An agency that is certified by the department to provide supported employment services under:

(1) The home- and community-based services mental retardation waiver pursuant to rule 441—77.37(249A); or

(2) The home- and community-based services brain injury waiver pursuant to rule 441—77.39(249A).

b. An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities as an organizational employment service provider or a community employment service provider.

c. An agency that is accredited by the Council on Accreditation of Services for Families and Children.

d. An agency that is accredited by the Joint Commission on Accreditation of Healthcare Organizations.

e. An agency that is accredited by the Council on Quality and Leadership in Supports for People with Disabilities.

f. An agency that is accredited by the International Center for Clubhouse Development.

HUMAN SERVICES DEPARTMENT[441](cont'd)

77.25(10) Provider enrollment. A prospective provider that meets the criteria in this rule shall be enrolled as an approved provider of a specific component of home- and community-based habilitation services. Enrollment carries no assurance that the approved provider will receive funding. Payment for services will be made to a provider only upon department approval of the provider and of the service the provider is authorized to provide.

a. The Iowa Medicaid enterprise shall review compliance with standards for initial enrollment. Review of a provider may occur at any time.

b. The department may request any information from the prospective service provider that is pertinent to arriving at an enrollment decision. This information may include:

(1) Current accreditations.

(2) Evaluations.

(3) Inspection reports.

(4) Reviews by regulatory and licensing agencies and associations.

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

ITEM 2. Amend 441—Chapter 78 by adopting **new** rule 441—78.27(249A) as follows:

441—78.27(249A) Home- and community-based habilitation services.

78.27(1) Definitions.

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

"Assessment" means the review of the current functioning of the member using the service in regard to the member's situation, needs, strengths, abilities, desires, and goals.

"Case management" means case management services accredited under 441—Chapter 24 and provided according to 441—Chapter 90.

"Comprehensive service plan" means an individualized, goal-oriented plan of services written in language understandable by the member using the service and developed collaboratively by the member and the case manager.

"Department" means the Iowa department of human services.

"Emergency" means a situation for which no approved individual program plan exists that, if not addressed, may result in injury or harm to the member or to other persons or in significant amounts of property damage.

"HCBS" means home- and community-based services.

"Interdisciplinary team" means a group of persons with varied professional backgrounds who meet with the member to develop a comprehensive service plan to address the member's need for services.

"ISIS" means the department's individualized services information system.

"Member" means a person who has been determined to be eligible for Medicaid under 441—Chapter 75.

"Program" means a set of related resources and services directed to the accomplishment of a fixed set of goals for qualifying members.

78.27(2) Member eligibility. To be eligible to receive home- and community-based habilitation services, a member shall meet the following criteria:

a. Risk factors. The member has at least one of the following risk factors:

(1) The member has undergone or is currently undergoing psychiatric treatment more intensive than outpatient care (e.g., emergency services, alternative home care, partial hospitalization, or inpatient hospitalization) more than once in the member's life; or

(2) The member has a history of psychiatric illness resulting in at least one episode of continuous, professional supportive care other than hospitalization.

b. Need for assistance. The member has a need for assistance demonstrated by meeting at least two of the following criteria on a continuing or intermittent basis for at least two years:

(1) The member is unemployed, is employed in a sheltered setting, or has markedly limited skills and a poor work history.

(2) The member requires financial assistance for out-of-hospital maintenance and is unable to procure this assistance without help.

(3) The member shows severe inability to establish or maintain a personal social support system.

(4) The member requires help in basic living skills such as self-care, money management, housekeeping, cooking, and medication management.

(5) The member exhibits inappropriate social behavior that results in a demand for intervention.

c. Income. The countable income used in determining the member's Medicaid eligibility does not exceed 150 percent of the federal poverty level.

d. Needs assessment. The member's case manager has completed an assessment of the member's need for service, and, based on that assessment, the Iowa Medicaid enterprise medical services unit has determined that the member is in need of home- and community-based habilitation services. A member who is not eligible for Medicaid case management services under 441—Chapter 90 shall receive case management as a home- and community-based habilitation service. The designated case manager shall:

(1) Complete a needs-based evaluation that meets the standards for assessment established in 441—subrule 24.4(2) before services begin and annually thereafter.

(2) Use the evaluation results to develop a comprehensive service plan as specified in subrule 78.27(4).

e. Plan for service. The department has approved the member's plan for home- and community-based habilitation services. A service plan that has been validated through ISIS shall be considered approved by the department. Home- and community-based habilitation services provided before department approval of a member's eligibility for the program cannot be reimbursed.

(1) The member's comprehensive service plan shall be completed annually according to the requirements of subrule 78.27(4). A service plan may change at any time due to a significant change in the member's needs.

(2) A member shall not receive home- and community-based habilitation services while enrolled in a home- and community-based services waiver program under 441—Chapter 83.

(3) The member shall receive at least one billable unit of service other than case management per calendar quarter.

(4) The member's habilitation services shall not exceed the maximum number of units established for each service in 441—subrule 79.1(2).

(5) The cost of the habilitation services shall not exceed unit expense maximums established in 441—subrule 79.1(2).

78.27(3) Application for services. The case manager shall apply for services on behalf of a member by entering a program request for habilitation services in ISIS.

a. Assignment of payment slot. The number of persons who may be approved for home- and community-based habilitation services is subject to a yearly total to be served.

The total is set by the department based on available funds and is contained in the Medicaid state plan approved by the federal Centers for Medicare and Medicaid Services. The limit is maintained through the awarding of payment slots to members applying for services.

(1) The case manager shall contact the Iowa Medicaid enterprise through ISIS to determine if a payment slot is available for each member applying for home- and community-based habilitation services.

(2) In assigning initial payment slots for the year beginning January 1, 2007, the department shall give preference to members who received rehabilitation services for adults with chronic mental illness between July 1, 2006, and December 31, 2006, and who request a payment slot before June 30, 2007. The department shall determine the number of slots needed to fulfill this preference as of December 31, 2006, and shall reserve the number of slots needed for members who could receive this preference. All remaining payment slots shall be available to members who are not eligible for this preference. If a member receiving a preference declines a payment slot, that slot shall become available to members who have not received a preference.

(3) When a payment slot is assigned, the case manager shall give written notice to the member.

(4) The department shall hold the assigned payment slot for the member as long as reasonable efforts are being made to arrange services and the member has not been determined to be ineligible for the program. If services have not been initiated and reasonable efforts are no longer being made to arrange services, the slot shall revert for use by the next applicant on the waiting list, if applicable. The member must reapply for a new slot.

b. Waiting list for payment slots. When the number of applications exceeds the number of members specified in the state plan and there are no available payment slots to be assigned, the member's application for habilitation services shall be denied. The department shall issue a notice of decision stating that the member's name will be maintained on a waiting list.

(1) The Iowa Medicaid enterprise shall enter the member on a waiting list based on the date and time when the member's request for habilitation services was entered into ISIS. In the event that more than one application is received at the same time, members shall be entered on the waiting list on the basis of the month of birth, January being month one and the lowest number.

(2) When a payment slot becomes available, the Iowa Medicaid enterprise shall notify the member's case manager, based on the member's order on the waiting list. The case manager shall give written notice to the member within five working days.

(3) The department shall hold the payment slot for 20 calendar days to allow the case manager to reapply for habilitation services by entering a program request through ISIS. If a request for habilitation services has not been entered within 20 calendar days, the slot shall revert for use by the next member on the waiting list, if applicable. The member assigned the slot must reapply for a new slot.

(4) The case manager shall notify the Iowa Medicaid enterprise within five working days of the withdrawal of an application.

c. Notice of decision. The department shall issue a notice of decision to the applicant when financial eligibility, determination of needs-based eligibility, and approval of the service plan have been completed.

78.27(4) Comprehensive service plan. Individualized, planned, and appropriate services shall be guided by a member-specific comprehensive service plan developed with the member in collaboration with an interdisciplinary team, as appropriate. Medically necessary services shall be planned for and provided at the locations where the member lives, learns, works, and socializes.

a. Development. A comprehensive service plan shall be developed for each member receiving home- and community-based habilitation services based on the member's current assessment and shall be reviewed on an annual basis.

(1) The case manager shall establish an interdisciplinary team for the member. The team shall include the case manager and the member and, if applicable, the member's legal representative, the member's family, the member's service providers, and others directly involved.

(2) With the interdisciplinary team, the case manager shall identify the member's services based on the member's needs, the availability of services, and the member's choice of services and providers.

(3) The comprehensive service plan development shall be completed at the member's home or at another location chosen by the member.

(4) The interdisciplinary team meeting shall be conducted before the current comprehensive service plan expires.

(5) The comprehensive service plan shall reflect desired individual outcomes.

(6) Services defined in the comprehensive service plan shall be appropriate to the severity of the member's problems and to the member's specific needs or disabilities.

(7) Activities identified in the comprehensive service plan shall encourage the ability and right of the member to make choices, to experience a sense of achievement, and to modify or continue participation in the treatment process.

(8) For members receiving home-based habilitation in a licensed residential care facility of 16 or fewer beds, the service plan shall address the member's opportunities for independence and community integration.

b. Service goals and activities. The comprehensive service plan shall:

(1) Identify observable or measurable individual goals.

(2) Identify interventions and supports needed to meet those goals with incremental action steps, as appropriate.

(3) Identify the staff persons, businesses, or organizations responsible for carrying out the interventions or supports.

(4) List all Medicaid and non-Medicaid services received by the member and identify:

1. The name of the provider responsible for delivering the service;
2. The funding source for the service; and
3. The number of units of service to be received by the member.

(5) Identify for a member receiving home-based habilitation:

1. The member's living environment at the time of enrollment;
2. The number of hours per day of on-site staff supervision needed by the member; and
3. The number of other members who will live with the member in the living unit.

(6) Include a separate, individualized, anticipated discharge plan that is specific to each service the member receives.

c. Rights restrictions. Any rights restrictions must be implemented in accordance with 441—subrule 77.25(4).

The comprehensive service plan shall include documentation of:

(1) Any restrictions on the member's rights, including maintenance of personal funds and self-administration of medications;

(2) The need for the restriction; and

(3) Either a plan to restore those rights or written documentation that a plan is not necessary or appropriate.

d. Emergency plan. The comprehensive service plan shall include a plan for emergencies and identification of the supports available to the member in an emergency. Emergency plans shall be developed as follows:

(1) The member's interdisciplinary team shall identify in the comprehensive service plan any health and safety issues applicable to the individual member based on information gathered before the team meeting, including a risk assessment.

(2) The interdisciplinary team shall identify an emergency backup support and crisis response system to address problems or issues arising when support services are interrupted or delayed or the member's needs change.

(3) Providers of applicable services shall provide for emergency backup staff.

e. Plan approval. Services shall be entered into ISIS based on the comprehensive service plan. A service plan that has been validated and authorized through ISIS shall be considered approved by the department. Services must be authorized in ISIS before the service implementation date.

78.27(5) Requirements for services. Home- and community-based habilitation services shall be provided in accordance with the following requirements:

a. The services shall be based on the member's needs as identified in the member's comprehensive service plan.

b. The services shall be delivered in the least restrictive environment appropriate to the needs of the member.

c. The services shall include the applicable and necessary instruction, supervision, assistance, and support required by the member to achieve the member's life goals.

d. Service components that are the same or similar shall not be provided simultaneously.

e. Service costs are not reimbursable while the member is in a medical institution, including but not limited to a hospital or nursing facility.

f. Reimbursement is not available for room and board.

g. Services shall be billed in whole units.

h. Services shall be documented. Each unit billed must have corresponding financial and medical records as set forth in rule 441—79.3(249A).

78.27(6) Case management. Case management assists members in gaining access to needed home- and community-based habilitation services, as well as medical, social, educational, and other services, regardless of the funding source for the services.

a. Scope. Case management services shall be provided as set forth in rule 441—90.5(249A). The case manager shall be responsible for the following activities:

(1) Explaining the member's right to freedom of choice.

(2) Ensuring that all unmet needs of the member are identified in the service plan.

(3) Retaining the comprehensive service plan, as specified in rule 441—79.3(249A).

(4) Explaining to the member what abuse is, and how to report abuse.

(5) Explaining to the member how to make a complaint about the member's services or providers.

(6) Monitoring the service plan, with review occurring regularly.

(7) Meeting with the member face to face at least quarterly.

(8) Assessing and revising the service plan at least annually to determine achievement, continued need, or changes in goals or intervention methods. The review shall include the member using the service and shall involve the interdisciplinary team.

(9) Notifying the member of any changes in the service plan by sending the member a notice of decision. When the change is an adverse action such as a reduction in services, the notice shall be sent ten days before the change and shall include appeal rights.

b. Exclusion. Payment shall not be made for case management provided to a member who is eligible for case management services under 441—Chapter 90.

78.27(7) Home-based habilitation. "Home-based habilitation" means individually tailored supports that assist with the acquisition, retention, or improvement of skills related to living in the community.

a. Scope. Home-based habilitation services are individualized supportive services provided in the member's home and community that assist the member to reside in the most integrated setting appropriate to the member's needs. Services are intended to provide for the daily living needs of the member and shall be available as needed during any 24-hour period. The specific support needs for each member shall be determined necessary by the interdisciplinary team and shall be identified in the member's comprehensive service plan. Covered supports include:

(1) Adaptive skill development;

(2) Assistance with activities of daily living;

(3) Community inclusion;

(4) Transportation;

(5) Adult educational supports;

(6) Social and leisure skill development;

(7) Personal care; and

(8) Protective oversight and supervision.

b. Exclusions. Home-based habilitation payment shall not be made for the following:

(1) Room and board and maintenance costs, including the cost of rent or mortgage, utilities, telephone, food, household supplies, and building maintenance, upkeep, or improvement.

(2) Service activities associated with vocational services, day care, medical services, or case management.

(3) Transportation to and from a day program.

(4) Services provided to a member who lives in a licensed residential care facility of more than 16 persons.

(5) Services provided to a member who lives in a facility that provides the same service as part of an inclusive or "bundled" service rate, such as a nursing facility or an intermediate care facility for persons with mental retardation.

78.27(8) Day habilitation. "Day habilitation" means assistance with acquisition, retention, or improvement of self-help, socialization, and adaptive skills.

a. Scope. Day habilitation activities and environments are designed to foster the acquisition of skills, appropriate behavior, greater independence, and personal choice. Services focus on enabling the member to attain or maintain the member's maximum functional level and shall be coordinated with any physical, occupational, or speech therapies in the comprehensive service plan. Services may serve to reinforce skills or lessons taught in other settings. Services must enhance or support the member's:

(1) Intellectual functioning;
(2) Physical and emotional health and development;
(3) Language and communication development;
(4) Cognitive functioning;
(5) Socialization and community integration;
(6) Functional skill development;
(7) Behavior management;
(8) Responsibility and self-direction;
(9) Daily living activities;
(10) Self-advocacy skills; or
(11) Mobility.

b. Setting. Day habilitation shall take place in a nonresidential setting separate from the member's residence. Services shall not be provided in the member's home. When the member lives in a residential care facility of more than 16 beds, day habilitation services provided in the facility are not considered to be provided in the member's home if the services are provided in an area apart from the member's sleeping accommodations.

c. Duration. Day habilitation services shall be furnished for four or more hours per day on a regularly scheduled basis for one or more days per week or as specified in the member's comprehensive service plan. Meals provided as part of day habilitation shall not constitute a full nutritional regimen (three meals per day).

d. Exclusions. Day habilitation payment shall not be made for the following:

(1) Vocational or prevocational services.

(2) Services that duplicate or replace education or related services defined in Public Law 94-142, the Education of the Handicapped Act.

(3) Compensation to members for participating in day habilitation services.

78.27(9) Prevocational habilitation. "Prevocational habilitation" means services that prepare a member for paid or unpaid employment.

a. Scope. Prevocational habilitation services include teaching concepts such as compliance, attendance, task completion, problem solving, and safety. Services are not oriented to a specific job task, but instead are aimed at a generalized result. Services shall be reflected in the member's comprehensive service plan and shall be directed to habilitative objectives rather than to explicit employment objectives.

b. Setting. Prevocational habilitation services may be provided in a variety of community-based settings based on the individual need of the member. Meals provided as part of these services shall not constitute a full nutritional regimen (three meals per day).

c. Exclusions. Prevocational habilitation payment shall not be made for the following:

(1) Services that are available under a program funded under Section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.). Documentation that funding is not available for the service under these programs shall be maintained in the file of each member receiving prevocational habilitation services.

(2) Services that duplicate or replace education or related services defined in Public Law 94-142, the Education of the Handicapped Act.

(3) Compensation to members for participating in prevocational services.

78.27(10) Supported employment habilitation. "Supported employment habilitation" means services associated with maintaining competitive paid employment.

a. Scope. Supported employment habilitation services are intensive, ongoing supports that enable members to perform in a regular work setting. Services are provided to members who need support because of their disabilities and who are unlikely to obtain competitive employment at or above the minimum wage absent the provision of supports. Covered services include:

(1) Activities to obtain a job, including the following services provided to or on behalf of the member:

1. Initial vocational and educational assessment to develop interventions with the member or the employer that affect the member's work.
2. Job development.
3. On-site vocational assessment before employment.
4. Disability-related support for vocational training or paid internships.
5. Assistance in helping the member learn the skills necessary for job retention, including skills to arrange and use supported employment transportation, and for job exploration.

(2) Supports to maintain employment, including the following services provided to or on behalf of the member:

1. Individual work-related behavioral management.
2. Job coaching.
3. On-the-job or work-related crisis intervention.
4. Assistance in the use of skills related to sustaining competitive paid employment, including assistance with communication skills, problem solving, and safety.
5. Assistance with time management.
6. Assistance with appropriate grooming.
7. Employment-related supportive contacts.
8. On-site vocational assessment after employment.
9. Employer consultation.

b. Setting. Supported employment may be conducted in a variety of settings, particularly work sites where persons without disabilities are employed.

(1) The majority of coworkers at any employment site with more than two employees where members seek, obtain, or maintain employment must be persons without disabilities.

(2) In the performance of job duties at any site where members seek, obtain, or maintain employment, the member must have daily contact with other employees or members of the general public who do not have disabilities, unless the absence of daily contact with other employees or the general public is typical for the job as performed by persons without disabilities.

(3) When services for maintaining employment are provided to members in a teamwork or "enclave" setting, the team shall include no more than eight people with disabilities.

c. Service requirements. The following requirements shall apply to all supported employment services:

(1) All supported employment services shall provide individualized and ongoing support contacts at intervals necessary to promote successful job retention.

(2) The provider shall provide employment-related adaptations required to assist the member in the performance of the member's job functions as part of the service.

(3) Community transportation options (such as carpools, coworkers, self or public transportation, families, volunteers) shall be attempted before the service provider provides transportation. When no other resources are available, employment-related transportation between work and home and to or from activities related to employment may be provided as part of the service.

(4) Members may access both services to maintain employment and services to obtain a job for the purpose of job advancement or job change. A member may receive a maximum of three job placements in a 12-month period and a maximum of 40 units per week of services to maintain employment.

d. Exclusions. Supported employment habilitation payment shall not be made for the following:

(1) Services that are available under a program funded under Section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.). Documentation that funding is not available under these programs shall be maintained in the file of each member receiving supported employment services.

(2) Incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment program.

(3) Subsidies or payments that are passed through to users of supported employment programs.

(4) Training that is not directly related to a member's supported employment program.

(5) Services involved in placing or maintaining members in day activity programs, work activity programs, or sheltered workshop programs.

(6) Supports for volunteer work or unpaid internships.

(7) Tuition for education or vocational training.

(8) Individual advocacy that is not member-specific.

78.27(11) Adverse service actions.

a. Denial. Services shall be denied when the department determines that:

(1) A payment slot is not available to the member pursuant to paragraph 78.27(3)"a."

(2) The member is not eligible for or in need of home- and community-based habilitation services.

(3) The service is not identified in the member's comprehensive service plan.

(4) Needed services are not available or received from qualifying providers, or no qualifying providers are available.

(5) The member's service needs exceed the unit or reimbursement maximums for a service as set forth in 441—subrule 79.1(2).

(6) Completion or receipt of required documents for the program has not occurred.

b. Reduction. A particular home- and community-based habilitation service may be reduced when the department determines that continued provision of service at its current level is not necessary.

c. Termination. A particular home- and community-based habilitation service may be terminated when the department determines that:

(1) The member's income exceeds the allowable limit, or the member no longer meets other eligibility criteria for the program established by the department.

(2) The service is not identified in the member's comprehensive service plan.

(3) Needed services are not available or received from qualifying providers, or no qualifying providers are available.

(4) The member's service needs are not being met by the services provided.

(5) The member has received care in a medical institution for 30 consecutive days in any one stay. When a member has been an inpatient in a medical institution for 30 consecutive days, the department will issue a notice of decision to inform the member of the service termination. If the member returns home before the effective date of the notice of decision and the member's condition has not substantially changed, the decision shall be rescinded, and eligibility for home- and community-based habilitation services shall continue.

(6) The member's service needs exceed the unit or reimbursement maximums for a service as established by the department.

(7) Duplication of services provided during the same period has occurred.

(8) The member or the member's legal representative, through the interdisciplinary process, requests termination of the service.

(9) Completion or receipt of required documents for the program has not occurred, or the member refuses to allow documentation of eligibility as to need and income.

d. Appeal rights. The department shall give notice of any adverse action and the right to appeal in accordance with 441—Chapter 7. The member is entitled to have a review of the determination of needs-based eligibility by the Iowa Medicaid enterprise medical services unit by sending a letter requesting a review to the medical services unit. If dissatisfied with that decision, the member may file an appeal with the department.

78.27(12) County reimbursement. The county board of supervisors of the member's county of legal settlement shall reimburse the department for all of the nonfederal share of the cost of home- and community-based habilitation services provided to an adult member with a chronic mental illness as defined in 441—Chapter 90. The department shall notify the county's central point of coordination administrator through ISIS of the approval of the member's service plan.

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

ITEM 3. Amend rule 441—79.1(249A) as follows:

Amend subrule **79.1(2)** by adopting the following **new** provider category in alphabetical order:

Provider category	Basis of reimbursement	Upper limit
Home- and community-based habilitation services:		
1. Case management	Fee schedule based on MR/CMI/DD case management rates as set under 79.1(1)"d."	$592.75 per month.
2. Home-based habilitation	Retrospective cost-related. See 79.1(24)	$46.24 per hour or $104.92 per day.
3. Day habilitation	Retrospective cost-related. See 79.1(24)	$13.08 per hour, $31.83 per half-day, or $63.65 per day.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Provider category	Basis of reimbursement		Upper limit
4. Prevocational habilitation	Retrospective cost-related.	See 79.1(24)	$9.81 per hour, $23.87 per half-day, or $47.74 per day.
5. Supported employment:			
Activities to obtain a job	Retrospective cost-related.	See 79.1(24)	$500 per job, not to exceed $1,500 per year.
Supports to maintain employment	Retrospective cost-related.	See 79.1(24)	$6.13 per hour for services in an enclave setting; $19.61 per hour for personal care; and $34.63 per hour for all other services. Total not to exceed $2,855.16 per month. Maximum of 40 units per week.

Adopt **new** subrule 79.1(24) as follows:

79.1(24) Reimbursement for home- and community-based habilitation services. Reimbursement for case management is based on a fee schedule developed using the methodology described in paragraph 79.1(1)"d." Reimbursement for home-based habilitation, day habilitation, prevocational habilitation, and supported employment is based on a retrospective cost-related rate calculated using the methodology in subrule 79.1(24). All rates are subject to the upper limits established in subrule 79.1(2).

a. Units of service.

(1) A unit of case management is one month.

(2) A unit of home-based habilitation is one hour. EXCEPTIONS:

1. A unit of service is one day when a member receives direct supervision for 14 or more hours per day, averaged over a calendar month. The member's comprehensive service plan must identify and reflect the need for this amount of supervision. The provider's documentation must support the number of direct support hours identified in the comprehensive service plan.

2. When cost-effective, a daily rate may be developed for members needing fewer than 14 hours of direct supervision per day. The provider must obtain approval from the Iowa Medicaid enterprise for a daily rate for fewer than 14 hours of service per day.

(3) A unit of day habilitation is an hour, a half-day (1 to 4 hours), or a full day (4 to 8 hours).

(4) A unit of prevocational habilitation is an hour, a half-day (1 to 4 hours), or a full day (4 to 8 hours).

(5) A unit of supported employment habilitation activities to obtain a job is one job placement.

(6) A unit of supported employment habilitation supports to maintain employment is one hour.

b. Submission of cost reports. The department shall determine reasonable and proper costs of operation for home-based habilitation, day habilitation, prevocational habilitation, and supported employment based on cost reports submitted by the provider on Form 470- 4425, Financial and Statistical Report for HCBS Habilitation Services.

(1) Financial information shall be based on the provider's financial records. When the records are not kept on an accrual basis of accounting, the provider shall make the adjustments necessary to convert the information to an accrual basis for reporting. Failure to maintain records to support the cost report may result in termination of the provider's Medicaid enrollment.

(2) For home-based habilitation, the provider's cost report shall reflect all staff-to-member ratios and costs associated with members' specific support needs for travel and transportation, consulting, and instruction, as determined necessary by the interdisciplinary team for each consumer. The specific support needs must be identified in the member's comprehensive service plan. The total costs shall not exceed $1570 per consumer per year. The provider must maintain records to support all expenditures.

(3) The provider shall submit the complete cost report to the IME Provider Cost Audit and Rate Setting Unit, P.O. Box 36450, Des Moines, Iowa 50315, within three months of the end of the provider's fiscal year. The submission must include a working trial balance. Cost reports submitted without a working trial balance will be considered incomplete.

(4) A provider may obtain a 30-day extension for submitting the cost report by sending a letter to the IME provider cost audit and rate setting unit before the cost report due date. No extensions will be granted beyond 30 days.

(5) A provider of services under multiple programs shall submit a cost allocation schedule, prepared in accordance with the generally accepted accounting principles and requirements specified in OMB Circular A-87. Costs reported under habilitation services shall not be reported as reimbursable costs under any other funding source. Costs incurred for other services shall not be reported as reimbursable costs under habilitation services.

(6) If a provider fails to submit a cost report that meets the requirement of paragraph 79.1(24)"b," the department shall reduce payment to 76 percent of the current rate. The reduced rate shall be paid for not longer than three months, after which time no further payments will be made.

(7) A projected cost report shall be submitted when a new habilitation services provider enters the program or an existing habilitation services provider adds a new service code. A prospective interim rate shall be established using the projected cost report. The effective date of the rate shall be the day the provider becomes certified as a Medicaid provider or the day the new service is added.

c. Rate determination based on cost reports. Reimbursement shall be made using a unit rate that is calculated retrospectively for each provider, considering reasonable and proper costs of operation.

(1) Interim rates. Providers shall be reimbursed through a prospective interim rate equal to the previous year's retrospectively calculated unit-of-service rate. Pending determination of habilitation services provider costs, the provider may bill for and shall be reimbursed at a unit-of-service rate that the provider and the Iowa Medicaid enterprise may reasonably expect to produce total payments to the provider for the provider's fiscal year that are consistent with Medicaid's obligation to reimburse that provider's reasonable costs.

(2) Audit of cost reports. Cost reports as filed shall be subject to review and audit by the Iowa Medicaid enterprise to determine the actual cost of services rendered to Medicaid members, using an accepted method of cost apportionment (as specified in OMB Circular A-87).

(3) Retroactive adjustment. When the reasonable and proper costs of operation are determined, a retroactive ad-

justment shall be made. The retroactive adjustment represents the difference between the amount that the provider received during the year for covered services through an interim rate and the reasonable and proper costs of operation determined in accordance with this subrule.

[Filed Emergency After Notice 3/14/07, effective 4/1/07]
[Published 4/11/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/11/07.

ARC 5814B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

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 reduces the requirement for face-to-face meetings between the service coordinator and the family receiving services in the Medicaid infant and toddler (Early ACCESS) program from once a month to once every three months, with a monthly telephone contact required in the other two months of each quarter. A face-to-face contact is required in the first 30 days of service. The Early ACCESS executive committee has approved this change to reduce the time commitment required from families and providers.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on January 17, 2007, as **ARC 5665B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice of Intended Action.

This amendment does not provide for waivers in specified situations because it removes a restriction on the persons affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment on March 14, 2007.

The Department finds that this amendment removes a restriction on providers and families involved in Early Access services by allowing them to substitute telephone meetings for face-to-face meetings in some circumstances. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of this amendment is waived.

This amendment became effective on April 1, 2007.

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

The following amendment is adopted.

Amend subrule **78.49(2)** as follows:

Amend paragraph **"b"** as follows:

b. A ~~minimum of one~~ face-to-face contact ~~per month~~ between the service coordinator and the child and family is required ~~for payment of infant and toddler coordination services~~*:*

(1) Within the first 30 days of service;

(2) Every three months thereafter.

Adopt **new** paragraph **"c"** as follows:

c. In months in which there is no face-to-face contact, a telephone contact between the service coordinator and the family is required.

[Filed Emergency After Notice 3/14/07, effective 4/1/07]
[Published 4/11/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/11/07.

ARC 5815B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 92, "IowaCare," Iowa Administrative Code.

These amendments reflect the annual update in IowaCare premiums as required by Iowa Code section 249J.8. Premiums are recalculated annually based on changes in federal poverty income guidelines published by the U.S. Department of Health and Human Services each year. By law, the monthly premium shall not exceed one-twelfth of 5 percent of the member's annual family income. If the member's family income is less than 100 percent of the federal poverty level, the premium shall not exceed one-twelfth of 2 percent of the member's annual family income.

These recalculations result in an increased premium for 13 of the 20 premium increment levels. The increases range from $1 to $3 per month. (Because the income thresholds for each level also change due to the new poverty levels, a member might fall into a lower premium level if the member's income remains unchanged.) The new premium amounts will be applied to new applications and renewal applications. A member's premiums do not change during the member's approved enrollment period.

These amendments do not provide for waivers in specified situations because all households should be subject to the same sliding-scale premiums. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on March 14, 2007.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because these amendments simply reflect the implementation of an existing methodology that is already adopted in statute and rules.

The Department finds that these amendments confer a benefit by avoiding confusion about the application of the rule, so that the amounts cited in paragraph 92.7(1)"a" conform to the updated amounts that will be charged effective April 1, 2007, based on the rule currently in effect. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of the amendments is waived.

These amendments are intended to implement Iowa Code section 249J.8.

These amendments became effective April 1, 2007.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515)

281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend paragraph **92.7(1)"a"** as follows:

a. The monthly premium amount is based on the household's countable monthly income as a percentage of the federal poverty level for a household of that size. The premium amounts based on this percentage effective April 1, ~~2006~~ *2007*, are as follows:

When the household's income is at or below:	Each member's premium amount is:
10% of federal poverty level	$ 0
20% of federal poverty level	$ 1
30% of federal poverty level	$ 3
40% of federal poverty level	~~$ 4~~ *$ 5*
50% of federal poverty level	$ 6
60% of federal poverty level	$ 8
70% of federal poverty level	~~$ 9~~ *$10*
80% of federal poverty level	$11
90% of federal poverty level	$13
100% of federal poverty level	~~$14~~ *$15*
110% of federal poverty level	~~$40~~ *$42*
120% of federal poverty level	~~$44~~ *$46*
130% of federal poverty level	~~$49~~ *$51*
140% of federal poverty level	~~$53~~ *$55*
150% of federal poverty level	~~$57~~ *$59*
160% of federal poverty level	~~$61~~ *$63*
170% of federal poverty level	~~$65~~ *$68*
180% of federal poverty level	~~$69~~ *$72*
190% of federal poverty level	~~$73~~ *$76*
200% of federal poverty level	~~$77~~ *$80*

ITEM 2. Amend **441—Chapter 92**, implementation clause, as follows:

These rules are intended to implement Iowa Code ~~Supplement~~ chapter 249J.

[Filed Emergency 3/14/07, effective 4/1/07]
[Published 4/11/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/11/07.

ARC 5837B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 100C.7, the State Fire Marshal hereby amends Chapter 275, "Certification of Automatic Fire Extinguishing System Contractors," Iowa Administrative Code.

Iowa Code chapter 100C establishes the Fire Extinguishing System Contractor Certification program in the Fire Marshal Division of the Department of Public Safety. Any person or firm which engages in layout, installation, repair, alteration, maintenance, or maintenance inspection of automated fire extinguishing systems is required to be certified. Certification is based upon the qualifications of a designated responsible managing employee. There are various endorsements available on the certification, which authorize the contractor to provided specific services for particular types of systems.

One form of endorsement authorizes contractors to install and service preengineered dry chemical or wet agent fire suppression systems. In order to qualify for this endorsement, the contractor's responsible managing employee is required, under current subrule 275.3(4), paragraph "c," to show evidence of both the training required by at least one manufacturer of a system which the contractor installs and of certification or training from a third party whose training is approved by the Fire Marshal. The subrule also provides that contractors may receive provisional certification with this endorsement by providing evidence of either sort of training. Prior to April 1, 2007, no evidence of training had been required to be provided for provisional certification.

The Fire Marshal Division has received numerous complaints about the training requirements, particularly the requirement that the responsible managing employee for a contractor installing or servicing preengineered dry chemical or wet agent systems must have training "required by a manufacturer." The Fire Marshal has concluded that the required third-party training is the key to ensure that contractors working on these systems are knowledgeable about them. Consequently, these amendments change the requirements for the endorsement to work on preengineered dry chemical or wet agent systems so that third-party training or certification approved by the Fire Marshal will be required for endorsement to install or service preengineered dry chemical or wet agent systems, but training "required by the manufacturer" will not be. However, it should be noted that training "required by a manufacturer" may be required by standards adopted by the Fire Marshal or under a local fire ordinance for these extinguishing systems.

Provisional certification will still be recognized on the basis of the responsible managing employee having received training "required by a manufacturer." Those who have received provisional certification based upon approved third-party training will now be recognized as having achieved full certification. There will be no cost to certificate holders for this change.

Pursuant to Iowa Code subsection 17A.4(2), the Department finds that notice and public participation prior to the adoption of these amendments are impractical. Clarifying the certification requirements for fire extinguishing system contractors who work only on preengineered dry chemical or wet agent systems needs to occur by April 1, 2007, to avoid unnecessary confusion for contractors.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department further finds that the normal effective date of these amendments, 35 days after publication, should be waived and these amendments made effective April 1, 2007, after filing with the Administrative Rules Coordinator. These amendments confer a benefit upon the public by clarifying the certification requirements for contractors working only on preengineered dry chemical and wet agent extinguishing systems.

These amendments are also published herein under Notice of Intended Action as **ARC 5836B**. Inclusion of the rules in the Notice of Intended Action will allow for public comment and participation in the rule-making process. A public hearing on the amendments will be held on May 2, 2007.

These amendments are intended to implement Iowa Code chapter 100C.

These amendments became effective on April 1, 2007.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

The following amendments are adopted.

Amend rule 661—275.3(100C) as follows:

Amend subrule **275.3(4)**, paragraph **"c,"** as follows:

c. A contractor may install preengineered dry chemical or wet agent fire suppression systems, if the responsible managing employee meets *the* requirements specified in ~~subparagraphs~~ *subparagraph* (1). ~~and (2), or if the responsible managing employee meets the requirements specified in subparagraph (3):~~ *Until April 1, 2009, a contractor may install preengineered dry chemical or wet agent fire suppression systems, if the responsible managing employee meets the requirements specified in subparagraph (2), and the contractor has received provisional certification prior to April 1, 2008.*

(1) ~~Satisfactory completion of any training required by the manufacturer for at least one system which the contractor installs; and~~

~~(2)~~ Certification by the National Institute for Certification in Engineering Technologies at level II or above in fire protection technology, for special hazards suppression systems; certification by the National Association of Fire Equipment Distributors in preengineered kitchen fire suppression systems or preengineered industrial fire suppression systems; or satisfactory completion of an applicable training or testing program which has been approved by the fire marshal.

~~(3)~~ *(2)* On or prior to April 1, 2008, a contractor may receive provisional certification with endorsement for installation of preengineered dry chemical or wet agent systems *if the responsible managing employee has completed training required by a manufacturer of at least one system which the contractor installs or maintains*. A contractor who is applying for provisional certification on or after April 1, 2007, shall provide documentation to the fire marshal of ~~either "1" or "2" below~~ *such training*. A contractor who has received provisional certification prior to April 1, 2007, shall, by April 1, 2007, provide documentation of either ~~"1" or "2" below~~ *training required by a manufacturer of at least one system which the contractor installs or maintains or of the training described in subparagraph (1). If satisfactory documentation is provided of the training required in subparagraph (1), the provisional status of the certification shall be removed at no cost to the contractor.*

~~1. Completion of training required by a manufacturer of at least one system which the contractor installs or maintains, or~~

~~2. Certification by the National Institute for Certification in Engineering Technologies at level II or above in fire protection technology, for special hazards suppression systems; certification by the National Association of Fire Equipment Distributors in preengineered kitchen fire suppression systems or preengineered industrial fire suppression systems; or satisfactory completion of an applicable training or testing program which has been approved by the fire marshal.~~

Provisional certification shall not be recognized on or after April 1, 2009.

Add the following **new** subrule:

275.3(7) Nothing in this rule shall be interpreted to conflict with or diminish any requirement for training or certification for anyone installing or servicing a fire extinguishing system or portable fire extinguisher set forth in any rule of the fire marshal or local fire ordinance or standard adopted by reference therein.

[Filed Emergency 3/22/07, effective 4/1/07]
[Published 4/11/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/11/07.

ARC 5832B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts amendments to Chapter 60, "Entrepreneurial Ventures Assistance Program," Iowa Administrative Code.

The amendments clarify the process for qualifying as an eligible Entrepreneurial Ventures Assistance Program applicant and expand the list of resources available for assisting applicants with meeting eligibility requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 17, 2007, as **ARC 5662B**. A public hearing to receive comments about the proposed amendments was held on February 6, 2007. No comments were received. The final amendments are identical to the proposed amendments.

The Iowa Economic Development Board adopted these amendments on March 15, 2007.

These amendments will become effective on May 16, 2007.

These amendments are intended to implement Iowa Code sections 15.338 and 15.339.

The following amendments are adopted.

ITEM 1. Amend rule **261—60.2(15)** as follows:

Amend the definition of "eligible applicant" as follows:

"Eligible applicant" means an individual ~~who is participating in or has successfully completed a recognized entrepreneurial venture development curriculum,~~ or ~~a~~ business ~~whose principal participants have successfully completed a recognized entrepreneurial venture development program~~ *that has consulted with and obtained a letter of endorsement from an IDED-approved business accelerator or from another IDED-recognized entrepreneurial development organization*.

Rescind the definition of "recognized entrepreneurial venture development curriculum."

ITEM 2. Amend subrule 60.3(3) as follows:

60.3(3) In order to be eligible for assistance, the business owner or owners (or appropriate individual(s) in a limited liability company, limited liability partnership or corporation) ~~must provide evidence that they are currently participating in, or have successfully completed, a recognized entrepreneurial venture development curriculum. In order to satisfy this requirement, the individuals can provide evidence of substantial progress or completion of the curriculum of study at one of the JPEC centers, or its equivalent~~ *must consult with and obtain a letter of endorsement from an IDED-approved business accelerator or from another recognized entrepreneurial development organization such as a John Pappajohn Entrepreneurial Center (JPEC), a Small Business Development Center (SBDC), or an equivalent organization recognized by IDED.*

[Filed 3/21/07, effective 5/16/07]
[Published 4/11/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/11/07.

ARC 5833B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts amendments to Chapter 168, "Additional Program Requirements," Iowa Administrative Code.

The amendments establish for all non-Grow Iowa Values Fund (GIVF) and tax credit program awards a contract-signing deadline that is similar to the deadline described in subrule 2.5(2) for all GIVF awards. Subrule 2.5(2) requires that a recipient sign a contract with the Department within 120 days of the award date. The amendments also add the Enterprise Zone program to the existing rule that establishes a standard definition of "employee" for purposes of state financial assistance programs.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 31, 2007, as **ARC 5689B**. A public hearing to receive comments about the proposed amendments was held on February 20, 2007. No comments were received. The final amendments are identical to the proposed amendments.

The Iowa Economic Development Board adopted these amendments on March 15, 2007.

These amendments will become effective on May 16, 2007.

These amendments are intended to implement Iowa Code chapters 15 and 17A.

The following amendments are adopted.

ITEM 1. Amend rule 261—168.302(15) as follows:

261—168.302(15) Applicability. The definition of the term "employee" described in this division is applicable to the high quality job creation program (HQJCP) (261—Chapter 68), the value-added agricultural products and processes financial assistance program (VAAPFAP) (261—Chapter 57), the community economic betterment *account* (CEBA) program (261—Chapter 53), the entrepreneurial ventures assistance (EVA) program (261—Chapter 60), the targeted small business financial assistance program (TSBFAP) (261—Chapter 55), the physical infrastructure assistance program (PIAP) (261—Chapter 61), the brownfield redevelopment program (261—Chapter 65), *the enterprise zone (EZ) program (261—Chapter 59)*, and all other state financial assistance programs administered by the department, including all programs receiving funding from the *grow* Iowa values fund.

ITEM 2. Amend 261—Chapter 168 by adding the following **new** Division VI:

DIVISION VI
CONTRACT ADMINISTRATION

261—168.401(15) Contract-signing deadline. Successful applicants will be required to execute an agreement with the department within 120 days of the department's or board's approval of an award. Failure to do so may result in action by the entity that approved the award (the department or the board) to rescind the award. The 120-day time limit may be extended by the entity that approved the award (the department or the board) for good cause shown.

261—168.402(15) Applicability. The 120-day contract-signing requirement described in this division is applicable

to the high quality job creation program (HQJCP) (261—Chapter 68), the enterprise zone (EZ) program (261—Chapter 59), the value-added agricultural products and processes financial assistance program (VAAPFAP) (261—Chapter 57), the community economic betterment account (CEBA) program (261—Chapter 53), the entrepreneurial ventures assistance (EVA) program (261—Chapter 60), the targeted small business financial assistance program (TSBFAP) (261—Chapter 55), the physical infrastructure assistance program (PIAP) (261—Chapter 61), the brownfield redevelopment program (261—Chapter 65), and all other state financial assistance programs administered by the department, including all programs receiving funding from the grow Iowa values fund.

These rules are intended to implement Iowa Code chapters 15 and 17A.

[Filed 3/21/07, effective 5/16/07]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/11/07.

ARC 5831B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of 2006 Iowa Acts, chapter 1142, section 34, the Iowa Department of Economic Development hereby adopts amendments to Chapter 312, "Renewable Fuel Infrastructure Program for Retail Motor Fuel Sites," and Chapter 314, "Renewable Fuel Infrastructure Program Administration," Iowa Administrative Code.

The amendments clarify contract length requirements and waiver requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 17, 2007, as **ARC 5671B**. The rule making was simultaneously Adopted and Filed Emergency as **ARC 5663B**. A public hearing to receive comments was held on February 6, 2007. No comments were received.

The adopted amendments include one change from the Notice. The amendment to rule 261—314.5(81GA,ch1142) increases the duration of the contract period to five years. A reference to contract length in paragraph 312.2(3)"f" was inadvertently not amended. This adopted rule making amends paragraph 312.2(3)"f" to be consistent with the amendment to rule 261—314.5(81GA,ch1142).

The Iowa Economic Development Board adopted these amendments on March 15, 2007.

These amendments will become effective on May 16, 2007, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

These amendments are intended to implement 2006 Iowa Acts, chapter 1142, sections 28 to 34.

The following amendments are adopted.

ITEM 1. Amend paragraph **312.2(3)"f"** as follows:

f. The dispenser must be described by type and model in a written statement by the manufacturer of the dispenser. The manufacturer's written statement must be signed by a responsible official on behalf of the manufacturer and must be provided either to the applicant or to the Iowa department of natural resources or the state fire marshal. If provided to the applicant, the statement must be kept on file on the premises of the applicant for the ~~four~~ *five*-year term of the agreement. The written statement must state that:

(1) The dispenser is, in the opinion of the manufacturer, not incompatible with E-85 gasoline; and

(2) The manufacturer has initiated the process of applying to an independent testing laboratory for listing of the equipment used in dispensing E-85 gasoline.

ITEM 2. Amend rule 261—314.5(81GA,ch1142) as follows:

261—314.5(81GA,ch1142) Contract administration.

314.5(1) Notice of award. The department shall notify approved applicants in writing of the board's award of grants, including any conditions and terms of the approval.

314.5(2) Contract required. The board shall direct the department to prepare a cost-share agreement which shall include terms and conditions of the grant established by the board. The agreement will:

a. Describe the project in sufficient detail to demonstrate the eligibility of the project.

b. State the total cost of the project expressed in a project budget included in sufficient detail to meet the requirements of the infrastructure board.

c. State the project completion deadline.

d. State the project completion requirements which are preconditions for payment of the grant by the board.

e. Recite the penalty for the storage or dispensing, within the stated time frame of ~~three~~ *five* years from submission of verified documentation of project completion, of motor fuel other than the type of renewable fuel for which the grant was awarded.

314.5(3) Repayment penalty for nonexclusive renewable fuel use. In the absence of a waiver from the board, the department may impose a civil penalty due to a grantee's use of infrastructure equipment for which a grant was awarded, for the storage or dispensing, within the time frame stated in the agreement, of motor fuel other than the type of renewable fuel for which the grant was awarded.

314.5(4) *Duration of grant agreement; repayment or board waiver.*

a. The duration of a cost-share grant agreement shall be five years from the date of submission of verified documentation of project completion.

b. Grantees shall not use the infrastructure to store and dispense motor fuel other than the type approved by the board, unless one of the following applies: (1) the grantee is granted a waiver by the board, or (2) the grantee pays back the moneys awarded with an additional 25 percent penalty. A grant recipient seeking a waiver during the time period in which a cost-share agreement is in effect shall submit a written waiver request to the board. The board hereby grants a waiver of the obligation to repay grant funds plus any penalty to all grant recipients that satisfy the terms and conditions of their cost-share grant agreements, including, but not limited to, the five-year exclusive use of renewable fuel requirement.

[Filed 3/21/07, effective 5/16/07]
[Published 4/11/07]

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ARC 5826B

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3, 29C.8 and 29C.20, the Homeland Security and Emergency Management Division adopts Chapter 12, "Homeland Security and Emergency Response Teams," Iowa Administrative Code.

New Chapter 12 is intended to implement 2006 Iowa Acts, House File 2797 [chapter 1185], which provides for changes to Iowa Code chapter 29C. Chapter 12 is intended to specify how homeland security and emergency response teams, which may be created by the Administrator, are created, deployed and funded.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on December 20, 2006, as **ARC 5624B**. The Division conducted a public hearing on January 11, 2007. At the hearing, public comment was received suggesting the addition of language to clarify team responsibilities and the Administrator's responsibilities in the funding process.

Based on a review of public comments, this chapter has been revised since the Notice of Intended Action. Eligibility criteria were amended in subrule 12.3(2) to clarify that the application information required in paragraph "b" relates to "deployable" response personnel and to include information pertaining to a response team's self-sufficiency and to the time required to deploy. Subrule 12.5(1) was also revised to include the availability of funds as a factor in response team compensation. In addition, two nonsubstantive changes have been made to the language of Chapter 12.

The Administrator adopted this amendment on March 19, 2007.

This amendment shall become effective on May 16, 2007.

This amendment is intended to implement Iowa Code sections 29C.8 and 29C.20.

The following amendment is adopted.

Adopt **new** 605—Chapter 12 as follows:

CHAPTER 12
HOMELAND SECURITY AND
EMERGENCY RESPONSE TEAMS

605—12.1(29C) Purpose. The duties of the administrator of the homeland security and emergency management division include the development and ongoing operation of homeland security and emergency response teams to be deployed by the state to supplement and enhance local resources during times of disaster and emergency. These rules are intended to specify how teams and team members will be designated, minimum standards that shall be maintained, and the use of the teams.

605—12.2(29C) Definitions.

"Administrator" means the administrator of the homeland security and emergency management division of the department of public defense.

"First responder advisory committee" means the advisory committee created by the administrator for the purpose of providing advice on public safety response issues within Iowa.

"Governor's disaster proclamation" means the proclamation of disaster emergency issued by the governor in accordance with Iowa Code section 29C.6.

605—12.3(29C) Homeland security and emergency response teams.

12.3(1) The administrator shall issue requests to create homeland security and emergency response teams based on identified needs, on recommendations from the first responder advisory committee, and at the request of the governor.

12.3(2) Each team shall be designated by the administrator. To be eligible for designation, a team shall provide a written application to the administrator that details the following information:

a. Type of assistance that the team provides.

b. Emergency response team information.

(1) Team name.

(2) Team location.

(3) 24/7 contact information and procedures.

(4) Team agency, including head of agency and contact information.

(5) Team commander and assistant commander, including contact information.

(6) Title, names, and responsibilities of deployable response personnel assigned to the team.

c. Listing of applicable local, state, and national standards and certifications to which team members are trained and certified.

d. Detailed listing of the team's major response assets that are related to the team's mission. The listing shall provide details related to self-sufficiency including the amount of time the team can remain self-sufficient.

e. Listing of communications assets, including radio frequencies used and any interoperability capabilities.

f. An estimate of the time required to assemble the team members and assets and deploy upon the request of the administrator or governor.

12.3(3) Upon receipt of the written application from the team, the administrator shall review the application. The administrator may seek additional information from the team. The team shall provide the requested information in a timely fashion.

12.3(4) Following approval of the application, the administrator shall issue a letter formally designating the team as an "Iowa homeland security and emergency response team" in accordance with Iowa Code section 29C.8. The administrator may enter into an agreement with the team in accordance with Iowa Code chapter 28E.

12.3(5) Upon acceptance as a homeland security and emergency response team, the team shall routinely update all records to accurately reflect membership rosters and major assets at the team's disposal. The team shall update records anytime personnel are added to or removed from the team.

605—12.4(29C) Use of homeland security and emergency response teams.

12.4(1) A designated team shall be deployed as a state asset only by a directive from the administrator or pursuant to a governor's disaster proclamation, unless the sponsoring agency's response team is needed to perform emergency services within its own jurisdiction.

12.4(2) A designated team may be deployed as a state asset to supplement and enhance disrupted or overburdened local emergency and disaster operations. A team may also be deployed as a state asset to other states pursuant to the interstate emergency management assistance compact as de-

scribed in Iowa Code section 29C.21 with the concurrence of the sponsoring agency.

605—12.5(29C) Homeland security and emergency response team compensation.

12.5(1) A homeland security and emergency response team shall be compensated for its expenses while it is deployed as a state asset in accordance with rule 12.4(29C), subject to availability of funds. The application for compensation shall be in a manner as specified by the administrator. Compensation shall be made to the team or the team's governing jurisdiction.

12.5(2) A member of a homeland security and emergency response team listed on the team roster filed pursuant to subrule 12.3(5), while acting under the directive of the administrator or pursuant to a governor's disaster proclamation, shall be considered an employee of the state under Iowa Code section 669.21. Disability, workers' compensation, and death benefits for designated team members participating in a response or recovery operation initiated by the administrator or governor pursuant to rule 12.4(29C) or participating in a training or exercise activity approved by the administrator shall be paid by the state in a manner consistent with the provisions of Iowa Code chapter 85, 410, or 411 as appropriate. The department of administrative services shall process claims for compensable losses of deployed team members.

12.5(3) The homeland security and emergency response team's materials, equipment and supplies consumed or damaged while the team is deployed in accordance with rule 12.4(29C) shall be reimbursed on a replacement cost basis, subject to the availability of funds.

12.5(4) The administrator shall request funds from the executive council to address any obligations under rule 12.5(29C).

605—12.6(29C) Alternate deployment of homeland security and emergency response teams.

12.6(1) At its discretion, a homeland security and emergency response team may deploy at the direct request of a political subdivision of the state without a directive from the administrator or without a governor's disaster proclamation.

12.6(2) The provisions of rule 12.5(29C) do not apply to a team deployed under 12.6(29C). A team deployed upon local request may seek compensation from the political subdivision making the request and in accordance with any existing mutual aid agreements that may exist at the time of deployment.

12.6(3) If, during a team deployment, a governor's disaster proclamation is issued, the administrator shall specify the date and time when the team may be deployed under rules 12.4(29C) and 12.5(29C).

These rules are intended to implement Iowa Code chapter 29C.

[Filed 3/19/07, effective 5/16/07]
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ARC 5819B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 7, "Appeals and Hearings," Chapter 114, "Licensing and Regulation of All Group Living Foster Care Facilities for Children," Chapter 130, "General Provisions," Chapter 152, "Contracting," and Chapter 156, "Payments for Foster Care and Foster Parent Training," rescinds Chapter 181, "Family Preservation Supportive and Nonrehabilitative Services," and amends Chapter 182, "Family-Centered Services," Chapter 185, "Rehabilitative Treatment Services," and Chapter 202, "Foster Care Services," Iowa Administrative Code.

These amendments remove references to rehabilitative and nonrehabilitative family-centered, family preservation, family foster care, and group care service. Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on August 30, 2006, as **ARC 5372B**, in conjunction with proposed amendments to create a new Medicaid service category, remedial services, to replace rehabilitative treatment services.

On September 20, 2006, the Department held a joint public hearing on the proposed Medicaid and child welfare amendments that was attended by 24 persons. Comments were received from 50 persons on the scope, eligibility, and payment provisions for the new services. It became apparent based on public comment that a transition period was necessary. Since rehabilitative treatment services could not be completely eliminated effective November 1, 2006, instead of adopting the rules proposed in **ARC 5372B**, the Department adopted rules to provide for an interim accommodation until plans for new services could be developed.

The amendments to the Medicaid coverage rules were Adopted and Filed Emergency After Notice and published in the Iowa Administrative Bulletin on November 8, 2006, as **ARC 5514B**, and were effective November 1, 2006. The interim child welfare amendments were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on November 8, 2006, as **ARC 5515B**. Those amendments extended the period during which authorizations for Medicaid rehabilitative treatment services could be issued through December 31, 2006, for services ending no later than June 30, 2007. The interim child welfare amendments were also published under Notice of Intended Action as **ARC 5516B** on the same date and were subsequently Adopted and Filed Emergency After Notice and published in the Iowa Administrative Bulletin on January 3, 2007, as **ARC 5651B**.

The amendments in this rule making remove references to rehabilitative and nonrehabilitative family-centered, family preservation, family foster care, and group care service from the rules except as necessary to maintain the interim contracting arrangements. Although a Notice of Intended Action on proposed new family-centered child welfare services was published in the Iowa Administrative Bulletin on January 31, 2007, as **ARC 5699B**, the Department anticipates that the interim family-centered service provisions will continue until October 1, 2007, when new contracts awarded through a competitive selection process are expected to take effect. Interim group care provisions will be replaced later.

The following changes have been made from the Notice of Intended Action **(ARC 5372B)**:

- Technical amendments to remove references to rehabilitative treatment services in Chapters 7, 114, 130, and 152 have been added. (See Items 1 through 8.)
- Changes already adopted in **ARC 5515B** and **ARC 5651B** have been eliminated.
- The definition of "treatment foster parent" in 441—156.1(234) is rescinded, and references to Chapter 185 in subrule 156.6(4) are eliminated. Paragraphs 156.6(4)"d" and "e" are clarified to refer specifically to the continuation of the payment rate for a child who was in "therapeutic" foster care or its equivalent as of October 31, 2006.
- Subrules 156.7(1), 156.7(4), and 156.7(5) on purchase of foster family home studies and services to children have been rescinded due to adoption of interim service provisions and to the negotiation of a statewide contract for foster family recruitment and retention, pursuant to a request for proposals issued August 9, 2006.
- All references to Form 470-3055 have been updated to refer to the current form title, "Referral and Authorization for Child Welfare Services."
- The introductory paragraph of subrule 156.9(1) is revised to extend the effect of the interim service provisions beyond June 30, 2007.
- Provisions in rules 441—182.3(234) and 441—182.4(234) relating to cases managed by juvenile court services have been rescinded. The Department has transferred state funds previously used for rehabilitative and nonrehabilitative treatment services for children adjudicated as delinquent to the graduated sanction programs administered by the chief juvenile court officers for each judicial district under 441—Chapter 151.
- Subrule 182.4(7) containing the time limits adopted in the interim rules for the transition to the interim services is rescinded.

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

The Council on Human Services adopted these amendments on March 14, 2007.

These amendments are intended to implement Iowa Code section 234.6.

These amendments shall become effective on July 1, 2007.

The following amendments are adopted.

ITEM 1. Amend rule **441—7.1(17A)**, definition of "aggrieved person," numbered paragraph "4," as follows:

4. For social services, including, but not limited to, adoption, foster care, ~~rehabilitative treatment~~ and ~~supportive~~ *family-centered* services, a person (see numbered paragraph "7" for providers):

- Whose request to be given an application was denied.
- Whose application for services or payment for adoption subsidy or foster care has been denied or has not been acted on in a timely manner.
- For whom it is determined that the person must participate in a service program.
- ~~Whose social work case manager failed to make a referral to the review organization for the rehabilitative treatment services requested or who is dissatisfied with the necessity, amount, duration, or scope of services as authorized by the review organization. Providers and referral workers who are dissatisfied with the authorized amount, duration, or scope of rehabilitative treatment services shall not be considered aggrieved persons.~~
- Whose claim for payment of services has been denied.
- Who has been notified that there will be a suspension, reduction, or cancellation of services.
- Who has been notified that an overpayment of benefits has been established and repayment is requested.
- Who applies for an adoption subsidy after the adoption has been finalized.
- Who alleges that the adoptive placement of a child has been denied or delayed when an adoptive family is available outside the jurisdiction with responsibility for handling the child's case.
- Who has not been referred to community care as provided in rule 441—186.2(234).
- Who has been referred to community care as provided in rule 441—186.2(234) and has exhausted the community care provider's dispute resolution process.
- Who has been referred to aftercare services under 441—Chapter 187 and has exhausted the aftercare provider's dispute resolution process.

ITEM 2. Amend rule **441—114.2(237)**, definition of "highly structured juvenile program" as follows:

"Highly structured juvenile program" means a short-term treatment program lasting 90 days and having a high degree of structure that stresses discipline, physical activity, and education. ~~These programs~~ *The program* must be licensed ~~as~~ either *as a* community residential ~~facilities~~ *facility* under this chapter or as *a* comprehensive residential ~~facilities~~ *facility* under 441—Chapter 115 ~~and certified to provide rehabilitative treatment services under 441—Chapter 185~~. ~~Programs~~ *The program* shall have the ability to use a physically secure setting dependent upon the level of the license.

ITEM 3. Amend rule **441—130.1(234)** by rescinding the definitions of "rehabilitative treatment service" and "review organization."

ITEM 4. Rescind and reserve subrule **130.2(8)**.

ITEM 5. Amend rule 441—130.4(234), introductory paragraph, as follows:

441—130.4(234) Fees. The department may set fees to be charged to clients for services received. The fees will be charged to those clients eligible under rule 130.3(234), but not those receiving services without regard to income due to a protective service situation ~~or for rehabilitative treatment services~~. Nothing in these rules shall preclude a client from voluntarily contributing toward the costs of service.

ITEM 6. Amend subrule 130.6(1) as follows:

130.6(1) Determine eligibility. ~~For rehabilitative treatment services, eligibility shall be determined by the review organization as directed in 441—subrule 185.2(2).~~

ITEM 7. Amend rule 441—130.9(234) as follows:

441—130.9(234) Entitlement. ~~Except as provided for rehabilitative treatment services, there~~ *There* is no automatic right to ongoing service in any service category from one fiscal year to the next.

ITEM 8. Amend **441—Chapter 152**, preamble, as follows:

PREAMBLE

The rehabilitative treatment and supportive services contract will encompass ~~rehabilitative and nonrehabilitative treatment services. Rehabilitative treatment and supportive services will include the following services: family-centered treatment, family preservation treatment, treatment family foster care,~~ group care ~~treatment~~ *child welfare services*, sup-

portive services provided in family-centered and family foster care, and group care maintenance. ~~Nonrehabilitative treatment services will include the following services: family-centered treatment and family preservation treatment.~~

Refer to ~~441—Chapter 185, Divisions II, III, IV, and V, for requirements for rehabilitative treatment services and~~ 441—Chapters 156 and 182 for requirements for supportive services.

ITEM 9. Amend rule **441—156.1(234)** by rescinding the definition of "treatment foster parent."

ITEM 10. Amend subrule **156.6(4),** paragraphs **"d"** and **"e,"** as follows:

d. ~~For placements made before~~ *Effective* January 1, 2007, when a ~~treatment~~ foster family provides care to a child *who was* receiving behavioral management services for children in therapeutic foster care ~~pursuant to 441—subrule 185.62(3)~~ *in that placement as of October 31, 2006*, the foster family shall be paid the basic maintenance rate plus $15 per day *for that child*. This rate shall continue for the duration of the placement.

e. ~~For placements made before~~ *Effective* January 1, 2007, when a service area manager determines that *as of October 31, 2006*, a foster family ~~is~~ *was* providing care *for a child* comparable to behavioral management services for children in therapeutic foster care ~~pursuant to 441—subrule 185.62(3)~~, except that the placement is supervised by the department and the child's treatment plan is supervised by a physician, mental health professional, or mental retardation professional, the foster family shall be paid the basic maintenance rate plus $15 per day *for that child*. ~~Foster families receiving this difficulty of care payment shall meet the requirements as found in 441—paragraph 185.10(8)"b."~~ This rate shall continue for the duration of the placement.

ITEM 11. Amend rule **441—156.7(234)** as follows:

Rescind and reserve subrule **156.7(1)**.

Amend subrule **156.7(2)** as follows:

Amend paragraphs **"c"** and **"g"** as follows:

c. The department shall determine when to refer a child to a private agency for family foster care supervision~~,~~ and shall specify the maximum number of units and the duration of services authorized on Form 470-3055, Referral ~~of Client for Rehabilitative Treatment~~ and ~~Supportive~~ *Authorization for Child Welfare* Services.

g. The provider shall receive approval from the referral worker on Form 470-3055, Referral ~~of Client for Rehabilitative Treatment~~ and ~~Supportive~~ *Authorization for Child Welfare* Services, before increasing the amount or duration of services beyond what was previously approved. Based on their ongoing assessment activities, providers may communicate family service needs they believe are not adequately addressed in the department case permanency plan at any time during their provision of services.

Amend paragraph **"i,"** subparagraph **(8)**, as follows:

(8) Form 470-3055, Referral ~~of Client for Rehabilitative Treatment~~ and ~~Supportive~~ *Authorization for Child Welfare* Services.

Rescind and reserve subrules **156.7(4)** and **156.7(5)**.

ITEM 12. Amend subrule 156.9(1), introductory paragraph, as follows:

156.9(1) In-state reimbursement. ~~For the period from~~ *Effective* November 1, 2006, ~~through June 30, 2007,~~ public and private foster group care facilities licensed or approved in the state of Iowa shall be paid for group care maintenance and child welfare services in accordance with the rate-setting methodology in this subrule.

ITEM 13. Amend subrule 156.20(2) as follows:

156.20(2) Provider eligibility for payment. Except for payments for foster parents or youth in supervised apartment living, payment shall be limited to providers with a purchase of service contract in force. Providers of ~~family foster care treatment services and supervision and providers of~~ group care services shall ~~meet certification requirements in rule 441—185.9(234) or 441—185.10(234) and shall~~ have a purchase of rehabilitative treatment and supportive services contract under 441—Chapter 152 in force.

ITEM 14. Rescind and reserve **441—Chapter 181**.

ITEM 15. Amend **441—Chapter 182**, preamble, third unnumbered paragraph, as follows:

This chapter defines and structures supportive services in the family-centered service program. These rules set the eligibility criteria, application and approval procedures, requirements for service provision, reimbursement methodology, provider qualifications, and service termination and appeal procedures for the program. ~~Family-centered rehabilitative treatment service components are addressed in 441—Chapter 185.~~

ITEM 16. Amend rule **441—182.1(234)** as follows:

Rescind the definitions of "nonrehabilitative treatment need" and "rehabilitative treatment need."

Amend the definition of "treatment plan" as follows:

"Treatment plan" means a written, goal-directed plan of service developed for a child and family by the provider ~~in compliance with 441—subrules 185.10(4) and 185.10(5)~~.

ITEM 17. Amend rule 441—182.2(234) as follows:

Amend subparagraph **182.2(1)"a"(7)** as follows:

(7) Monitoring of a child's behavior during transportation to and from juvenile court hearings, to and from sibling visits, or to and from parent-child visits, if specifically requested by the child's worker on Form 470-3055, Referral ~~of Client for Rehabilitative Treatment~~ and ~~Supportive~~ *Authorization for Child Welfare* Services, and approved by the service area manager or designee.

Rescind and reserve subrules **182.2(3)** and **182.2(4)**.

ITEM 18. Amend rule 441—182.3(234) as follows:

Rescind and reserve paragraphs **182.3(1)"c"** and **"d."**

Amend subparagraphs **182.3(4)"c"(1)** and **(2)** as follows:

(1) Children in shelter care may receive a maximum of 20 service units of ~~any combination of~~ parental counseling and education ~~or nonrehabilitative treatment therapy and counseling or skill development~~ services for purposes of family reunification.

(2) The maximum length of time that parental counseling and education ~~or nonrehabilitative treatment~~ services may be provided to a child placed in shelter care is 30 days from the start date of these services, without regard to the length of the child's shelter care stay.

ITEM 19. Amend rule 441—182.4(234) as follows:

Amend the introductory paragraph as follows:

441—182.4(234) Approval and referral for services. The referral worker shall assess a child's eligibility for services in accordance with rule 441—182.3(234) and *shall* determine if services under the family-centered program are necessary to help achieve the goals and outcomes of the case permanency plan. Department case permanency plan development, provision of social casework, and activities for the delivery of family-centered services shall adhere to the provisions of

rules 441—130.6(234)~~,~~ *and* 441—130.7(234)~~, and 441—Chapter 185, Divisions I and II. Except when a department worker is specified, the provisions of this rule also apply to a juvenile court officer who is the referral worker for a child who qualifies for supervision or nonrehabilitative treatment services.~~

Rescind and reserve paragraph **182.4(3)"b."**

Amend paragraph **182.4(4)"a,"** introductory paragraph, as follows:

a. The referral worker shall complete Form 470-3055, Referral ~~of Client for Rehabilitative Treatment~~ and ~~Supportive~~ *Authorization for Child Welfare* Services, ~~including any rehabilitative treatment services approved for the client and~~ indicating:

Rescind and reserve subrule **182.4(7)**.

ITEM 20. Amend rule 441—182.5(234) as follows:

Amend paragraph **182.5(1)"a"** as follows:

a. A contract for the delivery of ~~the rehabilitative treatment and~~ supportive services ~~program~~ pursuant to 441—Chapter 152. A provider with a contract for any ~~rehabilitative treatment or~~ supportive service shall amend that contract to include any family-centered service component the provider wishes to offer. A contract pursuant to 441—Chapter 152 is the only contracting method available to providers of the following family-centered service components:

(1) Supervision.

~~(2) Nonrehabilitative treatment.~~

~~(3)~~ *(2)* Parental counseling and education.

Amend subrule 182.5(4) as follows:

Amend the introductory paragraph as follows:

182.5(4) ~~Nonrehabilitative treatment and parental~~ *Parental* counseling and education.

Rescind and reserve paragraph **"a."**

Amend paragraph **"b"** as follows:

b. Persons delivering ~~nonrehabilitative treatment therapy and counseling or~~ parental counseling and education shall meet the minimum education and experience requirements for therapy and counseling services as specified in rule 441—185.10(234).

Rescind and reserve paragraph **"c."**

ITEM 21. Amend rule 441—182.6(234) as follows:

Amend paragraph **182.6(1)"a"** as follows:

a. Receive written approval for these services from the referral worker on Form 470-3055, Referral ~~of Client for Rehabilitative Treatment~~ and ~~Supportive~~ *Authorization for Child Welfare* Services, before providing services; and

Amend subrule 182.6(3), introductory paragraph, as follows:

182.6(3) Service management activities. Providers of supervision~~, nonrehabilitative treatment,~~ or parental counseling and education components shall undertake nonbillable activities to structure and facilitate the delivery of the service they are providing in response to the directions and goals of the case permanency plan. These activities shall include the following:

Amend subparagraph **182.6(4)"a"(2)** as follows:

(2) In order for indirect behavioral monitoring contacts to be provided, indirect contacts must be included on Form 470-3055, Referral ~~of Client for Rehabilitative Treatment~~ and ~~Supportive~~ *Authorization for Child Welfare* Services, and approved in the case permanency plan.

Amend subrule 182.6(6) as follows:

Amend the introductory paragraph as follows:

182.6(6) ~~Nonrehabilitative treatment and parental~~ *Parental* counseling and education. Providers of ~~family-centered nonrehabilitative treatment or~~ parental counseling and education shall:

Amend paragraph **"a"** as follows:

a. Develop a treatment plan in accordance with 441—subrules 185.10(4) and 185.10(5). ~~For a child who is also receiving rehabilitative treatment services from the same provider, the treatment plan for nonrehabilitative treatment or parental counseling and education shall be combined with the rehabilitative treatment plan.~~

Amend paragraph **"b"** by rescinding reserving subparagraph **(2)**.

Amend paragraph **"c"** as follows:

c. Document service delivery in the child's individual treatment record in accordance with the requirements of this subrule, 441—subrules 152.2(16) and 185.10(6), and rule 441—182.7(234). ~~Service documentation in the child's individual treatment record shall specify which services delivered are nonrehabilitative treatment or parental counseling and education, as opposed to rehabilitative treatment therapy and skill development services.~~

Amend paragraph **182.6(8)"b,"** introductory paragraph, as follows:

b. Maintain a record that supports billings submitted to the department. This record shall contain Form 470-3055, Referral ~~of Client for Rehabilitative Treatment~~ and ~~Supportive~~ *Authorization for Child Welfare* Services, which authorized the service and shall identify:

ITEM 22. Amend rule 441—182.7(234) as follows:

Amend subrules 182.7(2) and 182.7(3) as follows:

182.7(2) Progress reports. For family-centered supervision~~, nonrehabilitative treatment,~~ and parental counseling and education, providers shall complete progress reports that comply with 441—paragraph 185.10(6)"f." Provider progress reports are not required for family team meeting facilitation, community resource procurement, relative home studies and updates, or the flexible family support fund.

182.7(3) Discharge summary. For family-centered supervision~~, nonrehabilitative treatment,~~ and parental counseling and education, providers shall prepare a written report for the referral worker in accordance with 441—paragraph 185.10(6)"e" within 30 days of the termination of services. Discharge summaries are not required for family team meeting facilitation, community resource procurement, relative home studies, or the flexible family support fund.

Amend subrule **182.7(4)** as follows:

Amend paragraph **"b"** as follows:

b. Form 470-3055, Referral ~~of Client for Rehabilitative Treatment~~ and ~~Supportive~~ *Authorization for Child Welfare* Services, from the referral worker.

Amend paragraph **"h,"** introductory paragraph, as follows:

h. For ~~nonrehabilitative treatment,~~ parental counseling and education~~,~~ and supervision, documentation to substantiate each unit of service billed to the department. This documentation shall include:

ITEM 23. Amend rule 441—182.8(234) as follows:

Rescind and reserve paragraph **182.8(1)"c."**

Amend paragraph **182.8(2)"a"** as follows:

a. Unit rates for supervision ~~and nonrehabilitative treatment~~ services shall be established in accordance with 441—Chapter 185, Division VI. ~~Unit rates for therapy and counseling and for skill development are the same whether the child's treatment need is rehabilitative or nonrehabilitative.~~

Amend subrule 182.8(3) as follows:

182.8(3) Indirect costs. Expenses of transporting clients, service management activities, and other administrative

functions shall be allowable indirect costs for ~~nonrehabilitative treatment,~~ parental counseling and education, community resource procurement, and supervision services, subject to the restrictions set forth in 441—Chapters 152 and 185. Such costs and activities are not directly billable costs or activities.

ITEM 24. Amend rule 441—182.9(234) as follows:

441—182.9(234) Termination and adverse service actions. Services shall be denied, terminated, or reduced and appropriate notice given the client as specified in rule 441—130.5(234) unless otherwise provided for in this chapter. Services shall be terminated no later than the end of the service period approved by the department in Form 470-3055, Referral ~~of Client for Rehabilitative Treatment~~ and ~~Supportive~~ *Authorization for Child Welfare* Services.

ITEM 25. Amend 441—Chapter 185 as follows:

Rescind and reserve rules **441—185.2(234**) through **441—185.7(234)**.

Amend subrule **185.10(8)** by rescinding and reserving paragraphs **"a," "b," "c,"** and **"e."**

Rescind and reserve rule **441—185.11(234)**.

Rescind and reserve **Divisions II**, **III**, and **V**.

ITEM 26. Rescind and reserve paragraph **202.4(5)"f."**

[Filed 3/14/07, effective 7/1/07]
[Published 4/11/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/11/07.

ARC 5816B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6 and 2006 Iowa Acts, chapter 1184, section 13, the Department of Human Services amends Chapter 51, "Eligibility," and Chapter 52, "Payment," Iowa Administrative Code.

These amendments implement the annual adjustments to eligibility and payment levels in the State Supplementary Assistance Program that are necessary to meet the federal "pass-along" requirements specified in Title XVI of the Social Security Act. The State of Iowa uses the payment levels method of compliance, which requires an increase in the payment amounts and income limits for State Supplementary Assistance categories effective January 1 of each year, as necessary to meet the minimum levels required by the federal government. The minimum levels are indexed by the cost-of-living increase in federal Social Security and Supplemental Security Income (SSI) benefits, which is 3.3 percent for calendar year 2007.

To meet federal pass-along requirements for 2007, increases are necessary in:

- The income limit and payment standard for dependent relatives, by $11 per month (from $306 to $317).
- The dependent relative income limits, by $31 per month for an eligible individual (from $909 to $940) and by $41 per month for an eligible couple (from $1210 to $1251).
- The family life home income limit, by $20 per month (from $765 to $785).
- The maximum family life home payment, by $24 per month (from $673 to $697).
- The maximum residential care per diem rate, by $0.65 (from $25.85 to $26.50).

State legislation also requires the Department to increase the personal needs allowance for residents of residential care facilities at the same percentage and at the same time as federal Social Security and SSI benefits are increased. However, the amount added to the personal needs allowance for Medicaid copayment is decreased for 2007 due to the transfer of drug coverage to Medicare. Therefore, these amendments decrease the residential care facility and family life home personal needs allowances by $4 per month (from $92 to $88). A deduction from income may be allowed for people who have unmet medical needs, including Medicare Part D copayments.

These amendments were previously Adopted and Filed Emergency and were published in the Iowa Administrative Bulletin on January 3, 2007, as **ARC 5646B**. Notice of Intended Action to solicit comments on these amendments was published in the Iowa Administrative Bulletin on the same date as **ARC 5645B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

These amendments do not provide for waivers in specified situations because they benefit the people affected by increasing payment levels.

The Council on Human Services adopted these amendments March 14, 2007.

These amendments are intended to implement Iowa Code chapter 249 and 2006 Iowa Acts, chapter 1184, section 13.

These amendments shall become effective May 16, 2007, at which time the Adopted and Filed Emergency amendments are rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [51.4(1), 51.7, 52.1] is being omitted. These amendments are identical to those published under Notice as **ARC 5645B** and Adopted and Filed Emergency as **ARC 5646B**, IAB 1/3/07.

[Filed 3/14/07, effective 5/16/07]
[Published 4/11/07]

[For replacement pages for IAC, see IAC Supplement 4/11/07.]

ARC 5817B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 2006 Iowa Acts, chapter 1184, section 1, the Department of Human Services amends Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 83, "Medicaid Waiver Services," Iowa Administrative Code.

These amendments add case management as a covered service under the Medicaid home- and community-based services elderly waiver. Area agencies on aging have been pro-

viding case management services for elderly waiver clients without Medicaid funding. The General Assembly directed the Department, in collaboration with the Department of Elder Affairs, to submit an amendment to the elderly waiver to include case management as a Medicaid-covered waiver service. The waiver amendment has been approved by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services.

Under these amendments, case management provided for consumers under the elderly waiver will be eligible for federal financial participation under the Medicaid program. Funding for the case management services formerly provided through the area agencies on aging is being transferred to the Medicaid appropriation to be used for the nonfederal matching funds. The maximum monthly cost per client for case management under the elderly waiver is set at $70. Area agencies on aging will continue to provide case management services for frail elders who are not eligible for Medicaid.

These amendments were previously Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on October 11, 2006, as **ARC 5417B**. Notice of Intended Action to solicit comments on that submission was published in the Iowa Administrative Bulletin as **ARC 5414B** on the same date. The Department received comments on the Notice of Intended Action from the Iowa Department of Elder Affairs and has made the following changes to these rules in response to those comments:

- Addition of the following sentence to paragraph 77.33(21)"b," introductory paragraph: "A person cannot be the first-line supervisor of both case managers and direct service staff who are providing services to elderly waiver consumers."
- Elimination of subparagraph 83.22(2)"a"(5) and renumbering of subparagraphs 83.22(2)"a"(6) and 83.22(2)"a"(7) as 83.22(2)"a"(5) and 83.22(2)"a"(6).
- Substitution of the words "service plan" for the words "treatment process" in subparagraph 83.22(2)"d"(6).
- Addition of an amendment to paragraph 83.23(3)"c" to remove the reference to a specific service plan form in the second sentence. The revised sentence reads as follows: "The consumer, guardian, or attorney in fact under a durable power of attorney for health care shall sign the service plan indicating the consumer's choice of caregiver."
- Addition of an amendment to paragraph 83.23(4)"a" to substitute the words "case manager" for "department service worker" and eliminate the second sentence.
- Addition of an amendment to the introductory paragraph of rule 441—83.27(249A) to remove the reference to a specific service plan form and update the list of persons who must sign the service plan to include the consumer, the elderly waiver case manager, and any other person identified by the consumer.
- Addition of an amendment to paragraph 83.28(2)"d" to substitute the words "case manager and the interdisciplinary team" for the words "service worker."

These amendments do not provide for waivers in specified situations because the changes are mandated by 2005 Iowa Acts, chapter 167, section 14, and because the changes provide a benefit. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments March 14, 2007.

These amendments are intended to implement Iowa Code section 249A.4; 2005 Iowa Acts, chapter 167, section 14; and 2006 Iowa Acts, chapter 1184, section 1.

These amendments shall become effective May 16, 2007, at which time the Adopted and Filed Emergency amendments are rescinded.

The following amendments are adopted.

ITEM 1. Amend rule 441—77.33(249A) by adding the following **new** subrule:

77.33(21) Case management providers. A case management provider organization is eligible to participate in the Medicaid HCBS elderly waiver program if the organization meets the following standards:

a. The case management provider organization shall be an agency or individual that:

(1) Is accredited by the mental health, mental retardation, developmental disabilities, and brain injury commission as meeting the standards for case management services in 441—Chapter 24; or

(2) Is accredited through the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) to provide case management; or

(3) Is accredited through the Council on Accreditation of Rehabilitation Facilities (CARF) to provide case management; or

(4) Is accredited through the Council on Quality and Leadership in Supports for People with Disabilities (The Council) to provide case management; or

(5) Is approved by the department of elder affairs as meeting the standards for case management services in 321—Chapter 21; or

(6) Is approved by the department of public health as meeting the standards for case management services in 641—Chapter 80.

b. A case management provider shall not provide direct services to the consumer. The department and the Centers for Medicare and Medicaid Services deem the provision of direct services to case management consumers to be a conflict of interest. A person cannot be the first-line supervisor of both case managers and direct service staff who are providing services to elderly waiver consumers. The provider must have written conflict of interest policies that include, but are not limited to:

(1) Specific procedures to identify conflicts of interest.

(2) Procedures to eliminate any conflict of interest that is identified.

(3) Procedures for handling complaints of conflict of interest, including written documentation.

c. If the case management provider organization subcontracts case management services to another entity:

(1) That entity must also meet the provider qualifications in this subrule; and

(2) The contractor is responsible for verification of compliance.

ITEM 2. Amend rule 441—78.37(249A) as follows:

Amend subrule 78.37(10) as follows:

78.37(10) Mental health outreach. Mental health outreach services are services provided in a recipient's home to identify, evaluate, and provide treatment and psychosocial support. The services can only be provided on the basis of a referral from the ~~Case Management Program for the Frail Elderly (CMPFE)~~ *consumer's* interdisciplinary team *established pursuant to 441—subrule 83.22(2)*. A unit of service is 15 minutes.

Adopt the following **new** subrule:

78.37(17) Case management services. Case management services are services that assist a consumer in gaining access to medical, social, and other appropriate services needed for

the consumer to remain in the consumer's home. Case management is provided at the direction of the consumer and the interdisciplinary team established pursuant to 441—subrule 83.22(2).

a. Case management services shall include:

(1) A comprehensive assessment of the consumer's needs, which must be made within 30 days of referral to case management.

(2) Development and implementation of a service plan to meet those needs.

(3) Coordination, authorization, and monitoring of all services.

(4) A face-to-face meeting by the case manager with the consumer at least quarterly.

(5) Monitoring of the consumer's health, safety, and welfare.

(6) Evaluation of outcomes.

(7) Periodic reassessment and revision of the service plan as needed but at least annually.

(8) Assurance that consumers have a choice of providers.

b. Case management shall not include the provision of direct services by the case managers.

c. Payment for case management shall not be made until the consumer is enrolled in the waiver. Payment shall be made only for case management activity performed on behalf of the consumer during a month when the consumer is enrolled.

d. A unit of service is one month.

ITEM 3. Amend subrule **79.1(2)**, numbered paragraph **"17"** under the service category "HCBS waiver services providers," as follows:

Provider category	Basis of reimbursement	Upper limit
17. Case management	Fee schedule	*For brain injury waiver:* $592.75 per month. *For elderly waiver: $70 per month.*

ITEM 4. Amend rule **441—83.21(249A)** by rescinding the definitions of "project coordinator" and "senior living coordinating unit designated case management project for frail elderly."

ITEM 5. Amend rule 441—83.22(249A) as follows:

Rescind and reserve paragraph **83.22(1)"f."**

Rescind subrule 83.22(2) and adopt the following **new** subrule in lieu thereof:

83.22(2) Need for services, service plan, and cost.

a. Case management. As a condition of eligibility, all consumers under the elderly waiver shall receive case management services from a provider qualified pursuant to 441—subrule 77.33(21). The case manager shall be responsible for doing the following:

(1) Making a comprehensive assessment of the consumer's needs within 30 days of referral to case management.

(2) Initiating development and review of the service plan as required by this subrule.

(3) Ensuring that the consumer exhausts all services available under the state Medicaid plan before accessing the waiver.

(4) Ensuring that all unmet needs of the consumer are identified in the service plan.

(5) Explaining the following to the consumer:

1. What abuse is and how to report abuse.

2. How to file a complaint about the consumer's services or providers.

3. The consumer's right to freedom of choice.

(6) Verifying that providers of consumer-directed attendant care are adequately skilled to meet the needs of the consumer.

b. Interdisciplinary team. The case manager shall establish an interdisciplinary team for the consumer.

(1) Composition. The interdisciplinary team shall include the case manager and the consumer and, if appropriate, the consumer's legal representative, family, service providers, and others directly involved in the consumer's care.

(2) Role. The team shall identify:

1. The consumer's need for services based on the consumer's needs and desires.

2. Available and appropriate services to meet the consumer's needs.

3. Health and safety issues for the consumer that indicate the need for an emergency plan, based on a risk assessment conducted before the team meeting.

4. Emergency backup support and a crisis response system to address problems or issues arising when support services are interrupted or delayed or when the consumer's needs change.

c. Service plan. An applicant for elderly waiver services shall have a service plan developed by a qualified provider of case management services under the elderly waiver.

(1) Services included in the service plan shall be appropriate to the problems and specific needs or disabilities of the consumer.

(2) Services must be the least costly available to meet the service needs of the consumer. The total monthly cost of the elderly waiver services exclusive of case management services shall not exceed the established monthly cost of the level of care. Aggregate monthly costs are limited as follows:

Skilled level of care	Nursing level of care
$2,554	$1,084

(3) The service plan must be completed before services are provided.

(4) The service plan must be reviewed at least annually and when there is any significant change in the consumer's needs.

d. Content of service plan. The service plan shall include the following information based on the consumer's current assessment and service needs:

(1) Observable or measurable individual goals.

(2) Interventions and supports needed to meet those goals.

(3) Incremental action steps, as appropriate.

(4) The names of staff, people, businesses, or organizations responsible for carrying out the interventions or supports.

(5) The desired individual outcomes.

(6) The identified activities to encourage the consumer to make choices, to experience a sense of achievement, and to modify or continue participation in the service plan.

(7) Description of any restrictions on the consumer's rights, including the need for the restriction and a plan to restore the rights. For this purpose, rights include maintenance of personal funds and self-administration of medications.

(8) A list of all Medicaid and non-Medicaid services that the consumer received at the time of waiver program enrollment that includes:

1. The name of the service provider responsible for providing the service.

2. The funding source for the service.

3. The amount of service that the consumer is to receive.

(9) Indication of whether the consumer has elected the consumer choice option and, if so, the independent support

broker and the financial management service that the consumer has selected.

(10) The determination that the services authorized in the service plan are the least costly.

(11) A plan for emergencies that identifies the supports available to the consumer in situations for which no approved service plan exists and which, if not addressed, may result in injury or harm to the consumer or other persons or in significant amounts of property damage. Emergency plans shall include:

1. The consumer's risk assessment and the health and safety issues identified by the consumer's interdisciplinary team.

2. The emergency backup support and crisis response system identified by the interdisciplinary team.

3. Emergency, backup staff designated by providers for applicable services.

Rescind and reserve subrule **83.22(3)**.

ITEM 6. Amend rule 441—83.23(249A) as follows:

Amend paragraph **83.23(3)"c"** as follows:

c. An applicant must be given the choice between elderly waiver services and institutional care. The consumer, guardian, or attorney in fact under a durable power of attorney for health care shall sign ~~Form 470-3156, Senior Living Coordinating Unit Client Service Plan,~~ *the service plan* indicating the consumer's choice of caregiver.

Amend paragraph **83.23(4)"a"** as follows:

a. The effective date of eligibility cannot precede the date the ~~department service worker~~ *case manager* signs the case plan. ~~Applicants without a case plan signed by the department service worker are not eligible for the waiver.~~

ITEM 7. Amend rule 441—83.26(249A) as follows:

441—83.26(249A) Allowable services. Services allowable under the elderly waiver are *case management,* adult day care, emergency response system, homemaker, home health aide, nursing, respite care, chore, home-delivered meals, home and vehicle modification, mental health outreach, transportation, nutritional counseling, assistive devices, senior companions, consumer-directed attendant care, financial management, independent support brokerage, self-directed personal care, self-directed community supports and employment, and individual-directed goods and services as set forth in rule 441—78.37(249A).

ITEM 8. Amend rule 441—83.27(249A), introductory paragraph, as follows:

441—83.27(249A) Service plan. ~~Form 470-3156, Senior Living Coordinating Unit Client Service Plan,~~ *The service plan* shall be completed jointly by the ~~area agency on aging case management program for~~ *consumer,* the ~~frail~~ elderly *waiver case manager,* and *any other person identified by* the ~~department service worker~~ *consumer.*

ITEM 9. Amend paragraph **83.28(2)"d"** as follows:

d. The client receives elderly waiver services and the physical or mental condition of the client requires more care than can be provided in the client's own home as determined by the ~~service worker~~ *case manager and the interdisciplinary team*.

[Filed 3/14/07, effective 5/16/07]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/11/07.

ARC 5818B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 130, "General Provisions," Iowa Administrative Code.

This amendment requires that a child welfare case plan be completed in partnership with the family and extends the time frame for completing the Family Case Plan from 45 to 60 days to allow sufficient time to engage the family in the case-planning process. A 60-day time limit for case planning is consistent with federal child welfare requirements. The recommendations from the Child Protective Services Assessment Summary and the safety plan developed by Department staff shall serve as an initial case plan until the full Family Case Plan is completed.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on January 17, 2007, as **ARC 5666B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice of Intended Action.

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

The Council on Human Services adopted this amendment on March 14, 2007.

This amendment is intended to implement Iowa Code section 234.6.

This amendment shall become effective on June 1, 2007.

The following amendment is adopted.

Amend rule **441—130.7(234)** as follows:

Rescind subrule 130.7(3) and adopt the following **new** subrule in lieu thereof:

130.7(3) The case plan shall be developed and filed in the case record as follows:

a. In child welfare cases, the case plan shall be developed in partnership with the child, the family, and the caregiver.

(1) The recommendations from the child protective services assessment summary and the safety plan developed with the family shall be considered an initial case plan.

(2) A case plan that meets the requirements of Iowa Code section 232.2 shall be filed within 60 days from the date the child enters foster care or the date the department opens a child welfare service case, whichever occurs first.

b. For all other cases, the case plan shall be developed before services begin unless there is an unanticipated provision of service for the protection and well-being of a client. In that case, the case plan shall be filed within 45 days from the date that services begin.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code section 234.6 ~~and 1984 Iowa Acts, chapter 1310, section 3~~.

[Filed 3/14/07, effective 6/1/07]
[Published 4/11/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/11/07.

ARC 5828B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 60, "Minimum Physical Standards for Residential Care Facilities," and Chapter 61, "Minimum Physical Standards for Nursing Facilities," Iowa Administrative Code.

The adopted amendments revise the rules pertaining to electrical requirements for residential care facilities and nursing facilities by striking a requirement that facilities with fire and water pumps have backup emergency electric service. Facilities attempting to upgrade their sprinkler systems during renovations or major new construction have indicated that installation of an emergency electric service (backup generator) is cost-prohibitive. Further, the Department has learned that Iowa is the only state that requires a fire pump to have an emergency backup generator. Most states simply adopt the requirements of the National Fire Protection Association (NFPA) Standard 20, which requires a fire pump to have a secondary source if the local utility or primary power source is deemed unreliable.

The Department has received several waiver requests from these rules within the past several months. As part of the waiver request review process, the State Fire Marshal's office was consulted. The Department has been informed that neither 661—Chapter 205 nor the 2000 edition of the Life Safety Code requires emergency electric service to be provided for fire pumps.

According to the Continental Fire Sprinkler Company, most nursing facility fires start in a room where only four sprinkler heads are required to extinguish the fire, and a system without a fire pump has enough water pressure to activate the sprinkler system. Based on input from the Iowa Health Care Association, the State Fire Marshal's office, and the Continental Fire Sprinkler Company, the Department has determined that resident safety would not be compromised by the adopted amendments.

These amendments were initially reviewed by the State Board of Health at its January 10, 2007, meeting. The Board approved the amendments at its March 14, 2007, meeting.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 14, 2007, as **ARC 5713B**.

No comments were received on the adopted amendments, which are identical to those published under Notice of Intended Action.

These amendments will become effective May 16, 2007.

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135C.14.

The following amendments are adopted.

ITEM 1. Amend subrule **60.12(6)**, paragraph **"f,"** as follows:

f. Emergency electric service shall be provided to the distribution system for equipment essential to life safety and for the protection of important equipment or vital materials as follows:

(1) Call board; (III)

(2) Alarm system, including fire alarm actuated at manual stations~~,~~*;* water flow alarm devices or sprinkler systems, where electrically operated~~,~~*;* fire detection and smoke-detecting systems~~,~~*;* paging or speaker systems ~~where~~ intended for issuing instructions during emergency conditions~~,~~*;* and alarms required for nonflammable medical gas systems, where installed; (III)

~~(3) Fire and water pumps, where installed; (III)~~

~~(4)~~ *(3)* Sewage and sump lift pump, where installed; (III)

~~(5)~~ *(4)* All required duplex receptacles in resident corridors; (III)

~~(6)~~ *(5)* One elevator; (III) (Exception 4)

~~(7)~~ *(6)* Equipment, such as burners and pumps, necessary for operation of one or more boilers and their necessary auxiliaries and controls required for heating and sterilization; (III) *and*

~~(8)~~ *(7)* Equipment necessary for maintaining telephone service. (III)

ITEM 2. Amend subrule **61.12(10)**, paragraph **"e,"** as follows:

e. Emergency electric service shall be provided to the distribution system for equipment essential to life safety and to protect vital equipment or materials as follows:

(1) Call board; (III)

(2) Alarm systems, including fire alarm activated at manual stations~~,~~*;* water flow alarm devices or sprinkler systems, where electrically operated~~,~~*;* fire detection and smoke detection systems~~,~~*;* paging or speaker systems intended for issuing instructions during emergency conditions~~,~~*;* and alarms required for nonflammable medical gas systems, where installed; (III)

~~(3) Fire and water pumps, where installed; (III)~~

~~(4)~~ *(3)* Sewage and sump lift pump, where installed; (III)

~~(5)~~ *(4)* All required duplex receptacles in resident areas; (III)

~~(6)~~ *(5)* One elevator, if required for emergency service; (III)

~~(7)~~ *(6)* Burners and pumps necessary for operation of one or more boilers and their necessary auxiliaries and controls required for heating; (III) and

~~(8)~~ *(7)* Equipment necessary for maintaining telephone service. (III)

[Filed 3/21/07, effective 5/16/07]
[Published 4/11/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/11/07.

ARC 5811B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Examiners for Massage Therapy hereby rescinds Chapter 133, "Continuing Education for Massage Therapists," Iowa Administrative Code, and adopts new Chapter 133 with the same title.

This amendment rescinds Chapter 133 for continuing education and adopts a new Chapter 133 in lieu thereof. The Board has received public comments regarding the need to make the continuing education categories clearer, and the changes to Chapter 133 are in response to those comments.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 3, 2007, as **ARC 5627B**. A

public hearing was held on January 24, 2007, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received.

The amendment was adopted by the Board of Examiners for Massage Therapy on March 6, 2007.

This amendment will become effective May 16, 2007.

This amendment is intended to implement Iowa Code chapters 21, 147, 152C and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [Ch 133] is being omitted. This amendment is identical to that published under Notice as **ARC 5627B**, IAB 1/3/07.

[Filed 3/14/07, effective 5/16/07]
[Published 4/11/07]

[For replacement pages for IAC, see IAC Supplement 4/11/07.]

ARC 5820B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 136C.3, the Department of Public Health hereby amends Chapter 38, "General Provisions for Radiation Machines and Radioactive Materials," Chapter 39, "Registration of Radiation Machine Facilities, Licensure of Radioactive Materials and Transportation of Radioactive Materials," Chapter 40, "Standards for Protection Against Radiation," Chapter 41, "Safety Requirements for the Use of Radiation Machines and Certain Uses of Radioactive Materials," Chapter 42, "Minimum Certification Standards for Diagnostic Radiographers, Nuclear Medicine Technologists, and Radiation Therapists," Chapter 44, "Minimum Requirements for Radon Mitigation," and Chapter 46, "Minimum Requirements for Tanning Facilities," Iowa Administrative Code.

The following paragraphs itemize the adopted changes:

Items 1, 5, 10, and 56 amend the rules to reflect current federal regulations.

Item 2 amends definitions to meet the Conference on Radiation Control Program Directors (CRCPD) suggested state regulations.

Item 3 increases fees to cover the cost of operating the programs. Examination fees are increased because the examination provider increased the provider's fee.

Item 4 removes language that is covered elsewhere in rules governing settlements.

Item 6 amends language to indicate an approved registry rather than individual isotopes.

Items 7, 8, and 9 add language involving nationally tracked sources. Items 7, 8, and 9 meet Nuclear Regulatory Commission (NRC) compatibility requirements.

Item 11 is amended to allow radiologic assistants permitted in Chapter 42 to perform fluoroscopic procedures.

Item 12 adopts new language to add additional protection for individuals required to be in the room during certain fluoroscopic procedures.

Items 13 and 14 add language to allow use of hand-held dental X-ray systems.

Item 15 corrects language that was corrected in previous rule makings that removed the term "quality management program."

Items 16, 17, and 18 correct references.

Items 19 to 40 amend and adopt language to update requirements for fluoroscopic systems in order to meet CRCPD suggested state regulations.

Item 41 adds language for clarification.

Item 42 clarifies the application process for operator certification.

Item 43 corrects a reference.

Items 44, 45, 46, and 47 amend and adopt new requirements for operator continuing education.

Item 48 rescinds language that is incorporated in Item 42 for clarity.

Item 49 amends the time frame for operator certification examinations.

Items 50, 53, and 54 clarify language for operator training programs.

Item 52 rescinds language that is incorporated in Item 51 for clarity.

Item 55 corrects references to radon standards.

Items 57 and 60 allow options for verification of eyewear and cleansing of tanning units.

Item 58 removes the "30 seconds" response requirement and replaces it with "reasonable amount of time" to allow the operators of tanning facilities a greater variety of responses.

Item 59 clarifies what injuries should be reported to the Bureau.

Item 61 adopts new requirements for electronically controlled tanning facilities.

Item 62 removes unnecessary language.

Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on January 31, 2007, as **ARC 5682B**. A public hearing was held on February 22, 2007. Three individuals attended the hearing and presented two sets of verbal comments. Fifty-five sets of written comments were received and reviewed, and changes were incorporated as appropriate. The changes made from the Notice of Intended Action are as follows:

1. In Item 11, the proposed words "or a licensed registered nurse who is registered as an advanced registered nurse practitioner pursuant to Iowa Code chapter 152" were not adopted and will be further reviewed based on comments from the regulated community.
2. In Item 12, language was added to allow individuals who are in the room for only a short period of time to be exempt from the requirement to wear a protective apron as long as good protection measures are followed. This change was a recommendation from the regulated community.
3. In Item 44, the term "hands-on" in new subparagraph (6) was removed. Hands-on practice is not allowed for continuing education credit, and this wording was misleading.
4. Language adding a continuing education requirement for a new operator category (Item 44 in the Notice) was not adopted and will be further reviewed based on the comments from the regulated community.
5. Language to clarify who can operate CT, PET/CT, or SPECT/CT equipment (Item 50 in the Notice) was not adopted and will be further reviewed based on the comments from the regulated community.
6. Language adding new requirements for CT technologists (Item 52 in the Notice) was not adopted and will be further reviewed based on the comments from the regulated community.

The State Board of Health adopted these amendments on March 14, 2007.

These amendments will become effective May 16, 2007.

These amendments are intended to implement Iowa Code chapters 136B, 136C, and 136D.

The following amendments are adopted.

ITEM 1. Amend subrule 38.1(2) as follows:

38.1(2) All references to Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~May 3, 2006~~ *April 30, 2007*.

ITEM 2. Amend rule **641—38.2(136C)**, definitions of "prescribed dose," "primary dose monitoring system," "protective barrier," "radiation detector," and "target-to-skin distance (TSD)," as follows:

"Prescribed dose" means:

1. For gamma stereotactic radiosurgery, the total dose as documented in the written directive;

2. For teletherapy, particle accelerators and X-ray *therapy* systems, the total dose and dose per fraction as documented in the written directive;

3. For manual brachytherapy, either the total source strength and exposure time or the total ~~doses~~ *dose*, as documented in the written directive; or

4. For remote brachytherapy afterloaders, the total dose and dose per fraction as documented in the written directive.

"Primary dose monitoring system" means a system which will monitor the useful beam during irradiation and which will terminate irradiation when a preselected number of dose monitor units have been ~~acquired~~ *delivered*.

"Protective barrier" means a barrier used to reduce radiation exposure. The types of protective barriers are as follows:

1. "Primary protective barrier" means the material, excluding filters, placed in the useful beam~~, for protection purposes, to reduce the radiation exposure~~.

2. "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to the required degree.

"Radiation detector" means a device which, in the presence of radiation, *by either direct or indirect means*, provides a signal or other indication suitable for use in measuring one or more quantities of incident radiation.

"Target-to-skin distance (TSD)" means the distance measured along the beam axis from the center of the front surface of the X-ray target or electron *virtual source* scattering foil to the surface of the irradiated object or patient.

ITEM 3. Amend subrule **38.8(6)** as follows:

Amend paragraph **"a"** as follows:

a. Annual fee. Each individual must submit a ~~$ 45~~ *60* initial fee for the first year and ~~$35~~ *50* annually. These fees are nonrefundable.

Amend paragraph **"b"** as follows:

b. Examination fee.

~~(1)~~ Each individual making application to take an examination given by the agency as a *limited or general nuclear medicine technologist, limited or general radiation therapist, or limited or* general diagnostic radiographer~~, or general radiation therapist~~ as defined in 641—Chapter 42~~,~~ must pay a nonrefundable fee of ~~$80~~ *110* each time the individual takes the examination required by 641—Chapter 42.

~~(2) Each individual making application to take an examination given by the agency as a limited diagnostic radiographer, limited nuclear medicine technologist, or limited radiation therapist as defined in 641—Chapter 42 must pay a nonrefundable fee of $85 each time the individual takes the examination required by 641—Chapter 42.~~

~~(3) Each individual making application to take an examination given by the agency as a general nuclear medicine technologist as defined in 641—Chapter 42 must pay a nonrefundable fee of either $80 or $160, depending upon the testing organization chosen.~~

ITEM 4. Amend subrule 38.9(4) as follows:

38.9(4) Settlement and compromise. At any time after the issuance of an order designating the time and place of hearing in a proceeding to modify, suspend, or revoke an authorization, the staff and a regulated entity may enter into a stipulation for the settlement of the proceeding or the compromise of a civil penalty. ~~The stipulation or compromise shall be subject to approval by the designated presiding officer or, if none has been designated, by the chief administrative law judge, according due weight to the position of the staff. The presiding officer, or if none has been designated, the chief administrative law judge, may order such adjudication of the issues as deemed to be required in the public interest to dispose of the proceeding. If approved, the terms of the settlement or compromise shall be embodied in a decision or order settling and discontinuing the proceeding.~~

ITEM 5. Amend subrule 39.1(3) as follows:

39.1(3) All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~May 3, 2006~~ *April 30, 2007*.

ITEM 6. Amend subrule **39.4(22)**, paragraph **"d,"** subparagraph **(3)**, numbered paragraph **"13,"** first bulleted paragraph, as follows:

- Shall register devices ~~containing at least 10 mCi (370 MBq) of cesium-137, 0.1 mCi (3.7 MBq) of strontium-90, 1 mCi (37 MBq) of cobalt-60, 1 mCi (37 MBq) of americium-241, .01 mCi (.37 MBq) of radium-226, or 1 mCi (37 MBq) of any other transuranic (i.e., element with atomic number greater than uranium (92)), or 1000 times the activity indicated in Appendix B of 641—Chapter 39 (excluding hydrogen-3), based on the activity indicated on the label~~ *as approved in the Sealed Source Device Registry.* Each address for a location of use, as described in 39.4(22)"d"(3)"13," represents a separate general licensee and requires a separate registration and fee;

ITEM 7. Amend subrule **40.2(2)** by adopting the following **new** definition in alphabetical order:

"National tracked source" means a sealed source containing a quantity equal to or greater than Category 1 or Category 2 levels of any radioactive material listed in Appendix H of this chapter. In this context a "sealed source" is defined as radioactive material that is sealed in a capsule or closely bonded in a solid form and that is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold.

ITEM 8. Adopt the following **new** rule 641—40.99(136C):

641—40.99(136C) Reports of transactions involving nationally tracked sources. Each licensee who manufactures, transfers, receives, disassembles, or disposes of a nationally tracked source shall complete and submit a National Source Tracking Transaction Report as specified in subrules 40.99(1) to 40.99(5) for each type of transaction.

40.99(1) Each licensee that manufactures a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:

a. The name, address, and license number of the reporting licensee;

b. The name of the individual preparing the report;

c. The manufacturer, model, and serial number of the source;

d. The radioactive material in the source;

e. The initial source strength in becquerels (curies) at the time of manufacture; and

f. The manufacture date of the source.

40.99(2) Each licensee that transfers a nationally tracked source to another person shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:

a. The name, address, and license number of the reporting licensee;

b. The name of the individual preparing the report;

c. The name and license number of the recipient facility and the shipping address;

d. The manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

e. The radioactive material in the source;

f. The initial or current source strength in becquerels (curies);

g. The date for which the source strength is reported;

h. The shipping date;

i. The estimated arrival date; and

j. For nationally tracked sources transferred as waste under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification with the nationally tracked source.

40.99(3) Each licensee that receives a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:

a. The name, address, and license number of the reporting licensee;

b. The name of the individual preparing the report;

c. The name, address, and license number of the person that provided the source;

d. The manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

e. The radioactive material in the source;

f. The initial or current source strength in becquerels (curies);

g. The date for which the source strength is reported;

h. The date of receipt; and

i. For material received under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification with the nationally tracked source.

40.99(4) Each licensee that disassembles a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:

a. The name, address, and license number of the reporting licensee;

b. The name of the individual preparing the report;

c. The manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

d. The radioactive material in the source;

e. The initial or current source strength in becquerels (curies);

f. The date for which the source strength is reported; and

g. The disassemble date of the source.

40.99(5) Each licensee that disposes of a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:

a. The name, address, and license number of the reporting licensee;

b. The name of the individual preparing the report;

c. The waste manifest number;

d. The container identification with the nationally tracked source;

e. The date of disposal; and

f. The method of disposal.

40.99(6) Reports discussed in subrules 40.99(1) to 40.99(5) must be submitted by the close of the next business day after the transaction. A single report may be submitted for multiple sources and transactions. The reports must be submitted to the National Source Tracking System by using:

a. The on-line National Source Tracking System;

b. Electronically using a computer-readable format;

c. By facsimile;

d. By mail to the address on the National Source Tracking Transaction Report Form (NRC Form 748); or

e. By telephone with follow-up by facsimile or mail.

40.99(7) Each licensee shall correct any error in previously filed reports or file a new report for any missed transaction within five business days of the discovery of the error or missed transaction. Such errors may be detected by a variety of methods such as administrative reviews or by physical inventories required by regulation. In addition, each licensee shall reconcile the inventory of nationally tracked sources possessed by the licensee against that licensee's data in the National Source Tracking System. The reconciliation must be conducted during the month of January in each year. The reconciliation process must include resolving any discrepancies between the National Source Tracking System and the actual inventory by filing the reports identified by subrules 40.99(1) to 40.99(5). By January 31 of each year, each licensee must submit to the National Source Tracking System confirmation that the data in the National Source Tracking System is correct.

40.99(8) Each licensee that possesses Category 1 nationally tracked sources shall report its initial inventory of Category 1 nationally tracked sources to the National Source Tracking System by November 15, 2007. Each licensee that possesses Category 2 nationally tracked sources shall report its initial inventory of Category 2 nationally tracked sources to the National Source Tracking System by November 30, 2007. The information may be submitted by using any of the methods identified in subrule 40.99(6). The initial inventory report must include the following information:

a. The name, address, and license number of the reporting licensee;

b. The name of the individual preparing the report;

c. The manufacturer, model, and serial number of each nationally tracked source or, if not available, other information to uniquely identify the source;

d. The radioactive material in the sealed source;

e. The initial or current source strength in becquerels (curies); and

f. The date for which the source strength is reported.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 9. Amend **641—Chapter 40** by adopting **new** Appendix H as follows:

APPENDIX H
NATIONALLY TRACKED SOURCE THRESHOLDS

The Terabecquerel (TBq) values are the regulatory standard. The curie (Ci) values specified are obtained by converting from the TBq value. The curie values are provided for practical usefulness only and are rounded after conversion.

Radioactive Material	Category 1 (TBq)	Category 1 (Ci)	Category 2 (TBq)	Category 2 (Ci)
Actinium-227	20	540	0.2	5.4
Americium-241	60	1,600	0.6	16.0
Americium-241/Be	60	1,600	0.6	16.0
Californium-252	20	540	0.2	5.4
Cobalt-60	30	810	0.3	8.1
Curium-244	50	1,400	0.5	15.0
Cesium-137	100	2,700	1.0	27.0
Gadolinium-153	1,000	27,000	10.0	270.0
Iridium-192	80	2,200	0.8	22.0
Plutonium-238	60	1,600	0.6	16.0
Plutonium-239/Be	60	1,600	0.6	16.0
Polonium-210	60	1,600	0.6	16.0
Promethium-147	40,000	1,100,000	400.0	11,000.0
Radium-226	40	1,100	0.4	11.0
Selenium-75	200	5,400	2.0	54.0
Strontium-90	1,000	27,000	10.0	270.0
Thorium-228	20	540	0.2	5.4
Thorium-229	20	540	0.2	5.4
Thulium-170	20,000	540,000	200.0	5,400.0
Ytterbium-169	300	8,100	3.0	81.0

ITEM 10. Amend subrule **41.1(1)**, paragraph **"b,"** as follows:

b. All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~May 3, 2006~~ *April 30, 2007*.

ITEM 11. Amend subrule **41.1(5)**, paragraph **"l,"** subparagraph **(2)**, as follows:

(2) The use of fluoroscopic X-ray systems by radiologic technologists and students shall be performed under the direct supervision of a licensed practitioner of the healing arts for the purpose of localization to obtain images for diagnostic purposes. *The use of fluoroscopic X-ray systems by radiologic assistants shall be as defined in 641—42.6(136C).*

ITEM 12. Amend subrule **41.1(5)** by adopting **new** paragraph **"m"** as follows:

m. Additional requirements for stationary fluoroscopic systems used for cardiac catheterization procedures.

(1) Protective barriers shall be available for use by individuals whose presence is required in the room during activation of the X-ray tube(s). If a protective barrier includes or consists of a transparent viewing panel, the viewing panel shall afford protection of not less than 0.5 millimeter of lead equivalent.

(2) Protective aprons of not less than 0.25 millimeter of lead equivalent shall be worn in the fluoroscopy room by all individuals (except the patient). Any individual required to be in the room for short periods of time may not be required to wear a protective apron if exposure levels below minimum as seen on film badge reports can be verified. Individuals not using protective aprons should follow ALARA by using time and distance to reduce exposure. Any declared pregnant individual must meet the requirements of 641—40.22(136C).

ITEM 13. Amend subrule **41.1(7)**, paragraph **"c,"** subparagraph **(5)**, by adopting **new** numbered paragraph **"3"** as follows:

3. Portable or hand-held dental X-ray systems designed with a backscatter shield may be used without the additional protective barrier, but the operator must wear a protective apron. The operator must stand directly behind the unit to allow the shield to function as designed.

ITEM 14. Amend subrule **41.1(7)** by adopting **new** paragraph **"i"** as follows:

i. Portable or hand-held dental X-ray systems. Portable or hand-held dental X-ray systems designed with a backscatter shield shall:

(1) Be used only where it is impractical to use a portable dental system;

(2) Be used as the manufacturer indicates;

(3) Not be used with the backscatter shield removed, if applicable; and

(4) Be exempted from 41.1(4)"g."

ITEM 15. Amend subrule **41.2(11)**, paragraph **"c,"** subparagraph **(1)**, as follows:

(1) Instruct the supervised individual in the preparation of radioactive material for medical use and the principles of and procedures for radiation safety and in the licensee's written ~~quality management program~~ *procedures for maintaining written directives*, as appropriate to that individual's use of radioactive material;

ITEM 16. Amend subrule 41.2(65), introductory paragraph, as follows:

41.2(65) Training for radiation safety officer. Except as provided in ~~41.2(66)~~ *41.2(75)*, the licensee shall require an individual fulfilling the responsibilities of the radiation safety officer as provided in 41.2(8) to be an individual who:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 17. Amend subrule 41.2(67), introductory paragraph, as follows:

41.2(67) Training for uptake, dilution, and excretion studies. Except as provided in 41.2(75) *and 41.2(76)*, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under 41.2(31) to be a physician who:

ITEM 18. Amend subrule 41.2(68), introductory paragraph, as follows:

41.2(68) Training for imaging and localization studies. Except as provided in *41.2(75) and* 41.2(76), the licensee shall require the authorized user of unsealed radioactive material specified in 41.2(33) to be a physician who:

ITEM 19. Amend subrule **41.3(2)**, definitions of "moving beam radiation therapy" and "nominal treatment distance," as follows:

"Moving beam radiation therapy" means radiation therapy with continuous displacement of one or more mechanical axes relative to the patient during irradiation. It includes arc therapy, skip therapy, conformal therapy, *intensity modulation,* and rotational therapy.

"Nominal treatment distance" means:

1. For electron irradiation, the distance from the scattering foil, *virtual source,* or exit window~~,~~ of the electron beam to the entrance surface of the irradiated object along the central axis of the useful beam.

2. For X-ray irradiation, *the virtual source or* target to isocenter distance along the central axis of the useful beam. For nonisocentric equipment, this distance shall be that specified by the manufacturer.

ITEM 20. Amend subrule **41.3(5)** by adopting **new** paragraph **"g"** as follows:

g. A physician shall not act as an authorized user for any therapeutic radiation machine until such time as said physician's training has been reviewed and approved by the registrant.

ITEM 21. Amend subrule 41.3(8) as follows:

41.3(8) Written safety procedures and rules shall be developed by a radiation therapy physicist and shall be available in the control area of a therapeutic radiation machine, including any restrictions required for the safe operation of the particular therapeutic radiation machine. *The operator shall be able to demonstrate familiarity with these rules. All individuals associated with the operation of a therapeutic radiation machine shall be instructed in and shall comply with procedures for maintaining written directives.*

ITEM 22. Amend subrule 41.3(10) as follows:

41.3(10) Records of visiting authorized users. Notwithstanding the provisions of 41.3(5), a registrant may permit any physician to act as a visiting authorized user *for up to 60 days per calendar year* under the following conditions:

a. The *visiting* authorized user has the prior written permission of the registrant's management *and,* if the use occurs on behalf of an institution, *the institution's radiation safety committee;* ~~and~~

b. The visiting authorized user meets the requirements of 41.3(5); and

~~b~~ *c.* The registrant maintains copies of all records specified in 41.3(5) for five years from the date of the last visit.

ITEM 23. Amend subrule 41.3(11), introductory paragraph, as follows:

41.3(11) Information and maintenance record and associated information. The registrant shall maintain the following information *in a separate file or package* for each therapeutic radiation machine for inspection by the agency:

ITEM 24. Amend subrule **41.3(16)**, paragraph **"a,"** subparagraph **(2)**, as follows:

(2) In addition to the requirements of 41.3(16)"a"(1), a radiation protection survey shall also be performed prior to *any subsequent* medical use and:

1. After making any change in the treatment room shielding;

2. After ~~installing or relocating~~ *making any change in the location* of the therapeutic radiation machine *within the treatment room*;

3. After relocating the therapeutic radiation machine; or

~~3~~ *4.* Before using the therapeutic radiation machine in a manner that could result in increased radiation levels in areas outside the external beam radiation therapy treatment room.

ITEM 25. Amend subrule **41.3(17)**, paragraph **"d,"** subparagraph **(9)**, numbered paragraph **"2,"** as follows:

2. ~~Proper operation of the~~ *The* "BEAM-ON" and termination switches;

ITEM 26. Amend subrule **41.3(17)**, paragraph **"e,"** by adopting **new** subparagraph **(6)** as follows:

(6) The therapeutic radiation machine shall not be used for irradiation of patients unless the requirements of 41.3(17)"c" and "d" have been met.

ITEM 27. Amend subrule **41.3(18)**, paragraph **"a,"** subparagraph **(2)**, numbered paragraph **"2,"** first bulleted paragraph, as follows:

- A maximum of 2 percent *and average of 0.5 percent* of the absorbed dose on the central axis of the useful beam at the nominal treatment distance. This limit shall apply beyond a line seven centimeters outside the periphery of the useful beam; and

ITEM 28. Amend subrule **41.3(18)**, paragraph **"a,"** subparagraph **(4)**, numbered paragraph **"2,"** as follows:

2. If the absorbed dose rate information required by 41.3(18)"a"(9) relates exclusively to operation with a field-flattening *filter* or beam-scattering ~~filter~~ *foil* in place, such filter *or foil* shall be removable only by the use of tools;

ITEM 29. Amend subrule **41.3(18)**, paragraph **"a,"** subparagraph **(4)**, numbered paragraph **"3,"** third bulleted paragraph, as follows:

- A display shall be provided at the treatment control panel showing the wedge filter(s), *interchangeable field-flattening filter(s), and interchangeable beam-scattering foil(s) in use*; and

ITEM 30. Amend subrule **41.3(18)**, paragraph **"a,"** subparagraph **(7)**, numbered paragraph **"1,"** as follows:

1. Bent-beam linear accelerators *with beam-flattening filter(s)* subject to 41.3(18) shall be provided with auxiliary device(s) to monitor beam symmetry;

ITEM 31. Amend subrule **41.3(18)**, paragraph **"a,"** subparagraph **(8)**, by adopting **new** numbered paragraph **"4"** as follows:

4. Irradiation shall not be possible until a new selection of a number of dose monitor units has been made at the treatment control panel.

ITEM 32. Amend subrule **41.3(18)**, paragraph **"a,"** subparagraph **(15)**, by adopting **new** numbered paragraph **"4"** as follows:

4. For equipment manufactured after July 9, 1997, the selection of energy shall be in compliance with International Electrotechnical Commission (IEC) Document 60601-2-1.

ITEM 33. Amend subrule **41.3(18)**, paragraph **"a,"** subparagraph (**16**), numbered paragraph **"1,"** as follows:

1. Irradiation shall not be possible until a selection of stationary beam radiation therapy or ~~rotational arc~~ *moving beam* radiation therapy has been made at the treatment control panel;

ITEM 34. Amend subrule **41.3(18)**, paragraph **"a,"** subparagraph **(16)**, numbered paragraph **"5,"** first and third bulleted paragraphs, as follows:

- An interlock system shall be provided to terminate irradiation if the number of dose monitor units delivered in any ten degrees of rotation *or one centimeter of linear motion* differs by more than 20 percent from the selected value;
- An interlock shall be provided to prevent motion of more than five degrees *or one centimeter* beyond the selected limits during moving beam radiation therapy;

ITEM 35. Amend subrule **41.3(18)**, paragraph **"e,"** as follows:

e. ~~Full~~ *Acceptance testing, commissioning, and full* calibration measurements.

(1) ~~Full~~ *Acceptance testing, commissioning, and full* calibration of a therapeutic radiation machine subject to 41.3(18) shall be performed by, or under the direct supervision of, a radiation therapy physicist:

1. ~~Before~~ *Acceptance testing and commissioning shall be performed in accordance with "AAPM Code of Practice for Radiotherapy Accelerators: AAPM Report No. 47," prepared by Radiation Therapy Task Group 45, and the manufacturer's contractual specifications and shall be conducted before* the first medical use following installation or reinstallation of the therapeutic radiation machine;

2. Full calibration shall include measurement of all parameters listed in Appendix D of 641—Chapter 41 *and shall be performed in accordance with "AAPM Code of Practice for Radiotherapy Accelerators: AAPM Report No. 47," prepared by Radiation Therapy Task Group 45*. Although it shall not be necessary to complete all elements of a full calibration at the same time, all parameters (for all energies) shall be completed at intervals not to exceed 12 calendar months, unless a more frequent interval is required by this agency.

3. ~~Before medical use under the following conditions~~ *The radiation therapy physicist shall perform all elements of a full calibration necessary to determine that all parameters are within acceptable limits*:

- Whenever quality assurance check measurements indicate that the radiation output differs by more than 5 percent from the value obtained at the last full calibration and the difference cannot be reconciled. Therapeutic radiation machines with multienergy or multimode capabilities or both shall only require measurements for those modes or energies that are not within their acceptable range; and
- Following any component replacement, major repair, or modification of components that could significantly affect the characteristics of the radiation beam. If the repair, replacement or modification does not affect all modes or energies, ~~full calibration~~ *measurements* shall be performed on the ~~effected~~ *affected* mode/energy that is in most frequent clinical use at the facility. The remaining energies/modes may be validated with quality assurance check procedures against the criteria in 41.3(18)"e"(1)"3."

(2) The registrant shall use the dosimetry system described in 41.3(16)"c" to measure the radiation output for one set of exposure conditions.

(3) The registrant shall maintain a record of each calibration *in an auditable form* for the duration of the registration. The record shall include the date of the calibration, the manufacturer's name, model number, and serial number for the therapeutic radiation machine, the model numbers and serial numbers of the instruments used to calibrate the therapeutic radiation machine, and the signature of the radiation therapy physicist responsible for performing the calibration.

ITEM 36. Amend subrule **41.3(18)**, paragraph **"f,"** subparagraph **(5)**, numbered paragraphs **"2"** and **"3,"** as follows:

2. If all quality assurance check parameters appear to be within their acceptable range, the quality assurance check shall be reviewed and signed by either the authorized user or radiation therapy physicist within ~~seven working~~ *three treatment* days; and

3. The radiation therapy physicist shall review and sign the results of each radiation output quality assurance check ~~within 20 working days of completion~~ *at intervals not to exceed one month*.

ITEM 37. Amend subrule **41.3(18)**, paragraph **"f,"** subparagraph **(7)**, by adopting **new** numbered paragraph **"7"** as follows:

7. At least one emergency power cutoff switch. If more than one emergency power cutoff switch is installed and not all switches are tested at once, each switch shall be tested on a rotating basis. Safety quality assurance checks of the emergency power cutoff switches may be conducted at the end of the treatment day in order to minimize possible stability problems with the therapeutic radiation machine;

ITEM 38. Rescind and reserve subrule **41.3(18)**, paragraph **"f,"** subparagraph **(8)**.

ITEM 39. Amend rule 641—41.3(136C) by adopting **new** subrule 41.3(20) as follows:

41.3(20) Calibration of survey instruments.

a. The registrant shall ensure that the survey instruments used to show compliance with 645—41.3(136C) have been calibrated before first use, at intervals not to exceed 12 months, and following repair.

b. To satisfy the requirements of 41.3(20), the registrant shall:

(1) Calibrate all required scale readings up to 1000 mrem (10 mSv) per hour with an appropriate radiation source that is traceable to the National Institute of Standards and Technology (NIST);

(2) Calibrate at least two points on each scale to be calibrated. These points should be at approximately 1/3 and 2/3 of full scale;

(3) Consider a point as calibrated if the indicated dose rate differs from the calculated dose rate by not more than 10 percent; and

(4) Consider a point as calibrated if the indicated dose rate differs from the calculated dose rate by not more than 20 percent if a correction factor or graph is conspicuously attached to the instrument.

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c. The registrant shall retain a record of each calibration required in 41.3(20) for three years. The record shall include:

(1) A description of the calibration procedure; and

(2) A description of the source used and the certified dose rates from the source, and the rates indicated by the instrument being calibrated, the correction factors deduced from the calibration data, the signature of the individual who performed the calibration, and the date of calibration.

d. The registrant may obtain the services of individuals licensed by this agency, the U.S. Nuclear Regulatory Commission, an agreement state, or a licensing state to perform calibrations of survey instruments. Records of calibrations that contain information required in 41.3(20) shall be maintained by the registrant.

ITEM 40. Amend **641—Chapter 41**, **Appendix E**, **Part V**, by adopting **new** paragraph **"D"** as follows:

D. NCRP Report 144, "Radiation Protection for Particle Accelerator Facilities" (2003).

ITEM 41. Amend subrule **42.1(2)**, definition of "continuing education course," as follows:

"Continuing education course" means a planned program of continuing education having sufficient scope and depth of a given subject area directly related to the field *of diagnostic radiography, nuclear medicine, or radiation therapy* to form an educational unit that is planned, coordinated, administered, and evaluated in terms of educational ~~objects~~ *objectives* and *that* provides a defined level of knowledge or specific performance skill. This concept involves the organized presentation of a body of knowledge so that the subject matter is comprehensively covered in sufficient detail to meet the educational objectives of the course.

ITEM 42. Amend subrule 42.2(1) as follows:

42.2(1) ~~Minimum eligibility requirements.~~ *Application process. Any individual seeking certification under 641—Chapter 42 shall:*

a. Meet minimum eligibility requirements:

~~a.~~ *(1)* Graduation from high school or its equivalent.

~~b.~~ *(2)* Attainment of 18 years of age.

~~c.~~ *(3)* Ability to adequately perform necessary duties without constituting a hazard to the health or safety of patients or operators.

b. Satisfactorily complete an agency-approved training program.

c. Satisfactorily complete an agency-approved examination.

d. Upon completion of "b" and "c," apply to the agency for a permit to practice, and pay the fees as specified in 641—subrule 38.8(6).

e. Submit an annual renewal application which includes the fees specified in 641—subrule 38.8(6).

f. Report continuing education as required in 42.2(3).

g Post the permit at the individual's place of employment.

h. Work only under the supervision of a licensed practitioner as defined in 641—38.2(136C).

i. Submit a written report of any misdemeanor or felony, any disciplinary action brought against the individual in connection with a certificate or license issued from a certifying or licensing entity, or any disciplinary action brought against the individual by an employer or patient.

ITEM 43. Amend subrule **42.2(2)**, paragraph **"j,"** as follows:

j. Violating any of the rules of 641—Chapters 38 to ~~41~~ *42*.

ITEM 44. Amend subrule **42.2(3)**, paragraph **"b,"** as follows:

Amend subparagraphs **(2)**, **(3)**, and **(5)** as follows:

(2) Following its review, the agency ~~may~~ *will*, in consultation with or under predetermined guidance of the technical advisory committee, approve, disapprove, or request additional information on the proposed course.

(3) The agency may~~, from time to time,~~ audit ~~the~~ *any* continuing education course to verify the adequacy of program content and delivery.

(5) No continuing education credit is approved for passing ~~a~~ *an initial* certification examination~~,~~ *or for basic CPR*, hands-on practice, ~~or~~ mandatory abuse reporting, ultrasound or MRI courses that are less than 50 percent directly related to radiography, *nuclear medicine, or radiation therapy.*

Adopt **new** subparagraphs **(6)** and **(7)** as follows:

(6) One-half hour of credit will be granted for each hour of formal demonstration by the application specialist. Content must be company-specific but not site-specific. Credit is limited to 50 percent of the total hours required.

(7) Courses will be approved for a three-year period and may be given anytime within the three-year period.

ITEM 45. Amend subrule **42.2(3)**, paragraph **"c,"** by adopting **new** subparagraphs **(4)**, **(5)**, and **(6)**:

(4) Who complete 12.0 hours of tumor boards each two-year reporting period. Tumor board credit is limited to general radiographers, nuclear medicine technologists, and radiation therapists.

(5) Who complete all credit hours in self-studies. A self-study may not be repeated in subsequent reporting periods.

(6) Who pass an advanced ARRT certification examination in a permit-related area. Twenty-four hours will be granted.

ITEM 46. Amend subrule **42.2(3)**, paragraph **"g,"** subparagraphs **(2)** and **(3)**, as follows:

(2) Any individual who fails to complete the required continuing education before the continuing education due date but submits a written plan of correction to obtain the required hours *plus 3.0 additional penalty hours for limited technologists and 6.0 additional penalty hours for general technologists* and the fee required in 641—paragraph 38.8(6)"c" shall be allowed no more than 60 days after the original continuing education due date to complete the plan of correction *and additional penalty hours* and submit the documentation of completion of continuing education requirements. After 60 days, the certification shall be terminated and the individual shall not function as a diagnostic radiographer, radiation therapist, or nuclear medicine technologist in Iowa.

(3) Once certification has been terminated, any individual who requests permission to reestablish certification within six months of the initial continuing education due date must submit proof of continuing education hours *plus penalty hours* and shall submit a late fee as set forth in 641—paragraph 38.8(6)"c" in addition to the annual fee set forth in 641—paragraph 38.8(6)"a" in order to obtain reinstatement of certification.

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ITEM 47. Amend subrule **42.2(4)**, paragraph **"a,"** subparagraphs **(1)** and **(3)**, as follows:

(1) Any individual who wishes to regain certification and makes application within six months of the termination date will be allowed to do so with no additional training or testing required *but must complete any delinquent continuing education*.

(3) Any individual who has not renewed certification for at least ~~five~~ *two* years and wants to regain certification, or who has not applied for certification within ~~five~~ *two* years of the completion date of the original training course, will need to complete a recertification program approved by the department of not less than 24 contact hours for general certifications and 12 contact hours for limited certifications which specifically applies to the area of certification.

ITEM 48. Rescind and reserve subrule **42.2(5)**.

ITEM 49. Amend subrule 42.2(8) as follows:

42.2(8) Examinations. All individuals seeking certification under 641—Chapter 42 must pass a written examination ~~within six months of the date of the initial certification. The temporary six-month permit will be issued to allow the~~ *before the permit can be issued. The* individual *is allowed* to practice under *the direct* supervision of a licensed practitioner, an authorized user listed on a radioactive materials license, or a permitted individual with the permit in the same or higher category *until the permit is issued provided the test is pending*. ~~The individual will be issued an annual permit upon passing the examination.~~ *Individuals who fail the examination three times will be required to satisfactorily complete the training course again.*

ITEM 50. Amend subrule **42.3(1)**, paragraph **"a,"** introductory paragraph, as follows:

a. General diagnostic radiographer. Successful completion of a Joint Review Committee on Education in Radiologic Technology approved course of study, *certification by the American Registry of Radiologic Technologists or the American Registry of Clinical Radiography Technologists,* or equivalent *agency-approved training courses designed* to prepare the student to demonstrate competency in the following areas:

ITEM 51. Rescind subrule **42.3(1)**, paragraph **"d,"** and adopt the following **new** paragraph **"d"** in lieu thereof:

d. Graduates of programs recognized by the Iowa department of public health in consultation with the professional societies and boards of examiners for appropriate courses of study in diagnostic radiography will be considered to meet the requirements of this rule.

ITEM 52. Rescind and reserve subrule **42.3(2)**.

ITEM 53. Amend subrule **42.4(2)**, paragraph **"a,"** introductory paragraph, as follows:

a. General nuclear medicine technologist. Successful completion of a Joint Review Committee on Educational Programs in Nuclear Medicine approved course of study or equivalent *agency-approved training courses* designed to prepare the student to demonstrate competency in the following:

ITEM 54. Amend subrule **42.5(2)**, paragraph **"a,"** as follows:

a. General radiation therapist. Successful completion of a Joint Committee on Education in Radiologic Technology approved course of study or equivalent *agency-approved training courses* designed to prepare the student to demonstrate didactic and clinical competency in radiation therapy including, but not limited to, anatomy, physiology, radiation physics, radiation protection and exposure, quality assurance, radiation oncology treatment techniques, dosimetry, radiation oncology and pathology, radiology, oncologic patient care and management.

ITEM 55. Amend subrule **44.3(4)**, paragraph **"c,"** as follows:

c. The credentialed person shall comply with department standards and all the requirements as stated in EPA's Radon Mitigation Standards (RMS) EPA 402-R-93-078, October 1993 (Revised April 1994) and ASTMI E2121. ~~(NOTE: EPA has incorporated E2121 by reference and retained EPA's Radon Mitigation Standards (RMS) in effect until at least 2007), and must comply with EPA's Radon Mitigation Standards (RMS) EPA 402-R-93-078, October 1993 (Revised April 1994) and ASTMI E2121, which states that all~~ *All* "shoulds" *in the above document* ~~are~~ *shall be* "shalls" according to department standards.

ITEM 56. Amend rule **641—46.1(136D)**, first unnumbered paragraph, as follows:

All references to Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~May 5, 2004~~ *April 30, 2007*.

ITEM 57. Amend subrule **46.5(8)**, paragraph **"d,"** as follows:

d. A tanning facility operator shall not allow a consumer to use a tanning device if that consumer does not use the protective eyewear required by this subrule. *To verify that a consumer has the proper eyewear, the operator must:*

(1) Ask to see the eyewear before the consumer enters the tanning room; or

(2) Provide disposable eyewear in the tanning room at all times.

ITEM 58. Amend subrule **46.5(9)**, paragraph **"a,"** subparagraph **(2)**, as follows:

(2) The operator *or emergency personnel* can reach the consumer within ~~30 seconds~~ *a reasonable amount of time* after being summoned.

ITEM 59. Amend subrule **46.5(9)**, paragraph **"d,"** introductory paragraph, as follows:

d. *Any tanning injury not requiring a physician's care and any resulting changes in tanning sessions shall be noted in the consumer's file.* A written report of any tanning injury *requiring a physician's care* shall be forwarded by the permit holder to the department within five working days of its occurrence or knowledge thereof. The report shall include:

ITEM 60. Amend subrule **46.5(9)**, paragraph **"g,"** as follows:

g. Contact surfaces of tanning devices shall be*:*

(1) ~~cleansed~~ *Cleansed* by the operator with a cleansing agent between each use*;* ~~or~~

(2) ~~the contact surfaces may be covered~~ *Covered* by a nonreusable protective material during each use*; or*

(3) Cleansed by the consumer provided the following conditions are met:

1. The operator instructs the consumer annually on how to properly cleanse the unit;

2. The consumer annually signs a statement stating that the consumer agrees to cleanse the unit after each use;

3. Signs are posted in each tanning room reminding the consumer to cleanse the tanning unit after each use and stating the proper way to cleanse the unit; and

4. The operator cleanses the tanning unit at least once a day.

ITEM 61. Amend rule 641—46.5(136D) by adopting **new** subrule 46.5(12) as follows:

46.5(12) Requirements for electronically controlled facilities. Electronically controlled facilities are those facilities that rely on electronic means to monitor consumers.

a. Entry into the facility is allowed by card only. Two individuals may not enter under the same card. The card is specifically activated for tanning use if the facility offers other activities.

b. Police and all emergency services will have access to the facility through a key box located outside the entrance of the facility.

c. The tanning unit will not activate if the card is not programmed for tanning. The card will not activate if two individuals are in the tanning room.

d. The consumer must sign a tanning agreement that states the number of minutes per session, that the consumer agrees to wear protective eyewear, that the consumer will cleanse the unit after tanning, and that the consumer is aware of the emergency access in each room.

e. The card will be programmed for the number of minutes the consumer is allowed to tan. The card may be reprogrammed for an increase in minutes per session only after the consumer has reviewed and re-signed the Tanning Agreement. After 30 consecutive days without the consumer's accessing the tanning facility, the card will be deactivated and the consumer must reapply to access the tanning unit.

f. The operator will demonstrate to each consumer how to properly cleanse the unit after tanning, including the top, bottom, and handles. A sign will be placed in each room explaining the cleansing process. The operator will cleanse the units at least once a day when they are in use.

g. Free disposable eyewear will be placed in each room along with a sign stating that the disposable eyewear is available and that eyewear must be worn.

h. An emergency call button or device will be placed in each tanning room conveniently located within reach of the tanning bed. This device will call the operator or emergency personnel.

i. During annual inspections, the inspector may ask any consumer about any of the above processes.

ITEM 62. Amend **641—Chapter 46**, **Appendix 2**, as follows:

Appendix 2
SUN-REACTIVE SKIN TYPES USED IN CLINICAL PRACTICE

SKIN TYPE	SKIN REACTIONS TO SOLAR RADIATION[(a)] EXAMPLES	EXAMPLES
I	Always burns easily and severely (painful burn). Tans little or none and peels.	People most often with fair skin, blue eyes, freckles. Unexposed skin is white.
II	Usually burns easily and severely (painful burn). Tans minimally or lightly, also peels.	People most often with fair skin; red or blonde hair; blue, hazel or even brown eyes. Unexposed skin is white.
III	Burns moderately and tans about average.	Normal average Caucasoid. Unexposed skin is white.
IV	Burns minimally, tans easily, and above average with each exposure. Exhibits IPD (immediate pigment darkening) reaction.	People with white or light brown skin, dark skin, dark brown hair, dark eyes. Unexposed skin is brown.
V	Rarely burns, tans easily and substantially. Always exhibits IPD reaction.	~~Brown-skinned person.~~ Unexposed skin is brown.
VI	Never burns and tans profusely; exhibits IPD reaction.	Unexposed skin is black.

(a) Based in the first 45-60 minutes (= 2-3 minimum erythema dose) exposure of the summer sun (early June) at sea level.
(b) Rescinded IAB 3/29/06, effective 5/3/06.

[Filed 3/16/07, effective 5/16/07]
[Published 4/11/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/11/07.

ARC 5825B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby rescinds Chapter 79, "Public Health Nursing," and Chapter 80, "Home Care Aide," adopts new Chapter 80, "Local Public Health Services," and rescinds Chapter 83, "Iowa Senior Health Program," Iowa Administrative Code.

These rules consolidate the rules in rescinded Chapters 79 and 80 into one new chapter. The rules in new Chapter 80 describe the requirements for the local public health services state grant. Local boards of health, boards of supervisors, and local public health agencies will have a single chapter to reference in administering the state grant. This rule making eliminates Chapter 83 because the Iowa Senior Health Program no longer receives a separate appropriation.

Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on January 31, 2007, as **ARC 5683B**. A public hearing to receive public comment was held over the Iowa Communications Network (ICN) on Tuesday, February 20, 2007. Three individuals attended the hearing. Written comments were received from: Black Hawk County Health Department, Adair County Home Care, Mills County Public Health, Buchanan County Health Center, Home Caring Services, Inc., Franklin

County Home Care Service, Bremer County Home Care, Community Health Services of Marion County, Humboldt Home Care Connection, Visiting Nurse Services of Polk County, and Mahaska Health Partnership Community Health. The changes following publication of the Notice of Intended Action were made based on comments received and further internal review. Substantive changes are as follows:

In rule 641—80.2(135), the proposed words "or a referral from the department of human services" in the definition of "protective services" were not adopted.

In paragraph 80.4(5)"a," the following sentence was added: "An authorized agency may consider additional health care-related expenses or resources above $10,000 when determining the consumer fee according to an agency's policy."

In paragraph 80.4(5)"b," the following sentences were added: "The authorized agency shall determine placement on the sliding fee scale before the service begins. The authorized agency shall use payments, based on the sliding fee scale, and donations received from consumers to support essential public health services."

In paragraph 80.4(5)"b," subparagraph (2), the words "and resources of $10,000 or less" were added. In addition, the proposed words "resources and" were removed and replaced with "an" in subparagraphs (1), (2) and (5).

In subrule 80.5(1), the words "unless the agency receives a waiver from the department pending the outcome of the appeal" were added.

In paragraph 80.10(3)"b," the direct care worker chart was revised to show the progression of required training. Under the revised chart, Direct Care Worker I requires the least amount of training and Direct Care Worker V requires the most training, which is opposite from the original publication.

In subrule 80.10(5), a new paragraph "c" was added, which states that an individual who has provided home care aide care coordination and service management prior to June 30, 2007, shall be considered qualified to continue in that position. The grandfathering of current care coordinators and service managers was omitted from the Notice and has been added to the Adopted and Filed rules.

These amendments will become effective July 1, 2007.

These amendments are intended to implement Iowa Code chapter 135.

The following amendments are adopted.

ITEM 1. Rescind and reserve **641—Chapter 79**.

ITEM 2. Rescind 641—Chapter 80 and adopt the following **new** chapter in lieu thereof:

CHAPTER 80
LOCAL PUBLIC HEALTH SERVICES

641—80.1(135) Purpose. The purposes of the local public health services state grant is to assist with assuring core public health functions and delivering essential public health services and to increase the capacity of local boards of health to promote healthy people and healthy communities.

641—80.2(135) Definitions. For the purposes of these rules, the following definitions apply:

"Administrative expense" means the costs incurred which are not identified readily and specifically with a program but which are necessary to the general operations of the authorized agency.

"Appropriation formula" means the method used to distribute the allocations of the state grant to each county.

"Authorized agency" means a contractor or a private nonprofit or governmental organization delivering all or part of the local public health services funded by the local public health services state grant.

"Care coordination" means assessing a consumer's need for care; developing, implementing and updating the plan of care; assigning a direct care worker to the case; assigning direct care worker duties, including specifying the frequency of task performance and the length and frequency of visits; providing referrals and follow-up; coordinating the case, including coordinating interagency and intra-agency communications; and maintaining records and reports.

"Community" means the aggregate of persons with common characteristics such as race, ethnicity, age, or occupation or other similarities such as location.

"Consumer" means an individual, family, or community utilizing essential public health services through the local public health services state grant.

"Contractor" means the local board of health or the county board of supervisors as agreed upon by the local board of health and the county board of supervisors.

"Core public health functions" means the scope of activities which serve as a broad framework for public health agencies. Core public health functions are:

1. Assessment, which means to regularly and systematically collect, assemble, analyze, and make available information on the health of the community, including statistics on health status, community health needs and personal health services and epidemiologic and other studies of health problems.
2. Policy development, which means efforts to serve the public interest in the development of comprehensive public health policies by promoting use of a scientific knowledge base in decision making about public health and by taking the lead in comprehensive public health policy development.
3. Assurance, which means public health efforts to assure constituents that services necessary to achieve agreed-upon goals are provided either by encouraging actions by other entities (private or public sector), by requiring such action through regulation, or by providing services directly.

"Department" means the Iowa department of public health.

"Dependent nursing" means a function requiring the skills of a licensed registered nurse and the order of a physician according to 655—Chapter 6, Iowa Administrative Code.

"Direct care worker" means a trained and supervised individual who provides services, care, and emotional support to consumers.

"Essential public health services" means activities carried out by the authorized agency fulfilling core public health functions. Essential public health services are:

1. Monitoring health status and understanding health issues facing the community.
2. Protecting people from health problems and health hazards.
3. Giving people information they need to make healthy choices.
4. Engaging the community to identify and solve health problems.
5. Developing public health policies and plans.
6. Enforcing public health laws and regulations.
7. Helping people receive health services.
8. Maintaining a competent public health workforce.

9. Evaluating and improving programs and interventions.

10. Contributing to and applying the evidence base of public health.

"Evaluation" means the process to measure the effectiveness of interventions by measuring outcomes against previously established goals and objectives.

"Health promotion" means organizational, economic and environmental supports and education to stimulate healthy behaviors in individuals, groups or communities.

"Income" means all sources of revenue for the consumer and, if applicable, the consumer's spouse.

"Independent nursing" means a function requiring the skills of a licensed registered nurse according to 655—Chapter 6, Iowa Administrative Code.

"Local board of health" means a county, city or district board of health as defined in Iowa Code section 137.2.

"Nonprofit" means an entity meeting the requirements for tax-exempt status under the United States Internal Revenue Code.

"Nursing process" means the steps completed by a skilled licensed registered nurse according to 655—Chapter 6, Iowa Administrative Code.

"Outcome" means an action or event that follows as a result or consequence of the provision of a service or support.

"Outcome measures" means the mathematical expression of the effect of an activity, product, or service on consumers and the public health. Outcome measures are used to determine the extent to which the activity, product, or service has impacted its intended audience and to identify progress toward the achievement of a goal.

"Personal health services" means health services delivered to individuals, including primary care, specialty care, hospital care, emergency care, and rehabilitative care. For the purpose of the local public health services state grant, personal health services include nursing (disease and disability), nursing (health maintenance), home care aide (homemaker), and home care aide (personal care) activities.

"Population-based services" means interventions or activities for a community to promote health and to prevent disease, injury, disability, premature death, and exposure to environmental hazards.

"Poverty" means the level of adjusted income, factoring in resources and income, which is at or below 75 percent of the current federal poverty guidelines.

"Preservice education" means training required prior to assignment.

"Procedures" means the steps to be taken to implement a policy.

"Process" means a service or support provided by an authorized agency to a consumer that will allow the consumer to achieve an outcome. A process may include a written, formal, and consistent trackable method or an informal method that is not written but is trackable.

"Program," for the purposes of the state grant, means local public health services, local board of health services, public health nursing services, and home care aide services.

"Protective services" means interventions or activities for a child or adult to alleviate, protect against, or prevent situations which could lead to abuse or neglect. For the purposes of the local public health services state grant, protective services require an order from the justice system.

"Quality improvement" means a process to review, plan and ensure standards of quality for essential public health services, interventions and activities.

"Resources" means unrestricted assets owned by a consumer and, if applicable, by the consumer's spouse. The place of residence and one vehicle are exempt from consideration of resources.

"Restricted assets" means assets typically involving a penalty for early withdrawal such as IRA accounts, KEOGH accounts, 401(k) accounts, employee retirement accounts, and other deferred tax protected assets involving a penalty for early withdrawal. Restricted assets shall not be considered as a resource in the determination of a consumer's financial liability for services.

"Service management" means recruiting, employing, providing workforce development to, scheduling, supervising and evaluating direct care workers; ensuring the competency of direct care workers; providing quality assurance for the program; and maintaining community relations.

"Sliding fee scale" means a scale of consumer fee responsibility based on an assessment of the consumer's ability to pay all or a portion of the charge for services.

"State grant" means the local public health services state grant, which is the allocation of state funds appropriated annually by the Iowa general assembly for local public health services.

"Unrestricted assets" means assets that can be converted to cash for financial support. Unrestricted assets shall be considered in the determination of a consumer's financial liability for services in the sliding fee calculation.

"Vulnerable population" means individuals or groups in the community who are unable to promote and protect their personal and environmental health.

"Workforce development" means the provision of training relevant to services or tasks assigned to direct care workers to enhance their knowledge and the delivery of essential public health services.

641—80.3(135) Local public health services state grant. The following applies to the state allocation for local public health services, local board of health services, public health nursing services, and home care aide services.

80.3(1) Priority population. The state grant serves all populations, with a priority to serve vulnerable populations in Iowa.

80.3(2) Contractor assurance. In order to receive funding, the contractor shall provide to the department assurance that authorized agencies meet all applicable federal, state, and local requirements. The contractor may directly provide or subcontract all or part of the delivery of services. The contractor shall assure that each authorized agency complies with Title IV of the Civil Rights Act, the Americans with Disabilities Act of 1990 (ADA), and Section 504 of the 1973 Rehabilitation Act and with affirmative action requirements. In addition, the contractor shall assure that each authorized agency has, at a minimum, the following:

a. A governing board.

b. Program policies and procedures, which shall, at a minimum, include:

(1) Admission and discharge.

(2) A consumer appeals process.

(3) Records appropriate to the level of consumer care.

(4) A financial assessment.

(5) A sliding fee scale.

c. Personnel policies and procedures, which shall be reviewed and updated annually and communicated to staff. Personnel policies and procedures shall, at a minimum, include:

(1) Delegation of authority and responsibility for agency administration.

(2) Staff supervision.

(3) A staff training program for the identification and reporting of child and dependent adult abuse to the department pursuant to Iowa Code sections 232.69 and 235B.3.

(4) Conditions of employment including recruitment, selection, termination, promotion and compensation.

(5) A leave of absence policy.

(6) A grievance procedure.

(7) Annual employee performance evaluations.

(8) A nondiscrimination policy.

(9) An employee orientation program.

(10) A provision for career or workforce development.

(11) Fringe benefits.

(12) Employment application forms which comply with civil rights regulations.

(13) Current job descriptions which delineate qualifications, responsibilities and essential functions, reflect current responsibilities, and are dated.

(14) A current salary schedule.

d. Fiscal management, which shall, at a minimum, include:

(1) An annual budget.

(2) Fiscal policies and procedures which follow generally accepted accounting practices.

(3) An annual audit which is performed according to usual and customary accounting principles and practices.

e. A quality improvement plan. The plan shall address annual evaluation of the authorized agency, public health programs, and professional development and shall include:

(1) Written goals, objectives, and performance measures that use appropriate data and are analyzed regularly.

(2) Strategies to monitor program and service compliance with local, state, and federal requirements.

(3) Evidence that programs and services align with community health priorities.

(4) Methods for reporting the outcomes of evaluation to stakeholders.

(5) Steps to determine the cost-effectiveness of programs and services.

641—80.4(135) Billing services to the local public health services state grant. The contractor shall bill public health activities to the state grant based on the identified needs of the community.

80.4(1) Planning process. Prior to the ensuing fiscal year application process, the contractor shall initiate a community planning process with input from community partners including but not limited to authorized agencies in order to identify the needs of the community.

80.4(2) Alternative plan. A plan is required for the alternative use of the state grant funds. The plan shall be based on an assessment of the community and shall be submitted by the contractor for approval by the department. The plan shall:

a. Assure the department of the delivery of essential public health services that are the primary purpose of these funds.

b. Identify essential public health services to be delivered.

c. Describe the activity to be delivered.

d. Identify target populations to be served.

e. Identify outcome measures.

80.4(3) Funder of last resort. The state grant shall be billed as the last resort.

a. The state grant shall be billed the lower of the authorized agency's cost or charges.

b. The state grant shall not be billed for services eligible for third-party reimbursement (e.g., Medicare, Medicaid, private insurance, approved Iowa waivers, or other federal or state funds).

c. The state grant shall not be billed for the balance between the authorized agency cost or charge, whichever is lower, and the allowed reimbursement from a third-party payer.

d. The state grant shall not be billed for fees waived by the authorized agency.

80.4(4) Cost analysis. The authorized agency shall complete, at a minimum, an annual cost analysis, using a method approved by the department. The authorized agency shall maintain documentation to support the administrative cost allocation.

80.4(5) Fees and donations. Fees for services and donations shall be used to support local public health services.

a. Fees for services provided shall be based on a financial assessment which determines the consumer's financial responsibility. The financial assessment shall be updated annually by the authorized agency. An authorized agency may consider additional health care-related expenses or resources above $10,000 when determining the consumer fee according to an agency's policy.

b. Sliding fee scale. The authorized agency shall establish a sliding fee scale that considers resources and income. The sliding fee scale shall be based on the charge for services. The authorized agency shall determine placement on the sliding fee scale before the service begins. The authorized agency shall use payments, based on the sliding fee scale, and donations received from consumers to support essential public health services. The following instructions apply to the use of the sliding fee scale:

(1) A fee shall be charged to consumers who have an income at or above 200 percent of federal poverty guidelines.

(2) No fee shall be charged to consumers who have an income at or below 75 percent of federal poverty guidelines and resources of $10,000 or less.

(3) A sliding fee or full fee for home care aide (personal care); home care aide (homemaker), home care aide (home helper) and home care aide (chore); nursing (disease and disability); and nursing (health maintenance) shall be established.

(4) No fee shall be charged for protective services or communicable disease follow-up services.

(5) An authorized agency may charge a fee according to the authorized agency's policy for services other than those described in subparagraph (4) if the consumer has an income below 200 percent but above 75 percent of federal poverty guidelines.

80.4(6) Reallocation. The department will annually determine the potential for unused funds from contracts. If funds are available, reallocation of the funds shall be at the discretion of the department.

641—80.5(135) Right to appeal.

80.5(1) Denial, reduction or termination of services.

a. When an authorized agency denies, reduces or terminates services funded by the state grant against the wishes of a consumer, the authorized agency shall notify the consumer and the contractor of the following:

(1) The action taken;

(2) The reason for the action; and

(3) The consumer's right to appeal.

b. If a consumer files an appeal, the authorized agency shall provide services to the consumer throughout the ap-

peals process, unless the agency receives a waiver from the department pending the outcome of the appeal.

80.5(2) Local appeals process.

a. All contractors and their authorized agencies shall have a written local procedure to hear appeals. The local procedure shall, at a minimum, include:

(1) The method of notification of the right to appeal;

(2) The procedure for conducting the appeal;

(3) Time limits for each step; and

(4) The method of notification of the outcome of the local appeal and notification of the consumer's right to appeal to the state. Notifications of the outcome of the local appeal shall include the facts used to reach the decision and the conclusions drawn from the facts to support the authorized agency's decision.

b. The written appeals procedure and the record of appeals filed (including the record and disposition of each) shall be available for inspection by authorized representatives of the department.

80.5(3) Appeal to department.

a. If a consumer is dissatisfied with the decision of the local appeal, the consumer may appeal to the state. The appeal shall be made in writing by certified mail, return receipt requested, to the Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, within 15 days of the receipt of the local contractor's or authorized agency's appeal decision.

b. Department review. The department shall evaluate the appeal based upon the merits of the local appeal documentation. A department decision affirming, reserving, or modifying the local appeal decision shall be issued within 30 days of the receipt of all local appeal documentation. The department decision shall be in writing and sent by certified mail, return receipt requested, to the consumer and the contractor and the authorized agency.

80.5(4) Further appeal. The consumer may appeal the department's decision by submitting an appeal, within 10 days of the receipt of the department decision, to the Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. Upon receipt of an appeal that meets contested case status, the department shall forward the appeal within 5 working days to the department of inspections and appeals pursuant to the rules adopted by the department of inspections and appeals regarding the transmission of contested cases. The continued process for appeals shall be governed by 641—Chapter 173, Iowa Administrative Code.

641—80.6(135) Case management. Case management is a process optimizing self-care capabilities of consumers and their families in gaining access to needed medical, social, and other services.

80.6(1) Case manager qualifications. Individuals performing case management shall meet one of the following criteria:

a. Be a registered nurse licensed to practice in the state of Iowa.

b. Possess a bachelor's degree in family and consumer science, education, social work or other health or human services field.

c. Be a licensed practical nurse with a current Iowa license.

d. Be a home care aide who has an equivalent of two years' experience and who is supervised by an individual who meets one of the criteria in paragraphs "a" to "c."

80.6(2) Case management services. Case management services shall be provided at the direction of the consumer and shall include:

a. An initial assessment of the consumer's needs.

b. Development and implementation of a service plan to meet the identified needs.

c. A team composed of the consumer and the case manager and other entities, such as providers relevant to the consumer's service needs or family members, who may be included at the discretion of the consumer.

d. Face-to-face meetings with the consumer, which shall be held at least quarterly.

e. Coordination and monitoring of delivery of services. Case managers do not provide direct services. Case managers link the consumer to appropriate resources and natural supports.

e. Evaluation of outcomes.

f. Reassessment and revision of the consumer's service plan, which shall be completed as needed, but no less than annually.

g. Advocacy on behalf of the consumer.

h. Communication with the consumer and team members regarding the consumer's progress toward achieving the goals of the service plan.

i. Documentation which supports and demonstrates (1) the consumer's use of the case management process, (2) contacts with the consumer and with providers the consumer is using for services, and (3) other relevant information related to the coordination and delivery of case management services.

j. Monitoring of the consumer's health, safety and welfare.

k. An assurance that the consumer has a choice of providers.

80.6(3) Consumer records. Consumer records for case management, at a minimum, shall include the following:

a. An initial assessment;

b. A service plan;

c. Reassessment;

d. An emergency plan;

e. Documentation of the following:

(1) Consumer and family contacts;

(2) The coordination and monitoring of services;

(3) Activities related to delivery of services (i.e., interdisciplinary team meetings);

(4) The evaluation of outcomes.

641—80.7(135) Local board of health services.

80.7(1) Program purpose. The purpose of this program is to increase the organizational capacity of county boards of health to develop conditions for healthy people and healthy communities through public health nursing, home care aide, core public health functions and population-based essential public health services in Iowa.

80.7(2) Program services. Local board of health services include public health essential services as defined in rule 641—80.2(135).

80.7(3) Appropriation to county board of health. The funding supports the efforts of local boards of health in addressing specific health priorities in each county. The appropriation to each county board of health is determined by the following formula: 30 percent of the total allocation shall be divided so that an equal amount is available for use in each county in the state. The remaining 70 percent shall be allocated to each county according to the county's population based on the department's current published vital statistics.

641—80.8(135) Local public health services.

80.8(1) Program purpose. The purpose of this program is to increase local public health capacity by implementing core public health functions and essential public health services to address health inequalities. Local public health services address health inequalities by advocating for population-based policies and services to improve the health of the whole population in an equal way.

80.8(2) Program services. Local public health services include:

a. Assisting local boards of health in providing services that address health problem priorities identified in each county's health improvement plan.

b. Advancing the goals of Healthy Iowans 2010.

c. Providing financial support for targeted areas of service relating to Iowa's elderly and disabled populations (i.e., home- and community-based services, protective services, nursing (disease and disability), nursing (health maintenance), home care aide (personal care), home care aide (home helper), home care aide (chore) or home care aide (homemaker)).

80.8(3) Appropriation to county board of health. The appropriation to each county board of health is determined by the following formula: 40 percent of the total allocation shall be divided so that an equal amount is available for use in each county in the state. The remaining 60 percent shall be allocated to each county according to the county's population based on the department's current published vital statistics.

641—80.9(135) Public health nursing services. Public health nursing is a specialized nursing practice that combines the science and art of public health with the science and art of nursing.

80.9(1) Program purpose. The purpose of this program is to improve the health of the entire community, prevent illness, enhance the quality of life, and provide leadership to safeguard the health and wellness of the community. The program implements core public health functions and essential public health services to reduce, prevent or delay inappropriate institutionalization of consumers and to preserve families.

80.9(2) Scope. The practice of public health nursing is population-based, with the goals of promoting health and preventing disease and disability for all people through the creation of conditions in which people can be healthy. For the purposes of the state grant, public health nursing services include both personal health services and population-based services.

80.9(3) Standards of practice of public health nursing are consistent with the nursing process and include:

a. Assessment. The public health nurse assesses the health status of populations using data, community resources identification, input from the population, and professional judgment.

b. Diagnosis. The public health nurse analyzes collected assessment data and partners with people to attach meaning to those data and determine opportunities and needs.

c. Outcome identification. The public health nurse participates with other community partners to identify expected outcomes in the populations and their health status.

d. Planning. The public health nurse promotes and supports the development of programs, policies, and services that provide interventions that improve the health status of populations.

e. Evaluation. The public health nurse evaluates the status of the population.

80.9(4) Public health coordinator/supervisor qualifications.

a. Individuals performing public health coordination/supervision shall meet one of the following criteria:

(1) Possess a bachelor's degree or higher from an accredited college or university in public health, health administration, nursing or other applicable field and a minimum of two years of related experience; or

(2) Be a registered nurse, licensed to practice by the Iowa board of nursing, who has a minimum of two years of related experience and has completed a course approved by the department within six months of employment.

b. By January 1, 2008, individuals who hold the position of public health coordinator/supervisor on or before June 30, 2007, shall meet one of the criteria in paragraph "a."

80.9(5) Appropriation. The appropriation to each county is determined by the following formula: 25 percent of the total amount to be allocated shall be divided so that an equal amount is available for use in each county in the state. The remaining 75 percent shall be divided so that the share available for use in each county is proportionate to the number of elderly and low-income persons living in the county in relation to the total number of elderly and low-income persons living in the state.

641—80.10(135) Home care aide services. Home care aide services are intended to enhance the capacity of consumers to attain or maintain their independence. Trained and supervised direct care workers provide services to consumers who, due to the absence, incapacity or limitations of the usual homemaker, are experiencing stress or crisis.

80.10(1) Program purpose. The purpose of this program is to reduce, prevent or delay inappropriate institutionalization of consumers and to preserve families through the provision of supportive services by direct care workers who have completed training and are professionally supervised.

80.10(2) Scope. The direct care worker provides services for consumers by following a plan of care identifying assigned tasks. A direct care worker participates in activities to safeguard the health and wellness of the community and to implement core public health functions and essential public health services.

80.10(3) Authorized agency.

a. The authorized agency shall establish policies for supervision of direct care workers.

b. The authorized agency shall ensure that each direct care worker has completed adequate training and demonstrated competency for each task assigned. The required preservice education for direct care workers is outlined in the following chart:

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Level of Direct Care Worker	**Direct Care Worker I (equivalent to chore)**	**Direct Care Worker II (equivalent to home helper)**	**Direct Care Worker III (equivalent to homemaker)**	**Direct Care Worker IV (equivalent to personal care)**	**Direct Care Worker V (equivalent to protective worker)**
Scope of Services	Provides services to a consumer necessary to enable the consumer to live independently and that encompass heavier cleaning tasks, including outside maintenance and chores. For chore services, there is no physical contact between the consumer and the direct care worker	Under the supervision of a professional, provides services to protect the environment for a self-directing consumer to preserve a safe and sanitary home	Under the supervision of a professional, provides services primarily in the homes of consumers who, due to the absence, incapacity or limitations of the usual homemaker or caregiver, are experiencing stress or crisis, to promote consumer health and a safe, stable, sanitary home environment	Under the direction of nursing or medical staff, provides health-related services such as observation of self-administration of oral medications; checking the consumer's pulse rate, temperature, and respiration rate; helping with simple prescribed exercises; keeping the consumer's rooms neat; changing non-sterile dressings; providing skin care and back rubs; assisting with braces and artificial limbs; or assisting the consumer in using medical equipment	Provides services intended to stabilize a child's or adult's residential environment and relationships with relatives, caretakers, and other consumers and household members in order to alleviate a situation involving abuse or neglect or to otherwise protect the child or adult from a threat of abuse or neglect; also provides services intended to prevent situations which could lead to abuse or neglect of a child or adult when a definite potential for abuse or neglect exists
Services or tasks assigned include, but are not limited to:	Heavy household cleaning, garbage removal, snow shoveling, changing light bulbs, putting screens on windows, covering and uncovering air conditioners, lawn care and mowing	Essential shopping and housekeeping	Money management, household management, consumer education, transportation, meal preparation, family preservation, family management, child care, assistance with personal care, respite, essential shopping, and housekeeping	Personal care and rehabilitative therapies	Family preservation, family management, money management, child care, and transportation
Preservice Education	Direct care worker possesses skills for tasks assigned	4 hours on role of the home care aide; 2 hours on communication; 2 hours on understanding basic human needs; 2 hours on maintaining a healthy environment; 2 hours on infection control in the home; and 1 hour on emergency procedures	60-hour home care aide training: A Model Curriculum and Teaching Guide for the Instruction of the Homemaker-Home Health Aide **OR** 75-hour certified nurse aide course and Direct Care Worker II preservice education **OR** Home care aide training and prior approval by the department	60-hour home care aide training: A Model Curriculum and Teaching Guide for the Instruction of the Homemaker-Home Health Aide **OR** 75-hour certified nurse aide course and Direct Care Worker II preservice education **OR** Home care aide training and prior approval by the department	Training in a department-approved curriculum
Workforce Development (per calendar year)	None	3 hours prorated to employment	12 hours prorated to employment	12 hours prorated to employment	12 hours prorated to employment
Competency	Documented skills for assigned tasks	Documented skills for assigned tasks	Documented skills for assigned tasks	Documented skills for assigned tasks	Documented skills for assigned tasks

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80.10(4) Professional staff as providers of home care aide services. An individual who is in the process of receiving or who has completed the training required for LPN or RN licensure or who possesses an associate's degree or higher in social work, sociology, home economics or other health or human services field may be assigned to provide home care aide services if the following conditions are met:

a. Services or tasks assigned are appropriate to the individual's prior training.

b. Orientation to home care is conducted. Orientation includes adaptation of the individual's knowledge and skills from prior education to the home setting and to the role of the home care aide.

80.10(5) Care coordinator and service manager qualifications.

a. An individual performing care coordination or service management shall meet one of the following criteria:

(1) Be a registered nurse licensed to practice in the state of Iowa.

(2) Possess a bachelor's degree in family and consumer science, education, social work or other health or human services field.

(3) Be a licensed practical nurse with a current Iowa license.

b. A home care aide with an equivalent of two years' experience may be delegated care coordination/service management duties as long as a qualified individual who meets one of the criteria in paragraph "a" retains responsibility and provides supervision and evidence of supervision.

c. An individual who has provided home care aide care coordination and service management prior to June 30, 2007, shall be considered qualified to continue in the position.

80.10(6) A qualified care coordinator or service manager may provide direct care services as appropriate to the individual's level of education and competency for the assignment.

80.10(7) The service manager's scheduling duty may be delegated to an individual not possessing one of the qualifications in paragraph 80.10(5)"a" provided that a qualified individual who meets one of the qualifications in 80.10(5)"a" retains responsibility and provides supervision and evidence of supervision.

80.10(8) Consumer records. The authorized agency shall maintain records for each consumer. The records shall include:

a. An initial assessment.
b. A plan of care.
c. Assignment of direct care worker.
d. Assignment of tasks.
e. Reassessment.
f. Update of plan of care.
g. Direct care worker narrative notes.
h. Documented supervision.

80.10(9) Appropriation. The appropriation to each county is determined by the following formula: 15 percent of the total allocation shall be divided so that an equal amount is available for use in each county in the state. The following percentages of the remaining 85 percent shall be allocated to each county according to that county's proportion of state residents with the following demographic characteristics:

a. Sixty percent according to the number of elderly persons living in the county.

b. Twenty percent according to the number of persons below the federal poverty guidelines living in the county.

c. Twenty percent according to the number of substantiated cases of child abuse in the county during the three most recent years for which data is available.

These rules are intended to implement Iowa Code chapter 135.

ITEM 3. Rescind and reserve **641—Chapter 83**.

[Filed 3/16/07, effective 7/1/07]
[Published 4/11/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/11/07.

ARC 5821B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135.150(2)"b," the Department of Public Health hereby rescinds Chapter 162, "Gambling Treatment Program," and adopts new Chapter 162, "Licensure Standards for Problem Gambling Treatment Programs," Iowa Administrative Code.

These rules provide the Department the ability to license problem gambling treatment programs in Iowa.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 31, 2007, as **ARC 5684B**. Comments were received from the Iowa Council on Problem Gambling unanimously supporting "the drafted rules as presented with the exclusion of the affirmative action piece" in subrule 162.20(6). Additional comments were received from four members of the public which were generally favorable and which also included specific concerns regarding the exclusion of the affirmative action plan in subrule 162.20(6); the maintenance of client records for seven years in subrule 162.20(8); releases of information and the confidentiality of client case records in subrule 162.20(8); clarification of criteria used for identifying a problem gambler in subrule 162.20(9); clarification as to whether mental health and substance abuse screening tools are needed if the referral comes from a program that has already completed the screening tools in subrule 162.20(9); concern that the percentage of treatment supervisor reviews required is too high for nonprobationary employees in subrule 162.20(9); a question as to why treatment plan reviews cannot take place in group sessions in subrule 162.20(10); and clarification as to when discharge summaries are due in subrule 162.20(12). The Department made changes in each of these areas to address these concerns.

Also, a public hearing was held over the Iowa Communications Network on February 20, 2007, at which time several persons expressed support for the rules and one person repeated a concern referenced above, questioning why treatment plan reviews cannot take place in group sessions in subrule 162.20(10).

These rules were adopted by the State Board of Health on March 14, 2007.

These rules are intended to implement Iowa Code section 135.150.

These rules will become effective May 16, 2007.

The following amendment is adopted.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Rescind **641—Chapter 162** and insert in lieu thereof the following **new** chapter:

CHAPTER 162
LICENSURE STANDARDS FOR PROBLEM GAMBLING TREATMENT PROGRAMS

641—162.1(135) Definitions.

"Admission" means the point in an individual's relationship with the problem gambling treatment program at which the problem gambling treatment screening process has been completed and the individual is eligible to receive problem gambling treatment services.

"Affiliation agreement" means a written agreement between the governing body of the problem gambling treatment program and another organization under the terms of which specified services, space or personnel are provided to one organization by the other, but without exchange of moneys.

"Applicant" means any problem gambling treatment program that has applied for a license or for license renewal.

"Application" means the process through which a problem gambling treatment program applies for a license or for license renewal as outlined in rule 641—162.5(135).

"Assessment" means the ongoing process of identifying a diagnosis, ruling out other diagnoses, and determining the care needed by the problem gambling client. The assessment shall evaluate the problem gambling client's strengths and needs for the purpose of defining a course of treatment, including collecting additional client information in order to develop a treatment plan.

"Client" means an individual whose problem gambling treatment screening identifies a need for problem gambling treatment services.

"Clinical director" means the person(s) designated by the problem gambling treatment program who provides clinical oversight and who, by virtue of education, training and experience, is capable of supervising the screening and assessment of the problem gambling client to approve the treatment plan most appropriate for the client.

"Clinical oversight" means oversight provided by an individual who, by virtue of education, training and experience, is capable of supervising the clinical staff members who assess the psychosocial history of a problem gambling client to determine the treatment plan most appropriate for the client. The problem gambling treatment program shall designate the person who shall provide clinical oversight.

"Concerned person" means a person affected by the problem gambling behavior of an individual who needs problem gambling treatment services or a person willing to become involved in the treatment of an individual who gambles excessively. The concerned person may be either a relative or nonrelative of the individual.

"Confidentiality" means the confidentiality of records to be maintained by a problem gambling treatment facility, which shall conform to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and other relevant provisions of federal and state law.

"Contract" means a formal legal document adopted by the governing body of the problem gambling treatment program and any other organization, agency, or individual which specifies services, personnel or space to be provided to the problem gambling treatment program as well as the moneys to be expended in the exchange.

"Counselor" means a licensed or certified practitioner in a counseling-related field including: an advanced certified alcohol and drug counselor (ACADC) or certified alcohol and drug counselor (CADC) or CADC equivalent; a certified criminal justice professional (CCJP); a gambling counselor certified by the National Council on Problem Gambling (NCPG); a gambling treatment counselor (CGTC) certified by the Iowa board of certification (IBC); a licensed bachelor social worker (LBSW), a licensed independent social worker (LISW), and a licensed master social worker (LMSW) licensed under Iowa Code chapters 154C and 147; a licensed marital and family therapist (LMFT) licensed under Iowa Code chapters 154D and 147; a licensed mental health counselor (LMHC) licensed under Iowa Code chapters 154D and 147; an advanced registered nurse practitioner (ARNP) licensed under Iowa Code chapters 152 and 147; a psychologist licensed under Iowa Code chapters 154B and 147; a board-certified psychiatrist; or another licensed or certified professional approved by the department.

"Culturally and environmentally specific" means integrating into the problem gambling assessment and treatment process the ideas, customs, beliefs, and skills of a given population, as well as an acceptance, awareness, and celebration of diversity regarding conditions, circumstances and influences surrounding and affecting the development of an individual or group.

"Department" means the Iowa department of public health.

"Designee" means the staff person or counselor who is delegated tasks, duties and responsibilities normally performed by the clinical director, executive director or department director.

"Director" means the director of the Iowa department of public health.

"Discharge planning" means the process, beginning at the time of the client's admission for treatment in a problem gambling treatment program, of determining a client's continued need for problem gambling treatment services and of developing a plan to address the ongoing posttreatment needs of the client. Discharge planning may include a document identified as a discharge plan.

"Division" means the division of behavioral health and professional licensure in the Iowa department of public health.

"Division director" means the director of the division of behavioral health and professional licensure in the Iowa department of public health.

"Executive director" or "program director" means an individual who is hired by the problem gambling treatment program governing body to manage the overall operations of the program in accordance with the governing body's established policies.

"Facility" means a hospital, institution or program licensed under Iowa Code section 135.150 providing treatment for problem gamblers. "Facility" also means the physical areas including grounds, buildings, or portions of buildings under direct administrative control of the program.

"Governing body" means the individual(s), group, or agency that has ultimate authority and responsibility for the overall operation of the problem gambling treatment facility.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996.

"Intake" means gathering additional problem gambling treatment information at the time of the problem gambling assessment process.

"Licensee" means any problem gambling treatment program licensed by the department.

"Licensure" means the issuance of a license by the department which validates the licensee's compliance with prob-

lem gambling treatment program standards set forth in 641—Chapter 162 and authorizes the licensee to operate a problem gambling treatment program in the state of Iowa.

"Licensure weighting report" means the problem gambling treatment program report that is used to determine the type of license for which a problem gambling treatment program qualifies based on point values assigned to licensure standards reviewed and the total number of points attained. In addition, the problem gambling treatment program shall attain a minimum percent value in each of three categories to qualify for a license as follows: 95 percent or higher rating in clinical, administrative and programming for a three-year license; 90 percent or higher rating in clinical, administrative and programming for a two-year license; or less than 90 percent but not less than 70 percent rating in clinical, administrative and programming for a one-year license.

"Outpatient treatment" means an organized problem gambling outpatient, nonresidential treatment service. Services usually are provided in regularly scheduled individual, group and family sessions.

"Physician" means any individual licensed under Iowa Code chapter 148, 150, or 150A.

"Primary care modality" means a problem gambling treatment component or modality, including problem gambling outpatient treatment.

"Problem gambler" means an individual affected by problem gambling who has been assessed as habitually lacking impulse control while gambling to the extent that the individual's life is substantially endangered or that the individual's social or economic functioning is substantially disrupted.

"Problem gambling" means a pattern of gambling behavior which may compromise, disrupt or damage family, personal or vocational pursuits.

"Program" means any partnership, corporation, association, governmental subdivision or public or private organization that provides problem gambling treatment services.

"Protected class" means any class of people that requires special legislation to ensure equality.

"Quality improvement" means the process of objectively and systematically monitoring and evaluating the quality and appropriateness of problem gambling treatment program services to improve client care and resolve identified problems.

"Rehabilitation" means the restoration of a client to the fullest physical, mental, social, vocational, and economic functioning of which the client is capable. Rehabilitation may include, but is not limited to, medical treatment, counseling and therapy, occupational training, job counseling, social and domestic rehabilitation and education.

"Relapse" means the recurrence of symptoms of problem gambling after a period of improvement. Relapse may include the resumption of problem gambling or worsening of symptoms.

"Screening" means the process by which a client is determined appropriate and eligible for admission to a particular problem gambling treatment program.

"Sentinel event" means any event which occurs at a problem gambling treatment program or to program staff members or clients who are currently active or within one week of discharge from the program. Sentinel events include the unexpected incidence or serious risk of death or serious physical or psychological injury or any event which may be subject to litigation.

"Staff member" means any person who provides services to the problem gambling treatment program on a regular basis as a paid employee, agent or consultant or as a volunteer.

"Standards" means criteria that represent the minimal qualifications required of a problem gambling treatment program for the issuance of a license.

"Substance abuse" means any use of illegal chemical substances or the abuse of legal substances or the use of chemical substances to the extent that the person's health is substantially impaired or endangered or that the person's social or economic functioning is substantially disrupted.

"Treatment" means the broad range of planned and continuing problem gambling treatment services, including diagnostic screening and assessment, counseling, medical, psychiatric, psychological, and social services, which may be extended to problem gambling clients or concerned persons, and which is geared toward influencing the behavior of clients or concerned persons in order to facilitate rehabilitation.

641—162.2(135) Licensure. The department shall issue a single license to each qualifying problem gambling treatment program. The license shall delineate one or more categories of services the problem gambling treatment program is authorized to provide. Although a problem gambling treatment program may have more than one facility, the department shall issue only one license to the program.

641—162.3(135) Type of licenses.

162.3(1) Issuance of licenses.

a. An initial license may be issued for 270 days. The department shall not renew or extend an initial license issued for 270 days.

b. Licenses shall expire 270 days or one, two or three calendar years from the date of issuance, and the department shall renew a one-, two- or three-year license only on application.

c. A license may be renewed for one, two or three years.

d. The department shall renew a one- or two-year license contingent upon demonstration by the problem gambling treatment program of continued compliance with licensure standards and in accordance with the licensure weighting report criteria.

e. The department shall renew a three-year license contingent upon demonstration by the problem gambling treatment program of substantial continued compliance with licensure standards and in accordance with the licensure weighting report criteria.

f. Failure to apply for renewal of the license within the 30-day grace period after the expiration date shall result in immediate termination of the license and shall require reapplication.

162.3(2) Corrective action. Following the issuance of a license, the problem gambling treatment program may be requested by the department to provide a written plan of corrective action and to bring into compliance all areas found in noncompliance during an on-site visit. The department shall place the corrective action plan in the problem gambling treatment program's permanent file with the department and use it as a reference during future on-site inspections.

641—162.4(135) Nonassignability.

162.4(1) A license issued by the department for the operation of a problem gambling treatment program applies both to the applicant program and to the facility at which the program is to be operated.

162.4(2) Licenses are not transferable.

162.4(3) Any person or other legal entity acquiring a currently licensed program for the purpose of operating a problem gambling treatment program shall apply as provided in rule 641—162.5(135) for a new license.

162.4(4) Any person or legal entity licensed by the department that plans to fundamentally alter the treatment philosophy or transfer the program to a different premises must notify the department 30 days prior to the action in order for the department to review the treatment philosophy or site change and determine appropriate action.

162.4(5) A licensee shall, if possible, notify the department of impending closure of the licensed problem gambling treatment program at least 30 days prior to closure. The licensee shall be responsible for the removal and placement of clients and for the preservation of all records. Upon closing all facilities and terminating all service delivery activities, the licensee shall immediately return the license to the department.

641—162.5(135) Application procedures.

162.5(1) The department shall provide an application form to all applicants for licensure.

a. Any problem gambling treatment program applying for an initial license shall submit complete application information to the department and shall be inspected by the department prior to the program's opening and offering services to clients.

b. Any problem gambling treatment program that notifies the department within 60 days after May 16, 2007, that the program is currently operating in Iowa and that provides documentation verifying operation of a program in Iowa shall be exempt from the on-site inspection requirement for initial licensure before the program opens and admits clients for services. Documentation that a program is operating in Iowa may include a current contract with the department to provide problem gambling treatment services, a mission statement specifying that the program offers problem gambling treatment services, governing board bylaws specifying that the program is providing problem gambling treatment services, or articles of incorporation specifying that the program is providing problem gambling treatment services. Problem gambling treatment programs that qualify under this paragraph shall apply for licensure pursuant to this chapter within 60 days of May 16, 2007. These programs may continue to operate until their licenses are approved or denied by the department.

c. For initial applicants, if technical assistance has been provided to the problem gambling treatment program by the department, and if enough information was gathered during the technical assistance visit to determine that the program is eligible to receive an initial 270-day license, then the on-site inspection for initial licensure may be waived at the discretion of the department.

d. The division shall prepare a report with a recommendation for licensure to be presented to the department within 30 days of the on-site inspection.

162.5(2) Application information for problem gambling treatment programs. An applicant for licensure shall submit to the Iowa Department of Public Health, Division of Behavioral Health and Professional Licensure, Lucas State Office Building, Des Moines, Iowa 50319, the following information on forms provided by the department. The department shall not consider an application for licensure complete until the following information is received by the department from the problem gambling treatment program:

a. The name and address of the applicant for licensure.

b. The name and address of the executive director or program director of the problem gambling treatment program.

c. The names, titles, dates of employment, education, and years of recent job-related experience of staff members and a copy of the table of organization. When multiple treatment modalities and facilities exist, the relationship between treatment modalities and facilities must be shown and a description of the problem gambling treatment screening and training process for volunteer workers must be included.

d. The names and addresses of members of the governing body, sponsors, or advisory boards of the problem gambling treatment program and current articles of incorporation and bylaws.

e. The names and addresses of all physicians, other professionally trained personnel, medical facilities, and other individuals or organizations with which the problem gambling treatment program has a direct contractual or affiliation agreement.

f. A description of the treatment services provided by the problem gambling treatment program and a description of weekly activities for each treatment modality or component.

g. Copies of reports substantiating compliance with federal, state and local rules and laws for each facility, including appropriate Iowa department of inspections and appeals rules, state fire marshal rules and fire ordinances, and appropriate local health, fire, occupancy code, and safety regulations.

h. Information required under Iowa Code section 135C.33 for programs that admit juveniles.

i. Fiscal management information including the most recent audit or opinion of an auditor and the governing body minutes to reflect approval of the audit, and budget and insurance coverage. If this information is already on file with the department, the problem gambling treatment program does not need to resubmit this information.

j. Documentation of insurance coverage for professional and general liability, the facility, workers' compensation, and fidelity bond or crime and dishonesty insurance.

k. For programs using the gambling treatment reporting system (GTRS), the address and primary facility code of each office, facility, or program location.

l. Current, complete written policies and procedures manual to include the staff development and training plan and personnel policies.

The problem gambling treatment program shall complete the application information for an initial application for licensure and the department shall review the application information prior to a scheduled on-site inspection.

162.5(3) Renewal. The problem gambling treatment program shall submit an application for renewal on forms provided by the department at least 60 calendar days before expiration of the current license.

162.5(4) Application update or revision for existing licensed programs.

a. The problem gambling treatment program shall notify the department of the need for and shall request an application for a licensure update or revision.

b. The problem gambling treatment program shall apply for licensure update or revision 30 days prior to any planned change(s) of address of offices, facilities, or program locations or any additions or deletions of the type(s) of services or programs provided and licensed.

c. The problem gambling treatment program shall submit to the department within 10 working days from the date the forms are received a revised licensure application form which shall reflect changes of address of offices, facilities, or program locations or additions or deletions of the type(s) of services or program(s) provided or licensed to the division.

d. When applicable, as determined by the department, an on-site licensure inspection of a new component, service,

program or facility may be conducted by the department within six months of the receipt of the updated or revised application or during an existing licensed problem gambling treatment program's scheduled relicensure on-site inspection, whichever occurs first.

641—162.6(135) Application review. An applicant for licensure shall submit a completed application to the department within 30 days from the date the forms are received. The department shall review the application for completeness and request any additional material as needed. The department shall notify applicants that fail to return the application forms on time. Iowa Code section 135.150 requires that all state-funded problem gambling treatment programs be licensed.

641—162.7(135) Inspection of licensees. The department shall inspect the problem gambling treatment program and review the policies and procedures utilized by the program. The inspection may include case record audits and interviews with problem gambling treatment staff members and clients, consistent with the confidentiality safeguards of state and federal law.

162.7(1) Technical assistance. The department shall visit all problem gambling treatment programs applying for an initial license to operate a program in the state of Iowa for the purpose of providing needed technical assistance regarding the licensure criteria and procedures. The problem gambling treatment program may waive technical assistance in order to expedite the licensing process. The problem gambling treatment program shall submit requests for additional technical assistance in writing to the department.

a. Following the issuance of a license, the problem gambling treatment program may request technical assistance from the department to bring into conformity standards reported to be in noncompliance with these rules.

b. The department shall schedule technical assistance within 30 days of the applicant's request depending on the availability of staff.

c. The department may also request that technical assistance be provided to the problem gambling treatment program if deficiencies are noted during an on-site technical assistance visit.

162.7(2) On-site inspection for licensure. The department shall schedule an on-site inspection for licensure after the department's receipt of the problem gambling treatment program's completed application to operate a program in Iowa. The department shall not be required to provide advance notice to the problem gambling treatment program of the on-site inspection for licensure.

a. The on-site inspection team shall consist of designated members of the division staff.

b. Team members shall inspect the problem gambling treatment program in order to verify information contained in the application and ensure compliance with all laws, rules and regulations.

c. The inspection team shall send a written report, return receipt requested, of its findings to the applicant within 20 working days after the on-site inspection.

162.7(3) Effective date of license. The effective date of a license shall begin on the date the department reviews the problem gambling treatment program's written application and licensure weighting report and acts to issue a license.

641—162.8(135) Licensure renewal. Upon approval of an application for licensure renewal, the department shall renew the license pursuant to rule 641—162.5(135).

641—162.9(135) Corrective action plans.

162.9(1) Corrective action plans for 270-day license for problem gambling treatment programs.

a. Problem gambling treatment programs approved by the department for a 270-day license shall submit a corrective action plan to the division director no later than 30 days following notice that the program has received a 270-day license.

b. The corrective action plan shall include, but not be limited to:

(1) Specific problem areas.

(2) A delineation of corrective measures to be taken by the problem gambling treatment program for each problem area.

(3) A delineation of target dates for completion of corrective measures for each problem area.

c. The department shall review the implemented corrective action during the required follow-up on-site visit and issue a subsequent report to the division director and the program.

162.9(2) Corrective action plans for one- and two-year licensure programs.

a. Problem gambling treatment programs approved by the department for a one- or two-year license shall submit a corrective action plan for those standards found to be in noncompliance, if applicable, following an on-site inspection.

b. The department shall not be required to offer technical assistance on a corrective action plan for one- and two-year licenses.

c. The problem gambling treatment program approved by the department for a one- or two-year license shall submit a corrective action plan within 30 days of receipt of the licensure inspection report.

641—162.10(135) On-site inspection for initial licensure.

162.10(1) On-site inspection for licensure. The on-site inspection for licensure of an initial applicant shall occur prior to the problem gambling treatment program's opening and admitting clients (see 162.5(1) for details regarding exemption from this subrule). The department shall not be required to provide advance notice to the program of the on-site inspection for licensure.

a. The on-site inspection team shall consist of a designated member(s) of the division staff.

b. The team shall inspect the applicant program in order to verify information contained in the application and to ensure compliance with all laws, rules and regulations.

c. The inspection team shall send a written report, return receipt requested, of its findings to the applicant within 20 working days after completion of the inspection.

d. The application information for an initial application for licensure shall be completed by the program and reviewed by the department prior to a scheduled on-site inspection.

162.10(2) Upon approval of an application for licensure, the department shall issue a license.

641—162.11(135) Denial, suspension, revocation, or refusal to renew a license.

162.11(1) The department may deny, suspend, revoke or refuse to renew a license for any of the following reasons:

a. Failure to adequately complete the application or renewal application process or submission of fraudulent or misleading information on the initial or renewal application form.

b. Failure to obtain the minimum score required for a one-, two- or three-year license.

c. Violation by a problem gambling treatment program, program employee or agent of the employee of any statute or rule pertaining to problem gambling treatment programs, including a violation of any provision of this chapter.

d. Failure to comply with licensure, inspection, health, fire, occupancy, safety, sanitation, zoning, or building codes or regulations required by federal, state, or local law.

e. The commission of or permitting or aiding or abetting the commission of an unlawful act within a facility.

f. Conviction of a member of the problem gambling treatment program governing body, a director, administrator, chief executive officer, or other managing staff member, of a felony or misdemeanor involving the management or operation of the facility or directly related to the operation or integrity of the facility.

g. Use of untruthful or improbable statements in advertising.

h. Conduct or practices found by the department to be detrimental to the general health, safety, or welfare of a client or member of the community in which the program operates.

i. Violation of a client's confidentiality or willful, substantial, or repeated violation of a client's rights.

j. An attempt to defraud a problem gambling client, potential client, or third-party payor.

k. Inappropriate conduct by a problem gambling treatment program employee, including sexual contact with a client of the program.

l. Use of treatment techniques which endanger the health, safety, or welfare of a client.

m. Discrimination or retaliation against a client or employee who has submitted a complaint or information to the department.

n. Failure to allow an employee or agent of the department access to the facility for the purpose of inspection, investigation, or other information collection duties necessary to the performance of the department's duties.

o. Commission of an act to defraud the state of Iowa.

p. Failure to submit an acceptable written plan of corrective action or failure to comply with a written plan of corrective action issued pursuant to subrule 162.3(2), rule 641—162.9(135), or paragraph 162.16(4)"c."

q. Violation of an order of the department or violation of the terms or conditions of a consent agreement or informal settlement between a problem gambling treatment program and the department.

r. Failure to complete in full the application for licensure or failure to submit the information required by rule 641—162.5(135).

162.11(2) Initial notice from the department. When the department determines to deny, suspend, revoke or refuse to renew a license, the department shall notify the licensee by certified mail, return receipt requested, of the department's intent to deny, suspend, revoke, or refuse to renew the license and of the changes required to avoid denial, suspension, revocation or refusal to renew a license. The initial notice shall further provide the licensee the opportunity to submit to the department either a written plan of corrections or written objections within 20 days from the receipt of notice from the department.

162.11(3) Correction of deficiencies; objections.

a. Written plan of corrections. If a licensee submits a written plan of corrections, the licensee shall have 60 days from the date of submission to show compliance with the plan of corrections. The licensee shall submit any information to the department that the licensee deems pertinent to verify compliance with the plan of corrections.

b. Objections. If a licensee submits written objections, the licensee shall submit to the department any information that the licensee deems pertinent to support the licensee's defense.

162.11(4) Decision of the department. Following receipt of a written plan of corrections and expiration of the 60-day time period, or following receipt of written objections, or when objections or a notice of corrections has not been received within the 20-day time period, the department may determine whether to proceed with disciplinary action.

162.11(5) Notice of decision and opportunity for contested case hearing.

a. When the department determines to deny, suspend, revoke or refuse to renew a license, the department shall give the licensee written notice by certified mail, return receipt requested.

b. The licensee may request a hearing on the determination. The request must be in writing and received by the department within 30 days of receipt of the notice issued by the department. Failure to request a hearing by the deadline shall result in final action by the department.

162.11(6) Summary suspension. If the department finds that the health, safety or welfare of the public is endangered by continued operation of a problem gambling treatment program, summary suspension of a license may be ordered pending proceedings for revocation or other actions. These proceedings shall be promptly determined and instituted.

641—162.12(135) Contested case hearings. Any problem gambling treatment program that wishes to contest the denial, suspension, revocation or refusal to renew a license shall be afforded an opportunity for a hearing before an administrative law judge from the department of inspections and appeals. The department shall notify the problem gambling treatment program in writing, return receipt requested, of the date of the hearing not less than 30 days before the hearing.

162.12(1) Failure to appear. If a party fails to appear in a contested case hearing proceeding after proper service of notice, the administrative law judge shall, in such a case, enter a default judgment against the party failing to appear.

162.12(2) Conduct of hearing. The administrative law judge shall afford all parties opportunity to respond to and present evidence and argument on all issues involved and to be represented by counsel at their own expense.

a. The hearing shall be informal and all relevant evidence shall be admissible. Effect shall be given to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. The hearing shall be expedited and the interests of the parties shall not be prejudiced substantially. Any part of the evidence may be required to be submitted in verified written form.

b. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

c. Witnesses present at the hearing shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.

d. The record in a contested case shall include:

(1) All pleadings, motions and intermediate rulings.

(2) All evidence received or considered and all other submissions.

(3) A statement of all matters officially noticed.

(4) All questions and offers of proof, objections and rulings therein.

(5) All proposed findings and exceptions.

(6) Any decision, opinion or report by the officer presiding at the hearing.

e. Oral proceedings shall be open to the public and shall be recorded either by mechanized means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription thereof shall be filed with and maintained by the problem gambling treatment program for at least five years from the date of decision.

f. Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record.

162.12(3) Continuance. For good cause, the administrative law judge may either continue a hearing beyond the time originally scheduled or may recess the hearing. Requests for continuance shall be made to the administrative law judge in writing at least three days prior to the scheduled hearing date. The administrative law judge shall not grant continuances less than three days before the hearing except for exigent circumstances.

162.12(4) Decision. Findings of fact shall be based solely on the evidence in the record and upon matters officially noticed in the record.

a. The decision of the administrative law judge shall be a final decision unless there is an appeal to the department within 20 days of the receipt of the decision.

b. A proposed or final decision or order in a contested case hearing shall be in writing. A proposed or final decision shall include findings of fact and conclusions of law, separately stated. Parties shall be promptly notified of each proposed or final decision or order by delivery of a copy of the decision or order by certified mail, return receipt requested. In the case of a proposed decision, the department shall notify the parties of the right to appeal the decision to the department director.

162.12(5) Appeal to the department director.

a. Either party may request that the department director review the proposed decision. The request shall be in writing and delivered by certified mail, return receipt requested, within 20 days of receipt of the proposed decision.

b. The parties shall have an opportunity to submit briefs to the department director. The department director shall review the record and any briefs. No new evidence shall be admitted unless requested and allowed by the department director.

c. The department director shall issue a decision in writing within 90 days after receiving the request to review the proposed decision.

641—162.13(135) Rehearing application. Within 20 days after the department director issues a final decision in a contested case, any party may file an application for rehearing, stating the specific grounds therefor and the relief sought, and shall mail a copy of the application by certified mail, return receipt requested, to all parties of record. The application for rehearing is deemed to have been denied unless the department director grants the application within 20 days after its filing.

641—162.14(135) Judicial review. A licensee that is aggrieved or adversely affected by the department director's final decision and that has exhausted all adequate administrative remedies may seek judicial review of the department director's decision pursuant to and in accordance with Iowa Code section 17A.19.

641—162.15(135) Reissuance or reinstatement. After suspension, revocation or refusal to renew a license, the department shall not reissue or reinstate the license to the affected licensee within one year of the effective date of the suspension, revocation or expiration upon refusal to renew, unless by order of the department. After that time, proof of compliance with licensure standards must be presented to the department prior to reinstatement or reissuance of a license.

641—162.16(135) Complaints and investigations.

162.16(1) Complaints. Any person may file a complaint with the department against any problem gambling treatment program licensed pursuant to this chapter. The person filing the complaint shall make the complaint in writing and shall mail or deliver the complaint to the division director at the Division of Behavioral Health and Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319. The complaint shall include the name and address of the complainant, the name of the problem gambling treatment program, and a concise statement of the allegations against the program, including the specific alleged violations of this chapter, if known. A complaint may also be initiated by the department pursuant to evidence received by the department. Timely filing of complaints is required in order to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been significantly altered during the period of delay.

162.16(2) Evaluation and investigation. Upon receipt of a complaint, the department shall make a preliminary review of the allegations contained in the complaint. Unless the department concludes that the complaint is intended solely to harass a problem gambling treatment program or lacks a reasonable basis, the department shall conduct an on-site investigation of the program which is the subject of the complaint as soon as practicable. The department shall consider the complaint to be confidential and shall protect the name of the complainant, unless the complainant waives the right to confidentiality.

162.16(3) Investigative report. Within 30 working days after completion of the investigation, the department shall prepare a written investigative report and shall submit the report to the executive director or program director of the problem gambling treatment program and the chairperson of the program governing body. This report shall include the general nature of the complaint and shall indicate if the allegations were substantiated, unsubstantiated, or undetermined; the basis for the finding; the specific statutes or rules at issue; a response from the problem gambling treatment program, if received; and a recommendation for action.

162.16(4) Review of investigations. The department shall review the investigative report and shall determine appropriate action.

a. Closure. If the department determines that the allegations contained in the complaint are unsubstantiated, the department shall close the case and shall promptly notify the complainant and the problem gambling treatment program by certified mail, return receipt requested.

b. Referral for further investigation. If the department determines that the case warrants further investigation, it shall refer the case to department staff members for further investigation.

c. Written plan of corrective action. If the department determines any allegations contained in the complaint are substantiated and corrective action is warranted, the department may require the problem gambling treatment program to submit and comply with a written plan of corrective action.

A problem gambling treatment program shall submit a written plan of corrective action to the department within 20 working days after receiving a request for the plan. The written plan of corrective action shall include a plan for correcting violations as required by the department and a time frame within which the problem gambling treatment program shall implement the plan. The plan is subject to department approval. The requirement of a written plan of corrective action is not formal disciplinary action. Failure to submit or comply with a written plan of corrective action may result in formal disciplinary action against the problem gambling treatment program.

d. Disciplinary action. If the department determines that any allegations contained in the complaint are substantiated and disciplinary action is warranted, the department may proceed with such action in accordance with rule 641—162.11(135).

162.16(5) Confidential information and public information. Information contained in a complaint is confidential pursuant to Iowa Code sections 22.7(18) and 22.7(35) or any other provision of state or federal law, unless the complainant waives the right to confidentiality. Investigative reports, written plans of corrective action, and all notices and orders issued pursuant to rule 641—162.11(135) shall refer to problem gambling clients by number and shall not include any other client-identifying information. The department shall ensure that investigative reports, written plans of corrective action, and all notices and orders issued pursuant to rule 641—162.11(135) are available to the public as open records pursuant to Iowa Code chapter 22.

641—162.17(135) Funding. The issuance of a license by the department to any problem gambling treatment program shall not be construed as a commitment on the part of either the state or federal government to provide funds to the program.

641—162.18(135) Inspection. Each applicant or licensee agrees as a condition of licensure:

162.18(1) To permit properly designated representatives of the department to enter and inspect any and all premises of problem gambling treatment programs for which a license has been either applied or issued to verify information contained in the application or to ensure compliance with all laws, rules, and regulations relating thereto, during all hours of operation of the facility and at any other reasonable hour.

162.18(2) To permit properly designated representatives of the department to audit and collect statistical data from all records maintained by the licensee. The department shall not license a problem gambling treatment program which does not permit inspection by the department or examination of all records, including client records, personnel records, financial records, methods of administration, and any other records the department deems relevant.

641—162.19(135) Exemptions to rule 641—162.20(135).

162.19(1) The department shall exempt problem gambling treatment programs that hold a valid license under 641—Chapter 155 from all the standards required pursuant to rule 641—162.20(135), except for the standards set forth in the following subrules:

a. 162.20(6), Personnel;

b. 162.20(7), Child abuse, dependent adult abuse, and criminal history background checks;

c. 162.20(8), Client case record maintenance;

d. 162.20(9), Client screening, admission and assessment;

e. 162.20(15), Sentinel events;

f. 162.20(16), Quality improvement; and

g. 162.20(20), Financial counseling.

162.19(2) The department shall exempt problem gambling treatment programs accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF) from all the standards required pursuant to rule 641—162.20(135), except for the standards set forth in the following subrules:

a. 162.20(6), Personnel;

b. 162.20(7), Child abuse, dependent adult abuse, and criminal history background checks;

c. 162.20(8), Client case record maintenance; and

d. 162.20(9), Client screening, admission and assessment.

162.19(3) The department shall exempt problem gambling treatment programs accredited by the Council on Accreditation (COA) from all the standards required pursuant to rule 641—162.20(135), except for the standards set forth in the following subrules:

a. 162.20(6), Personnel;

b. 162.20(7), Child abuse, dependent adult abuse, and criminal history background checks; and

c. 162.20(9), Client screening, admission and assessment.

162.19(4) The department shall exempt problem gambling treatment programs accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) from all the standards required pursuant to rule 641—162.20(135), except for the standards set forth in the following subrules:

a. 162.20(6), Personnel;

b. 162.20(9), Client screening, admission and assessment; and

c. 162.20(20), Financial counseling services.

162.19(5) The department shall combine the scores for all programming, administrative and clinical standards into one score for the licensure weighting report for those problem gambling treatment programs exempted under this rule.

641—162.20(135) General standards for all problem gambling treatment programs. The following standards shall apply to all licensed problem gambling treatment programs in the state of Iowa regardless of the category of services provided by such programs. In situations in which differences between general standards and specific standards occur, both general and specific standards must be met.

162.20(1) Governing body. Each problem gambling treatment program shall have a formally designated governing body that is representative of the community being served, complies with Iowa Code chapter 504 and other Iowa Code chapters as appropriate, and has ultimate authority and responsibility for overall program operations.

a. The governing body shall develop and adopt written bylaws and policies that define the powers and duties of the governing body, its committees and advisory groups, and the executive director or program director. The governing body shall review and revise the bylaws and policies as necessary.

b. The bylaws shall specify, at a minimum, the following:

(1) Type of membership;

(2) Term of appointment;

(3) Frequency of meetings;

(4) Attendance requirements; and

(5) Quorum necessary to transact business.

c. The governing body shall keep minutes of all meetings and shall make the minutes available for review by the department. Minutes shall include, but not be limited to, the following:

(1) Date of the meeting;

(2) Names of members attending;
(3) Topics discussed; and
(4) Decisions reached and actions taken.

d. The duties of the governing body shall include, but not be limited to, the following:

(1) To appoint a qualified executive director or program director who shall have the responsibility and authority for the management of the problem gambling treatment program in accordance with the governing body's established policies;

(2) To establish effective controls which shall ensure that quality services are delivered;

(3) To review and approve the program's annual budget;

(4) To ensure that the program shall maintain the fiscal management system in accordance with generally accepted accounting principles, including internal controls, to reasonably protect program assets;

(5) To ensure that the program shall have insurance coverage that provides for the protection and replacement of the physical and financial resources of the program and that provides fidelity bond or crime and dishonesty insurance coverage for all staff members, facilities, and equipment;

(6) To review the insurance coverage annually; and

(7) To approve all contracts.

e. The governing body shall develop and approve policies for the effective operation of the program.

f. The governing body is responsible for all funds, equipment, supplies and the facility or facilities in which the program operates, and for the appropriateness and adequacy of services provided by the program.

g. The governing body shall at least annually prepare a report which shall include, but not be limited to, the following information:

(1) The name, address, occupation, and place of employment of each governing body member;

(2) Any family or business relationships which a member of the governing body may have with a program staff member; and

(3) When applicable, the name and address of any owner or controlling party whether it is an individual, a partnership, a corporation body or a subdivision of other bodies, such as a public agency, religious group, fraternity, or other philanthropic organization.

h. The governing body shall assume the responsibility of ensuring that malpractice and liability insurance and fidelity bond or crime and dishonesty insurance have been provided for the program.

162.20(2) Executive director or program director. The executive or program director shall have primary responsibility for overall problem gambling treatment program operations. The problem gambling treatment program governing body shall clearly define the duties of the executive director or program director, when applicable, in accordance with the policies established by the governing body.

162.20(3) Clinical oversight. The problem gambling treatment program shall have appropriate clinical oversight to ensure the quality of clinical services provided to clients. Clinical oversight shall be provided in-house or through consultation. The clinical director shall meet the criteria for staff members detailed in subrule 162.20(6), paragraph "k." Clinical oversight may include assisting the problem gambling treatment program in developing policies and procedures relating to the assessment and treatment of clients, assisting in the training of staff members and providing assistance to clinical staff members in assessment or treatment. The executive director or program director or designee is ultimately responsible to the governing body for the supervision of clinical services and the provision of services to clients.

162.20(4) Staff development.

a. The problem gambling treatment program governing body shall approve written policies and procedures that establish a staff development and training plan, based on an annual needs assessment. Staff development shall include orientation for staff members and opportunities for continuing job-related education.

b. The problem gambling treatment program shall institute and document in-service training programs when program operations or functions are changed. In addition, the program shall design in-service training programs to allow staff members to develop new skills so that staff members may effectively adapt to such changes.

c. The problem gambling treatment program shall make on-site staff development and activities for professional growth and development available to all personnel. These activities shall be culturally and environmentally specific.

162.20(5) Procedures manual. All problem gambling treatment programs shall develop and maintain a procedures manual. The manual shall define the program's policies and procedures to reflect the program's activities. Any revision entered in the manual shall include the date and the name and title of the individual making the entries. The manual shall include the required written policies, procedures, definitions, and all other documentation required in this chapter.

162.20(6) Personnel. All problem gambling treatment programs shall develop written personnel policies and procedures.

a. The problem gambling treatment program shall have written policies and procedures that address the following criteria:

(1) Recruitment, selection, and credentials of staff members;
(2) Recruitment and selection of volunteers;
(3) Wage and salary administration;
(4) Promotions;
(5) Employee benefits;
(6) Working hours;
(7) Vacation and sick leave;
(8) Lines of authority;
(9) Rules of conduct;
(10) Disciplinary actions and termination of employees;
(11) Methods for handling cases of inappropriate services to clients;
(12) Work performance appraisals;
(13) Employee accidents and safety;
(14) Employee grievances; and
(15) Employee assistance for staff members.

b. The problem gambling treatment program shall ensure that written personnel policies and practices include compliance with the United States Equal Employment Opportunity Commission.

c. The problem gambling treatment program shall have written job descriptions that reflect the actual duties of the employee.

d. The executive director or program director or designee shall review job descriptions when necessary or whenever there is a change in required qualifications or duties.

e. The problem gambling treatment program shall ensure that all positions have job descriptions included in the personnel section of the procedures manual or personnel record of the staff member.

f. The problem gambling treatment program shall have written personnel policies and practices that include a mech-

anism for written evaluation of employee performance on at least an annual basis. The program shall provide evidence that each evaluation is reviewed with the employee and that the employee is given the opportunity to respond to the evaluation.

g. The problem gambling treatment program shall have a personnel record for each staff member. These records shall contain, as applicable:

(1) Verification of training, experience and all professional credentials relevant to the position;

(2) Job performance evaluations;

(3) Incident reports;

(4) Disciplinary actions taken; and

(5) Documentation that the employee agrees to follow problem gambling treatment program-related confidentiality laws and rules. This documentation shall occur prior to the employee's assumption of duties.

h. The problem gambling treatment program shall have written policies and procedures that ensure confidentiality of personnel records and that list authorized personnel who have access to various types of personnel information.

i. The problem gambling treatment program shall have written policies related to the prohibition of sexual harassment.

j. The problem gambling treatment program shall have written policies related to the implementation of the Americans with Disabilities Act.

k. Staff members who provide treatment services and the clinical director must meet at least one of the following conditions:

(1) Currently maintain active status as a nationally certified gambling counselor or an Iowa-certified gambling counselor.

(2) Have received a minimum of 30 hours of training or education related to problem gambling within the previous 24 months and are working toward certification within a maximum of 24 months as a nationally certified gambling counselor or an Iowa-certified gambling counselor.

(3) Currently maintain active status as a licensed or certified practitioner in a counseling-related field and have received a minimum of 20 hours of training or education related to problem gambling within the previous 24 months.

162.20(7) Child abuse, dependent adult abuse, and criminal history background checks.

a. Written policies and procedures shall prohibit mistreatment, neglect, or abuse of children and dependent adults and shall specify reporting and enforcement procedures for the problem gambling treatment program. Staff members shall immediately report alleged violations to the executive director or program director or designee and appropriate department of human services personnel. The program shall have written policies and procedures for reporting alleged violations that comply with Iowa department of human services rules. The program shall hold any employee found to be in violation of Iowa Code sections 232.67 to 232.70, as substantiated by a department of human services investigation, subject to the program's policies concerning dismissal.

b. The personnel record for each employee working with clients shall contain at a minimum:

(1) Documentation of a criminal history background check with the Iowa division of criminal investigation on a new applicant for employment asking whether the applicant has been convicted of a crime.

(2) A written, signed and dated statement furnished by a new applicant for employment that discloses any substantiated reports of child abuse, neglect or sexual abuse or dependent adult abuse.

(3) For all employees working with or in contact with juveniles, documentation of a background check with the Iowa central child abuse registry on an applicant hired on probationary or temporary status, but prior to permanent employment, for any substantiated reports of child abuse, neglect or sexual abuse pursuant to Iowa Code section 125.14A.

(4) For all employees hired on or after July 1, 1994, and working with or in contact with dependent adults, documentation of a background check with the Iowa central adult abuse registry on an applicant hired on probationary or temporary status, but prior to permanent employment, for any substantiated reports of dependent adult abuse, neglect or sexual abuse pursuant to Iowa Code section 125.14A and chapter 235B.

c. A problem gambling treatment program shall not employ a person to work with juveniles who has a record of a criminal conviction or a founded child abuse report, unless an evaluation of the crime or founded child abuse has been made by the department of human services which concludes that the crime or founded child abuse does not merit prohibition of employment. If a record of criminal conviction or founded child abuse exists, the program shall offer the person with a criminal conviction or founded child abuse the opportunity to complete and submit Form 470-2310, Record Check Evaluation, to the Iowa department of human services. In its evaluation, the department of human services shall consider the nature and seriousness of the crime or founded abuse in relation to the position sought, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation, and the number of crimes or founded abuses committed by the person.

d. A problem gambling treatment program shall not employ a person to work with dependent adults who has a record of a criminal conviction or a founded dependent adult abuse report, unless an evaluation of the crime or founded dependent adult abuse has been made by the department of human services which concludes that the crime or founded dependent adult abuse does not merit prohibition of employment. If a record of criminal conviction or founded dependent adult abuse exists, the program shall offer the person with a criminal conviction or founded dependent adult abuse the opportunity to complete and submit Form 470-2310, Record Check Evaluation, to the Iowa department of human services. In its evaluation, the department of human services shall consider the nature and seriousness of the crime or founded abuse in relation to the position sought, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation, and the number of crimes or founded abuses committed by the person.

e. Each problem gambling treatment staff member shall complete two hours of training relating to the identification and reporting of child abuse and dependent adult abuse within six months of initial employment and shall complete at least two hours of additional training every five years thereafter.

162.20(8) Client case record maintenance. The problem gambling treatment program shall have written policies and procedures governing the compilation, storage and dissemination of individual client case records.

a. These policies and procedures shall ensure that:

(1) The problem gambling treatment program exercises its responsibility for safeguarding and protecting the client

case record against loss, tampering, or unauthorized disclosure of information;

(2) Content and format of client case records are uniform; and

(3) Entries in the client case record are signed and dated.

b. The problem gambling treatment program shall provide adequate physical facilities for the storage, processing, and handling of client case records. These facilities shall include locked office doors and file cabinets and secure computer storage and storage areas. In those instances where records are maintained electronically, the program shall accept a staff identification code number authorizing access in lieu of a signature.

c. The problem gambling treatment program shall maintain appropriate records readily accessible to both staff members who provide services directly to the client and other persons specifically authorized by program policy. The program shall maintain records in proximity to the area in which the client normally receives services.

d. The problem gambling treatment program shall have a written policy governing the disposal and maintenance of client case records. The program shall maintain any client case record for not less than six years from the date the record is officially closed.

e. The problem gambling treatment program governing body shall establish policies that specify the conditions under which information on applicants or clients may be released and the procedures to be followed for releasing such information, in accordance with HIPAA and other relevant provisions of federal and state law. Program staff members as defined in this chapter may release confidential information with a properly authorized release of information.

f. Confidentiality of client case records. The problem gambling treatment program shall protect the confidentiality of client case records maintained by a program in accordance with HIPAA and other relevant provisions of federal and state law.

162.20(9) Client screening, admission and assessment.

a. Client screening. A problem gambling treatment program shall consider a client who is either a problem gambler or a concerned person affected by problem gambling behavior to be eligible for outpatient services if:

(1) Screening of a client, which includes the use of the following tool, determines that the client has a gambling problem if:

1. The gambler meets diagnostic criteria for pathological gambling in the American Psychiatric Association: Diagnostic and Statistical Manual (DSM) of Mental Disorders, version IV; or

2. The gambler does not meet full criteria for pathological gambling but demonstrates two to four of the diagnostic criteria for pathological gambling in the American Psychiatric Association: Diagnostic and Statistical Manual (DSM) of Mental Disorders, version IV.

(2) A concerned person, if any one of the following applies:

1. The individual who gambles excessively, and whose behavior is affecting the concerned person, meets the criteria in subparagraph 162.20(9)"a"(1); or

2. The concerned person meets the criteria of the Gam-Anon 20 questions screening tool.

b. Client admission. The problem gambling treatment program shall determine a client is in need of services if the client meets the criteria in subparagraph 162.20(9)"a"(1) or (2), and may then admit the client to the program. The program shall collect and record prior to or at the time of admission the following intake information on standardized forms for all persons applying for services. The program shall ensure that the following information shall become part of the client case record:

(1) Identifying information, including name, address, and telephone number.

(2) Demographic information, including date of birth, sex, race or ethnicity.

(3) Identification of the referral source.

(4) Presenting problem.

(5) Gambling history, including type, amount, frequency and duration of gambling activity.

(6) A problem gambling treatment screening as described in paragraph 162.20(9)"a."

(7) A GTRS admission form if funded by the Iowa gambling treatment fund.

c. Client assessment. The problem gambling treatment program shall develop a complete assessment which is an analysis and synthesis of the intake data and which addresses the client's strengths, needs, and areas of clinical concern, including any problem gambling-specific goals and objectives the client has identified. The assessment shall be completed within 21 days of admission and shall include the following information:

(1) Legal history describing any involvement with the criminal justice system.

(2) Medical and health history.

(3) Mental health history and current mental health status, including, at a minimum, the use of a version of the Modified-MINI screening tool identified by the department. The program shall be exempt from the requirement in this subparagraph if the client was referred by a mental health provider that already completed a mental health history and current mental health status.

(4) Suicidal/homicidal assessment including past suicide attempts, method, suicide plan, family history of suicide attempts, and suicidal intent.

(5) Substance abuse history and screening describing current use, past use and treatment history, including, at a minimum, the use of a version of the Texas Christian University screening tool identified by the department. The program shall be exempt from the requirement in this subparagraph if the client was referred by a licensed substance abuse provider that already completed a substance abuse history and screening.

(6) Family history describing family composition and dynamics.

(7) Education status and history documenting levels of achievement.

(8) Vocational or employment status and history describing skills or trades learned, jobs held, duration of employment, and reasons for leaving.

(9) Peers and friends, indicating interpersonal relationships and interaction with persons and groups outside the home.

(10) A financial evaluation and information, including current financial status, gambling debt, any previous bankruptcy or repayment plans, and insurance coverage.

(11) Any other relevant information which shall assist in formulating an initial assessment of the client.

d. Problem gambling screening, admission and assessment policies and procedures. The problem gambling treatment program shall have written policies and procedures governing uniform screening, admission and assessment, which shall define:

(1) The types of information to be gathered on all problem gambling clients during screening, admission and assessment.

(2) Procedures to be followed to accept referrals from outside agencies or organizations.

(3) The types of records to be kept on all problem gambling clients applying for services.

e. The problem gambling treatment program shall ensure that all clinical observations and recommendations are documented in the client case record. If, in the judgment of the clinical director, psychological, psychiatric or further medical examinations are indicated, then the program shall refer the client to the appropriate professional services and document the referral in the client case record.

f. When a client refuses to divulge information or to follow the recommended course of treatment, the problem gambling treatment program shall note this refusal in the client case record.

g. During the screening and admission process, the program shall document that the client has been informed of:

(1) The general nature and goals of the problem gambling treatment program.

(2) The rules governing client conduct and the infractions that may lead to discharge from the program.

(3) The hours during which services are available.

(4) Problem gambling treatment costs to be borne by the client, if any.

(5) The client's rights and responsibilities.

(6) Confidentiality laws, rules and regulations including HIPAA.

h. The problem gambling treatment program shall clearly explain the results of the assessment to the client and to the client's family when appropriate. The problem gambling treatment program shall document this explanation in the client case record.

i. The clinical director shall review and approve all client screenings and assessments within 30 days of completion by probationary employees. The clinical director shall review and approve a minimum of 10 percent of all problem gambling client screenings and assessments within 30 days of completion by nonprobationary employees.

j. If the client is a minor, the program shall provide treatment services only with the permission of the client's parent or guardian.

162.20(10) Treatment plans. The problem gambling treatment program shall have a treatment plan in effect for each client receiving services. Based upon the initial assessment, the program shall develop and record an individualized written treatment plan in the client case record.

a. The problem gambling treatment program shall develop a treatment plan based upon the assessment as soon after the client's admission to the program as is clinically feasible, but not later than 30 days following admission.

b. The problem gambling treatment program shall have an individualized treatment plan for each client which, at a minimum, shall contain:

(1) Short-term and long-term goals that the client is attempting to achieve, based on the client's strengths and needs, including any problem gambling-specific goals and objectives that the client has identified.

(2) Time lines for the client to complete short-term and long-term goals and to successfully complete treatment.

(3) Type and frequency of therapeutic problem gambling treatment services which the client is receiving.

(4) Cultural and environmental criteria to meet the needs of the client.

c. The problem gambling treatment program shall develop treatment plans in partnership with the client.

d. The problem gambling treatment program shall provide the client with copies of all treatment plans upon request.

e. The problem gambling treatment program shall review the treatment plan with the client at a minimum of every 60 days or as progress occurs, whichever is sooner. The program shall document each review in the progress notes as required in subrule 162.20(11).

f. The problem gambling treatment program shall document that it has attempted to engage in joint treatment planning with other professionals who also provide services to the client.

g. If the client is a minor, the problem gambling treatment program shall develop a treatment plan in consultation with the client's parent or guardian.

162.20(11) Progress notes.

a. The problem gambling treatment program shall record a client's progress and current status in meeting the goals set in the treatment plan, as well as efforts by staff members to help the client achieve the stated goals in the client case record. Staff members shall record information following each individual counseling session and shall record a summary of group counseling services at least weekly for clients who receive group counseling services.

b. The problem gambling treatment program shall use a standard documentation format for progress notes.

c. The progress notes for each individual counseling session shall document the following:

(1) Content of the session.

(2) A reassessment of the client's status, including any new short-term or long-term goals which were developed in conjunction with the client.

(3) Efforts by staff members to help the client achieve the treatment plan goals.

(4) Progress in achieving short-term and long-term goals.

(5) A plan to determine future short-term and long-term goals.

d. Entries shall be filed in chronological order and shall include the date services were provided or observations made, the amount of service time, the date the entry was made, and the signature or initials and title of the staff member providing the services. Staff members shall enter all progress notes into the client case record in permanent pen or by typewriter or computer. For records maintained electronically, the program shall accept a staff identification code number authorizing access in lieu of a signature.

e. Staff members shall supplement all entries that involve subjective interpretations of a client's progress with a description of the actual behavioral observations which were the basis for the interpretation.

f. If a client is also receiving services from an outside resource, the program shall attempt to periodically provide an updated status report to the outside resource, and shall attempt to:

(1) Secure a written copy of status reports and other client records from the outside resource, and

(2) Engage in joint treatment planning with other professionals involved in the management of the client's case.

g. The problem gambling treatment program shall ensure that individual progress notes are written, typed or dictated within one working day of the session and that group progress notes are written, typed or dictated within five working days of the session.

162.20(12) Client case record contents. The problem gambling treatment program shall ensure that there is a case record for each client that contains, as applicable:

a. Results of all examinations, tests, screening, and admission information;

b. Reports from referring sources;

c. An assessment;

d. Treatment plans;

e. Date of report from an outside resource or documentation of verbal consultation with an outside resource including the name of the resource;

f. Documentation of multidisciplinary case conferences and consultations, including the date of the conference or consultation, recommendations made, actions taken, and individuals involved;

g. Correspondence related to the client, including all letters and dated notations of telephone conversations relevant to the client's treatment;

h. Treatment consent forms;

i. Release of information forms;

j. Progress notes;

k. Records of services provided;

l. A discharge summary of services provided, to be completed within 45 days of discharge. The program shall ensure that the discharge summaries are sufficiently detailed to identify the types of services the client has received and the actions taken to address the specific problems identified. The discharge planning process shall begin at the time of client admission, shall determine a client's continued need for treatment services, and shall include development of a plan to address ongoing client posttreatment needs. Discharge planning may also include a document identified as a discharge plan. Discharge of the client shall occur not later than 45 days after services have ceased. If the client is a minor, staff members shall develop the discharge plan in consultation with the client's parent or guardian;

m. GTRS forms if funded by the Iowa gambling treatment fund, or other appropriate data forms;

n. Incident reports; and

o. Documentation of all missed appointments and failure to comply with treatment recommendations.

In describing services, staff members shall avoid general terms such as "counseling" or "activities."

162.20(13) Medical services.

a. The problem gambling treatment program shall have policies and procedures developed to ensure that a medical history for all clients is completed upon admission to a treatment program. The program shall have policies and procedures developed in conjunction with a physician. The program policies and procedures shall specify how program staff members review the medical history of, examine, and evaluate persons seeking services, and shall specify when staff members refer clients to medical services.

b. The program shall ensure that the medical history is performed as soon as possible.

c. A program may accept a medical history from referral sources which was conducted not more than 90 days prior to admission.

162.20(14) Emergency medical services. The problem gambling treatment program shall have policies and procedures to address medical emergencies.

162.20(15) Sentinel events.

a. The problem gambling treatment program shall have written policies and procedures to identify sentinel events that include but are not limited to:

(1) Situations in which a client or staff member is determined to be a danger to self or others;

(2) Any injury occurring at the facility;

(3) Any child abuse or dependent adult abuse involving a client or involving a program staff member as the respondent;

(4) Vehicular accidents involving a staff member on program business or involving a program-owned vehicle;

(5) Abuse of licit substances on program property;

(6) Use or possession of illicit substances on program property;

(7) Any events which may be subject to litigation; and

(8) Any other event which the program considers a sentinel event.

b. The problem gambling treatment program shall identify and respond appropriately to all sentinel events.

162.20(16) Quality improvement. The problem gambling treatment program shall have an ongoing quality improvement plan primarily designed to improve client services and to resolve identified problems.

a. The program shall have a written plan for quality improvement that is designed to evaluate the quality and appropriateness of client services and to resolve identified problems.

b. Staff members shall document program progress in the quality improvement plan.

c. Staff members shall document program changes in the quality improvement plan.

d. Staff members shall document how the quality of client services is improved by means of the quality improvement plan.

e. Staff members shall identify problems resolved through actions taken in compliance with the quality improvement plan.

f. The program shall demonstrate that problem gambling treatment modalities are grounded in current best practices within the problem gambling treatment field.

g. The program shall demonstrate integration of available research-based findings into its clinical practice.

h. The program shall have written policies and procedures for incorporating client satisfaction, treatment outcomes and performance measurement data into the quality improvement plan and shall demonstrate that findings from these data sources have been used to monitor and improve program performance.

162.20(17) Facility construction and safety. All facilities in which clients receive screenings, assessments or treatment services shall be designed, constructed, equipped, and maintained in a manner that is designed to provide for the physical safety of clients, staff members, visitors, and others.

a. If required by local jurisdiction, the program shall display a certification of occupancy.

b. During all phases of construction or alterations of facilities, the program and construction contractor shall not diminish the level of life safety in any occupied area. The program shall ensure that construction is in compliance with all applicable federal, state, and local codes.

c. New construction shall comply with Iowa Code chapter 104A and all applicable federal and local codes and provide for safe and convenient use by disabled individuals.

d. The program shall have written policies and procedures to provide a safe environment for clients, personnel, and visitors and to monitor that environment. Staff members shall document implementation of the procedures. The program's written policies and procedures shall include, but not be limited to, the following:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

(1) A process for the identification, development, implementation, and review of safety policies and procedures for all facilities and services.

(2) The promotion and maintenance of an ongoing, facilitywide hazard surveillance program to detect and report all safety hazards related to clients, visitors, and personnel.

(3) The process by which staff members dispose of biohazardous waste within clinical service areas.

(4) For all facilities, the program shall:

1. Maintain all stairway, hall, and aisle floors with a substantial nonslippery material. The program shall maintain all stairways, halls, and aisles in a good state of repair, with adequate lighting. The program shall ensure that halls and aisles are free from obstructions at all times and that all stairways have handrails.

2. Ensure that radiators, registers, and steam and hot water pipes have protective covering or insulation and that electrical outlets and switches have wall plates.

3. Have written procedures for the handling and storage of hazardous materials.

4. Have policies and procedures for weapons removal.

5. Maintain swimming pools in conformance with state and local health and safety regulations. The program shall ensure that adult supervision is available at all times during which children are using the pool.

6. Have policies regarding fishing ponds, lakes, or any bodies of water located on or near the facility and accessible to the client.

162.20(18) Facility safety. The problem gambling treatment program shall:

a. Ensure that the outpatient facility is safe, clean, well ventilated, properly heated, free from vermin and rodents and in good repair.

b. Ensure that the facility is appropriate for providing those services available from the program and for protecting confidentiality.

c. Ensure that furniture is in good repair.

d. Have a written plan outlining procedures to be followed in the event of fire or tornado. This plan shall be conspicuously displayed in the facility.

162.20(19) Therapeutic environment. The problem gambling treatment program shall establish an environment that enhances the positive self-image of clients and preserves their human dignity. The program shall:

a. Ensure that all services are accessible to people with disabilities or have written policies and procedures that describe how people with disabilities can attain access to the facility for necessary services. The program shall comply with the Americans with Disabilities Act.

b. Ensure that the waiting or reception areas are of adequate size, have appropriate furniture and are located to ensure confidentiality.

c. Ensure that staff members are available to address the needs of clients and to greet clients and visitors.

d. Prohibit smoking within each facility.

e. Ensure that no staff member or other person sells, gives, or otherwise supplies any tobacco, tobacco products, or cigarettes to any client or staff member. The program shall not allow a person under the age of 18 to smoke, use, purchase, or attempt to purchase any tobacco, tobacco products, or cigarettes.

f. Have written policies and procedures to:

(1) Inform problem gambling clients of their legal and human rights at the time of admission to the program;

(2) Address client communication, opinions, or grievances and have a mechanism for redress;

(3) Address prohibition of sexual harassment; and

(4) Address a client's right to privacy.

162.20(20) Financial counseling services.

a. The program shall offer financial counseling services to clients. Financial counseling services shall be provided in-house or through consultation.

b. If the problem gambling treatment program determines that the client has financial problems, then financial counseling services shall include assisting clients in preparing a budget and discussing financial debt options, including restitution and bankruptcy.

These rules are intended to implement Iowa Code section 135.150.

[Filed 3/16/07, effective 5/16/07]
[Published 4/11/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/11/07.

ARC 5822B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby rescinds Chapter 190, "Consent for the Sale of Goods and Services," Iowa Administrative Code.

This amendment rescinds the Department's rules regarding officials selling goods or services to regulated persons. The Iowa Ethics and Campaign Disclosure Board now has rules that apply to all regulatory agency employees and officials in the area of sale of goods and services.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because another state entity, the Iowa Ethics and Campaign Disclosure Board, has adopted rules for regulatory agency officials and employees to obtain consent for the sale of goods and services.

This amendment shall become effective May 16, 2007.

This amendment is intended to implement Iowa Code section 68B.4.

The following amendment is adopted.

Rescind and reserve **641—Chapter 190**.

[Filed Without Notice 3/16/07, effective 5/16/07]
[Published 4/11/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/11/07.

ARC 5830B

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on March 21, 2007, adopted an amendment to Chapter 529, "For-Hire Interstate Motor Carrier Authority," Iowa Administrative Code.

Notice of Intended Action for this amendment was published in the February 14, 2007, Iowa Administrative Bulletin as **ARC 5715B**.

Because the Code of Federal Regulations (CFR) was updated in October 2006, the Department must cite the current version in the administrative rules. No changes to 49 CFR Parts 365-368 and 370-379 have occurred.

This amendment is identical to the one published under Notice of Intended Action.

This amendment is intended to implement Iowa Code chapter 327B.

This amendment will become effective May 16, 2007.

Rule-making action:

Amend rule 761—529.1(327B) as follows:

761—529.1(327B) Motor carrier regulations. The Iowa department of transportation adopts the Code of Federal Regulations, 49 CFR Parts 365-368 and 370-379, dated October 1, ~~2005~~ *2006*, for regulating interstate for-hire carriers.

Copies of this publication are available from the state law library or through the Internet at http://www.fmcsa.dot.gov.

[Filed 3/21/07, effective 5/16/07]
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ARC 5810B

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on March 13, 2007, rescinded Chapter 830, "Rail Assistance Program," and Chapter 831, "Railroad Revolving Loan Fund," Iowa Administrative Code.

Notice of Intended Action was published in the January 17, 2007, Iowa Administrative Bulletin as **ARC 5656B**.

The rail assistance program and the railroad revolving loan fund program were administered by the Department. In accordance with 2005 Iowa Acts, chapter 178, sections 31 to 34, these two programs were replaced by the railroad revolving loan and grant fund program, which is administered by the Iowa Railway Finance Authority. Therefore, the Department's administrative rules governing the administration of the rail assistance program and the railroad revolving loan fund program are no longer needed and are rescinded. The Iowa Railway Finance Authority has adopted 765—Chapter 5 to administer the railroad revolving loan and grant fund program.

This rule making does not provide for waivers. Granting waivers for obsolete rules is not appropriate.

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

These amendments are intended to implement Iowa Code chapter 327H.

These amendments will become effective May 16, 2007.

Rule-making actions:

ITEM 1. Rescind and reserve **761—Chapter 830**.

ITEM 2. Rescind and reserve **761—Chapter 831**.

[Filed 3/13/07, effective 5/16/07]
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