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Pursuant to section 17A.6 of the Iowa Code, the Iowa Administrative Code [IAC] Supplement is published biweekly and supersedes Part II of previous publications.

The Supplement contains replacement pages to be inserted in the loose-leaf IAC according to instructions in the respective Supplement. Replacement pages incorporate amendments to existing rules or entirely new rules or emergency or temporary rules which have been adopted by the agency and filed with administrative rules co-ordinator as provided in sections 17.7, 17A.4 to 17A.6. [It may be necessary to refer to the Iowa Administrative Bulletin* to determine the specific change.] The Supplement may also contain new or replacement pages for "General Information", Tables of Rules Implementing Statutes, and Skeleton Index.

When objections are filed to rules by the Administrative Rules Review Committee, Governor or the Attorney General, the context will be published with the rule to which the objection applies.

Any delay by the Administrative Rules Review Committee of the effective date of filed rules will also be published in the Supplement.

Each page in the Supplement contains a line at the top similar to the following:

IAC 12/29/75

Agriculture[30]

Ch 1, p.1

*Section 17A.6 has mandated that the "Iowa Administrative Bulletin" be published in pamphlet form which will contain material formerly published in Part I of the IAC Supplement. The Bulletin will contain Notices of Intended Action, Filed Rules, effective date delays, and the context of objections to rules filed by the Committee, Governor, or the Attorney General.

In addition, the Bulletin shall contain all proclamations and executive orders of the Governor which are general and permanent in nature, as well as other materials which are deemed fitting and proper by the Committee.

INSTRUCTIONS

FOR

Updating Iowa Administrative Code
with Biweekly Supplement

NOTE: Please review the "Preface" for both the Iowa Administrative Code and Biweekly Supplement and follow carefully the updating instructions.

The boldface entries in the left-hand column of the updating instructions correspond to the tab sections in the IAC Binders.

Obsolete pages to IAC are listed in the column headed "Remove Old Pages". New and replacement pages in this supplement are listed in the column headed "Insert New Pages". It is important to follow instructions in both columns.

UPDATING INSTRUCTIONS June 9, 1982 Biweekly Supplement

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*It is recommended that "Old Pages" be retained indefinitely in a place of your choice. They may prove helpful in tracing the history of a rule.

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CHAPTER 1 INTRODUCTION

20—1.1(249B) Basis and purpose of the rules. The rules of the Iowa commission on the aging, are based pursuant to the authority of chapter 249B, Iowa Code.

These rules prescribe requirements which agencies must meet to receive grants under the Older Americans Act and other funds administered through the Iowa commission on the aging.

20—1.2(249B) Applicability of other regulations and order of precedence.

1.2(1) Basis of the rules in order of precedence. These rules are based on the following federal and state regulations, listed in order of precedence which will prevail in the event of conflicting or inconsistent requirements:

- a. Older Americans Act of 1965, as amended.
- b. Code of Federal Regulations 5 CFR 900, subpart F, 7 CFR 250, 28 CFR 89, 45 CFR parts 74, 80, 81, 84, 90 and 1321.
- c. Administration on aging policy issuances and administration on aging program instructions.
- d. Chapter 249B of the Iowa Code—Commission on the Aging. Other chapters in the Iowa Code.
- e. Iowa Administrative Code—Aging, Commission on [20].
- f. The policy manual of the commission and policy issuances of the commissioners.
- g. Iowa aging directives signed by the executive director.

1.2(2) Applicability of other regulations. The commission shall be administered in accordance with all applicable federal laws and regulations, The Code, and policies of the commissioners.

20—1.3(249B) Applicability to various groups. The rules set forth herein apply to all grants awarded to any recipient through the commission. Unless otherwise specified, the rules reflect legislative mandate, federal requirements, or commission policies and thus should be regarded as mandatory.

20—1.4 to 1.6 Reserved.

20—1.7(249B) Definitions.

1.7(1) General definitions. Unless otherwise prescribed by federal and state regulations, the terms used in these rules shall have the following meanings:

- a. "Act" or "OAA" means the Older Americans Act of 1965, as amended.
- b. "Administration on aging" or "AoA" means the federal agency established to administer the provisions of the Act.
- c. "Aged" or "elderly" or "older" means persons aged sixty or older.
- d. "Agency number [20]". Rules of the aging commission appear under agency number [20] in the Iowa administrative code.
- e. "Area agency on aging" or "AAA" means the grantee agency designated by the commissioners in a planning and service area to develop and administer the area plan for a comprehensive and co-ordinated system of services for older persons.
- f. "Area administration cost" means all direct and indirect costs incurred by the grantee in managing a grant, including all audit and policy board expenses incurred in the support of an area agency director.
- g. "Chapter 249B" means chapter 249B of the Iowa Code which establishes the Iowa commission on the aging.
- h. "Commission" or "COA" means the Iowa commission on the aging consisting of the commissioners and the executive director.
- i. "Commissioners" means the individuals who comprise the policy board of the commission.

- j. "*Community focal point*" means a place or mobile unit in a community or neighborhood designated by the area agency for the co-location and co-ordination of services delivery to older persons.
- k. "*Community based adult services*" means a co-ordinated, multilevel social and health care delivery system which assures the functionally dependent eligible individual the most appropriate level of care and supportive services in order to live as independently and in the least restrictive setting as possible.
- l. Reserved.
- m. Reserved.
- n. "*Comprehensive and co-ordinated system*" means a program of interrelated social and nutrition services designed to meet the needs of older persons in a planning and service area.
- o. "*Continuum of care*" means a full range of economic, physical, psychological, social and support programs and services necessary to maintain or restore aging persons to their optimal environment.
- p. "*Dietitian*". See registered dietitian.
- q. "*Eligible individual*" means any person aged sixty or older and his or her spouse, regardless of the age of the spouse.
- r. "*Equivalent support*" means in-kind contribution of services, goods, volunteer support time, administrative support, or other support reasonably determined by the commission as equivalent to a dollar amount.
- s. "*Executive director*" means the executive director of the Iowa commission on the aging.
- t. "*Fiscal year*" or "*FY*" means the state fiscal year.
- u. "*Grantee*" means the legal entity to which a grant is awarded and which is accountable to the commission for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the award document. The term "grantee" does not include any secondary recipients such as subgrantees or contractors, who may receive funds from a grantee pursuant to a grant.
- v. "*Greatest economic need*" means the need resulting from an annual income level at or below the poverty guidelines defined under "low income".
- w. "*Greatest social need*" means the need caused by noneconomic factors which restrict an individual's ability to perform normal daily tasks or which threaten his or her capacity to live independently.
- x. "*Human services*" means social, health, or welfare services.
- y. "*Local match*". See match.
- z. Reserved.
- aa. "*Long-term care facility*" means any skilled nursing facility, intermediate care facility, residential care facility, or other similar adult care home as defined by sections 1861(j), 1905(c), and 1980(e) of the Social Security Act and section 135C.1, Iowa Code.
- ab. "*Low income*" means any person or persons whose actual individual or family income is less than one hundred twenty-five percent of the poverty guidelines issued by the U.S. Office of Management and Budget (1981).
- ac. "*Match*" means the equivalent cash value of third party in-kind contributions and cash resources or both, representing that portion of the costs of a grant supported project or program not borne by the commission.
- ad. "*Multipurpose senior center*" means a community or neighborhood facility for the organization and provision of a broad spectrum of services, and facilities for recreational and group activities for older persons.
- ae. "*Nutrition services*" means meals, outreach and nutrition education.
- af. "*Nutritionist*" means a graduate of a bachelor's degree program from an accredited college or university with a major in food and nutrition science or public health nutrition.
- ag. Reserved.
- ah. "*Older Americans Act*" or "*OAA*", see Act.
- ai. "*Planning and service area*" or "*PSA*" means a geographic area of the state that is designated by the commissioners for purposes of planning, development, delivery and overall ad-

ministration of services under an area plan.

aj. "Program cost" means all cost incurred by the area agency on aging in managing and delivering services, including salary, fringe, travel, training and other personnel costs plus the cost of equipment, supplies, and nonpersonnel expenses of service delivery.

ak. "Program income" or "project income" or "contributions" means gross income earned by a recipient from activities, part or all of the cost is paid by the grant or by funds used to match the grant.

al. "Registered dietitian" means a graduate from a baccalaureate program in an accredited college or university with a major in foods and nutrition, food service or institution management, or related subjects, plus successful completion of a dietetic internship or equivalent training accredited by the American Dietetic Association. The health professional is registered with the American Dietetic Association and receives continuing education to maintain registration status.

am. "Regional office" means the federal regional office in Kansas City, Missouri established to administer the provisions of the Act.

an. "Region VII" means the states of Iowa, Kansas, Missouri and Nebraska.

ao. "Rural" means those areas outside a standard metropolitan statistical area defined by the U.S. Bureau of the Census.

ap. "Senior activity center" means a community or neighborhood facility for the organization and provision of limited services, recreational, and group activities.

aq. "State agency" means the executive director.

ar. "Third party in-kind contributions" means property or services which benefit a grant-supported project or program and which are contributed by nonfederal third parties without a charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant.

as. "Title III" means Title III of the Act for grants to state and community programs on aging.

at. "Title III-B" means Title III, part B, of the Act for supportive services.

au. "Title III-C" means Title III, part C, of the Act for nutrition services.

av. "Title III-C(1)" means Title III, part C, subpart 1 of the Act for congregate nutrition services.

aw. "Title III-C(2)" means Title III, part C, subpart 2 of the Act for home delivered nutrition services.

ax. "Title IV-A" means Title IV, part A, of the Act for staff and volunteer training.

ay. "Title V" means Title V of the Act for employment of low income persons aged fifty-five and older.

az. "Unit of general purpose local government" means a political subdivision of the state whose authority is general and not limited to only one function or combination of related functions.

1.7(2) Service category definitions. Unless otherwise prescribed by federal and state regulations, terms when used in these rules have the following meanings:

a. "Adult day care services" means any program which provides an organized program of supportive care during the day in a group environment to elderly individuals who need a degree of supervision or assistance or both.

b. "Catered food service delivery system" means any food service delivery system where food is prepared at a congregate nutrition site or central kitchen or food service establishment and transported to a location where meals will be served in a designated congregate nutrition site.

c. "Chore services" means home maintenance services provided to individuals living in their own home.

d. "Congregate nutrition site" or "congregate meal site" or "meal site" or "site" means any location other than a primary place of residence where meals and other nutrition services are provided in a group setting in whole or in part, with AoA federal nutrition funds or contributions from an AoA nutrition program, or both.

e. "Health screening clinic" or "well-elderly clinic" means a point of entry to health care services at which the general health of the older person is reviewed, simple tests may be performed, referral may be made to other needed health care services, and health education is provided.

f. "Home delivered meals" means meals delivered to elderly individuals in their primary place of residence.

g. "Home repair services" means programs which aid elderly individuals in maintaining a safe and habitable living environment through improvement in the physical condition of their home.

h. Reserved.

i. Reserved.

j. Reserved.

k. "Information and referral service" means a system to link people in need of services to appropriate resources.

l. "Legal services" means legal advice and representation by an attorney, counseling or other appropriate assistance by a paralegal or law student under the supervision of an attorney, and counseling or representation by a trained advocate where permitted by law.

m. "Telephone reassurance" means regular, planned telephone calls to or from elderly individuals to assure their well-being.

n. "Transportation services" means services to facilitate access to other services.

o. "Well-elderly clinic". See health screening clinic.

[Filed 5/20/82, Notice 3/17/82—published 6/9/82, effective 7/14/82]

CHAPTER 2

COMMISSION DESIGNATION, LOCATION, ORGANIZATION AND FUNCTIONS

20—2.1(249B) Designation and functions of the commission.

2.1(1) *Designation.* The Iowa commission on the aging was created by chapter 249B, The Code.

2.1(2) *Location.* General correspondence, inquiries, requests for information or assistance, complaints, or petitions may be addressed to: Executive Director, Iowa Commission on the Aging, 415-10th Street, Des Moines, Iowa 50319. (515) 281-5187.

2.1(3) *Personal contact.* Business hours for the commission are 8:00 a.m. to 4:30 p.m., Monday to Friday, excluding legal holidays established by the state executive council.

2.1(4) *General purpose.* The general purposes for which the commission was created are:

a. To develop a state plan to administer the Older Americans Act in the state of Iowa;

b. To be primarily responsible for planning, co-ordinating and distributing information on programs and activities to meet the needs of older Iowans;

c. To be an advocate for older Iowans, to help older citizens achieve their rightful position in the community, and to encourage their involvement in planning and implementing programs;

d. To assist with funding and technical assistance, within the limitations of resources available, to federal, state and local agencies developing or delivering programs authorized under the Older Americans Act and related legislation.

20—2.2 Reserved.

20—2.3(249B) *Organization of the commission.* The Iowa commission on the aging shall serve as the designated sole state unit on aging in Iowa for all purposes of the Older Americans Act of 1965, as amended, and related legislation. The commission consists of the commissioners and the executive director.

20—2.4(249B) Commissioners.

2.4(1) *Appointment.* There are eleven commissioners, of which:

a. Two are senators from different parties appointed by the president of the senate to serve

as ex officio nonvoting members.

b. Two are representatives from different parties appointed by the speaker of the house to serve as ex officio nonvoting members.

c. Seven are appointed by the governor to serve as voting members.

2.4(2) Terms. All commissioners shall be appointed for four years.

2.4(3) Expenses. Commissioners, while engaged in their official duties, shall be reimbursed at a rate not to exceed rates established for state employees unless otherwise approved by the chair and be paid a per diem as set forth in 249B.6, Iowa Code. Legislative members shall receive payment pursuant to sections 2.10 and 2.12, Iowa Code.

2.4(4) Meetings.

a. *Frequency, time and place.* The commissioners shall meet at regular intervals at least six times annually. Meetings generally shall be held on the third Thursday of a month in Des Moines, Iowa, but may be held on different dates and at a different location as the commissioners may determine. All meetings shall be held at a place reasonably accessible to the public, including handicapped and disabled persons, and at a time reasonably convenient to the public, unless for good cause stated in the minutes of the meetings, such a place or time is impossible or impracticable.

b. *Conduct of meetings.* Meetings shall be conducted according to Robert's Rules of Order, as amended. The chairperson or a designee shall preside at each meeting. Members of the public may be recognized at the discretion of the chairperson.

c. *Quorum.* A quorum shall consist of two-thirds of the voting members of the commission.

d. *Notice.* Advance notice of time, date, place and tentative agenda of each meeting of the commissioners shall be given at least ten days before each meeting, except for an emergency meeting, in a manner reasonably calculated to apprise the public of that information, in compliance with section 28A.4, The Code. Reasonable notice shall include advising the news media which have filed a request for notice with the commission, sending notice to each area agency on aging, and posting the notice prominently at the office location identified under subrule 2.1(2).

e. *Minutes.* Minutes of each meeting shall be kept in compliance with sections 28A.3 and 28A.5(4), The Code. The minutes of each meeting shall be available for public inspection at the office location identified under subrule 2.1(2).

f. *Emergency meetings.* The chairperson may call an emergency meeting if for good cause ten days' notice of an emergency meeting is impossible or impracticable. As much notice of an emergency meeting as is reasonably possible shall be given. Notice shall include notification of one or more news media which are generally apprised of meetings of the commissioners. The chairperson shall make all reasonable and practical efforts to contact all commissioners, the executive director, the chairperson of the state advisory committee, and the chairperson of the Iowa association of area agencies on aging, informing them of the time, place and purpose of the meeting. The nature of the good cause justifying the emergency meeting shall be stated in the minutes of the meeting.

g. *Closed meetings.* All meetings shall be open to the public unless an open meeting is properly closed pursuant to section 28A.5, The Code.

2.4(5) Elections. The commissioners shall elect a chairperson and other officers from the regular voting members.

a. The term of office shall not exceed two years.

b. Officers may not be elected to more than two consecutive terms.

c. Elections shall be held at the first regularly scheduled meeting after July 1, announced in advance through public notice of that meeting.

d. Nominations shall be accepted from all commissioners.

e. When all nominations have been received, the regular voting members shall vote on the nominees.

f. The nominee receiving a majority of votes shall be elected.

2.4(6) Duties. The commissioners have the final authority and responsibility to see that

the general purposes are fulfilled. The specific responsibilities of the commissioners include:

- a. Approve a state plan on aging and submit a plan to the governor for approval and signature.
- b. Receive federal funds or any grants and gifts on behalf of the state for the purposes that are within the jurisdiction of the commission. All federal funds, grants and gifts shall be deposited with the state treasurer and shall be used only for the purposes agreed upon as conditions for receiving the funds, grants, and gifts.
- c. In consultation with the governor, set the general duties of the executive director and periodically assess that policy is implemented in accordance with directives.
- d. Develop and maintain rules for the Iowa commission on the aging, taking into account the views of recipients of services provided under the state plan in connection with matters of general policy.
- e. Serve in a judicial capacity relative to procedures developed by the executive director, as outlined in rule 4.11(249B).
- f. Annually report to the governor and to the general assembly on the activities of the commission and make recommendations for improvements and resources needed to promote the general well-being of the aging in Iowa.
- g. Create subcommittees as commissioners may authorize. Subcommittees may include noncommissioners who are qualified in any field of activity related to the general well-being of the aging.
- h. Establish a state advisory council in accordance with rule 4.4(249B).
- i. Divide the entire state into distinct planning and service areas.
- j. Designate or terminate a public or private nonprofit agency or organization as the grantee agency for each designated planning and service area, or combination thereof.
- k. Annually review and approve an affirmative action plan for the commission.
- l. Require area agencies on aging to follow procedures established by the executive director.

20—2.5(249B) State agency administration.

2.5(1) Appointment. The governor, with the consent of two-thirds of the senate, shall appoint an executive director who shall serve as the executive director of the commission and shall employ and direct the staff as necessary to administer the programs and carry out the policies of the commissioners.

2.5(2) Term. The executive director may be dismissed by the governor only after consultation with the commissioners.

2.5(3) Salary and benefits. The executive director shall be subject to the provisions in 249B.5, Iowa Code, and staff shall be subject to the state merit system in matters related to salary and benefits.

2.5(4) Duties. The specific responsibilities of the executive director include:

- a. Develop a multiyear state plan on aging, submit the plan as mandated by state and federal law to the commissioners, and administer the implementation of the plan within Iowa.
- b. Seek resources to provide service programs and services to the aging at the state, area, county or local levels and provide services through contract arrangement with public or private nonprofit agencies.
- c. Provide the commissioners or any interested persons who request it with any pertinent document or information which they need to be kept informed. A reasonable fee may be charged to noncommissioners to recover the cost of the document or information.
- d. Develop and maintain forms and procedures for the Iowa commission on the aging.
- e. Make reports as required by the administration on aging, the governor, the Iowa general assembly, and other federal and state agencies, on the activities of the commission.
- f. Collect facts and statistics and make special studies of conditions and problems pertaining to the general welfare of the aging of the state, and to request and receive reports from the various state agencies and institutions on matters within the jurisdiction of the commission.
- g. Make recommendations, based on commissioners' policies and guidance, to state and

local agencies serving the aging for purposes of co-ordinating the agencies' activities.

h. Keep informed of the latest developments of research, studies, and programs being conducted throughout the nation on the problems and needs of the elderly.

i. Serve as a central agency or advisory board, or both, for the mutual exchange of ideas and information on aging between federal, state and local governmental agencies, private organizations and individuals.

j. Co-operate with agencies, federal, state and local, or private organizations, in administering and supervising demonstration programs of services for aging designed to foster continued participation of older people in family and community life and to prevent, insofar as possible, the onset of dependency and the need for long-term institutional care.

k. Review and comment upon, at the request of any federal department or agency, any application from any agency for assistance relating to meeting the needs of older persons. Copies of comments shall be sent to the commission chairperson.

l. Conduct public hearings, as necessary, to gather information on the needs and programs related to older Iowans.

m. Assist in training.

n. Provide technical assistance upon request.

o. Develop grants for approval by the commissioners and manage grants received.

p. Monitor and assess grant recipients.

q. Use methods of administration which are necessary for proper and efficient administration of the state plan.

r. Keep on file for review by the administration on aging a functional statement of the manner in which the commission performs all of its responsibilities under the Act.

s. Require area agencies on aging to prepare, submit and carry out area plans on aging.

t. Submit recommendations to the commissioners on the area agency annual applications.

u. Require area agencies on aging to make final fiscal reports to the commissioners on programs in their areas within seventy days after the close of the grant period.

2.5(5) Divisions of the state agency. The state agency's activities are performed by three divisions directly responsible to the executive director:

a. Administrative, whose function is to control and account for all funds, provide technical assistance to funded agencies, handle purchasing activities, provide office management, complete all personnel transactions, handle central filing, and provide clerical support.

b. Planning, whose function is to work with various levels of the aging network and related service agencies, in the development of management information system which will enhance the planning and development of services to older Iowans.

c. Operations, whose function it is to prepare and manage grants, administer programs, develop program initiatives, provide technical assistance, renew and process area agency plans and funding applications, monitor, assess and evaluate area agency performance and develop and maintain relationships with programs providing service to the elderly.

20—2.6 Reserved.

20—2.7(249B) Staffing.

2.7(1) Employment under state merit system exceptions. The executive director shall comply with the provisions of the Iowa merit employment system, as applicable, in the employment of individuals. This is not to preclude the executive director from obtaining the specialized services of individuals or organizations on a contract basis, according to subrule 2.7(6). Subject to merit system requirements, preference shall be given to the employment of individuals aged sixty or older.

2.7(2) Standards of conduct. Each employee of the executive director is personally responsible for maintaining a high standard of honesty, integrity, impartiality, and conduct, consistent with rules of the Iowa merit employment department, chapter 18, conduct of classified employees, and standards issued by the executive director.

2.7(3) Discrimination. The executive director shall extend equal opportunities to all employees and to applicants for employment who meet the qualifications established for a

class or a position for which the application is made. Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, discipline, or any other aspect of personnel administration because of age, sex, race, national origin, or other nonmerit factors is prohibited.

2.7(4) *Grievance procedure for perceived discrimination.* Persons who have reason to believe they have been discriminated against under this rule shall, if an employee, file a grievance or complaint as provided within the "operating procedures" which shall be published and provided to all employees. Applicants for employment who are not chosen for a position shall be notified by letter that they were not chosen. After receipt of the written notification aggrieved applicants for employment should submit grievances, in writing, to the Iowa commission on the aging, for evaluation by the commission's affirmative action committee. If the grievance is found to be warranted, the affirmative action committee shall submit its recommendations to the executive director of the commission. Applicants whose grievances are found to be unwarranted shall additionally be notified in writing that further appeal may be made to either the Iowa merit employment commission, Iowa civil rights commission or the regional office of the U.S. Equal Employment Opportunities Commission.

2.7(5) *Affirmative action plans.* The commissioners shall annually review and approve an affirmative action plan for the commission. The action plan must comply with the requirements of section 900.607 of Title 5 of the Code of Federal Regulations (1981). The plan must identify the number and types of staff assigned to carry out responsibilities and functions under the Act.

2.7(6) *Use of consultants.* All work of the commission shall be done by staff members unless otherwise approved by the commissioners on a case-by-case basis.

20—2.8 Reserved.

20—2.9(249B) Confidentiality and disclosure of state agency information.

2.9(1) *Confidentiality.* The executive director must develop procedures to ensure that no personal information about, or obtained from an individual, is disclosed in a form identifiable with the individual. The individual or the individual's legal representative must give informed consent to the release of personal information by any agency or provider of service under programs of the commission, unless required by court order, in compliance with 45 CFR 74.24 (1981).

2.9(2) *Public accessibility to manuals, guidelines and records.* Copies of all manuals, guidelines and standards referred to by these rules shall be maintained by the commission. Subject to the confidentiality requirements of 2.9(1) and with the exceptions provided by 5 USC §552 (1979) and state law, all records maintained by the commission shall be available for public inspection at the office location identified under subrule 2.1(2).

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CHAPTER 3 STATE PLAN

20—3.1(249B) Authority for the state plan. The Iowa commission on aging is designated as the sole state unit on aging in Iowa for the development and implementation of a state plan on aging.

20—3.2(249B) Duration and format of the state plan. The commissioners shall adopt a multiyear state plan in compliance with the Older Americans Act of 1965, as amended, in order to receive grants from its allotments under the Act. The state plan will be developed in accordance with the format, content, time limits, transmittal forms, and procedures specified by the administration on aging, 45 CFR parts 1320, 1321, 1324, 1326. (1980).

20—3.3(249B) Content of the state plan. The content of the state plan shall comply with

requirements specified by the administration on aging, and the state requirements as may be necessary.

20—3.4 to 3.6 Reserved.

20—3.7(249B) Amendments to the state plan. The commission shall amend its state plan if:

1. The administration on aging requires further annual amendments.
2. A new or amended federal, state or U.S. Supreme Court law or decision requires a change in the state plan.
3. The state proposes to change the designation of the state agency.
4. The commission proposes to change the designation of any planning and service area.
5. The commission proposes to add, substantially modify, or delete any statewide program objectives.

20—3.8(249B) Development and review of the state plan and plan amendments.

3.8(1) *Public hearings on needs.* Prior to the development of each multiyear plan on aging, the executive director shall determine the needs of older persons, and the extent to which other public and private programs meet such need.

3.8(2) *State plan based on area plans.* The executive director shall develop the state plan in consultation with area agencies on aging to ensure that the objectives established in state and area plans are consistent.

3.8(3) *Public hearings and A-95 review.* The commissioners shall act upon the state plan after:

- a. Public notice and at least one public hearing throughout the state;
- b. Review and recommendations by the state advisory committee, both prior to and subsequent to the public hearings;
- c. Submittal to appropriate A-95 agencies for review and comment.

3.8(4) *Approval by the commissioners.* The state plan must be approved by the commissioners prior to submission to the governor.

3.8(5) *Action by the governor.* The commissioners shall submit the state plan to the governor for review and signature. The governor submits the approved plan to the administration on aging.

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CHAPTER 4 STATE AGENCY RESPONSIBILITY

20—4.1(249B) Advocacy responsibilities, general.

4.1(1) *General rule.* The commission shall serve as an effective and visible advocate for the elderly by reviewing and commenting upon the plans, budgets and policies of:

- a. The Iowa department of health;
- b. The Iowa department of social services;
- c. The Iowa department of revenue;
- d. The Iowa department of transportation;
- e. The Iowa housing finance authority;
- f. Other state agencies; and
- g. Any state or federal legislation which significantly affects the lives of the elderly.

4.1(2) *Interagency co-operation.* The commission shall form state level interagency co-ordination committees to maximize interagency co-operation and to consolidate program funding.

4.1(3) *Specific responsibilities.* Specific advocacy responsibilities of the commissioners and the executive director are listed in rules 2.4(249B) and 2.5(249B).

20—4.2(249B) Long-term care ombudsman program.

4.2(1) *General rule.* The Iowa commission on the aging shall operate the long-term care ombudsman program directly in co-operation with the office of the state ombudsman, the department of health, and area agencies on aging.

4.2(2) *Full-time specialist.* The executive director shall employ a full-time professional staff to operate the long-term care ombudsman program in accordance with the requirements of the Act, subject to the availability of funds.

4.2(3) *Access requirements.* The long-term care specialist and designee will be given appropriate private access to facilities, residents of long-term care facilities, and to resident's personal and medical records.

4.2(4) *Confidentiality and disclosure.* The executive director shall establish procedures to protect the confidentiality of resident's records and files which meet the requirements of 45 CFR 1321.43(e) (1981) and subrule 2.9(1).

4.2(5) *Reporting system.* The executive director must establish a statewide uniform reporting system to collect and analyze information on complaints and conditions in long-term care facilities in accordance with requirements of the Act.

20—4.3(249B) Service delivery systems responsibilities: General.

4.3(1) *General rule.* The commission shall carry out the service delivery system responsibilities specified in the Act and implementing regulations, and additional responsibilities as may be required.

4.3(2) *Nondiscrimination.* In providing any service administered and funded under or through the commission on the aging, no eligible individual shall be discriminated against because of race, creed, color, sex, national origin, age, religion, or physical or mental disabilities.

4.3(3) *Priorities in the provision of services.* Priority shall be given to providing services to older persons with the greatest economic or social needs.

4.3(4) *Staff development and training.* The executive director shall establish a state training committee consisting of representatives of the commissioners, the executive director, the state advisory council, the area agencies on aging, and others. The state training committee shall recommend to the executive director procedures and a plan that will support a broad program of staff development activities to ensure training of volunteers, paid personnel and providers of services to Iowa's elderly population. The executive director shall disburse training funds according to that plan, subject to availability of funds.

4.3(5) *Monitoring activities.* The executive director shall assess and evaluate the implementation of action steps, objectives, contracts, and rate of expenditures in each area agency; conduct at least annual on-site performance evaluations of each area agency and submit a written evaluation to the commissioners and the grantee; and monitor the progress of the area agencies by the review of monthly and quarterly reports.

4.3(6) *Technical assistance for remedial action.* As necessary, on-site technical assistance will be provided to area agencies on aging that have been unable to meet target dates.

4.3(7) *Withdrawal of funds and designation as an area agency.* In the event that an area agency on aging has been unable to take remedial action within the time frame established by the executive director's written recommendations, the executive director shall recommend appropriate action to the commissioners. Copies of the recommendations will be sent to the grantee agency. Recommended action may include withdrawal of funds and designation as an area agency.

4.3(8) *Reasons for withdrawal of designation.* The commission shall withdraw area agency designation whenever the commissioners, after reasonable notice and opportunity for a hearing, find that:

a. The grantee area agency does not meet the requirements of federal and state rules and regulations;

b. The plan or plan amendment is not approvable; or

c. There is substantial failure in the provision or administration of an approved area plan to

comply with federal and state rules and regulations.

4.3(9) *Notify the administration on aging.* If the commission withdraws an area agency designation it shall notify the administration on aging in writing of its action; provide a plan for the continuity of services in the affected planning and service area, and designate a new area agency in the planning and service area in a timely manner.

4.3(10) *Continuity of services.* If necessary to ensure continuity of services in a planning and service area, the commission may, for a period of up to one hundred eighty days after its final decision to withdraw designation of an area agency:

- a. Perform the responsibilities of the area agency; or
- b. Assign the responsibilities of the area agency to another agency in the planning and service area.

4.3(11) *Appeals.* Appeals of decision pursuant to this rule shall follow procedures developed under rule 4.11(249B).

20—4.4(249B) State advisory council on aging.

4.4(1) *Composition.* There shall be a state advisory council on aging of which:

- a. At least one-half of the members shall be aged sixty or older and shall include persons with greatest economic need and participants of programs under the Act; and may include:
- b. One member and an alternate elected from each of the sixteen Iowa planning and service areas by the area advisory council; and
- c. Two members elected at large.

4.4(2) *Bylaws.* The advisory council must develop and make public bylaws which specify the role and functions of the advisory council, number of members, procedures for selection of members, term of membership, frequency of meetings, and a voting quorum of two-thirds of the membership.

4.4(3) *Expenses and support.* Advisory council members, while engaged in their official duties, shall be reimbursed for their expenses at a rate not to exceed rates established for state employees. The executive director shall provide staff support and assistance to the council.

4.4(4) *Meetings.* The advisory council shall meet at least four times a year.

4.4(5) *Elections.* The election of officers of the advisory council shall be established in the bylaws of the council.

4.4(6) *Duties.* The specific responsibilities of the state advisory council include:

- a. Serve as an effective and visible advocate for the elderly.
- b. Review and make recommendations on the state plan on aging, and participate in public hearings related to the plan. The council shall review the state plan both prior and subsequent to its presentation at public hearings.
- c. Review and comment on other state plans, budgets and policies which affect older persons.
- d. Advise the commissioners on matters pertinent to community programs on aging, especially as they pertain to the area agencies on aging.
- e. Bring matters related to older Iowans to the attention of the commissioners for policies and programs, or for referral to the governor and the general assembly.
- f. Prepare an advisory council annual budget and plan of action for approval by the commissioners.
- g. Address matters referred to it by the commission.

20—4.5 to 4.8 Reserved.

20—4.9(249B) Intrastate funding formula.

4.9(1) *Title III formula.* From the sums allotted each fiscal year for supportive and nutrition services under Title III of the Older Americans Act, each area agency will be eligible to receive a portion equal to the planning and service area's share of the state's population aged sixty and older, double weighted for low income or rural individuals, except that:

- a. The state agency shall reserve at least one percent or \$35,000, whichever is greater, from

the supportive services allotment to operate the long-term care ombudsman program;

b. The state agency shall reserve for each area agency one-fourth of one percent from the total allotment, or \$24,000, whichever is greater, to be used for area administration or for services;

c. The state agency shall reserve for each area agency from the total allotment, three-hundredths of one percent, or \$3,000, whichever is greater, for each county in the planning and service area, to be used for area administration or for services (subject to availability of funds after applying subrule 4.9(1) paragraph "d");

d. No area agency shall be allotted a base grant less than the base grant received by the area for federal fiscal year 1980, unless the federal allotment to the commission is reduced below that level.

4.9(2) Exceptions. This distribution formula shall not apply to funds for which there is a required alternative distribution criteria, or for which there is an implicit distribution criteria based on demonstrated need, performance, competitive application, block or other factors.

4.9(3) State funds for area administration. Sums appropriated each state fiscal year for area administration shall be distributed as equal amounts of match for federal administrative funds distributed under 4.9(1)"b" and "c". These funds must be used as match for federal funds used for area administration. No area agency shall be allotted a base grant less than the state funds received by the area for state fiscal year 1981, unless that state allotment to the commission is reduced below that level.

4.9(4) State funds for senior multipurpose centers. Sums appropriated each state fiscal year for state senior centers shall be allocated by competitive application to the commission on the aging. Awards shall be based upon procedures obtained at the state agency office identified in subrule 2.1(2).

4.9(5) State funds for elderly care. All funds appropriated to the commission for elderly care shall be allocated to the area agencies on aging on the basis of population over sixty-five years of age, in the planning and service area, double-weighted for the low-income population over sixty-five years of age. These funds shall be awarded to area agencies on aging on the basis of applications approved by the commissioners.

4.9(6) Title IV-A disbursements. Title IV-A training funds shall be disbursed according to the training plan developed under subrule 4.3(7).

4.9(7) Title V awards. Adjustments in the amount of employment funds are subject to the availability and utilization of funds, and shall be made through the revision of contracts.

4.9(8) USDA allotments. Area agencies will receive a portion of the USDA allotment to the state based on the area's share of the state's USDA eligible meals.

20—4.10 Reserved.

20—4.11(249B) State agency hearing procedures for appeals. The executive director shall provide written hearing procedures to area agencies, applicants for designation as a planning and service area, service providers, and other aggrieved parties, as requested. A copy is available at the state agency office identified in subrule 2.1(2).

4.11(1) Definitions. The following terms when used in this subrule shall have the following meanings:

- a.* An "aggrieved party" is one of the following:
 1. Any area agency whose area plan or plan amendment is disapproved by the commissioners;
 2. Any area agency whose area agency's designation is withdrawn;
 3. Any applicant for designation as a planning and service area whose application is denied by the commissioners;
 4. Any service provider whose application to provide services under an approved area plan is denied, or whose subgrant or contract is terminated or not reviewed, and which has exhausted local procedures for appeals;
 5. Any other agency, organization or individual directly aggrieved by actions or decisions

of the commissioners or the area agency when an evidentiary hearing is required by constitution or statute before final action may be taken by the commissioners.

b. "Final agency action" is:

1. Commissioners' decision which is not appealed within thirty days;
2. A proposed decision by the hearing officer not appealed within ten days;
3. The written report of the commissioners when they take action to affirm, modify or reverse the proposed decision of the hearing officer.

4.11(2) General rules. The following general rules shall be used in implementation of these hearing procedures.

4.11(3) Informal disposition. Section 17A.12(5), The Code. Unless precluded by statute, informal disposition may be made of any contested case of stipulation, agreed settlement, consent order or default or by another method agreed upon by the parties in writing.

4.11(4) Requesting records. Papers filed in connection with a hearing may be inspected and copied in the state office of the commission, according to the limitations of 2.5(4)"c". All forms for use by persons in agency proceedings are indexed by the commission and are available at commission offices. Individuals may direct inquiries to the Executive Director, Commission on the Aging, identified in subrule 2.1(2).

4.11(5) Filing and serving papers.

a. Anyone who wishes to submit papers for the hearings shall file with the executive director an original and two copies, except that only originals of exhibits and testimony transcripts need be submitted.

b. Anyone who wishes to submit papers to be part of the record shall also serve copies on the parties by personal delivery or by mail, and file proof of this service with the executive director. Service on a party's designated attorney is the same as service on the party.

4.11(6) Rules suspended. After notifying the aggrieved party, the hearing officer may modify or waive procedural rules, if the hearing officer decides the action is equitable and does not unduly prejudice the rights of any party.

4.11(7) Time schedule. The hearing must be completed within one hundred and twenty days of the date the written request for hearing was received by the executive director. The hearing officer must issue the hearing decision within sixty days after the hearing is completed.

4.11(8) Costs. Each party shall be responsible for paying the costs of preparation and presentation of its own case. Joint costs will be assessed against the parties by the commission.

20—4.12(249B) Requesting a hearing.

4.12(1) General rule. An aggrieved party as defined in 4.11(1), has thirty days from receipt of the written notice of the adverse action to request a hearing. The aggrieved party shall make its request in writing to the executive director.

4.12(2) Failure to request a hearing. If the aggrieved party does not request a hearing within the time allowed by subrule 4.14(1), the decision is final.

20—4.13(249B) Hearing notice.

4.13(1) Acknowledgement of request. The request for a hearing will be acknowledged by the executive director in writing within fifteen days of the receipt of the request.

4.13(2) Hearing date. The executive director will establish a convenient date for a hearing and will designate the hearing officer.

4.13(3) Time frame. Not less than twenty, nor more than ninety days before the date set for hearing the executive director will provide all parties with a hearing notice.

4.13(4) Other entities entitled to written notice. Notice may also be sent to other parties which have a legitimate interest in the proceedings and may be published. Public notice will be given to those directly affected by the decision.

4.13(5) Adverse action by area agencies. When the adverse action is by the area agency, the area agency shall notify the state agency in writing of the decision and the reasons for the decision. Written notice of the hearing shall include notice of:

- a.* The date, place and nature of the hearing;

- b. The issues to be considered at the hearing;
- c. The reasons for the action and other matters asserted;
- d. A statement of the legal authority and jurisdiction; and
- e. A reference to the particular statutes and rules involved.

4.13(6) Waiver and extensions. Parties may waive notice and may agree to continue the hearing date, if necessary. Any extensions by the aggrieved party constitute a waiver of a prompt decision by the commissioners.

20—4.14(249B) The purpose of a hearing. The purpose of the hearing is to receive factual evidentiary testimony, including expert opinion testimony, and arguments related to the issues. The presiding officer may not allow argument as evidence.

20—4.15 Reserved.

20—4.16(249B) Authority of presiding officer.

4.16(1) General rule. The hearing officer conducts a fair hearing, avoids delay, maintains order and certifies a record of the proceedings to the commission, including the recommended decision on each issue. In doing so, the hearing officer has authority that includes:

- a. Regulating the course of the hearing;
- b. Regulating the participation and conduct of the parties, and others at the hearings;
- c. Ruling on procedural matters and, if necessary, issuing protective orders or other relief to a party against whom discovery is sought;
- d. Taking any action authorized by the rules in this section;
- e. Administering oaths and affirmations;
- f. Examining witnesses;
- g. Issuing subpoenas;
- h. Receiving or excluding evidence; and
- i. Ruling on or limiting evidence or discovery.

4.16(2) Authority. The hearing officer has all authority given by chapter 17A, Iowa Code.

20—4.17(249B) Parties.

4.17(1) Petitions to intervene. The hearing officer determines whether the petitioner has a legitimate interest in the proceedings and may contribute materially to the proper settlement of the issues. The officer also determines if the petitioner's participation would unduly delay the proceedings. The hearing officer permits or denies the petition and promptly sends the petitioner a written notice of the decision. If the presiding officer denies the petition, the officer must state the reason in this notice.

4.17(2) Rights of parties. A party may:

- a. Appear in person before the presiding officer to refute the basis for the decision;
- b. Appear by counsel or other authorized representative in all hearing proceedings;
- c. Participate in any prehearing conference held by the presiding officer;
- d. Stipulate facts that, if uncontested, become part of the record;
- e. Make opening statements;
- f. Present documentary evidence and other relevant evidence;
- g. Present witnesses who must be available for cross-examination;
- h. Cross-examine witnesses;
- i. Submit written briefs, proposed findings of fact, and proposed conclusions of law after the hearing pursuant to subrule 4.22(1); and
- j. Use any other rights afforded by chapter 17A, Iowa Code.

4.17(3) Consideration of written submissions. The hearing officer may consider the written submissions of interested persons if the parties do not object.

20—4.18(249B) Discovery. Discovery procedures are conducted pursuant to the Iowa rules of civil procedure. The agency will issue subpoenas to parties upon request but will not serve

subpoenas issued to others.

4.18(1) Presentation of evidence.

a. Testimony. Witnesses, under oath or affirmation, give oral testimony at a hearing. Witnesses must be available at the hearing for cross examination by the parties.

b. Rules of evidence.

1. Irrelevant, immaterial or unduly repetitious evidence will be excluded from the hearing. Finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, or may be based upon such evidence even if it would be inadmissible in a jury trial. The rules of privilege recognized by law will be observed. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

2. 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.

3. Witnesses at the hearing, or persons whose testimony has been submitted in written form shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.

4. Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. Parties shall be notified at the earliest practicable time either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source including any staff memoranda or data, and the parties shall be afforded an opportunity to contest the facts before the decision is announced unless the agency determines as part of the record or decision that fairness to the parties does not require an opportunity to contest the facts.

5. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

4.18(2) Reserved.

20—4.19(249B) Hearing record. The record includes the following:

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 thereon.
5. All proposed findings and exceptions.
6. Any decision, opinion or report by the officer presiding at the hearing.

20—4.20(249B) Posthearing procedures. Posthearing procedures shall include:

4.20(1) Posthearing briefs. The hearing officer may permit the filing of posthearing briefs and reply briefs at specified times.

4.20(2) Decisions.

a. The hearing officer shall make a proposed decision including findings of fact and conclusions of law separately stated. The findings of fact shall be specific and complete.

b. The commission or parties have ten days from the date of the proposed decision to file exceptions:

c. If no exceptions are filed, the proposed decision becomes final in ten days.

d. If exceptions are filed, the proposed decision shall be reviewed by the commissioners at their next regularly scheduled meeting, or at a special meeting established upon notice to the parties. The commissioners shall limit their discussion and shall base their decisions on evidence contained in the record.

e. The commissioners will approve the proposed decision unless it is clearly erroneous or without support in the record. If the commissioners reverse or modify the proposed decision,

reasons for the commissioners' action will become part of the record and must be stated in terms of findings of fact and conclusions of law. The commissioners' decision will be issued within sixty days after the hearing is completed.

20—4.21(249B) When a decision is effective.

4.21(1) General rule. The commissioners' decision will be effective immediately unless otherwise specified in the decision.

4.21(2) Appeal by applicants for designation as a planning and service area under 45 CFR § 1321.53(b)(1981) whose application is denied by the commissioners may appeal the denial to the administration on aging under the procedures specified in 4.11(249B).

20—4.22(249B) Minimum standards for area agency appeal procedures—general rule. Each area agency on aging shall develop procedures that, at a minimum, include the following:

1. Timely written notice by the area agency to service providers whose applications are denied or whose subcontract is not renewed. The written notice shall include a statement of the reason for the area agency decision.

2. Area agency reconsideration of its decision based on any written submission by the applicant or the service provider.

These rules are intended to implement sections 249B.4, 249B.8 and 17A.3, Iowa Code.

20—4.23 Reserved.

20—4.24 Reserved.

20—4.25(249B) Designation of planning and service areas.

4.25(1) General rule. The planning and service areas required by the Older Americans Act shall be one or more of the contiguous areas developed by the Iowa office for planning and programming.

4.25(2) Exceptions. The commissioners may alter existing planning and service area boundaries only after giving consideration to:

a. The views of public officials of units of general purpose local governments, the general public, and others expressed orally or in writing at a public hearing;

b. The recommendation of the area advisory council in the affected planning and service area;

c. Recommendations from the executive director;

d. The distribution in the state of persons aged sixty or older, including those with greatest economic need;

e. The incidence of need for services provided under the Older Americans Act and the resources available to meet these needs in the planning and service area;

f. The boundaries of units of general purpose local government, regional planning areas, Indian reservations, existing economic development districts, and areas within the state established for planning and administering human services; and

g. Other relevant factors.

4.25(3) Application for designation. The commission will provide an opportunity to apply for designation as a planning and service area to any unit of general purpose local government, or region metropolitan area of 100,000 or more population.

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**CHAPTER 5
AREA AGENCY DESIGNATION, ORGANIZATION AND FUNCTIONS**

20—5.1(249B) Area agency grantee designation and functions of area agencies.

5.1(1) Designation of area agency grantee. The commissioners shall designate an area agency to serve each planning and service area as defined in 4.25(1).

5.1(2) Procedures for designation. In designating an area agency grantee, the commission requires the following actions:

a. Any organization may submit a letter to the executive director at the address in 2.1(2), requesting an information packet detailing necessary steps in the procedure.

b. A public hearing shall be held according to the following procedures:

1. The commission shall publish advance notice of the hearing explaining the purpose of the hearing and send separate letters of invitation to members of the advisory council, representatives of general purpose local government, providers of service, senior citizen groups and public and private agency personnel.

2. The executive director or the director's designee, shall chair the hearing for the purpose of providing the opportunity for presentations by interested potential area agency grantees, presentation of comments by representatives of general purpose local governments and comments by other meeting attendees.

c. Subsequent to the public hearing, the area agency advisory council shall determine by secret ballot their recommendation for a proposed grantee and submit the recommendation to the executive director.

d. Interested persons may notify the executive director in writing of their recommendation for the proposed area agency grantee.

e. The executive director shall conduct an on-site assessment of the recommended proposed area agency grantee to carry out the functions of an area agency.

f. After the on-site assessment, the commissioners shall act on the designation of the area agency grantee at the next regularly scheduled commission meeting considering all written recommendations and the report of the on-site assessment.

g. Appeal. If any applicant wishes to appeal a denial of approval as an area agency grantee, that applicant shall be offered the opportunity for an appeal to the commission, as provided in 4.11(249B).

5.1(3) Functions of area agencies. In order to qualify for designation, an area agency must be able to:

a. Develop and administer a multiyear plan for a comprehensive and co-ordinated system of services;

b. Implement a program pursuant to the plan either directly or by contractual arrangements, to meet the needs of the elderly within the entire planning and service area;

c. Maintain and provide, and require subgrantees to maintain and provide, records and reports as are necessary to evaluate the effectiveness of the projects within guidelines established by the commission;

d. Generate and utilize local resources, including existing agencies, organizations and local funding sources to meet the needs of the elderly in the planning and service area;

e. Serve as the advocate and focal point for older persons in the planning and service area;

f. Establish an area advisory council pursuant to rule 7.7(249B);

g. Provide for the establishment and maintenance of information and referral sources pursuant to rule 8.61(249B).

20—5.2(249B) Withdrawal of area agency grantee designation. If an area agency cannot fulfill the responsibilities detailed in subrule 5.1(3), withdrawal of designation as an area agency grantee will result as outlined in subrules 4.3(7) and 4.3(8).

20—5.3(249B) Types of agencies that may be an area agency.

5.3(1) General rule. An area agency on aging as designated in rule 5.1(249B) must be one of the following types of agencies that has the authority and capacity to perform the functions of an area agency.

a. An established office on aging which operates within the planning and service area;

b. Any office or agency of a unit of general purpose local government that is proposed by the chief elected official of the unit;

c. Any office or agency proposed by the chief elected officials or a combination of units of

general purpose local government; or

d. Any other public or private nonprofit agency, except any regional or local agency of the state.

5.3(2) Multipurpose agencies. When a multipurpose agency has been designated as the grantee for the designated planning and service area, the governing body of that multipurpose agency shall be responsible to the commission for the administration and operation of the single organizational unit which develops and administers the state plan.

20—5.4(249B) Organization of the area agency.

5.4(1) General rule. An area agency may be either:

a. An agency whose single purpose is to administer programs for older persons; or

b. A multipurpose agency with the authority and capacity to administer human services in the area. A multipurpose agency must delegate all its authority and responsibility under the Act to a single organizational unit in the agency unless the area agency receives a waiver of this requirement from the state agency under 5.4(2) and 5.4(3).

5.4(2) Waiver. The area agency may request a waiver of the requirement in subrule 5.4(1) if the area agency:

a. Submits its request as part of its area plan or as a plan amendment;

b. Describes its methods for carrying out its functions and responsibility under the Act; and

c. Designates a component unit of the area agency to plan and develop all policy on programs for older persons in the area plan to provide a visible focal point for advocacy, co-ordination, monitoring and evaluation of programs for older persons in the planning and service area.

5.4(3) Approval. The commissioners may approve a request for waiver if it finds that the area agency can effectively carry out its functions and responsibilities under the Act without being a single organizational unit.

20—5.5 Reserved.

20—5.6(249B) Area agency procedures.

5.6(1) Area agency procedures manual. A procedures manual for the area agency on aging shall be developed and kept updated by the area agency on the aging. The area procedures manual shall, at a minimum, contain the following:

a. Grievance procedures for perceived discrimination as provided in subrule 5.8(4).

b. Procedures for the effective co-ordination of programs and activities related to the purpose of the Older Americans Act as provided in subrule 7.9(1).

c. Procedures to ensure that no information about, or obtained from, an older person is disclosed in a form that identifies the person without his or her informed consent as provided in subrule 5.9(1).

d. Methods for giving preference to those with greatest economic or social need in the provision of services under the plan as provided in rule 8.7(249B).

e. Procedures for the notification and conducting of at least one public hearing on the area plan as provided in subrule 6.11(1).

f. A memorandum of agreement between the area agency and the local A-95 clearinghouse which covers the means for co-ordinating their planning activities as provided in subrule 6.11(2).

g. Procedures for awarding grants or contracts under the area plan as provided in rules 8.2(249B) and 7.3(249B).

h. Procedures for monitoring and assessing programs and subcontracts funded by the area agency, including written monitoring reports at least quarterly and an on-site assessment report at least annually as provided in 7.3(1)“d”.

i. Procedures to respond to emergency or disaster situations as provided in 7.1(1)“f”.

j. Procedures for designating community focal points as provided in 7.5(2).

k. Procedures for the co-location of services as provided in 7.5(3).

- l.* Procedures for co-ordination and outreach activities by service providers as provided in 8.6(2).
- m.* Procedures for appeal by individuals of a decision that appears unfavorable to them concerning the provision of services funded by the area agency.
- n.* Procedures to be followed by service providers to obtain the views of participants about services they provide as provided in 8.13(249B).
- o.* Procedures for appeal of action as provided in 4.22.

20—5.7 Reserved.

20—5.8(249B) Staffing.

5.8(1) Full-time director. The grantee must employ a qualified full-time director, and may employ other staff as necessary to manage and monitor the area plan. Subject to merit requirements, preference shall be given to the employment of persons aged sixty or over.

5.8(2) Standards of conduct. All area agency employees are personally responsible for maintaining a high standard of honesty, integrity, impartiality, and conduct consistent with "Standards of Conduct for Title III Grantees of the Older Americans Act."

5.8(3) Discrimination. The area agency shall extend equal opportunities to all employees and to applicants for employment who meet the qualifications established for a class or a position for which the application is made. Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, discipline, or any other aspect of personnel administration because of sex, race, national origin, age, or other nonmerit factors is prohibited.

5.8(4) Grievance procedure for perceived discrimination. Each grantee must develop and maintain procedures for handling any grievance or complaint arising from perceived discrimination in employment.

5.8(5) Affirmative action plans. Each area agency must develop affirmative action plans on employment which must be submitted as part of the area plan. All affirmative action plans must comply with the requirements of section 900.67 of Title 5 of the Code of Federal Regulations (1981).

5.8(6) Address and telephone. Information on how to contact the appropriate area agency on aging office may be obtained by contacting the state agency at the office location identified under subrule 2.1(2).

20—5.9(249B) Confidentiality and disclosure of area agency information.

5.9(1) Confidentiality. Area agencies must have procedures to ensure that no information about, or obtained from an individual, and in possession of an agency providing services to an individual under programs funded by the commission, shall be disclosed in a form identifiable with the individual without the individual's informed written consent.

5.9(2) Public accessibility to manuals, guidelines and records. Copies of all manuals, guidelines and standards referred to by these rules shall be maintained by the area agencies and made available for public inspection. With the exceptions provided by federal and state law, all records maintained relating to grants from the commission shall be available for public inspection.

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CHAPTER 6
AREA PLAN

20—6.1(249B) Definition of an area plan. An area plan is a four-part document submitted by an area agency to the state agency in order to receive subgrants from the state agency's grants under the Act. The area plan shall consist of the grantee contract, the area profile, the long-range goals, and the annual application for award.

20—6.2 Reserved.

20—6.3(249B) Duration and format of the area plan and plan amendments.

6.3(1) *Multiyear plan.* The area plan must be for the multiyear period specified by the commissioners.

6.3(2) *Uniform area plan format.* The area agency must submit an area plan or amendment to the state agency in accordance with the uniform area plan format and other instructions issued by the executive director.

6.3(3) *Four parts of the area plan.* The long-range plan shall be a comprehensive and co-ordinated document which shall consist of:

- a. The grantee contract negotiated to coincide with the multiyear plan;
- b. The area profile updated at least annually;
- c. The long-range goals submitted as required by the commissioners; and
- d. The annual application for award.

20—6.4 Reserved.**20—6.5(249B) Comprehensive and co-ordinated service delivery system.**

6.5(1) *General rule.* The area plan must provide for the development of a comprehensive and co-ordinated service delivery system for all social and nutrition services needed by older persons in the planning and service area to:

- a. Facilitate access to and utilization of all existing services; and
- b. Develop social and nutrition services effectively and efficiently to meet the needs of older persons.

6.5(2) *Service components.* Service components of a comprehensive and co-ordinated service delivery system that may be funded are:

a. Services which facilitate access, such as transportation, outreach, information and referral, escort, individual needs assessment and service management.

b. Services provided in the community, such as congregate meals, continuing education, health, legal services, program development and co-ordination activities, advocacy, information and referral, individual needs assessment and service management, casework, counseling (concerning financial problems, welfare, the use of facilities and services, pre-retirement or second career), day care, protective services, health screening, services designed for the unique needs of the disabled, emergency services, including disaster relief services, residential repair and renovation, physical fitness and recreation services in helping to obtain adequate housing. Alteration, renovation, acquisition, and construction of facilities for use as multipurpose senior centers or senior activity centers;

c. Services provided in the home such as: Homemaker-home health aide services, preinstitutional evaluation, casework, counseling, chore maintenance, visiting, shopping, reading, letter writing, and telephone reassurance; and may include home delivered meals and nutrition education; and

d. Services provided to residents of care providing facilities, such as casework, counseling, placement and relocation assistance, group services, complaint and grievance resolution and visiting. Care providing facilities are adult day care facilities, long-term care facilities, emergency shelters, and other congregate living arrangements.

e. Senior opportunities and services designed to identify and meet the needs of low income individuals sixty years of age or older by development and provision of new volunteer services; effective referral to existing services; stimulation and creation of additional services and programs to remedy gaps and deficiencies in presently existing programs and services; and such other services as the commissioners may determine are necessary or especially appropriate to meet the needs of the older low income persons and to assure them greater self-sufficiency.

20—6.6 Reserved.**20—6.7(249B) Content of the area plan.**

6.7(1) *Comprehensive and co-ordinated system.* An area plan must provide for the com-

prehensive and co-ordinated service delivery system specified in the Act. The area plan must contain the following information according to the uniform format and instructions provided by the executive director.

6.7(2) *The grantee contract.* Part I of the area plan, the grantee contract must provide that the area agency agrees to abide by the requirements of the Act and related legislation, including:

a. Award subgrants and enter into contracts for the provision of services under the plan that is signed and effective for the appropriate fiscal year, as provided in 8.2(249B).

b. Technical assistance and evaluation of all providers, as provided in 7.3(1)"d".

c. Evaluation of effectiveness of services being provided, as provided in 7.3(1)"b" and 7.3(1)"d".

d. Co-ordination with other federal programs serving older persons as provided in 7.9(1).

e. Assurance that all service providers meet the service requirements for licensure, safety, training, outreach, co-ordination, preference to those in greatest economic or social need, contributions, maintenance of nonfederal support for services, and advisory role for older persons as provided in chapter 8 of commission on aging rules.

f. Give preference to older persons with greatest economic or social needs as provided in 7.3(1)"g".

6.7(3) *Area profile.* Part II of the area plan, the area profile must provide the informational requirements for the planning and service area, including:

a. Assessing the need for services in the planning and service area, as provided in 7.3(1)"b".

b. Considering the views of older persons, as provided in 7.3(1)"f".

c. Designating community focal points as provided in rule 7.5(249B) and maintain a current directory of the focal points in the area profile as provided in section 45 CFR § 1321.25(f). (1981)

d. Establishing methods for giving preference to older persons with greatest economic or social need as provided in 7.3(1)"g". The methods must include, but are not limited to, considerations of older persons with greatest economic or social need in the designation of community focal points; and may not include use of a means test.

e. Methods used to set service priorities.

f. Other information required by the commission.

6.7(4) *Long-range goals.* Part III of the area plan, the long-range goals must contain the multiyear goals and annual objectives of the area agency. The long-range goals must specify program objectives to implement the service delivery requirements that are consistent with the requirements of the Act for:

a. Access services as provided in subrule 6.5(2)"a".

b. Community services as provided in 6.5(2)"b".

c. In-home services as provided in 6.5(2)"c".

d. Institutional services as provided in 6.5(2)"d".

e. Advocacy efforts as provided in 7.1(249B).

6.7(5) *Annual application for award.* Part IV of the area plan, the annual application for award, must provide that the area agency requirements are met for:

a. Advocacy efforts as provided in rule 7.1(249B).

b. Outreach efforts as provided in 8.6(2).

c. Multipurpose senior center activities as provided in rules 8.20(249B) to 8.29(249B).

d. Nutrition services as provided in rules 8.45(249B) to 8.51(249B).

e. Legal services as provided in rules 8.55(249B) to 8.59(249B).

f. Information and referral services as provided in 8.61(249B).

g. Transportation services as provided in rule 8.65(249B).

h. Restriction of direct provision of services as provided in 8.2(249B).

i. Expenditure of an adequate proportion of the supportive services allotment for priority services, as identified by the area agency advisory council, as provided in 9.4(249B).

j. A resource allocation plan indicating the proposed use of all funds for programs for older persons directly administered by the area agency.

20—6.8 Reserved.**20—6.9(249B)** Amendments and revisions to the area plan.

6.9(1) Amendments. The area agency must amend the plan and submit it to the commissioners for approval if:

a. A new or amended state or federal statute or regulation requires a new provision, or conflicts with any existing plan provision;

b. A United States supreme court decision changes the interpretation of a statute or regulation;

c. Local law, organization, policy or agency operation changes and is no longer accurately reflected in the area plan;

d. The commission requires amendments;

e. The grantee proposes to change the designation of the single organizational unit or component unit;

f. The area agency proposes to add or delete any area plan objectives that involve the budget;

g. Commission funding by specific title (AoA supportive service, and AoA nutrition service funds) to the area agency changes by ten percent or less;

6.9(2) Revision. The area agency must revise the plan and submit it to the executive director for approval if:

a. Commission funding by specific title (AoA supportive service, and AoA nutrition service funds) to the area agency changes by ten percent or less'

b. There is a budget change of twenty percent or more in any single approved program component;

c. Actual performance under the area plan will vary by more than twenty percent from the approved performance;

d. The area agency proposes to add or delete any area plan objectives that do not involve the budget.

20—6.10 Reserved.**20—6.11(249B)** Review of the long-range goals, annual application for award, and amendments.

6.11(1) Public hearing. The area agency must hold at least one public hearing on the long-range goals, annual application for award, and on all amendments specified in 6.9(249B). The area agency must give adequate notice to older persons, public officials and other interested parties of the times, dates, and locations of the public hearing(s). The area agency must hold the public hearing(s) at a time and barrier free location which permit older persons, public officials, and other interested parties reasonable opportunity to participate.

6.11(2) Review and comment by advisory council and A-95 clearinghouse. The area agency must submit the long-range goals and annual application and amendments for review and comment to the advisory council, and to the appropriate A-95 clearinghouse in accordance with OMB circular A-95, Part I. (1981)

6.11(3) Submission. Area agencies must submit long-range goals and annual applications for award and amendments to the commissioners for approval following procedures specified by the executive director.

20—6.12 Reserved.**20—6.13(249B)** Approval or disapproval of an area plan and plan amendments.

6.13(1) Approval or disapproval. The commission shall approve an area plan or amendment which meets the established criteria for approval.

a. The grantee contract. The grantee contract must be negotiated annually and signed by the chief administrative officials of the grantee agency and the state agency, but it will not

need A-95 review, public hearings or review by local advisory councils for approval.

b. The area profile. The area profile shall contain accurate information at all times and is to be maintained by the staff of the state and area agencies. The executive director will include a review of the profile in recommendations to the commissioners for the approval of the annual application for award.

c. The long-range goals. The long-range goals are developed for a multiyear period and shall be approved by the commissioners after A-95 review, public hearings, review by the area advisory council, and recommendations by the executive director.

d. Annual application for award. The annual application for award shall be approved by the commissioners after A-95 review, public hearings, review by the area advisory council, assurance that there are signed contracts for service, and recommendations by the executive director.

6.13(2) Appeal. If any applicant wishes to appeal a denial of approval or conditions for approval on the area plan by the state agency, that applicant shall be offered the opportunity for an appeal to the commission, as provided in 4.11(249B).

20—6.14 and 6.15 Reserved.

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CHAPTER 7 AREA AGENCY RESPONSIBILITIES

20—7.1(249B) Advocacy responsibilities of the area agency.

7.1(1) General rule. The area agency shall:

a. Monitor, evaluate and comment on policies, programs, hearings, levies, and community actions, such as the local and district offices of the Iowa departments of health, social services, revenue, and transportation, the Iowa housing finance authority, and other public and private agencies which significantly affect the lives of older persons;

b. Conduct public hearings on the needs of older persons;

c. Represent the interests of older persons to public officials, public and private agencies or organizations;

d. Co-ordinate activities in support of the statewide long-term care ombudsman program in accordance with procedures developed by the executive director;

e. Co-ordinate planning with other agencies and organizations to promote new or expanded benefits and opportunities for older persons;

f. Co-ordinate planning with other agencies for assuring the safety of older persons in a natural disaster or other safety threatening situations.

7.1(2) Reserved.

20—7.2 Reserved.

20—7.3(249B) Area agency general planning and management responsibilities.

7.3(1) General rule. The area agency must:

a. Develop and administer an area plan for a comprehensive and co-ordinated service delivery system in the planning and service area, in compliance with all applicable laws and regulations, including all requirements of these rules;

b. Assess the kinds and levels of services needed by older persons in the planning and service area, and the effectiveness of other public or private programs serving those needs;

c. Except as provided in 8.2(249B), enter into subgrants or contracts to provide all services under the plan;

d. Provide technical assistance as needed, prepare written monitoring reports at least quarterly, and provide a written report of an annual on-site assessment of all service providers funded by the area agency;

e. Co-ordinate the administration of its plan with the federal programs specified in

7.9(249B) and with other federal, state and local resources in order to develop the comprehensive and co-ordinated service system required by 6.5(249B);

f. Establish an advisory council as required by 7.7(249B);

g. Give preference in the delivery of services under the area plan to older persons with the greatest economic or social need;

h. Assure that older persons in the planning and service area have reasonably convenient access to information and referral services;

i. Provide adequate and effective opportunities for older persons to express their views to the area agency on policy development and program implementation under the area plan;

j. Designate community focal points, as required by 7.5(249B);

k. Have outreach efforts, with special emphasis on the rural elderly, to identify older individuals with greatest economic or social needs and inform them of the availability of services under the area plan;

l. Develop and publish the methods that the agency uses to establish priorities for services, particularly those specified in 9.7(249B);

m. Attempt to involve the private bar in legal services activities as provided in 8.51(249B);

n. Submit all monthly fiscal and performance reports within thirty days following procedures established in 9.22(249B).

7.3(2) Reserved.

20—7.4 Reserved.

20—7.5(249B) Designation of community focal points.

7.5(1) *General rule.* In order to facilitate ready access to services provided under the area plan, and encourage the maximum co-location and co-ordination of services for older persons, the area agency must designate, if feasible, a focal point for comprehensive services delivery in each community.

7.5(2) Procedures for designating community focal points. The area agency must:

a. Specify in the area plan the communities in which it proposes to designate and develop focal points. In making the determination, the area agency must consider:

1. Communities with the greatest incidence of older persons with the greatest economic or social need;
2. The delivery pattern of services funded under this part and funded from other sources;
3. The location of multipurpose senior centers and congregate nutrition sites;
4. The geographic boundaries of communities and natural neighborhoods; and
5. The location of facilities suitable for designation.

b. Designate a facility to be a community focal point in each community selected under subrule 7.5(2)“a”. In making this designation, the area agency must give special consideration to multipurpose senior centers and assure that the facility currently or potentially can accommodate the co-location of services.

7.5(3) Developing co-location of services. The area agency must:

a. Establish guidelines for operating schedules at the focal point which are convenient for older persons in the community;

b. Assure that information and referral and emergency service programs are provided at the community focal point;

c. Encourage service providers to co-locate their services at the focal point.

d. Encourage co-ordination among service providers.

20—7.6 Reserved.

20—7.7(249B) Area agency advisory council.

7.7(1) *Composition.* The area agency must establish an area advisory council which has:

a. At least one-half of its members who are age sixty or older and includes:

1. Persons with greatest economic or social need; and
2. Participants of services under the Act.

- b. Representatives of older persons;
- c. Local elected officials; and
- d. The general public.

7.7(2) Bylaws. The area agency must develop and publicize bylaws which specify the role and functions of the advisory council, number of members, procedures for selection of members, term of membership, and frequency of meetings.

7.7(3) Staff support. The area agency must provide staff and assistance to the advisory council. The agency may use the advisory council to assist it in carrying out any of its functions.

7.7(4) Frequency of meetings. The area advisory council shall meet at least quarterly.

7.7(5) Duties. It shall be the specific responsibility of the advisory council to:

- a. Be advocates for the elderly in their planning and service area by keeping informed of all activities and proposals concerning the elderly;
- b. Review and make recommendations upon the content, formulation, and administration of the area plan and participate in public hearings on the area plan;
- c. Serve as an information link between the area agency on aging and providers of services to the elderly in the area;
- d. Review and make recommendations on program priorities for the area;
- e. Review and comment on community policies, programs and actions which affect older persons;
- f. Assist in generating local support for development of elderly programs in the area;
- g. Make recommendations concerning the employment or discharge of the area agency on aging director and personnel policies.

20—7.8 Reserved.

20—7.9(249B) Co-ordination with other programs.

7.9(1) General rule. The area agency on aging must establish effective and efficient procedures for co-ordination between the programs assisted under the Older Americans Act, and the programs listed in OAA 203(b), including:

- a. Health systems agencies designated under Title XV of the Public Health Services Act;
- b. The Comprehensive Employment and Training Act of 1973;
- c. Title II of the Domestic Volunteer Act of 1973;
- d. Titles II, XVI, XVIII, XIX and XX of the Social Security Act;
- e. Sections 231 and 232 of the National Housing Act;
- f. The United States Housing Act of 1937;
- g. Section 202 of the Housing Act of 1959;
- h. Title I of the Housing and Community Development Act of 1974;
- i. Section 222(a)(8) of the Economic Opportunity Act of 1965;
- j. The community schools program under the Elementary and Secondary Education Act of 1964; and
- k. Sections 3, 5, 9 and 16 of the Urban Mass Transportation Act of 1964.

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CHAPTER 8 SERVICE REQUIREMENTS

20—8.1(249B) Area agency subgrants or contracts.

8.1(1) General rule. Area agencies must maintain a file of all current contracts with service-providing agencies or organizations for annual monitoring and assessment by the executive director.

8.1(2) Contracts with profit-making organizations. The area agency must submit to the commission, for prior approval by the executive director, any proposed contracts with profit-making organizations for services under the area plan.

a. The executive director may only approve the contracts if the area agency demonstrates that the profit-making organization can provide services that are consistent with the goals of the area agency as stated in the area plan.

b. Application for approval of contracts with profit-making organizations. A separate approval request, using the request form provided by the state agency, must be filed for each contract between the area agency and a provider for a program or service that is proposed to be delivered by a profit-making organization.

1. The request for approval must be submitted to the state agency by the area agency at least thirty days prior to the signing of the contract by the area agency and the service provider.

2. All providers applying to the area agency must be listed on the request form provided by the state agency.

3. The area agency must demonstrate that the profit-making organization can provide service, as described in this subrule.

8.1(3) Definitions for purposes of this rule.

a. "Service" means a service category listed in the approved annual application for award. This does not include acquisitions of products necessary to deliver a service.

b. "Approval" means that the state agency agrees that the area agency has demonstrated that selected profit-making organizations can provide services as described in 8.1(2)"a". This approval does not constitute approval of the contract as to form or legality.

c. "Public or private nonprofit service providers" means any government agency or private organization certified to be nonprofit by the U.S. Internal Revenue Service or an agency which was established pursuant to Chapter 28E or Chapter 473A, Iowa Code, and is composed solely of public agencies or governmental units as defined in those chapters.

d. "Organization" means an individual, entity, or a body of persons organized for a specific purpose.

20—8.2(249B) Direct provision of services by area agencies.

8.2(1) General rule. Area agencies must use subgrants or contracts with service providers to provide all services under the Act unless the commissioners decide, using criteria specified in 8.2(3) that direct provision of a service by the area agency is necessary to assure an adequate supply of the service.

8.2(2) Effectively and efficiently. For purposes of this subrule, effectively refers to capacity to provide a defined service. It includes considerations of service quality and delivery criteria such as adequate quantity and timeliness. Efficiently refers to the relative total costs of providing a unit of service.

8.2(3) Test for direct provision of services.

a. For any of the services directly related to an area agency's statutory functions, direct provision is necessary to assure an adequate supply if the commissioners decide that the area agency can and will perform the services more effectively and efficiently than any other provider.

b. Services directly related to the statutory advocacy and service delivery functions of the area agency are those which must be performed in a consistent manner throughout the agency's jurisdiction. These services are: Information and referral, outreach, advocacy, program development, co-ordination, individual needs assessment and case management.

8.2(4) Test for adequate supply for other services. For any other service under this part, except the ombudsman program required by 4.3(249B) and the services identified in 8.2(3), direct provision is necessary to assure an adequate supply if the area agency can and will provide the service substantially more effectively and efficiently than any other service provider.

8.2(5) Services not under this rule. The area agency may plan, co-ordinate and provide services funded under other programs, if it continues to meet all its area agency responsibilities.

20—8.5(249B) Licensure and safety requirements.

1. All services provided with funds under the Act must meet any existing state and local licensure and safety requirements for the provisions of those services.

2. Assure that any facility housing an Older Americans Act program or service will fully comply with federal, state or local health, fire, safety, sanitation, accessibility and licensure requirements.

20—8.6(249B) Training, outreach and co-ordination.

8.6(1) Staff development and training. The state and area agencies shall have a plan and procedures that will support a broad program of staff development activities to ensure training of volunteers, paid personnel and providers of services to Iowa's elderly population. Title IV-A funds will be used when it is shown that they will supplement other available staff development resources. Education assistance and reimbursement for registration fees and expenses will meet the criteria set forth in the education assistance program (EAP) (memo of February 10, 1976), summarized as:

a. Educational assistance may be provided for the courses of study that have a relationship to tasks currently assigned to the individual or to learn skills for which the agency has a need, or both.

b. Accredited educational institutions of higher learning within the state may be attended. Attendance at out-of-state institutions may be approved on a limited basis, provided there are geographical or educational considerations which make attendance at a state institution impractical.

c. Tuition reimbursement will be granted for a maximum of six semester credits to be taken at one time.

d. Enrollment in evening and weekend classes should be sought. If this is not possible, the work schedule should be modified to the extent feasible to accommodate class hours.

e. The original paid receipt from the academic institution and proof of at least a "C" grade for undergraduate credit or at least a "B" grade for graduate credit must be presented to request reimbursement.

8.6(2) Co-ordination and outreach. All service providers under this part must comply with procedures established by the area agency for:

a. Co-ordination with other service providers in the planning and service area; and

b. Outreach activities to ensure participation of eligible older persons.

20—8.7(249B) Preference for those with greatest economic or social needs.

8.7(1) Priorities. The area agency on aging must establish priorities in the area plan which provide for serving older individuals with the greatest economic or social needs. All service providers under this part must follow priorities set by the area agency for serving older persons with the greatest economic or social need.

8.7(2) Methods. Service providers may use methods such as location of services and specialization in the types of services most needed by these groups to meet this requirement. Service providers may not use a means test.

20—8.8 to 8.10 Reserved.**20—8.11(249B) Contributions for services under the area plan.**

8.11(1) Opportunity to contribute. As established by contract with the area agency, each service provider must:

a. Provide each older person with a free and voluntary opportunity to contribute to the cost of the service;

b. Protect the privacy of each older person with respect to his or her contributions;

c. Utilize appropriate procedures to safeguard and account for all contributions, ensure against loss, mishandling or theft by bonding employees in accordance with guidelines set forth by the state agency;

d. Use all contributions to expand the services of the provider under the area plan. Nutrition service providers must use all contributions to increase the number of meals served, in compliance with chapter 9.

8.11(2) Contribution schedules. Each service provider must develop and prominently display a suggested contribution schedule for services provided.

8.11(3) Failure to contribute. A service provider that receives commission funds may not deny any older person a service because the older person will not or cannot contribute to the cost of the service.

8.11(4) Contributions as program income. Contributions made by older persons are considered program income subject to 45 CFR §§ 74.41 and 74.42 (1981).

8.11(5) Charges for nutrition services. Guests and staff, except food service personnel, who are not eligible participants must pay the total programmatic cost of the meal.

a. The executive director shall issue procedures for calculation of the total programmatic meal cost based on fiscal and programmatic data for the area agency to use in calculating the areawide cost.

b. Each congregate nutrition site must post the total programmatic cost of the meal to be paid by staff and guests not eligible for the program.

c. Volunteers under sixty years of age who perform essential site functions on a regular basis must have the same opportunity to contribute as provided to eligible participants.

20—8.12(249B) Maintenance of nonfederal support for services. As established by contract with the area agency, each service provider must assure that funds under the Act are not used to replace funds from nonfederal sources and agree to continue or initiate efforts to obtain support from private sources and other public organizations for services funded under the Act.

20—8.13(249B) Advisory role of older persons to service providers. Each service provider under the area plan must utilize procedures for obtaining the views of participants about the services they receive.

20—8.14 to 8.19 Reserved.

20—8.20(249B) Multipurpose senior centers.

8.20(1) Purpose of award. The area agency may award social service funds under the Act to a public or private nonprofit agency for the following purposes:

a. Acquiring, altering, leasing or renovating a facility, including a mobile facility, for use as a multipurpose senior center;

b. Constructing a facility, including a mobile facility for use as a multipurpose senior center, subject to the provision of 8.24(249B); or

c. The costs of professional and technical personnel required for the operation of multipurpose senior centers.

8.20(2) Definitions. For purposes of this rule:

a. "*Acquiring*" means obtaining ownership of an existing facility in fee simple or by lease for ten years or more for use as a multipurpose senior center.

b. "*Altering*" or "*renovating*" means making modifications to an existing facility which are necessary for its effective use as a multipurpose senior center. This includes restoration, repair, expansion and all related physical improvements.

c. "*Construction*" means building a new facility including the costs of land acquisition and architectural engineering fees.

d. "*Structural change*" means any change to the load-bearing members of a building.

8.20(3) Preference. In making awards for the purposes specified in 8.20(1), the area agency must give preference to facilities located in communities with the greatest incidence of older persons with the greatest economic or social need.

8.20(4) General requirements for multipurpose senior center awards. Funds may be awarded for the purposes specified in 8.20(1) only for a multipurpose senior center which:

- a. Serves a cross section of all segments of the older population of its service area, with special emphasis on those in greatest economic or social need;
- b. Operates a program of group activities, individual services and community service opportunities in each of the following categories of service:
 - 1. Access services specified in 6.5(2)"a";
 - 2. Community services specified in 6.5(2)"b";
 - 3. Services for frail, at-risk, and institutionalized elderly; and
 - 4. Nutrition services specified in 8.45(249B).
- c. Provides for necessary co-ordination with other services and programs in the service area by the co-location of staff and services of other service providers; and
- d. Operates its service program from a safe and physically accessible structure. Access to the service program must be available to older persons at least forty hours per week.

20—8.21(249B) Compliance with health, safety and construction requirements.

8.21(1) General rule. A recipient of any award for multipurpose senior center activities must comply with all applicable state and local health, fire, safety, building, zoning and sanitation laws, ordinances or codes.

8.21(2) Life safety. A recipient of any multipurpose senior center award must:

- a. Comply with the provisions of the applicable building occupancy classification of the National Fire Protection Association "Life Safety Code". (NFPA No. 101, 1976 edition);
- b. Install, in consultation with state or local fire authorities, an adequate number of smoke detectors in the senior center; and
- c. Have a plan for assuring the safety of older persons in a natural disaster or other safety threatening situation.

8.21(3) Architectural barriers. The plans and specifications for an award for acquiring, altering, renovating or constructing a multipurpose senior center facility must comply with regulations relating to minimum standards of construction, particularly with the requirements of the Architectural Barriers Act of 1968.

8.21(4) Technical adequacy. The recipient of funds must assure the technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under the Act that affects the load-bearing members of the facility, is structurally sound, and complies with all applicable local or state ordinances, laws or building codes. In absence of these codes, the recipient of funds must assure compliance with chapter 23 of the Uniform Building Code (1979), as published by the Internal Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90801.

20—8.22(249B) Compliance with federal labor standards. A recipient of an award for alteration, renovation, or construction of a facility for use as a multipurpose senior center must comply with the requirements of the Davis-Bacon Act and other mandatory federal labor standards.

20—8.23(249B) Length of use of an acquired or constructed facility.

8.23(1) Acquired facility. A recipient of an award for the acquisition of a facility to be used as a multipurpose senior center must assure that the facility will be used for that purpose for at least ten years from the date of acquisition.

8.23(2) Constructed facility. A recipient of an award for the construction of a facility to be used as a multipurpose senior center must assure the facility will be used for that purpose for at least twenty years after completion of construction.

8.23(3) Altered or renovated facility. A recipient of an award for altering or renovating a facility to be used as a multipurpose senior center must assure the facility will be leased for that purpose for at least one year for every \$1,000 of nonremovable improvements.

8.23(4) Waiver. The commissioners may request the administration on aging to waive the requirements of subrules 8.23(1) and 8.23(3) in unusual circumstances.

20—8.24(249B) Special conditions for acquiring by purchase, or constructing a facility.

8.24(1) Approval. The area agency must obtain the approval of the commissioners before making an award for the construction of a facility.

8.24(2) Criteria. The commissioners may approve the construction of a facility after considering the views of the area agency if it finds that there are no other suitable facilities available to be a focal point for the service delivery.

8.24(3) Available facilities. The area agency may make an award for purchasing or constructing of a facility only if there are no suitable facilities for leasing.

20—8.25(249B) Prohibition on sectarian use of a facility. A facility altered, acquired, renovated, or constructed using funds under the Act to be used as a multipurpose senior center may not be used and may not be intended to be used for sectarian instruction or as a place for religious worship.

20—8.26(249B) Funding and use requirements. A recipient of an award for alteration, renovation, acquisition or construction of a facility must assure that:

1. Sufficient funds are available to meet the nonfederal share of the award; and
2. Sufficient funds are available to effectively use the facility as a multipurpose senior center.

8.26(1) Shared facilities. In a facility that is shared with other age groups, funds received under the Act may support only:

- a. That part of the facility used by older persons; or
- b. A proportionate share of the costs based on the extent of the use of the facility by older persons.

8.26(2) Programs. A multipurpose senior center program must be operated in the facility, as required in 8.20(249B).

20—8.27(249B) Membership fees.

8.27(1) Membership fee prohibited. Payment of a membership fee may not be requested or required of participants in senior center activities.

8.27(2) Voluntary contributions. Each older person shall be provided with a free and voluntary opportunity to contribute to the cost of activities or services taking place in the center.

20—8.28(249B) Recapture.

8.28(1) Recapture from owner. The United States government is entitled to recapture a portion of federal funds and the commission is entitled to recapture a part of state funds from the owner of a facility if within ten years after acquisition or twenty years after completion of construction:

- a. The owner of the facility ceases to be a public or nonprofit agency; or
- b. The facility is no longer used for multipurpose senior center activities.

8.28(2) Amount of recapture. The amount recovered under 8.28(1) is that proportion of the current value of the facility equal to the proportion of federal or state funds contributed to the original cost. The current value of the facility is determined by an agreement between the owner of the facility and the federal government; or by an action in the federal district court in which the facility is located.

8.28(3) Recapture in leased facility. The commission is entitled to recapture a portion of federal and state funds from the owner of a leased facility if the facility is no longer leased for senior center activities within a period of time equal to one year for every \$1,000 of nonremovable alterations or renovations.

8.28(4) Recapture share. The amount recovered under 8.28(3) shall be the total federal or state funds contributed to the original cost or both, reduced by \$1,000 for each year, the facility was used as a senior center.

20—8.29(249B) Senior centers funded by state funds—general rule. Rules 8.20(249B) to 8.29(249B) shall apply to the use of state senior center funds for multipurpose senior centers, except that:

1. State senior center funds shall not be used for area agency administration costs.
2. State senior center funds shall be awarded by criteria developed by the executive director annually, and available at the Iowa commission on aging office, identified in 2.1(2).
3. Proposals shall be submitted annually to the commissioners for approval.

20—8.30(249B) Senior activity centers.

8.30(1) General rule. The area agency may award social service funds under the Act to a public or private nonprofit agency to support the activities of senior activity centers which operate not less than four hours per day, three days per week.

8.30(2) General requirements. Senior activity centers will comply with all rules for multipurpose senior centers in subrule 8.20(4) except that the services and programs may operate less than forty hours per week as specified in subrule 8.20(1).

8.30(3) Health and safety requirements.

a. A recipient of any award for senior activity center activities must comply with all applicable state and local health, fire, safety, building, zoning and sanitation laws, ordinances or codes.

b. If in the judgment of the area agency, existing fire and safety laws, ordinances or codes are inadequate to protect the health and safety of participants, the area agency may require a recipient of any senior activity center award to:

1. Comply with the provisions of the applicable building occupancy classification of the National Fire Protection Association, "Life Safety Code", (NFPA No. 101, 1976 edition);
2. Install, in consultation with state or local fire authorities, an adequate number of smoke detectors in the senior center; and
3. Have a plan for assuring the safety of older persons in a natural disaster or other safety threatening situation.

c. A senior activity center facility must comply with regulations relating to minimum standards of construction, particularly with the requirements of the Architectural Barriers Act of 1968.

20—8.31(249B) Elderly care program.

8.31(1) General rule. The elderly care program is designed to reduce the need for and incidence of institutionalization of elderly Iowans by encouraging community involvement in the provision of services which help elderly Iowans remain in their own homes. The elderly care program is established to increase the availability of chore, adult day care, home repair service and telephone reassurance.

8.31(2) Definitions. The following terms when used in this subrule shall have the following meanings:

a. "Eligible individual" means any person aged sixty-five and over with preference given to those with a low income.

b. "Home repair services" means programs which maintain a safe and habitable living environment through improvement in the physical condition of homes. Home repair services may include, but shall not be limited to:

1. Major home repairs, including removal of structural deficiencies, provision of basic sanitary facilities, and adequate heat and lighting. Major home repairs shall be available for residences owned and occupied by individuals sixty-five and over. These services shall not be available for rental property. The state appropriated elderly care funds expended for major home repair shall not exceed \$1,500 per residence.

2. Winterization of homes, including the provision of energy saving improvements to residences to minimize heat loss and improve thermal efficiency through the installation of weatherstripping, insulation, caulking of windows, and putting plastic over windows. Winterization services shall be available to residences owned and occupied or rented and occupied by

individuals sixty-five and over, except they shall not replace services available from other sources. The state appropriated elderly care funds expended for winterization shall not exceed \$250 per residence.

3. Residence accessibility including, but not limited to, the construction of entrance ramps which meet the requirements of section 104A.4, Iowa Code, and other modifications to make the residence accessible to physically handicapped individuals. This service shall be available for residences owned and occupied by individuals sixty-five and over. This service shall not be available for rental property.

c. "*Adult day care services*" means any program which provides an organized program of supportive care during the day in a group environment to individuals sixty-five and over who need a degree of supervision and assistance, or both. This service shall be available to individuals sixty-five and over who own or rent their homes or have established residence in the home of others. Services may include, but shall not be limited to, rehabilitation services, personal care services, nutrition services, transportation services, social/recreational activities and preventative or restorative services.

d. "*Significant local match*" means:

1. One dollar local cash or in-kind contribution (local tax; local voluntary funds; client fees; donated time, materials, space and services; or federal general revenue sharing funds) for each dollar of elderly care funds; or

2. Two dollars federal funds (Title XX, Department of Energy, HUD, Farmers Home Administration, etc.) for each dollar of elderly care funds. State funds shall not be used as local match.

e. "*Interagency co-ordinating committee*" means the committee created to advise and assist the commission in the establishment of the elderly care program.

20—8.32(249B) Interagency co-ordinating committee.

8.32(1) Composition. The committee shall consist of:

a. A representative of the commission, selected by the executive director of the commission;

b. A representative of the department of social services, selected by the commissioner of social services;

c. A representative of the state department of health selected by the commissioner of public health;

d. Two consumer representatives appointed by the governor and not subject to senate confirmation. The consumer representatives while engaged in their official duties shall be reimbursed for their actual and necessary expenses out of funds other than elderly care funds appropriated to the commission.

8.32(2) Duties. The interagency co-ordinating committee shall:

a. Recommend rules, eligibility guidelines and procedures necessary to approve grants and disburse funds appropriated to the commission from the general funds for the elderly care program and other funds available to the program.

b. Recommend uniform financial reporting procedures for all funds appropriated to the commission from the general funds for the elderly care program.

c. Review applications and recommend for commission approval grants to local area agencies on aging and any waivers or modifications of the local match requirement contained in the grants.

d. Advise on the reallocation and redistribution of funds among area agencies on aging, the handling of appeals, grievances and waiver requests and other matters relevant to the program when requested by the commission.

e. Evaluate local projects and the overall state program periodically.

f. Assist with liaison efforts to the general assembly, governmental agencies, private organizations and individuals, and with the dissemination of information relating to the program as requested by the commission.

20—8.33(249B) Allocation formula. All funds appropriated to the commission for elderly care shall be allocated to the area agencies on aging on the basis of population sixty-five years of age and over in the planning and service area, double-weighted for the low-income population sixty-five years of age and older.

20—8.34(249B) Eligibility for services—criteria. To receive services under the elderly care program, persons must be at least sixty-five years of age.

1. In the instance of a married couple, the spouse may be under sixty-five.
2. Preference for service shall be given to low-income persons.

20—8.35(249B) Program costs.

8.35(1) Allowable costs.

a. Elderly care funds shall be used only to establish new projects, to expand existing programs, or to continue existing elderly care projects.

b. Elderly care funds may be used for the provision of the following services:

1. Chore;
2. Adult day care;
3. Home repair services;
4. Telephone reassurance.

8.35(2) Unallowable costs.

a. Elderly care funds shall not be used to replace funds in existing programs or to free funds for other state supported services.

b. The state appropriated elderly care funds may not be used to pay for administrative cost of the commission or the area agencies on aging.

c. The state appropriated elderly care funds shall not exceed \$400 for the purchase of any item of equipment used by the provider.

20—8.36(249B) Matching requirements.

8.36(1) Project match. Elderly care funds shall be awarded and distributed, with exceptions stated in 8.36(1)“a” and “b”, and 8.36(2), only to projects which match each state dollar with significant local match in cash or in equivalent support. Project income generated by client contributions may be included as cash match.

a. If the applicant agency is already funding one of the services to be funded by the elderly care program, cash or in-kind generated by the current delivery of that service, not already committed as match for another source of funding, may be used to meet the match requirement of the elderly care program.

b. The area agency match requirement shall be calculated on an areawide basis.

8.36(2) Waivers. The interagency co-ordinating committee may recommend that the commissioners waive or modify the local match requirements.

a. Rejection of any waiver or modification request shall affect only that portion of the grant for which the waiver or modification was requested.

b. The committee may recommend that commissioners waive or modify local match requirements based on the following factors:

1. Demonstration by letter of commitment from a variety of local community groups and individuals of the contribution of cash or in-kind services or both.
2. Review of the socio-economic indicator, with emphasis on median family income, of the county or counties being served.
3. Review of other information submitted by the area agency regarding factors which affect the availability of matching resources.

20—8.37(249B) Funding process.

8.37(1) Application. The executive director shall provide the area agencies on aging with an application packet and instructions with standardized fiscal and program reports.

a. Elderly care funds shall be awarded to area agencies on the basis of applications approved by the commissioners.

b. Area agencies shall enter into subcontracts with service providers or deliver the service directly.

c. Area agencies on aging shall follow the procedure for advertising for funding requests in Title 45 of the Code of Federal Regulations, Part 74, Administration of Grants, subpart P, Procurement Standards, June 30, 1980.

8.37(2) Application requirements. The application of the area agency on aging shall include, but not be limited to:

a. Use of elderly care funds to respond to the area agency on aging needs assessment;

b. Compatibility with the comprehensive aging plan for the planning and service area;

c. Recommendation of the area advisory council;

d. A description of the project;

e. The source and amount of the required local match;

f. The projected number of persons sixty-five and over, including the number of low-income persons sixty-five and over to be served;

g. The method by which elderly citizens, particularly low-income elderly citizens, are located and served by the project; and

h. The items for which state elderly care funds are to be expended, as identified in the properly completed budget pages.

8.37(3) Appeal. The commission shall afford an opportunity for an appeal as outlined in 4.11(249B).

20—8.38(249B) Timeline for implementation—issuance.

8.38(1) Issuance. By March 1 of each year the executive director shall issue a timeline for implementation of the elderly care program.

a. Area agencies shall adhere to the timelines established by the executive director.

b. It is the intention of the commission to announce the funding approval of specific elderly care area agency applications during June of each year.

8.38(2) Reserved.

20—8.39(249B) Reallocation of funds.

8.39(1) Transfer to pool. Any funds not granted to area agencies on aging according to the timeline issued by the executive director shall be transferred to a reallocation pool.

8.39(2) Procedure established by commissioners. The commissioners shall establish the reallocation procedure after receipt of recommendations made by the interagency co-ordinating committee.

8.39(3) Grants of reallocated funds. The executive director and the interagency co-ordinating committee shall review area agency on aging requests and make recommendations to the commissioners on the granting of reallocated funds on the following basis:

a. Demonstration of ability of applicant to deliver elderly care services and to effectively spend elderly care funds.

b. Documentation of need for additional funds to provide necessary services. Need may be documented by waiting lists of persons requiring services.

c. Evidence that the matching requirement can be met.

d. Evidence of demonstration of local support.

20—8.40(249B) Timeline for implementation of reallocation funds.

8.40(1) Executive director establishes timeline. For each fiscal year area agencies shall adhere to the timeline issued by the executive director for implementation of reallocation funds.

8.40(2) Excess funds transfer. Excess funds not reallocated or granted by January 31 of each year, in accordance with the timeline issued by the executive director, may be transferred to the office for planning and programming to be used to assist the low-income elderly in the payment of winter utility bills.

20—8.41(249B) Records.

8.41(1) *Uniform records.* The executive director shall maintain uniform records on all grants made from the state elderly care funds.

8.41(2) *Standardized forms.* The executive director shall issue standardized forms for monthly budget status reports, and requests for funds.

8.41(3) *Reporting requirements.* Area agencies shall follow the reporting requirements and procedures issued by the executive director specifically for the elderly care program.

8.41(4) *Monitoring.* The executive director shall closely monitor monthly program and budget status reports to assure compliance with the rules and the law and to assure effectiveness of the elderly care program.

8.41(5) *Evaluation.* The executive director shall evaluate the elderly care program as part of the annual assessment of each area agency on aging.

20—8.42(249B) Procedures for amending and revising area agency elderly care grants.

8.42(1) *Amendments.* The area agency must amend the elderly care grant and submit it to the interagency co-ordinating committee for review and to the commissioners for approval if the amounts of elderly care funds available to the area agency either increases or decreases. If the area agency voluntarily reverts elderly care funds to the state agency in mid-year, action by commissioners and the interagency co-ordinating committee will not be necessary.

8.42(2) *Revisions.* The area agency must revise the elderly care grant and submit it to the executive director for approval if:

a. There is a budget change of twenty percent or more of either the elderly care funds or the matching funds in a subcontractor's total budget; or

b. Actual performance under the area agency elderly care grant will vary by more than twenty percent of the projected units of service and persons to be served in the approved area agency grant by service.

8.42(3) *Procedure for submission.* All amendments and revisions shall be submitted in accordance with procedures established by the executive director.

20—8.43(249B) Report to the general assembly.

8.43(1) *Report to commission.* The interagency co-ordinating committee shall evaluate the impact and effectiveness of the overall elderly care program and report to the commission on aging by January 1 of each year.

8.43(2) *Commission report.* The commission on aging shall submit a report and recommendations to the general assembly regarding continuation of the elderly care appropriation for future fiscal years.

20—8.44 Reserved.**20—8.45(249B) Nutrition services.**

8.45(1) *Purpose of making awards.* The area agency may award nutrition services funds to provide meals and other nutrition services, including outreach and nutrition education to older persons. The area agency must assure that funds are used to:

a. Provide meals in a congregate nutrition site, and provide home-delivered meals based upon a determination of need.

b. Provide other nutrition services, to assure that the maximum number of eligible individuals have the opportunity to participate. Other services include outreach activities with emphasis on frail, those with the greatest economic and social need, and the isolated.

c. Provide a nutrition education program planned by a registered dietitian or nutritionist, including the nutritionist employed by the state agency, who has determined the nature and extent of nutrition needs and problems of the target population. The program is to be based on desired objectives and conducted on a consistent basis by personnel trained to provide quality service.

8.45(2) Eligibility.

a. Congregate nutrition services. A person aged sixty or older and the spouse of the person, regardless of age, are eligible participants of congregate nutrition services.

1. Staff, guests and volunteers under sixty years of age may eat at a congregate nutrition site if that does not deprive an eligible participant of a meal in accordance with subrule 8.11(5).

2. At least ninety-five percent of the total number of meals served by an area agency during the fiscal year must be to persons aged sixty or older and their spouses.

b. Home-delivered nutrition services. A person aged sixty or over who is homebound by reason of illness, incapacitating disability, or is otherwise isolated, is eligible to receive a home-delivered meal. The spouse of the older person, regardless of age or condition, may receive a home-delivered meal, if according to criteria determined by the area agency, receipt of the meal is in the best interest of the homebound older person.

c. The area agency or the home-delivered meal provider, subject to area agency approval, shall establish procedures for the determination of an individual's eligibility for home-delivered nutrition services, including specific criteria for:

1. Initial and subsequent six-month assessments of the individual's eligibility for home-delivered meals;

2. Determination of the number of days per week the individual has a need for home-delivered meals;

3. Determination of the individual's need for other home-delivered nutrition services.

8.45(3) Assessment of need. The area agency must assess the level of need of congregate and home-delivered meals within the planning and service area and must base the awards on that assessment.

8.45(4) Registered dietitian or nutritionist. Each area agency must utilize the services of a registered dietitian or nutritionist to provide technical assistance in areas of food service management and other nutrition services.

20—8.46 Reserved.

20—8.47(249B) Selection of nutrition service providers.

8.47(1) General rule. The area agency may make awards for congregate and home-delivered nutrition services to a provider that furnishes either or both types of services. The area agency shall make awards only to providers that meet the requirements of rules 8.45(249B) and 8.47(249B).

8.47(2) Existing nutrition service projects. On September 30, 1978, area agencies on aging were the recipients of subgrants to provide nutrition services throughout the state. Therefore, 45 CFR § 1321.143(b) is not applicable to the state of Iowa.

a. The area agency must give preference in making awards for home-delivered meals to the public, private nonprofit and voluntary organizations which demonstrated an ability to provide home-delivered meals efficiently and reasonably as defined in rule 8.2(249B), and have furnished assurances to maintain efforts to solicit voluntary support and not to use funds received under the Act to supplant funds from nonfederal sources pursuant to rule 8.12(249B).

b. The area agency must maintain a contract system according to procedures issued by the executive director to ensure that home-delivered meal organizations perform in accordance with terms, conditions and specifications for home-delivered meal funding. At a minimum, the procedures must require that the contract include the specific number of units of service to be served to eligible persons and detailed terms such as meal pattern, use of project income, length of contract, cost per unit, and performance requirements to ensure accountability and monitoring.

20—8.48 Reserved.

20—8.49(249B) Special requirements for area agencies related to nutrition services.

8.49(1) Requirements for congregate providers. In making awards for congregate nutrition services, the area agency must assure that the congregate providers shall:

- a. Assess the individual need for home-delivered meals among participants.
- b. Provide hot or other appropriate meals in each congregate nutrition site.
- c. Serve a minimum of fifty meals per day, five or more days per week at congregate sites in communities with five hundred or more older persons.
- d. Serve a minimum of twenty-five meals per day, three or more days per week at congregate sites in communities with less than five hundred older persons.
- e. Locate congregate nutrition sites as close as possible to the majority of eligible older persons.

8.49(2) Waivers. Commissioners, in approving an area plan or plan amendment, may waive the minimum site attendance or minimum serving days requirement, or both.

a. The area agency, when submitting a request for waiver of these standards, must include the following:

1. Demographic data on number of older persons in the area served by the site, and the number of low-income minorities within the census tract, corporate limit or township.
2. Cost of maintaining site in comparison with sites in compliance.
3. Efforts to increase attendance or increase number of serving days.
4. Potential for increase in numbers of participants or serving days.
5. Effect of available transportation.
6. Size, location, accessibility and condition of building in relation to future use.
7. Demonstration of community support.

b. Reserved.

8.49(3) Requirements for area agencies. In making awards for congregate nutrition service, the area agency must:

a. Select and designate as a congregate meal site a location where meals are served in a group setting with federal AoA nutrition funds or contributions from an AoA federal nutrition program.

b. Conduct, record and keep on file systematic on-site evaluations on a semiannual basis in order to document improvement in a site's activities, analyze areas for concern and provide ongoing monitoring of congregate nutrition sites.

c. All congregate nutrition sites, whether meals are project-prepared or catered from another nutrition site, central kitchen, or food service establishment, must be inspected by the department of agriculture and must have current restaurant license posted in the congregate nutrition site.

d. Have procedures developed to handle weather and emergency situations at the congregate nutrition sites.

e. Provide, to the extent that such services are needed and are not already available and accessible to the individual's participation in the nutrition program, information and referral services, health and welfare counseling, recreation activities, and access to nutrition services.

f. Where feasible and appropriate, make arrangements for the availability of food to older persons in weather and disaster related emergencies.

8.49(4) Requirements for opening or closing congregate nutrition sites. The executive director must be notified in writing thirty days before the area agency may open, relocate, or terminate a nutrition site.

8.49(5) Requirements for home-delivered meals providers. In making awards for home-delivered nutrition services, the area agency must assure that the home-delivered meal provider shall:

a. Assess the individual need for home-delivered meals among participants using criteria in 8.45(2)“c”.

b. Provide for home-delivered meals to participants according to the frequency of need determined pursuant to 8.45(2). Meals may be hot, cold, frozen, dried, canned or supplemental foods with a satisfactory storage life. The provider is not required to provide meals more than five days per week but is encouraged to do so.

c. With the consent of the older person, or his or her representative, bring to the attention of appropriate officials for follow-up, conditions or circumstances which place the older person or the household in imminent danger. The area agency should make provision for other agencies to provide services to the homebound elderly person to reduce isolation and dependency.

d. Where feasible and appropriate, make arrangements for the availability of meals to older persons in weather and disaster related emergencies.

8.49(6) Requirements for area agencies. In making awards for home-delivered meals, the area agency must assure that service providers shall:

a. Provide other nutrition and social services to meet the need of the homebound individual.

b. Provide nutrition education for recipients that includes emphatic instruction in the storage and preparation of the home-delivered meal.

20—8.50 Reserved.

20—8.51(249B) Food requirements for all nutrition service providers funded under the Act.

8.51(1) Food standards. The area agency must require that the service provider, when purchasing food, preparing and delivering meals, follows appropriate procedures to preserve nutritional value and food safety.

a. Each service provider must establish and implement procedures on handling foods prepared for a meal but not served. The procedures shall address which foods need to be destroyed and instructions for cooling and storing foods for reuse.

b. All raw fruits and vegetables and other foods utilized must be free from spoilage, filth or contamination and must be safe for human consumption.

c. The use of hermetically sealed non-commercially packaged foods is prohibited because of the history of such food causing food-borne illness.

d. Standardized tested quantity recipes, adjusted to yield the number of servings needed, shall be used to achieve the consistent and desirable quality and quantity of meals.

e. Leftover foods shall not be given away or sold.

8.51(2) Preparation, handling and serving. The nutrition service providers must comply with all state and local health laws and ordinances concerning preparation, handling and serving food.

8.51(3) Menus.

a. Each meal served by the area agency or subcontractor must contain at least one-third of the current recommended dietary allowances as established by the food and nutrition board of the National Academy of Sciences- National Research Council.

b. All menus must be planned for a minimum of four weeks, certified in writing by the dietitian/nutritionist whose services are utilized by the area agency, and submitted to the state agency for review at least two weeks prior to the initial use of the menu. For purposes of audit, the area agencies shall keep on file for a period of one year copies of the certified menus to be used.

c. All certified menus must be posted in a conspicuous location in each congregate meal site. The certified menus may be modified occasionally if the provisions of 8.51(3) are maintained and a dietitian/nutritionist or nutrition director is consulted prior to the change.

8.51(4) Special diet menus. The area agency must assure that the nutrition service provider provides special menus, where feasible and appropriate, to meet the particular dietary needs arising from the health requirements, religious requirements, or ethnic backgrounds of eligible individuals.

a. The provider must use the following criteria to determine feasibility and appropriateness:

1. Sufficient numbers of persons exist who need the special menus to make their provision practical.

2. Skills and food necessary to prepare the special menus are available in the planning and service area.

b. Special diet menus must be planned under the supervision of a registered dietitian in accordance with a current diet manual approved by the executive director and supplied to each area agency by the state agency. Certified menus must be submitted to the state agency at least four weeks prior to the initial use of the menus.

c. A written physician's order for each individual requesting a special diet must be obtained prior to receipt of the meal, and kept on file where the meal is prepared and served. The order must be interpreted by a registered dietitian and renewed periodically by the dietitian and the individual's physician.

8.51(5) *Special utensils.* The service provider must have available for use, upon request, appropriate food containers and utensils for blind and handicapped participants.

8.51(6) *Food-borne illness.* The area agency must develop written procedures for handling suspected cases of food-borne illnesses. The food service provider must report the occurrence of a food-borne illness or suspected case to the area agency within twelve hours. The area agency must then notify the state agency within twelve hours.

8.51(7) *USDA food assistance programs.*

a. The area agency must have an agreement with the commission to receive USDA commodities, cash, or a combination of commodities and cash.

b. An area agency which receives commodities must enter into agreement with the department of public instruction for distribution.

c. The commission shall allocate all food, cash or the combination of food and cash received from USDA to area agencies based on each agency's proportion of the total number of meals served to eligible recipients in the state.

d. The area agency must comply with the requirements of 7 CFR, Part 250 for participation in the USDA program.

e. The area agency must maintain perpetual inventories of all USDA foods at each site and storage area, and must submit a quarterly areawide inventory to the commission within thirty days after the reporting period.

f. Nutrition service providers must accept and use appropriate USDA foods made available by the area agency, and must assure appropriate and cost effective arrangements for transportation, storage, inventory and use of the food.

g. USDA commodities shall be consumed as food only and shall not be sold, exchanged, traded, transferred, destroyed, or otherwise disposed of for any reason without prior approval from the executive director.

h. The area agency must report the loss, theft, damage, spoilage, or infestation of USDA commodities to the state agency within five working days to initiate claim action.

i. An area agency which receives cash-in-lieu of commodities must spend all cash received from USDA to purchase United States agricultural food items.

8.51(8) *Food stamp program.* The area agency and nutrition service providers must assist participants in taking advantage of benefits available to them under the food stamp program by providing current information to participants in both the congregate and home-delivered meals programs by co-ordinating activities with agencies responsible for administering the food stamp program, and by being certified to accept, and accepting food stamps as contributions for meals.

20—8.52 to 8.54 Reserved.

20—8.55(249B) **Legal services.**

8.55(1) *General rule.* Federal AoA supportive service funds awarded under this rule are for the purpose of increasing the availability of legal services to older persons, with a priority for older persons with the greatest economic or social need, in order to assist them in securing their rights, benefits and entitlements, and in achieving the objectives of the Older Americans Act as amended.

8.55(2) *Legal service provider qualifications.* A legal services provider must be either:

- a. A recipient of funds under the Legal Services Corporation Act; or
- b. An organization, including the area agency, which has a legal services program or the capacity to develop a legal services program; or
- c. An area agency that provides legal services directly pursuant to rule 8.2(249B), if the area agency has determined that it is a legal services provider which most fully meets the standards set forth in 8.55(3)'a'.

8.55(3) Conditions legal services providers must meet. Legal services provided under this section must be in addition to any legal services already being provided to older persons in the planning and service area.

a. The area agency must award federal supportive service funds to the legal services provider(s) that most fully meet(s) the following standards. The legal services provider(s):

1. Has staff with expertise in specific areas of law affecting older persons in economic or social need; for example, public benefits, institutionalization, and alternatives to institutionalization;
2. Demonstrates the capacity to provide effective administrative and judicial representation in the areas of law affecting older persons with social or economic need;
3. Demonstrates the capacity to provide support to other advocacy efforts, for example, the long-term care ombudsman program;
4. Demonstrates the capacity to effectively deliver legal services to institutionalized, isolated and home-bound individuals;
5. Has offices or outreach sites which are convenient and accessible to older persons in the community;
6. Demonstrates the capacity to provide legal services in a cost effective manner; and
7. Demonstrates the capacity to obtain other resources to provide legal services to older persons.

b. Reserved.

20—8.56 Reserved.

20—8.57(249B) Duties of a legal services provider.

8.57(1) Co-ordination with legal services corporation. Each legal services provider which is not a legal services corporation grantee must agree to co-ordinate its services with legal services corporation grantees in order to concentrate legal services on older individuals with the greatest economic or social need who are not eligible for services under the Legal Services Corporation Act.

a. In carrying out this requirement, a legal services provider receiving AoA federal supportive service funds shall not use a means test.

b. The provider may not require older persons to apply first for services through a legal services corporation grantee.

8.57(2) Requirements. Each legal services provider must:

a. Make efforts to involve the private bar in legal services provided under this section, including groups within the private bar that furnish legal services to older persons on a pro bono and reduced fee basis;

b. Ensure that no attorney of the provider engages in any outside practice of law if the director of the provider has determined that the practice is inconsistent with the attorney's full-time responsibilities;

c. Ensure that while employed under this section, no employee and no staff attorney of the provider at any time uses official authority or influence for the purpose of interfering with or affecting the results of an election or nomination for office, whether partisan or nonpartisan; or directly or indirectly coerces, attempts to coerce, command or advise an employee of any provider to pay, lend, or contribute anything of value to a political party or committee, organization, agency or person for political purposes; or is a candidate for partisan elective public office; or engages in any voter registration activity;

d. In areas where a significant number of clients do not speak English as their principal

language, adopt employment policies that ensure that legal assistance will be provided in the language spoken by those clients.

e. Adopt a procedure for affording the public appropriate access to the Act, regulations, and guidelines under this rule, the provider's written policies, procedures and guidelines, the names and addresses of the members of its governing body, and other materials that the provider determines should be disclosed. The procedure adopted must be approved by the area agency.

f. Ensure that legal services are not provided in fee generating cases, as defined in 45 CFR § 1609.2, unless adequate representation is unavailable from private attorneys.

g. Ensure that no employee or staff attorney working for a legal services provider shall directly or indirectly lobby for or against any legislation being considered by the Congress of the United States, the general assembly of Iowa or by any state or local legislative body. Nor shall the legal services provider's employees or staff attorneys present proposals to any of the aforementioned governmental units by petition, with the following exceptions:

1. Where representation by a legal services provider for a client is necessary with respect to the client's rights and responsibilities, the above-listed activities will be permitted. This exception does not include solicitation of a client by an employee or staff attorney for the purpose of making such representation possible.

2. Employees and staff attorneys will be permitted to draft, testify, review measures or make presentations before governmental agencies, legislative bodies, committees or members if requested to do so.

3. Employees and staff attorneys will be permitted to testify, draft, review measures or make presentations to any agency, body, committee or committee member which is considering legislation directly affecting the activities of a provider under this regulation.

20—8.58(249B) Case priorities.

8.58(1) *Greatest economic or social need.* A legal service provider funded under this rule may, with the approval of the area agency, set priorities for the categories of cases for which it will provide legal representation in order to concentrate on older persons with the greatest economic or social need.

8.58(2) *Availability of staff.* In setting case priorities, a legal services provider may consider the availability of staff resources in determining the extent of legal advice and representation to provide to individual older persons.

20—8.59(249B) Information about income and resources.

8.59(1) *Restricted client financial information.* A legal service provider may not require an older person to disclose information about income or resources as a condition for providing legal services under this section.

8.59(2) *Financial information necessary for counseling.* A legal service provider may ask about the person's financial circumstances as part of the process of providing legal advice, counseling and representation, or for the purpose of identifying additional resources and benefits for which the older person may be eligible.

20—8.60(249B) Waivers. Area agencies may request a waiver of the provision of legal services by the procedures outlined in subrule 9.7(2).

20—8.61(249B) Information and referral services.

8.61(1) *General rule.* The area plan must provide for information and referral services sufficient to assure that all older persons within the planning and service area have reasonably convenient access to the service.

8.61(2) *English not principal language.* In areas in which four hundred or more persons do not speak English as their principal language, the service provider must provide information and referral services in the language spoken by older persons.

8.61(3) *Requirements.* A provider of information and referral services must:

- a. Develop and maintain current information about services and opportunities available to older persons;
- b. Develop and maintain current lists of older persons in need of services and opportunities;
- c. Employ a trained staff to inform older persons about those opportunities and services and assist older persons to take advantage of them; and
- d. Obtain the informed written consent of the older person or an authorized representative before disclosing information about an older person.

20—8.62 to 8.64 Reserved.

20—8.65(249B) Transportation services.

8.65(1) Agreements. The area agency on aging may enter into transportation agreements with agencies administering programs under the Rehabilitation Act of 1973, and Titles XIX and XX of the Social Security Act to meet the common need for transportation services of individual participants under the separate programs.

8.65(2) Exemption. Agreements entered into under this rule are exempt from the requirement of rule 9.27(249B).

20—8.66 Reserved.

20—8.67(249B) Senior employment.

8.67(1) Scope and purpose. The senior community services employment program (SCSEP) is designed to provide, foster and promote useful part-time opportunities in community service employment for low-income persons who are fifty-five years of age or older, and, to the extent feasible, assist and promote the transition of program enrollees to private or other unsubsidized employment.

8.67(2) Definitions. The following definitions apply to the senior employment section:

a. *“Enrollee”* means an individual who is eligible, receives services, and is paid wages for engaging in community service employment under a project.

b. *“Authorized slot”* means an enrollment opportunity during a program year allocated by the executive director.

c. *“Eligible individual”*. An individual must be fifty-five years of age or older and comply with low-income definitions.

d. *“Project”* means an undertaking by a project sponsor which provides for the employment of eligible individuals and the delivery of associated services.

e. *“Eligible organization”* means an organization which is legally capable of receiving and using federal funds under the Act and entering into a project agreement with the executive director. Eligible organizations are limited to state and designated agencies as state units of local governments and their agencies and combinations of such units within the state, public and private nonprofit agencies and organizations other than political parties, federal establishments and agencies, and Indian and Alaskan entities.

f. *“Subproject”* means an eligible organization which has entered into a subproject agreement with the executive director.

g. *“Equitable distribution plan”* is a plan designed by all of the national sponsors operating in Iowa and the executive director which has taken into consideration the proportions of eligible persons in each area to the total number of positions in the state. The plan is revised and issued annually by the executive director.

h. *“Host agency”* means a public agency or a private nonprofit organization, other than a political party, exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954, as amended, which provides a work site and work supervision for the enrollee.

i. *“Low-income”* in addition to the definition included in 1.7(1)“ab”, means an income which during the preceding six months or on an annualized basis, does not exceed by more

than one hundred twenty-five percent of the poverty levels established and periodically updated by the United States Office of Management and Budget. In addition, an individual who receives, or is a member of a family which receives, regular cash welfare payments shall be deemed to have low income.

j. "Project sponsor" means the state agency when it has entered into a project agreement with the department of labor.

k. "SCSEP" means senior community service employment program.

l. "Subproject agreement" means an agreement entered into between the state agency and an eligible organization which provides for the transfer of federal funds to the organization for the purpose of carrying out authorized activities.

m. "Subproject sponsor" means an eligible organization which has entered into a subproject with the state agency.

n. "Temporary slot" means an enrollment opportunity over and above the authorized level made available by the executive director to the subproject during a project year when a portion of the project's funds are not being used due to such factors as enrollee absenteeism, attrition or enrollees who work fewer hours per week than planned.

20—8.68(249B) Allotment of funds.

8.68(1) *Distribution procedures.* The executive director shall allot funds for projects in accordance with procedures published annually.

8.68(2) *Reallocation.* The executive director may reallocate funds from one project to another as permitted in section 506(b) of Title V of the Act.

8.68(3) *Apportionment.* The amount allotted for authorized slots within the state shall be apportioned among projects within the state in an equitable manner taking into account the equitable distribution plan and spending patterns.

20—8.69(249B) Submitting an application.

8.69(1) *Timeline.* The executive director shall annually establish the date by which an eligible subproject seeking funds under SCSEP shall submit completed grant applications.

8.69(2) *Application requirements.* As a condition for approval, an application for funds must indicate or contain the following:

- a.* The performance period of the project;
- b.* The projected budget for the year by cost categories of administration, enrollee wages, enrollee fringe benefits, and other enrollee costs;
- c.* A description of the need of the project and its objectives;
- d.* A description of the results and the benefits to be derived from the project, including benefits which will accrue to project enrollees and to the community or communities in which the project is to operate; and
- e.* A description of the methods, procedures and arrangements which will be used to carry out the project functions.

8.69(3) *Application review.* The executive director shall review and consider for approval each application submitted by an eligible organization.

a. In reviewing and considering an application, the executive director shall determine whether:

1. Funds are available for the proposed project;
 2. The application demonstrates compliance with requirements and regulation of the Act;
 3. The application is complete and has been prepared in accordance with the instructions of the executive director; and
 4. The application demonstrates that effective use will be made of the funds.
- b.* Reserved.

8.69(4) *Award of funds.* Award of funds will be accomplished through the execution of a grant signatory sheet duly signed by the executive director.

20—8.70(249B) Project operations.

8.70(1) Assurance. In order for a subcontractor to operate a SCSEP, the subcontractor must assure that all procedures and guidelines shall be developed in accordance with the guidelines in 29 CFR Part 89, 1980, and in addition the subcontractor must assure that:

- a. Only eligible individuals are enrolled in the program;
- b. Enrollees reside in the community or in a community near where they are employed;
- c. Services provided to the community are related to publicly owned and operated facilities and projects, or projects sponsored by organizations, other than political parties, exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954 as amended, except projects involving the construction, operation, or maintenance of any facility used or to be used as a place for sectarian religious instruction or worship;
- d. Services provided contribute to the general welfare of the community;
- e. Employment has resulted in an increase in employment opportunities which would not otherwise be available, not result in the displacement of currently employed workers (including partial displacement, such as a reduction in the hours of nonovertime work or wages or employment benefits), and not impair existing contracts or result in the substitution of federal funds in connection with work that would otherwise be performed;
- f. Enrollees are not eligible to perform work the same or substantially the same as that performed by any other person who is on layoff;
- g. Methods of recruitment and selection (including listing of job vacancies with job service of Iowa) assure that the maximum number of eligible individuals will have the opportunity to participate in the project;
- h. Provision has been made for in-service training as is necessary to make the most effective use of the skills and talents of those individuals who are participating;
- i. Enrollees are assisted in attending meetings and other gatherings sponsored by either the area agency on aging or the commission on aging;
- j. Reasonable expenses and compensation for time spent in training are provided;
- k. Safe and healthful conditions of work are being provided;
- l. Persons employed in community service jobs assisted under the grant are being paid wages which would be applicable to the employer under the Fair Labor Standards Act of 1938. If section 6(a)(1) of the Fair Labor Standards Act applied to the participant and if he were not exempt, the state or local minimum wage for the most nearly comparable covered employment or the prevailing rates of pay for persons employed in similar public occupations by the same employer would apply;
- m. Persons competent in the field of service in which employment is being provided and knowledgeable with regard to the needs of older persons are administering the program in accordance with 28 CFR 89.28;
- n. Pay has been authorized for necessary transportation costs of eligible individuals which may be incurred in employment under the grant in accordance with 29 CFR 89.28;
- o. The needs of minority, Indian and limited English-speaking eligible individuals in proportion to their number in the geographic jurisdiction of the project have been served;
- p. Individuals participating in the project have been included under the state unemployment insurance plan;
- q. Annual physical examinations have been provided for the enrollees;
- r. Authorized enrollment level of the grantee has been effectively maintained. Recruitment efforts shall ensure that enrollment positions within the project are occupied to the fullest extent possible;
- s. If the program has been subcontracted, a copy of the contract is on file in the subcontract office, which includes a signoff on assurances;
- t. Enrollees have proper orientation to the host agencies as well as the aging network in their areas;
- u. On-the-job training shall not exceed twenty percent of total man-hours to be worked during the grant period;

- v. Supportive services shall be available to enrollees in accordance with 29 CFR 89.27;
 - w. Procedures are established for resolving any issues arising between an enrollee and a host agency and further assure that the enrollees have been given written job descriptions upon placement;
 - x. Provide employment for eligible individuals whose opportunities for other suitable public or private paid employment are poor; and
 - y. Assure that each enrollee shall be recertified at least once during each program year.
- 8.70(2) Reserved.

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CHAPTER 9 FISCAL REQUIREMENTS

20—9.1(249B) Grants to area agencies.

9.1(1) *General rule.* The commissioners make annual allotments to each area agency to part of the costs of administration and services under the area plan.

9.1(2) *Types of allotments.* Each area agency receives separate allotments for:

- a. AoA supportive services;
- b. AoA congregate nutrition services;
- c. AoA home-delivered nutrition services;
- d. AoA senior employment services;
- e. Other federal and state allotments received by the commissioners.

9.1(3) *Limitation on use.* Except as provided in rules 9.10(249B) and 9.12(249B), the area agency must use each allotment for the purpose for which it was made.

20—9.2(249B) *Area agency allotments.* Except as provided in rule 9.6(249B) and 45 CFR § 1321.195, (1981), the commissioners shall allot the entire social and nutrition services allotment to area agencies, under approved annual applications for award, according to intrastate funding formulas set forth in rule 4.9(249B).

20—9.3(249B) *Expenditures in rural areas.* The commissioners shall allot to rural areas at least one hundred and five percent of the amounts these areas spent under Titles III, V and VII of the Act during the fiscal year 1978. This will be accomplished through the intrastate funding formula set forth in rule 4.9(249B).

20—9.4(249B) Priority service requirement.

9.4(1) *General rule.* An area agency must spend an adequate proportion of its supportive services allotment as identified in 6.7(5) excluding amounts used for administration under rule 9.10(249B) for the following categories of service, with at least some funds spent in each of the following categories:

- a. Services associated with access to other services. These services are transportation, outreach, and information and referral;
- b. In-home services. These services are homemaker and home health aide, visiting and telephone reassurance, and chore maintenance; and
- c. Legal services.

9.4(2) *Waivers.* The commissioners, in approving the area plan or a plan amendment, shall upon recommendation of the executive director waive the requirement of 9.4(1) for any category of service for which the area agency demonstrates to the commissioners that the services provided from other sources meet the needs of older persons in the planning and service area for that category of service.

a. If the area agency receives a waiver for any category of priority service, the area agency must continue to spend for the remaining categories of services, the percentage of the area agency's social service funds agreed on by the state and area agency.

b. In order to obtain a waiver for legal services, the area agency shall demonstrate the

following factors both qualitatively and quantitatively;

1. That there are legal service providers in the planning and service area who possess expertise in areas of law affecting the elderly including, but not limited to, public benefits, health care, protective services or landlord or landlord-tenant problems; who can effectively serve isolated and homebound seniors; and who are willing to do some legal work for a reduced fee or for free.

2. That the needs assessment conducted by the agency shows that the legal service is a low priority service, (low priority service means a ranking in the lower quarter of the scale being used, e.g., eighth out of ten, fifteenth out of twenty) in the planning and service area. However, the needs assessment results shall not be considered unless the data base includes a socio-economic cross of the senior population living in the planning and service area.

3. That the services would be unnecessarily duplicated.

4. That no attorney or organization responded to the request for funding proposals.

c. To receive a waiver for access services or in-home services, the area agency shall demonstrate the following factors both qualitatively and quantitatively:

1. That the needs assessment conducted by the area agency shows that the service is a low priority service as defined in 9.4(2)“b”(2).

2. By listing existing service providers that the services would be unnecessarily duplicated in the area for the service category being waived.

3. That no agency or organization responded to the broadly advertised request for funding proposals.

4. That there is no documented evidence that older people requesting the services are being turned away due to a lack of available service.

d. The state agency may use any of the following additional considerations in granting or denying the waivers. This list is not exhaustive:

1. The level of funding during the prior fiscal year;

2. The level of service usage;

3. The level of publicity used to advise the public of this service; or

4. The reasons that waivers were denied or granted in the past for other area agencies.

e. The executive director shall advise the area agency in writing why the waiver was granted or denied after action by the commissioners.

20—9.5 Reserved.

20—9.6(249B) Long-term care ombudsman program. The executive director shall reserve at least one percent or \$35,000, whichever is greater, from the AoA supportive services allotment to operate the long-term care ombudsman program as set forth in rule 4.3(249B). The area agency may use supportive service funds in support of the long-term care ombudsman program for its specific planning and service area by providing services to or on behalf of institutionalized elderly.

20—9.7 Reserved.

20—9.8(249B) Use of congregate and home-delivered nutrition service funds.

9.8(1) Allotments. All AoA supportive service funds must be used to provide meals in a congregate nutrition site, and provide home-delivered meals based upon a determination of need.

a. AoA congregate nutrition service funds must be expended for congregate meals, outreach, nutrition education, or area plan administration.

b. AoA home-delivered nutrition service funds must be expended for home-delivered meals, outreach, nutrition education or area plan administration.

c. Nutrition service expenditures for congregate meals and home-delivered meals shall be reported separately for each individual allotment.

9.8(2) Contributions. Nutrition service providers, as specified in a written contract with the area agency, must use all contributions to increase the number of meals served by budget-

ing and spending only for raw food, labor costs, supplies, building/utilities, other costs, equipment, nutrition management, outreach and nutrition education.

20—9.9 Reserved.

20—9.10(249B) Transfer between supportive and nutrition service funds under the state plan.

9.10(1) *Transfers up to fifteen percent.* The commissioners may, without the approval of the administration on aging, transfer from one allotment to the other fifteen percent or less of the area's separate allotments for congregate and home-delivered nutrition services.

9.10(2) *Transfers exceeding fifteen percent.*

a. An area agency may apply to the commissioners to transfer from one allotment to the other a portion exceeding fifteen percent of the area's separate allotments for congregate and home-delivered nutrition services. The area agency must:

1. Specify the percent and the projected amount which the area agency proposes to transfer from one allotment to the other; and

2. Specify the length of time for the proposed transfer.

b. The commissioners approve the area agency's request by approving the area plan or plan amendment. The commissioners do not deny the transfer unless the commissioners decide that the transfer is not consistent with the purposes of the Act.

9.10(3) *Transfer of allotment.* The commissioners may without the approval of the administration on aging, transfer from one allotment to the other(s) twenty percent or less of the area's separate allotments for supportive and nutrition services.

20—9.11(249B) Allowable use of funds for state and area plan administration.

9.11(1) *State agency administration.* The state agency may use any part of its state plan administration allotment, which it determines is not needed to carry out the state agency responsibilities to pay part of the cost of the administration of area plans.

9.11(2) *Area agency administration.* The area agency may use not more than the amount received under 4.9(1)"b", 4.9(1)"c", 4.9(3), and at least the amount of local match prescribed in 9.14(2) for area administration costs. The area agency acting as AoA employment subproject sponsors, but which are not host agencies, may use not more than five percent of the sum of the categories, enrollee wages and fringe benefits and other enrollee costs under 4.9(7) for area administration.

20—9.12(249B) Obligation and reallocation.

9.12(1) *Obligation.*

a. The amount of federal funds which are not expended or obligated for goods and service or both to be provided by the last day of the previous federal budget year (carryover) shall be deducted from new federal funds awarded to the area agencies on aging to support the current budget year. This amount shall be available for reallocation.

b. State funds which are not expended or obligated for goods or service or both to be provided by the last day of the previous state fiscal year shall revert to the state.

c. The amount of unearned funds (carryover) will be determined on the basis of the year-end final report for the budget year, which is due not later than seventy days after the end of the budget year.

9.12(2) *Reallocation.* If the commissioners decide that an area agency will have unearned funds, the commissioners may reallocate the unused funds to one or more other area agencies according to their needs. The area agencies receiving these reallocated funds must obligate them by the end of the fiscal year in which they are reallocated.

20—9.13 Reserved.

20—9.14(249B) Federal financial participation.

9.14(1) State plan administration. The commission shall use its allotment for state plan administration to pay not more than seventy-five percent of the costs of administering area plans.

9.14(2) Area plan administration. An area agency may use its federal allotment under section 4.9(1)“b” and 4.9(1)“c” to pay not more than seventy-five percent of the cost of administering area plans.

9.14(3) Social and nutrition services. An area agency may use its federal allotments for social and nutrition services to pay not more than eighty-five percent of the costs of these activities.

20—9.15(249B) Nonfederal share requirements. The nonfederal share may be either by allowable cost of third-party in-kind contributions except as provided in rule 9.17(249B).

20—9.16 Reserved.

20—9.17(249B) Source of nonfederal share.

9.17(1) Cash match. At least twenty-five percent of the minimum nonfederal share in each federal fiscal year must be in the form of allowable costs of the state or local public agencies, or in the form of third-party in-kind contributions from local public agencies.

9.17(2) State match. One-third of the nonfederal share required under subrule 9.14(3) must be in the form of state appropriated funds.

20—9.18 Reserved.

20—9.19(249B) State agency maintenance of effort.

9.19(1) Same amount of funds. Each fiscal year the commission must spend under the state plan for both services and administration at least the same amount of state funds it spent under the plan in the previous fiscal year to meet the required nonfederal share applicable to its allotments under the Act.

9.19(2) Reduced funds. If the commission spends less than this amount, the administration on aging reduces the state’s allotments for social and nutrition services under the Act by a percentage equal to the percentage by which the state reduced its expenditures.

20—9.20(249B) Restriction on delegation of authority to other agencies. The state and area agency may not delegate to another agency the authority to award or administer funds under this part, except as provided in 5.4(1)“b”.

20—9.21(249B) State reviews and audits.

9.21(1) Audits. Grants from the Iowa commission on the aging to area agency on aging grantees shall be audited by the state auditor or by a certified public accountant or certified public accounting firm approved by the Iowa commission on the aging.

a. The audit costs are negotiated and paid for by the grantee from these grants.

b. The executive director shall provide the grantee with audit guidelines to be followed by the auditor.

c. Prior to being accepted by the commission on the aging, audits conducted by approved certified public accountants or certified public accounting firms must be evaluated and found to be acceptable by the state auditor.

9.21(2) Reports. Two copies of the completed audit reports are to be sent to the executive director of the agency.

20—9.22(249B) Records and reports.

9.22(1) General rule. The executive director shall maintain uniform fiscal and performance records on all grants made. The executive director shall issue standardized forms for

budget status reports, program reports, and requests for funds. The executive director shall closely monitor the program and budget status reports to assure compliance with the rules and law.

9.22(2) Reporting requirements. The grantee is required to submit all monthly fiscal and performance reports within thirty days following the end of the month being reported, following procedures and requirements established by the executive director.

9.22(3) Procedures for delinquent reports.

a. Reports not received by the due date will be considered delinquent.

b. Ten days after the due date, the state agency will mail a delinquent report notice to the area agency director.

c. Twenty-five days after the due date, the state agency will mail a delinquent report notice to the area agency director with a copy to the grantee indicating that funds will be put on hold if the delinquent report(s) is not received within two weeks.

d. Forty days after the due date, the executive director shall mail a hold notice to the grantee indicating that all funds have been put on hold pending receipt of the delinquent report(s).

20—9.23 Reserved.

20—9.24(249B) Procurement standards.

9.24(1) Authority. The commissioners and the area agencies may enter into contracts and arrangements for goods, equipment, and services with other agencies, public and private non-profit organizations, and other entities as necessary to carry out their responsibilities under state law and federal law (the Older Americans Act of 1965, as amended, and related Acts and regulations).

9.24(2) Standards. All contracting and similar arrangements for goods, equipment and services shall be in compliance with the standards contained in federal regulations, 45 CFR Part 74, Administration of Grants, unless a higher standard is elsewhere expressed by Iowa law. Where other factors are equal, preference will be given to Iowa contractors of goods and services over out-of-state contractors, in compliance with state law.

9.24(3) Utilization of small business and minority contractors. Positive efforts shall be made to utilize small business and minority owned business sources of supplies and services.

a. Lists of minority contractors shall be obtained and kept on file; the lists shall be reviewed quarterly and updated as needed.

b. Minority contractors will be contacted individually concerning contracts for which they may be able to provide services.

c. Records will be maintained showing names and numbers of minority contractors contacted in regard to each contract.

d. This rule shall not be construed to suggest, however, that the award of contracts will favor small business or minority contractors when this would result in higher cost to the commission.

9.24(4) Free competition. All procurement transactions, whether negotiated or advertised, shall be conducted in a manner to provide maximum open and free competition. Special attention shall be given to eliminate organizational conflicts of interest or other noncompetitive practices which may restrict or eliminate competition.

9.24(5) Procurement description. Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured.

a. The description shall not, in competitive procurements, contain features which unduly restrict competition.

b. "Brand name or equal" descriptions may be used to define the performance of other salient requirements of a procurement; and when so used, the specific features of the name brand which must be met by the offerors should be clearly specified.

9.24(6) Appropriateness of procurement instruments—prohibited costing method. The

type of procuring instrument used (i.e., fixed-price contract, cost reimbursement contract, purchase order, incentive contract, etc.) shall be appropriate for the particular procurement and for promoting the best interest of the program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

9.24(7) Bids. With the exceptions noted below, formal solicitation for bids, with clear and accurate purchase description, sealed bids and public openings, shall be the required method for all procurement in excess of \$5,000 for the commission and in excess of \$10,000 for area agencies.

a. Exceptions. Procurements may be negotiated if it is impracticable and infeasible to use formal bid solicitation. Generally, procurements may be negotiated if:

1. The item is available only from a single source;
2. Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive solicitation;
3. The federal grantor agency authorizes noncompetitive negotiations; or
4. After solicitation of a number of sources, competition is determined inadequate.

b. Selection of bidder. When solicited bids are obtained, the award shall be made to the bidder whose bid is responsive to the solicitation, and is most advantageous to the recipient, price and other factors considered. Any and all bids may be rejected and new bids requested if the bids received are judged not acceptable.

c. Methods of advertising. The invitations for bids shall be advertised by two publications in a newspaper published in the county in which the work is to be done.

1. The first publication shall not be less than fifteen days prior to the date set for receiving bids.
2. Additional methods of advertising may be used as deemed necessary, including the requirement for individually contacting minority contractors as specified above.
3. The invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for the bid to be evaluated.

9.24(8) Responsible bidders. Whether obtained through formal advertising or negotiation, contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources.

9.24(9) Restriction on procurement transactions for multipurpose agencies designated as area agencies on aging. When a multipurpose agency has been designated as the grantee for the area agency on aging, and it is the single organizational unit serving the designated planning and service area, no grant or contract shall be made between the area agency office and some other division of the multipurpose agency without the express approval of the commission.

9.24(10) Records—contract administration. The commission and area agencies shall maintain records on all procurements.

a. Procurement records for purchases in excess of \$10,000 shall provide at least the following pertinent information; record of publication and other advertising including minority contractors contacted; justification for the use of negotiation in lieu of advertising; contractor selection and basis of selection; and the basis for the cost of the price negotiated.

b. All parties contracting with the commission and area agencies shall maintain records and make reports as required by the terms of the contract to provide for efficient monitoring and contract administration.

c. A system for contract administration shall be maintained by the commission and area agencies to ensure contractor compliance with terms, conditions and specifications of the contract or order, and to ensure adequate and timely follow-up of all purchases.

d. All records and reports shall be open to public inspection, with the exceptions permitted by state law.

9.24(11) Additional requirements under Title V. In the acquisition of property under Title V, senior employment, the area agency must assure that:

- a. All property bought with grant funds with a unit acquisition cost of \$300 or more must be approved by the executive director prior to purchase;
- b. The department of labor reserves the right to take title of property bought with grant funds with a unit acquisition value of \$1,000 or more, when the grant terminates or if the property is no longer required for its intended purposes;
- c. Excess property may be acquired for use in the grant provided the grantee pays twenty-five percent of the acquisition costs;
- d. The rules of the Property Handbook for Employment and Training Administration Project Grantees, No. 303, shall be followed in the acquisition, accounting and disposition of property and shall be included as part of the grant provisions.

20—9.25(249B) Property management.

9.25(1) Responsibilities of grantees and contractors. All grantees or contractors who use funds received from the commission or area agency on aging to purchase property, to include real property or nonexpendable tangible personal property with a useful value of more than one year and an acquisition cost of \$300 or more per unit, as within the provisions of the grant or contract, shall make and maintain appropriate records of all such property.

9.25(2) Transfer upon termination. Upon the termination of the grant or contract period, the grantee or contractor shall be required to transfer the property back to the commission or area agency.

9.25(3) Standards. The standards and guidelines utilized by the commission to implement this rule shall be in compliance with current U.S. Department of Health and Human Services Property Management Regulations, (Administration of Grants, 45 CFR 74) July 14, 1982, unless a higher standard is elsewhere expressed by these rules.

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CHAPTER 10 RULEMAKING

20—10.1(17A) Rulemaking—notice, hearing and adoption.

10.1(1) Notice. The commission shall give notice of its intention to adopt, amend or repeal any rule by causing notice to be published in the Iowa administrative bulletin at least thirty-five days in advance of the intended action. The notice shall set forth the specified terms of the intended action, or where too voluminous, the notice shall set forth the subjects and issues involved, a summary of changes and the name and address of the person from whom a copy of the intended action can be obtained.

10.1(2) Name of person receiving submissions. The Notice of Intended Action shall include the name and address of a person to whom interested persons may present their views and arguments in writing and the times these views may be submitted. The designated person shall receive, identify and review all submissions.

10.1(3) Request for hearing included in notice. The notice shall include a statement that any interested person desiring to express or submit data, views or arguments at a public hearing must request the opportunity to do so. Also included in the notice shall be the statement that a public hearing shall be held if requested in writing within twenty-five days of publication of the initial notice by twenty-five interested persons, by a governmental subdivision, by the administrative rules review committee, by a state agency or by an association having not less than twenty-five members.

10.1(4) Public hearing. When the executive director deems it in the best interest to hold a public hearing on intended action, or when there is reason to believe a public hearing will be requested by the prerequisite parties in 10.1(3), the Notice of Intended Action may include notice of a public hearing. This notice shall include, in addition to the other requirements of this rule, the time and place of the public hearing, and the manner in which interested persons may present data, views and arguments.

10.1(5) Requested public hearing. When requested in writing within twenty-five days of

publication of the initial notice by twenty-five interested persons, by a governmental sub-division, by the administrative rules committee, by a state agency or by an association having not less than twenty-five members, the executive director shall hold a public hearing on the intended action which shall include the opportunity to make oral presentation prior to final action on the matter.

10.1(6) *Published notice of request.* In the event a public hearing is to be held as a result of requests for a hearing under this rule, notice shall be published in the Iowa administrative bulletin. Notice of a public hearing as a result of requests shall include notification that the public hearing is being held on request of the requisite parties in the proposed action and shall also contain the time and place of hearing and the manner in which data, views and arguments may be presented.

10.1(7) *Public hearing determination by director.* The executive director shall hold a public hearing on proposed rules when it has been determined that such action is in the best public interest or when it is reasonably anticipated that a public hearing will be requested under 10.1(5).

10.1(8) *Conduct of hearing on rulemaking.* The hearing shall be conducted by and be under the control of a presiding officer. The executive director or a person designated by the director shall be the presiding officer.

10.1(9) *Listing of witnesses.* At the commencement of the hearing, any person wishing to submit data, views or arguments orally or in writing shall advise the presiding officer of his/her name, address, and affiliation. The presiding officer shall provide an appropriate form for listing witnesses, which shall indicate the name of the witness, whether the witness favors or opposes the proposed rule, and any other information that may be required for the efficient conduct of the hearing.

10.1(10) *Order of presentation.* Subject to the discretion of the presiding officer, the order of presentation shall be:

- a. Statement of proponents.
- b. Statement of opponents.
- c. Statement of any other witness present and wishing to be heard.

10.1(11) *Examination of witnesses.* The presiding officer shall have the right to question or examine any witness making a statement at the hearing. The presiding officer may permit other persons to examine witnesses.

10.1(12) *Limitation of statements.* There shall be no rebuttal or additional statements given by any witness unless requested by the presiding officer, or granted for good cause. If such a statement is given, the presiding officer shall allow an equal opportunity for reply.

10.1(13) *Length of hearing.* The hearing may be continued, with recesses as determined by the presiding officer, until all witnesses present and wishing to make a statement have had an opportunity to do so.

10.1(14) *Evidence.* The presiding officer shall, where practicable, receive all relevant physical and documentary evidence presented by witnesses. Exhibits shall be marked and shall identify the witness offering the exhibits. The exhibits shall be preserved until at least thirty days after adoption of the rule. At the discretion of the agency, the exhibits shall be preserved for a period of one year after adoption of the rule or be returned to the person submitting the exhibit.

10.1(15) *Record of hearing.* A record shall be made of all of the proceedings, either in the form of minutes or a verbatim oral, written or mechanical report.

10.1(16) *Written report.* The person designated to receive written views from interested persons and the presiding officer at a public hearing shall, within a reasonable time, make a written summary of statements given.

10.1(17) *Commission action.* The proposed action to adopt, amend or repeal rules and the written report required by subrule 10.1(16) shall be presented to at least a quorum of the commission for official action.

10.1(18) *Filing rules—effective date.* Following the adoption, amendment or repeal of rules by the commission, an original and four copies of the action shall be filed in the office of

the administrative rules coordinator. Rule changes adopted by the commission shall become effective thirty-five days after filing and indexing and publication in the Iowa administrative code, unless a later date is specified in the rule in which case the later date controls. A rule change may become effective at an earlier time if subject to applicable provisions of the Iowa Code.

10.1(19) Termination of proceedings. In the event final commission action is not taken within one hundred eighty days following published notice or the last day of the hearing on the proposed action, whichever is later, the proceedings on the proposed action shall terminate. The agency shall file a notice of termination to be published in the administrative bulletin.

10.1(20) Statement of reasons. Upon final action taken on a proposed rule change, the commission chairperson or executive director shall issue a statement of reasons for and against the action taken, incorporating the reasons for overruling considerations and urged against the rule, if requested to do so by an interested person.

20—10.2(17A) Rulemaking without notice or hearing.

10.2(1) Filing without notice. If the executive director for good cause finds that notice or public participation would be impracticable, unnecessary, or contrary to the public interest, rules can be formulated without notice and hearing in accordance with the applicable provisions of chapter 17A, Iowa Code. The executive director shall incorporate in each rule a statement of specific reasons for filing without notice or public participation.

20—10.3(17A) Petition to promulgate, amend or repeal a rule.

10.3(1) General rule. An interested person or other legal entity may petition the commission requesting the promulgation, amendment or repeal of a rule.

10.3(2) Petition contents. The petition shall be in writing, signed by or on behalf of the petitioner, and shall contain a detailed statement of:

a. The rule that the petitioner is requesting the commission to promulgate, amend or repeal. If amendment of an existing rule is sought, the rule shall be set forth in full with the matter proposed to be deleted enclosed in brackets and proposed additions shown by underlining or boldface;

b. Facts in sufficient detail to show the reasons for the proposed action;

c. All propositions of law to be asserted by the petitioner;

d. Sufficient facts to show how the petitioner will be affected by adoption, amendment or repeal of the rule; and

e. The name and address of the petitioner and of any other person known to be interested in the rule sought to be adopted, amended or repealed.

10.3(3) Petition style. The petition shall be in typewritten or printed form, captioned BEFORE THE IOWA COMMISSION ON AGING and shall be deemed filed when received by the director.

10.3(4) Process on receipt of petition. Upon receipt of the petition the director shall:

a. Within ten days mail a copy of the petition to any parties named therein. The petition shall be deemed served on the date of mailing to the last known address of the party being served;

b. Advise petitioner that petitioner has thirty days within which to submit written views;

c. Schedule oral presentation or petitioner's views if the commission directs;

d. Within sixty days after the date of submission of the petition, either deny the petition or initiate rulemaking proceedings in accordance with this chapter.

10.3(5) Denial of a petition. In the case of a denial of a petition to promulgate, amend or repeal a rule, the commission or its director shall issue an order setting forth the reasons in detail for denial of the petition. The order shall be mailed to the petitioner and all other persons upon whom a copy of the petition was served.

20—10.4(17A) Petition for declaratory ruling.

10.4(1) General rule. Upon receipt of a petition for a declaratory ruling filed by an indi-

vidual, partnership, corporation, association, governmental subdivision, private or public organization or state agency, the commission may issue a declaratory ruling as to the applicability of statutes and rules, policy statements, decisions and orders under its jurisdiction.

10.4(2) *Petition for declaratory ruling style.* A petition for a declaratory ruling shall be typewritten or printed and at the top of the first page shall appear in capitals the words: PETITION FOR DECLARATORY RULING BEFORE THE COMMISSION ON THE AGING.

10.4(3) *Petitioner identification.* The petition shall include the name and official title, if any, address and phone number of each petitioner. If the request is at the behest of an entity mentioned in 10.4(1) it shall name the entity.

10.4(4) *Information to be included in petition.* The body of the petition shall contain:

a. A detailed statement of facts upon which petitioner requests the commission to issue its declaratory ruling;

b. The statute, rule, policy statement, decision or order for which a ruling is sought;

c. The exact words, passages, sentences or paragraphs which are the subject of inquiry;

d. The specific questions presented for declaratory ruling; and

e. A consecutive numbering of each multiple issue presented for declaratory ruling.

10.4(5) *Petition filing.* The petition shall be filed either by serving it personally on the director or by mailing it to the director at the state agency identified in subrule 2.1(1).

10.4(6) *Action on petition.* The director shall acknowledge receipt of petitions or return petitions not in substantial conformity with the above rules.

10.4(7) *Reasons for decline to issue declaratory ruling.* The commission may decline to issue a declaratory ruling for any of the following reasons:

a. A lack of jurisdiction;

b. A lack of clarity of the issue presented;

c. No clear answer determinable;

d. The issue or issues presented are pending resolution by a court of Iowa or by the attorney general.

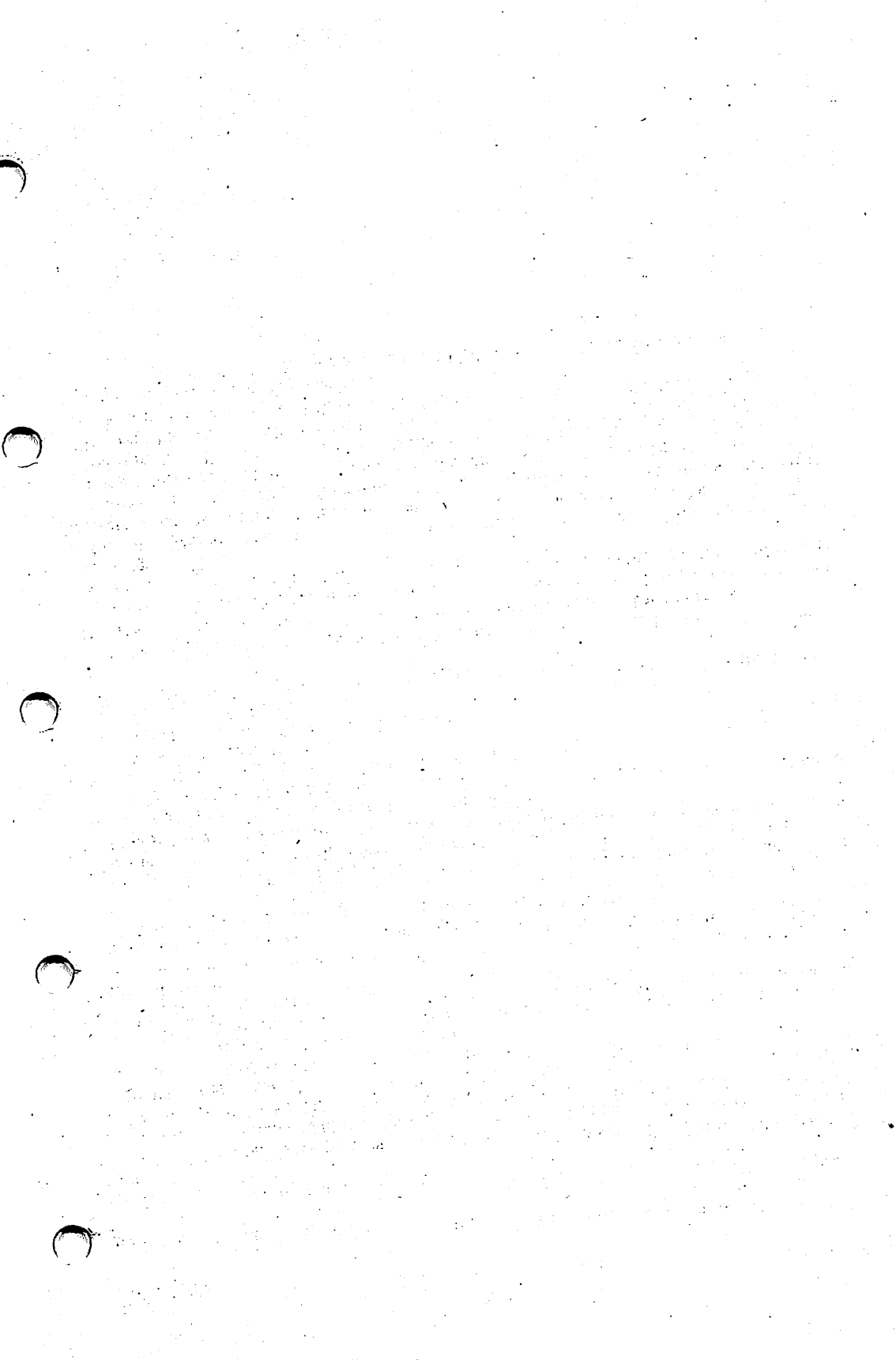
10.4(8) *Notification of petitioners.* In the event the commission declines to make a ruling, the director shall notify the petitioners of this fact and the reasons for the refusal.

10.4(9) *Ruling on disposition of petition.* When the petition is in proper form and has not been declined, the commission shall issue a ruling disposing of the petition within a reasonable time after its filing.

10.4(10) *Ruling mailed to petitioners.* Rulings shall be mailed to petitioners and to other interested parties. Rulings shall be indexed and available for public inspection.

10.4(11) *Effect of declaratory rulings.* A declaratory ruling by the commission shall have a binding effect upon subsequent commission decisions and orders which pertain to the party requesting the ruling and in which the factual situation and applicable law are indistinguishable from that presented in the petition for a declaratory ruling. To all other parties and in factual situations which are distinguishable from that presented in the petition, a declaratory ruling shall serve merely as precedent.

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AUDITOR OF STATE[130]

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chapter 535A, as amended, or these rules, may file a written complaint with the auditor of state or bring an action in the district court in accordance with section 535A.6.

This rule is intended to implement sections 535A.1 and 535A.4, The Code, as amended by Acts of the Sixty-ninth General Assembly, 1981 Session, Senate File 244, sections 4 to 7.

IOWA INDUSTRIAL LOAN CORPORATION
THRIFT GUARANTY ACT

130—1.28(536B) Rules of auditor.

1.28(1) Definitions.

a. "Industrial loan corporation" means a corporation licensed under chapter 536A, The Code.

b. "Guaranty corporation" means the corporation created pursuant to Acts of the Sixty-eighth General Assembly, chapter 1171, section 4.

c. "Member" means an industrial loan corporation which is required by Acts of the Sixty-eighth General Assembly, chapter 1171, section 5, to be a member of the guaranty corporation.

d. "Thrift certificates" means senior indebtedness issued to and in the hands of the general public, and includes thrift certificates, installment thrift certificates, certificates of indebtedness, promissory notes, or similar evidences of indebtedness.

e. "Capital impairments" or "Impaired capital" means the failure of a member to comply with the capital stock requirements of section 536A.8, The Code.

1.28(2) Reports.

a. Each member, within ninety days after the end of each fiscal year, shall submit the following reports to the auditor of state and the Guaranty Corporation.

(1) A balance sheet of the member, as at such date, setting forth in comparative form the corresponding figures as of a date one year prior thereto;

(2) A statement of income of the member, for such fiscal year ended on such date, setting forth in comparative form the corresponding figures as of a date one year prior thereto;

(3) An analyses of the related surplus accounts for such fiscal year, setting forth in comparative form the corresponding figures as of a date one year prior thereto;

(4) Supplementary data relative to analyses of unearned finance charges, contractual delinquency, reserve for losses, loans to and investments in subsidiaries or affiliates at the date of the balance sheet and the highest amount of loans to or investment in each subsidiary or affiliate during the period covered by the financial statements. Such information shall be examined by the member's independent certified public accountant in accordance with the treatment of supplementary data pursuant to generally accepted auditing standards as promulgated by the American Institute of Certified Public Accountants. The appropriate "Robert Morris" form and required supplements may be substituted for the supplementary data relative to unearned finance charges, contractual delinquency and reserve for losses.

b. Each member, within sixty days after the end of each first semiannual period, shall submit the following reports to the auditor of state and the Guaranty Corporation.

(1) A balance sheet of the member, as at such date, setting forth in comparative form the corresponding figures as of a date one year prior thereto;

(2) A statement of income of the member, for such fiscal period ended on such date, setting forth in comparative form the corresponding figures as of a date one year prior thereto;

(3) Supplementary data relative to loans to and investments in subsidiaries or affiliates at the date of the balance sheet and the highest amount of loans to or investment in each subsidiary or affiliate during the period covered by the financial statements. Such information shall be provided in the same format as provided pursuant to 1.28(2)"a"(4).

The financial statements with respect to each fiscal year shall be certified by an independent certified public accountant certified and registered to practice in the state of Iowa. The financial statements with respect to each first semiannual period shall be certified by an independent certified public accountant certified and registered to practice in the state of Iowa or shall be attested to by an authorized officer of the member.

Such financial statements shall be prepared in accordance with generally accepted accounting principles, and examinations by such independent certified public accountants shall be made in accordance with generally accepted auditing standards.

A member that does not submit a required report to the auditor in the time prescribed may be assessed a penalty fee of ten dollars for each day such report is late.

1.28(3) Impairment of capital. On review of reports submitted as provided above, the auditor may make such further examination of a member as deemed necessary to determine whether an impairment of capital exists. Such examination may include loan classification and recommended write down of assets to market value.

The member may request and obtain a meeting within thirty days of receipt of the auditor's written recommendation with the following: The auditor, the member's independent certified public accountant and a designated representative of the Guaranty Corporation to review any such recommended loan classification or write down of assets to market value.

In the event the auditor determines that capital of member is impaired and after meeting with the member to attempt to resolve and correct such impairment, the auditor may proceed to take over the management of the member as provided by section 15 of the Guaranty Act.

If, pursuant to section 15 of the Guaranty Act, the auditor determines that there is reasonable cause to take over the management of the property of a member, the auditor may, in his discretion ask the Guaranty Corporation, through its board of directors, to take such action as it elects to minimize the risk of loss to the Guaranty Corporation or to otherwise protect the interest of the public investors including, but not limited to:

1. Purchasing the capital stock of that member;
2. Contributing or lending funds to that member; or
3. Participating in the management of that member.

1.28(4) Auditor reimbursement.

a. In the event the auditor or his designated representative assumes management of the Guaranty Corporation or any of its member corporations, the auditor will be reimbursed by the corporation being managed for actual costs and expenses incurred while assuming such management.

b. To cover general administrative costs and expenses incurred from the administration of chapter 536B, the Guaranty Corporation shall pay to the auditor reasonable fees which are established by the auditor pursuant to section 536B.18, The Code. The auditor shall give notice of fees due as soon as practicable following each calendar quarter, and the Guaranty Corporation shall pay the fees within twenty days after receipt of the notice or such later date as the auditor may specify.

1.28(5) Affiliated loans. A member shall not extend credit to a subsidiary or affiliated corporation, unless the extension of credit:

1. Is commercially reasonable, and
2. Does not involve more than the normal risk of repayment, or present other unfavorable features. If a member extends credit to subsidiary or affiliated corporation(s) in excess of twenty percent of capital and surplus, such member shall on an annual and semiannual basis provide separate reports on such corporation(s) to the auditor and the Guaranty Corporation in such format as required by subrule 1.28(2).

1.28(6) Investment of guaranty corporation funds. The Guaranty Corporation is authorized to invest its funds in:

- a.* Deposits and accounts in insured commercial banks and savings and loan associations.
- b.* Direct obligations of the United States of America or agencies thereof.
- c.* General obligations of the state of Iowa or of any other state.
- d.* Other government or corporate securities which are rated by at least two nationally recognized rating agencies with a minimum rating of not less than the two highest ratings extended by such agencies.

The investment portfolio shall be such as to provide reasonable liquidity.

1.28(7) Fidelity bond requirements. An industrial loan corporation which is a member of the Guaranty Corporation shall maintain a fidelity bond to protect the company from losses due to dishonesty, theft or misconduct of any of its officers, directors, or employees. Such bond shall be in an amount at least equal to 1.5 percent of outstanding thrift certificate debt at December 31, each year, however, each member is required to maintain a minimum bond of one hundred thousand dollars, with a maximum deductible of twenty thousand dollars.

1.28(8) Notice to auditor.

a. Each member shall file with the auditor and the Guaranty Corporation a listing of its executive officers and directors and also of shareholders holding either beneficially or of record twenty percent or more of the outstanding voting securities of such member. A member shall file with the auditor and the Guaranty Corporation written notice of any change of such listing on file within ten days of the change.

b. In the event a member discontinues its offering of thrift certificates, with the intent of withdrawing its membership in the Guaranty Corporation it shall file a written notification of the discontinuance with the Guaranty Corporation and the auditor within ten days following the date on which the offering is discontinued. The notification shall state, in addition to the date on which the offering was discontinued, whether the member plans to:

(1) Renew any outstanding thrift certificates at maturity if the thrift certificates are renewable at maturity in accordance with their terms;

(2) Call for redemption any outstanding thrift certificates, in whole or in part, prior to their maturities, if any thrift certificates may be called for redemption prior to their maturities in accordance with their terms; and

(3) Continue to engage in the industrial loan business and maintain its industrial loan license or licenses.

c. In the event the member discloses in any notification that it does not plan to continue in the industrial loan business, it shall disclose in the notification its plans for the redemption, liquidation or other disposition of its outstanding thrift certificates.

d. Notifications filed pursuant to this rule shall be amended from time to time to reflect any material changes in the member's plans with respect to the notification on file. Any amendment shall be filed with the Guaranty Corporation and the auditor within ten days following the date of any such material change in, or material deviation from existing plans.

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The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity and reliability of financial data. This section also covers the various methods used to collect and analyze data, highlighting the need for consistency and precision in all reporting.

The second part of the document focuses on the role of management in ensuring the accuracy of financial reports. It outlines the responsibilities of different departments and individuals involved in the reporting process. This section also discusses the importance of internal controls and the need for regular audits to identify and correct any errors or discrepancies.

The third part of the document addresses the challenges faced by organizations in maintaining accurate records. It discusses the impact of technological changes, such as the use of spreadsheets and database systems, on the reporting process. This section also covers the importance of training and education for staff involved in financial reporting.

The fourth part of the document provides a detailed overview of the reporting process, from data collection to final reporting. It discusses the various steps involved in preparing financial statements and the importance of ensuring that all data is up-to-date and accurate. This section also covers the importance of transparency and the need for clear communication between all stakeholders.

The fifth part of the document discusses the importance of internal controls in ensuring the accuracy of financial reports. It outlines the various types of internal controls that can be implemented, such as segregation of duties and regular reconciliations. This section also covers the importance of monitoring and evaluating the effectiveness of internal controls over time.

The sixth part of the document provides a summary of the key findings and recommendations. It emphasizes the need for a strong commitment to accuracy and integrity in all financial reporting. This section also covers the importance of ongoing monitoring and evaluation of the reporting process to ensure that it remains effective and efficient.

1.28(9) Advertisement of interest rates.

a. Interest rates paid on thrift certificates shall be stated in terms of annual rate of simple interest.

b. If a percentage yield achieved by compounding interest is advertised, the annual rate of simple interest shall also be stated along with a brief explanation of the method of compounding.

c. Whenever an advertisement, display, distribution or broadcast contains a reference to the interest to be paid on thrift certificates and a minimum investment requirement exists with respect to obtaining said interest rate, such reference shall also include a clear statement of the minimum savings or investment requirement.

d. Whenever an advertisement, display, distribution or broadcast contains a reference to the interest to be paid on thrift certificates and a penalty exists for withdrawal thereof prior to maturity, such reference shall also include either a clear statement of the exact penalty which may be imposed or the statement, "A substantial interest penalty may be imposed for early withdrawal".

1.28(10) Advertisement regarding the Guaranty Corporation.

a. Advertising, displays, distribution or broadcasts, by or on behalf of any member of the corporation with regard to its thrift certificates shall include the following disclosures:

(1) Whenever in such advertisement, display, distribution or broadcast, a reference is made with regard to membership in the Guaranty Corporation the statement "Thrift certificates are protected up to a maximum of ten thousand dollars by the Industrial Loan Thrift Guaranty Corporation of Iowa, a private corporation, regulated by the state of Iowa; however, thrift certificates are not guaranteed by the state of Iowa".

(2) Whenever in such advertisement, display, distribution or broadcast, a reference is made to the size or amount of assets, capital or other measures of financial worth of an association, partnership, or corporation with which said member is affiliated, such advertisement, display, distribution or broadcast must disclose whether or not said association, partnership, or corporation is under any obligation to insure or guarantee the thrift investment liabilities of said member.

b. When used in television advertisements, the disclosures required in subrule 1.28(9) and in subparagraphs 1.28(10) "a" (1) and (2) shall be made orally or superimposed in writing upon the viewing screen. If a writing is used in television advertisements, the statement shall be of such size and of such duration to allow sufficient time to be fully read by a reasonable person.

c. When used in radio advertisements, the disclosure required in subrule 1.28(9) and subparagraphs 1.28(10) "a" (1) and (2) shall be made orally.

d. No advertisement, display, distribution or broadcast by any member of the Guaranty Corporation with regard to its thrift certificates shall contain any representation concerning the protected or guaranteed nature of its thrift certificates without providing equal prominence to the disclosure provided by subparagraph 1.28(10) "a" (1).

1.28(11) Guaranty corporation brochure. The Guaranty Corporation shall prepare a brochure to be distributed to all prospective investors by members. The brochure shall provide explanation as to the Guaranty Corporation form and purpose; the (guaranty) fund and an explanation of types of accounts guaranteed. All members shall provide the brochure as set forth below:

a. When accepting moneys from any new customer on the member premises, said customer shall be offered a copy of the brochure.

b. Upon receipt by a member of money from a customer who has an existing account and who has not previously been offered a copy of the brochure, one shall be offered to said customer at the time of receipt of the money.

c. Any new customer who forwards moneys for investment by mail will be mailed a copy of the brochure.

The members shall purchase the brochures at cost from the Guaranty Corporation.

1.28(12) Application for membership.

a. Prior to the issuance of thrift certificates as defined under section 536B.2(5), The Code, an industrial loan corporation shall be required to be approved for membership in the Guaranty Corporation (such industrial loan corporation shall hereinafter in this rule be called the "applicant"). The applicant shall submit to the Guaranty Corporation an application for membership on forms provided by the Guaranty Corporation. The forms as submitted shall be complete in all respects when submitted by the applicant, unless the Guaranty Corporation permits otherwise.

b. The Guaranty Corporation may request on the application forms information as required in these rules, plus additional information which is reasonable and appropriate for its determination to grant or deny the applicant membership in the Guaranty Corporation. Following the submission of an application for membership by an applicant, the Guaranty Corporation may from time to time request additional or supplemental information from the applicant as it deems necessary or appropriate for the determination. The Guaranty Corporation may use (in addition to any other information available to the Guaranty Corporation) any or all of the information submitted by the applicant for the determination.

c. In the event an applicant does not furnish such additional or supplemental information referred to in paragraph "b" of this subrule within sixty days following the date the request for the information is made by the Guaranty Corporation, the Guaranty Corporation may determine to deny the applicant membership in the Guaranty Corporation. If an applicant is denied membership for this reason, a new application may be filed anytime thereafter. In such event the Guaranty Corporation has the right to request updated information.

d. If the Guaranty Corporation determines that an applicant should be denied membership in the Guaranty Corporation, the Guaranty Corporation shall notify the applicant in writing of the determination, and specify in that notification the primary reason or reasons for the denial.

e. An applicant that is denied membership in the Guaranty Corporation may, within thirty days following the date it receives notification of the rejection, either:

(1) Request a hearing with the Board of Directors of the Guaranty Corporation, which hearing shall be held at a place and time determined by the Guaranty Corporation; or

(2) Request a hearing before the auditor pursuant to chapter 17A, The Code.

f. The Board of Directors of the Guaranty Corporation, in determining whether to approve the applicant as a member, may take into consideration the following factors with respect to the applicant:

1. The adequacy of capital, surplus and retained earnings;
 2. The ratio of debt to equity;
 3. The earnings history and projected trends;
 4. The level of delinquency of loans or other finance receivables;
 5. The adequacy of reserve for losses;
 6. Liquidity;
 7. The fair market value of assets as compared to their book value and the resulting effect on reserves;
 8. The average maturity of loans or other finance receivables;
 9. The average term of the indebtedness outstanding;
 10. The amount and nature of any contingent liabilities;
 11. The extent and nature of loans or investments in subsidiary or affiliated companies or businesses, or in companies or businesses which are related to the principal officers and directors and, the percentage of time devoted to the industrial loan business;
 12. The recommendation, if any, of the auditor of state;
 13. Any other factors which relate to the safety, soundness and future staying power of the applicant and the safety of thrift certificates invested or to be invested by the public.
- g. An industrial loan company which issues or will issue senior indebtedness to the public is not required to apply for membership if it qualifies for the exemption pursuant to section 536B.23, subsection (1), The Code.

1.28(13) Plan of payment of guaranteed accounts.

a. General. In the event of capital impairment of a member, or if the financial status of a member reflects capital impairment, the auditor or his designee may assume control of the impaired member. The auditor may appoint a conservator to handle the affairs of the member until the time that a final decision regarding the future of the member is made. The auditor may do whatever is necessary and reasonable to preserve the value of investments in thrift certificates by the public in the impaired member, including but not limited to bulk or partial disposition of assets. If the member is to be liquidated, the auditor may, with the assistance of the attorney general, petition a court of proper jurisdiction for a receiver to be named.

b. If the member company is liquidated and the thrift certificate holders are to be paid off, the auditor, if necessary, shall determine from the books and records of the member the amounts of the accounts which are eligible for coverage under chapter 536B, The Code. The auditor will make available to each guaranteed thrift certificate holder shown to be on the books of the member, written notice showing the amount of their investment(s) which are guaranteed, and other pertinent information as deemed necessary. This notice shall be sent by United States postal service to the last known address of the certificate holder as shown on the books of the member. In addition to the above, the auditor may request that the Guaranty Corporation cause to be published in a newspaper of general circulation in the locality in which the office(s) of the member is located, a notice to holders of thrift certificates describing the general plan of payment of guaranteed accounts. This notice may include the anticipated time and place of payment of the accounts along with other pertinent information deemed necessary.

c. Amount of guaranteed account. The amount of a thrift certificate which is eligible to be guaranteed pursuant to chapter 536B, The Code, is the amount which a guaranteed thrift certificate holder would have been entitled to withdraw as of the date the auditor assumes control of or declares the member impaired, plus accrued interest at the announced or written contract rate. If the member declares bankruptcy prior to the declaration by the auditor, the date of the filing of the bankruptcy petition shall be the date of impairment. In the case of a thrift certificate account with a fixed or minimum term or a qualifying or notice period that has not expired as of the date of impairment, earned interest thereon shall be computed as if the amount could have been withdrawn on that date without any penalty or reduction in the rate of earnings so long as the principal and accrued interest do not exceed \$10,000. In the event a guaranteed thrift certificate holder holds more than one guaranteed thrift certificate in the same capacity, and the aggregate amount of those certificates and accrued interest exceed \$10,000, the guaranty coverage will be prorated among the holder's interest in all accounts held in the same capacity, with coverage not to exceed \$10,000.

d. Identification of account holders. The guaranty proceeds shall be paid to the registered owners of the thrift certificates.

1.28(14) Records.

a. In the absence of evidence to the contrary, the instruments representing thrift certificates shall be controlling in the determination of guaranty coverage afforded to the holder(s) thereof.

b. If the account records of a member disclose an amount of a thrift certificate which disagrees with the amount of coverage applied for by a thrift certificate holder, the auditor of state shall determine the correct amount to be guaranteed. This determination shall be based on evidence as the auditor shall determine to be relevant, including, but not limited to, the records of the member and the thrift certificate holder maintained in good faith and in the regular course of business.

1.28(15) Disclosure for privately placed debt and subordinated debt.

a. In the event any indebtedness for borrowed money is offered or issued by a licensed industrial loan corporation (whether or not a member) in an exempt transaction within the meaning of section 502.203, subsection 9, The Code, the industrial loan corporation shall set forth on the face of each note, certificate or other instrument evidencing the indebtedness, in a conspicuous manner, a statement in substantially the following form, subject to appropriate

modification when circumstances require, in capital letters printed in at least ten-point boldface type:

“THIS (insert “THRIFT CERTIFICATE”, “SECURITY”, “NOTE”, “EVIDENCE OF INDEBTEDNESS” or other appropriate designation of the instrument) IS NOT GUARANTEED BY THE INDUSTRIAL LOAN THRIFT GUARANTY CORPORATION OF IOWA, NOR BY THE STATE OF IOWA.”

b. In the event any indebtedness for borrowed money offered or issued by a member is subordinated to any of the member's other indebtedness, the member shall set forth, on each note, certificate or other instrument evidencing the subordinated indebtedness, in addition to and in the same manner as the statement referred to in paragraph “*a*” of this subrule, a statement in substantially the following form, subject to appropriate modification where circumstances require:

“THE INDEBTEDNESS EVIDENCED BY THIS (insert the same designation of the instrument inserted in the statement referred to in subrule 1.28(15), paragraph “*a*”) IS SUBORDINATED TO OTHER INDEBTEDNESS OF THIS CORPORATION.”

c. Compliance with paragraph “*a*” of this subrule by an industrial loan corporation shall be deemed to satisfy the requirement of section 536B.23, subsection 2, The Code.

d. Compliance with paragraph “*b*” of this subrule by a member shall be deemed to satisfy the requirement of section 536B.24, The Code.

130—1.29(536A) Disclosure for subordinated debt. In the event any thrift certificates, installment thrift certificates, certificates of indebtedness, promissory notes or similar evidences of indebtedness offered or issued to the public by a licensed industrial loan company pursuant to section 536A.22, The Code, and not subject to chapter 536B, The Code, are subordinated to any of the industrial loan company's other indebtedness, the industrial loan company shall set forth on each thrift certificate, installment thrift certificate, certificate of indebtedness, promissory note or similar evidence of indebtedness representing subordinated indebtedness, in a conspicuous manner, the following statements in substantially the following form, subject to appropriate modification where circumstances require, in capital letters printed in at least ten-point boldface type:

“THIS (insert “THRIFT CERTIFICATE”, “SECURITY”, “NOTE”, “EVIDENCE OF INDEBTEDNESS” or other appropriate designation of the instrument) IS NOT GUARANTEED BY THE INDUSTRIAL LOAN THRIFT GUARANTY CORPORATION OF IOWA, NOR BY THE STATE OF IOWA. THE INDEBTEDNESS EVIDENCED BY THIS (insert the same designation of the instrument inserted in the preceding sentence) IS SUBORDINATED TO OTHER INDEBTEDNESS OF THIS CORPORATION.”

This rule is intended to implement section 536A.28, The Code.

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SAVINGS AND LOAN DIVISION

CHAPTER 2
INCORPORATION AND ORGANIZATION

130—2.1(534) Board resolution to file application. Prior to an association amending its articles of incorporation and the bylaws for the purpose of establishing a branch office, the board of directors of the association will, by resolution, authorize the filing of an application for permission to establish a branch office along with the supporting information required by such application. The prescribed form of application and an outline of information required in support thereof may be obtained by request from the office of the Auditor of State, Supervisor of Savings and Loan Associations, State Capitol Building, Des Moines, Iowa.

130—2.2(534) Eligibility. No application will be considered if at the date on which it is filed:

2.2(1) The association has not been in operation for at least three years;

2.2(2) The association has on file any other application for permission to establish a branch office with respect to which action by the supervisor, auditor of state or the state executive council is pending;

2.2(3) The association does not submit assurance that the proposed branch office will open within eighteen months of the date of approval of amendment to the articles and bylaws by the state executive council.

130—2.3(534) Application and supporting data. In support of the requirements of the Code, the association will supply such data as are outlined in the "Application for

Permission to Establish a Branch Office." Particular emphasis is placed on trend data concerning the proposed branch service area. Appropriate to this are economic surveys of the area, whether compiled primarily for the applicant or for other local groups. Also required are an estimate of the annual income and expenses of the proposed branch office, the annual business to be transacted by it, and a statement of the functions to be performed at such office and of the personnel and office facilities to be provided for the operation of the office.

130—2.4(534) Annual budget. The application for permission to branch must be accompanied by a proposed annual budget of the association. The budget is for the confidential use of the supervisor and the auditor of state and is not to be open to inspection by the public.

130—2.5(534) Evaluation of applications. A certified copy of the association's board of directors' resolution authorizing application, the completed "Application for Permission to Establish a Branch Office" and the proposed annual budget will be submitted by the association to the office of the auditor of state, savings and loan division. The auditor of state and the supervisor are charged with the preliminary evaluation of the application and supporting data and may request further information as may be desirable in particular cases. They will have thirty days from date of receipt of all required or requested information in which to evaluate the application.

130—2.6(534) Amendment of articles and bylaws. If, upon evaluation of the information presented, the auditor of state and the supervisor approve the application, they will give written notice to the association to proceed with amendment of the articles of incorporation and bylaws of the association. The articles are to be amended as provided in section 534.3(3) "g" of the Code and the bylaws by resolution of the board of directors. Both amendments are subject to approval of the supervisor as to form and must be approved by the state executive council. The amendments must indicate the location for the specific branch office intended. An amendment cannot be made giving the association broad powers to branch.

Upon approval of the members of the amendment to the articles of incorporation and upon approval of the amendment to the bylaws by the board of directors, four certified copies of each of the amendments shall be filed with the supervisor.

130—2.7(534) Published notice of branch. If the application is approved the supervisor shall give the association written notification to publish the following notice:

**NOTICE OF FILING APPLICATION FOR THE PURPOSE
OF ESTABLISHING A BRANCH OFFICE**

Notice is hereby given that the Savings and Loan Association,,Iowa, has filed with the office of Auditor of State, Savings and Loan Division, located in the State Capitol Building, Des Moines, Iowa, an "Application for Permission to Establish a Branch Office". Said application provides for the office to be located in the immediate vicinity of, Iowa. Any person may file communications in favor or in protest of said branch office at the office of Auditor of state within twenty days after the date of this publication. The application, together with all communications received in favor or in protest thereof, are available for inspection by interested persons at the aforesaid office.

.....Savings and Loan Association
....., Iowa

The association shall publish the notice in a newspaper of general circulation in the community in which the branch office is to be located within fifteen days of the supervisor's notification to do so. A copy of the notice accompanied by a publisher's affidavit will be furnished the supervisor by the association immediately after publication.

CHAPTER 1 ORGANIZATION AND OPERATION

150—1.1(123,17A) Purpose. This chapter describes the organization and operation of the Iowa beer and liquor control department, including the offices where and the means by which any interested person may obtain information and make submittals or requests.

150—1.2(123,17A) Scope and rules. Promulgated under chapters 17A and 123 of the Code of Iowa, these rules shall apply to all matters before the Iowa beer and liquor control department. No rule shall in any way relieve a wholesaler, manufacturer, vintner, rectifier, licensee or permittee, their agents or employees from any duty under the laws of this state.

150—1.3(123,17A) Waiver. The purpose of these rules is to facilitate the business before the department and to promote a just resolution of controversies. Consistent with this purpose, the application of any of these rules, unless provided otherwise by law, may be waived by the department to prevent undue hardship to any party transacting business with the department or to a proceeding. Reasons for granting the waiver shall be in writing and be made part of the record in the proceeding or part of the file in other matters.

150—1.4(123,17A) Duties of the department. The Iowa beer and liquor control department administers the laws of this state concerning beer, alcoholic liquor, and wines. The department is vested with the sole and exclusive control within the state of Iowa both as purchaser and vendor of all alcoholic liquor sold by distilleries within the state or imported therein, except beer, and except as otherwise provided by law.

150—1.5(123,17A) Organization — council. The Iowa beer and liquor control department consists of five council members appointed by the governor and confirmed by the senate. The council acts as a policy-making body and serves in an advisory capacity to the director. One member of the council serves on the three-member hearing board. The council meets statutorily the first of July of each year and monthly thereafter as scheduled by the chairperson. A quorum shall consist of at least three council members.

1.5(1) Director. Subject to senate confirmation, the council appoints a director who conducts the daily operations of the department. These operations consist of but are not limited to:

a. Purchases of alcoholic liquor for resale by the department.

b. The granting, refusing, suspension, or revoking of liquor control licenses, beer permits, and special licenses.

c. The establishment of retail price of alcoholic liquor.

d. The establishment or discontinuance of state liquor stores.

1.5(2) Hearing board. A three-member hearing board, consisting of one member of the Iowa beer and liquor control council, the commissioner of public safety or his designee and the attorney general or his designee, established pursuant to statutory authority reviews, upon request, departmental controversies of special liquor licenses, liquor control licenses or beer permits.

150—1.6(123,17A)* Central offices. The central offices are located at 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021, (515) 964-6800. They consist of the office of the director, the administrative division, store operations manager, products manager, and licensing division. These offices are responsible for the operational support of the department including such functions as purchasing, store operations policy, and control, products management, licensing, supply and other administrative duties. These offices are the principal custodians of all departmental orders, statements of law, or policy issued by the department, legal documents concerning properties, and other public documents on file with the department.

*Emergency, pursuant to §17A.5(2)"b"(2), The Code.

150—1.7(123,17A) Matters applicable to all proceedings.*

1.7(1) Communications. All communications to the department shall be addressed to the Iowa Beer and Liquor Control Department, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021, unless otherwise specifically directed. Bids, complaints, pleadings, or other papers required to be filed with the department, shall be filed in the office of the secretary to the director within the time limit, if any, for such filing. Unless otherwise specifically provided, all communications and documents are officially filed upon receipt at the office of the department.

1.7(2) Office hours. Office hours are 8:00 a.m. to 4:30 p.m., Monday through Friday. Offices are closed on Saturdays, Sundays, and official state holidays designated in accordance with state laws.

1.7(3) Public information. Any interested person may examine all public records of the department including the decisions, orders, rules, opinions, and other statements of law or policy issued by the department in the discharge of its function. These documents may be examined in the offices of the department during regular business hours. Unless otherwise provided by law, all information contained therein shall be made available for public inspection.

These rules are intended to implement sections 123.4, 123.5, 123.6, 123.10, and 17A.3 of the Code.

[Filed 12/14/72]

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[Filed emergency 5/19/82—published 6/9/82, effective 5/19/82]

CHAPTER 2

[Ch 2, IAC 7/1/75 rescinded 3/7/79; see Ch 4]

RULEMAKING

150—2.1(123,17A) Purpose and scope. These rules shall govern the practice and procedure in all rulemaking proceedings of the Iowa beer and liquor control department.

150—2.2(123,17A) Petition for adoption of rules.

2.2(1) Any interested person may petition the department for the adoption, amendment, or repeal of a rule.

2.2(2) Form of petition. A petition for rulemaking shall comply with subrule 12.2(1). The petition (original and two copies) shall be filed with the Iowa Beer and Liquor Control Department, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021.

150—2.3(123,17A) Commencement of proceedings.

2.3(1) The department shall give notice of the director's intentions to adopt, amend or repeal any rule by causing notice to be published in the Iowa administrative bulletin at least thirty-five days in advance of the intended action. The notice of intended action may be initiated by the department on its own motion or upon the filing of a petition for rulemaking by any interested person.

2.3(2) Department's action on petition. Within sixty days after the filing of a petition for rulemaking, the department shall either deny the petition by written order on its merits, stating the reasons therefor; commence rulemaking procedures as stated in 2.3(1) or adopt a rule pursuant to section 17A.4(2) of the Code.

150—2.4(123,17A) Written statements of position.

2.4(1) Persons. Any interested person may file a written statement of position containing data, views, comments, or arguments concerning the proposed adoption, amendment or repeal of a rule.

*Emergency, pursuant to §17A.5(2)"b"(2), The Code.

2.4(2) Filing. Written statements of position shall be filed with the department not later than thirty calendar days after publication of notice of rulemaking in the Iowa administrative bulletin. If the publication of a notice of rulemaking is not required by law, written



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statements of position may be filed as authorized by the department.

2.4(3) Form of written statement of position. A written statement of position shall comply with subrule 12.2(2), be addressed to the director of the Iowa beer and liquor control department, and specifically identify the proposed rule to which the statement pertains. The original and two copies of a written statement shall be filed with the department.

2.4(4) Service. Written statements of position shall be served by the author upon the petitioner, if any, at the time of filing.

150—2.5(123,17A) Counter-statements of position.

2.5(1) Petitioner. The petitioner, if any, or any interested party, may file a counter-statement of position with the department in response to written statements of position.

2.5(2) Filing. Counter-statements of position, if any, shall be filed with the department not later than fifteen calendar days after the petition's receipt of the written statement of position to which the petitioner is responding.

2.5(3) Form of counter-statements of position. A counter-statement of position shall comply with subrule 12.2(3). The original and two copies shall be filed with the department.

2.5(4) Service. Counter-statements of position shall be served by the petitioner at the time of the filing, upon the authors of written statements of position to which the petitioner is responding.

150—2.6(123,17A) Requests for oral presentation.

2.6(1) Filing. Requests for oral presentation shall be filed not later than thirty calendar days after the publication of the notice of rulemaking in the Iowa administrative bulletin.

2.6(2) Form of request for oral presentation. A request for oral presentation shall comply with subrule 12.2(4). The original and two copies shall be filed with the department.

2.6(3) Action on proper request. Within fifteen days of the filing of a request for oral presentation, the department shall determine if the request is in accordance with section 17A.4 of the Code. If the department determines that the request complies with section 17A.4, it shall, by written notice, schedule oral presentations on the rulemaking and shall cause the notice of oral presentations to be published in the Iowa administrative bulletin. The notice shall state the date, time, and place of the oral presentation and shall briefly describe the subject matter of the rulemaking proceedings. The notice of oral presentation on the rulemaking shall be not less than twenty calendar days after the publication of notice. The department shall serve a similar notice on the party requesting oral presentation and on the petitioner, if any.

2.6(4) Action on improper request. If the department determines that a request for oral presentation does not comply with chapter 17A of the Code, it may deny such request stating the reasons therefor, or it may, in its discretion, grant the request and schedule oral presentation as described in subrule 2.6(3).

2.6(5) Action on own motion. The department may, on its own motion, schedule oral presentation on the rulemaking in accordance with subrule 2.6(3).

150—2.7(123,17A) Rulemaking oral presentation.

2.7(1) Written appearance. Upon the filing of a written appearance, any interested person may participate in rulemaking oral presentations in person or by counsel. A written appearance shall be filed not less than two calendar days prior to oral presentation. The department may, in its discretion, waive the filing of a written appearance as a condition precedent to participation in oral presentation. The department staff shall not be required to file a written appearance.

2.7(2) Form of written appearance. A written appearance shall be in letter form, stating the name of the person requesting appearance, their interest in the rulemaking action, and

their address or the address of their counsel, if any. The letter shall be addressed to the Director of the Iowa Beer and Liquor Control Department, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021.*

2.7(3) Oral presentations. Participants in rulemaking oral presentations may submit exhibits and present oral statements of position which may include data, views, comments or arguments concerning the proposed adoption, amendment or repeal of the rule. Participants shall not be required to take an oath and shall not be subject to cross-examination, provided however, the department may, in its discretion, permit the questioning of participants by any interested person, and provided further that no participant shall be required to answer any question.

2.7(4) Rebuttal and limitations. The department may, in its discretion, permit rebuttal statements of position subsequent to the adjournment of the rulemaking oral presentation. The department may limit the time of any oral presentation and the length of any written presentation.

150—2.8(123,17A) Rulemaking decision.

2.8(1) Adoption, amendment, or repeals. The department shall, by written order, adopt, amend or repeal the rule pursuant to the rulemaking proceeding or dismiss the proceeding in accordance with 17A.4 of the Code. The department may specify the effective date of the adoption, amendment or repeal of a rule.

2.8(2) Statements. Upon the adoption, amendment, or repeal of a rule or termination of a rulemaking proceeding, and if timely written request is filed by any interested person, the department shall issue a formal written statement of the principal reasons for and against the adoption, amendment, or repeal of a rule or termination of the rulemaking proceeding, including the reasons why the department overruled the positions in opposition to the department's division. A request for statement shall comply with subrule 12.2(5).

These rules are intended to implement sections 123.21 and 17A.4 of the Code.

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CHAPTER 3

[Ch 3, IAC 7/1/75 rescinded 3/7/79; see Ch 4]

DECLARATORY RULINGS

150—3.1(123,17A) Purpose and scope. These rules shall govern the practice and procedure in all declaratory ruling proceedings of the Iowa beer and liquor control department.

150—3.2(123,17A) Declaratory rulings—general. Upon the filing of a petition by any interested person, the department may issue a declaratory ruling with respect to the interpretation or applicability of any statutory provision, rule, or other written statement of law or policy, decision or order of the department.

150—3.3(123,17A) Petition for declaratory ruling.

3.3(1) Persons and amendments. Any interested person may file a petition for declaratory ruling with the department. The department may require or allow the petitioner to amend the petition once so as to provide for greater specificity in the statement of facts, questions presented, or rule, statute, or order in question.

3.3(2) Form of petition. A petition for declaratory ruling shall substantially comply with the form prescribed in department rule 12.2(6). The original and three copies of the petition and amendment, if any, shall be filed with the department.

3.3(3) Date of filing petition. For purposes of section 17.19(1) of the Code, a petition

*Emergency, pursuant to §17A.5(2)"b"(2), The Code.

refund. The local authority by itself, in the case of retail beer permits, shall make the refund on a quarterly use basis starting from the effective date of the permit. The local authority will complete, and send to the department, a cancellation certificate. The certificate is to be furnished by the department. The permit is to be attached to the cancellation certificate, if at all possible. The department must have all cancellations reported to them.

This rule is intended to implement section 123.38, Iowa Code.

150—4.17(123) Prohibited storage of alcoholic beverages. No licensee shall permit alcoholic beverages, purchased under authority of a liquor control license, to be kept or stored upon any premises other than those licensed, however, under special circumstances, the director may authorize the storage of alcoholic beverages on premises other than those covered by the license. The director may allow class "D" liquor control licensees to store alcoholic liquor in a bonded warehouse to be used for consumption in Iowa, under the authority of a class "D" liquor control license.

This rule is intended to implement section 123.21(11), Iowa Code.

150—4.18(123) Transfer of license or permit to another location. A liquor license or a beer permit may only be transferred within the boundaries of the local authority which approved the license or permit.

4.18(1) Permanent transfers. A person may obtain an application for a permanent transfer from the local authority or the department. The application must be approved by the local authority and sent to the department prior to the transfer. An endorsement from the insurance company holding the dramshop policy listing the new address must be sent to the department prior to the transfer. When the above requirements are met, the department shall issue an amended license or permit showing the new permanent address.

4.18(2) Temporary transfers. If the transfer of a license or permit is for the purpose of accommodating a special event or circumstance temporary in nature, the minimum time of transfer is hereby set at twenty-four hours and transfer time shall not exceed seven days. A letter from the local authority granting the temporary transfer must be sent to the department. Temporary transfers cannot be made more than three times a year for any one licensee or permittee. The insurance company holding the dramshop policy must be notified of any change of address.

This rule is intended to implement section 123.38, Iowa Code.

150—4.19(123) Alcoholic liquors levied upon or bankruptcy proceedings of licensee. Alcoholic liquors purchased and possessed by a liquor control licensee, and levied upon under execution of a valid judgment or a distress warrant, or under a bankruptcy proceeding against such licensee, must be sold under the following provisions:

1. An inventory must be made of all alcoholic liquors and the sheriff or other official must contact the department, or one of its duly authorized agents, furnishing them with a copy of the inventory.

2. The department, or its duly authorized agent, may purchase the entire stock, or any part thereof, of the alcoholic liquors levied upon under execution at the retail price the licensee paid the department minus the fifteen percent licensee tax or arrange the disposition of the alcoholic liquors in a manner to be determined by the department.

This rule is intended to implement section 123.21(3), Iowa Code.

150—4.20(123) Liquor store checks accepted. The Iowa state liquor stores may accept checks from holders of a retail liquor control license under the following conditions:

1. The check must be either the personal check of the licensee or the business check of the licensee. The business check must be the named establishment on the license and cannot be a check on another business owned or operated by the licensee.

2. The check must be signed by the licensee. (For all holders of liquor control licenses this is interpreted as those persons whose authorized signatures are on file with the bank for

the licensee's account). However, this does not preclude an agent of the licensee from presenting a check signed by the licensee in the normal transaction of buying liquor.

3. Travelers checks and bank drafts, signed by the licensee, will be accepted.

4. Checks or travelers checks will not be accepted from anyone other than licensees.

4.20(1) In the event a check is dishonored for good cause, the director shall issue an order suspending the license for a period of thirty days. The order and notice of suspension will be served on the licensee by an agent of the Iowa department of public safety. Good cause shall be:

a. When a check is returned for insufficient funds for good cause.

b. When a check is written on an inactive or closed account.

c. When a check is written on an account which has a "hold" on it and the licensee had knowledge of the "hold".

d. Checks returned for any other reason will be considered on an individual basis.

4.20(2) A retail liquor establishment which tenders the department one insufficient funds check for the purchase of alcoholic liquor will lose its check-writing privilege for ninety days from the date the establishment pays the department even though the department does not suspend the liquor license because the establishment paid the department within the ten-day-demand period. A retail liquor establishment which tenders the department more than one insufficient funds check for the purchase of alcoholic liquor will lose its check-writing privilege for one hundred eighty days from the date the establishment pays the department even though the department does not suspend the liquor license because the establishment paid the department within the ten-day-demand period.

During the period a licensee does not have the privilege of tendering a check to the state liquor stores, the stores can accept from the licensee: Cash, money order payable to the department for amount of purchase, bank cashier's check signed by a bank official payable to the department for amount of purchase, or licensee's personal or business check payable to the department for the amount of purchase which has been certified by the bank.

4.20(3) The department shall collect from retail liquor licensees a ten-dollar-collection fee on each insufficient funds check tendered to the department's state liquor stores by retail liquor licensees for the purchase of alcoholic beverages.

This rule is intended to implement section 123.24, Iowa Code.

150—4.21(123) Identification cards—licensee. Each holder of a liquor control license will be furnished with three identification cards. These cards will have the license number, effective date, name of the establishment and city preprinted when issued. The licensee must sign the card. (For all licensees this requirement means that all authorized signatures which are on file with the licensee's bank for signing checks are to be on the identification card. For licensees who have more than one authorized signature on file, those signatures will be placed on back of the identification cards.) When a licensee purchases liquor, the identification card must be presented. Each licensee is authorized to have one card on file at the Iowa state liquor store where the licensee primarily transacts business. This requirement does not preclude an agent of the licensee from presenting a licensee identification card in the normal transaction of business with a state liquor store.

This rule is intended to implement section 123.31(3), Iowa Code.

150—4.22(123) Liquor on licensed premises. Holders of class "A", "B" and "C" liquor control licenses must purchase their liquor supplies from state liquor stores. It is the responsibility of the licensee or their agents/employees to ensure that each bottle purchased for resale under the provisions of their license has a licensee tax decal affixed to it prior to leaving the state liquor store. No licensee shall knowingly keep on the licensed premises nor use for resale purposes any alcoholic liquor on which the special tax has not been paid.

4.22(1) Exception to the above requirement. "Bona fide conventions or meetings" may bring their own legal liquor onto licensed premises under the following conditions:

a. "Bona fide conventions or meetings" shall be construed to mean an identifiable body of persons gathered together in furtherance of a specific common purpose or cause, whether political, fraternal, or business, including but not limited to structured club meetings and conventions, professional association functions, employer-employee gatherings and political dinners. Neither the mere purchase nor consumption of liquor nor the purchase of an admission ticket shall be deemed to create a specific common purpose or cause.

b. Liquor may be brought onto the licensed premises at a bona fide convention or meeting by either the sponsoring entity or the individuals comprising that entity.

c. Consumption or dispensation of liquor brought onto the licensed premises by a bona fide convention or meeting must be confined to the meeting place or convention rooms within the licensed premises.

d. The liquor must be served to the delegates or guests without cost.

e. At the completion of the convention or meeting, all liquor brought onto the licensed premises by the members of the convention or meeting must be removed from the licensed premises by those members.

f. All other laws and rules governing the license shall apply to dispensing and consumption of liquor at bona fide conventions or meetings, including hours for consumption and Sunday sales.

4.22(2) Reserved.

150—4.23(123) Liquor on unlicensed places. Liquor may be kept and consumed but not sold on unlicensed places under the following conditions:

4.23(1) Liquor may be kept and consumed in a private home at any time.

4.23(2) Liquor may be kept and consumed, by the guests or residents, in the residential or sleeping quarters of a hotel or motel at any time. This is considered as an extension of the private home.

4.23(3) Liquor may be consumed at a private social gathering in a private place at any time.

4.23(4) A private place shall be:

a. One to which the public does not have access at the time the liquor is kept, dispensed or consumed thereon.

b. One which is not of a commercial nature.

c. One where goods or services are neither sold nor purchased.

d. One where the use of the place was obtained without charges or rent or any other thing of value was exchanged for its use.

e. One which is not a licensed premise.

f. One where no admission fees or other kind of entrance fee, fare, ticket or charge is required to enter the place.

This rule is intended to implement section 123.95 of the Code.

150—4.24(123) Liquor on beer permit premises. Liquor may not be kept, consumed, or dispensed for any purpose by any entity or individual on the premises of a class "B" beer permit holder.

This rule is intended to implement section 123.141, The Code.

150—4.25(123) Age requirements. Persons eighteen and older may hold a liquor license or beer permit. Eighteen-year-old licensees may purchase from and may pick up alcoholic beverages at state liquor stores; persons, who are not licensees, must be nineteen in order to pick up alcoholic liquor at a state liquor store. People eighteen and older may be bartenders, waiters, waitresses, and may serve alcoholic beverages in establishments in which alcoholic beverages and beer are consumed (class "A", "B", and "C" liquor establishments and class "B" beer establishments). People sixteen and older may sell beer in class "C" beer establishments. People must be eighteen or older to work in a state liquor store.

This rule is intended to implement sections 123.30 and 123.49, The Code.

150—4.26(123) Timely filing of renewal beer and liquor applications. A licensee or permittee who timely files his or her renewal application with the local authority will be able to continue to use his or her permit or license after the permit or license expires. A renewal application is "timely filed" if it is filed with the local authority at least fifteen days before expiration of license or permit unless otherwise defined by the local authority.

This rule is intended to implement section 17A.18(2), The Code.

150—4.27(123) Effect of suspension. Subject to the right to convey a suspended establishment under section 123.39, The Code, no beer or liquor can be consumed in an establishment under suspension.

This rule is intended to implement section 123.39, The Code.

150—4.28(123) Use of establishment during hours liquor and beer cannot be consumed. No one, including licensee, permittee, and employees can consume beer or alcohol beverages in their licensed establishment during hours which beer and alcohol cannot be sold. An establishment covered by a liquor license or beer permit can be used as a restaurant or any other lawful purpose during hours which beer or liquor cannot be sold as long as beer or alcohol beverages is not consumed during these hours.

This rule is intended to implement section 123.49, The Code.

150—4.29(123) Native Wineries—licensee decals. Native wineries who sell wine to liquor licensees for resale in a licensed establishment must collect a fifteen percent IBLCD licensee tax, in lieu of the three percent sales tax, and must affix an IBLCD licensee decal on each bottle sold. The department will keep native wineries supplied with licensee decals. The native wineries will be required to keep a decal ledger listing each licensee making a purchase, the license number, the series of decal numbers used, the dollar amount of liquor purchased, and the amount of licensee tax collected. Each month the native wineries must remit the total amount of the licensee tax collected along with a copy of the licensee decal ledger to the accounting division of the department.

Sales tickets for licensee sales will be maintained by the wineries. These will be used by the department's auditors to reconcile the number of decals used to the number of bottles sold. They will also be used to reconcile total dollar sales to the fifteen percent tax submitted to the department. The sales tickets will be signed by the licensee upon completion of the transaction, with the licensee number being documented on the sales ticket. Wineries violating this rule shall lose their right to receive licensee decals from the department for thirty days.

This rule is intended to implement sections 123.27 and 123.56, The Code.

150—4.30(123) Persons producing fuel alcohol. Persons producing fuel alcohol for their own use or to be sold commercially do not have to obtain a license or permit from the department.

This rule is intended to implement section 123.41, Iowa Code.

150—4.31(123) Storage of beer. No retail liquor licensee or retail beer permittee shall store beer except on premises licensed for retail sale and then only to the extent that the beer is intended for sale to consumers from the individually licensed premises where stored. The adoption of this rule shall not preclude a retail liquor licensee or a retail beer permittee from picking up beer from a class "A" beer permittee and directly transporting the beer to the retail establishment where the beer is intended to be sold at retail.

This rule is intended to implement section 123.21, Iowa Code.

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CHAPTER 5

[Ch 5, IAC 7/1/75 renumbered Ch 6, IAC 3/7/79]

LICENSE AND PERMIT DIVISION

150—5.1(123) Manufacture and sale of native wines. Manufacturers of native wines from grapes, cherries, other fruit juices or honey, may sell, keep or offer for sale and deliver the same subject to the following regulations and restrictions.

5.1(1) Manufacturer entering in business. Before commencing the business of selling wine, the manufacturer shall inform the department in writing of intention to enter into such business, the place where it will be conducted, the type, brand name and package size of each wine to be sold and name and mailing address of the manufacturer. If any of such facts are thereafter changed, the manufacturer shall immediately notify the department in writing of the full nature of each such change.

5.1(2) Sale and delivery. Sale and delivery of such wine may be made only on the premises where the wine was manufactured.

5.1(3) Hours of sale. Such native wines may be sold on Mondays through Saturdays between the hours of 9:00 a.m. and 10:00 p.m., and on Sundays between the hours of noon and 10:00 p.m.

5.1(4) Reports on gallons of wine produced. The manufacturer shall, in January of each year, deliver to the department a complete report, sworn to under oath by the owner, a partner or corporation officer, showing the number of gallons of wine produced by the winery in the preceding year, and number of gallons of wine in possession at the beginning and at the end of the preceding year. If such manufacturer is also engaged in buying and selling wine, the report shall also contain the information in regard to wine purchased, purchased wine sold, and purchased wine in the manufacturer's possession at the beginning and at the end of the preceding year.

5.1(5) Monthly report required. A monthly report is required showing the amount of wine on hand at the beginning of the month, the amount produced, the amount sold and used for family use and any other information requested, on forms which shall be sent to the department, not later than the last day of the month following the month or period of time for which report is made. Report forms shall be furnished by the department.

5.8(4) Cancellation notice. It must contain a provision that the policy cannot be canceled by either the company or the insured until after the department, at its office in Ankeny, Iowa, has received a thirty-day prior written notice of said cancellation.

5.8(5) Civil tort liability. Subject to these conditions and exclusions usually found in a policy of dramshop liability insurance, it must contain coverage to insure against all civil tort liability of the insured, created under sections 123.92, 123.93 and 123.94 of the Code, as it now exists or may hereafter be amended.

5.8(6) Proof of financial responsibility. A licensee or permittee shall be deemed to have furnished proof of financial responsibility as contemplated under the provisions of sections 123.92, 123.93, and 123.94 when it has filed with the department at its offices in Ankeny, Iowa, a properly executed form as described by subrule 12.2(8).

5.8(7) Signature required. Copies of the form described above shall not be deemed properly executed unless the authorized company representative executing the same shall first have filed with the department a sample of his signature. Facsimile signatures will be acceptable.

5.8(8) Proof of liability insurance. Applications to post bond in lieu of providing a liability insurance policy to show proof of financial responsibility as contemplated under the provisions of sections 123.92, 123.93, and 123.94 must be made in writing to the department and the form and the amount of such bond will be determined on each application individually.

This rule is intended to implement sections 123.92, 123.93, and 129.94, The Code.

150—5.9(123) Surety bond requirements. A five thousand dollar penal bond must be filed with the department with each application for a liquor control license. A five hundred dollar penal bond must be filed with the department for a retail beer permit. Each must meet the following requirements.

5.9(1) Certificate of authority. It must be issued by a company holding a current certificate of authority from the commissioner of insurance authorizing the company to issue bonds in Iowa.

5.9(2) Forfeiture of beer or liquor bond. It must contain a provision for the principal and surety to consent to the forfeiture of principal sum of the bond in the event of revocation of the license or permit by the violation of any Code provision which requires forfeiture of the bond.

5.9(3) Notice of cancellation. It must contain a provision that the bond cannot be canceled by either the principal or the surety until after the department, at its offices in Ankeny, Iowa, has received a thirty-day prior written notice of said cancellation and the cancellation or notice thereof will be of no force and effect in the event of revocation or the filing of a complaint where the possibility of a revocation would result from a hearing on the complaint.

5.9(4) Proof of bond. A licensee or beer permittee shall be deemed to have furnished a surety bond when it has filed with the department at its offices in Ankeny, Iowa, a form described by subrule 12.2(7).

5.9(5) Alternate for surety bond. Applications to post a bond in lieu of providing a surety bond must be made in writing to the department and each application will be determined individually.

These rules are intended to implement sections 123.30(1), 123.128, and 123.129 of the Code.

[Filed 12/14/72]

[Filed emergency 5/11/76—published 5/31/76, effective 5/11/76]

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[Filed 8/15/80, Notice 5/28/80—published 9/3/80, effective 10/8/80]

[Filed emergency 5/19/82—published 6/9/82, effective 5/19/82]

1945

1. The first part of the report deals with the general situation of the country and the progress of the war. It is a very interesting and informative account of the events of the past few years.

2. The second part of the report deals with the economic situation of the country. It is a very detailed and thorough analysis of the economic conditions and the measures that have been taken to improve them.

3. The third part of the report deals with the social situation of the country. It is a very comprehensive and up-to-date survey of the social conditions and the progress of social reforms.

4. The fourth part of the report deals with the political situation of the country. It is a very clear and concise account of the political events and the progress of the democratic process.

5. The fifth part of the report deals with the cultural situation of the country. It is a very interesting and detailed account of the cultural life and the progress of the cultural movement.

6. The sixth part of the report deals with the foreign relations of the country. It is a very comprehensive and up-to-date survey of the foreign policy and the progress of international relations.

7. The seventh part of the report deals with the military situation of the country. It is a very detailed and thorough analysis of the military conditions and the progress of the military reforms.

8. The eighth part of the report deals with the future prospects of the country. It is a very optimistic and forward-looking account of the future of the country and the progress of the nation.

c. Window displays. No licensee of any class shall expose any alcoholic liquor or containers in window displays for advertising purposes.

d. Limitation on wording and size of sign. No existing exterior sign and no exterior sign to be erected in the future which states alcoholic beverages are sold or available shall exceed the size of 10½ square feet, and must not contain the word "liquor", "booze" or derivative thereof, with the exception of retail stores operated by the department.

6.1(9) *Advertising conclusion.* In any case where an industry member or licensee is doubtful as to whether a proposed advertisement is in compliance with the provisions of these rules, a sample, specimen or copy of the proposed advertisement should be submitted to the director of the department for prior approval to publication, printing or purchasing. This rule is intended to implement section 123.51, The Code.

[Filed 12/14/72]

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[Filed 8/15/80, Notice 5/28/80—published 9/3/80, effective 10/8/80]

CHAPTER 7

[Ch 7, IAC 7/1/75 renumbered Ch 8, IAC 3/7/79]

REPRESENTATIVES OF DISTILLERS, RECTIFIERS, MANUFACTURERS, BREWERS AND VINTNERS

150—7.1(123) Sales to the department—registration of agents.

7.1(1) *Forms for registration by suppliers.* All persons, firms or corporations selling or intending to sell or offering for sale any alcoholic beverages to the department shall register with the department upon forms prescribed by the department each salesman, agent, consultant, broker and representative through which such person, firm or corporation transacts or conducts its sales or makes its offers, and each salesman, agent, consultant, broker or representative shall obtain from the department a registration card carrying his name, address and registration number.

7.1(2) *Registration fees.* Fees for the registration of each applicant shall be fifty dollars annually and shall expire on the anniversary date one year later and shall be renewed upon application unless suspended or revoked for cause. One fifty dollar fee annually shall cover all registrations of individuals for each supplier. As employees are added or replaced, it shall be the responsibility of the supplier to register or have deleted the names of such employees with the department. Such employees may represent more than one supplier if properly registered.

150—7.2(123) Salesmen—prohibited practices—penalties.

7.2(1) *Solicitation of employees.* No supplier of alcoholic beverages, or salesman, agent or representative thereof, shall solicit either in person, by mail or otherwise any employee of the department except the director or his or her designee, for the purpose or with the intent of furthering the sale of a particular brand or brands of merchandise as against another brand or brands of merchandise, and at no time will any supplier or their representative call upon or make contact personally with the department or a member of the department more than four times a year in any one year, unless requested to do so by the department. No supplier or representative thereof shall give away any alcoholic beverage of any kind or description or anything of value to any person in the employ of the department. This provision shall not prevent any contribution to any college, university or any research project for use in combating and studying alcoholism.

7.2(2) *Visiting of state stores.* No salesman, agent or representative of any supplier shall visit any state liquor store except for the purpose of making a purchase in the usual manner, as any other customer. Any information relative to sales or inventories of their particular brands will be furnished on request by the director or his or her designee at the central offices located in Ankeny, Iowa.

7.2(3) Gifts of liquor prohibited. No salesman, agent or representative of any supplier shall give or offer to any employee of the department any entertainment, gratuity or any other consideration for the purpose of inducing or promoting sale of merchandise.

7.2(4) Advertising material. No advertising material of any nature is to be left with state liquor store managers or personnel, warehouse personnel for distribution, except as provided in 6.1(5)"e", mailings of advertising material may be made only by suppliers and must be confined and directed to licensees only.

7.2(5) Solicitation of orders prohibited. Solicitation of orders for merchandise not listed on the price list of the department is prohibited. Proposals for listings may be made to the department only.

7.2(6) Sale or brand information. No accounting or statistical data relative to liquor sales, liquor inventories and operations of the department shall be furnished to anyone outside the department except as provided herein:

a. The director's office shall furnish each month to the National Alcoholic Beverage Control Association, Inc., Washington, D. C. a report showing liquor sales by code number, in units and retail sales value. Similar information is now being supplied to this same association by all state liquor control departments.

b. Any advertising agency, any representative of a supplier or anyone seeking information concerning sales or inventory of any liquor code number sold by the department, or anyone making inquiry, verbal or written, concerning financial or operating figures of the department shall be referred to the director or his designee.

This rule is intended to implement section 123.21, subsection 2, The Code.

150—7.3(123) Purchases.

7.3(1) Procedure for presentation of new items for listing.

a. The following information is furnished for the convenience and guidance of suppliers of alcoholic liquors wishing to submit their products to the department for consideration and possible listing.

b. The form of liquor control in effect in Iowa is that of state control. This department operates its own retail stores; all retail sales are by the package for off-premise consumption.

c. New listings are made on May 1 and November 1 of each year. These dates also include any change in price, alcoholic content, name or formula. The deadline for submission of merchandise for possible listings shall be forty-five days prior to the effective dates shown in this paragraph.

d. All new listings shall be submitted on the proper form "Liquor Vendors Price Quotation," furnished by the department, and shall include freight charges f.o.b. our warehouse at 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021.*

e. All new listings shall be submitted to the director or his designee. The director reserves the right to establish a time limit on submissions made. This rule is established as a means of shortening interviews.

f. No supplier shall give away any alcoholic liquor samples of any kind or description at any time in connection with his or her business except alcoholic liquor for testing or sampling purposes which must be delivered to our warehouse.

(1) The department may, if necessary, when a brand of liquor has been accepted for testing, forward samples to the state chemist for analysis. Such brand shall be subject to final approval by the department after receiving the chemist's report.

(2) When a distiller wishes to change the formula or price of a brand already listed with the department, he or she must submit new quotations forty-five days prior to the effective date which must fall only on February 1, May 1, August 1, and November 1.

(3) Suppliers must have their presentation made before the department only by an authorized agent or representative whose name has been properly registered with the department, and who must carry a department identification card and number.

(4) In relationship to any of the above, no member or employee of the department shall accept or receive any gift of alcoholic liquor or other things of value from any supplier doing business with the department or seeking to do business with the department,

*Emergency, pursuant to §17A.5(2)"b"(2), The Code.

and that no employee or member of the department shall at any time give or sell any sample liquor, or liquor received for chemical analysis to any person.

7.3(2) Reserved.

This rule is intended to implement section 123.21, subsection 2, The Code.

150—7.4(123) Infraction of rules. Upon the infraction of any of the foregoing rules by any salesman, agent, consultant, broker or representative, the department may cancel the credentials issued to such salesman, agent, broker or representative and may remove his company's products from the sales list of the department after notice and hearing before the department hearing board. Decisions of the hearing board concerning such suspension or revocations shall be binding upon all parties.

[Filed December 14, 1972]

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[Filed emergency 5/19/82—published 6/9/82, effective 5/19/82]

CHAPTER 8

[Ch 8, IAC 7/1/75 rescinded 3/7/79; see 5.8, 5.9]

TRANSPORTATION AND WAREHOUSE

150—8.1(123) Transportation of liquor.

8.1(1) *Transportation of tax-free alcohol.* Any common carrier may receive for transportation, and transport and deliver tax-free alcohol consigned to a holder of a permit from the United States Government authorizing such holder to purchase tax-free alcohol; provided, however, that in respect of such shipments compliance shall be had with sections 123.98, 123.101, 123.103 and 123.104 of the Code, provided further that such common carrier shall make to the department a report of each such shipment showing date thereof, to whom and where made, and the character and quantity of such shipment.

8.1(2) *Transportation of sacramental wines.* Any common carrier may receive for transportation, and transport and deliver sacramental wines to holders of clergymen's permits issued under law, provided the transportation thereof and delivery to the consignee is in conformity with the provisions of this chapter.

8.1(3) *Transportation and delivery of intoxicating liquors.* Any common carrier may receive for transportation, transport, and deliver shipments of intoxicating liquors made by or consigned to wholesalers, distillers, rectifiers, blenders and manufacturers holding a permit issued by the department provided that in respect to such shipments and the delivery thereof, compliance shall be required under sections 123.98, 123.101, and 123.103, The Code, and provided further that promptly upon arrival of any such shipment at the delivery point, the carrier shall report to the department in Ankeny, Iowa, the purported amount and character thereof, and the name and address of the consignor and consignee.

150—8.2(123) Rules and regulations as between shippers and this department.

8.2(1) *Shipment into state.* Shipments of alcoholic liquors and wines can only be made into the state of Iowa by suppliers. Shipments can only be made to the state warehouse, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021, or to receiving points designated by the director.

8.2(2) *Purchase order and requirements.* The original copy of the purchase order and a duplicate acknowledgment copy are mailed direct by the department to the supplier. The shipping plant will execute the acknowledgment duly signed and will return it directly to the merchandising co-ordinator.

8.2(3) *Bottle-label requirements and registration.* After the type of container and labels submitted are approved by the department for use on shipments into Iowa, no change may be made in the type of container or labels without the express approval of the department. All labels must conform to the regulations of the Bureau of Alcohol, Tobacco and Firearms.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by proper documentation, such as receipts and invoices. This ensures transparency and allows for easy verification of the data. The text also mentions the need for regular audits to identify any discrepancies or errors in the accounting process.

Another key aspect of financial management is the timely payment of liabilities. The document highlights that failing to pay bills on time can lead to penalties, damaged relationships with suppliers, and even legal action. It advises businesses to establish a clear payment schedule and to communicate with creditors if there are any difficulties in meeting the obligations.

Furthermore, the document stresses the importance of budgeting and cost control. By setting a realistic budget, businesses can track their spending and identify areas where costs can be reduced. This helps in maximizing profitability and ensuring that the company stays on track with its financial goals. The text also discusses the benefits of using accounting software to streamline the bookkeeping process and reduce the risk of human error.

In addition, the document touches upon the importance of staying up-to-date with changes in tax laws and regulations. Tax compliance is a critical part of financial management, and businesses must ensure that they are following the latest rules to avoid penalties and interest. Consulting with a tax professional can be helpful in navigating these complexities.

Overall, the document provides a comprehensive overview of the essential components of financial management. It serves as a guide for businesses looking to improve their financial health and ensure long-term success. By following the principles outlined, companies can make informed decisions and maintain a strong financial foundation.

The document concludes by reiterating the importance of a proactive approach to financial management. Regular reviews and adjustments are necessary to adapt to changing market conditions and business needs. It encourages businesses to seek professional advice when needed and to maintain a clear focus on their financial objectives.

8.2(4) *Standard case code label.* All shipments of alcoholic liquors or wines, consigned to the department must have affixed to each shipping case a standard case code label as adopted by the Industry Advisory Committee for Control States. Affix the standard case code label to the end of the case and to that end of the case which will place the

government serial number side on your left as you stand facing the case. Affix the label in the upper left hand corner of the designated end of the case and about ¼ inch away from the edges to prevent fringing. On such merchandise where serial numbers are not used, affix the standard case code label on the recognized end of said case. This will permit the warehouse to tier cases with the end with the standard case code label outward and the government or serial number side on the left as you stand facing the tier of cases.

8.2(5)** *Notification—changes in age, proof, formula.* Whenever consent has been given by the department for a change in either age or proof, the supplier must notify the department at the time the first shipment goes forward, giving the new age or proof together with car number and initial, and date of shipment. Failure of the shipper to give this notification shall mean that the shipper shall assume all cost of necessary inconvenience suffered by the department as a result of the changes made. Letter covering this advice should be forwarded to the director of the department, State Office Building, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021.

8.2(6) *Car loading plan.* Be consistent as possible in keeping codes together and yet keep cases properly and safely braced.

8.2(7) *Standard manifest of liquor shipment.* Standard manifest of liquor shipment on typewriter (or its equivalent as to legibility) and handled as follows:

- a. Original to go forward with shipment.
- b. Duplicate to accompany copy of forwarding advice furnished to the traffic department.

8.2(8) *How to consign shipments.* All shipments to the department are to be forwarded on straight bill of lading. The original bill of lading is to be retained in the files of the shipping point for future use in supporting claims, etc. The signed memorandum copy of the bill of lading is to be forwarded to the traffic department. Freight rate must be shown on the bill of lading in the proper place.

8.2(9) *Prepaid freight and freight bill.* Under the sales agreement with the department, the goods are sold on a delivered price basis to their warehouse. Freight charges must accordingly be fully prepaid to destination by suppliers' shipping plants. The shipping plant will retain the prepaid bill and not forward it to Iowa.

8.2(10)** *Forwarding advice.* Upon forwarding shipment the shipper shall send by first class mail such advice showing therein:

- a. Shipping point
- b. Shipping date
- c. Car no.
- d. Department purchase order nos.
- e. cases of code
- cases of code
- cases of code

The above advice should be directed to the traffic department of the department, State Office Building, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021. Copies of the above advice should be sent under separate cover to each of the following:

*Superintendent of Warehouse
Iowa Beer and Liquor Control Department
1918 S.E. Hulsizer Avenue
Ankeny, Iowa 50021

*together with duplicate of manifest to:
Merchandise Manager
Iowa Beer and Liquor Control Department
1918 S.E. Hulsizer Avenue
Ankeny, Iowa 50021

8.2(11) *Mail forwarding advice.*

a. Original to: Traffic Department, Iowa Beer and Liquor Control Department, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021.

*Each copy to be mailed separately.

**Emergency, pursuant to §17A.5(2)"b"(2), The Code.

- b. *Copy to—(with blue manifest attached thereto);
 Superintendent of Central Warehouse Iowa Beer and Liquor Control Department
 **1918 S.E. Hulsizer Avenue
 Ankeny, Iowa 50021
 *Copy to:
 Merchandise Manager
 Iowa Beer and Liquor Control Department
 **1918 S.E. Hulsizer Avenue
 Ankeny, Iowa 50021

8.2(12) Invoicing instructions. Shipping plant is to use its own regular invoice form as no special invoice form is supplied by the department. Purchase order number must be shown on the invoice and in the proper place. Car initial and number must be shown without fail and complete routing. Iowa code number must be shown on the same line with the particular brand and size and not placed at the foot of the invoice. The various items on the invoices must be listed in consecutive order of the code numbers, namely, the item carrying the lowest code number must be the first item appearing on the face of the invoice. The signed memorandum copy of the bill of lading is to be attached to the invoice when mailed to the department. Shipping plant will retain in its files the original bill of lading. After completing the invoice to the above extent, the shipping plant must show the following claimant's affidavit typewritten across the face of the original and duplicate of the invoice and to have same signed and dated:

Claimant's Affidavit

State of _____ County ss:

We, _____, the within claimant, do state that items for which payment is claimed were furnished under authority of the law, that the charge is just and lawful and that the same is wholly unpaid.

 Claimant

Date _____

The invoice in duplicate carrying the above claimant's affidavit together with signed memorandum copy of the bill of lading is to be forwarded to: (Also see following note)

Accounting Department
 Iowa Beer and Liquor Control Department
 **1918 S.E. Hulsizer Avenue
 Ankeny, Iowa 50021

NOTE: Shipping plant must be careful to observe the special requirements of Iowa and forward all shipping papers complete, attached together, and in one envelope to the Accounting Department, Iowa Beer and Liquor Control Department, 300 Fourth Street, Des Moines, Iowa 50319, so that same will be received by time shipment arrives. A complete set of shipping papers to the accounting department will comprise the following:

- a. Invoice in duplicate with Claimant's Affidavit executed thereon.
- b. Acknowledgment of order duly executed.
- c. Signed memorandum copy of bill of lading.

8.2(13) Reserved. [Rescinded effective 10/8/80]

Rules 8.1 and 8.2 are intended to implement section 123.21, subsection 2, The Code.

[Filed 12/14/72]

[Filed 2/16/79, Notice 12/27/78—published 3/7/79, effective 4/16/79]

[Filed 8/15/80, Notice 5/28/80—published 9/3/80, effective 10/8/80]

[Filed emergency 5/19/82—published 6/9/82, effective 5/19/82]

*Each copy to be mailed separately.

**Emergency, pursuant to §17A.5(2)"b"(2), The Code.

CHAPTER 9
[Ch 9, IAC 11/3/75 rescinded 3/7/79; see Ch 10]
PROCUREMENT
LEASING OF STATE LIQUOR STORES

150—9.1(123) Scope. This chapter shall pertain to and govern the procurement policies and practices of this department in obtaining such state liquor store locations as are required to fulfill its statutory responsibilities. This chapter does not apply to the department's purchases of alcoholic beverages for resale; nor does it apply to other necessary and proper procurements of goods and services for the department, such expenditures to be made in compliance with the regulations of the state general services department.

150—9.2(123) Procurement policy. It is the policy of the beer and liquor control department to make all procurements of state liquor store leases as are necessary to fulfill its statutory responsibilities in the most efficient and economic manner possible. All such procurements, whether awarded on the basis of formal requests for bids or by negotiation, shall be conducted on a competitive basis. All liquor store leases shall be obtained through the formal request for bids process, unless specifically exempted by written statement of the director of the department for such reasons as are contained in rule 150—9.13(123), *infra*.

150—9.3(123) Requests for information.** All requests for information and all forms, bids and other correspondence required under this chapter should be directed to the Real Estate Division, Iowa Beer and Liquor Control Department, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021. Office hours are from 8:00 a.m. to 4:30 p.m., Monday through Friday. The telephone number is (515) 964-6810.

150—9.4(123) Bidding procedures. The department shall lease all state liquor stores by obtaining competitive bids whenever possible. Formal bids shall be solicited by one or more of the following methods:

9.4(1) Solicitations to listed bidders. Formal bids as outlined herein may be solicited through the use of a written "request for bid" form which is to be mailed to a list of bidders, lessors and developers. The "request for bid" form shall contain the following information:

- a. Due date and time of bid opening;
- b. Description of property to be leased;
- c. Directions for obtaining plans, specifications, bid forms, lease forms and other information related to the bid.

Such "request for bid" invitations shall be mailed at least thirty days prior to the date for submission of bids.

9.4(2) Publication. The department may cause to be printed, in at least* one newspaper published as near as possible to the proposed liquor store site, a classified advertisement with the heading "notice to bidders". Such publication shall be made at least thirty days prior to the time set for submission of bids. The advertisement shall contain the following information:

- a. Due date and time of bid opening;
- b. Description of property to be leased;
- c. Directions for obtaining plans, specifications, bid forms, lease forms and other information related to the bid.

In addition to the formal newspaper advertisement, news releases explaining the department's intention to lease will be made to local newspapers, radio stations, chamber of commerce and the city government in communities where stores will be leased.

*Filed rules show "lease"

**Emergency, pursuant to §17A.5(2)"b"(2), The Code.

condition which makes performance temporarily impossible, it shall be the responsibility of that party to notify the department immediately. In such instances, the department shall attempt to grant such reasonable extensions in the time for performance.

150—9.15(123) Assignment of leases. A party who has received a lease award may not assign such lease to another party without the written permission of the department.

150—9.16(123) Bidders appeal. Any bidder whose bid has been timely filed, and who is aggrieved by the award of the beer and liquor control council, may appeal the decision by filing a written appeal to the chairman of the council within seven days of receipt of the notice of bid award, exclusive of Saturdays, Sundays and legal holidays. Upon receipt of the written decision of the chairman of the council, the bidder may, if desired, appeal the decision by filing a written appeal with the Iowa executive council within seven days of the date of the chairman's written decision, exclusive of Saturdays, Sundays and legal holidays.

These rules are intended to implement section 123.20(3) of the Code.

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[Filed 2/16/79, Notice 12/27/78—published 3/7/79, effective 4/16/79]

[Filed emergency 5/19/82—published 6/9/82, effective 5/19/82]

CHAPTER 10

[Ch 10, IAC 11/3/75 rescinded see Ch 11]

COMPLAINT PROCEDURE

150—10.1(123,17A) Statute of limitations. A complaint alleging a violation of chapter 123, The Code, must be filed with the department or with the local authority within one year from the date of the alleged violation.

This rule is intended to implement section 123.32(4), The Code.

150—10.2(123,17A) Forms. The complaint shall substantially comply with the form prescribed in subrule 12.2(9). The complaint shall be filed with the Iowa Beer and Liquor Control Department, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021. The local approving authority and the director of the department, or the director's designated hearing officer, have jurisdiction to suspend or revoke licenses and permits for violations of chapter 123, The Code. The director of this department, or the designated hearing officer, has jurisdiction of cases in which licensees or permittees are charged with violating provisions of chapter 123, The Code, and local ordinances. The director of this department does not have jurisdiction of cases based solely on violations of local ordinances. Complaints based solely on violations of local ordinances must be heard either by a city council or a county board of supervisors. Administrative hearing complaints which are to be heard by the director of this department, or the designated hearing officer, which charge permittees or licensees with violating provisions of chapter 123, The Code, must be signed by a county attorney, a city attorney, a representative of the Iowa department of public safety, or an employee of the department other than the person who is going to be the hearing officer, and shall be filed with the licensing division, Iowa beer and liquor control department. Administrative hearing complaints to be heard by a city council, charging permittees or licensees with violating provisions of chapter 123, The Code, or city ordinances, must be signed by a city attorney and filed in the city clerk's office. Administrative hearing complaints which are to be heard by a county board of supervisors must be signed by a county attorney and filed in the county auditor's office.

This rule is intended to implement section 123.32(4), The Code.

150—10.3(123,17A) Notice of hearing. Upon the filing of a complaint, the department shall send notice of hearing to all interested parties, or their counsel, by certified mail or by personal service as in civil actions, at least ten days prior to the date of the hearing, unless a shorter period of time is agreed upon by all parties. The notice shall include the time, place and nature of the hearing and a reference to the particular sections of the statutes or rules involved.

150—10.4(123,17A) Continuance. Requests for continuances shall be made to the department, in writing, not less than three days prior to scheduled hearing date. Request for more than one continuance shall be granted only when good cause is shown. Requests for continuances within three days of the hearing date must be based upon emergency reasons.

150—10.5(123,17A) Hearing officer. The director, or a designated member of the department staff, will preside as hearing officer, or an administrative hearing officer available under chapter 17A of the Code, shall preside at the hearing.

150—10.6(123,17A) Neutrality of hearing officer. The presiding officer shall sit as a neutral hearing officer. A party to a contested case proceeding may, at any time up to three days prior to scheduled hearing date, file an affidavit with the department challenging the neutrality of the presiding officer. Such affidavit shall assert disqualifications of the presiding officer by reason of personal bias or that the presiding officer has either prosecuted or advocated the position in connection that case, in the specific controversy underlying that case, in another pending factually related controversy that may culminate in a contested

150—10.9(123,17A) Ex-parte communications. Parties or their representatives in a contested case shall not communicate with the presiding officer, except as otherwise provided in this chapter, directly or indirectly in connection with any issue of fact or law in that contested case. Any prohibited communication shall be included in the record of the proceedings and a decision may be made against any party who violates this rule.

150—10.10(123,17A) Open hearings—record. Hearings shall be open to the public and shall be recorded either by mechanized means or by certified shorthand reporters. The hearing or any portion 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 the hearing or the transcription thereof shall be filed with and maintained by the department for a five-year period from the date of the decision by the hearing officer. All papers, briefs, motions, rulings by the hearing officer, and decisions connected with that contested case shall comprise the record of that contested case.

150—10.11(123,17A) Representation by counsel. All persons who are parties to a contested case shall have the right to be represented by counsel of their choice and at their expense. Service of notices, briefs, and other papers concerning any item relevant to the proceeding may be served on the counsel of the parties to a contested case.

150—10.12(123,17A) Failure to appear. If a party to a contested case fails to appear, after proper service of notice, the hearing officer may, if no adjournment is granted, proceed with the hearing and render a decision in the absence of the party. The hearing officer may enter a default judgment against the party failing to appear.

150—10.13(123,17A) Decisions. Upon completion of the receipt of testimony, documents, exhibits and the filing of briefs, if any, the hearing officer shall issue a decision. Said decision shall state finding of fact, based solely on evidence in the record or matters officially noticed in the record; shall be in writing or stated in the record; shall state separately conclusions of law, supported by cited authority or by a reasoned opinion; and shall be a final decision. Parties shall be promptly notified of the decision by delivery to them of a copy of the decision.

150—10.14(123,17A) Appeal. Any party to a contested case, aggrieved by a decision of the hearing officer or the local authority, may appeal that decision to the department's hearing board pursuant to section 123.32, subsection 2, The Code. An appeal from a decision rendered by the hearing officer or the local authority must be filed with the department's hearing board within thirty days of the date of the decision of the hearing officer or the local authority. The notice of appeal shall substantially comply with the form shown in subrule 12.2(10).

These rules are intended to implement sections 123.32 and 123.39, The Code.

[Filed 10/20/75, Notice 9/8/75—published 11/3/75, effective 12/9/75]

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[Filed 8/15/80, Notice 5/28/80—published 9/3/80, effective 10/8/80]

[Filed emergency 5/19/82—published 6/9/82, effective 5/19/82]



12.2(7) Certification of bond.

IOWA BEER AND LIQUOR CONTROL DEPARTMENT

BOND NO. _____

This bond issued in connection with an application for a Class _____ Liquor Control License or Class _____ Beer Permit.

KNOW ALL MEN BY THESE PRESENTS THAT _____ of, _____ County, State of Iowa, as Principal, and _____ (City and/or County)

_____ of _____ (City and State)

as surety, are held firmly bound unto the state of Iowa in the penal sum of _____, lawful money of the United States, for the payment of which, in Des Moines, Polk County, Iowa, we bond ourselves, our successor and our legal representatives firmly by these presents.

PURSUANT TO section 123.50, Iowa Code, the penal sum of this bond shall be forfeited to the department if principal's liquor license is revoked under section 123.50, Iowa Code, after principal had been convicted of section 123.49, subsection 2, paragraph "a", "d", or "e", Iowa Code. Pursuant to section 123.50, Iowa Code, the penal sum of this bond shall be forfeited to the department if principal's beer permit is revoked under section 123.50, Iowa Code, after principal had been convicted of section 123.49, subsection 2, paragraph "a", Iowa Code. Pursuant to section 123.30, Iowa Code, the penal sum of this bond, or any part thereof, shall be forfeited to the department if principal licensee tenders this department a check for purchase of alcoholic beverages, as allowed by section 123.24, Iowa Code, and licensee fails to redeem any nonsufficient fund checks that it tendered the department for the purchase of alcoholic beverages.

NOW THEREFORE, if the said _____ shall well and truly observe and obey all the provisions of sections 123.30, 123.49, 123.50, Iowa Code, including the payment of all taxes as provided therein, then this bond shall be void, otherwise to remain in full force and effect.

THIS BOND shall be effective on _____, 19____, and shall remain effective continuously without cumulative liability until canceled. This bond may be canceled by the principal or the surety by giving written notice to the other party and the Iowa beer and liquor control department at its office in *1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021, stating the date of cancellation, which in no event shall be less than 30 days after actual receipt of said notice; however, no cancellation shall be effective as to forfeiture in the event proceedings for the revocation of the principal's liquor control license or beer permit have been or are commenced prior to the effective date of such cancellation.

Signed _____ day of _____, 19____.

PRINCIPAL

SURETY

NOTE: Surety on this bond must be a surety company holding a current certificate of authority from the Iowa Insurance Commissioner.

*Emergency, pursuant to §17A.5(2)'b'(2), The Code.

12.2(8) Certification of dramshop liability.

STATE OF IOWA

BEER AND LIQUOR CONTROL DEPARTMENT
LIQUOR CONTROL LICENSE
DRAMSHOP LIABILITY CERTIFICATE OF INSURANCE

Filed with
IOWA BEER AND LIQUOR CONTROL DEPARTMENT
*1918 S.E. Hulsizer Avenue
Ankeny, Iowa 50021

(execute in Duplicate)

THIS IS TO CERTIFY, that the _____

(Name of Company)

(hereinafter called Company) of _____

(Home office address of Company)

has issued to _____ of _____
(Name of Assured)

_____, Policy no. _____
(address of Assured)

effective _____ to _____.

The policy of insurance herein described contains coverage to comply with the provisions of section 123.92 and all regulation of the Iowa Beer and Liquor Control Department promulgated thereunder.

The policy described herein may be canceled by the Company or the Assured giving 30 days' notice in writing to the Iowa Beer and Liquor Control Department at its office, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021, said 30 days' notice to commence to run from date notice is actually received at the office of the department.

Whenever requested by the department, the company agrees to furnish to the department a duplicate original of said policy and all endorsements thereon.

Countersigned at _____ this _____ day
of _____, 19__.

(Authorized Company Representative)

Iowa Resident Agent

*Emergency, pursuant to §17A.5(2)'b'(2), The Code.

12.2(9) *Hearing complaint.*

STATE OF IOWA
BEFORE THE IOWA BEER AND LIQUOR CONTROL DEPARTMENT
*1918 S.E. Hulsizer Avenue
Ankeny, Iowa 50021

IN RE:)	Date _____, 19__
(insert the name of the)	
licensee, trade name of the)	
establishment and address))	
)	HEARING COMPLAINT
Liquor Control License no. _____)	
Beer Permit no. _____)	
)	

Complaint is hereby made that on _____,
at _____, Iowa, the above named licensee/permittee did himself, or by
his agent, clerk or employee, violate section _____ of the Code of Iowa, or violate rule
no. _____ of the Iowa Beer and Liquor Control Department.

TO WIT:

(insert the code or rule violation)

WHEREFORE, it is requested that the Director of the Iowa Beer and Liquor Control
Department hear the proceeding in accordance with the law and regulations.

Complainant Authority

By _____

List of Witnesses;
(insert names and addresses of witnesses)

*Emergency, pursuant to §17A.5(2)"b"(2), The Code.

12.2(10) *Appeal to hearing board.*

STATE OF IOWA
BEFORE THE IOWA BEER AND LIQUOR CONTROL DEPARTMENT
*1918 S.E. Hulsizer Avenue
Ankeny, Iowa 50021

IN RE:)	Date _____, 19__
(insert the caption as in the)	
hearing complaint before the)	
director))	NOTICE OF APPEAL
)	
Liquor Control License no. _____)	
Beer permit no. _____)	
_____)	

(insert the notice of appeal, giving the order, or other action from which the appeal is taken, stating that portion of the order appealed and the basis of the appeal)

Respectfully submitted,

name and address

These rules are intended to implement sections 123.21(4), 123.30, and 123.125, The Code.

[Filed without Notice 7/6/79—published 7/25/79, effective 8/29/79]
[Filed 8/15/80, Notice 5/28/80—published 9/3/80, effective 10/8/80]
[Filed emergency 5/19/82—published 6/9/82, effective 5/19/82]

*Emergency, pursuant to §17A.5(2)'b'(2), The Code.

adopts the criteria used by the state board of regents to determine Iowa residency for tuition purposes, IAC 720—1.4(262).

8.1(2) Contracts. Contracts with colleges of optometry and podiatry shall be renegotiated annually by the commission, subject to the availability of appropriated funds.

8.1(3) Payment of contracted funds. The commission shall authorize payment of contracted funds after the following requirements have been fulfilled by the college:

a. The college will submit to the commission prior to the beginning of the academic year a list of all Iowa residents applying for admission, indicating those who have been accepted for admission.

b. Two weeks after the beginning of the academic year, the college will submit to the commission a list of names by class of Iowa residents who are officially enrolled in the optometric and podiatric degree programs respectively.

8.1(4) Selection of Iowa residents. Iowa residents to be admitted to the college under contract shall be selected by the college on the basis of their qualifications and without discrimination because of sex, color or creed.

These rules are intended to implement Acts of the Sixty-eighth General Assembly, Chapter 13, sections 23 to 25.

[Filed 1/7/77, Notice 10/20/76—published 1/26/77, effective 3/2/77]

[Filed 2/16/79, Notice 11/1/78—published 3/7/79, effective 4/11/79]

[Filed 9/20/79, Notice 7/25/79—published 10/17/79, effective 11/21/79]

CHAPTER 9

NATIONAL GUARD EDUCATIONAL BENEFITS PROGRAM

245—9.1(261) Benefits. A state-supported program to provide educational benefits for Iowa residents enlisted in the Iowa National Guard.

9.1(1) Eligibility.

a. Applicant must be an Iowa resident, according to the residency criteria adopted by the state board of regents.

b. Applicant must be serving currently as a member of the Iowa National Guard.

c. Applicant must be accepted for admission at an Iowa postsecondary institution which is approved by the U.S. Office of Education for purposes of federal student aid programs.

d. Applicant must apply on a form approved by the commission and bearing certification by the Iowa National Guard.

e. Applicant must not be receiving federal bonus or education benefits funded by the military.

9.1(2) Priority for awards. Grants will be awarded to eligible applicants in order of receipt of application by the commission to the extent of available funds.

9.1(3) Amount and payment of awards.

a. Amount of award will be based on anticipated period of enrollment and on enrollment as a full-time or a half-time student.

b. Payment of total award will be made through the financial aid office at the recipient's college after certification of enrollment to be applied to any education-related expenses.

c. If recipient is dismissed or withdraws from college before completion of anticipated period of enrollment, the award or portion thereof shall be refunded to the state of Iowa in conformity with the institution's accepted policy on tuition refunds.

This chapter implements Acts of the Sixty-ninth General Assembly, chapter 8.

[Filed 2/16/79, Notice 11/1/78—published 3/7/79, effective 4/11/79]

[Filed 12/18/81, Notice 8/5/81—published 1/6/82, effective 2/10/82]

CHAPTER 10

IOWA GUARANTEED STUDENT LOAN PROGRAM*

[Filed emergency 6/18/79 after Notice 3/7/79—published 7/11/79, effective 6/18/79]

[Filed emergency 4/17/81—published 5/13/81, effective 4/17/81]

[Filed emergency 12/22/81—published 1/20/82, effective 12/22/81]

[Filed emergency 5/18/82—published 6/9/82, effective 5/18/82]

*Omitted pursuant to §17A.6(3). Copies available from College Aid Commission.

**CHAPTER 11
DUE PROCESS**

245—11.1(261) Appeals. Procedures for appeal to commission decisions covering student eligibility for state scholarship and grant awards, adjustment in award amounts, refunds of awards, and institutional eligibility for participation in state scholarship and grant programs.

11.1(1) Administrative staff of the commission shall make all decisions in accordance with established policies and published administrative rules approved by the commission and shall notify the individual or institution concerned of these decisions within a reasonable time after inquiry.

11.1(2) If an individual, institution or any duly appointed representative thereof disagrees with a staff decision, written evidence shall be presented to the executive director of the commission, setting forth the reasons for disagreement. The evidence must be presented within sixty days after notification of the staff decision, and the appellant may request a hearing.

a. If no hearing is requested, the executive director will consider all evidence provided and will notify the appellant within thirty days whether the decision is retracted, modified or upheld. The appellant will be advised of his/her right to carry the appeal to a meeting of the full commission or to an appeals panel appointed by the commission.

b. If a hearing is requested, the executive director will set a date for the hearing no later than thirty days from the date that the request was received.

c. The executive director or a delegated representative of the executive director will preside at the hearing and will consider any written material presented before the hearing as well as other evidence presented during the course of the hearing.

d. After considering all evidence presented, the presiding officer will notify the appellant in writing as to the decision on the appeal, advising the appellant of his/her right to carry the appeal to a full meeting of the commission or to its appointed appeals panel.

11.1(3) If the appellant seeks a hearing before the full commission or its appointed appeals panel, the appellant must notify the executive director of this request in writing within thirty days after receiving notice of the presiding officer's ruling.

a. Upon receipt of the request, the executive director will set a date for the hearing before the commission or its appointed appeals panel at the earliest convenience of both the appellant and the commission, but not to exceed sixty days from the date of the request.

b. After consideration of all evidence presented, the full commission or its appointed appeals panel will notify the appellant in writing of the final decision.

These rules are intended to implement sections 261.2(4), 261.15 and 261.17, The Code.

[Filed 3/9/82, Notice 1/6/82—published 3/31/82, effective 5/5/82]

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- 11.3(478) Petitions
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- 12.1(543) Application of rules
- 12.2(543) Types of products to be warehoused
- 12.3(543) Application for license
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- 12.5(543) Posting of license and fee receipts
- 12.6(543) Reinstatement of warehouse license
- 12.7(543) Financial statements
- 12.8(543) Bonds
- 12.9(543) Insurance
- 12.10(543) Notice to commission
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- 12.12(543) Cancellation of warehouse receipts
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- 12.14(543) Form of warehouse receipt
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- 12.19(543) Records
- 12.20(543) Adjustment of records
- 12.21(543) Scale weight ticket and settlement sheets
- 12.22(543) Monthly statements
- 12.23(543) Tariffs
- 12.24(543) Rates
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- 12.26(543) Maintenance of storage facilities
- 12.27(543) Temporary storage facilities
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- 13.12(542) Filing of monthly statement and reports
- 13.13(542) Notice to commission
- 13.14(542A) Application for bargaining agent permit
- 13.15(542A) Bargaining agent not transferable
- 13.16(542A) Bonds
- 13.17(542A) Information on proceeds of sale
- 13.18(542A) Inspection of agent's books
- 13.19(69GA, HF841) Shrinkage adjustments—disclosure—penalties

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- 15.9(476) System emergencies
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- 16.1(476) Accounting—general information
- 16.2(476) Uniform systems of accounts—electric
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- 27.5(476) Scope of benefits
- 27.6(476) Program announcements
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- 27.8(476) Program auditors, installers
and inspectors
- 27.9(476) Listing requirements
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loans, and termination of
service
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- 28.16(476) Recordkeeping

CHAPTER 1
ORGANIZATION AND OPERATION

250—1.1(17A,474) Purpose. This chapter describes the organization and operation of the Iowa state commerce commission (hereinafter referred to as the commission) including the offices where, and the means by which any interested person may obtain information and make submittals or requests.

250—1.2(17A,474) Scope of rules. Promulgated under chapters 17A and 474 of the Code of Iowa, these rules shall apply to all matters before the Iowa state commerce commission. No rule shall in any way relieve a utility, grain dealer, warehouseman or other person from any duty under the laws of this state.

250—1.3(17A,474) Waiver. The purpose of these rules is to facilitate the transaction of business before the commission and to promote the just resolution of controversies. Consistent with this purpose, the application of any of these rules, unless otherwise provided by law, may be waived by the commission to prevent undue hardship to a party to a proceeding.

250—1.4(17A,474) Duties of the commission. The Iowa state commerce commission regulates grain dealers; agricultural-products warehouses; electric, gas, telephone, telegraph, and water utilities; and pipelines and underground gas storage. Specific areas of regulation, as well as statutory delegation of authority for such regulation, are set forth below.

1.4(1) Public utilities. The commission regulates the rates and services of public utilities pursuant to chapter 476 of the Code of Iowa; construction and safety of electric transmission lines pursuant to chapter 478; and pipelines and underground gas storage pursuant to chapter 479.

1.4(2) Grain dealers. The commission regulates grain dealers pursuant to chapter 542 of the Code of Iowa.

1.4(3) Bonded warehouses. The commission regulates agricultural-products warehouses pursuant to chapter 543 of the Code of Iowa.

250—1.5(17A,474) Organization. The commission consists of: The three-member commission, the office of the secretary, and the technical and administrative staff which includes:

- a. The office of general administration
- b. The public utilities division
- c. The warehouse division

1.5(1) The commission. The three-member commission is responsible for all activities of the agency. Each member of the commission is appointed by the governor, with the approval of two-thirds of the senate, to a six-year term in office. The chairman, as the principal executive officer of the agency, is responsible for all executive and administrative functions. Appointed by the commission, the secretary is charged with the responsibility of directing the activities of the office of general administration. The secretary is the custodian of the commission seal. The secretary or the secretary's designee is responsible for attesting the signatures of the commissioners and placing the commission seal on original commission orders. The secretary or the secretary's designee is responsible for certifying official copies of commission documents.

1.5(2) The office of general administration. This office is responsible for the operational support of the commission including such functions as purchasing, public relations, personnel, supply, and other related administrative duties. In addition, this office is the principal custodian of all commission orders, decisions, rulings, and other written statements of law or policy issued by the commission and all other public documents on file with the commission.

b. Each utility shall adopt and maintain a standard pressure in its distribution system at locations to be designated as the point or points of "standard pressure".

c. At regular intervals, each utility shall make a survey of pressures in its distribution system of sufficient magnitude to indicate the quality of service being rendered at representative points on its system. Such surveys should be made during periods of high usage at or near the maximum usage during the year. The pressure charts for these surveys shall show the date and time of beginning and end of the test and the location at which the test was made. Records of these pressure surveys shall be maintained at the utility's principal office in the state and shall be made available to the commission upon request.

21.7(3) *Interruption of supply.* Prompt notice by telephone or telegraph shall be given to the commission by each utility of all interruptions to or major impairment of the supply for periods of a duration of one hour or more occurring on production works, storage works, transmission mains or distribution mains except those occurring in the course of routine operations. The same notice shall be given in case of accident or damage to portions of the plant which might lead to interruptions of service.

a. Each utility shall make all reasonable efforts to prevent interruptions of service and when such emergency interruptions occur shall endeavor to re-establish service with the shortest possible delay consistent with the safety to its customers and the general public. Where an emergency interruption affects fire protection service, the utility shall immediately notify the fire chief or other responsible local official.

b. Whenever any utility finds it necessary to schedule an interruption to its service, it shall make all reasonable efforts to notify all customers to be affected by the interruption, stating the time and anticipated duration of the interruption. Whenever possible, scheduled interruptions shall be at such hours as will provide least inconvenience to the customer.

c. Every utility shall maintain records of interruptions for a period of at least five years.

21.7(4) *Shortage of supply.* The utility shall exercise reasonable diligence to furnish a continuous and adequate supply of water to its customers and to avoid any shortage or interruption of delivery thereof.

a. If a utility finds that it is necessary to restrict the use of water it shall notify its customers, and give the commission written notice, before such restriction becomes effective. Such notifications shall specify:

- (1) The reason for the restriction.
- (2) The nature and extent of the restriction.
- (3) The date such restriction is to go into effect.
- (4) The probable date of termination of such restriction.

b. During times of threatened or actual water shortage the utility shall equitably apportion its available water supply among its customers with due regard to public health and safety.

..... Tariffs
(Name of Company) (type)
Filed with I.S.C.C.

..... Sheet No.
Canceling Sheet No.

RATE DESIGNATION
CLASS OF SERVICE

EXHIBIT "A"

Authorized By
(Date)

Effective
(Date)

Supersedes Rate No.

These rules are intended to implement sections 476.2 and 476.8, The Code.

[Filed June 11, 1968; amended June 27, 1975]

[Filed 9/30/77, Notice 6/29/77—published 10/19/77, effective 11/23/77]

CHAPTER 22
RATES CHARGED AND SERVICE SUPPLIED BY TELEPHONE UTILITIES

250—22.1(476) General information.

22.1(1) Application and purpose of rules. The rules shall apply to any telephone utility operating within the state of Iowa subject to chapter 490A of the Code, and shall supersede all conflicting rules of any telephone utility which were in force and effect prior to the adoption of their superseding rules. These rules shall be construed in a manner consistent with their intent:

- a. To allow fair competition in the public interest while assuring the availability of safe and adequate communications service to the public.
- b. To provide uniform, reasonable standards for communications service provided by telephone utilities.
- c. To assure that the rates and charges of rate-regulated telephone utilities for communications service, and regulated services rendered in connection therewith, will be reasonable and just.
- d. To assure that no telephone utility shall unreasonably discriminate among different customers or service categories or on the basis of source or ownership of terminal equipment or inside station wiring.

22.1(2) Waiver and modification. If unreasonable hardship to a utility or to a customer or user results from the application of any rule herein prescribed, application may be made to the commission for the modification of the rule or for temporary or permanent exemption from its requirements.

The adoption of these rules shall in no way preclude the commission from altering or amending them, pursuant to statute, or from making such modifications with respect to their application as may be found necessary to meet exceptional conditions.

22.1(3) Definitions. For the administration and interpretation of these rules, the following words and terms shall have the meaning indicated below:

- a. *“Active account”* refers to a customer who is currently receiving telephone service, or one whose service has been temporarily disconnected (vacation, nonpayment, storm damage, etc.).
- b. *“Ancillary service or equipment”* means any communication service or equipment not included in the definitions of transmission service, terminal equipment or inside station wiring.
- c. *“Average busy-season, busy-hour traffic”* means the average traffic volume for the busy-season, busy-hours.
- d. *“Base rate area”* means the developed portion or portions within each exchange service area as set forth in the telephone utility’s tariffs, maps or descriptions.
- e. *“Busy-hour”* means the two consecutive half-hours during which the greatest volume of traffic is handled in the office.
- f. *“Busy-season”* means that period of the year during which the greatest volume of traffic is handled in the office.
- g. *“Calls”* means telephone messages attempted by customers or users.
- h. *“Central office”* means a unit in a telephone system which provides service to the general public, having the necessary equipment and operating arrangements for terminating and interconnecting customer lines and trunks or trunks only. There may be more than one central office in a building.
- i. *“Central office access line”* means a circuit extending from the central office equipment to the demarcation point.
- j. *“Channel”* means an electrical path suitable for the transmission of communications.
- k. *“Charges”* shall mean nonrecurring amounts billed to customers for regulated services and equipment.
- l. *“Check of service”* or *“service check”* means an examination, test or other method utilized to determine the condition of customer-provided terminal equipment and inside station wiring.

m. *"Class of service"* means the various categories of service generally available to customers, such as business or residence.

n. *"Commission"* means the Iowa state commerce commission.

o. *"Customer"* means any person, firm, association, corporation, agency of the federal, state or local government, or legal entity responsible by law for payment for communication service from the telephone utility.

p. *"Customer provision"* means customer purchase of terminal equipment or new inside station wiring from the telephone company or customer purchase or lease of inside station wiring or terminal equipment from any other supplier.

q. *"Delinquent or delinquency"* means an account for which a bill or payment agreement for regulated services or equipment has not been paid in full on or before the last day for timely payment.

r. *"Demarcation point"* means the point of connection, provided and maintained by the telephone utility, to which the utility-owned or customer-provided inside station wiring is connected. This connection point will normally be a standard protector affixed to the customer's premises.

s. *"Disconnect"* means the disabling of circuitry preventing both outgoing and incoming communications.

t. *"Due date"* means the last day for payment without unpaid amounts being subject to a late payment charge or additional collection efforts.

u. *"Exchange"* means a unit established by a telephone utility for the administration of communication services.

v. *"Exchange service"* means communication service furnished by means of exchange plant and facilities.

w. *"Exchange service area"* or *"exchange area"* means the general area in which the telephone utility holds itself out to furnish exchange telephone service.

x. *"Extended area service"* means telephone service, furnished at flat rates, between customers' telephone stations located within an exchange area and all of the customers of an additional exchange area.

y. *"Flat rate service"* means service furnished at a fixed monthly or periodic charge.

z. *"Foreign exchange service"* means exchange service furnished a customer from an exchange other than the exchange regularly serving the area in which the customer is located.

aa. *"Former account"* refers to a customer whose service has been permanently disconnected, and the final bill either has been paid or has been written off to the reserve for uncollectible accounts.

ab. *"Fully allocated cost study"* means a study performed in accordance with 22.13(3).

ac. *"Fully distributed cost study"* means a study performed in accordance with 22.13(2).

ad. *"Grade of service"* means the number of parties served on a telephone line such as one-party, two-party, four-party, etc.

ae. *"Held order for regrade"* means an application for regrade of service not filled within thirty days of the date which the customer desires regraded service, provided preconditions have been met.

af. *"Held order for service"* means an application for establishment of service not filled within thirty days of the date the prospective customer desires service, provided preconditions have been met.

ag. *"Inactive account"* refers to a customer whose service has been permanently disconnected and whose account has not been settled either by payment or refund.

ah. *"Inside station wiring"* means the portion of the wiring located on the customer's premises, extending from the demarcation point to the terminal or ancillary equipment.

ai. *"Local service"* means telephone service furnished between customer stations located within an exchange area.

aj. *"Message"* means a completed telephone call by a customer or user.

ak. *"Message rate service"* means service for which the customer charges are based on message units depending in part upon the number of originated local or extended area service messages.

al. "Multiparty service" means service provided to more than one customer on a single circuit to the central office.

am. "Outside plant" means the telephone equipment and facilities installed on, along, or under streets, alleys, highways, and private rights of way between customer locations, central offices or the central office and customer location.

an. "Percentage of fill" means the ratio of circuits and equipment in use to the total available multiplied by 100.

ao. "Premises" means the space occupied in a single exchange by a customer in a building or in adjoining buildings.

ap. "Protector" means a utility-owned electrical device located in the central office, at a customer's premises or anywhere along any telephone facilities which protects both the telephone utility's and the customer's property and facilities from over-voltage and over-current by shunting such excessive voltages and currents to ground.

aq. "Rate zone" means an area other than base rate area within an exchange service area where service generally is furnished at uniform rates without mileage charges.

ar. "Rates" shall mean recurring amounts billed to customers for regulated services and equipment.

as. "Rural service" means service in an exchange area outside of a base rate area or generally outside a special rate area.

at. "Special rate area" means an area within an exchange where service generally is furnished at uniform rates. Usually this comprises a developed area outside of the base rate area which is also known as a "locality rate area" and separated by some distance from the base rate area.

au. "Suspend" means temporary disconnection or impairment of service which shall disable either outgoing or incoming communications, or both.

av. "Switching service" means switching performed for service lines.

aw. "Tariff" means the entire body of regulated rates, tolls, rentals, charges, classifications, rules, procedures, policies, etc., adopted and filed with the commission by a telephone utility in fulfilling its role of furnishing communications service.

ax. "Telephone station" means the telephone instrument connected to the network.

ay. "Telephone utility" or "utility" means any person, partnership, business association, or corporation, domestic or foreign, owning or operating any facilities for furnishing communications service to the public for compensation.

az. "Terminal equipment" means telephone instruments, the common equipment of key and PBX systems, and other devices and apparatus which are intended to be connected electrically, acoustically or inductively to the telecommunication system of the telephone utility.

ba. "Timely payment" is a payment on a customer's account made on or before the due date shown: (1) on a current bill for rates and charges, or (2) by an agreement between the customer and a utility for a series of partial payments to settle a delinquent account.

bb. "Toll connecting trunks" means a general classification of trunks carrying toll traffic and ordinarily extending between a local office and a toll office.

bc. "Toll message" means a message made between different exchange areas for which a charge is made, excluding message rate service charges.

bd. "Toll rate" means the tariff charge prescribed for toll messages, usually based upon the duration of the message, the distance between the exchanges, the day and time of the message and the degree of operator assistance.

be. "Toll station" means a telephone connected to a toll line or directly to a toll board.

bf. "Toll station service" means telephone service rendered from a toll station.

bg. "Traffic" means telephone call volume, based on number and duration of calls.

bh. "Traffic grade of service" means the decimal fraction representing the probability of a call being blocked by an all-trunks-busy condition during the average busy-season, busy-hour.

bi. "Transmission service" means the common carrier provision of exchange access, switching, intra-exchange transmission, and inter-exchange transmission, including private line service and existing company owned inside station wiring.

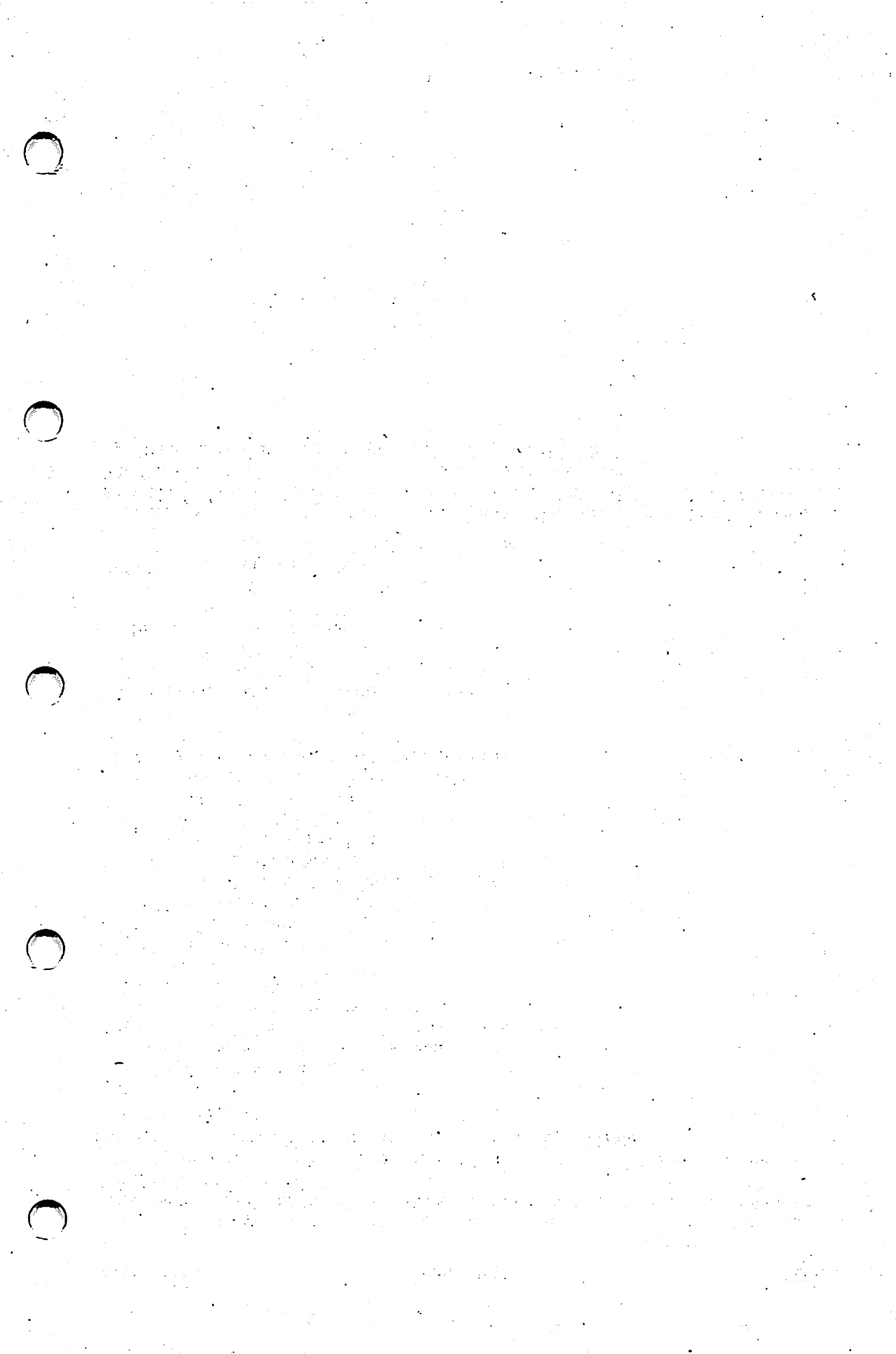
bj. "Trouble report" means any call or written statement from a customer or user of telephone service relating to a physical defect or to difficulty or dissatisfaction with the operation of telephone facilities.

bk. "Wide area service" means service beyond the local or extended area provided at a flat monthly rate or on a basis differing from customary message toll rates.

22.1(4) Abbreviations.

AMA—Automatic Message Accounting
ANC—All Number Calling
ANI—Automatic Number Identification
CAMA—Centralized Automatic Message Accounting
CATV—Community Antenna Television
CB—Common Battery
CDO—Community Dial Office
COE—Central Office Equipment
DDD—Direct Distance Dialing
D-TPL—Dial-Terminal Per Line
D-TPS—Dial-Terminal Per Station
EAS—Extended Area Service
ESS—Electronic Switching System
FAC—Fully Allocated Cost
FDC—Fully Distributed Cost
IMTS—Improved Mobile Telephone Service
INWATS—Inward Wide Area Telephone Service
MG—Magneto
MMM—Message Minute Miles
NFPA—National Fire Protection Association
PABX—Private Automatic Branch Exchange
PBX—Private Branch Exchange
SLU—Subscriber Line Usage
TSP—Traffic Service Position
TSPS—Traffic Service Position System
TWX—Teletypewriter Exchange Service
WATS—Outward Wide Area Telephone Service

22.1(5) Basic utility obligations. Each telephone utility shall provide telephone service to the public in its service area in accordance with its rules and tariffs on file with the commission. Such service shall normally meet or exceed the standards set forth in these rules governing "Rates Charged and Service Supplied By Telephone Utilities."



250—22.2(476) Records and reports.

22.2(1) *Evaluation of records.* Each telephone utility has the obligation to continually study and evaluate its records and reports to ensure that any irregularities in service that may cause customer or user dissatisfaction or complaint are corrected expeditiously and that all phases of construction, equipment maintenance or operation are satisfactory.

22.2(2) *Location and retention of records.* Unless otherwise specified in this chapter, all records required by these rules shall be kept and preserved in accordance with the applicable provisions of Chapter 18 of the commission's rules, Utility Records.

Where a telephone utility is operated in conjunction with any other enterprise, suitable records shall be maintained so that the results of the telephone operation may be determined upon reasonable notice and request by the commission.

22.2(3) *Tariffs to be filed with the commission.* The utility shall file its tariff with the commission, and shall maintain such tariff filing in a current status. A copy of the same tariff shall also be on file in all business offices of the telephone utility and shall be available for inspection by the public.

The schedules of rates of rate-regulated utilities and rules of all utilities shall be filed with the commission and shall be classified, designated, arranged and submitted so as to conform to the requirements of current tariff or rate schedule circulars and special instructions which have been or may from time to time be issued by the commission. Provisions of the schedules shall be definite and so stated as to minimize ambiguity or the possibility of misinterpretation. The form, identification and content of tariffs shall be in accordance with these rules.

Utilities which are not subject to the rate regulation provided for by chapter 490A, shall not be required to file schedules of rates, or contracts primarily concerned with a rate schedule, with the commission but nothing contained in these rules shall be deemed to relieve any utility of the requirement of furnishing any of these same schedules or contracts which are needed by the commission in the performance of the commission duties upon request to do so by the commission.

22.2(4) *Form and identification.* All tariffs shall conform to the following rules.

a. The tariff shall be printed, typewritten or otherwise reproduced on 8½ x 11-inch sheets of white paper equal in durability to twenty-pound bond paper with twenty-five percent cotton or rag content so as to result in a clear and permanent record. The sheets of the tariff should be ruled or spaced to set off a border on the left side suitable for binding. in the case of utilities subject to regulation by any federal agency the format of sheets of tariff as filed with the commission may be the same format as is required by the federal agency, provided that the rules of the commission as to title page; identity of superseding, replacing or revising sheets; identity of amending sheets; identity of the filing utility, issuing official, date of issue and effective date; and the words "Filed with the I.S.C.C." shall be applied to modify the federal agency format for the purposes of filing with this commission.

b. The title page of every tariff and supplement shall show in the order named:

(1) The first page shall be the title page which shall show:

(Name of Public Utility)

Telephone Tariff

Filed with

Iowa State Commerce Commission

_____ (date)

(2) When a tariff is to be superseded or replaced in its entirety, the replacing tariff shall show on its title page that it is a revision of a tariff on file.

(3) When a revision or amendment is made to a filed tariff, the revision or amendment shall show on each sheet the designation of the original tariff or the number of the immediate preceding revision or amendment which it replaces. (See exhibit A)

(4) When a new part of a tariff eliminates an existing part of a tariff it shall so state and clearly identify the part eliminated. (See exhibit A)

c. Any tariff modifications as defined above shall be marked in the right-hand margin of the replacing tariff sheet with symbols as here described to indicate the place, nature and extent of the change in text.

—Symbols—

(C)—Changed regulation

(D)—Discontinued rate or regulation

(I)— Increase in rate

(N)—New rate or regulation

(R)—Reduction in rate

(T)—Change in text only

d. All sheets except the title page shall have, in addition to the above-stated requirements, the following further information:

(1) (Name of public utility) Telephone Tariff under which shall be set forth the words "Filed with I.S.C.C." If the utility is not a corporation, and a trade name is used, the name of the individual or partners must precede the trade name.

(2) Issuing official and issue date.

(3) Effective date.

22.2(5) *Content of tariffs.*

a. A table of contents containing a list of exchange rate schedules and other sections in the order in which they appear showing the sheet number of the first page of each rate schedule or other section. In the event the utility filing the tariff elects to segregate a section such as general rules from the section containing the rate schedules or other sections, it may at its option prepare a separate table of contents or index for each such segregated section.

b. All rates of rate-regulated utilities for service defining the classes and grades of service that are available to the customers and to which each rate applies as well as the rate to be charged to the customer for directory assistance calls in excess of the limit established by the commission under which no charge shall be assessed. With these rate schedules, a map shall be filed which shall clearly define the base rate boundary and any rural or special zones that are set forth in the tariff. The boundary line location on such maps shall be delineated from fixed reference points.

c. The period during which the billed amount may be paid before the account becomes delinquent shall be specified. Where net and gross amounts are billed, the difference between net and gross is a late payment charge and the amount shall be specified.

d. Forms of standard contracts required of customers for the various types of service available other than those which are defined elsewhere in the tariff.

e. A designation, by exchange, of the EAS to other exchanges.

f. The list of exchange areas and the standard rates associated therewith, where rate control is authorized by law, shall be filed in such form as to facilitate ready determination of the rates available. If the utility has mileage extension charges, the areas where mileage rates apply shall be indicated.

g. Definitions of classes of customers.

h. Extension rules, under which extensions of service will be made, indicating what portion of the extension or cost thereof will be furnished by the utility; and if the rule is based on cost, the items of cost included as required in 22.3(7).

i. The type of construction which the utility requires the customer to provide if in excess of the Iowa electrical safety code or the requirements of the municipality having jurisdiction, whichever may be the most stringent in any particular.

j. Statement of the type of special construction commonly requested by customers which the utility allows to be connected, and the terms upon which such construction will be permitted, with due provision for the avoidance of unjust discrimination as between customers who request special construction and those who do not. This applies, for example, to a case where a customer desires underground service in overhead territory.

k. Rules with which prospective customers must comply as a condition of receiving service.

l. Notice by customer required for having service discontinued.

m. Rules covering temporary, emergency, auxiliary and standby service.

n. Rules covering the type of equipment which may or may not be connected.

o. Rules on billing periods, bill issuance, notice of delinquency, refusal of service, service disconnection and reconnection and customer account termination for nonpayment of bill.

p. All nonrecurring charges and rules which determine their application.

q. Customer deposit rules which cover when deposits are required, how the amounts of required deposits are calculated, requests for additional deposits, interest on deposits, records maintained, issuance of receipts to customers, replacement of lost receipts, refunds and unclaimed deposit disposition.

r. A separate glossary of all acronyms and tradenames used.

s. A general explanation of each service and equipment offering available from the utility.

t. Prior to implementation, the location of all information relating to network design, technical standards, interface specifications or changes to the telecommunications network, which would affect either intercarrier interconnection or the manner in which terminal equipment and inside station wiring is attached to the network.

u. Separate rates or charges for transmission services, utility-provided terminal equipment and ancillary services and equipment.

(1) No rate shall be included for customer-provided extension telephones.

(2) Conditions shall be specified for the sale to customers of terminal equipment in place.

22.2(6) *Annual, periodic and other reports to be filed with the commission.*

a. Exchange area boundary maps. The utility shall file annually a verification that it has a currently correct set of exchange area boundary maps on file with the commission in accordance with 22.3(8).

b. Each utility shall file with the commission a report of each accident in connection with the operation of the utility's telephone plant which results in an injury temporarily disabling an employee for two days or more or resulting in permanent disability or death. Prompt notice of fatal accidents shall be given to the commission by telephone. A written report of the accident shall be filed within ten days next following the occurrence of the accident on forms approved by the commission. Such written reports shall indicate the following information:

(1) The name, address and age of the person or persons involved in the accident.

(2) The time and place where the accident occurred.

(3) The cause of the accident in detail.

(4) The name of the individual, company, corporation, city or town operating the telephone exchange service.

c. The utility shall file annually a report of all important additions to the telephone plant by exchange or location, the construction or acquisition of which was completed by the utility during the preceding year and that which is planned for the current year. For the purpose of this rule an important addition to plant shall mean a single project involving the

expenditure of more than fifty thousand dollars or an amount equivalent to more than twenty-five percent of the total telephone plant in service, whichever is less.

d. Each utility shall compile a monthly record by exchange of station, central office, and outside trouble reports and held applications. Each call or written statement received shall be considered a separate report, even though it may duplicate a previous report or merely involve an inquiry concerning progress on a previous report. Also, a separate report shall be counted for each telephone or PBX switchboard position reported in trouble when several items are reported by one customer at the same time, unless the group of troubles so reported is clearly related to a common cause. This information shall be supplied on forms approved by the commission. The records shall be compiled not later than thirty days after the end of the month covered and shall, upon and after compilation, be kept available for inspection by the commission or its staff. A summary of the twelve monthly records shall be attached to and submitted with the utility's annual report to the commission.

e. The utility shall keep the commission informed currently by written notice as to the location at which the utility keeps the various classes of records required by these rules.

f. A copy of each standard type of customer bill form in current use shall be filed with the commission.

g. The name, title, address and telephone number of the person who is authorized to receive, act upon and respond to communications from the commission in connection with the following:

- (1) General management duties.
- (2) Customer relations (complaints).
- (3) Engineering operations.
- (4) Emergencies during nonoffice hours.

h. A copy of a new directory being distributed to customers.

i. A copy of any application for waiver, modification or clarification (however denominated) the utility files with the Federal Communications Commission with respect to its decision in Docket No. 20828.

j. Any transaction between the utility and an affiliated equipment manufacturer or affiliated company providing, installing or maintaining terminal equipment or inside station wiring which involves the transfer (either directly or by accounting or other record entries) of money, personnel, resources or other assets shall be reduced to writing and the accounting entries for both the utility and the affiliated company shall be filed with the commission, together with any contract, agreement or other arrangement entered into between such entities.

k. Any index or list which comprehensively catalogs or cross-references tariffed offerings for internal management or sales purposes.

250—22.3(476) General service requirements.

22.3(1) Held applications.

a. During such period of time as telephone utilities may not be able to supply initial telephone service to prospective customers or upgrade existing customers within thirty days after the date applicant desires service, the telephone utility shall keep a record by exchanges showing the name and address of each applicant for service, the date of application, date that service is desired, the class and grade of service applied for, together with the reason for the inability to provide the new service or higher grade to the applicant.

b. When, because of shortage of facilities, a utility is unable to supply main telephone service on dates requested by applicants, first priority shall be given to furnishing those services which are essential to public health and safety. In cases of prolonged shortage or other emergency, the commission may require establishment of a priority plan, subject to its approval for clearing held orders, and may request periodic reports concerning the progress being made.

22.3(2) Directories. All directories published after the effective date of these rules shall conform to the following:

a. Telephone directories shall be published not less than annually, except for good cause shown, listing the name, address and telephone number of all customers unless otherwise requested by the customer.

b. Upon issuance, a copy of each directory shall be distributed to all customers locally served by that directory.

c. The year of issue shall appear on the front cover and, if space permits, on the back binding. Information pertaining to emergency calls, such as for the police and fire departments, for each exchange listed in the directory shall appear conspicuously on the front side of the first page of the directory. The directory shall also show a summary of the names of listed exchanges with the name of each serving telephone utility next to the exchanges it serves.

d. The directory shall contain such instructions concerning placing local and long distance calls, calls to repair and information services, and location of telephone company business offices as may be appropriate to the area served by the directory. A statement shall be included that the company will verify the condition of a line if requested by a customer and whether any charge will apply. Rates between frequently called points, rates for basic transmission service for residential and business customers, and rates for the lowest priced basic terminal equipment and most frequently provided terminal equipment available from the utility shall also be included.

e. Directory assistance or intercept operators shall maintain records of all telephone numbers (except telephone numbers not listed or published at customer request) in the area for which they are responsible for furnishing information service.

f. In the event of an error or omission, in the name or number listing of a customer, that customer's correct name and telephone number shall be furnished to the calling party either upon request to or interception by the telephone company.

g. Placed under the prominent heading "Customers' Rights To Own And Provide Their Own Telephones, Other Terminal Equipment And Inside Station Wiring," each directory shall provide information that:

(1) A customer has the right to provide and own telephones, other terminal equipment and new inside station wiring. Existing inside station wiring is provided by the telephone utility.

(2) A customer is not required to buy or lease telephones or other terminal equipment from the telephone utility in order to receive service.

(3) A customer is not required to use the services of the telephone utility for the installation of new inside station wiring. Upon request, the telephone utility will provide technical information for new inside station wiring.

(4) The charges for transmission services, connections, disconnections or service checks shall not be preferential due to the fact that telephones, or other terminal equipment or inside station wiring are provided by the telephone utility.

h. When additions or changes in plant, records or operations which will necessitate a large group of number changes are scheduled, reasonable notice shall be given to all customers so affected even though the additions or changes may be coincident with a directory issue.

22.3(3) Grade of service.

a. No utility shall connect more customers on any line than are contemplated under the grade of service charged the customer on such line.

b. All residential subscriber telephone service shall be a grade of one-, two-, or four-party service. Not more than four residential parties shall be connected to any line outside the base rate area and not more than two residential parties shall be connected to any line within the base rate area.

Upon completion in the meeting of this requirement a report to that effect shall be filed with the commission.

c. All business subscriber telephone service shall be a grade of one- or two-party service. Not more than two business parties shall be connected to any line outside the base rate

area, and not more than one business party shall be connected to any line within the base rate area. It shall also be the objective of telephone companies to ultimately provide one-party service to all business customers.

22.3(4) *Class of service.* No utility shall serve business and residential subscribers on the same subscriber line. The one exception to this rule is where the owner or employee of a business subscribes to bridged or combination main station service to his own residential phone in accordance with the utility's filed tariff.

22.3(5) *Compliance.* All telephone utilities shall comply with Commission subrules 22.3(3) and 22.3(4) by January 1, 1982, except that, in complying with the grade and class of service requirements of subrules 22.3(3) and 22.3(4) no utility shall be required to add more than ten percent of its net plant-in-service per year nor shall any utility be permitted to add less than five percent of its net plant-in-service per year.

22.3(6) *Public telephone service.*

a. In each incorporated municipality the telephone utility shall supply at least one coin telephone that will be available to the public on a twenty-four hour basis. This coin telephone shall be located in a prominent location in the municipality and shall be lighted at night. New or refurbished installations shall comply with the applicable provisions of the American National Standards Institute (ANSI) standard "Specifications For Making Buildings And Facilities Accessible To, And Usable By, The Physically Handicapped," ANSI A117.1-1980. The utility may also establish other public telephone service at locations where the public convenience will be served. This requirement may be waived by the commission for good cause shown.

b. In other locations the telephone utility may provide semipublic telephone service to subscribers. Semipublic service is used at locations where the installation of a public telephone is not warranted but where there is a demand for telephone service for transients or where there is a need of this service by guests, employees, members or occupants, or where there is a demand for service by a combination of transient and customer use.

22.3(7) *Extension plan.* Each utility shall develop a plan, acceptable to the commission, for the extensions of facilities, where they are in excess of those included in the regular rates for service and for which the customer shall be required to pay all or part of the cost. This plan must be related to the investment that prudently can be made for the probable revenue. No utility shall make or refuse to make any extensions except as permitted by the approved extension plan.

22.3(8) *Exchange area boundary maps.* Each telephone utility shall maintain in a current status exchange area boundary maps and shall file them with the commission as specified in Appendix A of the commission order of December 29, 1972, in Docket No U-358, "In Matter Of: Study Of Dual Telephone Service And Boundary Line Disputes," copies of which have been served upon all affected utilities and are on file and available for public inspection at the commerce commission offices.

22.3(9) *Traffic rules.*

a. Suitable practices shall be adopted by each telephone utility concerning the operating methods to be employed by operators with the objective of providing efficient and pleasing service to the customers.

b. Telephone operators shall be instructed to be courteous, considerate and efficient in the handling of all calls, and to comply with the provisions of the Communications Act of 1934 in maintaining the secrecy of communications.

c. All operator-handled calls shall be carefully supervised and disconnects made promptly.

d. When an operator is notified by a customer that he has reached a wrong number on a direct dialed call, the customer shall be given credit on his bill when the claim has been substantiated.

22.3(10) *"Directory assistance."* A telephone utility may charge a customer of a telephone exchange or service for directory assistance calls. This charge must be included in the telephone utility's tariff and approved by the commission subject to the following limitations:

a. A customer shall not be charged for the first seven directory assistance calls from the customer's station each month for the first twelve months that the tariff is in effect. After the first twelve months of directory assistance charges, the number of directory assistance calls from the customer's station for which no charge shall be assessed shall be reduced to four per month.

b. A customer shall not be charged for a directory assistance call if the telephone number requested is not listed in the telephone directory most recently published and distributed by the utility in the area being called.

c. There shall be no charge for telephone directory assistance calls originating from coin telephones, hotels and motels, or hospitals.

d. Any customer who is visually, physically or mentally handicapped in a way that makes him/her unable to use a telephone directory shall be exempt from charges for directory assistance at both his/her residence and place of employment. Each telephone utility shall, in its tariff filing, outline its method for certifying those persons eligible for the exemption.

e. Telephone directories shall be made available without charge to customers of a telephone utility and at a nominal charge for noncustomers.

22.3(11) Nonworking numbers. All nonworking numbers shall be placed upon an adequate intercept where existing equipment allows.

22.3(12) Assignment of numbers.

a. No telephone number shall be reassigned to a different customer within sixty days from the date of permanent disconnect.

b. For customers assigned a new number within the exchange, the former working number intercept shall provide the new number to a calling party for not less than sixty days or until the issuance of a new directory. No new number information shall be provided if the customer so requests.

Exception: When a change in number is required by a telephone utility due to nonpayment of yellow page advertising, the intercept is not required to volunteer the new number to callers. The new number shall be provided to callers of the directory assistance operator.

c. If the number assigned a customer results in wrong number calls sufficient in volume to be a nuisance, the number shall be changed at no charge.

22.3(13) Ordering and transferring of service and terminal equipment. Telephone utilities shall permit the ordering and transferring of transmission service and terminal equipment to be accomplished by telephone. A utility shall not volunteer prices or otherwise attempt to promote terminal equipment which is offered by an affiliated company when transmission service is ordered. A utility may not require customers to order transmission service through a company affiliated with that utility.

250—22.4(476) Customer relations.

22.4(1) Customer information.

a. Each utility shall:

(1) Maintain up-to-date maps, plans, or records of its entire exchange systems, together with such other information as may be necessary to enable the utility to advise prospective customers, and others entitled to the information, as to the facilities available for serving prospective customers in its service area.

(2) Prior to processing a request for transmission service, new inside station wiring or new or additional terminal equipment, inform the requesting party, whenever relevant, of: The nature of and rates for the lowest priced single and multiparty transmission service available at the relevant location, the customer's right to provide and own terminal equipment and new inside station wiring, the availability of information on new inside station wiring and the rate for transmission service and all other rates or charges that will be incurred after processing the request, both initially and on a continuing basis. The telephone utility shall also inform the party that the rate for transmission service is the same whether or not terminal equipment is provided by the customer.

(3) Notify customers affected by a change in rates or schedule classification.

(4) Post notices in a conspicuous place in each office of the utility where applications for service are received, informing the public that copies of the rate schedules and rules relating to the service of the utility, as filed with the commission, are available for inspection and that customers have the right to own their own terminal equipment and that this will not affect the rate for transmission service.

(5) Furnish such additional information as the customer may reasonably request.

b. Employees responsible for the receiving of customer telephone calls and customer office visits shall be properly qualified and instructed in the screening and prompt handling of complaints to assure prompt reference of the complaint to the person or department capable of effective handling of the matter complained of and to obviate the necessity of the customer's preliminary repetition of the entire complaint to employees lacking in ability and authority to take appropriate action.

22.4(2) Customer deposits. Each utility may require from any customer or prospective customer a deposit intended to guarantee payment of bills for service. No deposit shall be required as a condition for service other than determined by application of either credit rating or deposit calculation criteria, or both, of the filed tariff.

a. Such deposit shall not be more in amount than the maximum charge for two months local exchange service plus two months toll service estimated from either past toll usage or customer estimated anticipated usage or exchange average toll usage for the same class and grade of service, or as may reasonably be required by the utility in cases involving service for short periods of time or special occasions.

b. Interest on customer deposits. Interest shall be paid by the rate-regulated utility to each customer required to make a deposit. Interest of at least seven percent per annum, compounded on an annual basis, shall be paid on deposits through July 14, 1982. Commencing on July 14, 1982, the interest compounded annually, shall be twelve percent per annum. Interest shall be paid for the period beginning with the date of deposit to the date of refund or to the date that the deposit is applied to the customer's account or to the date the customer's bill becomes permanently delinquent. The date of refund is that date on which the refund or the notice of deposit return is forwarded to the customer's last known address. The date a customer's bill becomes permanently delinquent, relative to an account treated as an uncollectible account, is the most recent date the account became delinquent.

c. Each utility shall keep records to show:

- (1) The name and address of each depositor.
- (2) The amount and date of the deposit.
- (3) Each transaction concerning the deposit.

d. Each utility shall issue a receipt of deposit to each customer from whom a deposit is received, and shall provide means whereby a depositor may establish his claim if his receipt is lost.

e. The deposit shall be refunded after not more than twelve consecutive months of prompt payment (which may be eleven timely payments and one automatic forgiveness of late payment). The account shall be reviewed after twelve months of service and if the deposit is retained it shall again be reviewed at the end of the utility's accounting year or on the anniversary date of the account.

f. A record of each unclaimed deposit must be maintained for at least three years during which time the utility shall make a reasonable effort to return the deposit.

g. Unclaimed deposits, together with accrued interest, shall be credited to an appropriate account.

h. A new or additional deposit may be required to cover the amount provided in "a" above when a deposit has been refunded or is found to be inadequate by virtue of increased toll or nonpayment. Written notice shall be mailed advising the customer of any new or additional deposit requirement. The customer shall have no less than twelve days from the date of mailing to comply. The new or additional deposit shall be payable at any of the utility's business offices or local authorized agents. An appropriate receipt shall be provided. No written notice is required to be given of a deposit required as a prerequisite for commencing initial service.

If toll usage is abnormal, the tariff may provide for a new deposit or an increase in the deposit to guarantee payment of bill.

For customers with at least six consecutive months of service, abnormal usage of toll service is at least a twenty-five percent increase in monthly toll charges which amounts to at least twenty dollars. To determine the increase, comparison shall be to the customer's average monthly toll during not less than the prior three months.

For customers with less than six consecutive months of service, abnormal usage of toll service is when one month's toll charges exceeds the deposit attributable to toll by at least twenty-five percent and this excess amounts to at least twenty dollars.

In no instance will the utility demand a new or additional deposit in anticipation of increased toll usage. A customer who fails to comply with the deposit requirements may be disconnected under the provisions of the written notice and 22.4(5).

22.4(3) Customer billing, timely payment, late payment charges, payment and collection efforts. Each utility's tariff rules shall comply with these minimum standards.

a. Billing to customers shall be scheduled monthly. A utility with unusual circumstances may obtain authority from the commission for billing at other than monthly intervals.

b. When a customer is connected or disconnected, the telephone is out of order, or for other cause the service received deviates by more than twenty-four consecutive hours from the normal billing period, the bill shall be prorated. If the prorating indicates a refund is due, the refund shall be accomplished by bill credit.

c. The bill form or a bill insert shall provide the following information:

(1) The dates at the beginning and end of the billing period for transmission services, service charges, and other services and equipment.

(2) The last date for timely payment shall be clearly shown and shall be not less than fifteen days after the bill is rendered. The bill shall be considered rendered to the customer when deposited in the U.S. mail with postage prepaid. If the delivery is by other than U.S. mail the bill shall be considered rendered when delivered to the last known address of the party responsible for payment.

(3) The amount of the net charge, stated by category, for local transmission service, terminal equipment, ancillary services and equipment, toll service, sales tax and excise tax, and of any late payment charge together with the gross amount of the bill, with separate entries for total amounts current or in arrears. The utility shall comply with reasonable requests for bill detail.

(4) Customer billing information alternates. A utility serving less than fifteen thousand telephone customers may provide the information listed above on bill form or otherwise. If the utility elects not to provide this information, it shall advise the customer, on bill form or by bill insert, that such information can be obtained by contacting the utility's local office.

d. Late payment charges by rate-regulated utilities. Where net and gross amounts are billed customers, difference between net and gross is a late payment charge and is valid only when part of a delinquent bill payment. A late payment charge less taxes shall not exceed five percent of the net bill less taxes for local transmission service, terminal equipment, recurring rates for ancillary services and equipment and intrastate toll. No collection fee may be levied in addition to this late payment charge. This does not prohibit cost-justified charges for disconnection and reconnection of service.

e. If the customer makes a partial payment in a timely manner, and does not designate the service or product being paid for, the payment shall be first applied to the bill for utility services and related taxes. The late payment charge provision should be applied to only the outstanding balance for utility services, except interstate toll and related taxes.

f. Each account shall be granted not less than one complete forgiveness of a late payment charge each calendar year. The utility's rules shall be definitive that on one monthly bill in each period of eligibility, the utility will accept the net amount of such bill as full payment for such month after expiration of the net payment period. When a customer makes a timely partial payment of less than fifty percent of the bill for utility services for the current billing period, the forgiveness of penalty shall apply. The rules shall state how the customer is

notified the eligibility has been used. Complete forgiveness prohibits any effect upon the credit rating of the customer or collection of late payment charge.

g. All residential customers shall be permitted to have a last date for timely payment changeable for cause in writing; such as, but not limited to, fifteen days following the approximate date each month upon which income is received by the person responsible for payment.

h. Maximum payment required for initial network access shall comply with the total derived in accord with these rules and specified in the filed tariff.

(1) An applicant for network access, who under the tariff credit rules is required to make a deposit to guarantee payment of bills, may be required to pay the service charges and deposit prior to access. An applicant not required to make a deposit shall not be billed a service charge earlier than the first regular monthly bill.

(2) The amounts required must comply with 22.4(2), 22.4(5) and 22.4(7).

i. Maximum payments required by an active account or inactive account, for restoration of service of the same class and location as existed prior to disconnection, shall be the total of charges derived for reconnection and must comply with 22.4(2), 22.4(5) and 22.4(7). Only charges specified in the filed tariff shall be applied.

j. The utility may initiate collection efforts with the issuance of a final bill when the termination of service is at the customer's request. For all other bills no collection effort other than rendering of the bill shall be undertaken until the delinquency date.

22.4(4) Customer complaints.

a. Complaints concerning the charges, practices, facilities, or service of the utility shall be investigated promptly and thoroughly. The utility shall keep a record of such complaint showing the name and address of the complainant, the date and nature of the complaint, its disposition, and all other pertinent facts dealing with the complaint, which will enable the utility to review and analyze its procedure and actions. The records maintained by the utility under this rule shall be available for inspection by the commission or its staff upon request.

b. Each utility shall provide in its filed tariff a concise, fully informative procedure for the resolution of all customer complaints.

c. The utility shall take reasonable steps to ensure that customers unable to travel shall not be denied the right to be heard.

d. The final step in a complaint hearing and review procedure shall be a filing for commission resolution of the issues.

22.4(5) Refusal or disconnection of service. Notice of a pending disconnection shall be rendered and telephone service refused or disconnected as set forth in the tariff.

The notice of pending disconnection required by these rules shall be a written notice setting forth the reason for the notice, and the final date by which the account is to be settled or specific action taken. The notice shall be considered rendered to the customer when deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the notice shall be considered rendered when delivered to the last known address of the person responsible for payment for the service. The final date shall be not less than five days after the notice is rendered.

One written notice, including all reasons for the notice, shall be given where more than one cause exists for refusal or disconnection of service. This notice shall include a toll-free or collect number where a utility representative qualified to provide additional information about the disconnection can be reached. The notice shall also state the final date by which the account is to be settled or other specific action taken. In determining the final date, the days of notice for the causes shall be concurrent.

Service may be refused or disconnected for any of the reasons listed below. Unless otherwise stated, the customer shall be provided notice of the pending disconnection and the rule violation which necessitates disconnection. Furthermore, unless otherwise stated, the customer shall be allowed a reasonable time in which to comply with the rule before service is disconnected. Except as provided in 22.4(5) "a", "b", "c", "d" and "e", no service shall be disconnected on the day preceding or day on which the utility's local business office or local authorized agent is closed. Service may be refused or disconnected:

a. Without notice in the event of a condition on the customer's premises determined by the utility to be hazardous.

b. Without notice in the event of customer's use in such a manner as to adversely affect the utility's equipment or the utility's service to others.

c. Without notice in the event of tampering with equipment furnished and owned by the utility.

d. Without notice in the event of unauthorized use.

e. For violation of or noncompliance with the utility's rules on file with the commission, the requirements of municipal ordinances or law pertaining to the service.

f. For failure of the customer or prospective customer to furnish service equipment, permits, certificates or rights of way specified to be furnished in the utility's rules filed with the commission as conditions for obtaining service, or for the withdrawal of that same equipment or the termination of those permissions or rights, or for the failure of the customer or prospective customer to fulfill the contractual obligations imposed upon him or her as conditions of obtaining service by a contract filed with and subject to the regulatory authority of the commission.

g. For failure of the customer to permit the utility reasonable access to its equipment.

h. For nonpayment of bill or deposit, except as restricted by 22.4(7), provided that the utility has made a reasonable attempt to effect collection and:

(1) Has provided the customer with five days prior written notice as required by this rule; disconnection may take place prior to the expiration of the five-day notice period if the utility determines, from verifiable data, that usage during the five-day notice period is so abnormally high that a risk of irreparable revenue loss is created.

(2) Is prepared to reconnect the same day if disconnection is scheduled for a weekend, holiday or after 2:00 p.m.

(3) In the event of a dispute concerning the bill, the telephone company may require the customer to pay a sum of money equal to the amount of the undisputed portion of the bill. Following payment of the undisputed amount, efforts to resolve the complaint, using complaint procedures in the company's tariff, shall continue and for not less than forty-five days after the rendering of the disputed bill, the service shall not be disconnected for nonpayment of the disputed amount. The forty-five days may be extended by up to sixty days if requested of the utility by the commission in the event the customer files a written complaint with the commission.

22.4(6) Medical emergency. Notwithstanding any other provision of these rules, a telephone utility shall postpone the disconnection of service to a residential customer for a reasonable time, not in excess of thirty days, if the customer produces verification from a physician, or a public health or social services official, which states that telephone service is essential due to an existing medical emergency of the customer, a member of the customer's family or any permanent resident of the premises where service is rendered. This written verification shall identify the medical emergency and specify the circumstances. Initial verification may be by telephone if written verification is forwarded to the utility within five days.

22.4(7) Insufficient reasons for refusal, suspension or discontinuance of service. The following shall not constitute sufficient cause for refusal, suspension or discontinuance of service to a present or prospective customer:

a. Delinquency in payment for service by a previous occupant of the premises to be served.

b. Failure to pay for terminal equipment, new inside station wiring or other merchandise purchased from the utility.

c. Failure to pay for a different type or class of public utility service.

d. Failure to pay the bill of another customer as guarantor thereof.

e. Permitting another occupant of the premises access to the telephone utility service when that other occupant owed an uncollectible bill for service rendered at a different location.

f. Failure to pay for yellow page advertising.

g. Use of an auxiliary directory cover.

22.4(8) Temporary service. When the utility renders temporary service to a customer, it may require that the customer bear all the cost of installing and removing the service facilities in excess of any salvage realized.

250—22.5(476) Engineering.

22.5(1) Requirement for good engineering practice. The telephone plant of the utility shall be constructed, installed, maintained and operated subject to the provisions of the Iowa electrical safety code as defined in IAC [250], chapter 25(476,476A,478), or the requirements of any municipality having jurisdiction, whichever may be the most stringent, and in accordance with accepted good engineering practice in the communication industry to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

22.5(2) Adequacy of service.

a. Each utility shall employ recognized engineering and administrative procedures to determine the adequacy of service being provided to the customer.

b. Traffic studies shall be made and records maintained to determine that sufficient equipment and an adequate operating force are provided during the busy-season, busy-hour.

c. Each telephone utility shall provide emergency service in all exchanges operated in which regular service is not available at certain periods during the twenty-four hours of the day. When service is not continuous for the full twenty-four-hour day, proper arrangements shall be made for handling emergency calls during the off periods by the use of alarms maintained in proper condition with someone conveniently available so that emergency calls will be given prompt attention.

d. Each utility shall employ adequate procedures for assignment of facilities. The assignment record shall be kept up-to-date and checked periodically to determine if adjustments are necessary to maintain proper balance in all groups.

22.5(3) Manual switchboard requirements.

a. Switchboards shall be provided with sufficient cord pairs to handle the calls of an average busy-season, busy-hour so that ninety-six percent of the calls are answered on the initial attempt.

b. The position requirements shall be engineered on the basis of each position handling no more than two hundred thirty traffic units during the average busy-season, busy-hour. (This shall be applicable to all types of switchboards.)

22.5(4) Dial service requirements.

a. Each utility shall employ appropriate procedures to determine the adequacy of central office equipment. Sufficient central office capacity and equipment shall be provided to meet the following minimum requirements during average busy-season, busy-hour:

(1) Dial tone within three seconds on at least ninety-five percent of telephone calls.

(2) Complete dialing of called numbers on at least ninety percent of telephone calls without encountering an all-trunks-busy condition within the central office.

b. Each telephone utility shall engineer all new and additional central office equipment requirements using sound engineering practice, consistent with the practices of the telephone industry.

c. Rural lines shall be engineered for a line fill of no more than four customers per line. Whenever practical, all new dial offices shall be engineered on a terminal per station basis.

d. Each central office shall be provided with alarms to indicate improper functioning of equipment.

22.5(5) Grounded circuits. On and after the effective date of these rules, no additional telephone lines shall be constructed as a single wire with ground return. Telephone utilities shall provide full metallic circuits for all customers located within the base rate area, and so far as economically feasible, to all rural multiparty customers located beyond the base rate area. Telephone utilities operating ground return rural circuits which are affected by inductive interference should co-operate to the fullest extent possible with all interested

parties in correcting this condition, and where necessary to eliminate inductive or conductive interference full metallic circuits, properly transposed, shall be provided.

22.5(6) *Interexchange trunks.*

a. When trunk lines or toll circuits for communication are furnished by one or more telephone utilities between exchanges, the circuits connecting such exchanges shall be nongrounded. No customer's instruments other than toll stations shall be regularly connected thereto.

b. Interexchange trunks shall be provided so that at least ninety-five percent of telephone calls offered to the group will not encounter an all-trunks-busy condition. For toll connecting trunks, this figure shall be at least ninety-seven percent.

22.5(7) *Transmission requirements.* Telephone utilities shall furnish and maintain adequate plant, equipment and facilities to provide satisfactory transmission of communications between users in their service areas. Transmission shall be at adequate volume levels and free of excessive distortion. Levels of noise and cross talk shall be such as not to impair communications.

22.5(8) *Minimum transmission objectives.*

a. The transmission objectives set forth herein are based upon the use of standard telephone sets connected to a forty-eight-volt dial central office, and measured at a frequency of one thousand cycles.

b. With the foregoing conditions a subscriber line that provides satisfactory pulsing and supervision normally will provide acceptable and adequate transmission. Such line should, in general, have a loop resistance not exceeding the operating design of the associated central office equipment.

c. The overall transmission loss, including terminating equipment, on local inter-exchange or interoffice trunks should be no more than ten decibels.

d. Whenever feasible, the overall transmission loss, including terminating equipment, on intertoll trunks and on terminating links should be no more than five decibels measured at multiple frequencies between two hundred and three thousand cycles. Because these trunks may be only one of several connected links on some toll routes, it may be necessary to provide better facilities in order to keep the overall net circuit losses within the five decibel limit so as to provide satisfactory message transmission.

22.5(9) *Joint use.* Where joint construction is mutually agreed upon, it shall be subject to the provisions of the Iowa electrical safety code or such other appropriate regulation as may be prescribed.

22.5(10) *Provisions for testing.* Each telephone utility shall provide or have access to test facilities which will enable it to determine the operating and transmission capabilities of circuit and switching equipment, either for routine maintenance or for fault location.

22.5(11) *Answering time.* At manual exchanges ninety-five percent of the local calls shall be answered by the operator within ten seconds. In large manual exchanges it should be possible to answer the majority of such calls within three seconds except during periods of momentary peak loads. It is not contemplated that this rule can be observed during periods of emergency when an abnormal and unexpected volume of traffic occurs. In manual toll offices, ninety percent of trunk signals shall be answered within ten seconds. On the average, calls shall be answered within five seconds. The average time interval between operator's answer of the user's signal and the initial signal or report as to the called number should be no more than ninety seconds unless delayed due to reference to rate and route operators.

22.5(12) *Maintenance of plant and equipment.*

a. Each telephone utility shall adopt and pursue a maintenance program aimed at achieving efficient operation of its system so as to permit the rendering of safe, adequate and continuous service at all times.

b. Maintenance shall include keeping all plant and equipment in a good state of repair consistent with safe and adequate service performance. Broken, damaged or deteriorated

parts which are no longer serviceable shall be repaired or replaced. Adjustable apparatus and equipment shall be readjusted as necessary when found by preventive routines or fault location tests to be in unsatisfactory operating condition. Electrical faults, such as leakage or poor insulation, noise induction, cross talk, or poor transmission characteristics shall be corrected to the extent practicable within the design capability of the plant affected.

c. In all exchanges, periodic leakage tests shall be made on all circuits by use of proper instruments to determine that sufficient insulation is being maintained and further to discover any substantial change in insulation values which might cause future service difficulties. Loop resistance tests or transmission loss tests should be made on local circuits when transmission is poor, in an endeavor to locate the source of trouble.

d. Maintenance of aerial plant shall include the replacement of broken or missing insulators; broken or badly deteriorated poles, crossarms and brackets; rusted wires; and broken-down guys. Defective splices shall be replaced, slack wire retensioned, wires properly transposed, and adequate clearance provided between the wires and trees or brush.

e. Switchboard maintenance shall include the replacement of frayed cords, the periodic gauging of jack ferrules, and plugs, and the replacement of ferrules and plugs worn beyond reasonable tolerance. The night alarm circuit for each line and the ringoff drops on the cord circuits shall be tested periodically and adjustments made where necessary. Central office batteries shall be replaced when required to maintain good telephone service.

f. Dial central office equipment shall be inspected and routinely tested at regular intervals, and such repairs, adjustments or replacements made as are found to be necessary and as are required to insure the proper functioning of dial switching equipment.

g. All station apparatus shall be properly maintained including replacement of transmitters and receivers and cords when broken, damaged, or when necessary for good transmission. Utility owned station batteries on magneto systems shall be replaced when the voltage per cell is one volt or less.

h. All station dry cells shall show either the date of original installation or the date of manufacture, or in lieu thereof the telephone utility may keep a record at each central office of the dates of installation of station batteries used at stations served from that central office.

i. Records of various tests and inspections shall be kept on file in the office of the telephone utility for a minimum of one year. These records shall show the line or station tested or inspected, the reason for the test, the general conditions under which the test was made, the general result of the test and such corrections as were made when the test indicated need for same.

250—22.6(476) Standards of quality of service.

22.6(1) Service interruption.

a. Each telephone utility shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall reestablish service with the shortest possible delay. The following objectives in the clearing of trouble reports shall be observed:

(1) In central offices in excess of ten thousand terminals:

Business service: Eighty percent cleared within two hours

Residence service: Eighty percent cleared within four hours

(2) In central offices with less than ten thousand terminals:

Business service: Eighty percent cleared in eight hours

Residence service: Eighty percent cleared in twenty-four hours.

b. Each telephone utility shall inform the commission as soon as possible of any occurrence of an unusual nature which apparently will result in prolonged and serious interruption of service to a large number of customers.

c. Arrangements shall be made to have personnel available to receive and record trouble reports twenty-four hours daily and also to clear trouble of an emergency nature; at night, on holidays, and weekends, as well as during regular working hours.

d. Whenever service must be interrupted during regular working hours for the purpose of working on the lines, cable or equipment, the work shall be done at a time which will cause the least inconvenience to the customers, and any who would be seriously affected by such interruption shall, so far as possible, be notified in advance.

e. Each telephone utility shall keep a written record showing all interruptions affecting service in an entire exchange service area or any major portion thereof for a minimum of six years. This record shall show the date, time, duration, time cleared and extent and cause of the interruption. This record shall be available to the commission or its authorized representatives upon request at any time within the period prescribed for retention of such records.

f. Whenever a trouble report is received, a record should be made by the company and if repeated within a thirty-day period by the same customer, this case shall be referred to a supervisor for permanent correction.

g. When a customer's telephone is reported or is found to be out of order, it shall be restored to service as promptly as possible.

h. It shall be a minimum objective to so maintain the service that the average rate of customer trouble reports in an exchange is no greater than fourteen per one hundred telephones per month.

22.6(2) Emergency operation.

a. Each telephone utility shall make reasonable provisions to meet emergencies resulting from failures of lighting or power service, sudden and prolonged increases in traffic, illness of operators, or from fire, storm, or acts of God, and each telephone utility shall inform employees as to procedures to be followed in the event of emergency in order to prevent or mitigate interruption or impairment of telephone service.

b. It is essential that all central offices have adequate provision for emergency power. In offices without installed emergency power facilities, there shall be access to a mobile power unit which can be delivered on short notice.

c. In toll centers and in exchanges exceeding ten thousand terminals, it is essential that a permanent auxiliary power unit is installed.

250—22.7(476) Safety.

22.7(1) Protective measures.

a. Each utility shall exercise reasonable care to reduce the hazards to which its employees, its customers or users and the general public may be subjected.

b. The utility shall give reasonable assistance to the commission in the investigation of the cause of accidents and in the determination of suitable means of preventing accidents.

c. Each utility shall maintain a summary of all reportable accidents arising from its operations.

22.7(2) Safety program. Each utility shall adopt and execute a safety program, fitted to the size and type of its operations. As a minimum, the safety program should:

a. Require employees to use suitable tools and equipment in order that they may perform their work in a safe manner.

b. Instruct employees in safe methods of performing their work.

c. Instruct employees who, in the course of their work, are subject to the hazard of electrical shock, asphyxiation or drowning, in accepted methods of artificial respiration.

EXHIBIT A

..... Telephone Tariff

(Name of Company)

Filed with I.S.C.C.

Part No.

Sheet No.

Canceling (or revising) Sheet No.

Amending Sheet No.

EXAMPLE

Issued Effective

(Date) (Date)

By

250—22.8(476) Nontoll interexchange trunking service (EAS) survey procedure.

22.8(1) General information.

a. The nontoll interexchange trunking service (EAS) survey procedures shall be followed by all telephone companies subject to the service jurisdiction of this commission. The procedures in 22.8(2) and 22.8(3) shall be followed to establish EAS. The procedures in 22.8(4) and 22.8(5) shall be followed in order to discontinue EAS. There is no need to follow these procedures if there will be no rate increase associated with new EAS.

b. At all stages of this procedure the information required to be supplied to customers shall be sufficient to explain the required items to the customers, yet the information shall be in a form which is sufficiently brief not to confuse the customers or discourage the customers from completing the survey.

c. Whenever an EAS survey is conducted, the company shall mail to each customer account (primary service listing) a survey letter explaining the purpose of the survey, and a postage-paid, company-addressed return postcard on which the customer can indicate his or her preference.

d. The company shall provide the commission, for its approval, a copy of the posposed text and format of the customer letter and ballot survey card. The commission may require alterations or corrections before permission is granted to proceed with the actual survey of the customers.

22.8(2) Procedures and requirements for establishing EAS studies.

a. The initiative for EAS shall be in the form of a request presented to the company with evidence of support indicated by a petition signed by no less than fifteen percent of the exchange customers. Only the person to whom the monthly bill is addressed may sign the petition. In the case of a business customer, only a duly authorized agent or representative may sign. Each signer shall include address and telephone number. Initiative for EAS may also come from the company or the commission.

b. If the requirements of 22.8(2), paragraph "a", are fulfilled, a point-to-point usage study should be used to determine if sufficient community interest exists. There should be an average of five or more calls per customer per month and more than fifty percent of the customers making at least two toll calls per month. If these basic criteria are not met, the request will be dismissed without further proceedings.

c. If the provisions of 22.8(2), paragraph "b" have been met, additional customer calling studies, cost and revenue studies including loss of toll revenues may be conducted, and submitted to the commission. The commission shall determine the merits of proceeding with a customer survey.

d. Records shall be kept of this procedure to substantiate the steps taken by the company. These studies need not be undertaken more than once in any eighteen-month period.

22.8(3) Procedures and requirements for customer survey to establish EAS.

a. The customer survey for two-way EAS need not be taken more than once in any eighteen-month period and the survey letter should contain the following items:

- (1) An explanation of the purpose of the survey.
 - (2) A statement which identifies by class and grade of service the existing rate, the amount of rate increase and the new rate associated with the addition of the proposed EAS.
 - (3) A statement that more than sixty-five percent of the customers returning ballots must vote in favor of the proposal before further action will be taken.
 - (4) A statement indicating the proposed date when service would be established which shall not be more than two years from the survey ballot return date, unless the delay is granted by the commission due to the facility considerations.
 - (5) The date by which the ballot must be returned to be considered shall be a minimum of ten days and a maximum of twenty days from the date on which the survey letter is mailed to the customer. The ballots shall not be counted for three days following the survey ballot return date to allow all return cards to clear the post office. Results of the survey shall be provided to the commission within fifteen days of the return date.
- b.* Ballot by return postcard. The postage-paid, company-addressed return postcard included with the customer survey letter should contain the following information:
- (1) A statement explaining the EAS proposal being voted on as set out in the customer survey letter.
 - (2) A place for the customer to indicate whether he or she favors or is opposed to the establishment of EAS.
 - (3) Lines designated for the customer's signature, telephone number and date.
- c.* The return ballot shall be retained by the company for at least two years and shall be available for review by the commission staff during that time. After two years the ballots may be destroyed; however, the results of the survey as recorded from the return ballots shall be maintained for a period of five years.

d. If the customers in an exchange vote in favor of EAS to another exchange but concurrence in two-way EAS is not received from that second exchange then consideration may be given to one-way EAS. The same basic survey procedure shall be followed as provided herein, but the customer survey letter shall also include information concerning lack of concurrence on two-way service by the neighboring exchange and that another survey is being taken to determine interest in one-way calling.

22.8(4) Procedures and requirements for discontinuing EAS.

a. The initiative to discontinue EAS shall be in the form of a request presented to the company with evidence of support indicated by a petition signed by no less than fifteen percent of the exchange customers. Only the person to whom the monthly bill is addressed may sign the petition. In the case of a business customer, only a duly authorized agent or representative may sign. Each signer must include address and telephone number. Initiative to discontinue EAS may also come from the company or the commission.

b. Customer calling studies, cost and revenue studies may be conducted and submitted to the commission. The commission shall determine the merits of proceeding with a customer survey.

c. Records shall be kept of this procedure to substantiate the steps taken by the company. These studies need not be undertaken more than once in any eighteen-month period.

22.8(5) Procedures and requirements for customer survey to discontinue EAS.

a. The customer survey for two-way EAS need not be taken more than once in any eighteen-month period and the survey letter should contain the following items:

- (1) An explanation of the purpose of the survey.
- (2) A statement which identifies by class and grade of service the amount of rate decrease, if any, and the new rates associated with the proposed discontinuance of EAS.
- (3) A statement that more than sixty-five percent of the customers returning ballots must vote in favor of the discontinuance proposal before further action will be taken.
- (4) A statement indicating the proposed date when service would be discontinued (which shall not be more than six months from the survey ballot return date).
- (5) The date by which the ballots must be returned to be considered. This return date shall be a minimum of ten days and a maximum of twenty days from the date on which the survey

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letter is mailed to the customer. The ballots shall not be counted for three days following the survey ballot return date to allow all return cards to clear the post office. Results of the survey shall be provided to the commission within fifteen days of the return date.

b. Ballot by return postcard. The postage-paid, company-addressed return postcard included with the customer survey letter should contain the following information:

(1) A statement explaining the EAS proposal being voted on as set out in the customer survey letter.

(2) A place for the customer to indicate whether he or she favors or is opposed to the discontinuance of EAS.

(3) Lines designated for the customer's signature, telephone number and date.

c. The return ballot shall be retained by the company for at least two years and shall be available for review by the commission staff during that time. After two years, the ballot may be destroyed; provided, however, a record showing the results of the survey as recorded from the return ballots shall be maintained for a period of five years.

d. If the customers approve discontinuance of two-way EAS to another exchange and concurrence in that discontinuance cannot be obtained from the customers of the second exchange, consideration may be given to continuance of one-way EAS by that second exchange. The same basic survey procedure shall be followed as provided herein, but the customer survey letter shall also include a statement indicating that the neighboring exchange or its customers have voted to discontinue two-way EAS and that this survey is being taken to determine interest in one-way calling.

22.9 Reserved.

250—22.10(476) Standards of competition. In areas of telephone service where customer provision of terminal equipment or inside station wiring is permissible, a telephone utility's practices and actions shall be fair.

a. In order to promote fair treatment of customers, the telephone utility shall observe the following practices:

(1) A telephone utility shall inform, in writing, all employees who may handle customer complaints, requests for information and communication services or equipment items which may be provided by customers, of the provisions of 22.3(12), 22.4(1)"a"(2) and 22.11(476).

(2) Telephone utility personnel are required to provide applicable rates and charges or any other information contained in the utility tariff, to answer inquiries as to the absence or presence of telephone utility equipment or services at a specified location, and to provide specifications which will permit customer-provided equipment and new inside station wiring to gain access to the telephone network.

(3) The telephone utility shall perform a service check for a location in which any or all of the terminal equipment or inside station wiring is customer-provided if the customer requests the service check and agrees to pay the tariffed rate. If a service check is not requested by the customer, the telephone utility cannot levy a charge for such a check.

b. All unfair or deceptive practices related to customer provision of equipment are prohibited. Any failure to provide information to customers or to deal with customers who provide their own terminal equipment or inside station wiring or an alteration of the charges for or availability of equipment or services on that ground, unless specifically authorized by commission order or rule and by the utility's tariff, shall constitute unfair or deceptive practices. In cases of equipment in compliance with federal communications commission registration requirements, telephone utility personnel are prohibited from making any statement, express or implied, to, or which will reach, a customer or prospective customer that terminal equipment in compliance with federal communications commission registration requirements cannot properly be attached to the telephone network. This does not apply to good faith efforts to amend the federal communications commission requirements.

The listing of unfair practices in this rule shall not limit the types of acts which may be found to be unfair nor shall those listed be used to establish decisional criteria operating to exempt any act otherwise unfair from the intent of this rule.

250—22.11(476) Inside station wiring.

22.11(1) to 22.11(4) Reserved.

22.11(5) Customer provision of inside station wiring. A telephone utility shall allow customer provision of new inside station wiring in the following situations:

a. Intrasystem wiring in customer-provided PBX and key telephone systems in compliance with applicable registration standards promulgated by the federal communications commission.

b. For use with telephone transmission service where only nonbutton or single button telephone stations and associated ancillary devices in compliance with 47 CFR Part 68 are connected. The inside station wiring must comply with applicable national, state or local building and electrical codes; National Electrical Code, NFPA No. 70-1978 (Article 800, Communications Circuits); and accepted good engineering practice in the communication industry to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and safety of persons and property.

Telephone utilities shall endeavor to answer any questions concerning the installation of inside station wiring generally. Telephone utilities shall distribute explanatory printed materials on inside station wiring to their customers or other interested parties upon request.

250—22.12(476) Contents of tariff filings proposing rates.

22.12(1) Construction of rule. This rule shall be construed in a manner consistent with its purpose to expedite informed consideration of tariff filings proposing rates by assuring the availability of relevant information on a standardized basis. It shall apply to all tariff filings by rate-regulated telephone utilities proposing rates, unless a waiver is granted prior to filing.

22.12(2) *Cost studies to be filed.* Tariff filings proposing rates shall be accompanied by applicable cost studies performed in accordance with 22.13(476). These shall be accompanied by all workpapers used.

22.12(3) *Specification of cost methodologies.* By September 1, 1982, all telephone utilities shall file cost study methods, consistent with 22.13(476).

a. This filing will include definitions which permit the assignment of tariffs to a cost study method, formulae or documentation for computer programs and applicable parameters, definitions, unit costs, and specific and common costs allocation factors.

b. Subsequent filings must be consistent with a filed method and contain an explanation as to how the cost study method used conforms with the filed definitions, unless an application is made to amend or revise the method on file.

22.12(4) *Claims of privilege.* Any claim that filed cost studies or any other cost information submitted to the commission or its staff constitute proprietary information or are otherwise privileged shall only be effective if approved by the commission.

a. A claim of privilege shall be raised by a separate filing articulating the specific reasoning and authority supporting such claim. It is not raised by merely indicating on the material that it is to be considered privileged.

b. When a claim of privilege is made, it shall be respected by commission personnel until ruled upon by the commission.

c. The burden of proof shall be on the utility to justify confidential treatment of any material.

d. This subrule is effective as to all cost studies and information in the possession of the commission or its staff on and after the date it becomes effective.

250—22.13(476) Methodology for determining costs to serve.

22.13(1) *Construction of rule.* This rule shall be construed in a manner consistent with its purpose to provide information on costs of supplying specific telephone services and on the relative contributions of general telephone service offerings to the rates of returns to the telephone utilities. It shall require periodic fully distributed cost (FDC) studies to be prepared

and submitted to the commission and shall require individual tariff filings to be supported by cost studies. It shall apply to all tariff filings by rate-regulated telephone utilities, unless a waiver is granted by the commission prior to filing.

22.13(2) Fully distributed cost studies. As used in this chapter, a FDC study operates to estimate the costs to serve customer classes.

a. In a FDC analysis, the totality of all investment and operating costs for all services offered during a specified test period are first determined. In addition, the total volume of each service provided during the test period is determined from the utility's records. Direct costs which can be identified for a particular category of service are segmented and attributed to the relevant services. The remaining common and joint costs are allocated among the services according to quantitative determinations as to test period direct investment in each service or test period relative use which each service made of the facilities, personnel, and operations supported by such costs. Revenues are identified, segmented and attributed to the relevant services. At the conclusion of the process, it should be possible not only to compute a rate of return for each service, but also to estimate unit costs for each of the services offered during the test period, which can be used as a basis for assessing relative revenue requirement contributions for each service which would have satisfied the utility's total revenue requirement—including cost of capital. The rates for each service shall be computed so as to have contributed an equal rate of return on investment.

b. Service category cost studies shall be made a part of any cost study. The test period direct costs, common and joint costs, investments and revenues shall be identified and attributed to each of the categories.

Categories and subcategories of service to be studied include, but are not limited to, the following:

(1) Terminal equipment—main stations; station key systems; business and residence extensions; compact decorator and dial-in-handset telephones; call directors, etc.; PBX, data sets, and other teletypewriters; centrex stations; special assembly services, other miscellaneous station equipment, voice and data protective services, and tone dialing station additive charges; and installation charges (not service connection charges).

(2) Private line—group channel service; cable carrying charges; continuous property loop; signal grade subscriber loop; voice grade subscriber loop; signal grade and voice grade block loops; local wiring charge; airport lines; intercept lines; signal multiloop; channels for program transmission; intrastate video transmission channel; multipoint loudspeaker network transmission channel; industrial television; and interoffice mileage.

(3) Intrastate tolls—toll DDD service; operator-assisted; coin toll service; and WATS.

(4) Local exchange service—inside station wiring; transmission service; and EAS.

c. Reconciliations of the subcategory cost studies to the category cost studies and of the category cost studies to the test period investment and costs shall be provided.

22.13(3) Service class cost studies. As used in this rule, a cost study operates to determine the cost for a specific service or equipment offering within the service class.

a. Fully allocated cost studies or other commission-approved cost studies shall be provided for discrete service and equipment offerings when rates are proposed therefor or when requested by the commission.

For fully allocated cost studies, these studies shall identify directly attributable costs and investments to which must be added an appropriate allocation of general administrative costs and other overhead costs, as well as an allocation of common and joint costs. Where possible, allocations should be made in the same manner as in the utility's FDC study.

b. Fully allocated cost studies or other commission-approved cost studies shall include:

(1) An explanation, on a separate page, of the sources, derivation and calculation of all values used.

(2) Definitions, statements of all assumptions, formulae or documentation or other company procedures utilized, unit costs, and allocation factors for specific and common costs.

(3) All workpapers used.

These rules are intended to implement sections 476.5, 476.6 and 476.8, The Code.

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CHAPTER 23 ANNUAL REPORT

250—23.1(476) General information.

23.1(1) Every public utility is required to keep and render its books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the commission and to comply with all directions of the commission relating to such books, accounts, papers and records.

23.1(2) In order that the commission may keep informed regarding the manner and method in which a utility business is conducted, and in order to obtain information on which to apportion the costs of operation of the utilities division of the commerce commission as prescribed by chapter 490A, all public utilities coming under the provision of chapter 490A, shall file with this commission, annual reports as hereinafter described in these rules, on or before April 1 of each year covering their operations during the immediately preceding calendar year. In the event that a utility has ceased operations through merger or sale of its plant during the calendar year, each of the involved utilities shall be responsible for filing an annual report with the commission which reflects the operations of the properties which were subject to such sale or merger. The annual report covering the portion of the calendar year operations to the date of sale or merger shall be filed with the commission within ninety days after such transaction.

23.1(3) All pages of the report must be completed and submitted to the commission. The words "none" or "not applicable" may be used to complete a schedule when they accurately and fully state the facts. The commission shall be notified of the nature, amount and purpose of any accounts used in addition to those prescribed in utilities division chapter 16, "Accounting". A copy shall be retained in the respondent's file. All reports are to be prepared for and certified to the Iowa state commerce commission.

23.1(4) Annual report requirements specified in "Regulations Governing Service Supplied by Gas, Electric, Telephone, or Water Utilities", utilities division, chapters 19, 20, 21, and 22, shall be included with the annual reports set forth in the following paragraphs. The reporting utility should use their own format in preparing such reports.

250—23.2(476) Annual report requirements—rate-regulated utilities. Two copies each of the following report forms must be completed and filed with the commission.

23.2(1) *Electric utilities.*

a. Class A & B—Form IE-1, Annual Report—Rate-Regulated Electric Utilities

- 56.7(135C) Notation of classes of violations
- 56.8(135C) Notation for more than one class of violation
- 56.9(135C) Factors determining selection of class of violation
- 56.10(135C) Factors determining size of fine
- 56.11(135C) Class I violation not specified in the rules
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- 56.13(135C) Form of citations
- 56.14(135C) Licensee's response to a citation
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- 56.17(135C) Formal contest
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- 57.17(135C) Resident care and personal services
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- 57.39(135C) Resident abuse prohibited
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1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that this is crucial for the company's financial health and for providing reliable information to stakeholders.

2. The second part of the document outlines the specific procedures for recording transactions. It details the steps from initial entry to final review, ensuring that all necessary information is captured and verified.

3. The third part of the document addresses the role of the accounting department in this process. It highlights the need for clear communication and collaboration between different departments to ensure the accuracy of the data.

4. The fourth part of the document discusses the importance of regular audits and reviews. It explains how these checks help to identify any discrepancies or errors early on, preventing them from becoming major issues.

5. The fifth part of the document provides a summary of the key points discussed. It reiterates the importance of accuracy, proper procedures, and regular audits in maintaining the integrity of the company's financial records.

6. The sixth part of the document discusses the impact of accurate financial records on the company's overall performance. It notes that reliable data is essential for making informed decisions and for attracting investors.

7. The seventh part of the document outlines the responsibilities of the accounting staff. It provides a clear list of tasks and duties to ensure that everyone is working towards the same goal of accurate record-keeping.

8. The eighth part of the document discusses the use of technology in accounting. It explores how modern software solutions can streamline the recording process and reduce the risk of human error.

9. The ninth part of the document provides a conclusion and a call to action. It encourages all employees to take ownership of their role in maintaining accurate financial records and to report any issues immediately.

10. The tenth part of the document includes a list of references and additional resources. It provides links to relevant articles, books, and software tools that can be used to further improve the accounting process.

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57.1(1) "*Accommodation*" means the provision of lodging, including sleeping, dining, and living areas.

57.1(2) "*Administrator*" means a person approved and certified by the department who administers, manages, supervises, and is in general administrative charge of a residential care facility, whether or not such individual has an ownership interest in such facility, and whether or not the functions and duties are shared with one or more individuals.

57.1(3) "*Alcoholic*" means a person in a state of dependency resulting from excessive or prolonged consumption of alcoholic beverages as defined in section 125.2 of the Code.

57.1(4) "*Ambulatory*" means the condition of a person who immediately and without aid of another is physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

57.1(5) "*Basement*" means that part of a building where the finish floor is more than thirty inches below the finish grade of the building.

57.1(6) "*Board*" means the regular provision of meals.

57.1(7) "*Communicable disease*" means a disease caused by the presence of viruses or microbial agents within a person's body, which agents may be transmitted either directly or indirectly to other persons.

57.1(8) "*Department*" means the state department of health.

57.1(9) "*Distinct part*" means a clearly identifiable area or section within a health care facility, consisting of at least a residential unit, wing, floor, or building containing contiguous rooms.

57.1(10) "*Drug addiction*" means a state of dependency, as medically determined, resulting from excessive or prolonged use of drugs as defined in chapter 204 of the Code.

57.1(11) "*Medication*" means any drug including over-the-counter substances ordered and administered under the direction of the physician.

57.1(12) "*Nonambulatory*" means the condition of a person who immediately and without aid of another is not physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

57.1(13) "*Personal care*" means assistance with the activities of daily living which the recipient can provide for himself or herself only with difficulty. Examples are help in getting in and out of bed, assistance with personal hygiene and bathing, help with dressing and feeding, and supervision over medications which can be self-administered.

57.1(14) "*Program of care*" means all services being provided for a resident in a health care facility.

57.1(15) "*Qualified mental retardation professional*" means a psychologist, physician, registered nurse, educator, social worker, physical or occupational therapist, speech therapist or audiologist who meets the educational requirements for the profession, as required in the State of Iowa, and having one year experience working with the mentally retarded.

57.1(16) "*Rate*" means that daily fee charged for all residents equally and shall include the cost of all minimum services required in these rules and regulations.

57.1(17) "*Responsible party*" means the person who signs or cosigns the admission agreement required in 57.14 or the resident's guardian or conservator if one has been appointed. In the event that a resident has neither a guardian, conservator nor person who signed or cosigned the resident's admission agreement, the term "responsible party" shall include the resident's sponsoring agency, e.g., the department of social services, veteran's administration, religious groups, fraternal organizations, or foundations that assume responsibility and advocate for their client patients and pay for their health care.

57.1(18) "*Restraints*" means the measures taken to control a resident's physical activity for his or her own protection or for the protection of others.

470—57.2(135C) **Variances.** Variances from these rules may be granted by the commissioner for good and sufficient reason when the need for variance has been established; no danger to the health, safety, or welfare of any resident results; alternate means are employed or compensating circumstances exist and the variance will apply only to an individual residential care facility. Variances will be reviewed at the discretion of the commissioner.

57.2(1) To request a variance, the licensee must:

- a.* Apply for variance in writing on a form provided by the department;
- b.* Cite the rule or rules from which a variance is desired;
- c.* State why compliance with the rule or rules cannot be accomplished;
- d.* Explain alternate arrangements or compensating circumstances which justify the variance;
- e.* Demonstrate that the requested variance will not endanger the health, safety, or welfare of any resident.

57.2(2) Upon receipt of a request for variance, the commissioner will:

- a.* Examine the rule from which variance is requested to determine that the request is necessary and reasonable;

- b. If the request meets the above criteria, evaluate the alternate arrangements of compensating circumstances against the requirement of the rules;
- c. Examine the effect of the requested variance on the health, safety, or welfare of the residents;
- d. Consult with the applicant if additional information is required.

57.2(3) Based upon these studies, approval of the variance will be either granted or denied within forty-five days of receipt.

470—57.3(135C) Application for licensure.

57.3(1) *Initial application and licensing.* In order to obtain an initial residential care facility license, for a residential care facility which is currently licensed the applicant must:

- a. Meet all of the rules, regulations, and standards contained in chapters 57(135C) and 60(135C) of the Iowa Administrative Code;
- b. Submit a letter of intent and a written resume of the resident care program and other services provided for departmental review and approval;
- c. Make application at least thirty days prior to the change of ownership of the facility on forms provided by the department;
- d. Submit a floor plan of each floor of the facility drawn on 8½ x 11 inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms; and designation of the use to which room will be put and window and door location;
- e. Submit a photograph of the front and side elevation of the facility;
- f. Submit the statutory fee for a residential care facility license;
- g. Comply with all other local statutes and ordinances in existence at the time of licensure;
- h. Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

57.3(2) In order to obtain an initial residential care facility license for a facility not currently licensed as a residential care facility, the applicant must:

- a. Meet all of the rules, regulations, and standards contained in chapters 57(135C) and 60(135C) of the Iowa Administrative Code. Exceptions noted in subrule 60.3(2) shall not apply;
- b. Submit a letter of intent and a written resume of the resident care program and other services provided for departmental review and approval;
- c. Make application at least thirty days prior to the proposed opening date of the facility on forms provided by the department;
- d. Submit a floor plan of each floor of the residential care facility, drawn on 8½ x 11 inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which room will be put and window and door locations;
- e. Submit a photograph of the front and side of the residential care facility;
- f. Submit the statutory fee for a residential care facility license;
- g. Comply with all other local statutes and ordinances in existence at the time of licensure;
- h. Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

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

- a. Submit the completed application form thirty days prior to annual license renewal date of residential care facility license;
- b. Submit the statutory license fee for a residential care facility with the application for renewal;
- c. Have an approved current certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations;

d. Submit appropriate changes in the resume to reflect any changes in the resident care program or other services.

470—57.4(135C) Special categories. Special variations and considerations may be granted a residential care facility which is operated for people who have special problems such as retardation, physical disabilities, have a physical or mental disability or a condition in common which can best be treated in a specialized environment under an approved program of care commensurate with the needs of the residents of the facility. Criteria for these specialized programs shall be established by the department based on the resume of programs and services furnished by the facility and the numbers and qualifications of the administrator and staff providing these services in the facility.

57.4(1) Such a facility shall be provided with the kind of equipment, numbers of qualified staff, and operated in such fashion as to meet the requirements of the department.

57.4(2) On approval of the department, the state fire marshal, the department of social services, or other appropriate agencies, other variations from the established rules and regulations and standards for a licensed health care facility of that category may be made

c. Establish written policies, which shall be available for review, for the operation of the residential care facility. (III)

57.10(2) The administrator shall:

a. Be responsible for the selection and direction of competent personnel who provide services for the resident care program. (III)

b. Be responsible for the arrangement for all department heads to annually attend a minimum of ten contact hours of educational programs either approved or provided by the department; (III)

c. Be responsible for a monthly in-service educational program for all employees and to maintain records of programs and participants; (III)

d. Make available the residential care facility payroll records for departmental review as needed. (III)

470—57.11(135C) General policies.

57.11(1) There shall be written personnel policies in facilities of more than fifteen beds to include hours of work and attendance at educational programs. (III)

57.11(2) There shall be a written job description developed for each category of worker in facilities of more than fifteen beds. The job description shall include title of job, job summary, age range, qualifications (formal education and experience), skills needed, physical requirements, and responsibilities. (III)

57.11(3) Health examinations for all personnel shall be done at the commencement of employment and thereafter at least yearly. (III)

57.11(4) Health certificates for all employees shall be available for review. (III)

57.11(5) Health examinations shall be in sufficient detail to determine freedom from:

a. Clinical evidence of any disease in a communicable form: (III)

b. Boils or infected wounds; (III)

c. Acute or chronic inflammatory condition of respiratory system. A chest X-ray or tuberculin test is required annually. A positive skin test requires a chest X-ray; (III)

d. Evidence of a carrier state of an intestinal infection. Food handlers and nursing staff specifically shall be required to report disabilities and illnesses, especially boils, infected wounds, rashes, sores, acute respiratory infections and intestinal infections. (III)

57.11(6) There shall be written policies for emergency medical care for employees and residents in case of sudden illness or accident, which includes the individuals to be contacted in case of emergency. (III)

57.11(7) The facility shall have a written agreement with a hospital for the timely admission of a resident who, in the opinion of the attending physician, requires hospitalization. (III)

57.11(8) The residential care facility shall have established policies concerning the control, investigation, and prevention of infections within the facility. (III)

57.11(9) Each facility licensed as a residential care facility shall provide an organized continuous twenty-four-hour program of care commensurate with the needs of the residents of the home and under the direction of an administrator whose combined training and supervisory experience is such as to ensure adequate and competent care. (III)

470—57.12(135C) Personnel.

57.12(1) *General qualifications.*

a. No person with a current record of habitual alcohol intoxication or addiction to the use of drugs shall serve in a managerial role of a residential care facility. (II)

b. No person under the influence of alcohol or intoxicating drugs shall be permitted to provide services in a residential care facility. (II)

c. No person with a communicable disease shall be allowed to provide services in a residential care facility. (II, III)

d. Return to duty by personnel who have been diagnosed with a communicable disease shall be subject to a physician's written approval. (III)

e. Individuals with either physical or mental disabilities may be employed for specific duties, but only if that disability is unrelated to that individual's ability to perform the duties of the job. (III)

57.12(2) Supervision and staffing.

a. Staffing.

(1) In a facility that is licensed for more than one level of care, where the facility consists of a single building or of contiguous buildings, the department shall establish on an individual facility basis the numbers and qualifications of the staff required in a residential care facility, based on the needs of the residents in that facility.

(2) In a facility licensed only for residential care the facility shall provide the following minimum staffing ratios of personal care staff:

Days—1:25 or less (II, III)

Evenings—1:35 or less (II, III)

Nights—1:45 or less (II, III)

b. Personnel in a residential care facility shall provide twenty-four-hour coverage for residential care services. Personnel shall be up and dressed at all times in facilities over fifteen beds. (II, III)

c. Direct care staff shall be present in the facility unless all residents are involved in activities away from the facility. (II, III)

d. Physician's orders shall be implemented by qualified personnel. (II, III)

470—57.13(135C) Admission, transfer, and discharge.

57.13(1) General admission policies.

a. No resident shall be admitted to or retained in a residential care facility who is in need of greater services than the facility can provide. (II, III)

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

c. There shall be no more beds erected than is stipulated on the license. (II, III)

d. There shall be no more beds erected in a room than its size and other characteristics will permit. (II, III)

e. The admission of a resident to a residential care facility shall not give the facility or any employee of the facility the right to manage, use, or dispose of any property of the resident except with the written authorization of the resident or the resident's legal representative. (III)

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

g. A residential care facility shall provide for the safekeeping of personal effects, funds, and other property of its residents. The facility may require that items of exceptional value or which would convey unreasonable responsibilities to the licensee be removed from the premises of the facility for safekeeping. (III)

h. Rescinded, effective 7/14/82.

i. Funds or properties received by the residential care facility, belonging to or due a resident, expendable for the resident's account, shall be trust funds. (III)

j. Infants and children under the age of sixteen shall not be admitted to health care facilities for adults unless given prior written approval by the department. A distinct part of a health care facility, segregated from the adult section, may be established based on a program of care submitted by the licensee or applicant which is commensurate with the needs of the residents of the health care facility and has received the department's review and approval. (III)

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

l. Upon the verified petition of the county board of supervisors, the district court may appoint the administrator of a county care facility as conservator or guardian or both of a resident of such county care facility. Such administrator shall serve as conservator or guardian or both without fee. The administrator may establish either separate or common bank accounts for cash funds of such resident wards. (III)

57.13(2) Discharge or transfer.

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

b. Proper arrangements shall be made by the residential care facility for the welfare of the resident prior to the transfer or discharge in the event of an emergency or inability to reach the next of kin or legal representative. (III)

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

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

e. When a resident is transferred or discharged, the appropriate record as set forth in 57.16(1) of these rules will accompany the resident. (II, III)

f. Prior to the transfer or discharge of a resident to another health care facility, arrangements to provide for continuity of care shall be made with the facility to which the resident is being sent. (II, III)

470—57.14(135C) Contracts. Each contract shall:

57.14(1) State the base rate or scale per day or per month, the services included, and the method of payment; (III)

57.14(2) Contain a complete schedule of all offered services for which a fee may be charged in addition to the base rate. (III) Furthermore, the contract shall:

a. Stipulate that no further additional fees shall be charged for items not contained in complete schedule of services as set forth in subsection 2; (III)

b. State the method of payment of additional charges; (III)

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

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

57.14(3) Contain an itemized list of those services, with the specific fee the resident will be charged and method of payment, as related to his or her current condition, based on the program assessment at the time of admission, which is determined in consultation with the administrator; (III)

57.14(4) Include the total fee to be charged initially to the specific resident; (III)

57.14(5) State the conditions whereby the facility may make adjustments to its overall fees for resident care as a result of changing costs. (III) Furthermore, the contract shall provide that the facility shall give:

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

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

57.14(6) State the terms of agreement in regard to refund of all advance payments, in the event of transfer, death, voluntary, or involuntary discharge; (III)

57.14(7) State the terms of agreement concerning the holding and charging for a bed in the event of temporary absence of the resident; such terms shall include, at a minimum, the following provisions:

a. If a resident has a temporary absence from a facility for medical treatment, the facility shall ask the resident or responsible party if they wish the bed held open. This shall be documented in the resident's record including the response. Upon request of the resident/responsible party, the facility shall hold the bed open for at least ten days during the resident's absence and the facility shall receive payment for the absent period in accordance with provisions of the contract. (II)

b. If a resident has a temporary absence from a facility for therapeutic reasons as approved by a physician, the facility shall ask the resident or responsible party if they wish the bed held open. This shall be documented in the resident's record including the response. The bed shall be held open at least eighteen days per year and the facility shall receive payment for the absent periods in accordance with the provisions of the contract. The required holding during temporary absences for therapeutic reasons is limited to eighteen days per year. (II)

c. Private pay residents shall have a negotiated rate stated in the signed contract relating to these provisions. (II)

57.14(8) State the conditions under which the involuntary discharge or transfer of a resident would be effected; (III)

57.14(9) State the conditions of voluntary discharge or transfer; (III)

57.14(10) Set forth any other matters deemed appropriate by the parties to the contract. No contract or any provision thereof shall be drawn or construed so as to relieve any health care facility of any requirement or obligation imposed upon it by this chapter or any standards or rules in force pursuant to this chapter; (III)

57.14(11) Each party shall receive a copy of the signed contract. (III)

470—57.15(135C) Medical services.

57.15(1) Each resident in a residential care facility shall have a designated licensed physician, who may be called when needed. (III)

57.15(2) Each resident admitted to a residential care facility shall have had a physical examination prior to admission. If the resident is admitted directly from a hospital, a copy of the hospital admission physical and discharge summary may be part of the record in lieu of an additional physical examination. A record of the examination, signed by the physician, shall be a part of the resident's record. (III)

57.15(3) Arrangements shall be made to have a physician available to furnish medical care in case of emergency. (II, III)

57.15(4) Rescinded, effective 7/14/82.

57.15(5) The person in charge shall immediately notify the physician of any accident, injury, or adverse change in the resident's condition. (III)

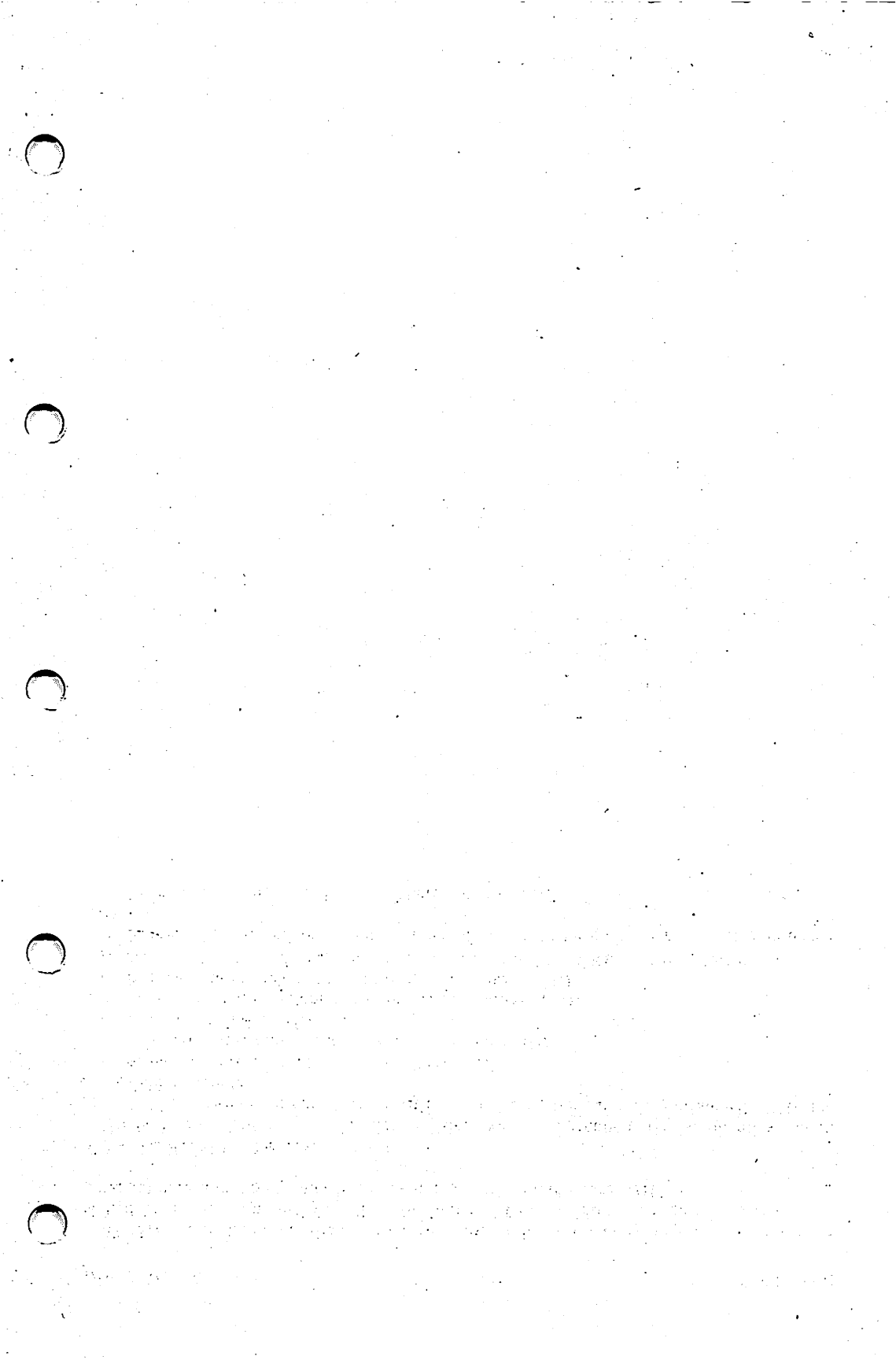
57.15(6) Each resident shall be visited by or shall visit his or her physician at least once each year. (III)

57.15(7) Residents shall be admitted to a residential care facility only on a written order signed by a physician certifying that the individual being admitted requires no more than personal care and supervision but does not require nursing care. (III)

470—57.16(135C) Records.

57.16(1) *Resident record.* The licensee shall keep a permanent record on all residents admitted to a residential care facility with all entries current, dated, and signed. (III) The record shall include:

- a. Name and previous address of resident; (III)
- b. Birthdate, sex, and marital status of resident; (III)
- c. Church affiliation; (III)
- d. Physician's name, telephone number, and address; (III)
- e. Dentist's name, telephone number, and address; (III)
- f. Name, address, and telephone number of next of kin or legal representative; (III)
- g. Name, address, and telephone number of person to be notified in case of emergency; (III)
- h. Mortician's name, telephone number, and address; (III)



- i.* Pharmacist's name, telephone number, and address; (III)
- j.* Physical examination and medical history; (III)
- k.* Certification by the physician that the resident requires no more than personal care and supervision, but does not require nursing care; (III)
- l.* Physician's orders for medication, treatments, and diet in writing and signed by the physician quarterly; (III)
 - m.* A notation of yearly or other visits to physician or other professional services; (III)
 - n.* Any change in the resident's condition; (II, III)
 - o.* If the physician has certified that the resident is capable of taking his or her prescribed medications, the administrator shall require residents to keep him or her advised of current medications, treatments, and diet. The administrator shall keep a listing of medications, treatments, and diet prescribed by the physician for each resident; (III)
 - p.* If the physician has certified that the resident is not capable of taking his or her prescribed medication, it must be administered by a qualified person of the facility. A qualified person shall be defined as either a registered or licensed practical nurse or an individual who has completed the state-approved training course in medication administration; (II)
 - q.* Medications administered by an employee of the facility shall be recorded on a medication record by the individual who administers the medication; (II, III)
 - r.* A notation describing condition on admission, transfer, and discharge; (III)
 - s.* In the event of the death of a resident, a death record shall be completed, including the physician's signature and disposition of the body. A notation shall be made on the resident record of the notification of the family; (III)
 - t.* A copy of instructions given to the resident, legal representative, or facility in the event of discharge or transfer; (III)
 - u.* Disposition of valuables. (III)

57.16(2) Incident record.

- a.* Each residential care facility shall maintain an incident record report and shall have available incident report forms. (III)
- b.* Report of incidents shall be in detail on a printed incident report form. (III)
- c.* The person in charge at the time of the incident shall oversee the preparation and sign the incident report. (III)
- d.* The report shall cover all accidents whether there is apparent injury or where hidden injury may have occurred. (III)
- e.* The report shall cover all accidents or unusual occurrences within the facility or on the premises affecting residents, visitors, or employees. (III)
- f.* A copy of the incident report shall be kept on file in the facility. (III)

57.16(3) Retention of records.

- a.* Records shall be retained in the facility for five years following termination of services. (III)
- b.* Records shall be retained within the facility upon change of ownership. (III)
- c.* Rescinded, effective 7/14/82.
- d.* When the facility ceases to operate, the resident's record shall be released to the facility to which the resident is transferred. If no transfer occurs, the record shall be released to the individual's physician. (III)

57.16(4) Reports to the department. The licensee shall furnish statistical information concerning the operation of the facility to the department on request. (III)

57.16(5) Personnel record.

- a.* An employment record shall be kept for each employee consisting of the following information: Name and address of employee, social security number of employee, date of birth of employee, date of employment, experience and education, references, position in the home, date and reason for discharge or resignation. (III)

b. The personnel records shall be made available for review upon request by the department. (III)

470—57.17(135C) Resident care and personal services.

57.17(1) Beds shall be made daily and adjusted as necessary. A complete change of linen shall be made at least once a week and more often if necessary. (III)

57.17(2) Residents shall receive sufficient supervision so that their personal cleanliness is maintained. (II, III)

57.17(3) Residents shall have clean clothing as needed to present a neat appearance, be free of odors, and to be comfortable. Clothing shall be appropriate to their activities and to the weather. (III)

57.17(4) Rescinded, effective 7/14/82.

57.17(5) Residents shall be encouraged to leave their rooms and make use of the recreational room or living room of the facility. (III)

57.17(6) Residents shall not be required to pass through another's bedroom to reach a bathroom, living room, dining room, corridor, or other common areas of the facility. (III)

57.17(7) Rescinded, effective 7/14/82.

57.17(8) Uncontrollable residents shall be transferred or discharged from the facility in accordance with contract arrangements and requirements of chapter 135C of the Code. (II, III)

57.17(9) Residents shall be required to bathe at least twice a week. (II, III)

57.17(10) *Nonambulatory residents.*

a. All nonambulatory residents shall be housed on the grade level floor. (II)

b. These provisions in section "a" above relating to nonambulatory residents are not applicable if the facility has a suitably sized elevator.

470—57.18(135C) Rescinded, effective 7/14/82.

(3) Monthly calendars, prepared in advance. (III)

d. Co-ordinate the activity program with all other services in the facility; (III)

e. Participate in the in-service training program in the facility. This shall include attending as well as presenting sessions. (III)

57.23(4) *Supplies, equipment, and storage.*

a. Each facility shall provide a variety of supplies and equipment of a nature calculated to fit the needs and interests of the residents. These may include: Books (standard and large print), magazines, newspapers, radio, television, and bulletin boards. Also appropriate would be box games, game equipment, songbooks, cards, craft supplies, record player, movie projector, piano, outdoor equipment, etc. (III)

b. Storage shall be provided for recreational equipment and supplies. (III)

c. Locked storage should be available for potentially dangerous items such as scissors, knives, and toxic materials. (III)

470—57.24(135C) Care review committee. Each facility shall establish a care review committee in accordance with section 135C.25 of the Code, which shall operate within the scope of these rules and regulations for health care facilities. (III)

57.24(1) *Purpose of care review committee.*

a. The committee shall represent the rights of the consumer in the facility for determination of appropriate care, of services available in the facility, and the determination of any discriminative practices. (III)

b. The committee shall consider the needs of the residents in respect to the services the facility is authorized to render. (III)

c. The committee shall consist of at least three members and no more than five. (III)

d. The area wide health planning council shall appoint the members of the committee from individuals who have an interest in the provision of health care services and protection of dependent persons. After failure of the area wide health planning council to appoint members to the care review committee within the time unit specified in the Code, the commissioner and facility administrator shall act under the same guidelines concerning who shall be appointed and within the specified time limits in the Code. (III)

e. Membership of the care review committee shall be evaluated by the department prior to renewal of license each year. The department shall be notified in writing of all appointments to care review committees including names and addresses, within thirty days of an appointment. (III)

f. A care review committee found to be functioning unsatisfactorily by the department may be required to be replaced. (III)

g. The members of the care review committee shall not have an ownership interest in the facility, nor be employed by the facility, nor be related to an employee or licensee, nor be a public employee involved with the sponsoring or placement of residents, nor be one who inspects or otherwise evaluates the facility or residents. (III)

h. The committee shall elect a chairperson and secretary (at its first meeting) and shall meet at least quarterly and on such occasions as required to accomplish its purposes. (III)

i. Information concerning the operation of the facility and residents residing therein is a privileged communication and shall not be disclosed publicly in such manner as to identify individuals or the facility except in accordance with section 135C.19 of the Code. (III)

j. The committee shall be made acquainted and knowledgeable by the administrator of the rules and regulations of the department governing the operation of the facility and the services it is licensed to provide. (III)

57.24(2) *Responsibilities of the committee.*

a. The committee shall determine whether the facility and the contract for services and program of care are as agreed upon in the contract. (III)

b. The committee may function for more than one facility. (III)

c. Each resident shall be reviewed on at least an annual basis. (III)

d. The committee shall determine through its observations, conference with the resident, and consultation with others that services are being provided in accordance with the résumé of care. Determination shall be made regarding the following: Cleanliness of resident, whether types of tasks given residents are in accordance with the physician's orders and whether resident employees may receive remuneration, consideration of the resident's personal and social needs, situations affecting resident's welfare and safety, absence of signs of malnutrition and dehydration, preservation of the highest level of independent functioning in relation to each individual's physical and mental capabilities, sanitation of the facility and grounds, that the physical structure of the facility contains no physical barriers which would prevent any resident from freely using the services of the facility or exiting to the outside. (Physical barriers preventing the exit from a facility shall not apply to remotely operated devices previously approved by the department for the safety of the residents). (III)

e. The committee shall submit a report to the administrator at the conclusion of each meeting. (III)

f. The committee shall report to the department for counsel and guidance in situations where the administrator fails to acknowledge the intent of their findings and recommendations. (III)

g. The committee shall be available to meet with the department upon request. (III)

h. Any official agency will have the privilege of meeting with the committee to discuss problems in the facility pertinent to the agency's official capacity, providing that information exchanged is treated as privileged communication and is kept confidential in accordance with section 135C.19 of the Code. (III)

57.24(3) *Limitations of the committee.*

a. The medical treatment of the individual resident shall not be an area of concern for the care review committee. (III)

b. The committee shall not have access to the medical or financial records of the resident. (III)

c. The committee shall not have access to the confidential record of the resident prepared by the staff of the social services department. The person responsible for the social services shall be available to the committee to interpret the psychosocial needs of the individual. (III)

57.24(4) *Role of committee in complaint investigations.*

a. The department shall notify the facility's care review committee of a complaint from the public.

b. The department may refer complaints to the committee for initial evaluation or investigation. After such initial evaluation or investigation, the committee shall report to the department in writing the results of the evaluation or investigation within ten days any pertinent information it may have regarding the complaint.

c. The department shall notify the committee and the Iowa commission on aging of its findings upon conclusion of its investigation.

d. Results of complaint investigations initiated by the committee that detect violations of the Code or rules of the department shall be forwarded to the department within ten days of completion of the investigation.

e. The committee shall be responsible, upon department request, to monitor correction of justified complaints.

57.24(5) Reserved, 9/1/78.

57.24(6) *Assistance to the committee.*

a. All physicians admitting residents to the facility shall have the responsibility of assisting the committee when necessary. (III)

b. The physician's certification of care shall be made available to the committee by the administrator. (III)

c. The licensee of the facility shall meet with the committee on a consultation basis and furnish information upon request to the committee. (III)

d. Committee members may seek advice and counsel from allied health professions, from specialists in the community, or from appropriate state agencies. (III)

470—57.25(135C) Safety. The licensee of a residential care facility shall be responsible for the provision and maintenance of a safe environment for residents and personnel. (III)

57.25(1) Fire safety.

a. All residential care facilities shall meet the fire safety rules and regulations as promulgated by the state fire marshal. (I, II)

b. The size of the facility and needs of the residents shall be taken into consideration in evaluating safety precautions and practices.

57.25(2) Safety duties of administrator. The administrator shall have a written emergency plan to be followed in the event of fire, tornado, explosion, or other emergency. (III)

a. The plan shall be posted. (III)

b. In-service shall be provided to insure that all employees are knowledgeable of the emergency plan. (III)

57.25(3) Resident safety.

a. Residents shall be permitted to smoke only where proper facilities are provided. Smoking shall not be permitted in bedrooms. Smoking by residents considered to be careless shall be prohibited except when under direct supervision. (II, III)

b. Smoking is prohibited in all rooms where oxygen is being administered or in rooms where oxygen is stored. (II, III)

c. Whenever full or empty tanks of oxygen are being used or stored, they shall be securely supported in an upright position. (II, III)

d. Smoking shall be permitted only in posted areas. (II, III)

e. Residents shall receive adequate supervision to insure against hazard from themselves, others, or elements in the environment. (II, III)

57.25(4) Restraints.

a. Rescinded, effective 7/14/82.

b. Residents shall not be kept behind locked doors;

c. Temporary seclusion of residents shall be used only in an emergency to prevent injury to the resident or to others pending transfer to appropriate placement;

d. A divided door equipped with a securing device that may be readily opened by personnel shall be considered an appropriate means of temporarily confining a resident in his or her room;

e. Divided doors shall be of such type that when the upper half is closed the lower section shall close.

470—57.26(135C) Housekeeping.

57.26(1) Written procedures shall be established and implemented for daily and weekly cleaning schedules. (III)

57.26(2) Each resident unit shall be cleaned on a routine schedule. (III)

57.26(3) All rooms, corridors, storage areas, linen closets, attics, and basements shall be kept in a clean, orderly condition, free of unserviceable furniture and equipment and accumulations of refuse. (III)

57.26(4) A hallway or corridor shall not be used for storage of equipment. (III)

57.26(5) All odors shall be kept under control by cleanliness and proper ventilation. (III)

57.26(6) Clothing worn by personnel shall be clean and washable. (III)

57.26(7) Housekeeping and maintenance personnel shall be provided with well-constructed and properly maintained equipment appropriate to the function for which it is to be used. (III)

57.26(8) All furniture, bedding, linens, and equipment shall be cleaned periodically and before use by another resident. (III)

57.26(9) Polishes used on floors shall provide a nonslip finish. (III)

57.26(10) Throw or scatter rugs shall not be permitted. (III)

57.26(11) Entrances, exits, steps, and outside walkways shall be kept free from ice, snow, and other hazards. (II, III)

57.26(12) Residents shall not have access to storage areas for all cleaning agents, bleaches, insecticides, or any other poisonous, dangerous, or flammable materials. (II, III)

57.26(13) Sufficient numbers of noncombustible trash containers, which have covers, shall be available. (III)

57.26(14) Personal possessions of residents which may constitute hazards to themselves or to others shall be removed and stored. (III)

470—57.27(135C) Maintenance.

57.27(1) Each facility shall establish a maintenance program to insure the continued maintenance of the facility, to promote good housekeeping procedures, and insure sanitary

57.31(4) In facilities where the total occupancy of family, employees, and residents is more than five, separate bathing and toilet facilities shall be required for the family or employees distinct from such areas provided for residents. (III)

57.31(5) In all health care facilities, if the family or employees live within the facility, separate living quarters and recreation facilities shall be required for the family or employees distinct from such areas provided for residents. (III)

470—57.32(135C) Animals. No animals shall be allowed within the facility except with written approval of the department and under controlled conditions. (III)

470—57.33(135C) Environment and grounds.

57.33(1) A residential care facility shall be constructed in a neighborhood free from excessive noise, dirt, polluted, or odorous air, or similar disturbances. (III)

57.33(2) There shall be an area available for outdoor activities calculated at twenty-five square feet per licensed bed. Open air porches may be included in meeting such requirements. (III)

470—57.34(135C) Supplies.

57.34(1) Linen supplies.

a. There shall be an adequate supply of linen so that each resident shall have at least three washcloths, hand towels, and bath towels per week. (III)

b. A complete change of bed linens shall be available in the linen storage area for each bed. (III)

c. Sufficient lightweight, clean, serviceable blankets shall be available. All blankets shall be laundered as often as necessary for cleanliness and freedom of odors. (III)

d. Each bed shall be provided with clean, washable bedspreads. There shall be a supply available when changes are necessary. (III)

e. Uncrowded and convenient storage shall be provided for linens, pillows, and bedding. (III)

57.34(2) First aid kit. A first aid emergency kit shall be available on each floor in every facility. (II, III)

57.34(3) General supplies.

a. All equipment shall be properly cleaned and sanitized before use by another resident. (III)

b. Clean and sanitary storage shall be provided for equipment and supplies. (III)

470—57.35(135C) Residents' rights in general.

57.35(1) Each facility shall ensure that policies and procedures are written and implemented which include, at a minimum, all of the following provisions (subrules 57.35(2) to 57.35(6)) and which govern all areas of service provided by the facility. These policies and procedures shall be available to staff, residents, their families or legal representatives and the public and shall be reviewed annually. (II)

57.35(2) Policies and procedures regarding the admission, transfer, and discharge of residents shall assure that:

a. Only those persons are accepted whose needs can be met by the facility directly or in cooperation with community resources or other providers of care with which it is affiliated or has contracts. (II)

b. As changes occur in residents' physical or mental condition, necessitating services or care which cannot be adequately provided by the facility, they are transferred promptly to other appropriate facilities. (II)

57.35(3) Policies and procedures regarding the use of chemical and physical restraints shall define the use of restraints and identify the individual who may authorize the application of physical restraints in emergencies, and describe the mechanism for monitoring and controlling their use. (II)

57.35(4) Policies and procedures shall include a method for submitting complaints and recommendations by residents or their responsible party and for assuring a response and disposition by the facility. (II)

57.35(5) Policies and procedures shall include provisions governing access to, duplication of, and dissemination of information from the residents' records. (II)

57.35(6) Policies and procedures shall include a provision that each resident shall be fully informed of his/her rights and responsibilities as a resident and of all rules governing resident conduct and responsibilities. This information must be provided upon admission, or in the case of residents already in the facility, upon the facility's adoption or amendment of residents' rights policies. (II)

a. The facility shall make known to residents what they may expect from the facility and its staff, and what is expected from them. The facility shall communicate these expectations during the period of not more than two weeks before or five days after admission. The communication shall be in writing, e.g., in a separate handout or brochure describing the facility, and interpreted verbally, e.g., as part of a preadmission interview, resident counseling, or in individual or group orientation sessions following admission. (II)

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

c. A statement shall be signed by the resident, or his/her responsible party, if applicable, indicating an understanding of these rights and responsibilities, and shall be maintained in the record. The statement shall be signed no later than five days after admission, and a copy of the signed statement shall be given to the resident or responsible party. In the case of a mentally retarded resident, the signature shall be witnessed by a person not associated with or employed by the facility. The witness may be a parent, guardian, Medicaid agency representative, etc. (II)

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

e. All residents shall be advised within thirty days following changes made in the statement of residents' rights and responsibilities. Appropriate means shall be utilized to inform non-English speaking, deaf or blind residents of changes. (II)

57.35(7) Each resident or responsible party shall be fully informed in a contract as required in rule 57.14(135C), prior to or at the time of admission and during his/her stay, of services available in the facility, and of related charges not covered by the facility's basic per diem rate. (II)

57.35(8) Each resident or responsible party shall be fully informed by a physician of his/her health and medical condition unless medically contraindicated (as documented by a physician in his/her resident record). Each resident shall be afforded the opportunity to participate in the planning of his/her total care and medical treatment, which may include, but is not limited to, nursing care, nutritional care, rehabilitation, restorative therapies, activities, and social work services. Each resident only participates in experimental research conducted under the department of health and human services protection from research risks policy and then only upon his/her informed written consent. Each resident has the right to refuse treatment except as provided by chapter 229, The Code. In the case of a confused or mentally retarded individual, the responsible party shall be informed by the physician of the resident's medical condition and be afforded the opportunity to participate in the planning of his/her total care and medical treatment, to be informed of the medical condition, and to refuse to participate in experimental research. (II)

a. The requirement that residents shall be informed of their conditions, involved in the planning of their care, and advised of any significant changes in either, shall be communicated to every physician responsible for the medical care of residents in the facility. (II)

b. The administrator or his/her designee shall be responsible for working with attending physicians in the implementation of this requirement. (II)

c. If the physician determines or in the case of a confused or mentally retarded resident the responsible party determines that informing the resident of his/her condition is contraindicated, this decision and reasons for it shall be documented in the resident's record by the physician. (II)

d. Any clinical investigation involving residents must be under the sponsorship of an institution with a human subjects review board functioning in accordance with the requirements of Public Law 93-348, as implemented by Part 46 of Title 45 of the Code of Federal Regulations, as amended to December 1, 1981 (45 CFR 46). A resident being considered for participation in experimental research must be fully informed of the nature of the experiment, e.g., medication, treatment, and understand the possible consequences of participating or not participating. The resident's (or responsible party's) written informed consent must be received prior to participation. (II)

470—57.36(135C) Involuntary discharge or transfer.

57.36(1) A facility shall not involuntarily discharge or transfer a resident from a facility except: For medical reasons; for the resident's welfare or that of other residents; for nonpayment for the resident's stay (as contained in the contract for the resident's stay), except as prohibited by Title XIX of the Social Security Act, 42 U.S.C. 1396 to 1396k and by reason of action pursuant to chapter 229, The Code. (I, II)

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

b. "Welfare" of a resident or that of other residents refers to their social, emotional, or physical well-being. A resident might be transferred or discharged because his/her behavior poses a continuing threat to himself/herself (e.g., suicidal) or to the well-being of other residents or staff (e.g., his/her behavior is incompatible with their needs and rights). Evidence that the resident's continued presence in the facility would adversely affect their own welfare or that of other residents shall be made by the administrator or his/her designee and shall be in writing and shall include specific information to support this determination. (II)

c. Involuntary transfer or discharge of a resident from a facility shall be preceded by a written notice to the resident or responsible party at least thirty days in advance of the proposed transfer or discharge. The thirty-day requirement shall not apply in any of the following instances:

(1) If an emergency transfer or discharge is mandated by the resident's health care needs and is in accord with the written orders and medical justification of the attending physician. Emergency transfers or discharges may also be mandated to protect the health, safety, or well-being of other residents and staff from the resident being transferred. (II)

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

d. The notice required by paragraph "c" shall contain all of the following information:

(1) The stated reason for the proposed transfer or discharge. (II)

(2) The effective date of the proposed transfer or discharge. (II)

(3) A statement in not less than twelve-point type (elite), which reads: "You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa state department of health (hereinafter referred to as "department") within seven days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than fourteen days after receipt of your request by the department and you will not be transferred prior to a final decision. Provision may be made for extension of the fourteen-day requirement upon request to the health department designee in emergency circumstances. If you lose the hearing, you will not

be transferred before the expiration of thirty days following receipt of the original notice of the discharge or transfer, or no sooner than five days following final decision of such hearing. To request a hearing or receive further information, call the department at (515) 281-4130 or you may write to the department to the attention of: Chief, Division of Health Facilities, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319". (II)

e. A request for a hearing made under paragraph "d"(3) shall stay a transfer or discharge pending a hearing or appeal decision. (II)

f. The hearing shall be held in the facility and the date and time of the hearing shall be determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident, responsible party, and Iowa commission on aging long-term care ombudsman of record, not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident or responsible party, that they have a right to appear at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. The Iowa commission on aging long-term care ombudsman shall have the right to appear at the hearing.

g. The hearing shall be heard by a health department designee pursuant to chapter 17A, The Code. (The hearing shall be public unless the resident or his/her representative requests in writing that it be closed.) The licensee or his/her designee shall have the opportunity to present to the representative of the department any oral testimony or written materials to show by a preponderance of the evidence just cause why a transfer or discharge may be made. The resident and responsible party shall also have an opportunity to present to the representative of the department any oral testimony or written material to show just cause why a transfer or discharge should not be made. In a determination as to whether a transfer or discharge is authorized, the burden of proof rests on the party requesting the transfer or discharge.

h. Based upon all testimony and materials submitted to the representative of the department, the representative shall issue, in accordance with chapter 17A, The Code, contested hearings, a written findings of fact, conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, responsible party, and commission on aging long-term care ombudsman within ten working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

Appeals from any decision or order of the representative must be made in writing and mailed to the commissioner of public health by certified mail return receipt requested or by personal service within ten days after the mailing of the decision or order to the aggrieved party. A party who has exhausted all adequate administrative remedies and is aggrieved by the final action of the department may petition for judicial review in the manner provided by chapter 17A, The Code.

i. A copy of the notice required by paragraph "c" shall be personally delivered to the resident and a copy placed in the resident's record. A copy shall also be transmitted to the department, the resident's responsible party, physician, the person or agency responsible for the resident's placement, maintenance, and care in the facility, and the commission on aging long-term care ombudsman.

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

k. The involuntary transfer or discharge shall be discussed with the resident, the resident's responsible party, and the person or agency responsible for the resident's placement, maintenance, and care in the facility within forty-eight hours after notice of discharge has been received. The explanation and discussion of the reasons for involuntary transfer or discharge shall be given by the facility administrator or other appropriate facility representative as the administrator's designee. The content of the discussion and explanation shall be

summarized in writing and shall include the names of the individuals involved in the discussions and made a part of the resident's record. (II)

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

(1) Counseling shall be provided by a qualified individual who meets one of the following criteria:

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

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

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

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

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

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

m. In the case of an emergency transfer or discharge as outlined in paragraph "c"(1), the resident must still be given a written notice prior to or within forty-eight hours following transfer or discharge. A copy of this notice must be placed in the resident's file and it must contain all the information required by paragraphs "d"(1) and (2). In addition, the notice must contain a statement in not less than twelve-point type (elite), which reads: "You have a right to appeal the facility's decision to transfer or discharge you on an emergency basis. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa state department of health within seven days after receiving this notice. If you request a hearing, it will be held no later than fourteen days after receipt of your request by the department. You may be transferred or discharged before the hearing is held or before a final decision is rendered. If you win the hearing, you have the right to be transferred back into the facility. To request a hearing or receive further information, call the department at (515) 281-4130 or you may write to the department to the attention of: Chief, Division of Health Facilities, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319". A hearing requested pursuant to this subrule shall be held in accordance with paragraphs "f", "g", and "h". (I)

n. Residents shall not have the right to a hearing to contest an involuntary discharge or transfer resulting from the revocation of the facility's license by the department of health. In the case of a facility voluntarily closing, a period of thirty days must be allowed for an orderly transfer of residents to other facilities.

57.36(2) Intrafacility transfer:

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

(1) Incompatibility with or disturbing to other roommates, as documented in the resident's record.

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

(3) For medical, nursing or psychosocial reasons, as documented in the resident's record, as judged by the attending physician, nurse or social worker in the case of a facility which groups residents by medical, nursing or psychosocial needs.

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

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

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

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

- (1) Change from private pay status to Title XIX, except as outlined in paragraph "a"(5). (II)
- (2) As punishment or behavior modification (except as specified in paragraph "a"(1). (II)
- (3) Discrimination on the basis of race or religion. (II)

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

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

470—57.37(135C) Residents' rights. Each resident shall be encouraged and assisted throughout his/her period of stay, to exercise his/her rights as a resident and as a citizen and may voice grievances and recommend changes in policies and services to administrative staff or to outside representatives of his/her choice, free from interference, coercion, discrimination, or reprisal. (II)

57.37(1) The facility shall provide ongoing opportunities for residents to be aware of and to exercise their rights as residents. Residents shall be kept informed of issues or pending decisions of the facility that affect them and their views shall be solicited prior to action. (II)

57.37(2) The facility shall implement a written procedure for registering and resolving grievances and recommendations by residents or their responsible party. The procedure shall ensure protection of the resident from any form of reprisal or intimidation. The written procedure shall include:

- a. Designation of an employee responsible for handling grievances and recommendations. (II)
- b. A method of investigating and assessing the validity of a grievance or recommendation. (II)
- c. Methods of resolving grievances. (II)
- d. Methods of recording grievances and actions taken. (II)

57.37(3) The facility shall post in a prominent area the name, phone number, and address of the ombudsman, survey agency, local law enforcement agency, care review committee members, the text of section 135C.46, The Code, etc., to provide to residents a further course of redress. (II)

470—57.38(135C) Financial affairs—management. Each resident, who has not been assigned a guardian or conservator by the court, may manage his/her personal financial affairs, and to the extent, under written authorization by the resident that the facility assists in management, the management shall be carried out in accordance with section 135C.24, The Code. (II)

57.38(1) The facility shall maintain a written account of all residents' funds received by or deposited with the facility. (II)

57.38(2) An employee shall be designated in writing to be responsible for resident accounts. (II)

57.38(3) The facility, shall keep on deposit personal funds over which the resident has control in accordance with section 135C.24(2). Should the resident request these funds, they shall be given to him/her on request with receipts maintained by the facility and a copy to the resident. In the case of a confused or mentally retarded resident, the resident's responsible party shall designate a method of disbursing their funds. (II)

57.38(4) If the facility makes financial transactions on a resident's behalf, the resident must receive or acknowledge that he/she has seen an itemized accounting of disbursements and current balances at least quarterly. A copy of this statement shall be maintained in the resident's financial or business record. (II)

470—57.39(135C) Resident abuse prohibited. Each resident shall receive kind and considerate care at all times and shall be free from mental and physical abuse. Each resident shall be free from chemical and physical restraints, except in an emergency for the shortest amount of time necessary to protect the resident from injury to himself/herself or to others, pending the immediate transfer to an appropriate facility. The decision to use restraints on an emergency basis shall be made by the designated charge person who shall promptly report the action taken to the physician and the reasons for using restraints shall be documented in the resident's record. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

57.39(1) Mental abuse includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation. (II)

57.39(2) Physical abuse includes, but is not limited to, corporal punishment and the use of restraints as punishment. (II)

57.39(3) Drugs such as tranquilizers may not be used as chemical restraints to limit or control resident behavior for the convenience of staff. (II)

470—57.40(135C) Resident records. Each resident shall be ensured confidential treatment of all information contained in his/her records, including information contained in an automatic data bank. His/her written consent shall be required for the release of information to persons not otherwise authorized under law to receive it. (II)

57.40(1) The facility shall limit access to any medical records to staff and consultants providing professional service to the resident. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

75.40(2) Similar procedures shall safeguard the confidentiality of residents' personal records, e.g., financial records and social services records. Only those personnel concerned with the financial affairs of the residents may have access to the financial records. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

57.40(3) The resident, or his/her responsible party, shall be entitled to examine all information contained in his/her record and shall have the right to secure full copies of the record at reasonable cost upon request, unless the physician determines the disclosure of the record or section thereof is contraindicated in which case this information will be deleted prior to making the record available to the resident or responsible party. This determination and the reasons for it must be documented in the resident's record. (II)

470—57.41(135C) Dignity preserved. The resident shall be treated with consideration, respect, and full recognition of his/her dignity and individuality, including privacy in treatment and in care for his/her personal needs. (II)

57.41(1) Staff shall display respect for residents when speaking with, caring for, or talking about them, as constant affirmation of their individuality and dignity as human beings. (II)

57.41(2) Schedules of daily activities shall allow maximum flexibility for residents to exercise choice about what they will do and when they will do it. Residents' individual preferences regarding such things as menus, clothing, religious activities, friendships, activity programs, entertainment, sleeping and eating, also times to retire at night and arise in the morning shall be elicited and considered by the facility. (II)

57.41(3) Residents shall be examined and treated in a manner that maintains the privacy of their bodies. A closed door or a drawn curtain shall shield the resident from passersby. People not involved in the care of the residents shall not be present without the resident's consent while he/she is being examined or treated. (II)

57.41(4) Privacy of a resident's body also shall be maintained during toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance. (II)

57.41(5) Staff shall knock and be acknowledged before entering a resident's room unless the resident is not capable of a response. This shall not apply under emergency conditions. (II)

470—57.42(135C) Resident work. No resident may be required to perform services for the facility, except as provided by sections 219.14 and 253.5, The Code. (II)

57.42(1) Residents may not be used to provide a source of labor for the facility against their will. Physician's approval is required for all work programs. (I, II)

57.42(2) Residents who perform work for the facility must receive remuneration unless the work is part of their approved training program. Persons on the resident census performing work shall not be used to replace paid employees in fulfilling staffing requirements. (II)

470—57.43(135C) Communications. Each resident may communicate, associate, and meet privately with persons of his/her choice, unless to do so would infringe upon the rights of other residents, and may send and receive his/her personal mail unopened. (II)

57.43(1) Subject to reasonable scheduling restrictions, visiting policies and procedures shall permit residents to receive visits from anyone they wish. Visiting hours shall be posted. (II)

57.43(2) Reasonable, regular visiting hours shall not be less than twelve hours per day and shall take into consideration the special circumstances of each visitor. A particular visitor(s) may be restricted by the facility for one of the following reasons:

a. The resident refuses to see the visitor(s). (II)

b. The resident's physician documents specific reasons why such a visit would be harmful to the resident's health. (II)

c. The visitor's behavior is unreasonably disruptive to the functioning of the facility (this judgment must be made by the administrator and the reasons shall be documented and kept on file). (II)

57.43(3) Decisions to restrict a visitor are reviewed and re-evaluated: Each time the medical orders are reviewed by the physician; at least quarterly by the facility's staff; or at the resident's request. (II)

57.43(4) Space shall be provided for residents to receive visitors in reasonable comfort and privacy. (II)

57.43(5) Telephones consistent with ANSI standards (405.1134(c)) shall be available and accessible for residents to make and receive calls with privacy. Residents who need help shall be assisted in using the phone. (II)

57.43(6) Arrangements shall be made to provide assistance to residents who require help in reading or sending mail. (II)

57.43(7) Residents shall be permitted to leave the facility and environs at reasonable times unless there are justifiable reasons established in writing by the attending physician, qualified mental retardation professional, or facility administrator for refusing permission. (II)

57.43(8) Residents shall not have their personal lives regulated beyond reasonable adherence to meal schedules, bedtime hours, and other written policies which may be necessary for the orderly management of the facility and as required by these rules. However, residents shall be encouraged to participate in recreational programs. (II)

470—57.44(135C) Resident activities. Each resident may participate in activities of social, religious, and community groups at his/her discretion unless contraindicated for reasons documented by the attending physician or qualified mental retardation professional as appropriate in his/her resident record. (II)

57.44(1) Residents who wish to meet with or participate in activities of social, religious, or other community groups in or outside of the facility shall be informed, encouraged, and assisted to do so. (II)

57.44(2) All residents shall have the freedom to refuse to participate in these activities. (II)

470—57.45(135C) Resident property. Each resident may retain and use his/her personal clothing and possessions as space permits and provided such use is not otherwise prohibited by these rules. (II)

57.45(1) Residents shall be permitted to keep reasonable amounts of personal clothing and

possessions for their use while in the facility. The personal property shall be kept in a safe location which is convenient to the resident. (II)

57.45(2) Residents shall be advised, prior to or at the time of admission, of the kinds and amounts of clothing and possessions permitted for personal use, and whether the facility will accept responsibility for maintaining these items, e.g., cleaning and laundry. (II)

57.45(3) Any personal clothing or possessions retained by the facility for the resident during his/her stay shall be identified and recorded on admission and a record placed on the resident's chart. The facility shall be responsible for secure storage of the items, and they shall be returned to the resident promptly upon request or upon discharge from the facility. (II)

470—57.46(135C) Family visits. Each resident, if married, shall be ensured privacy for visits by his/her spouse; if both are residents in the facility, they shall be permitted to share a room, if available. (II)

57.46(1) The facility shall provide for needed privacy in visits between spouses. (II)

57.46(2) Spouses who are residents in the same facility shall be permitted to share a room, if available, unless one of their attending physicians documents in the medical record those specific reasons why such an arrangement would have an adverse effect on the health of the resident. (II)

57.46(3) Family members shall be permitted to share a room, if available, if requested by both parties, unless one of their attending physicians documents in the medical record those specific reasons why such an agreement would have an adverse effect on the health of the resident. (II)

470—57.47(135C) Choice of physician. Each resident shall be permitted free choice of a physician and a pharmacy, if accessible. The facility may require the pharmacy selected to utilize a drug distribution system compatible with the system currently used by the facility. (II)

470—57.48(135C) Incompetent residents.

57.48(1) Each facility shall provide that all rights and responsibilities of the resident devolve to the resident's responsible party, when a resident is adjudicated incompetent in accordance with state law, or when the attending physician or qualified mental retardation professional has documented in the resident's record the specific impairment that has rendered the resident incapable of understanding these rights. The resident's specific impairment shall be re-evaluated annually by the attending physician or qualified mental retardation professional. (II)

57.48(2) The fact that a resident has been adjudicated incompetent does not absolve the facility from advising the resident of these rights to the extent the resident is able to understand them. The facility shall also advise the responsible party, if any, and acquire a statement indicating an understanding of residents' rights. (II)

These rules are intended to implement section 135C.14, The Code, as amended by the Acts of the Sixty-ninth General Assembly, 1981 Regular Session, Chapter 60.

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CHAPTER 58
INTERMEDIATE CARE FACILITIES

470—58.1(135C) Definitions. For the purpose of these rules, the following terms shall have the meaning indicated in this chapter. The definitions set out in section 135C.1 of the Code shall be considered to be incorporated verbatim in the rules. The use of the words "shall" and "must" indicate those standards are mandatory. The use of the words "should" and "could" indicate those standards are recommended.

58.1(1) "Accommodation" means the provision of lodging, including sleeping, dining, and living areas.

58.1(2) "Administrator" means a person licensed pursuant to chapter 147, Code of Iowa, who administers, manages, supervises, and is in general administrative charge of an intermediate care facility, whether or not such individual has an ownership interest in such facility, and whether or not the functions and duties are shared with one or more individuals.

58.1(3) "Alcoholic" means a person in a state of dependency resulting from excessive or prolonged consumption of alcoholic beverages as defined in section 125.2 of the Code.

58.1(4) "Ambulatory" means the condition of a person who immediately and without aid of another is physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

58.1(5) "Basement" means that part of a building where the finish floor is more than thirty inches below the finish grade.

58.1(6) "Board" means the regular provision of meals.

58.1(7) "Chairfast" means capable of maintaining a sitting position but lacking the capacity of bearing own weight, even with the aid of a mechanical device or another individual.

58.1(8) "Communicable disease" means a disease caused by the presence of viruses or microbial agents within a person's body, which agents may be transmitted either directly or indirectly to other persons.

58.1(9) "*Department*" means the state department of health.

58.1(10) "*Distinct part*" means a clearly identifiable area or section within a health care facility, consisting of at least a residential unit, wing, floor, or building containing contiguous rooms.

58.1(11) "*Drug addiction*" means a state of dependency, as medically determined, resulting from excessive or prolonged use of drugs as defined in chapter 204 of the Code.

58.1(12) "*Medication*" means any drug including over-the-counter substances ordered and administered under the direction of the physician.

58.1(13) "*Nonambulatory*" means the condition of a person who immediately and without aid of another is not physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

58.1(14) "*Personal care*" means assistance with the activities of daily living which the recipient can provide for himself or herself only with difficulty. Examples are help in getting in and out of bed, assistance with personal hygiene and bathing, help with dressing and feeding, and supervision over medications which can be self-administered.

58.1(15) "*Program of care*" means all services being provided for a resident in a health care facility.

58.1(16) "*Qualified mental retardation professional*" means a psychologist, physician, registered nurse, educator, social worker, physical or occupational therapist, speech therapist or audiologist who meets the educational requirements for the profession, as required in the state of Iowa, and having one year experience working with the mentally retarded.

58.1(17) "*Qualified nurse*" means a registered nurse or a licensed practical nurse, as defined in chapter 152, The Code.

58.1(18) "*Rate*" means that daily fee charged for all residents equally and shall include the cost of all minimum services required in these rules and regulations.

58.1(19) "*Responsible party*" means the person who signs or cosigns the admission agreement required in 58.13(135C) or the resident's guardian or conservator if one has been appointed. In the event that a resident has neither a guardian, conservator nor person who signed or cosigned the resident's admission agreement, the term "responsible party" shall include the resident's sponsoring agency, e.g., the department of social services, Veteran's Administration, religious groups, fraternal organizations, or foundations that assume responsibility and advocate for their client patients and pay for their health care.

58.1(20) "*Restraints*" means the measures taken to control a resident's physical activity for his or her own protection or for the protection of others.

470—58.2(135C) **Variances.** Variances from these rules may be granted by the commissioner for good and sufficient reason when the need for variance has been established; no danger to the health, safety, or welfare of any resident results; alternate means are employed or compensating circumstances exist and the variance will apply only to an individual intermediate care facility. Variances will be reviewed at the discretion of the commissioner.

58.2(1) To request a variance, the licensee must:

- a. Apply for variance in writing on a form provided by the department;
- b. Cite the rule or rules from which a variance is desired;
- c. State why compliance with the rule or rules cannot be accomplished;
- d. Explain alternate arrangements or compensating circumstances which justify the variance;
- e. Demonstrate that the requested variance will not endanger the health, safety, or welfare of any resident.

58.2(2) Upon receipt of a request for variance, the commissioner will:

- a. Examine the rule from which variance is requested to determine that the request is necessary and reasonable;

b. The administrator shall spend the equivalent of three full eight-hour days per week in each facility. (II)

c. The administrator may be responsible for no more than one hundred fifty beds in total if he or she is an administrator of more than one facility. (II)

58.8(3) The licensee may be the licensed nursing home administrator providing he or she meets the requirements as set forth in these regulations and devotes the required time to administrative duties. Residency in the facility does not in itself meet the requirement. (III)

58.8(4) A provisional administrator may be appointed on a temporary basis by the intermediate care facility licensee to assume the administrative responsibilities for an intermediate care facility for a period not to exceed six months when, through no fault of its own, the home has lost its administrator and has not been able to replace the administrator provided:

a. The department has been notified prior to the date of the administrator's appointment; (III)

b. The board of examiners for nursing home administrators has approved the administrator's appointment and has confirmed such appointment in writing to the department. (III)

58.8(5) In the absence of the administrator, a responsible person shall be designated in writing to the department to be in charge of the facility. (III) The person designated shall:

a. Be knowledgeable of the operation of the facility; (III)

b. Have access to records concerned with the operation of the facility; (III)

c. Be capable of carrying out administrative duties and of assuming administrative responsibilities; (III)

d. Be at least eighteen years of age; (III)

e. Be empowered to act on behalf of the licensee during the administrator's absence concerning the health, safety, and welfare of the residents; (III)

f. Have had training to carry out assignments and take care of emergencies and sudden illness of residents. (III)

58.8(6) A licensed administrator in charge of two facilities shall employ an individual designated as a full-time assistant administrator for each facility. (III)

58.8(7) An administrator of only one facility shall be considered as a full-time employee. Full-time employment is defined as forty hours per week. (III)

470—58.9(135C) Administration.

58.9(1) The licensee shall:

a. Assume the responsibility for the overall operation of the intermediate care facility; (III)

b. Be responsible for compliance with all applicable laws and with the rules of the department; (III)

c. Establish written policies, which shall be available for review, for the operation of the intermediate care facility. (III)

58.9(2) The administrator shall:

a. Be responsible for the selection and direction of competent personnel to provide services for the resident care program; (III)

b. Be responsible for the arrangement for all department heads to annually attend a minimum of ten contact hours of educational programs either approved or provided by the department; (III)

c. Be responsible for a monthly in-service educational program for all employees and to maintain records of programs and participants; (III)

d. Make available the intermediate care facility payroll records for departmental review as needed; (III)

e. Be required to maintain a staffing pattern of all departments. These records must be maintained for six months and are to be made available for departmental review. (III)

470—58.10(135C) General policies.

58.10(1) There shall be written personnel policies in facilities of more than fifteen beds

to include hours of work, and attendance at educational programs. (III)

58.10(2) There shall be a written job description developed for each category of worker. The job description shall include title of job, job summary, pay range, qualifications (formal education and experience), skills needed, physical requirements, and responsibilities. (III)

58.10(3) Health examinations for all personnel shall be done at the commencement of employment and thereafter at least yearly. (III)

58.10(4) Health certificates for all employees shall be available for review. (III)

58.10(5) Health examinations shall be in sufficient detail to determine freedom from:

- a. Clinical evidence of any disease in a communicable form; (III)
- b. Boils or infected wounds; (III)
- c. Acute or chronic inflammatory condition of respiratory system. A chest X ray or tuberculin skin test is required annually. A positive skin test requires a chest X ray; (III)
- d. Evidence of a carrier state of an intestinal infection. Food handlers and nursing staff specifically shall be required to report disabilities and illnesses, especially boils, infected wounds, rashes, sores, acute respiratory infections and intestinal infections. (III)

58.10(6) There shall be written policies for emergency medical care for employees and residents in case of sudden illness or accident which includes the individual to be contacted in case of emergency. (III)

58.10(7) The facility shall have a written agreement with a hospital for the timely admission of a resident who, in the opinion of the attending physician, requires hospitalization. (III)

58.10(8) The facility shall have established policies concerning the control, investigation, and prevention of infections within the facility. (III)

58.10(9) There shall be written policies for resident care programs and services as outlined in these rules. (III)

470—58.11(135C) Personnel.

58.11(1) General qualifications.

a. No person with a current record of habitual alcohol intoxication or addiction to the use of drugs shall serve in a managerial role of an intermediate care facility. (II)

b. No person under the influence of alcohol or intoxicating drugs shall be permitted to provide services in an intermediate care facility. (II)

c. No person with a communicable disease shall be allowed to provide services in an intermediate care facility. (II, III)

d. Return to duty by personnel who have been diagnosed with a communicable disease shall be subject to a physician's written approval. (III)

e. Individuals with either physical or mental disabilities may be employed for specific duties, but only if that disability is unrelated to that individual's ability to perform the duties of the job. (III)

f. Persons employed in all departments, except the nursing department of an intermediate care facility shall be qualified through formal training or through prior experience to perform the type of work for which they have been employed. Prior experience means at least two hundred forty hours of full-time employment in a field related to their duties. Persons may be hired in laundry, housekeeping, activities and dietary without experience or training if the facility institutes a formal in-service training program to fit the job description in question and documents such as having taken place within thirty days after the initial hiring of such untrained employees. (III)*

g. Rescinded, effective 7/14/82.

h. The health services supervisor shall be a qualified nurse as defined in these regulations. (II)

i. Nurse's aides, orderlies, or attendants in an intermediate care facility shall have completed or be currently enrolled in a state-approved sixty-hour nurse's aide educational program. This program may be provided by the facility or an academic institution. All

*Emergency, pursuant to §17A.5(2)"b"(2) of the Code.

personnel administering medications must have completed the state-approved training program in medication administration. (III)

j. There shall be an organized on-going in-service educational and training program planned in advance for all personnel in all departments. (II, III)

58.11(2) Nursing supervision and staffing.

a. Nurses who are employed in the facility on a full-time basis shall not be engaged in other full-time work. (III)

b. Where only part-time nurses are employed, one nurse shall be designated health service supervisor. (III)

c. A qualified nurse shall be employed to relieve the supervising nurses, including charge nurses, on holidays, vacation, sick leave, days off, absences or emergencies. Pertinent information for contacting such relief person shall be posted at the nurse's station. (III)

d. When the health service supervisor serves as the administrator of a facility fifty beds and over, a qualified nurse must be employed to relieve the health service supervisor of nursing responsibilities. (III)

e. The department may establish on an individual facility basis the numbers and qualifications of the staff required in the facility using as its criteria the services being offered and the needs of the residents. (III)

f. Additional staffing, above the minimum ratio, may be required by the department commensurate with the needs of the individual residents. (III)

g. The minimum hours of resident care personnel required for residents needing intermediate nursing care shall be 1.7 hours per resident day computed on a seven-day week and a minimum of twenty percent of such time shall be provided by qualified nurses. (II, III)

h. The health service supervisor's hours worked per week shall be included in computing the twenty percent requirement.

i. An intermediate care facility of seventy-five beds or more shall have a qualified nurse on duty twenty-four hours per day, seven days a week. (II, III)

j. In facilities under seventy-five beds, if the health service supervisor is a licensed practical nurse, the facility shall employ a registered nurse, for at least four hours each week for consultation, who must be on duty at the same time as the health service supervisor. (II, III)

(1) This shall be an on-site consultation and documentation shall be made of the visit. (III)

(2) The registered nurse-consultant shall have responsibilities clearly outlined in a written agreement with the facility. (III)

(3) Consultation shall include but not be limited to the following: Counseling the health service supervisor in the management of the health services; (III) reviewing and evaluating the health services in determining that the needs of the residents are met; (II, III) conducting a review of medications at least monthly if the facility does not employ a registered nurse part-time. (II, III)

k. Facilities with seventy-five or more beds must employ a health service supervisor who is a registered nurse. (II)

l. There shall be at least two people who shall be capable of rendering nursing service, awake, dressed, and on duty at all times. (II)

m. Physician's orders shall be implemented by qualified personnel. (II, III)

470—58.12(135C) Admission, transfer, and discharge.

58.12(1) General admission policies.

a. No resident shall be admitted or retained in an intermediate care facility who is in need of greater services than the facility can provide. (II, III)

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

c. There shall be no more beds erected than is stipulated on the license. (II, III)

d. There shall be no more beds erected in a room than its size and other characteristics will permit. (II, III)

e. The admission of a resident to an intermediate care facility shall not give the facility or any employee of the facility the right to manage, use, or dispose of any property of the resident except with the written authorization of the resident or the resident's legal representative. (III)

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

g. An intermediate care facility shall provide for the safekeeping of personal effects, funds, and other property of its residents. The facility may require that items of exceptional value or which would convey unreasonable responsibilities to the licensee be removed from the premises of the facility for safekeeping. (III)

h. Rescinded, effective 7/14/82.

i. Funds or properties received by the intermediate care facility belonging to or due a resident, expendable for the resident's account, shall be trust funds. (III)

j. Infants and children under the age of sixteen shall not be admitted to health care facilities for adults unless given prior written approval by the department. A distinct part of a health care facility, segregated from the adult section, may be established based on a program of care submitted by the licensee or applicant which is commensurate with the needs of the residents of the health care facility and has received the department's review and approval. (III)

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

58.12(2) Discharge or transfer.

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

b. Proper arrangements shall be made by the intermediate care facility for the welfare of the resident prior to transfer or discharge in the event of an emergency or inability to reach the next of kin or legal representative. (III)

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

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

e. When a resident is transferred or discharged, the appropriate record as set forth in 58.15(2) "k" of these rules will accompany the resident. (II, III)

f. Prior to the transfer or discharge of a resident to another health care facility, arrangements to provide for continuity of care shall be made with the facility to which the resident is being sent. (II, III)

470—58.13(135C) Contracts. Each contract shall:

58.13(1) State the base rate or scale per day or per month, the services included, and the method of payment; (III)

58.13(2) Contain a complete schedule of all offered services for which a fee may be charged in addition to the base rate. Furthermore, the contract shall: (III)

a. Stipulate that no further additional fees shall be charged for items not contained in complete schedule of services as set forth in subsection 2; (III)

b. State the method of payment of additional charges; (III)

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

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

58.13(3) Contain an itemized list of those services, with the specific fee the resident will be charged and method of payment, as related to his or her current condition, based on the nursing assessment at the time of admission, which is determined in consultation with the administrator; (III)

58.13(4) Include the total fee to be charged initially to the specific resident; (III)

58.13(5) State the conditions whereby the facility may make adjustments to their overall fees for resident care as a result of changing costs. (II) Furthermore, the contract shall provide that the facility shall give:

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

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

58.13(6) State the terms of agreement in regard to refund of all advance payments in the event of transfer, death, voluntary or involuntary discharge; (III)

58.13(7) State the terms of agreement concerning the holding and charging for a bed in the event of temporary absence of the resident; such terms shall include, at a minimum, the following provisions:

a. If a resident has a temporary absence from a facility for medical treatment, the facility shall ask the resident or responsible party if they wish the bed held open. This shall be documented in the resident's record including the response. Upon request of the resident/responsible party, the facility shall hold the bed open for at least ten days during the resident's absence and the facility shall receive payment for the absent period in accordance with provisions of the contract. (II)

b. If a resident has a temporary absence from a facility for therapeutic reasons as approved by a physician, the facility shall ask the resident or responsible party if they wish the bed held open. This shall be documented in the resident's record including the response. The bed shall be held open at least eighteen days per year and the facility shall receive payment for the absent periods in accordance with the provisions of the contract. The required holding during temporary absences for therapeutic reasons is limited to eighteen days per year. (II)

c. For Title XIX residents the department of social services shall continue funding for the temporary absence as provided under paragraphs "a" and "b" and in accordance with department of social service guidelines.

d. Private pay residents shall have a negotiated rate stated in the signed contract relating to these provisions. (II)

58.13(8) State the conditions under which the involuntary discharge or transfer of a resident would be effected; (III)

58.13(9) State the conditions of voluntary discharge or transfer; (III)

58.13(10) Set forth any other matters deemed appropriate by the parties to the contract. No contract or any provision thereof shall be drawn or construed so as to relieve any health care facility of any requirement or obligation imposed upon it by this chapter or any standards or rules in force pursuant to this chapter; (II)

58.13(11) Each party shall receive a copy of the signed contract. (III)

470—58.14(135C) Medical services.

58.14(1) Each resident in an intermediate care facility shall have a designated licensed physician, who may be called when needed. (III)

58.14(2) Each resident admitted to an intermediate care facility shall have had a physical examination prior to admission. If the resident is admitted directly from a hospital, a copy of the hospital admission physical and discharge summary may be made part of the record in lieu of an additional physical examination. A record of the examination, signed by the physician, shall be a part of the resident's record. (III)

58.14(3) Arrangements shall be made to have a physician available to furnish medical care in case of emergency. (II, III)

58.14(4) Rescinded, effective 7/14/82.

58.14(5) The person in charge shall immediately notify the physician of any accident, injury, or adverse change in the resident's condition. (III)

58.14(6) A schedule listing the names and telephone numbers of the physicians shall be posted in each nursing station. (III)

58.14(7) Residents shall be admitted to an intermediate care facility only on a written order signed by a physician certifying that the individual being admitted requires no greater degree of nursing care than the facility is licensed to provide. (III)

58.14(8) Each resident shall be visited by or shall visit his or her physician at least twice a year. The year period shall be measured by the date of admission and is not to include preadmission physicals. (III)*

*Emergency, pursuant to §17A.5(2)"b"(2), Iowa Code.

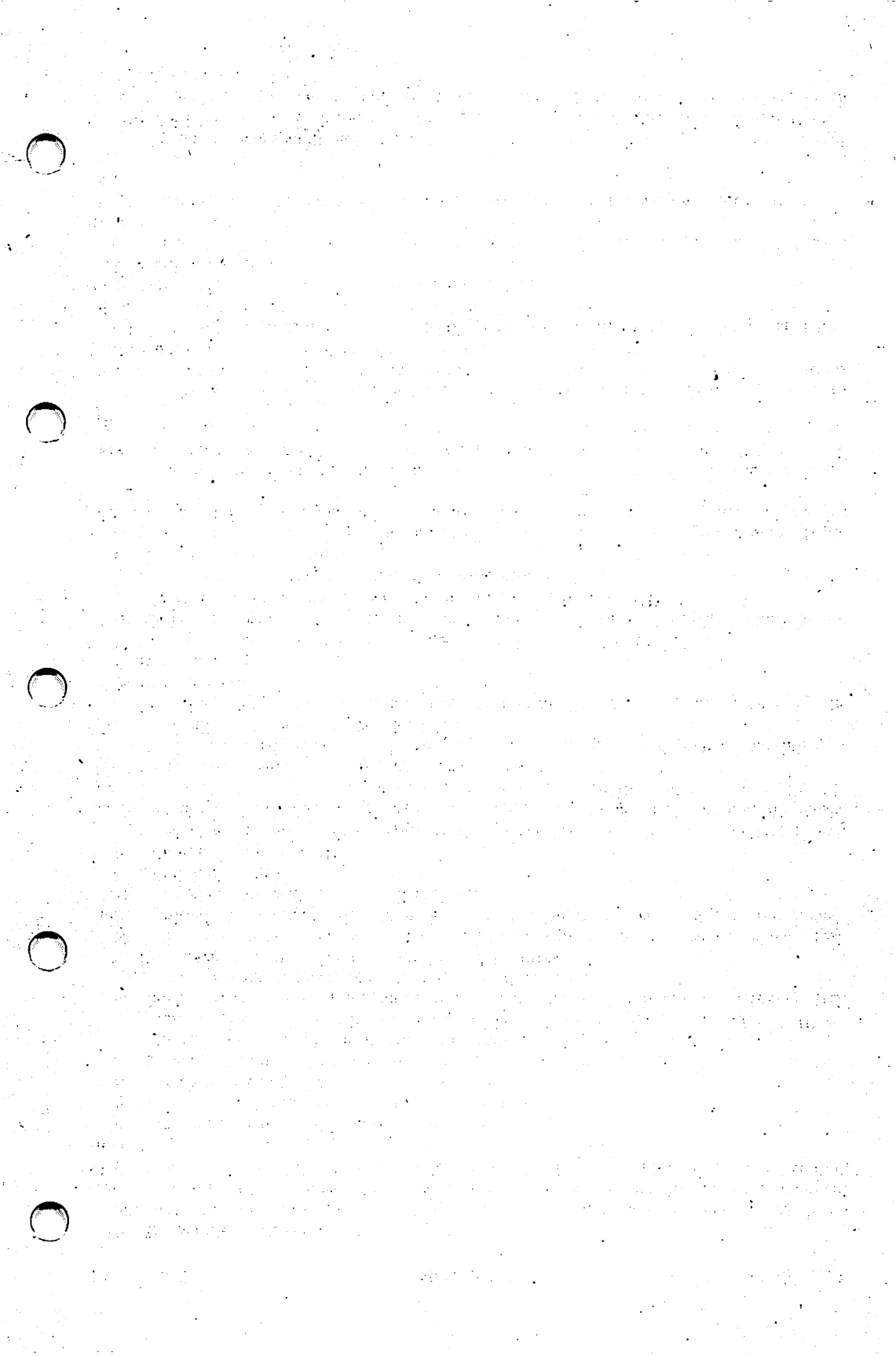
470—58.15(135C) Records.

58.15(1) Resident admission record. The licensee shall keep a permanent record on all residents admitted to an intermediate care facility with all entries current, dated, and signed. This shall be a part of the resident clinical record. (III) The admission record form shall include:

- a. Name and previous address of resident; (III)
- b. Birthdate, sex, and marital status of resident; (III)
- c. Church affiliation; (III)
- d. Physician's name, telephone number, and address; (III)
- e. Dentist's name, telephone number, and address; (III)
- f. Name, address, and telephone number of next of kin or legal representative; (III)
- g. Name, address, and telephone number of person to be notified in case of emergency; (III)
- h. Mortician's name, telephone number, and address; (III)
- i. Pharmacist's name, telephone number, and address. (III)

58.15(2) Resident clinical record. There shall be a separate clinical record for each resident admitted to an intermediate care facility with all entries current, dated, and signed. (III) The resident clinical record shall include:

- a. Admission record; (III)
- b. Admission diagnosis; (III)
- c. Physical examination: The record of the physical examination and medical history shall include resident's name, sex, age, medical history, physical examination, diagnosis, statement of chief complaints, estimation of restoration potential, results of tuberculin skin test or chest X-ray, and other diagnostic procedures; (III)
- d. Physician's certification that the resident requires no greater degree of nursing care than the facility is licensed to provide; (III)
- e. Physician's orders for medication, treatment, and diet in writing and signed by the physician quarterly; (III)
- f. Progress notes.
 - (1) Physician shall enter a progress note at the time of each visit; (III)
 - (2) Other professionals, i.e., dentists, social workers, physical therapists, pharmacists, and others shall enter a progress note at the time of each visit; (III)
- g. All laboratory, X-ray, and other diagnostic reports; (III)
- h. Nurse's record including:
 - (1) Admitting notes including time and mode of transportation; room assignment; disposition of valuables; symptoms and complaints; general condition; vital signs; and weight; (II, III)
 - (2) Routine notes including physician's visits; telephone calls to and from the physician; unusual incidents and accidents; change of condition; social interaction; and P.R.N. medications administered including time and reason administered, and resident's reaction; (II, III)
 - (3) Discharge or transfer notes including time and mode of transportation; resident's general condition; instructions given to resident or legal representative; list of medications and disposition; and completion of transfer form for continuity of care; (II, III)
 - (4) Death notes including notification of physician and family to include time, disposition of body, resident's personal possessions and medications; and complete and accurate notes of resident's vital signs and symptoms preceding death; (III)
- i. Medication record.
 - (1) An accurate record of all medications administered shall be maintained for each resident. (II, III)
 - (2) Schedule II drug records shall be kept in accordance with state and federal laws; (II, III)
- j. Death record.
 - (1) The death record shall include name, age, sex, and race of deceased; date and time of death; physician's name, address, and signature; immediate cause of death; name and address of relative or legal representative notified of death; name, address, and signature of mortician receiving the body. (III)



(2) If the physician does not sign the death record, a copy of the death certificate shall be obtained by the facility as soon as it becomes available and made a part of the resident's medical record retained by the facility; (III)

k. Transfer form.

(1) The transfer form shall include identification data from the admission record, name of transferring institution, name of receiving institution, and date of transfer; (III)

(2) The nurse's report shall include resident attitudes, behavior, interests, functional abilities (activities of daily living), unusual treatments, nursing care, problems, likes and dislikes, nutrition, current medications (when last given), and condition on transfer; (III)

(3) The physician's report shall include reason for transfer, medications, treatment, diet, activities, significant laboratory and X ray findings, and diagnosis and prognosis; (III)

l. Consultation reports shall indicate services rendered by allied health professionals in the facility or in health-centered agencies such as dentists, physical therapists, podiatrists, oculists, and others. (III)

58.15(3) Resident personal record. Personal records may be kept as a separate file by the facility.

a. Personal records may include factual information regarding personal statistics, family and responsible relative resources, financial status, and other confidential information.

b. Personal records shall be accessible to professional staff involved in planning for services to meet the needs of the resident. (III)

c. When the resident's records are closed, the information shall become a part of the final record. (III)

d. Personal records shall include a duplicate copy of the contract(s). (III)

58.15(4) Incident record.

a. Each intermediate care facility shall maintain an incident record report and shall have available incident report forms. (III)

b. Report of incidents shall be in detail on a printed incident report form. (III)

c. The person in charge at the time of the incident shall prepare and sign the report. (III)

d. The report shall cover all accidents where there is apparent injury or where hidden injury may have occurred. (III)

e. The report shall cover all accidents or unusual occurrences within the facility or on the premises affecting residents, visitors, or employees. (III)

f. A copy of the incident report shall be kept on file in the facility. (III)

58.15(5) Retention of records.

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

b. Records shall be retained within the facility upon change of ownership. (III)

c. Rescinded, effective 7/14/82.

d. When the facility ceases to operate, the resident's record shall be released to the facility to which the resident is transferred. If no transfer occurs, the record shall be released to the individual's physician. (III)

58.15(6) Reports to the department. The licensee shall furnish statistical information concerning the operation of the facility to the department on request. (III)

58.15(7) Personnel record.

a. An employment record shall be kept for each employee consisting of the following information: Name and address of employee, social security number of employee, date of birth of employee, date of employment, experience and education, references, position in the home, date and reason for discharge or resignation. (III)

b. The personnel records shall be made available for review upon request by the department. (III)

470—58.16(135C) Resident care and personal services.

58.16(1) Beds shall be made daily and adjusted as necessary. A complete change of linen shall be made at least once a week and more often if necessary. (III)

58.16(2) Residents shall receive sufficient supervision so that their personal cleanliness is maintained. (II, III)

58.16(3) Residents shall have clean clothing as needed to present a neat appearance, be free of odors, and to be comfortable. Clothing shall be appropriate to their activities and to the weather. (III)

58.16(4) Rescinded, effective 7/14/82.

58.16(5) Residents shall be encouraged to leave their rooms and make use of the recreational room or living room of the facility. (III)

58.16(6) Residents shall not be required to pass through another's bedroom to reach a bathroom, living room, dining room, corridor, or other common areas of the facility. (III)

58.16(7) Rescinded, effective 7/14/82.

58.16(8) Uncontrollable residents shall be transferred or discharged from the facility in accordance with contract arrangements and requirements of chapter 135C of the Code. (II, III)

58.16(9) Residents who are not bedfast shall be fully dressed each day to maintain self-esteem and promote normal life style. (III)

58.16(10) Residents shall be required to bathe at least twice a week. (II, III)

470—58.17 Rescinded, effective 7/14/82.

470—58.18(135C) Nursing care.

58.18(1) Individual health care plans shall be based on the nature of the illness or disability, treatment, and care prescribed. Long and short term goals shall be developed by each discipline providing service, treatment, and care. These plans shall be in writing, revised as necessary, and kept current. They shall be made available to all those rendering the services and for review by the department. (III)

58.18(2) Residents shall be protected against hazards to themselves and others or the environment. (II, III)

58.18(3) The facility shall provide resident and family education as an integral part of restorative and supportive care. (III)

58.18(4) The facility shall provide prompt response from qualified staff for the resident's use of the electrically-operated nurse call system. (II, III) (Prompt response being considered as no longer than fifteen minutes.)

470—58.19(135C) **Required nursing services for residents.** The program plan for intermediate care facilities shall have the following required nursing services under the twenty-four-hour direction of qualified nurses with ancillary coverage as set forth in these rules:

58.19(1) *Activities of daily living.*

- a. Bathing; (II, III)
- b. Daily oral hygiene (denture care); (II, III)
- c. Routine shampoo; (II, III)
- d. Nail care; (III)
- e. Shaving; (III)
- f. Daily care and application of prostheses (glasses, hearing aids, glass eyes, limb prosthetics, braces, or other assistive devices); (II, III)
- g. Ambulation with equipment if applicable, or transferring, or positioning; (I, II, III)
- h. Daily routine range of motion; (II, III)
- i. Mobility (assistance with wheelchair, mechanical lift, or other means of locomotion); (I, II, III)
- j. Elimination.
 - (1) Assistance to and from the bathroom and perineal care; (II, III)
 - (2) Bedpan assistance; (II, III)
 - (3) Care for incontinent residents; (II, III)
 - (4) Bowel and bladder training programs including in-dwelling catheter care (i.e., insertion and irrigation), enema and suppository administration, and monitoring and recording of intake and output, including solid waste; (I, II, III)
- k. Colostomy care (to be performed only by a registered nurse or licensed practical nurse or by a qualified aide under the direction of a registered nurse or licensed practical nurse); (I, II, III)
- l. Ileostomy care (to be performed only by a registered nurse or licensed practical nurse or by a qualified aide under the direction of a registered nurse or licensed practical nurse); (I, II, III)
- m. All linens necessary; (III)
- n. Nutrition and meal service.
 - (1) Regular, therapeutic, modified diets, and snacks; (I, II, III)
 - (2) Mealtime preparation of resident; (II, III)
 - (3) Assistance to and from meals; (II, III)
 - (4) In-room meal service or tray service; (II, III)
 - (5) Assistance with food preparation and feeding including total feeding if needed; (II, III)
 - (6) Assistance with adaptive devices; (II, III)
 - (7) Tube feeding (to be performed by a registered nurse or licensed practical nurse only); (I, II, III)
- o. Promote initiation of self-care for elements of resident care. (II, III)
- p. Oral suctioning (to be performed only by a registered nurse or licensed practical nurse or by a qualified aide under the direction of a registered nurse or licensed practical nurse). (I, II)

58.19(2) *Medication and treatment.*

- a. Administration of all medications as ordered by the physician including oral, instillations, topical, injectable (to be injected by a registered nurse or licensed practical nurse only); (I, II)
- b. Decubitus care; (I, II)
- c. Heat lamp; (II, III)

- d. Clinitest/acetest; (I, II)
- e. Vital signs, blood pressure, and weights; (I, II)
- f. Ambulation and transfer; (II, III)
- g. Provision of restraints; (I, II)
- h. Administration of oxygen (to be performed only by a registered nurse or licensed practical nurse or by a qualified aide under the direction of a registered nurse or licensed practical nurse); (I, II)
- i. Provision of all treatments; (I, II, III)
- j. Provide emergency and arrange medical care, including transportation, in accordance with written policies and procedures of the facility. (I, II, III)

470—58.20(135C) Duties of health service supervisor. Every intermediate care facility shall have a health service supervisor who shall:

- 58.20(1)** Direct the implementation of the physician's orders; (I, II)
- 58.20(2)** Plan for and direct the nursing care, services, treatments, procedures, and other services in order that each resident's needs are met; (II, III)
- 58.20(3)** Review the health care needs of each resident admitted to the facility and assist the attending physician in planning for the resident's care; (II, III)
- 58.20(4)** Develop and implement a written health care plan in co-operation with other disciplines in accordance with instructions of the attending physician as follows:
 - a. The written health care plan, based on the assessment and reassessment of the resident health needs, is personalized for the individual resident and indicates care to be given, short and long-term goals to be accomplished, and methods, approaches, and modifications necessary to achieve best results; (III)
 - b. The health service supervisor is responsible for preparing, reviewing, supervising the implementation, and revising the written health care plan; (III)
 - c. The health care plan is readily available for use by all personnel caring for the resident; (III)
- 58.20(5)** Initiate preventative and restorative nursing procedures for each resident so as to achieve and maintain the highest possible degree of function, self-care, and independence; (II, III)
- 58.20(6)** Supervise health services personnel to assure they perform the following restorative measures in their daily care of residents:
 - a. Maintaining good bodily alignment and proper positioning; (II, III)
 - b. Making every effort to keep the resident active except when contraindicated by physician's orders, and encouraging residents to achieve independence in activities of daily living by teaching self-care, transfer, and ambulation activities; (III)
 - c. Assisting residents to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests as necessary; (III)
 - d. Assisting residents to carry out prescribed therapy exercises between visits of the therapist; (III)
 - e. Assisting residents with routine range of motion exercises; (III)
- 58.20(7)** Plan and conduct nursing staff orientation and in-service programs and provide for training of nurse's aides; (III)
- 58.20(8)** Plan with the physician, family and health-related agencies for the care of the resident upon discharge; (III)
- 58.20(9)** Designate a responsible person to be in charge during absences; (III)
- 58.20(10)** Be responsible for all assignments and work schedules for all health services personnel to assure that the health needs of the residents are met; (III)
- 58.20(11)** Ensure that all nurse's notes are descriptive of the care rendered including the resident's response; (III)
- 58.20(12)** Visit each resident routinely to be knowledgeable of the resident's current condition; (III)
- 58.20(13)** Evaluate in writing the performance of each individual on the health care staff on at least an annual basis. This evaluation shall be available for review in the facility to the department; (III)

whether types of tasks given residents are in accordance with the physician's orders and whether resident employees may receive remuneration, consideration of the resident's personal and social needs, situations affecting resident's welfare and safety, absence of signs of malnutrition and dehydration, preservation of the highest level of independent functioning in relation to each individual's physical and mental capabilities, sanitation of the facility and grounds, that the physical structure of the facility contains no physical barriers which would prevent any resident from freely using the services of the facility or exiting to the outside. (Physical barriers preventing the exit from a facility shall not apply to remotely operated devices previously approved by the department for the safety of the residents.) (III)

e. The committee shall submit a report to the administrator at the conclusion of each meeting. (III)

f. The committee shall report to the department for counsel and guidance in situations where the administrator fails to acknowledge the intent of their findings and recommendations. (III)

g. The committee shall be available to meet with the department upon request. (III)

h. Any official agency will have the privilege of meeting with the committee to discuss problems in the facility pertinent to the agency's official capacity, providing that information exchanged is treated as privileged communication and is kept confidential in accordance with section 135C.19 of the Code. (III)

58.27(3) *Limitations of the committee.*

a. The medical treatment of the individual resident shall not be an area of concern for the care review committee. (III)

*b.** The committee shall not have access to the medical or financial record of the resident. (III)

c. The committee shall not have access to confidential record of the resident prepared by the staff of the social services department. The person responsible for the social services shall be available to the committee to interpret the psychosocial needs of the individual. (III)

58.27(4) *Role of committee in complaint investigations.*

a. The department shall notify the facility's care review committee of a complaint from the public.

b. The department may refer complaints to the committee for initial evaluation or investigation. After such initial evaluation or investigation, the committee shall report to the department in writing the results of the evaluation or investigation within ten days any pertinent information it may have regarding the complaint.

c. The department shall notify the committee and the Iowa commission on aging of its findings upon conclusion of its investigation.

d. The results of complaint investigations initiated by the committee that detect violations of The Code or rules of the department shall be forwarded to the department within ten days of completion of the investigation.

e. The committee shall be responsible, upon department request, to monitor correction of justified complaints.

58.27(5) Reserved, 9/1/78.

58.27(6) *Assistance to the committee.*

a. All physicians admitting residents to the facility shall have the responsibility of assisting the committee when necessary. (III)

b. The physician's certification of care shall be made available to the committee by the administrator. (III)

c. The licensee of the facility shall meet with the committee on a consultation basis and furnish information upon request to the committee. (III)

d. Committee members may seek advice and counsel from allied health professions, from specialists in the community, or from appropriate state agencies. (III)

*Objection filed 12/11/78, see insert IAC 12/27/78.

470—58.28(135C) Safety. The licensee of an intermediate care facility shall be responsible for the provision and maintenance of a safe environment for residents and personnel. (III)

58.28(1) Fire safety.

a. All intermediate care facilities shall meet the fire safety rules and regulations as promulgated by the state fire marshal. (I, II)

b. The size of the facility and needs of the residents shall be taken into consideration in evaluating safety precautions and practices.

58.28(2) Safety duties of administrator. The administrator shall have a written emergency plan to be followed in the event of fire, tornado, explosion, or other emergency. (III)

a. The plan shall be posted. (III)

b. In-service shall be provided to insure that all employees are knowledgeable of the emergency plan. (III)

58.28(3) Resident safety.

a. Residents shall be permitted to smoke only where proper facilities are provided. Smoking shall not be permitted in bedrooms. Smoking by residents considered to be careless shall be prohibited except when the resident is under direct supervision. (II, III)

b. Smoking is prohibited in all rooms where oxygen is being administered or in rooms where oxygen is stored. (II, III)

c. Whenever full or empty tanks of oxygen are being used or stored, they shall be securely supported in an upright position. (II, III)

d. Smoking shall be permitted only in posted areas. (II, III)

e. Each resident shall receive adequate supervision to insure against hazard from himself, others, or elements in the environment. (II, III)

470—58.29(135C) Resident care.

58.29(1) There shall be a readily available supply of self-help and ambulation devices such as wheelchairs, walkers, and such other devices maintained in good repair that will meet the current needs of all residents. (III)

58.29(2) The facility shall assure that each ambulatory resident has well-fitting shoes to provide support and prevent slipping. (III)

58.29(3) Equipment for personal care shall be maintained in a safe and sanitary condition. (II, III)

58.29(4) The expiration date for sterile equipment shall be exhibited on their wrappings. (III)

58.29(5) Residents who have been known to wander shall be provided with appropriate means of identification. (II, III)

58.29(6) Electric heating pads, blankets, or sheets shall be used only on the written order of a physician. (II, III)

470—58.30(135C) Rescinded, effective 7/14/82.

470—58.31(135C) Housekeeping.

58.31(1) Written procedures shall be established and implemented for daily and weekly cleaning schedules. (III)

58.31(2) Each resident unit shall be cleaned on a routine schedule. (III)

58.31(3) All rooms, corridors, storage areas, linen closets, attics, and basements shall be kept in a clean, orderly condition, free of unserviceable furniture and equipment and accumulations of refuse. (III)

58.31(4) A hallway or corridor shall not be used for storage of equipment. (III)

58.31(5) All odors shall be kept under control by cleanliness and proper ventilation. (III)

58.31(6) Clothing worn by personnel shall be clean and washable. (III)

58.31(7) Housekeeping and maintenance personnel shall be provided with well-constructed and properly maintained equipment appropriate to the function for which it is to be used. (III)

58.31(8) All furniture, bedding, linens, and equipment shall be cleaned periodically and before use by another resident. (III)

58.31(9) Polishes used on floors shall provide a nonslip finish. (III)

58.31(10)* Throw or scatter rugs shall not be permitted. (III)

58.31(11) Entrances, exits, steps, and outside walkways shall be kept free from ice, snow, and other hazards. (II, III)

58.31(12) Residents shall not have access to storage areas for all cleaning agents, bleaches, insecticides, or any other poisonous, dangerous, or flammable materials. (II, III)

58.31(13) Sufficient numbers of noncombustible trash containers, which have covers, shall be available. (III)

58.31(14) Definite procedures shall be established for training housekeeping personnel. (III)

58.31(15) Employees engaged in housekeeping or laundry services shall not be simultaneously involved in the preparation of food, food service, or resident care. (III)

58.31(16) There shall be provisions for the cleaning and storage of housekeeping equipment and supplies for each nursing unit. (III)

58.31(17) Bathtubs, shower stalls, or lavatories shall not be used for laundering, cleaning of utensils and mops, or for storage. (III)

58.31(18) Bedside utensils shall be stored in enclosed cabinets. (III)

58.31(19) Kitchen sinks shall not be used for the cleaning of mops, soaking of laundry, cleaning of bedside utensils, nursing utensils, or dumping of waste water. (III)

58.31(20) Personal possessions of residents which may constitute hazards to themselves or others shall be removed and stored. (III)

470—58.32(135C) Maintenance.

58.32(1) Each facility shall establish a maintenance program in writing to insure the continued maintenance of the facility, to promote good housekeeping procedures, and to insure sanitary practices throughout the facility. (III)

58.32(2) The building, grounds, and other buildings shall be maintained in a clean, orderly condition and in good repair. (III)

58.32(3) Draperies and furniture shall be clean and in good repair. (III)

58.32(4) Cracks in plaster, peeling wallpaper or paint, and tears or splits in floor coverings shall be promptly repaired or replaced in a professional manner. (III)

58.32(5) The electrical systems, including appliances, cords, and switches, shall be maintained to guarantee safe functioning and comply with the national electrical code. (III)

58.32(6) All plumbing fixtures shall function properly and comply with the state plumbing code. (III)

58.32(7) Yearly inspections of the heating and cooling systems shall be made to guarantee safe operation. Documentation of these inspections shall be available for review. (III)

58.32(8) The building, grounds, and other buildings shall be kept free of breeding areas for flies, other insects, and rodents. (III)

58.32(9) The facility shall be kept free of flies, other insects, and rodents. (III)

58.32(10) Maintenance personnel.

a. A written program shall be established for the orientation of maintenance personnel. (III)

b. Maintenance personnel shall:

(1) Follow established written maintenance programs; (III)

(2) Be provided with appropriate, well-constructed, and properly maintained equipment. (III)

470—58.33(135C) Laundry.

58.33(1) All soiled linens shall be collected in and transported to the laundry room in closed, leakproof laundry bags or covered, impermeable containers. (III)

*Objection, see filed rules (ch 58) published IAC Supp. 9/7/77, 10/5/77.

Denture identification equipment

Tracheotomy care equipment

470—58.39(135C) Residents' rights in general.

58.39(1) Each facility shall ensure that policies and procedures are written and implemented which include, at a minimum, all of the following provisions (subrules 58.39(2) to 58.39(6)) and which govern all areas of service provided by the facility. These policies and procedures shall be available to staff, residents, their families or legal representatives and the public and shall be reviewed annually. (II)

58.39(2) Policies and procedures regarding the admission, transfer, and discharge of residents shall assure that:

a. Only those persons are accepted whose needs can be met by the facility directly or in cooperation with community resources or other providers of care with which it is affiliated or has contracts. (II)

b. As changes occur in residents' physical or mental condition, necessitating services or care which cannot be adequately provided by the facility, they are transferred promptly to other appropriate facilities. (II)

58.39(3) Policies and procedures regarding the use of chemical and physical restraints shall define the use of said restraints and identify the individual who may authorize the application of physical restraints in emergencies, and describe the mechanism for monitoring and controlling their use. (II)

58.39(4) Policies and procedures shall include a method for submitting complaints and recommendations by residents or their responsible party and for assuring a response and disposition by the facility. (II)

58.39(5) Policies and procedures shall include provisions governing access to, duplication of, and dissemination of information from the residents' records. (II)

58.39(6) Policies and procedures shall include a provision that each resident shall be fully informed of his/her rights and responsibilities as a resident and of all rules governing resident conduct and responsibilities. This information must be provided upon admission, or in the case of residents already in the facility, upon the facility's adoption or amendment of residents' rights policies. (II)

a. The facility shall make known to residents what they may expect from the facility and its staff, and what is expected from them. The facility shall communicate these expectations during the period of not more than two weeks before or five days after admission. The communication shall be in writing, e.g., in a separate handout or brochure describing the facility, and interpreted verbally, e.g., as part of a preadmission interview, resident counseling, or in individual or group orientation sessions following admission. (II)

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

c. A statement shall be signed by the resident, or his/her responsible party, indicating an understanding of these rights and responsibilities, and shall be maintained in the record. The statement shall be signed no later than five days after admission, and a copy of the signed statement shall be given to the resident or responsible party, if applicable. In the case of a mentally retarded resident, the signature shall be witnessed by a person not associated with or employed by the facility. The witness may be a parent, guardian, Medicaid agency representative, etc. (II)

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

e. All residents shall be advised within thirty days following changes made in the statement of residents' rights and responsibilities. Appropriate means shall be utilized to inform non-English speaking, deaf, or blind residents of such changes. (II)

58.39(7) Each resident or responsible party shall be fully informed in a contract as required in rule 58.13(135C), prior to or at the time of admission and during his/her stay, of services available in the facility, and of related charges including any charges for services not covered under the Title XIX program or not covered by the facility's basic per diem rate. (II)

58.39(8) Each resident or responsible party shall be fully informed by a physician of his/her health and medical condition unless medically contraindicated (as documented by a physician in his/her resident record). Each resident shall be afforded the opportunity to participate in the planning of his/her total care and medical treatment, which may include, but is not limited to, nursing care, nutritional care, rehabilitation, restorative therapies, activities, and social work services. Each resident only participates in experimental research conducted under the department of health and human services protection from research risks policy and then only upon his/her informed written consent. Each resident has the right to refuse treatment except as provided by chapter 229, The code. In the case of a confused or mentally retarded individual, the responsible party shall be informed by the physician of the resident's medical condition and be afforded the opportunity to participate in the planning of his/her total care and medical treatment, to be informed of the medical condition, and to refuse to participate in experimental research. (II)

a. The requirement that residents shall be informed of their conditions, involved in the planning of their care, and advised of any significant changes in either, shall be communicated to every physician responsible for the medical care of residents in the facility. (II)

b. The administrator or his/her designee shall be responsible for working with attending physicians in the implementation of this requirement. (II)

c. If the physician determines or in the case of a confused or mentally retarded resident the responsible party determines that informing the resident of his/her condition is contraindicated, this decision and reasons for it shall be documented in the resident's record by the physician. (II)

d. The resident's plan of care shall be based on the physician's orders. It shall be developed upon admission by appropriate facility staff and shall include participation by the resident if capable. Residents shall be advised of alternative courses of care and treatment and their consequences when such alternatives are available. The resident's preference about alternatives shall be elicited and honored if feasible.

e. Any clinical investigation involving residents must be under the sponsorship of an institution with a human subjects review board functioning in accordance with the requirements of Public Law 93-348, as implemented by Part 46 of Title 45 of the Code of Federal Regulations, as amended to December 1, 1981 (45 CFR 46). A resident being considered for participation in experimental research must be fully informed of the nature of the experiment, e.g., medication, treatment, and understand the possible consequences of participating or not participating. The resident's (or responsible party's) written informed consent must be received prior to participation. (II)

470—58.40(135C) Involuntary discharge or transfer.

58.40(1) A facility shall not involuntarily discharge or transfer a resident from a facility except: For medical reasons; for the resident's welfare or that of other residents; for nonpayment for the resident's stay (as contained in the contract for the resident's stay), except as prohibited by Title XIX of the Social Security Act, 42 U.S.C. 1396 to 1396k by reason of action pursuant to chapter 229, The Code; by reason of negative action by the Iowa department of social services; and by reason of negative action by the professional standards review organization. A resident shall not be transferred or discharged solely because the cost of the resident's care is being paid under chapter 249A, The Code, or because the resident's source of payment is changing from private support to payment under chapter 249A. (I, II)

a. "Medical reasons" for transfer or discharge are based on the resident's needs and are determined and documented in the resident's record by the attending physician. Transfer or discharge may be required to provide a different level of care. In the case of transfer or discharge for the reason that the resident's condition has improved such that he or she no

longer needs the level of care being provided by the facility, the determination that such medical reason exists is the exclusive province of the professional standards review organization or utilization review process in effect for residents whose care is paid in full or in part by Title XIX. (II)

b. "Welfare" of a resident or that of other residents refers to their social, emotional, or physical well-being. A resident might be transferred or discharged because his/her behavior poses a continuing threat to himself/herself (e.g., suicidal) or to the well-being of other residents or staff (e.g., his/her behavior is incompatible with their needs and rights). Evidence that the resident's continued presence in the facility would adversely affect their own welfare or that of other residents shall be made by the administrator or his/her designee and shall be in writing and shall include specific information to support this determination.

c. Involuntary transfer or discharge of a resident from a facility shall be preceded by a written notice to the resident or responsible party at least thirty days in advance of the proposed transfer or discharge. The thirty-day requirement shall not apply in any of the following instances:

(1) If an emergency transfer or discharge is mandated by the resident's health care needs and is in accord with the written orders and medical justification of the attending physician. Emergency transfers or discharges may also be mandated to protect the health, safety, or well-being of other residents and staff from the resident being transferred. (II)

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

(3) If the discharge or transfer is the result of a final, nonappealable decision by the department of social services or the professional standards review organization.

d. The notice required by paragraph "c" shall contain all of the following information:

(1) The stated reason for the proposed transfer or discharge. (II)

(2) The effective date of the proposed transfer or discharge. (II)

(3) A statement in not less than twelve-point type (elite), which reads: "You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa State Department of Health (hereinafter referred to as "Department") within seven days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than fourteen days after receipt of your request by the Department and you will not be transferred prior to a final decision. Provision may be made for extension of the fourteen day requirement upon request to the Health Department designee in emergency circumstances. If you lose the hearing, you will not be transferred before the expiration of thirty days following receipt of the original notice of the discharge or transfer, or no sooner than five days following final decision of such hearing. To request a hearing or receive further information, call the Department at (515) 281-4130 or you may write to the Department to the attention of: Chief, Division of Health Facilities, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319". (II)

e. A request for a hearing made under paragraph "d"(3) shall stay a transfer or discharge pending a hearing or appeal decision. (II)

f. The hearing shall be held in the facility and the date and time of the hearing shall be determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident, responsible party, and Iowa commission on aging long term care ombudsman of record not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident or responsible party, that they have a right to appear at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. The Iowa commission on aging long term care ombudsman shall have the right to appear at the hearing.

g. The hearing shall be heard by a health department designee pursuant to chapter 17A, The Code. (The hearing shall be public unless the resident or his/her representative requests in writing that it be closed.) The licensee or his/her designee shall have the opportunity to present to the representative of the department any oral testimony or written materials to show by a preponderance of the evidence just cause why a transfer or discharge may be made. The resident and responsible party shall also have an opportunity to present to the representative of the department any oral testimony or written material to show just cause why a transfer or discharge should not be made. In a determination as to whether a transfer or discharge is authorized, the burden of proof rests on the party requesting the transfer or discharge.

h. Based upon all testimony and materials submitted to the representative of the department, the representative shall issue, in accordance with chapter 17A, The Code, contested hearings, a written findings of fact, conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, responsible party, and commission on aging long term care ombudsman within ten working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

Appeals from any decision or order of the representative must be made in writing and mailed to the commissioner of public health by certified mail return receipt requested or by personal service within ten days after the mailing of the decision or order to the aggrieved party. A party who has exhausted all adequate administrative remedies and is aggrieved by the final action of the department may petition for judicial review in the manner provided by chapter 17A, The Code.

i. A copy of the notice required by paragraph "c" shall be personally delivered to the resident and a copy placed in the resident's record. A copy shall also be transmitted to the department, the resident's responsible party, physician, the person or agency responsible for the resident's placement, maintenance, and care in the facility, and the commission on aging long term care ombudsman.

j. If the basis for an involuntary transfer or discharge is the result of a negative action by the Iowa department of social services or the professional standards review organization (Iowa foundation for medical care), appeals shall be filed with those agencies as appropriate. Continued payment shall be consistent with rules of those agencies.

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

l. The involuntary transfer or discharge shall be discussed with the resident, the resident's responsible party, and the person or agency responsible for the resident's placement, maintenance, and care in the facility within forty-eight hours after notice of discharge has been received. The explanation and discussion of the reasons for involuntary transfer or discharge shall be given by the facility administrator or other appropriate facility representative as the administrator's designee. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions and made part of the resident's record. (II)

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

(1) Counseling shall be provided by a qualified individual who meets one of the following criteria:

1. Has a bachelor's or master's degree in social work from an accredited college. (II)
2. Is a graduate of an accredited four-year college and has had at least one year of full-time paid employment in a social work capacity with a public or private agency. (II)
3. Has been employed in a social work capacity for a minimum of four years in a public or private agency. (II)

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

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

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

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

n. In the case of an emergency transfer or discharge as outlined in 58.40(1)“c”(1), the resident must still be given a written notice prior to or within forty-eight hours following transfer or discharge. A copy of this notice must be placed in the resident's file and it must contain all the information required by 58.40(1)“d”(1) and (2). In addition, the notice must contain a statement in not less than twelve-point type (elite), which reads: “You have a right to appeal the facility's decision to transfer or discharge you on an emergency basis. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa State Department of Health within seven days after receiving this notice. If you request a hearing, it will be held no later than fourteen days after receipt of your request by the department. You may be transferred or discharged before the hearing is held or before a final decision is rendered. If you win the hearing, you have the right to be transferred back into the facility. To request a hearing or receive further information, call the Department at (515) 281-4130 or you may write to the Department to the attention of: Chief, Division of Health Facilities, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319”. A hearing requested pursuant to this subrule shall be held in accordance with paragraphs “f”, “g”, and “h”. (II)

o. Residents shall not have the right to a hearing to contest an involuntary discharge or transfer resulting from the revocation of the facility's license by the Department of Health. In the case of a facility voluntarily closing, a period of thirty days must be allowed for an orderly transfer of residents to other facilities.

58.40(2) Intrafacility transfer:

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

(1) Incompatibility with or disturbing to other roommates, as documented in the resident's record.

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

(3) For medical, nursing or psychosocial reasons, as documented in the resident's record, as judged by the attending physician, nurse or social worker in the case of a facility which groups residents by medical, nursing or psychosocial needs.

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

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

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

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

(1) Change from private pay status to Title XIX, except as outlined in paragraph “a”(5). (II)

(2) As punishment or behavior modification (except as specified in paragraph “a”(1)). (II)

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

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

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

470—58.41(135C) Residents' rights. Each resident shall be encouraged and assisted throughout his/her period of stay, to exercise his/her rights as a resident and as a citizen and may voice grievances and recommend changes in policies and services to administrative staff or to outside representatives of his/her choice, free from interference, coercion, discrimination, or reprisal. (II)

58.41(1) The facility shall provide ongoing opportunities for residents to be aware of and to exercise their rights as residents. Residents shall be kept informed of issues or pending decisions of the facility that affect them and their views shall be solicited prior to action. (II)

58.41(2) The facility shall implement a written procedure for registering and resolving grievances and recommendations by residents or their responsible party. The procedure shall ensure protection of the resident from any form of reprisal or intimidation. The written procedure shall include:

- a.* Designation of an employee responsible for handling grievances and recommendations. (II)
- b.* A method of investigating and assessing the validity of a grievance or recommendation. (II)
- c.* Methods of resolving grievances. (II)
- d.* Methods of recording grievances and actions taken. (II)

58.41(3) The facility shall post in a prominent area the name, phone number, and address of the ombudsman, survey agency, local law enforcement agency, care review committee members, the text of section 135C.46, The Code, to provide to residents a further course of redress. (II)

470—58.42(135C) Financial affairs—management. Each resident, who has not been assigned a guardian or conservator by the court, may manage his/her personal financial affairs, and to the extent, under written authorization by the resident that the facility assists in management, the management shall be carried out in accordance with section 135C.24, The Code. (II)

58.42(1) The facility shall maintain a written account of all residents' funds received by or deposited with the facility. (II)

58.42(2) An employee shall be designated in writing to be responsible for resident accounts. (II)

58.42(3) The facility, shall keep on deposit personal funds over which the resident has control in accordance with section 135C.24(2). Should the resident request these funds, they shall be given to him/her on request with receipts maintained by the facility and a copy to the resident. In the case of a confused or mentally retarded resident, the resident's responsible party shall designate a method of disbursing their funds. (II)

58.42(4) If the facility makes financial transactions on a resident's behalf, the resident must receive or acknowledge that he/she has seen an itemized accounting of disbursements and current balances at least quarterly. A copy of this statement shall be maintained in the resident's financial or business record. (II)

470—58.43(135C) Resident abuse prohibited. Each resident shall receive kind and considerate care at all times and shall be free from mental and physical abuse. Each resident shall be free from chemical and physical restraints except as follows: When authorized in writing by a physician for a specified period of time; when necessary in an emergency to protect the resident from injury to himself/herself or to others, in which case restraints may be authorized by designated professional personnel who promptly report the action taken to the

physician; and in the case of a mentally retarded individual when ordered in writing by a physician and authorized by a designated qualified mental retardation professional for use during behavior modification sessions. Mechanical supports used in normative situations to achieve proper body position and balance shall not be credited to be a restraint. (II)

58.43(1) Mental abuse includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation. (II)

58.43(2) Physical abuse includes, but is not limited to, corporal punishment and the use of restraints as punishment. (II)

58.43(3) Drugs such as tranquilizers may not be used as chemical restraints to limit or control resident behavior for the convenience of staff. (II)

58.43(4) Physicians' orders are required to utilize all types of physical restraints and shall be renewed at least quarterly. (II) Physical restraints are defined as the following:

Type I—the equipment used to promote the safety of the individual but is not applied directly to their person. Examples: Divided doors and totally enclosed cribs.

Type II—the application of a device to the body to promote safety of the individual. Examples: Vest devices, soft-tie devices, hand socks, geriatric chairs.

Type III—the application of a device to any part of the body which will inhibit the movement of that part of the body only. Examples: Wrist, ankle or leg restraints and waist straps.

58.43(5) Physical restraints are not to be used to limit resident mobility for the convenience of staff and must comply with life safety requirements. If a resident's behavior is such that it may result in injury to himself/herself or others and any form of physical restraint is utilized, it should be in conjunction with a treatment procedure(s) designed to modify the behavioral problems for which the resident is restrained, or as a last resort, after failure of attempted therapy. (I, II).

58.43(6) Each time a Type II or III restraint is used documentation on the nurse's progress record shall be made which includes type of restraint and reasons for the restraint and length of time resident was restrained. The documentation of the use of Type III restraint shall also include the time of position change. (II)

58.43(7) Each facility shall implement written policies and procedures governing the use of restraints which clearly delineate at least the following:

a. Physicians' orders shall indicate the specific reasons for the use of restraints. (II)

b. Their use is temporary and the resident will not be restrained for an indefinite amount of time. (I, II)

c. A qualified nurse shall make the decision for the use of a Type II or Type III restraint for which there shall be a physician's order. (II)

d. A resident placed in a Type II or III restraint shall be checked at least every thirty minutes by appropriately trained staff. This shall be documented on a check sheet. No form of restraint shall be used or applied in such a manner as to cause injury or the potential for injury and provide a minimum of discomfort to resident restrained. (I, II)

e. Reorders are issued only after the attending physician reviews the resident's condition. (II)

f. Their use is not employed as punishment, for the convenience of the staff, or as a substitute for supervision or program. (I, II)

g. The opportunity for motion and exercise shall be provided for a period of not less than ten minutes during each two hours in which Type II and Type III restraints are employed, except when resident is sleeping. However, when resident awakens, this shall be provided. This shall be documented each time. A check sheet may serve this purpose. (I, II)

h. Locked restraints or leather restraints shall not be permitted except in life threatening situations. Straight jackets and secluding residents behind locked doors shall not be employed. (I, II)

i. Nursing assessment of the resident's need for continued application of a Type II restraint shall be made every twelve hours and documented on the nurse's progress record. Documentation shall include the type of restraint, reason for the restraint and the circumstances. Nursing

assessment of the resident's need for continued application of either a Type I or Type II restraint and nursing evaluation of the resident's physical and mental condition shall be made every seven days and documented on the nurse's progress record. (II)

j. A divided door equipped with a securing device that may be readily opened by personnel shall be considered an appropriate means of temporarily confining a resident in his or her room. (II)

k. Divided doors shall be of the type that when the upper half is closed the lower section shall close. (II)

l. Methods of restraint shall permit rapid removal of the resident in the event of fire or other emergency. (I, II)

m. The facility shall provide orientation and ongoing education programs in the proper use of restraints.

58.43(8) In the case of a mentally retarded individual who participates in a behavior modification program involving use of restraints or aversive stimuli, the program shall be conducted only with the informed consent of his/her parent or responsible party. Where restraints are employed, an individualized program shall be developed by the interdisciplinary team with specific methodologies for monitoring its progress. (II)

a. The resident's responsible party shall receive a written account of the proposed plan of the use of restraints or aversive stimuli and have an opportunity to discuss the proposal with a representative(s) of the treatment team. (II)

b. The responsible party must consent in writing prior to the use of the procedure. Consent may also be withdrawn in writing. (II)

470—58.44(135C) Resident records. Each resident shall be ensured confidential treatment of all information contained in his/her records, including information contained in an automatic data bank. His/her written consent shall be required for the release of information to persons not otherwise authorized under law to receive it. (II)

58.44(1) The facility shall limit access to any medical records to staff and consultants providing professional service to the resident. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

58.44(2) Similar procedures shall safeguard the confidentiality of residents' personal records, e.g., financial records and social services records. Only those personnel concerned with the financial affairs of the residents may have access to the financial records. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

58.44(3) The resident, or his/her responsible party, shall be entitled to examine all information contained in his/her record and shall have the right to secure full copies of the record at reasonable cost upon request, unless the physician determines the disclosure of the record or section thereof is contraindicated in which case this information will be deleted prior to making the record available to the resident or responsible party. This determination and the reasons for it must be documented in the resident's record. (II)

470—58.45(135C) Dignity preserved. The resident shall be treated with consideration, respect, and full recognition of his/her dignity and individuality, including privacy in treatment and in care for his/her personal needs. (II)

58.45(1) Staff shall display respect for residents when speaking with, caring for, or talking about them, as constant affirmation of their individuality and dignity as human beings. (II)

58.45(2) Schedules of daily activities shall allow maximum flexibility for residents to exercise choice about what they will do and when they will do it. Residents' individual preferences regarding such things as menus, clothing, religious activities, friendships, activity programs, entertainment, sleeping and eating, also times to retire at night and arise in the morning shall be elicited and considered by the facility. (II)

58.45(3) Residents shall be examined and treated in a manner that maintains the privacy of their bodies. A closed door or a drawn curtain shall shield the resident from passers-by. Peo-

ple not involved in the care of the residents shall not be present without the resident's consent while he/she is being examined or treated. (II)

58.45(4) Privacy of a resident's body also shall be maintained during toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance. (II)

58.45(5) Staff shall knock and be acknowledged before entering a resident's room unless the resident is not capable of a response. This shall not apply in emergency conditions. (II)

470—58.46(135C) Resident work. No resident may be required to perform services for the facility, except as provided by sections 219.14 and 253.5, The Code. (II)

58.46(1) Residents may not be used to provide a source of labor for the facility against their will. Physician's approval is required for all work programs. (I, II)

58.46(2) If the plan of care requires activities for therapeutic or training reasons, the plan for these activities shall be professionally developed and implemented. Therapeutic or training goals must be clearly stated and measurable and the plan shall be time limited and reviewed at least quarterly. (II)

58.46(3) Residents who perform work for the facility must receive remuneration unless the work is part of their approved training program. Persons on the resident census performing work shall not be used to replace paid employees in fulfilling staffing requirements. (II)

470—58.47(135C) Communications. Each resident may communicate, associate, and meet privately with persons of his/her choice, unless to do so would infringe upon the rights of other residents, and may send and receive his/her personal mail unopened. (II)

58.47(1) Subject to reasonable scheduling restrictions, visiting policies and procedures shall permit residents to receive visits from anyone they wish. Visiting hours shall be posted. (II)

58.47(2) Reasonable, regular visiting hours shall not be less than twelve hours per day and shall take into consideration the special circumstances of each visitor. A particular visitor(s) may be restricted by the facility for one of the following reasons:

a. The resident refuses to see the visitor(s). (II)

b. The resident's physician documents specific reasons why such a visit would be harmful to the resident's health. (II)

c. The visitor's behavior is unreasonably disruptive to the functioning of the facility (this judgment must be made by the administrator and the reasons shall be documented and kept on file). (II)

58.47(3) Decisions to restrict a visitor are reviewed and re-evaluated: Each time the medical orders are reviewed by the physician; at least quarterly by the facility's staff; or at the resident's request. (II)

58.47(4) Space shall be provided for residents to receive visitors in reasonable comfort and privacy. (II)

58.47(5) Telephones consistent with ANSI standards (405.1134(c)) shall be available and accessible for residents to make and receive calls with privacy. Residents who need help shall be assisted in using the phone. (II)

58.47(6) Arrangements shall be made to provide assistance to residents who require help in reading or sending mail. (II)

58.47(7) Residents shall be permitted to leave the facility and environs at reasonable times unless there are justifiable reasons established in writing by the attending physician, qualified mental retardation professional or facility administrator for refusing permission. (II)

58.47(8) Residents shall not have their personal lives regulated beyond reasonable adherence to meal schedules, bedtime hours, and other written policies which may be necessary for the orderly management of the facility and as required by these rules. However, residents shall be encouraged to participate in recreational programs. (II)

470—58.48(135C) Resident activities. Each resident may participate in activities of social, religious, and community groups at his/her discretion unless contraindicated for reasons

documented by the attending physician or qualified mental retardation professional as appropriate in his/her resident record. (II)

58.48(1) Residents who wish to meet with or participate in activities of social, religious, or other community groups in or outside of the facility shall be informed, encouraged, and assisted to do so. (II)

58.48(2) All residents shall have the freedom to refuse to participate in these activities. (II)

470—58.49(135C) Resident property. Each resident may retain and use his/her personal clothing and possessions as space permits and provided such use is not otherwise prohibited by these rules. (II)

58.49(1) Residents shall be permitted to keep reasonable amounts of personal clothing and possessions for their use while in the facility. The personal property shall be kept in a safe location which is convenient to the resident. (II)

58.49(2) Residents shall be advised, prior to or at the time of admission, of the kinds and amounts of clothing and possessions permitted for personal use, and whether the facility will accept responsibility for maintaining these items, e.g., cleaning and laundry. (II)

58.49(3) Any personal clothing or possessions retained by the facility for the resident during his/her stay shall be identified and recorded on admission and a record placed on the resident's chart. The facility shall be responsible for secure storage of the items, and they shall be returned to the resident promptly upon request or upon discharge from the facility. (II)

470—58.50(135C) Family visits. Each resident, if married, shall be ensured privacy for visits by his/her spouse; if both are residents in the facility, they shall be permitted to share a room if available. (II)

58.50(1) The facility shall provide for needed privacy in visits between spouses. (II)

58.50(2) Spouses who are residents in the same facility shall be permitted to share a room, if available, unless one of their attending physicians documents in the medical record those specific reasons why an arrangement would have an adverse effect on the health of the resident. (II)

58.50(3) Family members shall be permitted to share a room, if available, if requested by both parties, unless one of their attending physicians documents in the medical record those specific reasons why such an agreement would have an adverse effect on the health of the resident. (II)

470—58.51(135C) Choice of physician. Each resident shall be permitted free choice of a physician and a pharmacy, if accessible. The facility may require the pharmacy selected to utilize a drug distribution system compatible with the system currently used by the facility. (II)

470—58.52(135C) Incompetent resident.

58.52(1) Each facility shall provide that all rights and responsibilities of the resident devolve to the resident's responsible party, when a resident is adjudicated incompetent in accordance with state law, or when the attending physician or qualified mental retardation professional has documented in the resident's record the specific impairment that has rendered the resident incapable of understanding these rights. The resident's specific impairment shall be re-evaluated annually by the attending physician or qualified mental retardation professional. (II)

58.52(2) The fact that a resident has been adjudicated incompetent does not absolve the facility from advising the resident of these rights to the extent the resident is able to understand them. The facility shall also advise the responsible party, if any, and acquire a statement indicating an understanding of residents' rights. (II)

This rule is intended to implement section 135C.14, The Code, as amended by the Acts of the Sixty-ninth General Assembly, 1981 Regular Session, Chapter 60.

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CHAPTER 59 SKILLED NURSING FACILITIES

470—59.1(135C) Definitions. For the purpose of these rules, the following terms shall have the meaning indicated in this chapter. The definitions set out in section 135C.1 of the Code shall be considered to be incorporated verbatim in the rules. The use of the words “shall” and “must” indicate those standards are mandatory. The use of the words “should” and “could” indicate those standards are recommended.

59.1(1) “Accommodation” means the provision of lodging, including sleeping, dining, and living areas.

59.1(2) “Administrator” means a person licensed pursuant to chapter 147 of the Code, who administers, manages, supervises, and is in general administrative charge of a skilled nursing facility, whether or not such individual has an ownership interest in such facility, and whether or not the functions and duties are shared with one or more individuals.

59.1(3) “Alcoholic” means a person in a state of dependency resulting from excessive or prolonged consumption of alcoholic beverages as defined in chapter 125.2 of the Code.

59.1(4) “Ambulatory” means the condition of a person who immediately and without aid of another is physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

59.1(5) “Basement” means that part of a building where the finish floor is more than thirty inches below the finish grade of the building.

59.1(6) “Board” means the regular provision of meals.

59.1(7) “Chairfast” means capable of maintaining a sitting position but lacking the capacity of bearing own weight, even with the aid of a mechanical device or another individual.

59.1(8) “Communicable disease” means a disease caused by the presence of viruses or microbial agents within a person’s body, which agents may be transmitted either directly or indirectly to other persons.

59.1(9) “Department” means the state department of health.

59.1(10) “Distinct part” means a clearly identifiable area or section within a health care facility, consisting of at least a residential unit, wing, floor, or building containing contiguous rooms.

59.1(11) “Drug addiction” means a state of dependency, as medically determined, resulting from excessive or prolonged use of drugs as defined in chapter 204 of the Code.

59.1(12) “Medication” means any drug including over-the-counter substances ordered and administered under the direction of the physician.

59.1(13) *"Nonambulatory"* means the condition of a person who immediately and without aid of another is not physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

59.1(14) *"Personal care"* means assistance with the activities of daily living which the recipient can provide for himself or herself only with difficulty. Examples are help in getting in and out of bed, assistance with personal hygiene and bathing, help with dressing and feeding, and supervision over medications which can be self-administered.

59.1(15) *"Program of care"* means all services being provided for a resident in a health care facility.

59.1(16) *"Qualified mental retardation professional"* means a psychologist, physician, registered nurse, educator, social worker, physical or occupational therapist, speech therapist or audiologist who meets the educational requirements for the profession, as required in the State of Iowa, and having one year experience working with the mentally retarded.

59.1(17) *"Qualified nurse"* means a registered nurse or licensed practical nurse, as defined in chapter 152, The Code.

59.1(18) *"Rate"* means that daily fee charged for all residents equally and shall include the cost of all minimum services required in these rules and regulations.

59.1(19) *"Responsible party"* means the person who signs or cosigns the admission agreement required in 59.15 or the resident's guardian or conservator if one has been appointed. In the event that a resident has neither a guardian, conservator nor person who signed or co-signed the resident's admission agreement, the term "responsible party" shall include the resident's sponsoring agency, e.g., the department of social services, Veterans Administration, religious groups, fraternal organizations, or foundations that assume responsibility and advocate for their client patients and pay for their health care.

59.1(20) *"Restraints"* means the measures taken to control a resident's physical activity for his or her own protection or for the protection of others.

470—59.2(135C) Variances. Variances from these rules may be granted by the commissioner for good and sufficient reason when the need for variance has been established; no danger to the health, safety, or welfare of any resident results; alternate means are employed or compensating circumstances exist and the variance will apply only to an individual skilled nursing facility. Variances will be reviewed at the discretion of the commissioner.

59.2(1) To request a variance, the licensee must:

- a. Apply for variance in writing on a form provided by the department;
- b. Cite the rule or rules from which a variance is desired;
- c. State why compliance with the rule or rules cannot be accomplished;
- d. Explain alternate arrangements or compensating circumstances which justify the variance;
- e. Demonstrate that the requested variance will not endanger the health, safety, or welfare of any resident.

59.2(2) Upon receipt of a request for variance, the commissioner will:

- a. Examine the rule from which variance is requested to determine that the request is necessary and reasonable;
- b. If the request meets the above criteria, evaluate the alternate arrangements or compensating circumstances against the requirement of the rules;
- c. Examine the effect of the requested variance on the health, safety, or welfare of the residents;
- d. Consult with the applicant if additional information is required.

59.2(3) Based upon these studies, approval of the variance will be either granted or denied within forty-five days of receipt.

470—59.3(135C) Application for licensure.

59.3(1) Initial application and licensing. In order to obtain an initial skilled nursing facility license, for a skilled nursing facility which is currently licensed, the applicant must:

- a. Meet all of the rules, regulations, and standards contained in chapters 59(135C) and 61(135C) of the Iowa Administrative Code.

Applicable exceptions found in rule 61.2 shall apply based on the construction date of the facility;

- b. Submit a letter of intent and a written résumé of the resident care program and other services provided for departmental review and approval;
- c. Make application at least thirty days prior to the change of ownership of the facility on forms provided by the department;

d. Submit a floor plan of each floor of the skilled nursing facility, drawn on 8½ x 11 inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which room will be put and window and door location;

e. Submit a photograph of the front and side elevation of the skilled nursing facility;

f. Submit the statutory fee for a skilled nursing facility license;

g. Comply with all other local statutes and ordinance in existence at the time of licensure;

h. Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

59.3(2) In order to obtain an initial skilled nursing facility license for a facility not currently licensed as a skilled nursing facility, the applicant must:

a. Meet all of the rules, regulations, and standards contained in chapters 59(135C) and 61(135C) of the Iowa Administrative Code. Exceptions noted in subrule 61.1(2) shall not apply;

b. Submit a letter of intent and a written resume of the resident care program and other services provided for departmental review and approval;

c. Make application at least thirty days prior to the proposed opening date of the facility on forms provided by the department;

d. Submit a floor plan of each floor of the skilled nursing facility, drawn on 8½ x 11 inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which room will be put and window and door locations;

e. Submit a photograph of the front and side elevation of the skilled nursing facility;

f. Submit the statutory fee for a skilled nursing facility license;

g. Comply with all other local statutes and ordinances in existence at the time of licensure;

h. Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

59.3(3) *Renewal application.* In order to obtain a renewal of the skilled nursing facility license, the applicant must:

a. Submit the completed application form thirty days prior to annual license renewal date of the skilled nursing facility license;

b. There shall be written effective procedures in aseptic and isolation techniques followed by all personnel. These procedures shall be reviewed and revised annually for effectiveness and improvement. (III)

c. The committee shall meet at least quarterly, submit reports to the administrator and maintain minutes in sufficient detail to document its proceedings and actions. (III)

d. The committee shall monitor the health and environmental aspects of the facility. (III)

470—59.13(135C) Personnel.

59.13(1) *General qualifications.*

a. No person with a current record of habitual alcohol intoxication or addiction to the use of drugs shall serve in a managerial role of a skilled nursing facility. (II)

b. No person under the influence of alcohol or intoxicating drugs shall be permitted to provide services in a skilled nursing facility. (II)

c. No person with a communicable disease shall be allowed to provide services in a skilled nursing facility. (II, III)

d. Return to duty by personnel who have been diagnosed with a communicable disease shall be subject to a physician's written approval. (III)

e. Individuals with either physical or mental disabilities may be employed for specific duties, but only if that disability is unrelated to that individual's ability to perform the duties of the job. (III)

f. Persons employed in all departments, except the nursing department, of a skilled nursing facility shall be qualified through formal training or through prior experience to perform the type of work for which they have been employed. Prior experience means at least two hundred forty hours of full-time employment in a field related to their duties. Persons may be hired in laundry, housekeeping, activities, and dietary without experience or training if the facility institutes a formal inservice training program to fit the job descriptions in question and documents such as having taken place within thirty days after the initial hiring of such untrained employees. (III)*

g. Rescinded, effective 7/14/82.

h. Nurse's aides, orderlies, or attendants in a skilled nursing facility shall have completed or be currently enrolled in a state-approved, 60-hour nurse's aide educational program. This program may be provided by the facility or an academic institution. All personnel administering medications must have completed the state-approved training program in medication administration. (III)

i. There shall be an organized on-going in-service educational and training program planned in advance for all personnel in all departments. (II, III) This training shall include at least:

- (1) Prevention and control of infections;
- (2) Fire prevention and safety;
- (3) Accident prevention;
- (4) Confidentiality of resident information;
- (5) Preservation of resident dignity.

j. A full-time employee shall be designated responsible for personnel services and for supervision and training of personnel.

59.13(2) *Nursing supervision and staffing.*

a. The health service supervisor shall be a registered nurse employed full-time on the day shift. (II, III)

b. The facility shall provide twenty-four hour service by licensed nurses, including at least one registered nurse on the day tour of duty, seven days a week. (II, III)

c. If the health service supervisor has other institutional responsibilities, a qualified registered nurse shall serve as the supervisor's assistant so there is the equivalent of a full-time health service supervisor on duty. (II, III)

*Emergency, pursuant to §17A.5(2)"b"(2) of the Code.

d. The department may establish on an individual facility basis the numbers and qualifications of the staff required in the facility using as its criteria the services being offered and the needs of the residents. (III)

e. The health service supervisor shall not serve as charge nurse in a facility with an average daily total occupancy of sixty or more residents. (II, III)

f. A waived licensed practical nurse shall not be allowed as a charge nurse on any shift. However, a waived licensed practical nurse may be counted in supplying the additional nursing hours required in facilities larger than fifty beds. (II, III)

g. The minimum hours of professional nursing personnel for residents requiring skilled nursing care shall be 168 hours per week for facilities under fifty beds. For every additional bed over fifty, 2.24 hours of additional nursing per week is required. (II, III)

h. Nonprofessional nursing care staff shall be required in the ratio of 1:28 employee per bed, per week. (II, III)

i. The adequacy of the staffing pattern of the facility will be dependent upon:

- (1) The purpose and objectives of the facility;
- (2) The nonnursing functions performed by nursing personnel;
- (3) The intensity of illness, nursing needs, and degree of dependence of the residents;
- (4) The physical layout of the facility;
- (5) The level of preparation and the turnover rate of the staff.

j. There shall be at least two people who shall be capable of rendering nursing service awake, dressed, and on duty at all times. (II)

470—59.14(135C) Admission, transfer, and discharge.

59.14(1) General admission policies.

a. No resident shall be admitted or retained in a skilled nursing facility who is in need of greater services than the facility can provide. (II, III)

b. No skilled nursing facility shall admit more residents than the number of beds for which it is licensed. (II, III)

c. There shall be no more beds erected than is stipulated on the license. (II, III)

d. There shall be no more beds erected in a room than its size and other characteristics will permit. (II, III)

e. The admission of a resident to a skilled nursing facility shall not give the facility or any employee of the facility the right to manage, use, or dispose of any property of the resident except with the written authorization of the resident or the resident's legal representative. (III)

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

g. A skilled nursing facility shall provide for the safekeeping of personal effects, funds, and other property of its residents. The facility may require that items of exceptional value or which would convey unreasonable responsibilities to the licensee be removed from the premises of the facility for safekeeping. (III)

h. Rescinded, effective 7/14/82.

i. Funds or properties received by the skilled nursing facility belonging to or due a resident, expendable for the resident's account, shall be trust funds; (III)

j. Infants and children under the age of sixteen shall not be admitted to health care facilities for adults unless given prior written approval by the department. A distinct part of a health care facility, segregated from the adult section, may be established based on a program of care submitted by the licensee or applicant which is commensurate with the needs of the residents of the health care facility and has received the department's review and approval. (III)

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

59.14(2) Discharge planning.

a. The facility shall have in operation an organized discharge planning program.

b. The administrator shall designate, in writing, one or more members of the staff to be responsible for discharge planning.

c. The facility shall maintain a written discharge planning procedure which describes:

(1) How the discharge co-ordinator will function;

(2) The time period in which each resident's need for discharge planning is determined;

(3) The maximum time period after which a re-evaluation of each resident's discharge plan is made;

(4) Local resources available to the facility;

(5) Provisions for periodic review and re-evaluation of the discharge planning program.

d. The facility shall, at the time of discharge, provide those responsible for the resident's post discharge care with an appropriate summary of information to ensure the optimal continuity of care.

e. The discharge summary shall include at least:

(1) Current information relative to diagnosis;

(2) Rehabilitation potential;

(3) A summary of the course of prior treatment;

(4) Physician's orders for the immediate care of the resident;

(5) Pertinent social information.

59.14(3) Discharge or transfer.

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

b. Proper arrangements shall be made by the skilled nursing facility for the welfare of the resident prior to the transfer or discharge in the event of an emergency or inability to reach the next of kin or legal representative. (III)

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

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

e. When a resident is transferred or discharged, the appropriate record as set forth in 59.19(2)"k" of these rules will accompany the resident. (II, III)

470—59.15(135C) Contracts. Each contract shall:

59.15(1) State the base rate or scale per day or per month, the services included, and the method of payment; (III)

59.15(2) Contain a complete schedule of all offered services for which a fee may be charged in addition to the base rate. (III) Furthermore, the contract shall:

a. Stipulate that no further additional fees shall be charged for items not contained in complete schedule of services as set forth in subsection 2; (III)

b. State the method of payment of additional charges; (III)

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

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

59.15(3) Contain an itemized list of those services, with the specific fee the resident will be charged and method of payment, as related to his or her current condition, based on the nursing assessment at the time of admission, which is determined in consultation with the administrator; (III)

59.15(4) Include the total fee to be charged initially to the specific resident; (III)

59.15(5) State the conditions whereby the facility may make adjustments to their overall fees for resident care as a result of changing costs. (III) Furthermore, the contract shall provide that the facility shall give:

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

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

59.15(6) State the terms of agreement in regard to refund of all advance payments in the event of transfer, death, voluntary, or involuntary discharge; (III)

59.15(7) State the terms of agreement concerning the holding and charging for a bed in the event of temporary absence of the resident; such terms shall include, at a minimum, the following provisions:

a. If a resident has a temporary absence from a facility for medical treatment, the facility shall ask the resident or responsible party if they wish the bed held open. This shall be documented in the resident's record including the response. Upon request of the resident/responsible party, the facility shall hold the bed open for at least ten days during the resident's absence and the facility shall receive payment for the absent period in accordance with provisions of the contract. (II)

b. If a resident has a temporary absence from a facility for therapeutic reasons as approved by a physician, the facility shall ask the resident or responsible party if they wish the bed held open. This shall be documented in the resident's record including the response. The bed shall be held open at least eighteen days per year and the facility shall receive payment for the absent periods in accordance with the provisions of the contract. The required holding during temporary absences for therapeutic reasons is limited to eighteen days per year. (II)

c. For Title XIX residents the department of social services shall continue funding for the temporary absence as provided under paragraphs "a" and "b" and in accordance with department of social service guidelines.

d. Private pay residents shall have a negotiated rate stated in the signed contract relating to these provisions. (II)

59.15(8) State the conditions under which the involuntary discharge or transfer of a resident would be affected; (III)

59.15(9) State the conditions of voluntary discharge or transfer; (III)

59.15(10) Set forth any other matters deemed appropriate by the parties to the contract. No contract or any provision thereof shall be drawn or construed so as to relieve any health care facility of any requirement or obligation imposed upon it by this chapter or any

standards or rules in force pursuant to this chapter; (III)

59.15(11) Each party shall receive a copy of the signed contract. (III)

470—59.16(135C) Medical director.

59.16(1) The facility shall retain pursuant to a written agreement, a state licensed physician to serve as medical director on a part-time or full-time basis.

59.16(2) The medical director shall be responsible for:

- a. The overall co-ordination of the medical care in the facility;
- b. The development of written bylaws, rules, and regulations;
- c. Liaison with attending physicians to ensure their writing orders promptly upon admission of a resident;
- d. Periodic evaluation of the adequacy and appropriateness of health professional and supportive staff and services;
- e. Surveillance of the health status of the facility's employees;
- f. Reviewing incidents and accidents that occur on the premises to identify hazards to health and safety;
- g. Execution of resident care policies.

470—59.17(135C) Medical (physician) services.

59.17(1) Residents in need of skilled nursing or rehabilitative care are admitted to the facility only upon the recommendation of and remain under the care of a licensed physician. A written order signed by the physician certifying that the individual being admitted requires no greater degree of nursing care than the facility is licensed to provide must be available.

(III)

59.17(2) The resident shall have a physical examination completed within five days prior to admission or forty-eight hours after admission. (III)

59.17(3) The resident shall be visited by the attending physician at least once every thirty days during the first ninety days of residency in the facility. (III)

59.17(4) Subsequent to the ninetieth day following admission the resident may be seen by his or her physician on an alternate schedule. At no time may the schedule exceed sixty days and documentation by the physician in the resident's record must indicate why the resident does not need to be visited on a thirty-day schedule. (III)

59.17(5) Rescinded, effective 7/14/82.

59.17(6) The person in charge shall immediately notify the physician of any accident, injury, or adverse change in the resident's condition. (II, III)

59.17(7) A schedule listing the names and telephone numbers of the physicians shall be posted in each nursing station. (III)

470—59.18(135C) Medical records service.

59.18(1) Overall supervisory responsibility is assigned to a full-time employee of the facility.

59.18(2) There shall be employed sufficient supportive personnel competent to carry out the functions of the medical record service.

59.18(3) If the medical record supervisor is not a qualified medical record practitioner, there shall be consultation provided from a person so qualified.

59.18(4) Residents' medical records shall be indexed according to name of resident and final diagnosis.

470—59.19(135C) Records.

59.19(1) *Resident admission record.* The licensee shall keep a permanent record on all residents admitted to a skilled nursing facility with all entries current, dated, and signed. This shall be a part of the resident clinical record. (III) The admission record form shall include:

- a. Name and previous address of resident; (III)
- b. Birthdate, sex, and marital status of resident; (III)
- c. Church affiliation; (III)
- d. Physician's name, telephone number, and address; (III)
- e. Dentist's name, telephone number, and address; (III)
- f. Name, address, and telephone number of next of kin or legal representative; (III)
- g. Name, address, and telephone number of person to be notified in case of emergency; (III)

h. Mortician's name, telephone number, and address; (III)

i. Pharmacist's name, telephone number, and address. (III)

59.19(2) *Resident clinical record.* There shall be a separate clinical record for each resident admitted to a skilled nursing facility with all entries current, dated, and signed. (III) The resident clinical record shall include:

- a. Admission record; (III)
- b. Admission diagnosis; (III)
- c. Physical examination: The record of the physical examination and medical history shall include resident's name, sex, age, medical history, physical examination, diagnosis, statement of chief complaints, estimation of restoration potential, results of tuberculin skin test or chest X ray, and other diagnostic procedures; (III)
- d. Physician's certification that the resident requires no greater degree of nursing care than the facility is licensed to provide; (III)

e. Physician's orders for medication, treatment, and diet in writing and signed by the physician every thirty days; (III)

f. Progress notes:

(1) Physician shall enter a progress note at the time of each visit; (III)

(2) Other professionals, i.e., dentists, social workers, physical therapists, pharmacists, and others shall enter a progress note at the time of each visit; (III)

g. All laboratory, X-ray, and other diagnostic reports; (III)

h. Nurses notes, signed at the time of entry, to include:

(1) Admitting notes including time and mode of transportation; room assignment; disposition of valuables; symptoms and complaints; general condition; vital signs; and weight; (II, III)

(2) Routine notes including physician's visits; telephone calls to and from the physician; unusual incidents and accidents; change of condition; social interaction; and P.R.N. medications administered including time and reason administered; and resident's reaction; (II, III)

(3) Organized nursing history and assessment of observation of symptoms; (II, III)

(4) Reaction to all treatments and medications; (II, III)

(5) changes in the resident's physical and emotional condition; (II, III)

(6) Description of the nursing care provided; (II, III)

(7) Discharge or transfer notes including time and mode of transportation; resident's general condition; instructions given to resident or legal representative; list of medications and disposition; and completion of transfer form for continuity of care; (II, III)

(8) Death notes including notification of physician and family to include time, disposition of body, resident's personal possessions and medications; and complete and accurate notes of resident's vital signs and symptoms preceding death; (III)

i. Medication record. Medication and treatment record, including all medications, treatments, and special procedures for each resident. (II, III)

j. Death record.

(1) The death record shall include name, age, sex, and race of deceased; date and time of death; physician's name, address, and signature; immediate cause of death; name and address of relative or legal representative notified of death; name, address, and signature of mortician receiving the body. (III)

(2) If the physician does not sign the death record, a copy of the death certificate shall be obtained by the facility as soon as it becomes available and made a part of the resident's medical record retained by the facility; (III)

k. Transfer form:

(1) The transfer form shall include identification data from the admission record, name of transferring institution, name of receiving institution, and date of transfer; (III)

(2) The nurse's report shall include resident attitudes, behavior, interests, functional abilities (activities of daily living), unusual treatments, nursing care, problems, likes and dislikes, nutrition, current medications (when last given), and condition on transfer; (III)

(3) The physician's report shall include reason for transfer, medications, treatment, diet, activities, significant laboratory and X-ray findings, and diagnosis and prognosis; (III)

l. Consultation reports shall indicate services rendered by allied health professionals in the facility or in health-centered agencies such as dentists, physical therapists, podiatrists, oculists, and others. (III)

59.19(3) *Resident personal record.* Personal records may be kept as a separate file by the facility.

a. Personal records may include factual information regarding personal statistics, family and responsible relative resources, financial status, and other confidential information.

b. Personal records shall be accessible to professional staff involved in planning for services to meet the needs of the resident. (III)

c. Upon discharge of the resident, all statistical and financial information pertaining to the resident's stay shall be centralized in the resident's medical record. (III)

d. Personal records shall include a duplicate copy of the contract. (III)

59.19(4) Incident record.

- a. Each skilled nursing facility shall maintain an incident record report and shall have available incident report forms. (III)
- b. Report of incidents shall be in detail on a printed incident report form. (III)
- c. Rescinded, effective 7/14/82.
- d. The report shall cover all accidents where there is apparent injury or where hidden injury may have occurred. (III)
- e. The report shall cover all accidents or unusual occurrences within the facility or on the premises affecting residents, visitors, or employees. (III)
- f. A copy of the incident report shall be kept on file in the facility. (III)
- g. Incidents and accidents to residents and personnel shall be reviewed to identify health and safety hazards.

59.19(5) Retention of records.

- a. Records shall be retained in the facility for five years following termination of services. (III)
- b. Records shall be retained within the facility upon change of ownership. (III)
- c. Rescinded, effective 7/14/82.
- d. When the facility ceases to operate, the resident's record shall be released to the facility to which the resident is transferred. If no transfer occurs, the record shall be released to the individual's physician. (III)

59.19(6) Reports to the department. The licensee shall furnish statistical information concerning the operation of the facility to the department on request. (III)

59.19(7) Personnel record.

- a. An employment record shall be kept for each employee consisting of the following information: Name and address of employee, social security number of employee, date of birth of employee, date of employment, experience and education, name and address of three references, position in the home, date and reason for discharge or resignation. (III)
- b. The personnel records shall be made available for review upon request by the department. (III)

470—59.20(135C) Resident care and personal services.

59.20(1) Beds shall be made daily and adjusted as necessary. A complete change of linen shall be made at least once a week and more often if necessary. (III)

59.20(2) Residents shall receive sufficient supervision so that their personal cleanliness is maintained. (II, III)

59.20(3) Residents shall have clean clothing as needed to present a neat appearance, be free of odors, and to be comfortable. (III)

59.20(4) Rescinded, effective 7/14/82.

59.20(5) Residents shall be encouraged to leave their rooms and make use of the recreational room or living room of the facility. (III)

59.20(6) Residents shall not be required to pass through another's bedroom to reach a bathroom, living room, dining room, corridor, or other common areas of the facility. (III)

59.20(7) Rescinded, effective 7/14/82.

59.20(8) Uncontrollable residents shall be transferred or discharged from the facility in accordance with contract arrangements and requirements of chapter 135C, Code of Iowa. (II, III)

59.20(9) Residents who are not bedfast shall be fully dressed each day to maintain self-esteem and promote a normal life style. (III)

59.20(10) Residents shall be required to bathe at least twice a week. (II, III)

470—59.21(135C) Rescinded, effective 7/14/82.

470—59.22(135C) Resident care plans.

59.22(1) A written resident care plan for each resident is developed upon admission and co-ordinated by nursing service staff in co-operation with all other services. (III)

a. Resident care plan is based on the written assessment of resident needs, and the written assessment is updated regularly to ascertain progress and change. Assessments and changes are reflected in the care plan.

b. Through resident care conferences all professional personnel involved in the care of the resident review and revise the plan as necessary. Such review is written on the resident's record.

c. The plan indicates care to be given and goals to be accomplished and which professional service is responsible for each element of care.

d. The resident care plan is available for use by all personnel caring for the resident.

e. Relevant information from the resident care plan is made available to another institution or agency upon transfer or discharge of the resident.

f. When appropriate, the resident participates in the development and review of his or her plan.

59.22(2) The facility shall provide resident and family education as an integral part of restorative and supportive care. (II, III)

470—59.23(135C) Required nursing services for residents. The program plan for skilled nursing facilities shall have the following nursing services.

59.23(1) Nursing care including activities of daily living:

a. Bathing; (II, III)

b. Daily oral hygiene (denture care); (II, III)

c. Routine shampoo; (II, III)

d. Nail care; (III)

e. Shaving; (III)

f. Daily care and application of prostheses (glasses, hearing aids, glass eyes, limb prosthetics, braces, or other assistive devices); (II, III)

g. Ambulation with equipment if applicable, or transferring, or positioning; (I, II, III)

h. Daily routine range of motion; (II, III)

i. Mobility (assistance with wheelchair, mechanical lift, or other means of locomotion); (I, II, III)

j. Elimination.

(1) Assistance to and from the bathroom and perineal care; (II, III)

(2) Bedpan assistance; (II, III)

(3) Care for incontinent residents; (II, III)

(4) Bowel and bladder training programs including in-dwelling catheter care (i.e., insertion and irrigation), enema and suppository administration, and monitoring and recording of intake and output, including solid waste; (I, II, III)

k. Colostomy care (to be performed only by a registered nurse or licensed practical nurse or by a qualified aide under the direction of a registered nurse or licensed practical nurse); (I, II, III)

l. Ileostomy care (to be performed only by a registered nurse or licensed practical nurse or by a qualified aide under the direction of a registered nurse or licensed practical nurse); (I, II, III)

m. All linens necessary; (III)

n. Nutrition and meal service:

- (1) Regular, therapeutic, modified diets, and snacks; (I, II, III)
- (2) Mealtime preparation of resident; (II, III)
- (3) Assistance to and from meals; (II, III)
- (4) In room meal service or tray service; (II, III)
- (5) Assistance with food preparation and feeding including total feeding if needed; (II, III)
- (6) Assistance with adaptive devices; (II, III)
- (7) Tube feeding (to be performed by a registered nurse or licensed practical nurse only); (I, II, III)
 - o. Promote initiation of self-care for elements of resident care; (II, III)
 - p. Oral suctioning (to be performed only by a registered nurse or licensed practical nurse or by a qualified aide under the direction of a registered nurse or licensed practical nurse); (I, II)
 - q. Tracheotomy care provided by licensed personnel only; (I, II)
 - r. Intravenous feedings administered by registered nurses only; (I, II)
 - s. Blood transfusions administered by registered nurses only; (I, II)
 - t. Subcutaneous fluids administered by licensed personnel only. (I, II)

59.23(2) Medication and treatment:

- a. Administration of all medications as ordered by the physician including oral, instillations, topical, injectable (to be injected by a registered nurse or licensed practical nurse only); (I, II)
- b. Decubitus care; (I, II)
- c. Heat lamp; (II, III)
- d. Clinitest/acetest; (I, II)
- e. Vital signs, blood pressure, and weights; (I, II)
- f. Ambulation and transfer; (II, III)
- g. Provision of restraints; (I, II)
- h. Administration of oxygen (to be performed only by a registered nurse or licensed practical nurse or by a qualified aide under the direction of a registered nurse or licensed practical nurse); (I, II)
- i. Provision of all treatments; (I, II, III)
- j. Provide emergency and arrange medical care, including transportation, in accordance with written policies and procedures of the facility. (I, II, III)

59.23(3) Residents shall be protected against hazards to themselves and others or the environment.

59.23(4) The facility shall provide prompt response from qualified staff for the resident's use of electrically operated nurse call system. (Prompt response being considered as no longer than five minutes).

470—59.24(135C) Responsibilities of health service supervisor. Every skilled nursing facility shall have a full-time health service supervisor who shall:

59.24(1) Develop and maintain nursing service policies and procedures to implement the program of care and make available a nursing procedure manual which shall include all procedures practiced in the facility. (III)

59.24(2) Ensure that the total nursing needs of residents are met by assigning a sufficient number of qualified supervisory and supportive nursing personnel for each tour of duty. (III)

59.24(3) Designate a responsible person to be in charge during the health service supervisor's absence. (III)

59.24(4) Participate in co-ordination of resident services through departmental and appropriate staff committee meetings. (i.e., pharmacy, infection control, resident care policies, and utilization review). (III)

59.24(5) Co-operate with the administrator in planning the staff development program which will upgrade the competence of the personnel. Specific attention shall be given to improving supervisory skills of the charge nurses, and the multidisciplinary approach to resident care. (III)

- c. The program shall include both group and individual activities. (III)
- d. No resident shall be forced to participate in the activity program. (III)
- e. The activity program shall include suitable activities for those residents unable to leave their rooms. (III)
- f. The program shall be incorporated into the overall health care plan and shall be designed to meet the goals as written in the plan.

59.31(2) Co-ordination of activities program.

- a. Each skilled nursing facility shall employ a person to direct the activities program. (III)
- b.*† Staffing for the activity program shall be provided on the minimum basis of thirty-five minutes per licensed bed per week. (II,III)
- c. The activity co-ordinator shall have completed the activity co-ordinators' orientation course offered through the department within six months of employment or have comparable training and experience as approved by the department. (III)
- d. The activity co-ordinator shall attend workshops or educational programs which relate to activity programming. These shall total a minimum of ten contact hours per year. These programs shall be approved by the department. (III)
- e. There shall be a written plan for personnel coverage when the activity co-ordinator is absent during scheduled working hours. (III)

59.31(3) Duties of activity co-ordinator. The activity co-ordinator shall:

- a. Have access to all residents' records excluding financial records; (III)
- b. Co-ordinate all activities, including volunteer or auxiliary activities and religious services; (III)
- c. Keep all necessary records including:
 - (1) Attendance; (III)
 - (2) Individual resident progress notes recorded at regular intervals (at least every two months). A copy of these notes shall be placed in the resident's clinical record; (III)
 - (3) Monthly calendars, prepared in advance. (III)
- d. Co-ordinate the activity program with all other services in the facility; (III)
- e. Participate in the in-service training program in the facility. This shall include attending as well as presenting sessions. (III)
- f. Provide input to the individual resident care plans. (III)

59.31(4) Activity supplies, equipment and storage.

- a. Each facility shall provide a variety of supplies and equipment of a nature calculated to fit the needs and interests of the residents. (III) These may include: Books (standard and large print), magazines, newspapers, radio, television, and bulletin boards. Also appropriate would be box games, game equipment, songbooks, cards, craft supplies, record player, movie projector, piano, outdoor equipment, etc.
- b. Storage shall be provided for recreational equipment and supplies. (III)
- c. Locked storage should be available for potentially dangerous items such as scissors, knives, and toxic materials. (III)

470—59.32(135C) Care review committee. Each facility shall establish a care review committee in accordance with section 135C.25 of the Code, which shall operate within the scope of these rules and regulations for health care facilities. (III)

59.32(1) Purpose of care review committee.

- a. The committee shall represent the rights of the consumer in the facility for determination of appropriate care, of services available in the facility, and the determination of any discriminative practices. (III)
- b. The committee shall consider the needs of the residents in respect to the services the facility is authorized to render. (III)
- c. The committee shall consist of at least three members and no more than five. (III)

*Emergency, pursuant to §17A.5(2)*b*(2) of the Code.

†Objection filed 2/14/79, see insert IAC 3/7/79 following Ch 57, p.17.

d. The area wide health planning council shall appoint the members of the committee from individuals who have an interest in the provision of health care services and protection of dependent persons. After failure of the area wide health planning council to appoint members to the care review committee within the time unit specified in the Code, the commissioner and facility administrator shall act under the same guidelines concerning who shall be appointed and within the specified time limits in the Code. (III)

e. Membership of the care review committee shall be evaluated by the department prior to renewal of license each year. The department shall be notified in writing of all appointments to care review committees including names and addresses, within thirty days of an appointment. (III)

f. A care review committee found to be functioning unsatisfactorily by the department may be required to be replaced. (III)

g. The members of the care review committee shall not have an ownership interest in the facility, nor be employed by the facility, nor be related to an employee or licensee, nor be a public employee involved with the sponsoring or placement of residents, nor be one who inspects or otherwise evaluates the facility or residents. (III)

h. The committee shall elect a chairperson and secretary (at its first meeting) and shall meet at least quarterly and on such occasions as required to accomplish its purposes. (III)

i. Information concerning the operation of the facility and residents residing therein is a privileged communication and shall not be disclosed publicly in such manner as to identify individuals or the facility except in accordance with section 135C.19 of the Code. (III)

j. The committee shall be made acquainted and knowledgeable by the administrator of the rules and regulations of the department governing the operation of the facility and the services it is licensed to provide. (III)

59.32(2) Responsibilities of the committee.

a. The committee shall determine whether the facility and the contract for services and program of care are as agreed upon in the contract. (III)

b. The committee may function for more than one facility. (III)

c. Each resident shall be reviewed on at least an annual basis. (III)

d. The committee shall determine through its observations, conference with the resident, and consultation with others that services are being provided in accordance with the resume of care. Determination shall be made regarding the following: Cleanliness of resident, whether types of tasks given residents are in accordance with the physician's orders and whether resident employees may receive remuneration, consideration of the resident's personal and social needs, situations affecting resident's welfare and safety, absence of signs of malnutrition and dehydration, preservation of the highest level of independent functioning in relation to each individual's physical and mental capabilities, sanitation of the facility and grounds, that the physical structure of the facility contains no physical barriers which would prevent any resident from freely using the services of the facility or exiting to the outside. (Physical barriers preventing the exit from a facility shall not apply to remotely operated devices previously approved by the department for the safety of the residents). (III)

e. The committee shall submit a report to the administrator at the conclusion of each meeting. (III)

f. The committee shall report to the department for counsel and guidance in situations where the administrator fails to acknowledge the intent of their findings and recommendations. (III)

g. The committee shall be available to meet with the department upon request. (III)

h. Any official agency will have the privilege of meeting with the committee to discuss problems in the facility pertinent to the agency's official capacity, providing that information exchanged is treated as privileged communication and is kept confidential in accordance with section 135C.19, Code of Iowa. (III)

59.32(3) Limitations of the committee.

a. The medical treatment of the individual resident shall not be an area of concern for the care review committee. (III)

b. The committee shall not have access to the medical or financial record of the resident. (III)

c. The committee shall not have access to the confidential record of the resident prepared by the staff of the social services department. The person responsible for the social services shall be available to the committee to interpret the psychosocial needs of the individual. (III)

59.32(4) *Role of committee in complaint investigations.*

a. The department shall notify the facility's care review committee of a complaint from the public.

b. The department may refer complaints to the committee for initial evaluation or investigation. After such initial evaluation or investigation, the committee shall report to the department in writing the results of the evaluation or investigation within ten days any pertinent information it may have regarding the complaint.

c. The department shall notify the committee and the Iowa commission on aging of its findings upon conclusion of its investigation.

d. Results of complaint investigations initiated by the committee that detect violations of The Code or rules of the department shall be forwarded to the department within ten days of completion of the investigation.

e. The committee shall be responsible, upon department request, to monitor correction of justified complaints.

59.32(5) Reserved, 9/1/78.

59.32(6) *Assistance to the committee.*

a. All physicians admitting residents to the facility shall have the responsibility of assisting the committee when necessary. (III)

b. The physician's certification of care shall be made available to the committee by the administrator. (III)

c. The licensee of the facility shall meet with the committee on a consultation basis and furnish information upon request to the committee. (III)

d. Committee members may seek advice and counsel from allied health professions, from specialists in the community, or from appropriate state agencies. (III)

470—59.33(135C) *Safety.* The licensee of a skilled nursing facility shall be responsible for the provision and maintenance of a safe environment for residents and personnel. (III)

59.33(1) *Fire safety.*

a. All skilled nursing facilities shall meet the fire safety rules and regulations as promulgated by the state fire marshal. (I, II)

b. The size of the facility and needs of the residents shall be taken into consideration in evaluating safety precautions and practices.

59.33(2) *Safety duties of administrator.* The administrator shall have a written emergency plan to be followed in the event of fire, tornado, explosion, or other emergency. (III)

a. The plan shall be posted. (III)

b. In-service shall be provided to ensure that all employees are knowledgeable of the emergency plan. (III)

59.33(3) *Resident safety.*

a. Residents shall be permitted to smoke only where proper facilities are provided. Smoking shall not be permitted in bedrooms. Smoking by residents considered to be careless shall be prohibited except when the resident is under direct supervision. (II, III)

b. Smoking is prohibited in all rooms where oxygen is being administered or in rooms where oxygen is stored. (II, III)

c. Whenever full or empty tanks of oxygen are being used or stored, they shall be securely supported in an upright position. (II, III)

d. Smoking shall be permitted only in posted areas. (II, III)

e. Residents shall receive adequate supervision to ensure against hazard from themselves, others, or elements in this environment. (II, III)

470—59.34(135C) Resident care.

59.34(1) There shall be a readily available supply of self-help and ambulation devices such as wheelchairs, walkers, and such other devices maintained in good repair that will meet the current needs of all residents. (III)

59.34(2) The facility shall assure that each ambulatory resident has well-fitting shoes to provide support and prevent slipping. (III)

59.34(3) Equipment for personal care shall be maintained in a safe and sanitary condition. (II, III)

59.34(4) The expiration date for sterile equipment shall be exhibited on their wrappings. (III)

59.34(5) Residents who have been known to wander shall be provided with appropriate means of identification. (II, III)

59.34(6) Electric heating pads, blankets, or sheets shall be used only on the written order of a physician. (II, III)

470—59.35(135C) Rescinded, effective 7/14/82.

470—59.36(135C) Housekeeping.

59.36(1) Written procedures shall be established and implemented for daily and weekly cleaning schedules. (III)

59.36(2) Each resident unit shall be cleaned on a routine schedule. (III)

59.36(3) All rooms, corridors, storage areas, linen closets, attics, and basements shall be kept in a clean, orderly condition, free of unserviceable furniture and equipment and accumulations of refuse. (III)

59.36(4) A hallway or corridor shall not be used for storage of equipment. (III)

59.36(5) All odors shall be kept under control by cleanliness and proper ventilation. (III)

59.36(6) Clothing worn by personnel shall be clean and washable. (III)

59.36(7) Housekeeping and maintenance personnel shall be provided with well-constructed and properly maintained equipment appropriate to the function for which it is to be used. (III)

59.36(8) All furniture, bedding, linens, and equipment shall be cleaned periodically and before use by another resident. (III)

59.36(9) Polishes used on floors shall provide a nonslip finish. (III)

59.36(10) Throw or scatter rugs shall not be permitted. (III)

59.36(11) Entrances, exits, steps, and outside walkways shall be kept free from ice, snow, and other hazards. (II, III)

59.36(12) Residents shall not have access to storage areas for all cleaning agents, bleaches, insecticides, or any other poisonous, dangerous, or flammable materials. (II, III)

59.36(13) Sufficient numbers of noncombustible trash containers, which have covers, shall be available. (III)

59.36(14) Definite procedures shall be established for training housekeeping personnel. (III)

59.36(15) Employees engaged in housekeeping or laundry services shall not be simultaneously involved in the preparation of food, food service, or resident care. (III)

59.36(16) There shall be provisions for the cleaning and storage of housekeeping equipment and supplies for each nursing unit. (III)

59.36(17) Bathtubs, shower stalls, or lavatories shall not be used for laundering, cleaning of utensils and mops, or for storage. (III)

59.36(18) Bedside utensils shall be stored in enclosed cabinets. (III)

59.36(19) Kitchen sinks shall not be used for the cleaning of mops, soaking of laundry, cleaning of bedside utensils, nursing utensils, or dumping of waste water. (II)

59.36(20) Personal possessions of residents which may constitute hazards to themselves or others shall be removed and stored. (III)

59.36(21) A full-time employee shall be designated responsibility for the housekeeping services and for supervision and training of personnel. (III)

59.36(22) If a facility has a contract with an outside resource for housekeeping services, the facility or outside resource shall meet the above requirements. (III)

470—59.37(135C) Maintenance.

59.37(1) Each facility shall establish a maintenance program in writing to ensure the continued maintenance of the facility, to promote good housekeeping procedures, and to ensure sanitary practices throughout the facility. (III)

59.37(2) The building, grounds, and other buildings shall be maintained in a clean, orderly condition and in good repair. (III)

59.37(3) Draperies and furniture shall be clean and in good repair. (III)

59.37(4) Cracks in plaster, peeling wallpaper or paint, and tears or splits in floor coverings shall be promptly repaired or replaced in a professional manner. (III)

59.37(5) The electrical systems, including appliances, cords, and switches, shall be maintained to guarantee safe functioning and comply with the national electrical code. (III)

59.37(6) All plumbing fixtures shall function properly and comply with the state plumbing code. (III)

59.37(7) Yearly inspections of the heating and cooling systems shall be made to guarantee safe operation. Documentation of these inspections shall be available for review. (III)

59.37(8) The building, grounds, and other buildings shall be kept free of breeding areas for flies, other insects, and rodents. (III)

59.37(9) The facility shall be kept free of flies, other insects and rodents. (III)

59.37(10) Maintenance personnel.

a. A written program shall be established for the orientation of maintenance personnel. (III)

b. Maintenance personnel shall:

(1) Follow established written maintenance programs; (III)

(2) Be provided with appropriate, well-constructed, and properly maintained equipment. (III)

470—59.38(135C) Laundry.

59.38(1) All soiled linens shall be collected in and transported to the laundry room in closed, leakproof laundry bags or covered, impermeable containers. (III)

59.38(2) Except for related activities, the laundry room shall not be used for other purposes. (III)

59.38(3) Procedures shall be written for the proper handling of wet, soiled, and contaminated linens. (III)

59.38(4) Resident's personal laundry shall be marked with an identification. (III)

59.38(5) Bed linens, towels, and washcloths shall be clean and stain-free. (III)

470—59.39(135C) Garbage and waste disposal.

59.39(1) All garbage shall be gathered, stored, and disposed of in a manner that will not permit transmission of disease, create a nuisance, or provide a breeding or feeding place for vermin or insects. (III)

59.39(2) All containers for refuse shall be watertight, rodent-proof, and have tight-fitting covers. (III)

59.39(3) All containers shall be thoroughly cleaned each time the containers are emptied. (III)

59.39(4) All wastes shall be properly disposed of in compliance with local ordinances and state codes. (III)

59.39(5) Special provision shall be made for the disposal of soiled dressings and similar items in a safe, sanitary manner. (III)

470—59.40(135C) Buildings, furnishings, and equipment.

59.40(1) *Buildings—general requirements.*

a. For purposes of computation of usable floor space in bedrooms and other living areas of the facility, that part of the room having no less than seven feet of ceiling height shall be used. Usable floor space may include irregularities in the rooms such as alcoves and offsets with approval of the department. Usable floor space shall not include space needed for corridor door swings or wardrobes being used as a substitute for closet space. (III)

b. Battery-operated, portable emergency lights in good working condition shall be available at all times, at a ratio of one light per one employee on duty from 6 p.m. to 6 a.m. (III)

c. All windows shall be supplied with curtains and shades or drapes which are kept clean and in good repair. (III)

470—59.41(135C) Family and employee accommodations.

59.41(1) Children under fourteen years of age shall not be allowed into the service areas. (III)

59.41(2) The resident's bedrooms shall not be occupied by employees, family members of employees, or family members of the licensee. (III)

59.41(3) In facilities where the total occupancy of family, employees, and residents is five or less, one toilet and one tub or shower shall be the minimum requirement. (III)

59.41(4) In facilities where the total occupancy of family, employees, and residents is more than five, separate bathing and toilet facilities shall be required for the family or employees distinct from such areas provided for residents. (III)

59.41(5) In all health care facilities, if the family or employees live within the facility, separate living quarters and recreation facilities shall be required for the family or employees distinct from such areas provided for residents. (III)

470—59.42(135C) Animals. No animals shall be allowed within the facility except with written approval of the department and under controlled conditions. (III)

470—59.43(135C) Supplies.

59.43(1) Linen supplies.

a. There shall be an adequate supply of linen so that each resident shall have at least three wash cloths, hand towels, and bath towels per week. (III)

b. A complete change of bed linens shall be available in the linen storage area for each bed. (III)

c. Sufficient lightweight, clean, serviceable blankets shall be available. All blankets shall be laundered as often as necessary for cleanliness and freedom of odors. (III)

d. Each bed shall be provided with clean, washable bedspreads. There shall be a supply available when changes are necessary. (III)

e. Uncrowded and convenient storage shall be provided for linens, pillows, and bedding. (III)

59.43(2) First aid kit. A first aid emergency kit shall be available on each floor in every facility. (II, III)

59.43(3) Supplies and equipment for nursing services.

a. All nursing care equipment shall be properly sanitized or sterilized before use by another resident. (II)

b. There shall be disposable or one-time use items available appropriate to the size of the facility with provisions made for proper disposal so as to prevent their reuse. (III)

c. Convenient, safe storage shall be provided for bath and toilet supplies, bathroom scales, mechanical lifts, and shower chairs. (III)

d. Sanitary and protective storage shall be provided for all equipment and supplies. (III)

e. All items that must be sterilized shall be autoclaved unless sterile disposable items are furnished which are promptly disposed of after a single use. (II)

f. Supplies and equipment for nursing and personal care sufficient in quantities to meet the needs of the residents shall be provided and, as in a minimum, which include the following: (III)

- | | |
|---|---|
| Bath basins | Stethoscope |
| Soap containers | Ice caps |
| Denture cups | Hot water bottles |
| Emesis basins | Rectal tubes |
| Mouthwash cups | Catheters and catheterization equipment |
| Bedpans | Douche nozzle |
| Urinals | Oxygen therapy equipment |
| Enema equipment | Naso-gastric feeding equipment |
| Commodes | Wheelchairs |
| Quart graduate measure | Moisture-proof draw sheets |
| Thermometer for measurement of bath water temperature | Moisture-proof pillow covers |
| Oral thermometer | Moisture-proof mattress covers |
| | Foot tubs |

Rectal thermometer	Metal pitcher
Basins for sterilizing thermometers	Disinfectant solutions
Basins for irrigations	Alcohol
Asepto syringes	Lubricating jelly
Sphygmomanometer	Skin lotion
Paper towels	Applicators
Paper handkerchiefs	Tongue blades
Insulin syringes	Toilet paper
2cc hypodermic syringes	Rubber gloves or disposable gloves
Hypodermic needles	Suction machine
Tourniquet	Portable linen hampers
Medicine dispensing containers	Denture identification equipment
Bandages	Tracheotomy care equipment
Adhesive	Scales for nonambulatory patients
Weight scales	Parenteral fluid administration equipment
Water pitchers	Blood transfusion administration equipment
Ostomy care equipment	

470—59.44(135C) Residents' rights in general.

59.44(1) Each facility shall ensure that policies and procedures are written and implemented which include, at a minimum, all of the following provisions (subrules 59.44(2) to 59.44(6)) and which govern all areas of service provided by the facility. These policies and procedures shall be available to staff, residents, their families or legal representatives and the public and shall be reviewed annually. (II)

59.44(2) Policies and procedures regarding the admission, transfer, and discharge of residents shall assure that:

a. Only those persons are accepted whose needs can be met by the facility directly or in cooperation with community resources or other providers of care with which it is affiliated or has contracts. (II)

b. As changes occur in residents physical or mental condition, necessitating services or care which cannot be adequately provided by the facility, they are transferred promptly to other appropriate facilities. (II)

59.44(3) Policies and procedures regarding the use of chemical and physical restraints shall define the use of said restraints and identify the individual who may authorize the application of physical restraints in emergencies, and describe the mechanism for monitoring and controlling their use. (II)

59.44(4) Policies and procedures shall include a method for submitting complaints and recommendations by residents or their responsible party and for assuring a response and disposition by the facility. (II)

59.44(5) Policies and procedures shall include provisions governing access to, duplication of, and dissemination of information from the residents' records. (II)

59.44(6) Policies and procedures shall include a provision that each resident shall be fully informed of his/her rights and responsibilities as a resident and of all rules governing resident conduct and responsibilities. The information must be provided upon admission or, in the case of residents already in the facility, upon the facility's adoption or amendment of resident right policies. (II)

a. The facility shall make known to residents what they may expect from the facility and its staff, and what is expected from them. The facility shall communicate these expectations during the period of not more than two weeks before or five days after admission. The communication shall be in writing, e.g., in a separate handout or brochure describing the facility, and interpreted verbally, e.g., as part of a preadmission interview, resident counseling, or in individual or group orientation sessions following admission. (II)

b. Residents' rights and responsibilities shall be presented in language understandable to the resident. If the facility serves residents who are non-English speaking or deaf, steps shall

be taken to translate the information into a foreign or sign language. In the case of blind residents, either braille or a recording shall be provided. Residents shall be encouraged to ask questions about their rights and responsibilities and these questions shall be answered. (II)

c. A statement shall be signed by the resident, or his/her responsible party, if applicable, indicating an understanding of these rights and responsibilities, and shall be maintained in the record. The statement shall be signed no later than five days after admission, and a copy of the signed statement shall be given to the resident or responsible party. In the case of a mentally retarded resident, the signature shall be witnessed by a person not associated with or employed by the facility. The witness may be a parent, guardian, Medicaid agency representative, etc. (II)

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

e. All residents shall be advised within thirty days following changes made in the statement of residents' rights and responsibilities. Appropriate means shall be utilized to inform non-English speaking, deaf, or blind residents of such changes. (II)

59.44(7) Each resident or responsible party shall be fully informed in a contract as required in rule 59.15(135C), prior to or at the time of admission and during his/her stay, of services available in the facility, and of related charges including any charges for services not covered under the Title XIX program or not covered by the facility's basic per diem rate. (II)

59.44(8) Each resident or responsible party shall be fully informed by a physician of his/her health and medical condition unless medically contraindicated (as documented by a physician in his/her resident record). Each resident shall be afforded the opportunity to participate in the planning of his/her total care and medical treatment, which may include, but is not limited to, nursing care, nutritional care, rehabilitation, restorative therapies, activities, and social work services. Each resident only participates in experimental research conducted under the department of health and human services protection from research risks policy and then only upon his/her informed written consent. Each resident has the right to refuse treatment except as provided by chapter 229, The Code. In the case of a confused or mentally retarded individual, the responsible party shall be informed by the physician of the resident's medical condition and be afforded the opportunity to participate in the planning of his/her total care and medical treatment, to be informed of the medical condition, and to refuse to participate in experimental research. (II)

a. The requirement that residents shall be informed of their conditions, involved in the planning of their care, and advised of any significant changes in either, shall be communicated to every physician responsible for the medical care of residents in the facility. (II)

b. The administrator or his/her designee shall be responsible for working with attending physicians in the implementation of this requirement. (II)

c. If the physician determines or in the case of a confused or mentally retarded resident the responsible party determines that informing the resident of his/her condition is contraindicated, this decision and reasons for it shall be documented in the resident's record by the physician. (II)

d. The resident's plan of care shall be based on the physician's orders. It shall be developed upon admission by appropriate facility staff and shall include participation by the resident if capable. Residents shall be advised of alternative courses of care and treatment and their consequences when such alternatives are available. The resident's preference about alternatives shall be elicited and honored if feasible.

e. Any clinical investigation involving residents must be under the sponsorship of an institution with a human subjects review board functioning in accordance with the requirements of Public Law 93-348, as implemented by Part 46 of Title 45 of the Code of Federal Regulations, as amended, to December 1, 1981, (45 CFR 46). A resident being considered for participation in experimental research must be fully informed of the nature of the experiment, e.g., medication, treatment, and understand the possible consequences of participating or not participating. The resident's (or responsible party's) written informed consent must be received prior to participation. (II)

470—59.45(135C) Involuntary discharge or transfer.

59.45(1) A facility shall not involuntarily discharge or transfer a resident from a facility except: For medical reasons; for the resident's welfare or that of other residents; for nonpayment for the resident's stay (as contained in the contract for the resident's stay), except as prohibited by Title XIX of the Social Security Act, 42 U.S.C. 1396 to 1396k by reason of action pursuant to chapter 229, The Code; by reason of negative action by the Iowa department of social services; and by reason of negative action by the professional standards review organization. A resident shall not be transferred or discharged solely because the cost of the resident's care is being paid under chapter 249A, The Code, or because the resident's source of payment is changing from private support to payment under chapter 249A. (I, II)

a. "Medical reasons" for transfer or discharge are based on the resident's needs and are determined and documented in the resident's record by the attending physician. Transfer or discharge may be required to provide a different level of care. In the case of transfer or discharge for the reason that the resident's condition has improved so that he or she no longer needs the level of care being provided by the facility, the determination that the medical reason exists is the exclusive province of the professional standards review organization or utilization review process in effect for residents whose care is paid in full or in part by Title XIX. (II)

b. "Welfare" of a resident or that of other residents refers to their social, emotional, or physical well-being. A resident might be transferred or discharged because his/her behavior poses a continuing threat to himself/herself (e.g., suicidal) or to the well-being of other residents or staff (e.g., his/her behavior is incompatible with their needs and rights). Evidence that the resident's continued presence in the facility would adversely affect their own welfare or that of other residents shall be made by the administrator or his/her designee and shall be in writing and shall include specific information to support this determination. (II)

c. Involuntary transfer or discharge of a resident from a facility shall be preceded by a written notice to the resident or responsible party at least thirty days in advance of the proposed transfer or discharge. The thirty day requirement shall not apply in any of the following instances:

(1) If an emergency transfer or discharge is mandated by the resident's health care needs and is in accord with the written orders and medical justification of the attending physician. Emergency transfers or discharges may also be mandated to protect the health, safety, or well-being of other residents and staff from the resident being transferred. (II)

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

(3) If the discharge or transfer is the result of a final, nonappealable decision by the department of social services or the professional standards review organization.

d. The notice required by paragraph "c" shall contain all of the following information:

(1) the stated reason for the proposed transfer or discharge. (II)

(2) The effective date of the proposed transfer or discharge. (II)

(3) A statement in not less than twelve point type (elite), which reads: "You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa State Department of Health (hereinafter referred to as "Department") within seven days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than fourteen days after receipt of your request by the department, and you will not be transferred prior to a final decision. Provision may be made for extension of the fourteen day requirement upon request to the Health Department designee in emergency circumstances. If you lose the hearing, you will not be transferred before the expiration of thirty days following receipt of the original notice of the discharge or transfer, or no sooner than five days following final decision of such hearing. To request a hearing or receive further information, call the department at (515) 281-4130 or you may write to the Department to the attention of: Chief, Division of Health

Facilities, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319". (II)

e. A request for a hearing made under paragraph "d"(3) shall stay a transfer or discharge pending a hearing or appeal decision. (II)

f. The hearing shall be held in the facility and the date and time of the hearing shall be determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident, responsible party, and Iowa commission on aging long term care ombudsman of record not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident or responsible party, that they have a right to appear at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. The Iowa commission on aging long term care ombudsman shall have the right to appear at the hearing.

g. The hearing shall be heard by a health department designee pursuant to chapter 17A, The Code. (The hearing shall be public unless the resident or his/her representative requests in writing that it be closed.) The licensee or his/her designee shall have the opportunity to present to the representative of the department any oral testimony or written materials to show by a preponderance of the evidence just cause why a transfer or discharge may be made. The resident and responsible party shall also have an opportunity to present to the representative of the department any oral testimony or written material to show just cause why a transfer or discharge should not be made. In a determination as to whether a transfer or discharge is authorized, the burden of proof rests on the party requesting the transfer or discharge.

h. Based upon all testimony and materials submitted to the representative of the department, the representative shall issue, in accordance with chapter 17A, The Code, contested hearings, a written findings of fact, conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, responsible party, and commission on aging long term care party, and commission on aging long term care ombudsman within ten working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

Appeals from any decision or order of the representative must be made in writing and mailed to the commissioner of public health by certified mail return receipt requested or by personal service within ten days after the mailing of the decision or order to the aggrieved party. A party who has exhausted all adequate administrative remedies and is aggrieved by the final action of the department may petition for judicial review in the manner provided by chapter 17A, The Code.

i. A copy of the notice required by paragraph "c" shall be personally delivered to the resident and a copy placed in the resident's record. A copy shall also be transmitted to the department, the resident's responsible party, physician, the person or agency responsible for the resident's placement, maintenance, and care in the facility, and the commission on aging long term care ombudsman.

j. If the basis for an involuntary transfer or discharge is the result of a negative action by the Iowa department of social services or the professional standards review organization (Iowa foundation for medical care), appeals shall be filed with those agencies as appropriate. Continued payment shall be consistent with rules of those agencies.

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

l. The involuntary transfer or discharge shall be discussed with the resident, the resident's responsible party, and the person or agency responsible for the resident's placement, maintenance, and care in the facility within forty-eight hours after notice of discharge has been received. The explanation and discussion of the reasons for involuntary transfer or discharge shall be given by the facility administrator or other appropriate facility represen-

tative as the administrator's designee. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions and made a part of the resident's record. (II)

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

(1) Counseling shall be provided by a qualified individual who meets one of the following criteria:

1. Has a bachelor's or master's degree in social work from an accredited college. (II)
2. Is a graduate of an accredited four-year college and has had at least one year of full-time paid employment in a social work capacity with a public or private agency. (II)
3. Has been employed in a social work capacity for a minimum of four years in a public or private agency. (II)
4. Is a licensed psychologist or psychiatrist. (II)
5. Is any other person of the resident's choice. (II)

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

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

n. In the case of an emergency transfer or discharge as outlined in paragraph "c"(1), the resident must still be given a written notice prior to or within forty-eight hours following transfer or discharge. A copy of this notice must be placed in the resident's file and it must contain all the information required by paragraph "d"(1) and (2). In addition, the notice must contain a statement in not less than twelve point type (elite), which reads: "You have a right to appeal the facility's decision to transfer or discharge you on an emergency basis. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa State Department of Health within seven days after receiving this notice. If you request a hearing, it will be held no later than fourteen days after receipt of your request by the Department. You may be transferred or discharged before the hearing is held or before a final decision is rendered. If you win the hearing, you have the right to be transferred back into the facility. To request a hearing or receive further information, call the Department at (515) 281-4130 or you may write to the Department to the attention of: Chief, Division of Health Facilities, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319." A hearing requested pursuant to this subrule shall be held in accordance with paragraphs "f", "g", and "h". (II)

o. Residents shall not have the right to a hearing to contest an involuntary discharge or transfer resulting from the revocation of the facility's license by the department of health. In the case of a facility voluntarily closing, a period of thirty days must be allowed for an orderly transfer of residents to other facilities.

59.45(2) Intrafacility transfer:

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

(1) Incompatibility with or disturbing to other roommates, as documented in the resident's record.

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

(3) For medical, nursing or psychosocial reasons, as documented in the resident's record, as judged by the attending physician, nurse or social worker in the case of a facility which groups residents by medical, nursing or psychosocial needs.

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

(5) In the case of a resident whose source of payment was previously private, but who now is eligible for Title XIX assistance, the resident may be transferred from a private room to a

semiprivate room or from a semiprivate room to another.

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

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

(1) Change from private pay status to Title XIX, (except as outlined in paragraph "a"(5)). (II)

(2) As punishment or behavior modification (except as specified in paragraph "a"(1)). (II)

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

c. If intrafacility relocation is necessary for reasons outlined in paragraph "a", the resident shall be notified at least forty-eight hours prior to the transfer and the reason therefore shall be explained. The responsible party shall be notified as soon as possible. The notification shall be documented in the resident's record and signed by the resident or responsible party. (II)

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

470—59.46(135C) Resident rights. Each resident shall be encouraged and assisted throughout his/her period of stay, to exercise his/her rights as a resident and as a citizen and may voice grievances and recommend changes in policies and services to administrative staff or to outside representatives of his/her choice, free from interference, coercion, discrimination, or reprisal. (II)

59.46(1) The facility shall provide ongoing opportunities for residents to be aware of and to exercise their rights as residents. Residents shall be kept informed of issues or pending decisions of the facility that affect them and their views shall be solicited prior to action. (II)

59.46(2) The facility shall implement a written procedure for registering and resolving grievances and recommendations by residents or their responsible party. The procedure shall ensure protection of the resident from any form of reprisal or intimidation. The written procedure shall include:

a. Designation of an employee responsible for handling grievances and recommendations.

(II)

b. A method of investigating and assessing the validity of a grievance or recommendation.

(II)

c. Methods of resolving grievances. (II)

d. Methods of recording grievances and actions taken. (II)

59.46(3) The facility shall post in a prominent area the name, phone number, and address of the ombudsman, survey agency, local law enforcement agency, care review committee members, the text of section 135C.46, The Code, etc., to provide to residents a further course of redress. (II)

470—59.47(135C) Financial affairs—management. Each resident, who has not been assigned a guardian or conservator by the court, may manage his/her personal financial affairs, and to the extent, under written authorization by the resident that the facility assists in management, the management shall be carried out in accordance with section 135C.24, The Code. (II)

59.47(1) The facility shall maintain a written account of all residents' funds received by or deposited with the facility. (II)

59.47(2) An employee shall be designated in writing to be responsible for resident accounts. (II)

59.47(3) The facility shall keep on deposit personal funds over which the resident has control in accordance with 135C.24(2). Should the resident request these funds, they shall be given to him/her on request with receipts maintained by the facility and a copy to the resident.

In the case of a confused or mentally retarded resident, the resident's responsible party shall designate method of disbursing their funds. (II)

59.47(4) If the facility makes financial transactions on a resident's behalf, the resident must receive or acknowledge that he/she has seen an itemized accounting of disbursements and current balances at least quarterly. A copy of this statement shall be maintained in the resident's financial or business record. (II)

470—59.48(135C) Resident abuse prohibited. Each resident shall receive kind and considerate care at all times and shall be free from mental and physical abuse. Each resident shall be free from chemical and physical restraints except as follows: When authorized in writing by a physician for a specified period of time; when necessary in an emergency to protect the resident from injury to himself/herself or to others, in which case restraints may be authorized by designated professional personnel who promptly report the action taken to the physician; and in the case of a mentally retarded individual when ordered in writing by a physician and authorized by a designated qualified mental retardation professional for use during behavior modification sessions. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

59.48(1) Mental abuse includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation. (II)

59.48(2) Physical abuse includes, but is not limited to, corporal punishment and the use of restraints as punishment. (II)

59.48(3) Drugs such as tranquilizers may not be used as chemical restraints to limit or control resident behavior for the convenience of staff. (II)

59.48(4) Physicians' orders are required to utilize all types of physical restraints and shall be renewed at least quarterly. (II) Physical restraints are defined as the following:

Type I—the equipment used to promote the safety of the individual but is not applied directly to their person. Examples: Divided doors and totally enclosed cribs.

Type II—the application of a device to the body to promote safety of the individual. Examples: Vest devices, soft-tie devices, hand socks, geriatric chairs.

Type III—the application of a device to any part of the body which will inhibit the movement of that part of the body only. Examples: Wrist, ankle or leg restraints and waist straps.

59.48(5) Physical restraints are not to be used to limit resident mobility for the convenience of staff and must comply with life safety requirements. If a resident's behavior is such that it may result in injury to himself/herself or others and any form of physical restraint is utilized, it should be in conjunction with a treatment procedure(s) designed to modify the behavioral problems for which the resident is restrained or, as a last resort, after failure of attempted therapy. (I, II)

59.48(6) Each time a Type II or III restraint is used documentation on the nurse's progress record shall be made which includes type of restraint and reasons for the restraint and length of time resident was restrained. The documentation of the use of Type III restraint shall also include the time of position change. (II)

59.48(7) Each facility shall implement written policies and procedures governing the use of restraints which clearly delineate at least the following:

- a. Physicians' orders shall indicate the specific reasons for the use of restraints. (II)
- b. Their use is temporary and the resident will not be restrained for an indefinite amount of time. (I, II)
- c. A qualified nurse shall make the decision for the use of a Type II or Type III restraint for which there shall be a physician's order. (II)
- d. A resident placed in a Type II or III restraint shall be checked at least every thirty minutes by appropriately trained staff. This shall be documented on a check sheet. No form of restraint shall be used or applied in such a manner as to cause injury or the potential for injury and provide a minimum of discomfort to resident restrained. (I, II)
- e. Reorders are issued only after the attending physician reviews the resident's condition. (II)

f. Their use is not employed as punishment, for the convenience of the staff, or as a substitute for supervision or program. (I, II)

g. The opportunity for motion and exercise shall be provided for a period of not less than ten minutes during each two hours in which Type II and Type III restraints are employed, except when resident is sleeping. However, when resident awakens, this shall be provided. This shall be documented each time. A check sheet may serve this purpose. (I, II)

h. Locked restraints or leather restraints shall not be permitted except in life threatening situations. Straight jackets and secluding residents behind locked doors shall not be employed. (I, II)

i. Nursing assessment of the resident's need for continued application of a Type III restraint shall be made every twelve hours and documented on the nurse's progress record. Documentation shall include the type of restraint, reason for the restraint and the circumstances. Nursing assessment of the resident's need for continued application of either a Type I or Type II restraint and nursing evaluation of the resident's physical and mental condition shall be made every seven days and documented on the nurse's progress record. (II)

j. A divided door equipped with a securing device that may be readily opened by personnel shall be considered an appropriate means of temporarily confining resident in his or her room. (II)

k. Divided doors shall be of the type that when the upper half is closed the lower section shall close. (II)

l. Methods of restraint shall permit rapid removal of the resident in the event of fire or other emergency. (I, II)

m. The facility shall provide orientation and ongoing education programs in the proper use of restraints. (II)

59.48(8) In the case of a mentally retarded individual who participates in a behavior modification program involving use of restraints or aversive stimuli, the program shall be conducted only with the informed consent of his/her parent or responsible party. Where restraints are employed, an individualized program shall be developed by the interdisciplinary team with specific methodologies for monitoring its progress. (II)

a. The resident's responsible party shall receive a written account of the proposed plan of the use of restraints or aversive stimuli and have an opportunity to discuss the proposal with a representative(s) of the treatment team. (II)

b. The responsible party must consent in writing prior to the use of the procedure. Consent may also be withdrawn in writing. (II)

470—59.49(135C) Resident records. Each resident shall be ensured confidential treatment of all information contained in his/her records, including information contained in an automatic data bank. His/her written consent shall be required for the release of information to persons not otherwise authorized under law to receive it. (II)

59.49(1) The facility shall limit access to any medical records to staff and consultants providing professional service to the resident. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

59.49(2) Similar procedures shall safeguard the confidentiality of residents' personal records, e.g., financial records and social services records. Only those personnel concerned with the financial affairs of the residents may have access to the financial records. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

59.49(3) The resident, or his/her responsible party, shall be entitled to examine all information contained in his/her record and shall have the right to secure full copies of the record at reasonable cost upon request, unless the physician determines the disclosure of the record or section thereof is contraindicated in which case this information will be deleted prior to making the record available to the resident or responsible party. This determination and the reasons for it must be documented in the resident's record. (II)

470—59.50(135C) Dignity preserved. The resident shall be treated with consideration,

respect, and full recognition of his/her dignity and individuality, including privacy in treatment and in care for his/her personal needs. (II)

59.50(1) Staff shall display respect for residents when speaking with, caring for, or talking about them, as constant affirmation of their individuality and dignity as human beings. (II)

59.50(2) Schedules of daily activities shall allow maximum flexibility for residents to exercise choice about what they will do and when they will do it. Residents' individual preferences regarding such things as menus, clothing, religious activities, friendships, activity programs, entertainment, sleeping and eating, also times to retire at night and arise in the morning shall be elicited and considered by the facility. (II)

59.50(3) Residents shall be examined and treated in a manner that maintains the privacy of their bodies. A closed door or a drawn curtain shall shield the resident from passersby. People not involved in the care of the residents shall not be present without the resident's consent while he/she is being examined or treated. (II)

59.50(4) Privacy of a resident's body also shall be maintained during toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance. (II)

59.50(5) Staff shall knock and be acknowledged before entering a resident's room unless the resident is not capable of a response. This shall not apply under emergency conditions. (II)

470—59.51(135C) Resident work. No resident may be required to perform services for the facility, except as provided by sections 219.14 and 253.5, The Code. (II)

59.51(1) Residents may not be used to provide a source of labor for the facility against their will. Physician's approval is required for all work programs. (I, II)

59.51(2) If the plan of care requires activities for therapeutic or training reasons, the plan for these activities shall be professionally developed and implemented. Therapeutic or training goals must be clearly stated and measurable and the plan shall be time limited and reviewed at least quarterly. (II)

59.51(3) Residents who perform work for the facility must receive remuneration unless the work is part of their approved training program. Persons on the resident census performing work shall not be used to replace paid employees in fulfilling staffing requirements. (II)

470—59.52(135C) Communications. Each resident may communicate, associate, and meet privately with persons of his/her choice, unless to do so would infringe upon the rights of other residents, and may send and receive his/her personal mail unopened. (II)

59.52(1) Subject to reasonable scheduling restrictions, visiting policies and procedures shall permit residents to receive visits from anyone they wish. Visiting hours shall be posted. (II)

59.52(2) Reasonable, regular visiting hours shall not be less than twelve hours per day and shall take into consideration the special circumstances of each visitor. A particular visitor(s) may be restricted by the facility for one of the following reasons:

- a. The resident refuses to see the visitor(s). (II)
- b. The resident's physician documents specific reasons why such a visit would be harmful to the resident's health. (II)
- c. The visitor's behavior is unreasonably disruptive to the functioning of the facility (this judgment must be made by the administrator and the reasons shall be documented and kept on file). (II)

59.52(3) Decisions to restrict a visitor are reviewed and re-evaluated: Each time the medical orders are reviewed by the physician; at least quarterly by the facility's staff; or at the resident's request. (II)

59.52(4) Space shall be provided for residents to receive visitors in reasonable comfort and privacy. (II)

59.52(5) Telephones consistent with ANSI standards (405.1134(c)), shall be available and accessible for residents to make and receive calls with privacy. Residents who need help shall be assisted in using the phone. (II)

59.52(6) Arrangements shall be made to provide assistance to residents who require help in reading or sending mail. (II)

59.52(7) Residents shall be permitted to leave the facility and environs at reasonable times unless there are justifiable reasons established in writing by the attending physician or qualified mental retardation professional or facility administrator for refusing such permission. (II)

59.52(8) Residents shall not have their personal lives regulated beyond reasonable adherence to meal schedules, bedtime hours, and other written policies which may be necessary for the orderly management of the facility and as required by these rules. However, residents shall be encouraged to participate in recreational programs. (II)

470—59.53(135C) Resident activities. Each resident may participate in activities of social, religious, and community groups at his/her discretion unless contraindicated for reasons documented by the attending physician or qualified mental retardation professional as appropriate in his/her resident record. (II)

59.53(1) Residents who wish to meet with or participate in activities of social, religious, or other community groups in or outside of the facility shall be informed, encouraged, and assisted to do so. (II)

59.53(2) All residents shall have the freedom to refuse to participate in these activities. (II)

470—59.54(135C) Resident property. Each resident may retain and use his/her personal clothing and possessions as space permits and provided such use is not otherwise prohibited by these rules. (II)

59.54(1) Residents shall be permitted to keep reasonable amounts of personal clothing and possessions for their use while in the facility. The personal property shall be kept in a safe location which is convenient to the resident. (II)

59.54(2) Residents shall be advised, prior to or at the time of admission, of the kinds and amounts of clothing and possessions permitted for personal use, and whether the facility will accept responsibility for maintaining these items, e.g., cleaning and laundry. (II)

59.54(3) Any personal clothing or possessions retained by the facility for the resident during his/her stay shall be identified and recorded on admission and a record placed on the resident's chart. The facility shall be responsible for secure storage of the items, and they shall be returned to the resident promptly upon request or upon discharge from the facility. (II)

470—59.55(135C) Family visits. Each resident, if married, shall be ensured privacy for visits by his/her spouse, if both are residents in the facility, they shall be permitted to share a room, if available. (II)

59.55(1) The facility shall provide for needed privacy in visits between spouses. (II)

59.55(2) Spouses who are residents in the same facility shall be permitted to share a room, if available, unless one of their attending physicians documents in the medical record those specific reasons why such an arrangement would have an adverse effect on the health of the resident. (II)

59.55(3) Family members shall be permitted to share a room, if available, if requested by both parties, unless one of their attending physicians documents in the medical record those specific reasons why such an agreement would have an adverse effect on the health of the resident. (II)

470—59.56(135C) Choice of physician. Each resident shall be permitted free choice of a physician and a pharmacy, if accessible. The facility may require the pharmacy selected to utilize a drug distribution system compatible with the system currently used by the facility. (II)

470—59.57(135C) Incompetent resident.

59.57(1) Each facility shall provide that all rights and responsibilities of the resident devolve to the resident's responsible party when a resident is adjudicated incompetent in accordance with state law, or when the attending physician or qualified mental retardation professional has documented in the resident's record the specific impairment that has

rendered the resident incapable of understanding these rights. The resident's specific impairment shall be re-evaluated annually by the attending physician or qualified mental retardation professional. (II)

59.57(2) The fact that a resident has been adjudicated incompetent does not absolve the facility from advising the resident of these rights to the extent the resident is able to understand them. The facility shall also advise the responsible party, if any, and acquire a statement indicating an understanding of residents' rights. (II)

These rules are intended to implement section 135C.14, The Code, as amended by the Acts of the Sixty-ninth General Assembly, 1981 Regular Session, Chapter 60.

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Iowa State Building Code.

Iowa State Plumbing Code.

National Fire Protection Association (NFPA) Standard No. 70, *National Electrical Code*.

National Fire Protection Association (NFPA) Standard No. 82, *Standard for Incinerators*.

National Fire Protection Association (NFPA) Standard No. 90A, *Installation of Air Conditioning and Ventilating Systems*.

National Fire Protection Association (NFPA) Standard No. 101, *Life Safety Code*.

Public Health Service (PHS) Publication No. 934, *Food Service Sanitation Manual*.

Underwriters' Laboratories, Inc. (UL) Publication No. 181, *Air Ducts*.

United States of America Standards Institute (USASI) Standard No. A117.1-1961, *American Standard Specifications for Making Buildings and Facilities Accessible To, and Usable by, the Physically Handicapped*.

Copies of nongovernment publications can be obtained from the various agencies at the addresses listed:

American Society of Mechanical Engineers, and American Society of Heating, Refrigerating and Air-Conditioning Engineers

United Engineer Center

345 East 47th Street

New York, New York 10017

American Society for Testing and Materials

1916 Race Street

Philadelphia, Pennsylvania 19013

International Standards Organization (USA Headquarters, United States of American Standards Institute)

10 East 40th Street

New York, New York 10016

National Electrical Manufacturers Association

155 East 44th Street

New York, New York 10017

National Fire Protection Association

60 Batterymarch Street

Boston, Massachusetts 02110

Underwriters' Laboratories, Inc.

207 East Ohio Street

Chicago, Illinois 60611

United States of America Standards Institute

(Formerly American Standards Association, Inc.)

10 East 40th Street

New York, New York 10016

National Sanitation Foundation

P.O. Box 1468

Ann Arbor, Michigan 48106

Illuminating Engineering Society

1806 Broadway

New York, New York 10023

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CHAPTER 63
RESIDENTIAL CARE FACILITIES FOR THE MENTALLY RETARDED

470—63.1(135C) Definitions. For the purpose of these rules, the following terms shall have the meaning indicated in this chapter. The definitions set out in section 135C.1 of the Code shall be considered to be incorporated verbatim in the rules. The use of the words "shall" and "must" indicate those standards are mandatory. The use of the words "should" and "could" indicate those standards are recommended.

63.1(1) "Accommodation" means the provision of lodging, including sleeping, dining, and living areas.

63.1(2) "Administrator" means a person who administers, manages, supervises, and is in general administrative charge of a residential care facility for the mentally retarded, whether or not such individual has an ownership interest in such facility, and whether or not his or her functions and duties are shared with one or more individuals.

63.1(3) "Alcoholic" means a person in a state of dependency resulting from excessive or prolonged consumption of alcoholic beverages as defined in section 125.2 of the Code.

63.1(4) "Ambulatory" means a person who immediately and without aid of another, is physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

63.1(5) "Basement" means that part of a building where the finish floor is more than thirty inches below the finish grade.

63.1(6) "Board" means the regular provision of meals.

63.1(7) "Communicable disease" means a disease caused by the presence of virus or microbial agents within a person's body, which agents may be transmitted either directly or indirectly to other persons.

63.1(8) "Department" means the state department of health.

63.1(9) "Distinct part" means a clearly identifiable area or section within a residential care facility for the mentally retarded, consisting of at least a residential unit, wing, floor, or building containing contiguous rooms.

63.1(10) "Drug addiction" means a state of dependency, as medically determined, resulting from excessive or prolonged use of drugs as defined in chapter 204 of the Code.

63.1(11) "Interdisciplinary team" means persons drawn from, or representing such of the professions, disciplines, or services required for the care of the resident.

63.1(12) "Medication" means any drug including over-the-counter substances ordered and administered under the direction of the physician.

63.1(13) "Nonambulatory" means a person who immediately and without the aid of another is not physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

63.1(14) "Personal care" means assistance with the activities of daily living which the recipient can provide for himself or herself only with difficulty. Examples are, help in getting in and out of bed, assistance with personal hygiene and bathing, help with dressing and feeding, and supervision over medications which can be self-administered.

63.1(15) "Program of care" means all services being provided for a resident in a health care facility.

63.1(16) "Qualified mental retardation professional" means a psychologist, physician, registered nurse, educator, social worker, physical or occupational therapist, speech therapist or audiologist who meets the educational requirements for the profession, as required in the state of Iowa, and having one year's experience working with the mentally retarded.

63.1(17) "Rate" means that daily fee charged for all residents equally and shall include the cost of all minimum services required in these regulations.

63.1(18) "Responsible party" means the person who signs or cosigns the admission agreement required in 63.14 or the resident's guardian or conservator if one has been appointed. In the event that a resident has neither a guardian, conservator nor person who signed or cosigned the resident's admission agreement, the term "responsible party" shall include the

resident's sponsoring agency, e.g., the department of social services, Veterans Administration, religious groups, fraternal organizations, or foundations that assume responsibility and advocate for their client patients and pay for their health care.

63.1(19) "Restraints" means the measures taken to control a resident's physical activity for his or her own protection or for the protection of others.

470—63.2(135C) Variances. Variances from these rules may be granted by the commissioner for good and sufficient reason when the need for variance has been established; no danger to the health, safety, or welfare of any resident results; alternate means are employed or

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d. A separate staff with qualifications appropriate to the care and services being rendered must be regularly assigned and working in the distinct part under responsible management; (III)

e. Separately licensed distinct parts may have certain services such as management, building maintenance, laundry, and dietary in common with each other.

470—63.8(135C) Administrator. Each residential care facility for the mentally retarded shall have one person in charge, duly approved by the department or acting in a provisional capacity in accordance with these regulations. (III)

63.8(1) The administrator shall be at least eighteen years of age and shall have a high school diploma or equivalent. (III) In addition this person shall meet at least one of the following conditions:

a. Be a licensed nursing home administrator who is also a qualified mental retardation professional, (III) or;

b. Be a qualified mental retardation professional with at least one year of experience in an administrative capacity in a health care facility, (III) or;

c. Have completed a one-year educational training program approved by the department for residential care facility for the mentally retarded. (III)

63.8(2) The administrator may act as an administrator for not more than two residential care facilities for the mentally retarded. (II)

a. The distance between the two facilities shall be no greater than fifty miles. (II)

b. The administrator shall spend the equivalent of three full eight-hour days per week in each facility. (II)

c. The administrator may be responsible for no more than one hundred fifty beds in total if he or she is an administrator of more than one facility. (II)

63.8(3) The licensee may be the approved administrator providing he or she meets the requirements as set forth in these regulations and devotes the required time to administrative duties. Residency in the facility does not in itself meet the requirement. (III)

63.8(4) A provisional administrator may be appointed on a temporary basis by the residential care facility for the mentally retarded licensee to assume the administrative responsibilities for a residential care facility for the mentally retarded for a period not to exceed six months when, through no fault of its own, the home has lost its administrator and has not been able to replace the administrator, provided the department has been notified prior to the date of the administrator's appointment. (III)

63.8(5) In the absence of the administrator, a responsible person shall be designated in writing to the department to be in charge of the facility. (III) The person designated shall:

a. Be knowledgeable of the operation of the facility. (III)

b. Have access to records concerned with the operation of the facility; (III)

c. Be capable of carrying out administrative duties and of assuming administrative responsibilities; (III)

d. Be at least eighteen years of age; (III)

e. Be empowered to act on behalf of the licensee during the administrator's absence concerning the health, safety, and welfare of the residents; (III)

f. Have had training to carry out assignments and take care of emergencies and sudden illnesses of residents; (III)

63.8(6) The licensee shall:

a. Assume the responsibility for the overall operation of the residential care facility for the mentally retarded; (III)

b. Be responsible for compliance with all applicable laws and with the rules of the department; (III)

c. Establish written policies, which shall be available for review, for the operation of the residential care facility for the mentally retarded. (III)

63.8(7) The administrator shall:

a. Be responsible for the selection and direction of competent personnel to provide services for the resident care program; (III)

b. Be responsible for the arrangement for all department heads to annually attend a minimum of ten contact hours of educational programs either approved or provided by the department; (III)

c. Be responsible for a monthly in-service educational program for all employees and to maintain records of programs and participants; (III)

d. Make available the residential care facility for the mentally retarded payroll records for departmental review as needed; (III)

470—63.9(135C) General policies.

63.9(1) There shall be written personnel policies in facilities of more than fifteen beds to include hours of work, and attendance at educational programs. (III)

63.9(2) There shall be a written job description developed for each category of worker in facilities. The job description shall include title of job, job summary, age range, qualifications (formal education and experience), skills needed, physical requirements, and responsibilities. (III)

63.9(3) Health examinations for all personnel shall be done at the commencement of employment and thereafter at least yearly. (III)

63.9(4) Health certificates for all employees shall be available for review. (III)

63.9(5) Health examinations shall be in sufficient detail to determine freedom from:

a. Clinical evidence of any disease in a communicable form: (III)

b. Boils or infected wounds; (III)

c. Acute or chronic inflammatory condition of respiratory system. A chest X ray or tuberculin skin test is required annually. A positive skin test requires a chest X ray; (III)

d. Evidence of a carrier state of an intestinal infection. Food handlers and nursing staff specifically shall be required to report disabilities and illnesses, especially boils, infected wounds, rashes, sores, acute respiratory infections and intestinal infections. (III)

63.9(6) There shall be written policies for emergency medical care for employees and residents in case of sudden illness or accident which includes the individual to be contacted in case of emergency. (III)

63.9(7) The facility shall have a written agreement with a hospital for the timely admission of a resident who, in the opinion of the attending physician, requires hospitalization. (III)

63.9(8) The residential care facility for the mentally retarded shall have established policies concerning the control, investigation, and prevention of infections within the facility. (III)

63.9(9) Each facility licensed as a residential care facility for the mentally retarded shall provide an organized continuous twenty-four hour program of care commensurate with the needs of the residents of the home and under the direction of an administrator whose combined training and supervisory experience is such as to ensure adequate and competent care. (III)

470—63.10(135C) Rescinded, effective 7/14/82.

470—63.11(135C) Personnel.**63.11(1) General qualifications.**

a. No person with a current record of habitual alcohol intoxication or addiction to the use of drugs shall serve in a managerial role of a residential care facility for the mentally retarded. (II)

b. No person under the influence of alcohol or intoxicating drugs shall be permitted to provide services in a residential care facility for the mentally retarded. (II)

c. No person with a communicable disease shall be allowed to provide services in a residential care facility for the mentally retarded. (II, III)

d. Return to duty by personnel who have been diagnosed with a communicable disease shall be subject to a physician's written approval. (III)

e. Individuals with either physical or mental disabilities may be employed for specific duties, but only if that disability is unrelated to that individual's ability to perform the duties of the job. (III)

63.11(2) Supervision and staffing.

a. The department shall establish on an individual facility basis the numbers and qualifications of the staff required in a residential care facility for the mentally retarded using as its criteria the services being offered as indicated on the resume' program of care and as required for individual care plans the needs of the resident. (II, III)

b. Personnel in a residential care facility for the mentally retarded shall provide twenty-four hour coverage for residential care services for the mentally retarded. Personnel shall be up and dressed at all times in facilities over fifteen beds. In facilities with fifteen or less beds, personnel shall be up and dressed when residents are awake. (II, III)

c. Direct care staff shall be present in the facility unless all residents are involved in activities away from the facility. (II, III)

d. Physician's orders shall be implemented by qualified personnel. (II, III)

470—63.12(135C) Resident care and personal services.

63.12(1) Beds shall be made daily and adjusted as necessary. A complete change of linen shall be made at least once a week and more often if necessary. (III)

63.12(2) Residents shall receive sufficient supervision so that their personal cleanliness is maintained. (II, III)

63.12(3) Residents shall have clean clothing as needed to present a neat appearance, be free of odors, and to be comfortable. Clothing shall be appropriate to their activities and to the weather. (III)

63.12(4) Rescinded, effective 7/14/82.

63.12(5) Residents shall be encouraged to leave their rooms and make use of the recreational room or living room of the facility. (III)

63.12(6) Residents shall not be required to pass through another's bedroom to reach a bathroom, living room, dining room, corridor, or other common areas of the facility. (III)

63.12(7) Rescinded, effective 7/14/82.

63.12(8) Uncontrollable residents shall be transferred or discharged from the facility in accordance with contract arrangements and requirements of chapter 135C of the Code. (II, III)

63.12(9) Residents shall be required to bathe at least twice a week. (II, III)

470—63.13(135C) Admission, transfer, and discharge.

63.13(1) General admission policies.

a. No resident shall be admitted or retained in a residential care facility for the mentally retarded who is in need of greater services than the facility can provide. (II, III)

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

c. There shall be no more beds erected than is stipulated on the license. (II, III)

d. There shall be no more beds erected in a room than its size and other characteristics will permit. (II, III)

e. The admission of a resident to a residential care facility for the mentally retarded shall not give the facility or any employee of the facility the right to manage, use, or dispose of any property of the resident except with the written authorization of the resident or the resident's legal representative. (III)

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

g. A residential care facility for the mentally retarded shall provide for the safekeeping of personal effects, funds, and other property of its residents. The facility may require that items of exceptional value or which would convey unreasonable responsibilities to the licensee be removed from the premises of the facility for safekeeping. (III)

h. Rescinded, effective 7/14/82.

i. Funds or properties received by the residential care facility for the mentally retarded, belonging to or due a resident, expendable for his or her account, shall be trust funds. (III)

j. Infants and children under the age of sixteen shall not be admitted to health care facilities for adults unless given prior written approval by the department. A distinct part of a health care facility, segregated from the adult section, may be established based on a program of care submitted by the licensee or applicant which is commensurate with the needs of the residents of the health care facility and has received the department's review and approval. (III)

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

l. Upon the verified petition of the county board of supervisors, the district court may appoint the administrator of a county care facility as conservator or guardian or both of a resident of such county care facility. Such administrator shall serve as conservator or guardian or both without fee. The administrator may establish either separate or common bank accounts for cash funds of such resident wards. (III)

63.13(2) Discharge or transfer.

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

b. Proper arrangements shall be made by the residential care facility for the mentally retarded for the welfare of the resident prior to transfer or discharge in the event of an emergency or inability to reach the next of kin or legal representative. (III)

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

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

e. When a resident is transferred or discharged, the appropriate record as set forth in 63.17(1) of these rules will accompany the resident. (II, III)

f. Prior to the transfer or discharge of a resident to another health care facility, arrangements to provide for continuity of care shall be made with the facility to which the resident is being sent. (II, III)

470—63.14(135C) Contracts. Each party shall receive a copy of the signed contract. Each contract for residents shall:

63.14(1) State the base rate or scale per day or per month, the services included, and the method of payment; (III)

63.14(2) Contain a complete schedule of all offered services for which a fee may be charged in addition to the base rate. (III) Furthermore, the contract shall:

a. Stipulate that no further additional fees shall be charged for items not contained in complete schedule of services as set forth in subrule 63.14(2); (III)

b. State the method of payment of additional charges; (III)

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

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

63.14(3) Contain an itemized list of those services, with the specific fee the resident will be charged and method of payment, as related to his or her current condition, based on a preadmission evaluation assessment which is determined in consultation with the administrator; (III)

63.14(4) Include the total fee to be charged initially to the resident; (III)

63.14(5) State the conditions whereby the facility may make adjustments to their overall fees for resident care as a result of changing costs. (III) Furthermore, the contract shall provide that the facility shall give:

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

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

63.14(6) State the terms of agreement in regard to refund of all advance payments in the event of transfer, death, voluntary or involuntary discharge; (III)

63.14(7) State the terms of agreement concerning the holding and charging for a bed in the event of temporary absence of the resident; such terms shall include, at a minimum, the following provisions:

a. If a resident has a temporary absence from a facility for medical treatment, the facility shall ask the resident or responsible party if they wish the bed held open. This shall be documented in the resident's record including the response. Upon request of the resident/responsible party, the facility shall hold the bed open for at least ten days during the resident's absence and the facility shall receive payment for the absent period in accordance with provisions of the contract. (II)

b. If a resident has a temporary absence from a facility for therapeutic reasons as approved by a physician, the facility shall ask the resident or responsible party if they wish the bed held open. This shall be documented in the resident's record including the response. The bed shall be held open at least eighteen days per year and the facility shall receive payment for the absent periods in accordance with the provisions of the contract. The required holding during temporary absences for therapeutic reasons is limited to eighteen days per year. (II)

c. Private pay residents shall have a negotiated rate stated in the signed contract relating to these provisions. (II)

63.14(8) State the conditions under which the involuntary discharge or transfer of a resident would be effected; (III)

63.14(9) State the conditions of voluntary discharge or transfer; (III)

63.14(10) Set forth any other matters deemed appropriate by the parties to the contract. No contract or any provision thereof shall be drawn or construed so as to relieve any health care facility of any requirement or obligation imposed upon it by this chapter or any standards or rules in force pursuant to this chapter; (III)

470—63.15(135C) Medical services.

63.15(1) Each resident in a residential care facility for the mentally retarded shall have a designated licensed physician, who may be called when needed. (III)

63.15(2) Each resident admitted to a residential care facility for the mentally retarded shall have had a physical examination prior to admission. If the resident is admitted directly from another health care facility, a copy of the admission physical and discharge summary may be part of the record in lieu of an additional physical examination. A record of the examination, signed by the physician, shall be part of the resident's record. (III)

63.15(3) Arrangements shall be made to have a physician available to furnish medical care in case of emergency. (II, III)

63.15(4) Rescinded, effective 7/14/82.

63.15(5) The person in charge shall immediately notify the physician of any accident, injury, or adverse change in the resident's condition. (III)

63.15(6) Each resident shall be visited by or shall visit his or her physician at least annually. (III)

63.15(7) Residents shall be admitted to a residential care facility for the mentally retarded only on a written order signed by a physician certifying that the individual being admitted requires no more than personal care and supervision but does not require nursing care. (III)

470—63.16(135C) Dental services.

63.16(1) The residential care facility for the mentally retarded personnel shall assist residents to obtain regular and emergency dental services. (III)

63.16(2) Transportation arrangements shall be made when necessary for the resident to be transported to the dentist's office. (III)

63.16(3) Dental services shall be performed only on the request of the resident, responsible relative, or legal representative. The resident's physician shall be advised of the resident's dental problems. (III)

63.16(4) All dental reports or progress notes shall be included in the clinical record. (III)

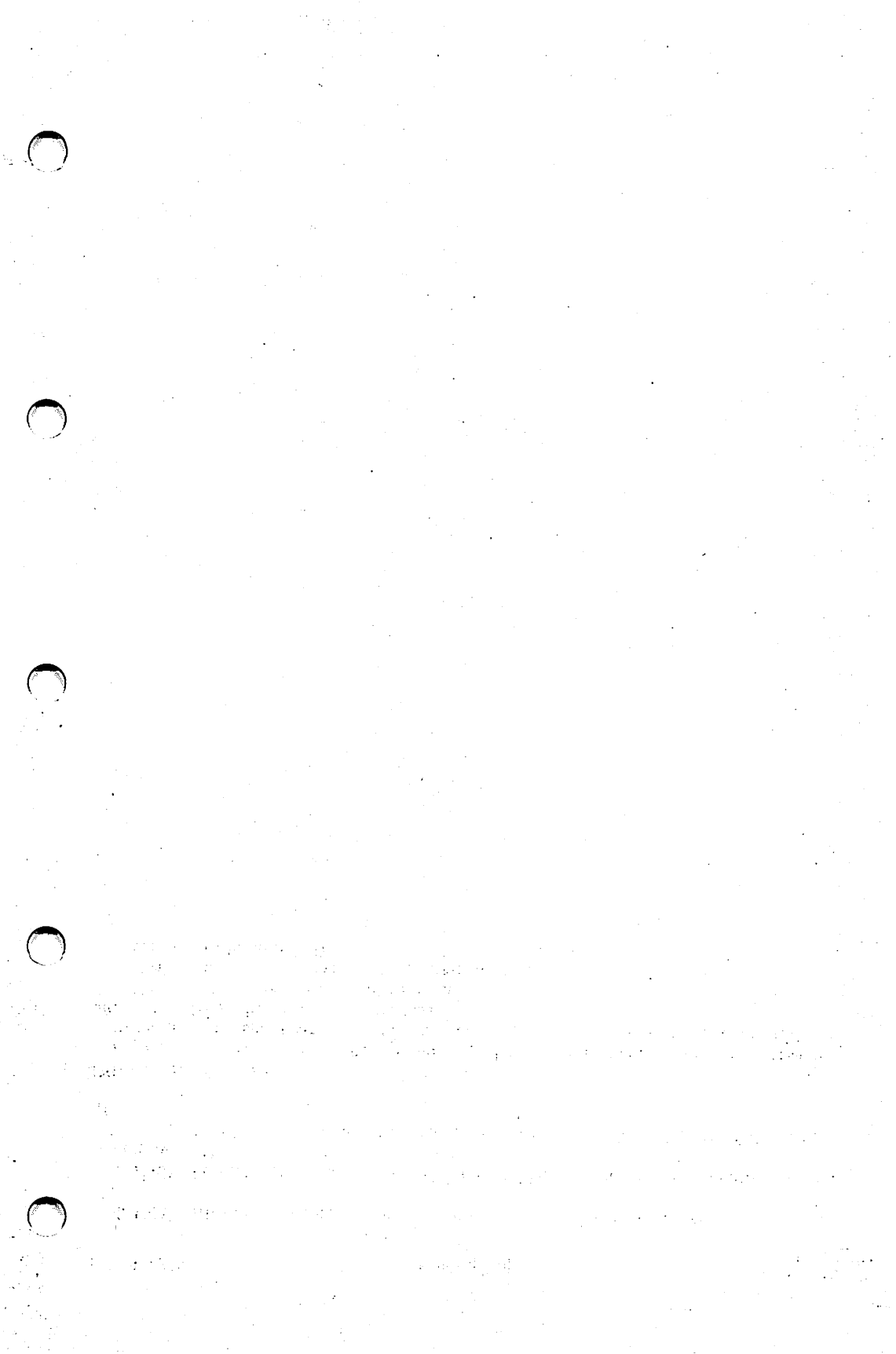
63.16(5) Personal care staff shall assist the resident in carrying out dentist's recommendations. (III)

63.16(6) Dentists shall be asked to participate in the in-service program of the facility. (III)

470—63.17(135C) Records.

63.17(1) Resident record. The licensee shall keep a permanent record on all residents admitted to a residential care facility for the mentally retarded with all entries current, dated, and signed. (III) The record shall include:

- a. Name and previous address of resident; (III)
- b. Birthdate, sex, and marital status of resident; (III)
- c. Church affiliation; (III)



- d. Physician's name, telephone number, and address; (III)
 - e. Dentist's name, telephone number, and address; (III)
 - f. Name, address, and telephone number of next of kin or legal representative; (III)
 - g. Name, address, and telephone number of person to be notified in case of emergency; (III)
 - h. Mortician's name, telephone number, and address; (III)
 - i. Pharmacist's name, telephone number, and address; (III)
 - j. Physical examination and medical history; (III)
 - k. Certification by the physician that the resident requires no more than personal care and supervision, but does not require nursing care; (III)
 - l. Physician's orders for medication, treatment, and diet in writing and signed by the physician; (III)
 - m. A notation of yearly or other visits to physician or other professional services; (III)
 - n. Any change in the resident's condition; (II, III)
 - o. If the physician has certified that the resident is capable of taking his or her prescribed medications, the resident shall be required to keep the administrator advised of current medications, treatments, and diet. The administrator shall keep a listing of medication, treatments, and diet prescribed by the physician for each resident; (III)
 - p. If the physician has certified that the resident is not capable of taking his or her prescribed medication, it must be administered by a qualified person of the facility. A qualified person shall be defined as either a registered or licensed practical nurse or an individual who has completed the state-approved training course in medication administration; (II)
 - q. Medications administered by an employee of the facility shall be recorded on a medication record by the individual who administers the medication; (II, III)
 - r. A notation describing condition on admission, transfer, and discharge; (III)
 - s. In the event of the death of a resident, a death record shall be completed, including the physician's signature and disposition of the body. A notation shall be made on the resident record of the notification of the family and, as appropriate, the agency of financial responsibility. (III)
 - t. A copy of instructions given to the resident, legal representative, or facility in the event of discharge or transfer; (III)
 - u. Disposition of valuables. (III)
- 63.17(2) Incident record.**
- a. Each residential care facility for the mentally retarded shall maintain an incident record report and shall have available incident report forms. (III)
 - b. Report of incidents shall be in detail on a printed incident report form. (III)
 - c. The person in charge at the time of the incident shall oversee the preparation and sign the incident report. (III)
 - d. The report shall cover all accidents where there is apparent injury or where hidden injury may have occurred. (III)
 - e. The report shall cover all accidents or unusual occurrences within the facility or on the premises affecting residents, visitors, or employees. (III)
 - f. A copy of the incident report shall be kept on file in the facility. (III)
- 63.17(3) Retention of records.**
- a. Records shall be retained in the facility for five years following termination of services. (III)
 - b. Records shall be retained within the facility upon change of ownership. (III)
 - c. Rescinded, effective 7/14/82.
 - d. When the facility ceases to operate, the resident's record shall be released to the facility to which the resident is transferred. If no transfer occurs, the record shall be released to the individual's physician. (III)
- 63.17(4) Reports to the department.** The licensee shall furnish statistical information concerning the operation of the facility to the department on request. (III)

63.17(5) Personnel record.

a. An employment record shall be kept for each employee consisting of the following information: Name and address of employee, social security number of employee, date of birth of employee, date of employment, experience and education, references, position in the home, date and reason for discharge or resignation. (III)

b. The personnel records shall be made available for review upon request by the department. (III)

470—63.18(135C) Drugs.**63.18(1) Drug storage.**

a. Residents who have been certified in writing by the physician as capable of taking their own medications, may retain these medications in their bedroom but locked storage must be provided. (III)

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

(1) A cabinet with a lock shall be provided which can be used for storage of drugs, solutions, and prescriptions; (III)

(2) A bathroom shall not be used for drug storage; (III)

(3) The drug storage cabinet shall be kept locked; (III)

(4) Schedule II drugs, as defined by chapter 204 of the Code, shall be kept in a locked box within the locked medication cabinet; (II)

(5) The medicine cabinet key shall be in the possession of the employee charged with the responsibility of administering medications; (II, III)

(6) Medications requiring refrigeration shall be kept in a refrigerator and separated from food and other items; (III)

(7) Drugs for external use shall be stored separately from drugs for internal use; (III)

(8) All potent, poisonous, or caustic materials shall be stored separately from drugs. They shall be plainly labeled and stored in a specific, well-illuminated cabinet, closet, or storeroom and made accessible only to authorized persons; (I, II)

(9) The drug cabinet shall have a work counter, both the counter and cabinet shall be well-lighted; (III)

(10) Running water shall be available in the room in which the medicine cabinet is located or in an adjacent room; (III)

(11) Inspection of drug storage condition shall be made by the administrator and a registered pharmacist not less than once every three months. The inspection shall be verified by a report signed by the administrator and the pharmacist and filed with the administrator. The report shall include, but not be limited to, certifying absence of the following: Expired drugs, deteriorated drugs, improper labeling, drugs for which there is no current physician's order, and drugs improperly stored. (III)

c. Bulk supplies of prescription drugs shall not be kept in a residential care facility for the mentally retarded unless a licensed pharmacy is established in the facility under the direct supervision and control of a pharmacist. (III)

63.18(2) Drug safeguards.

a. All prescribed medications shall be clearly labeled indicating the resident's full name, physician's name, prescription number, name and strength of drug, dosage, directions for use, date of issue, and name and address and telephone number of pharmacy or physician issuing the drug. Where unit dose is used, prescribed medications shall, as a minimum, indicate the resident's full name, physician's name, name and strength of drug, and directions for use. Standard containers shall be utilized for dispensing drugs. Paper envelopes shall not be considered standard containers. (III)

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

c. The medications of each resident shall be kept or stored in the originally received containers. (II, III)

470—63.22(135C) Care review committee. Each facility shall establish a care review committee in accordance with section 135C.25 of the Code, which shall operate within the scope of these rules and regulations for health care facilities. (III)

63.22(1) Purpose of care review committee.

a. The committee shall represent the rights of the consumer in the facility for determination of appropriate care, of services available in the facility, and the determination of any discriminative practices. (III)

b. The committee shall consider the needs of the residents in respect to the services the facility is authorized to render. (III)

c. The committee shall consist of at least three members and no more than five. (III)

d. The area wide health planning council shall appoint the members of the committee from individuals who have an interest in the provision of health care services and protection of dependent persons. After failure of the area wide health planning council to appoint members to the care review committee within the time unit specified in the Code, the commissioner and facility administrator shall act under the same guidelines concerning who shall be appointed and within the specified time limits in the Code. (III)

e. Membership of the care review committee shall be evaluated by the department prior to renewal of license each year. The department shall be notified in writing of all appointments to care review committees including the names and addresses, within thirty days of an appointment. (III)

f. A care review committee found to be functioning unsatisfactorily by the department may be required to be replaced. (III)

g. The members of the care review committee shall not have an ownership interest in the facility, nor be employed by the facility, nor be related to an employee or licensee, nor be a public employee involved with the sponsoring or placement of residents, nor be one who inspects or otherwise evaluates the facility or residents. (III)

h. The committee shall elect a chairperson and secretary at its first meeting and shall meet at least quarterly and on such occasions as required to accomplish its purposes. (III)

i. Information concerning the operation of the facility and residents residing therein is a privileged communication and shall not be disclosed publicly in such a manner as to identify individuals or the facility except in accordance with section 135C.19 of the Code. (III)

j. The committee shall be made acquainted and knowledgeable by the administrator of the rules and regulations of the department governing the operation of the facility and the services it is licensed to provide. (III)

63.22(2) Responsibilities of the committee.

a. The committee shall determine whether the facility and the contract for services and program of care are as agreed upon in the contract. (III)

b. The committee may function for more than one facility. (III)

c. Each resident shall be reviewed on at least an annual basis. (III)

d. The committee shall determine through its observations, conference with the resident, and consultation with others that services are being provided in accordance with the resume of care. Determination shall be made regarding the following: Cleanliness of resident, whether types of tasks given residents are in accordance with the physician's orders and whether resident employees may receive remuneration, consideration of the resident's personal and social needs, situations affecting resident's welfare and safety, absence of signs of malnutrition and dehydration, preservation of the highest level of independent functioning in relation to each individual's physical and mental capabilities, sanitation of the facility and grounds, that the physical structure of the facility contains no physical barriers which would prevent any resident from freely using the services of the facility or exiting to the outside. Physical barriers preventing the exit from a facility shall not apply to remotely operated devices previously approved by the department for the safety of the residents. (III)

e. The committee shall submit a report to the administrator at the conclusion of each meeting. (III)

f. The committee shall report to the department for counsel and guidance in situations where the administrator fails to acknowledge the intent of their findings and recommendations. (III)

g. The committee shall be available to meet with the department upon request. (III)

h. Any official agency will have the privilege of meeting with the committee to discuss problems in the facility pertinent to the agency's official capacity, providing that information exchanged is treated as privileged communication and is kept confidential in accordance with section 135C.19 of the Code. (III)

63.22(3) *Limitations of the committee.*

a. The medical treatment of the individual resident shall not be an area of concern for the care review committee. (III)

b. The committee shall not have access to the medical or financial record of the resident. (III)

c. The committee shall not have access to the confidential record of the resident prepared by the staff of the social services department. The person responsible for the social services shall be available to the committee to interpret the psychosocial needs of the individual. (III)

63.22(4) *Role of committee in complaint investigations.*

a. The department shall notify the facility's care review committee of a complaint from the public.

b. The department may refer complaints to the committee for initial evaluation or investigation. After such initial evaluation or investigation, the committee shall report to the department in writing the results of the evaluation or investigation within ten days any pertinent information it may have regarding the complaint.

c. The department shall notify the committee and the Iowa commission on aging of its findings upon conclusion of its investigation.

d. Results of complaint investigations initiated by the committee that detect violations of the Code or rules of the department shall be forwarded to the department within ten days of completion of the investigation.

e. The committee shall be responsible, upon department request, to monitor correction of justified complaints.

63.22(5) Reserved, 9/1/78.

63.22(6) *Assistance to the committee.*

a. All physicians admitting residents to the facility shall have the responsibility of assisting the committee when necessary. (III)

b. The physician's certification of care shall be made available to the committee by the administrator. (III)

c. The licensee of the facility shall meet with the committee on a consultation basis and furnish information upon request to the committee. (III)

d. Committee members may seek advice and counsel from allied health professions, from specialists in the community, or from appropriate state agencies. (III)

470—63.23(135C) Safety. The licensee of a residential care facility for the mentally retarded shall be responsible for the provision and maintenance of a safe environment for residents and personnel. (III)

63.23(1) *Fire safety.*

a. All residential care facilities for the mentally retarded shall meet the fire safety rules and regulations as promulgated by the state fire marshal. (I, II)

b. The size and condition of the facility and needs of the residents shall be taken into consideration in evaluating safety precautions and practices.

63.23(2) *Safety duties of administrator.* The administrator shall have a written emergency plan to be followed in the event of fire, tornado, explosion, or other emergency which shall be rehearsed at least quarterly. (III)

a. The plan shall be available for review upon request. (III)

b. In-service shall be provided to insure that all employees are knowledgeable of the emergency plan. (III)

63.23(3) Resident safety.

a. Residents shall be permitted to smoke only where proper facilities are provided. Smoking shall not be permitted in bedrooms. Smoking by residents considered to be careless shall be prohibited except when the resident is under direct supervision. (II, III)

b. Smoking is prohibited in all rooms where oxygen is being administered or in rooms where oxygen is stored. (II, III)

c. Whenever full or empty tanks of oxygen are being used or stored, they shall be securely supported in an upright position. (II, III)

d. Smoking shall be permitted only in designated areas. (II, III)

e. Residents shall receive adequate supervision to insure against hazards from themselves, others, or elements in the environment. (II, III)

63.23(4) Restraints.

a. Residents shall not be kept behind locked doors;

b. Temporary seclusion of residents shall be used only in an emergency to prevent injury to the resident or to others pending transfer to appropriate placements;

c. A divided door equipped with a securing device that may be readily opened by personnel shall be considered an appropriate means of temporarily confining a resident in his or her room;

d. Divided doors shall be of such type that when the upper half is closed the lower section shall close.

470—63.24(135C) Housekeeping.

63.24(1) Written procedures shall be established and implemented for daily and weekly cleaning schedules. (III)

63.24(2) Each resident unit shall be cleaned on a routine schedule. (III)

63.24(3) All rooms, corridors, storage areas, linen closets, attics, and basements shall be kept in a clean, orderly condition, free of unserviceable furniture and equipment and accumulations of refuse. (III)

63.24(4) A hallway or corridor shall not be used for storage of equipment. (III)

63.24(5) All odors shall be kept under control by cleanliness and proper ventilation. (III)

63.24(6) Clothing worn by personnel shall be clean and washable. (III)

63.24(7) Housekeeping and maintenance personnel shall be provided with well-constructed and properly maintained equipment appropriate to the function for which it is to be used. (III)

63.24(8) All furniture, bedding, linens, and equipment shall be cleaned periodically and before use by another resident. (III)

63.24(9) Polishes used on floors shall provide a nonslip finish. (III)

63.24(10) Throw or scatter rugs shall not be permitted. (III)

63.24(11) Entrances, exits, steps, and outside walkways shall be kept free from ice, snow, and other hazards. (II, III)

63.24(12) Cleaning agents, bleaches, insecticides, or any other poisonous, dangerous, or flammable materials shall not be accessible to residents except as indicated in individualized programs of care. (II, III)

63.24(13) Sufficient numbers of noncombustible trash containers, which have covers, shall be available. (III)

470—63.25(135C) Maintenance.

63.25(1) Each facility shall establish a maintenance program to insure the continued maintenance of the facility, to promote good housekeeping procedures, and to insure sanitary practices throughout the facility. In facilities over fifteen beds, this program shall be established in writing and available for review by the department. (III)

63.25(2) The building, grounds, and other buildings shall be maintained in a clean, orderly condition and in good repair. (III)

63.25(3) Draperies and furniture shall be clean and in good repair. (III)

63.25(4) Cracks in plaster, peeling wallpaper or paint, and tears or splits in floor coverings shall be promptly repaired or replaced in a professional manner. (III)

63.25(5) The electrical systems, including appliances, cords, and switches, shall be maintained to guarantee safe functioning and comply with the national electrical code. (III)

63.25(6) All plumbing fixtures shall function properly and comply with the state plumbing code. (III)

63.25(7) Yearly inspections of the heating and cooling systems shall be made to guarantee safe operation. (III)

63.25(8) The building, grounds, and other buildings shall be kept free of breeding areas for flies, other insects, and rodents. (III)

63.25(9) The facility shall be kept free of flies, other insects, and rodents. (III)

63.25(10) Janitor closet.

a. Facilities shall be provided with storage for cleaning equipment, supplies, and utensils. (III)

b. Mops, scrub pails, and other cleaning equipment used in the resident areas shall not be stored or used in the dietary area. (III)

c. In facilities licensed for over fifteen beds, a janitor's closet shall be provided. It shall be equipped with water for filling scrub pails and janitor's sink for emptying scrub pails. (III)

470—63.26(135C) Laundry.

63.26(1) All soiled linens shall be collected in and transported to the laundry room in closed, leakproof laundry bags or covered, impermeable containers. (III)

63.26(2) Except for related activities, the laundry room shall not be used for other purposes. (III)

63.26(3) Procedures shall be written for the proper handling of wet, soiled, and contaminated linens. (III)

63.26(4) Residents' personal laundry shall be marked with an identification. (III)

63.26(5) Bed linens, towels, washcloths, and residents' clothing shall be clean and stain-free. (III)

63.26(6) If laundry is done in the facility, the following shall be provided:

a. A clean, dry, well-lighted area to accommodate a washer and dryer of adequate size to serve the needs of the facility. (III)

b. In facilities of over fifteen beds, the laundry room shall be divided into separate areas, one for sorting soiled linen and one for sorting and folding clean linen. (III)

470—63.27(135C) Garbage and waste disposal.

63.27(1) All garbage shall be gathered, stored, and disposed of in a manner that will not permit transmission of disease, create a nuisance, or provide a breeding or feeding place for vermin or insects. (III)

63.27(2) All containers for refuse shall be watertight, rodent-proof, and have tight-fitting covers. (III)

63.27(3) All containers shall be thoroughly cleaned each time the containers are emptied. (III)

63.27(4) All wastes shall be properly disposed of in compliance with local ordinances and state codes. (III)

63.27(5) Special provision shall be made for the disposal of soiled dressings and similar items in a safe, sanitary manner. (III)

470—63.28(135C) Buildings, furnishings, and equipment.

63.28(1) *Buildings—general requirements.*

a. For purposes of computation of usable floor space in bedrooms and other living areas of the facility, that part of the room having no less than seven feet of ceiling height shall be used. Usable floor space may include irregularities in the rooms such as alcoves and offsets with approval of the department. Usable floor space shall not include space needed for corridor door swings or wardrobes being used as a substitute for closet space. (III)

b. Battery-operated, portable emergency lights in good working condition shall be available at all times, at a ratio of one light per one employee on duty from 6 p.m. to 6 a.m. (III)

c. All windows shall be supplied with curtains and shades or drapes which are kept clean and in good repair. (III)

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PHYSICS DEPARTMENT

PHYSICS 311

LECTURE 1

LECTURE 2

LECTURE 3

f. Each toilet room shall have a door. (III)

g. All toilet, bath, and shower facilities shall be supplied with adequate safety devices appropriate to the needs of the individual residents. Raised toilet seats shall be available for residents who are aged or infirm. (III)

h. Toilet and bath facilities shall have an aggregate outside window area of at least four square feet. Facilities having a system of mechanical ventilation are exempt from this regulation. (III)

i. Every facility shall provide a toilet with grab bars and lavatory for the public and staff. (III)

63.28(6) Heating. A centralized heating system capable of maintaining a minimum temperature of 78°F (26°C) shall be provided. Portable units or space heaters are prohibited from being used in the facility except in an emergency. (III)

63.28(7) Water supply.

a. Every facility shall have an adequate water supply from an approved source. A municipal source of supply shall be considered as meeting this requirement. (III)

b. Private sources of supply shall be tested annually and the report submitted with the annual application for license. (III)

c. A bacterially unsafe source of supply shall be grounds for denial, suspension, or revocation of license. (III)

d. The department may require testing of private sources of supply at its discretion in addition to the annual test. The facility shall supply reports of such tests as directed by the department. (III)

e. Hot and cold running water under pressure shall be available in the facility. (III)

f. Prior to construction of a new facility or new water source, private sources of supply shall be surveyed and shall comply with the requirements of the department. (III)

63.28(8) Sewage system.

a. Sewage shall be collected and disposed of in a manner approved by the department. Disposal into a municipal system will be considered as meeting this requirement. (III)

b. Private sewage systems shall conform to the rules and regulations of the department of environmental quality, state health department, and the natural resources council. (III)

c. Every facility shall have an interior plumbing system complete with flushing device. (III)

63.28(9) Attendant's station. In facilities over fifteen beds, an attendant's station with a minimum of forty square feet shall be provided which is centrally located in the resident area and shall have a well-lighted desk with the necessary equipment for the keeping of required records and supplies. (III)

470—63.29(135C) Family and employee accommodations.

63.29(1) Children under fourteen years of age shall not be allowed into the service areas in facilities of more than fifteen beds. (III)

63.29(2) The residents' bedrooms shall not be occupied by employees, family members of employees, or family members of the licensee. (III)

63.29(3) In facilities where the total occupancy of family, employees, and residents is five or less, one toilet and one tub or shower shall be the minimum requirement. (III)

63.29(4) In facilities where the total occupancy of family, employees, and residents is more than five, separate bathing and toilet facilities shall be required for the family or employees distinct from such areas provided for residents. (III)

63.29(5) In facilities of more than fifteen beds, if the family or employees live within the facility, separate living quarters and recreation facilities shall be required for the family or employees distinct from such areas provided for residents. (III)

470—63.30(135C) Animals. No animals shall be allowed within the facility except with written approval of the department and under controlled conditions. (III)

470—63.31(135C) Environment and grounds.

63.31(1) A residential care facility for the mentally retarded shall be constructed in a neighborhood free from excessive noise, dirt, polluted, or odorous air, or similar disturbances. (III)

63.31(2) There shall be an area available for outdoor activities calculated at twenty-five square feet per licensed bed. (III) Open air porches may be included in meeting such requirement.

470—63.32(135C) Supplies.**63.32(1) Linen supplies.**

a. There shall be an adequate supply of linen so that each resident shall have at least three washcloths, hand towels, and bath towels per week. (III)

b. A complete change of bed linens shall be available in the linen storage area for each bed. (III)

c. Sufficient lightweight, clean, serviceable blankets shall be available. All blankets shall be laundered as often as necessary for cleanliness and freedom of odors. (III)

d. Each bed shall be provided with clean, washable bedspreads. There shall be a supply available when changes are necessary. (III)

e. Uncrowded and convenient storage shall be provided for linens, pillows, and bedding. (III)

63.32(2) First aid kit. A first aid emergency kit shall be available on each floor in every facility. (II, III)

63.32(3) General supplies.

a. All equipment shall be properly cleaned and sanitized before use by another resident. (III)

b. Clean and sanitary storage shall be provided for equipment and supplies. (III)

470—63.33(135C) Residents' rights in general.

63.33(1) Each facility shall ensure that policies and procedures are written and implemented which include, at a minimum, all of the following provisions (subrules 63.33(2) to 63.33(6)) and which govern all areas of service provided by the facility. These policies and procedures shall be available to staff, residents, their families or legal representatives and the public and shall be reviewed annually. (II)

63.33(2) Policies and procedures regarding the admission, transfer, and discharge of residents shall assure that:

a. Only those persons are accepted whose needs can be met by the facility directly or in cooperation with community resources or other providers of care with which it is affiliated or has contracts. (II)

b. As changes occur in residents' physical or mental condition, necessitating services or care which cannot be adequately provided by the facility, they are transferred promptly to other appropriate facilities. (II)

63.33(3) Policies and procedures regarding the use of chemical and physical restraints shall define the use of restraints and identify the individual who may authorize the application of physical restraints in emergencies, and describe the mechanism for monitoring and controlling their use. (II)

63.33(4) Policies and procedures shall include a method for submitting complaints and recommendations by residents or their responsible party and for assuring a response and disposition by the facility. (II)

63.33(5) Policies and procedures shall include provisions governing access to, duplication of, and dissemination of information from the residents' records. (II)

63.33(6) Policies and procedures shall include a provision that each resident shall be fully informed of his/her rights and responsibilities as a resident and of all rules governing resident conduct and responsibilities. The information must be provided upon admission or in the case of residents already in the facility upon the facility's adoption or amendment of resident right policies.

a. The facility shall make known to residents what they may expect from the facility and its staff, and what is expected from them. The facility shall communicate these expectations during the period of not more than two weeks before or five days after admission. The communication shall be in writing, e.g., in a separate handout or brochure describing the facility, and interpreted verbally, e.g., as part of a preadmission interview, resident counseling, or in individual or group orientation sessions following admission. (II)

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

c. A statement shall be signed by the resident, or his/her responsible party, indicating an understanding of these rights and responsibilities, and shall be maintained in the record. The statement shall be signed no later than five days after admission, and a copy of the signed statement shall be given to the resident or responsible party, if applicable. In the case of a mentally retarded resident, the signature shall be witnessed by a person not associated with or employed by the facility. The witness may be a parent, guardian, Medicaid agency representative, etc. (II)

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

e. All residents shall be advised within thirty days following changes made in the statement of residents' rights and responsibilities. Appropriate means shall be utilized to inform non-English speaking, deaf, or blind residents of such changes. (II)

63.33(7) Each resident or responsible party shall be fully informed in a contract as required in rule 63.14(135C), prior to or at the time of admission and during his/her stay, of services available in the facility, and of related charges not covered by the facility's basic per diem rate. (II)

63.33(8) Each resident or responsible party shall be fully informed by a physician of his/her health and medical condition unless medically contraindicated (as documented by a physician in his/her resident record). Each resident shall be afforded the opportunity to participate in the planning of his/her total care and medical treatment, which may include, but is not limited to, nursing care, nutritional care, rehabilitation, restorative therapies, activities, and social work services. Each resident only participates in experimental research conducted under the department of health and human services protection from research risks policy and then only upon his/her informed written consent. Each resident has the right to refuse treatment except as provided by chapter 229, The Code. In the case of a confused or mentally retarded individual, the responsible party shall be informed by the physician of the resident's medical condition and be afforded the opportunity to participate in the planning of his/her total care and medical treatment, to be informed of the medical condition, and to refuse to participate in experimental research. (II)

a. The requirement that residents shall be informed of their conditions, involved in the planning of their care, and advised of any significant changes in either, shall be communicated to every physician responsible for the medical care of residents in the facility. (II)

b. The administrator or his/her designee shall be responsible for working with attending physicians in the implementation of this requirement. (II)

c. If the physician determines or in the case of a confused or mentally retarded resident the responsible party determines that informing the resident of his/her condition is contraindicated, this decision and reasons for it shall be documented in the resident's record by the physician. (II)

d. Any clinical investigation involving residents must be under the sponsorship of an institution with a human subjects review board functioning in accordance with the requirements of Public Law 93-348, as implemented by Part 46 of Title 45 of the Code of Federal Regulations, as amended December 1, 1981 (45 CFR 46). A resident being considered for participation in

experimental research must be fully informed of the nature of the experiment, e.g., medication, treatment, and understand the possible consequences of participating or not participating. The resident's (or responsible party's) written informed consent must be received prior to participation. (II)

470—63.34(135C) Involuntary discharge or transfer.

63.34(1) A facility shall not involuntarily discharge or transfer a resident from a facility except: For medical reasons; for the resident's welfare or that of other residents; for nonpayment for the resident's stay (as contained in the contract for the resident's stay), and by reason of action pursuant to Chapter 229, The Code. (I, II)

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

b. "Welfare" of a resident or that of other residents refers to their social, emotional, or physical well-being. A resident might be transferred or discharged because his/her behavior poses a continuing threat to himself/herself (e.g., suicidal) or to the well-being of other residents or staff (e.g., his/her behavior is incompatible with their needs and rights). Evidence that the resident's continued presence in the facility would adversely affect their own welfare or that of other residents shall be made by the administrator or his/her designee and shall be in writing and shall include specific information to support this determination. (II)

c. Involuntary transfer or discharge of a resident from a facility shall be preceded by a written notice to the resident or responsible party at least thirty days in advance of the proposed transfer or discharge. The thirty-day requirement shall not apply in any of the following instances:

(1) If an emergency transfer or discharge is mandated by the resident's health care needs and is in accord with the written orders and medical justification of the attending physician. Emergency transfers or discharges may also be mandated to protect the health, safety, or well-being of other residents and staff from the resident being transferred. (II)

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

d. The notice required by paragraph "c" shall contain all of the following information:

(1) The stated reason for the proposed transfer or discharge. (II)

(2) The effective date of the proposed transfer or discharge. (II)

(3) A statement in not less than twelve-point type (elite), which reads: "You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa State Department of Health (hereinafter referred to as "Department") within seven days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than fourteen days after receipt of your request by the Department and you will not be transferred prior to a final decision. Provision may be made for extension of the fourteen day requirement upon request to the Health Department designee in emergency circumstances. If you lose the hearing, you will not be transferred before the expiration of thirty days following receipt of the original notice of the discharge or transfer, or no sooner than five days following final decision of such hearing. To request a hearing or receive further information, call the Department at (515) 281-4130 or you may write to the Department to the attention of: Chief, Division of Health Facilities, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319". (II)

e. A request for a hearing made under paragraph "d"(3) shall stay a transfer or discharge pending a hearing or appeal decision. (II)

f. The hearing shall be held in the facility and the date and time of the hearing shall be determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident, responsi-

ble party, and Iowa commission on aging long term care ombudsman of record not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident or responsible party, that they have a right to appear at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present nor represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. The Iowa commission on aging long term care ombudsman shall have the right to appear at the hearing.

g. The hearing shall be heard by a health department designee pursuant to chapter 17A, The Code. (The hearing shall be public unless the resident or his/her representative requests in writing that it be closed.) The licensee or his/her designee shall have the opportunity to present to the representative of the department any oral testimony or written materials to show by a preponderance of the evidence just cause why a transfer or discharge may be made. The resident and responsible party shall also have an opportunity to present to the representative of the department any oral testimony or written material to show just cause why a transfer or discharge should not be made. In a determination as to whether a transfer or discharge is authorized, the burden of proof rests on the party requesting the transfer or discharge.

h. Based upon all testimony and materials submitted to the representative of the department, the representative shall issue, in accordance with chapter 17A, The Code, contested hearings, a written findings of fact, conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, responsible party, and commission on aging long term care ombudsman within ten working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

Appeals from any decision or order of the representative must be made in writing and mailed to the commissioner of public health by certified mail return receipt requested or by personal service within ten days after the mailing of the decision or order to the aggrieved party. A party who has exhausted all adequate administrative remedies and is aggrieved by the final action of the department may petition for judicial review in the manner provided by chapter 17A.

i. A copy of the notice required by paragraph "c" shall be personally delivered to the resident and a copy placed in the resident's record. A copy shall also be transmitted to the department, the resident's responsible party, physician, the person or agency responsible for the resident's placement, maintenance, and care in the facility, and the commission on aging long term care ombudsman.

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

k. The involuntary transfer or discharge shall be discussed with the resident, the resident's responsible party, and the person or agency responsible for the resident's placement, maintenance, and care in the facility within forty-eight hours after notice of discharge has been received. The explanation and discussion of the reasons for involuntary transfer or discharge shall be given by the facility administrator or other appropriate facility representative as the administrator's designee. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions and made a part of the resident's record. (II)

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

(1) Counseling shall be provided by a qualified individual who meets one of the following criteria:

1. Has a bachelor's or master's degree in social work from an accredited college. (II)
2. Is a graduate of an accredited four-year college and has had at least one year of full-time paid employment in a social work capacity with public or private agency. (II)
3. Has been employed in a social work capacity for a minimum of four years in a public or private agency. (II)

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

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

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

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

m. In the case of an emergency transfer or discharge as outlined in paragraph "c"(1), the resident must still be given a written notice prior to or within forty-eight hours following transfer or discharge. A copy of this notice must be placed in the resident's file and it must contain all the information required by paragraph "d"(1) and (2). In addition, the notice must contain a statement in not less than twelve-point type (elite), which reads: "You have a right to appeal the facility's decision to transfer or discharge you on an emergency basis. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa State Department of Health within seven days after receiving this notice. If you request a hearing, it will be held no later than fourteen days after receipt of your request by the Department. You may be transferred or discharged before the hearing is held or before a final decision is rendered. If you win the hearing, you have the right to be transferred back into the facility. To request a hearing or receive further information, call the Department at (515) 281-4130 or you may write to the Department to the attention of: Chief, Division of Health Facilities, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319". A hearing requested pursuant to this subrule shall be held in accordance with paragraph "f", "g", and "h". (II)

n. Residents shall not have the right to a hearing to contest an involuntary discharge or transfer resulting from the revocation of the facility's license by the department of health. In the case of a facility voluntarily closing, a period of thirty days must be allowed for an orderly transfer of residents to other facilities.

63.34(2) Intrafacility transfer:

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

(1) Incompatibility with or disturbing to other roommates, as documented in the resident's record.

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

(3) For medical, nursing or psychosocial reasons, as documented in the resident's record, as judged by the attending physician, nurse or social worker in the case of a facility which groups residents by medical, nursing or psychosocial needs.

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

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

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

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

(1) Change from private pay status to Title XIX, except as outlined in paragraph "a"(5). (II)

(2) As punishment or behavior modification (except as specified in paragraph "a"(1). (II)

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

c. If intrafacility relocation is necessary for reasons outlined in paragraph "a", the resident shall be notified at least forty-eight hours prior to the transfer and the reason therefore shall be explained. The responsible party shall be notified as soon as possible. Notification shall be documented in the resident's record and signed by the resident or responsible party. (II)

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

470—63.35(135C) Resident rights. Each resident shall be encouraged and assisted throughout his/her period of stay, to exercise his/her rights as a resident and as a citizen and may voice grievances and recommend changes in policies and services to administrative staff or to outside representatives of his/her choice, free from interference, coercion, discrimination, or reprisal. (II)

63.35(1) The facility shall provide ongoing opportunities for residents to be aware of and to exercise their rights as residents. Residents shall be kept informed of issues or pending decisions of the facility that affect them and their views shall be solicited prior to action. (II)

63.35(2) The facility shall implement a written procedure for registering and resolving grievances and recommendations by residents or their responsible party. The procedure shall ensure protection of the resident from any form of reprisal or intimidation. The written procedure shall include:

a. Designation of an employee responsible for handling grievances and recommendations. (II)

b. A method of investigating and assessing the validity of a grievance or recommendation. (II)

c. Methods of resolving grievances. (II)

d. Methods of recording grievances and actions taken. (II)

63.35(3) The facility shall post in a prominent area the name, phone number, and address of the ombudsman, survey agency, local law enforcement agency, care review committee members, the text of section 135C.46, The Code, etc., to provide to residents a further course of redress. (II)

470—63.36(135C) Financial affairs—management. Each resident, who has not been assigned a guardian or conservator by the court, may manage his/her personal financial affairs, and to the extent, under written authorization by the resident that the facility assists in management, the management shall be carried out in accordance with section 135C.24, The Code. (II)

63.36(1) The facility shall maintain a written account of all residents' funds received by or deposited with the facility. (II)

63.36(2) An employee shall be designated in writing to be responsible for resident accounts. (II)

63.36(3) The facility, shall keep on deposit personal funds over which the resident has control in accordance with section 135C.24(2). Should the resident request these funds, they shall be given to him/her on request with receipts maintained by the facility and a copy to the resident. In the case of a confused or mentally retarded resident, the resident's responsible party shall designate a method of disbursing their funds. (II)

63.36(4) If the facility makes financial transactions on a resident's behalf, the resident must receive or acknowledge that he/she has seen an itemized accounting of disbursements and current balances at least quarterly. A copy of this statement shall be maintained in the resident's financial or business record. (II)

470—63.37(135C) Resident abuse prohibited. Each resident shall receive kind and considerate care at all times and shall be free from mental and physical abuse. Each resident shall be free from chemical and physical restraints, except in an emergency for the shortest amount of time necessary to protect the resident from injury to himself/herself or to others, pending the immediate transfer to an appropriate facility. The decision to use restraints on an emergency basis shall be made by the designated charge person who shall promptly report the

action taken to the physician and the reasons for using restraints shall be documented in the resident's record. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

63.37(1) Mental abuse includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation. (II)

63.37(2) Physical abuse includes, but is not limited to, corporal punishment and the use of restraints as punishment. (II)

63.37(3) Drugs such as tranquilizers may not be used as chemical restraints to limit or control resident behavior for the convenience of staff or as a substitute for program. (II)

470—63.38(135C) Resident records. Each resident shall be ensured confidential treatment of all information contained in his/her records, including information contained in an automatic data bank. His/her written consent shall be required for the release of information to persons not otherwise authorized under law to receive it. (II)

63.38(1) The facility shall limit access to any medical records to staff and consultants providing professional service to the resident. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

63.38(2) Similar procedures shall safeguard the confidentiality of residents' personal records, e.g., financial records and social services records. Only those personnel concerned with the financial affairs of the residents may have access to the financial records. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

63.38(3) The resident, or his/her responsible party, shall be entitled to examine all information contained in his/her record and shall have the right to secure full copies of the record at reasonable cost upon request, unless the physician determines the disclosure of the record or section thereof is contraindicated in which case this information will be deleted prior to making the record available to the resident or responsible party. This determination and the reasons for it must be documented in the resident's record. (II)

470—63.39(135C) Dignity preserved. The resident shall be treated with consideration, respect, and full recognition of his/her dignity and individuality, including privacy in treatment and in care for his/her personal needs. (II)

63.39(1) Staff shall display respect for residents when speaking with, caring for, or talking about them, as constant affirmation of their individuality and dignity as human beings. (II)

63.39(2) Schedules of daily activities shall allow maximum flexibility for residents to exercise choice about what they will do and when they will do it. Residents' individual preferences regarding such things as menus, clothing, religious activities, friendships, activity programs, entertainment, sleeping and eating, also times to retire at night and arise in the morning shall be elicited and considered by the facility. (II)

63.39(3) Residents shall be examined and treated in a manner that maintains the privacy of their bodies. A closed door or a drawn curtain shall shield the resident from passers-by. People not involved in the care of the residents shall not be present without the resident's consent while he/she is being examined or treated. (II)

63.39(4) Privacy of a resident's body also shall be maintained during toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance. (II)

63.39(5) Staff shall knock and be acknowledged before entering a resident's room unless the resident is not capable of a response. This shall not apply under emergency conditions. (II)

470—63.40(135C) Resident work. No resident may be required to perform services for the facility, except as provided by sections 219.14 and 253.5, The Code. (II)

63.40(1) Residents may not be used to provide a source of labor for the facility against their will. Physician's approval is required for all work programs. (I, II)

63.40(2) If the plan of care requires activities for therapeutic or training reasons, the plan for these activities shall be professionally developed and implemented. Therapeutic or training goals must be clearly stated and measurable and the plan shall be time limited and reviewed at least quarterly. (II)

63.40(3) Residents who perform work for the facility must receive remuneration unless such work is part of their approved training program. Persons on the resident census performing work shall not be used to replace paid employees in fulfilling staff requirements. (II)

470—63.41(135C) Communications. Each resident may communicate, associate, and meet privately with persons of his/her choice, unless to do so would infringe upon the rights of other residents, and may send and receive his/her personal mail unopened. (II)

63.41(1) Subject to reasonable scheduling restrictions, visiting policies and procedures shall permit residents to receive visits from anyone they wish. Visiting hours shall be posted. (II)

63.41(2) Reasonable, regular visiting hours shall not be less than twelve hours per day and shall take into consideration the special circumstances of each visitor. A particular visitor(s) may be restricted by the facility for one of the following reasons:

- a. The resident refuses to see the visitor. (II)
- b. The resident's physician documents specific reasons why such a visit would be harmful to the resident's health. (II)
- c. The visitor's behavior is unreasonably disruptive to the functioning of the facility (this judgment must be made by the administrator and the reasons shall be documented and kept on file). (II)

63.41(3) Decisions to restrict a visitor are reviewed and re-evaluated: Each time the medical orders are reviewed by the physician; at least quarterly by the facility's staff; or at the resident's request. (II)

63.41(4) Space shall be provided for residents to receive visitors in reasonable comfort and privacy. (II)

63.41(5) Telephones consistent with ANSI standards (405.1134(c)), shall be available and accessible for residents to make and receive calls with privacy. Residents who need help shall be assisted in using the phone. (II)

63.41(6) Arrangements shall be made to provide assistance to residents who require help in reading or sending mail. (II)

63.41(7) Residents shall be permitted to leave the facility and environs at reasonable times unless there are justifiable reasons established in writing by the attending physician, qualified mental retardation professional or facility administrator for refusing permission. (II)

63.41(8) Residents shall not have their personal lives regulated beyond reasonable adherence to meal schedules, bedtime hours, and other written policies which may be necessary for the orderly management of the facility and as required by these rules. However, residents shall be encouraged to participate in recreational programs. (II)

470—63.42(135C) Resident activities. Each resident may participate in activities of social, religious, and community groups at his/her discretion unless contraindicated for reasons documented by the attending physician or qualified mental retardation professional as appropriate in his/her resident record. (II)

63.42(1) Residents who wish to meet with or participate in activities of social, religious, or other community groups in or outside of the facility shall be informed, encouraged, and assisted to do so. (II)

63.42(2) All residents shall have the freedom to refuse to participate in these activities. (II)

470—63.43(135C) Resident property. Each resident may retain and use his/her personal clothing and possessions as space permits and provided such use is not otherwise prohibited by these rules. (II)

63.43(1) Residents shall be permitted to keep reasonable amounts of personal clothing and possessions for their use while in the facility. The personal property shall be kept in a safe location which is convenient to the resident. (II)

63.43(2) Residents shall be advised, prior to or at the time of admission, of the kinds and amounts of clothing and possessions permitted for personal use, and whether the facility will

accept responsibility for maintaining these items, e.g., cleaning and laundry. (II)

63.43(3) Any personal clothing or possessions retained by the facility for the resident during his/her stay shall be identified and recorded on admission and a record placed on the resident's chart. The facility shall be responsible for secure storage of such items, and they shall be returned to the resident promptly upon request or upon discharge from the facility. (II)

470—63.44(135C) Family visits. Each resident, if married, shall be ensured privacy for visits by his/her spouse; if both are residents in the facility, they shall be permitted to share a room, if possible. (II)

63.44(1) The facility shall provide for needed privacy in visits between spouses. (II)

63.44(2) Spouses who are residents in the same facility shall be permitted to share a room, if available, unless one of their attending physicians documents in the medical record those specific reasons why an arrangement would have an adverse effect on the health of the resident. (II)

63.44(3) Family members shall be permitted to share a room, if available, if requested by both parties, unless one of their attending physicians documents in the medical record those specific reasons why such an arrangement would have an adverse effect on the health of the resident. (II)

470—63.45(135C) Choice of physician. Each resident shall be permitted free choice of a physician and a pharmacy, if accessible. The facility may require the pharmacy selected to utilize a drug distribution system compatible with the system currently used by the facility. (II)

470—63.46(135C) Incompetent resident.

63.46(1) Each facility shall provide that all rights and responsibilities of the resident devolve to the resident's responsible party, when a resident is adjudicated incompetent in accordance with state law, or when the attending physician or qualified mental retardation professional has documented in the resident's record the specific impairment that has rendered the resident incapable of understanding these rights. The resident's specific impairment shall be re-evaluated annually by the attending physician or qualified mental retardation professional. (II)

63.46(2) The fact that a resident has been adjudicated incompetent does not absolve the facility from advising the resident of these rights to the extent the resident is able to understand them. The facility shall also advise the responsible party, if any, and acquire a statement indicating an understanding of residents' rights. (II)

These rules are intended to implement section 135C.14, The Code, as amended by the Acts of the Sixty-ninth General Assembly, 1981 Regular Sessions, Chapter 60.

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CHAPTER 64

INTERMEDIATE CARE FACILITIES
FOR THE MENTALLY RETARDED

470—64.1(135C) Definitions. For the purpose of these rules, the following terms shall have the meaning indicated in this chapter. The definitions set out in section 135C.1 of the Code shall be considered to be incorporated verbatim in the rules. The use of the words "shall" and "must" indicate those standards are mandatory. The use of the words "should" and "could" indicate those standards are recommended.

64.1(1) "Administrator" means a person who administers, manages, supervises, and is in general administrative charge of an intermediate care facility for the mentally retarded, whether or not such individual has an ownership interest in such facility, and whether or not his or her functions and duties are shared with one or more individuals.

64.1(2) "Alcoholic" means a state of dependency resulting from excessive or prolonged consumption of alcoholic beverages as defined in section 125.2 of the Code.

64.1(3) "Ambulatory" means a person who immediately and without aid of another is physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

64.1(4) "Chief executive officer" means the individual appointed by the governing body of a facility to act in its behalf in the overall management of the facility. Job titles may include, but are not limited to, superintendent, director, and administrator.

64.1(5) "Communicable disease" means a disease caused by the presence of viruses or microbial agents within a person's body, which agents may be transmitted either directly or indirectly to other persons.

64.1(6) "Distinct part" means a clearly identifiable area or section within an intermediate care facility for the mentally retarded, consisting of at least a residential unit, wing, floor, or building containing contiguous rooms.

64.1(7) "Drug addiction" means a state of dependency, as medically determined, resulting from excessive or prolonged use of drugs as defined in chapter 204 of the Code.

64.1(8) "Facility" means an intermediate care facility for the mentally retarded or persons with related conditions.

64.1(9) "Governing body" means the policy-making authority, whether an individual or a group, that exercises general direction over the affairs of a facility and establishes policies concerning its operation and the welfare of the individuals it serves.

64.1(10) "Living unit" means a resident living unit that includes sleeping areas and may additionally include dining and activity areas.

64.1(11) "Medication" means any drug including over-the-counter substances ordered and administered under the direction of a physician.

64.1(12) "Mobile nonambulatory" means unable to travel independently or without assistance, but able to move from place to place with the use of devices such as walkers, crutches, wheelchairs, wheeled platforms, and so forth.

64.1(13) "Nonambulatory" means a person who immediately and without the aid of another is not physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

64.1(14) "Nonmobile" means unable to travel independently, without assistance, or unable to move from place to place.

64.1(15) "Program of care" means all services provided for a resident in a health care facility.

64.1(16) "Resident-living" means pertaining to residential or domiciliary services provided by a facility.

64.1(17) "Rate" means that daily fee charged for all residents equally and shall include the cost of all minimum services required in these regulations.

64.1(18) *"Time out"* means time out from positive reinforcement; a behavior modification procedure in which, contingent upon undesired behavior, the resident is removed from the situation in which positive reinforcement is available.

64.1(19) *"Qualified nurse"* means a registered nurse or licensed practical nurse, as defined in chapter 152 of the Code.

64.1(20) *Qualified professionals.*

a. Dietitian. A person who:

(1) Is eligible for registration by the American Dietetic Association under its requirements in effect on January 17, 1974; or

(2) Has a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management, has one year of supervisory experience in dietetic service of a health care institution, and participates annually in continuing dietetic education.

b. Occupational therapist. A person who:

(1) Is a graduate of an occupational therapy curriculum accredited jointly by the Council on Medical Education of the American Medical Association and the American Occupational Therapy Association; or

(2) Is eligible for certification by the American Occupational Therapy Association under its requirements in effect on the publication of this provision; or

(3) Has two years of appropriate experience as an occupational therapist, and has achieved a satisfactory grade on a proficiency examination except that such determination of proficiency shall not apply with respect to persons initially licensed by a state or seeking initial qualifications as an occupational therapist after December 31, 1977.

c. Occupational therapy assistant. A person who:

(1) Is eligible for certification as a certified occupational therapy assistant (COTA) by the American Occupational Therapy Association under its requirements in effect on the publication of this provision; or

(2) Has two years of appropriate experience as an occupational therapy assistant, and has achieved a satisfactory grade on a proficiency examination except that such determination of proficiency shall not apply with respect to persons initially licensed by a state or seeking initial qualification as an occupational therapy assistant after December 31, 1977.

d. Physical therapist. A person who is licensed as a physical therapist by the state of Iowa, and

(1) Has graduated from a physical therapy curriculum approved by the American Physical Therapy Association, or by the council on medical education and hospitals of the American Medical Association, or jointly by the council on medical education of the American Medical Association and the American Physical Therapy Association; or

(2) Prior to January 1, 1966, was admitted to membership by the American Physical Therapy Association, or was admitted to registration by the American Registry of Physical Therapists, or has graduated from a physical therapy curriculum in a four-year college or university approved by a state department of education; or

(3) Has two years of appropriate experience as a physical therapist, and has achieved a satisfactory grade on a proficiency examination except that such determinations of proficiency shall not apply with respect to persons initially licensed by a state or seeking qualification as a physical therapist after December 31, 1977; or

(4) Was licensed or registered prior to January 1, 1966, and prior to January 1, 1970, had fifteen years of full-time experience in the treatment of illness or injury through the practice of physical therapy in which services were rendered under the order and direction of attending and referring physician; or

(5) If trained outside the United States, was graduated since 1928 from a physical therapy curriculum approved in the country in which curriculum was located and in which there is a member organization of the World Confederation for Physical Therapy, meets the requirements for membership in a member organization of the World Confederation for Physical Therapy, has one year of experience under the supervision of an active member of the American

Physical Therapy Association, and has successfully completed a qualifying examination as prescribed by the American Physical Therapy Association.

e. Physical therapist assistant. A person who is licensed as a physical therapist assistant, if applicable, by the state of Iowa, and

(1) Has graduated from a two-year college-level program approved by the American Physical Therapy Association; or

(2) Has two years of appropriate experience as a physical therapist assistant, and has achieved a satisfactory grade on a proficiency examination except that such determinations of proficiency shall not apply with respect to persons initially licensed by a state or seeking initial qualification as a physical therapist assistant after December 31, 1977.

f. Social worker. A person who is licensed, if applicable, by the state of Iowa and who:

(1) Is a graduate of a school of social work accredited or approved by the Council on Social Work Education, and

(2) Has one year of social work experience in a health care setting.

g. Speech pathologist or audiologist. A person who is licensed, if applicable, by the state of Iowa, and

(1) Is eligible for a certificate of clinical competence in the appropriate area (speech pathology or audiology) granted by the American Speech and Hearing Association under its requirements in effect on the publication of this provision; or

(2) Meets the educational requirements for certification, and is in the process of accumulating the supervised experience required for certification.

64.1(21) *Qualified mental retardation professions.*

a. Psychologist. A psychologist with at least a master's degree in psychology from an accredited program and one year of experience in treating the mentally retarded.

b. Physician. A physician licensed under state law to practice medicine or osteopathy and one year of experience in working with the mentally retarded.

c. Educator. An educator with a degree in education from an accredited program and one year of experience in working with the mentally retarded.

d. Social worker. A social worker with a bachelor's degree in social work from an accredited program, or a bachelor's degree in a field other than social work and at least three years' social work experience under the supervision of a qualified social worker, and one year of experience in working with the mentally retarded.

e. Occupational therapist. An occupational therapist as defined in 64.1(20)"b" and who has one year experience in treating the mentally retarded.

f. Physical therapist. A physical therapist as defined in 64.1(20)"d" and who has one year experience in treating the mentally retarded.

g. Speech pathologist or audiologist. A speech pathologist or audiologist as defined in 64.1(20)"g" and who has one year of experience in treating the mentally retarded.

h. Registered nurse. A registered nurse who has one year of experience in treating the mentally retarded.

i. Therapeutic recreation specialist. A therapeutic recreation specialist who is a graduate of an accredited program and where applicable, is licensed or registered in the state, and who has one year of experience in working with the mentally retarded.

64.1(22) "Responsible party" means the person who signs or cosigns the admission agreement required in 64.17 or the resident's guardian or conservator if one has been appointed. In the event that a resident has neither a guardian, conservator nor person who signed or cosigned the resident's admission agreement, the term "responsible party" shall include the resident's sponsoring agency, e.g., the department of social services, veteran's administration, religious groups, fraternal organizations, or foundations that assume responsibility and advocate for their client patients and pay for their health care.

64.1(23) "Restrains" means the measures taken to control a resident's physical activity for his or her own protection or for the protection of others.

470—64.2(135C) Variances. Variances from these rules may be granted by the commissioner for good and sufficient reason when the need for variance has been established; no danger to the health, safety, or welfare of any resident results; alternate means are employed or compensating circumstances exist and the variance will apply only to an individual intermediate care facility for the mentally retarded. Variances will be reviewed at the discretion of the commissioner.

64.2(1) To request a variance, the licensee must:

- a. Apply for variance in writing on a form provided by the department;
- b. Cite the rule or rules from which a variance is desired;
- c. State why compliance with the rule or rules cannot be accomplished;

d. Explain alternate arrangements or compensating circumstances which justify the variance;

e. Demonstrate that the requested variance will not endanger the health, safety, or welfare of any resident.

64.2(2) Upon receipt of a request for variance, the commissioner will:

a. Examine the rule from which variance is requested to determine that the request is necessary and reasonable;

b. If the request meets the above criteria, evaluate the alternate arrangements or compensating circumstances against the requirement of the rules;

c. Examine the effect of the requested variance on the health, safety, or welfare of the residents;

d. Consult with the applicant if additional information is required.

64.2(3) Based upon these studies, approval of the variance will be either granted or denied within forty-five days of receipt.

470—64.3(135C) Application for licensure.

64.3(1) Initial application. In order to obtain an initial intermediate care facility for the mentally retarded license for an intermediate care facility for the mentally retarded which is currently licensed, the applicant must:

a. Submit a letter of intent and a written resume of the resident care program and other services provided for departmental review and approval;

b. Make application at least thirty days prior to the change of ownership the facility on forms provided by the department;

c. Submit a floor plan of each floor of the intermediate care facility, drawn on 8½ x 11 inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which room will be put and window and door location;

d. Submit a photograph of the front and side elevation of the intermediate care facility for the mentally retarded;

e. Submit the statutory fee for an intermediate care facility for the mentally retarded license;

f. Meet all of the rules, regulations, and standards contained in chapters 64(135C) and 61(135C) of the Iowa Administrative Code;

g. Comply with federal, state, and local laws, codes, and regulations pertaining to health and safety, including procurement, dispensing, administration, safeguarding and disposal of medications and controlled substances; building, construction, maintenance and equipment standards; sanitation; communicable and reportable diseases; and postmortem procedures;

h. Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

64.3(2) In order to obtain an initial intermediate care facility for the mentally retarded license for a facility not currently licensed as an intermediate care facility for the mentally retarded, the applicant must:

a. Meet all of the rules, regulations, and standards contained in chapters 64(135C) and 61(135C) of the Iowa Administrative Code; Exceptions noted in subrule 61.1(2) shall not apply;

b. Submit a letter of intent and a written resume of the resident care program and other services provided for departmental review and approval;

c. Make application at least thirty days prior to the proposed opening date of the facility on forms provided by the department;

d. Submit a floor plan of each floor of the intermediate care facility for the mentally retarded, drawn on 8½ x 11 inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which the rooms will be put and window and door locations;

e. Submit a photograph of the front and side elevation of the intermediate care facility for the mentally retarded;

f. Submit the statutory fee for an intermediate care facility for the mentally retarded;

g. Comply with federal, state, and local laws, codes, and regulations pertaining to health and safety, including procurement, dispensing, administration, safeguarding and disposal of medications and controlled substances; building, construction, maintenance and equipment standards; sanitation; communicable and reportable diseases; and postmortem procedures;

h. Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

64.3(3) *Renewal application.* In order to obtain a renewal of the intermediate care facility for the mentally retarded license, the applicant must:

a. Submit the completed application form thirty days prior to annual license renewal date of intermediate care facility for the mentally retarded license;

b. Submit the statutory license fee for an intermediate care facility for the mentally retarded with the application for renewal;

c. Have an approved current certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations;

d. Submit appropriate changes in the resume' to reflect any changes in the resident care program or other services.

470—64.4(135C) General requirements.

64.4(1) The license shall be displayed in a conspicuous place in the facility which is viewed by the public. (III)

64.4(2) The license shall be valid only in the possession of the licensee to whom it is issued.

ments as set forth in these regulations and devotes the required time to administrative duties. Residency in the facility does not in itself meet this requirement.

64.9(8) A provisional administrator may be appointed on a temporary basis by the licensee to assume the administrative responsibilities for an intermediate care facility for the mentally retarded for a period not to exceed six months, when through no fault of its own, the home has lost its administrator and has not been able to replace the administrator provided:

a. The department has been notified prior to the date of the administrator's appointment; (III)

b. In the case where the candidate for provisional administrator is seeking qualification as a licensed nursing home administrator, the board of examiners for nursing home administrators has approved the administrator's appointment and has confirmed such appointment in writing to the department; (III)

c. Except in the case cited in 64.9(8) "b," the department has given written approval of such temporary appointment. (III)

64.9(9) The licensee shall:

a. Assume the responsibility for the overall operation of the intermediate care facility for the mentally retarded; (III)

b. Be responsible for compliance with all applicable laws and with the rules of the department; (III)

c. Establish written policies, which shall be available for review for the operation of the intermediate care facility for the mentally retarded; (III)

d. Be responsible for the selection and direction of competent personnel to provide services for the resident care program; (III)

e. Be responsible for the arrangement for all department heads to annually attend a minimum of ten contact hours of educational programs either approved or provided by the department; (III)

f. Be responsible for a monthly in-service educational program for all employees and to maintain records of programs and participants; (III)

g. Make available the payroll records of the intermediate care facility for the mentally retarded for departmental review as needed; (III)

h. Be required to maintain a staffing pattern of all departments. These records must be maintained for six months and are to be made available for departmental review. (III)

470—64.10(135C) Communications.

64.10(1) There shall be adequate communication services, including adequate telephone service, whenever residents are in the facility. (III)

64.10(2) The communication system shall assure:

a. Prompt contact of on-duty personnel; (III)

b. Prompt notification of responsible personnel in the event of emergency. (III)

470—64.11(135C) Qualified mental retardation professional.

64.11(1) The institution shall provide for a qualified mental retardation professional who is responsible for:

a. Supervising the implementation of each resident's individual plan of care; (II)

b. Integrating the various aspects of the institution's program; (III)

c. Recording each resident's progress; (III)

d. Initiating periodic review of each individual plan of care for necessary modification or adjustments. (II)

470—64.12(135C) General administrative policies and practices.

64.12(1) The facility shall have a written outline of the philosophy, objectives, and goals it is striving to achieve available for distribution to staff, consumer representatives, and the interested public and shall include but need not be limited to:

a. Its role in the state comprehensive program for the mentally retarded; (III)

b. Its goals for its residents; (III)

c. Its concept of its relationship to the parents of its residents, or to their surrogates. (III)

64.12(2) Rescinded, effective 7/14/82.

64.12(3) The facility shall have written policies and procedures that shall:

a. Protect the financial interests of residents; (III)

b. Provide for counseling of the resident concerning use of large sums accrued; (III)

c. Protect such funds; (III)

d. Permit normalized and normalizing possession and use of money by residents for work payment and property administration. (III)

e. Assure free access of residents to pursue independence as far as possible. (III)

64.12(4) Rescinded, effective 7/14/82.

64.12(5) Policies and procedures in the major operating units of the facility shall be described in manuals that are current, relevant, available and followed. (III)

64.12(6) The facility shall have a plan for continuing management audit to insure compliance with state laws and regulations and the effective implementation of its stated policies and procedures. (III)

64.12(7) A governing body of the facility shall exercise general direction and shall establish policies concerning the operation of the facility and the welfare of the individual served. (III)

64.12(8) The governing body shall establish appropriate qualifications of education, experience, personal factors, and skills for the chief executive officer. (III)

64.12(9) The chief executive officer shall make arrangements so that some one individual is responsible for the administrative direction of the facility at all times. (III)

64.14(9) Corporal punishment shall not be permitted. (II)

64.14(10) Residents shall not discipline other residents, except as part of an organized self government program that is conducted in accordance with written policy. (II)

64.14(11) Seclusion, defined as the placement of a resident alone in a locked room, shall not be employed except as defined in 64.14(15). (III)

64.14(12) Rescinded, effective 7/14/82.

64.14(13) Rescinded, effective 7/14/82.

64.14(14) Rescinded, effective 7/14/82.

64.14(15) Behavior modification programs involving the use of timeout devices or the use of aversive stimuli shall be:

a. Reviewed and approved by the facility's human rights committee or the appropriate qualified mental retardation professional; (III)

b. Conducted only with the consent of the affected resident's parents or surrogates; (II)

c. Described in written plans that are kept on file in the facility; (II)

d. Applied in the case of restraints employed as timeout devices, only during conditioning sessions, and only in the presence of the trainer; (II)

e. Not used for more than one hour in the case of removal from a situation for timeout purposes, and this procedure shall be used only during the conditioning program, and only under the supervision of the trainer. (II)

470—64.15(135C) Resident-living staff.

64.15(1) There shall be sufficient appropriately qualified, adequately trained personnel to conduct the resident-living program in accordance with the standards specified in these regulations. (II, III)

64.15(2) Resident-living personnel shall be administratively responsible to a person whose training and experience is appropriate to the program. (III)

64.15(3) Regardless of the organization or design of resident-living units, the overall staff-resident ratios are as follows unless program needs justify otherwise:

a. For units including children under the age of six years, severely and profoundly retarded, severely physically handicapped, and residents who are manifestly severely hyperactive or psychoticlike behavior, the overall ratio (allowing for five-day workweek plus holiday, vacation, and sick time), is 1 to 2; (II, III)

b. For units serving moderately retarded residents requiring habit training, the overall ratio is 1 to 2.5; (II, III)

c. For units serving residents in vocational training programs and adults who work in sheltered employment situations, the overall ratio is 1 to 5. (II,III)

64.15(4) Where family living accommodations are provided for employees in the facility:

a. Children under fourteen years of age shall not be allowed into the service areas in facilities of more than fifteen beds; (III)

b. The residents' bedrooms shall not be occupied by employees, family members of employees, or family members of the licensee. (III)

c. In facilities where the total occupancy of family, employees, and residents is more than five, separate bathing and toilet facilities shall be required for the family or employee distinct from such areas provided for residents. (III)

470—64.16(135C) Admission and release.

64.16(1) A resident shall be admitted when it has been determined in accordance with 64.16(2)"c" that the resident is in need of the care and services provided by the institution. (II, III)

64.16(2) Active treatment. A program of active treatment shall be provided for each resident, to be initiated upon admission. (II) The active treatment program shall include:

a. Regular participation in professionally developed and supervised activities, experiences or therapies; (III)

b. An individual written plan of care which:

(1) Sets forth measurable goals or behaviorally stated objectives; (III)

(2) Prescribes an integrated program of individually designed activities, experiences or therapies; (III)

c. An interdisciplinary professional evaluation (II) that:

(1) Provides for a complete medical, social and psychological diagnosis and evaluation; (III)

(2) Provides for evaluation of the individual's need for institutional care; (III)

(3) Is conducted by a physician, a social worker and other professionals; (III)

(4) Includes at least one member of the team who is a qualified mental retardation professional; (III)

d. Re-evaluation medically, socially, and psychologically at least annually by staff involved in carrying out resident's plan of care including: (II)

(1) Review of progress toward meeting plan objectives; (III)

(2) Appropriateness of the plan of care; (III)

(3) Assessment of continuing need for institutional care; (III)

(4) Consideration of alternate methods of care; (III)

e. An individual postinstitutional plan developed prior to discharge by a qualified mental retardation professional and other appropriate professionals (II) includes provision for:

(1) Appropriate services; (III)

(2) Protective supervision; (III)

(3) Other followup services in resident's new environment. (III)

64.16(3) No individual whose needs cannot be met by the facility shall be admitted to it.

(II) The number admitted as residents to the facility shall not exceed:

a. Its licensed bed capacity; (II, III)

b. Its provisions for adequate programming; (II, III)

c. The number of beds approved by the Health Facilities Construction Review Committee. (III)

64.16(4) The laws, regulations, and procedures concerning admission, readmission, and release shall be summarized and available for distribution. (III)

64.16(5) The intermediate care facility for the mentally retarded shall admit only residents who have had a comprehensive evaluation covering physical, emotional, social, and cognitive factors, conducted by an appropriately constituted interdisciplinary team, as defined in 64.16(2)"c." (II)

explanation of the method of periodic reassessment, if any, resulting in changing such additional charges; (III)

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

64.17(3) Contain an itemized list of those services, with the specific fee the resident will be charged and method of payment, as related to his or her current condition, based on a preadmission evaluation assessment which is determined in consultation with the administrator; (III)

64.17(4) Include the total fee per day to be charged to the resident; (III)

64.17(5) State the conditions whereby the facility may make adjustments to their overall fees for resident care as a result of changing costs. (III) Furthermore, the contract shall provide that the facility shall give:

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

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

64.17(6) State the terms of agreement in regard to refund of all advance payments in the event of transfer, death, voluntary or involuntary discharge; (III)

64.17(7) State the terms of agreement concerning the holding and charging for a bed in the event of temporary absence of the resident; such terms shall include, at a minimum, the following provisions:

a. If a resident has a temporary absence from a facility for medical treatment, the facility shall ask the resident or responsible party if they wish the bed held open. This shall be documented in the resident's record including the response. Upon request of the resident/responsible party, the facility shall hold the bed open for at least ten days during the resident's absence and the facility shall receive payment for the absent period in accordance with provisions of the contract. (II)

b. If a resident has a temporary absence from a facility for therapeutic reasons as approved by a physician, the facility shall ask the resident or responsible party if they wish the bed held open. This shall be documented in the resident's record including the response. The bed shall be held open at least eighteen days per year and the facility shall receive payment for the absent periods in accordance with the provisions of the contract. The required holding during temporary absences for therapeutic reasons is limited to eighteen days per year. (II)

c. For Title XIX residents the department of social services shall continue funding for the temporary absence as provided under paragraphs "a" and "b" and in accordance with department of social services guidelines.

d. Private pay residents shall have a negotiated rate stated in the signed contract relating to these provisions. (II)

64.17(8) State the conditions under which the involuntary discharge or transfer of a resident would be effected; (III)

64.17(9) State the conditions of voluntary discharge or transfer; (III)

64.17(10) Set forth any other matters deemed appropriate by the parties to the contract. No contract or any provision thereof shall be drawn or construed so as to relieve any facility of any requirement or obligation imposed upon it by this chapter or any standards or rules in force pursuant to this chapter. (III)

470—64.18(135C) General provisions.

64.18(1) Residents shall be provided with professional and special programs and services in accordance with their needs for such programs and services. (II, III)

64.18(2) Programs and services provided by the facility, or to the facility by agencies outside it, or by persons not employed by it, shall meet the standards for quality of services as stated in this rule, and all contracts for the provision of such services shall stipulate that these standards will be met. (III)

64.18(3) There shall be interdisciplinary teams with persons drawn from, or representing such professions, disciplines, or services areas included in this rule for:

- a. Evaluating the resident's needs; (III)
- b. Planning an individualized habilitation program to meet identified needs; (III)
- c. Periodically reviewing the resident's responses to the program and revising the program accordingly. (III)

470—64.19(135C) Medical service.

64.19(1) Medical services shall be rendered: (III)

- a. Directly, through personal contact between physicians and residents; (III)
- b. Indirectly, through contact between physicians and other persons working with the residents. (III)

64.19(2) Electroencephographic services shall be available as necessary. There shall be evidence, such as may be provided by a record of the minutes of a utilization review commit-

- a. Reports of accidents, seizures, illnesses, and treatment thereof, and immunizations; (III)
- b. Records of all periods of restraint with justification and authorization for each; (III)
- c. Reports of regular, at least annual, review and evaluation of the program, developmental progress, and status of each resident; (III)
- d. Observations of the resident's response to the program, recorded with sufficient frequency to enable evaluation of its efficacy; (III)
- e. Records of significant behavior incidents; (III)
- f. Records of family visits and contacts; (III)
- g. Records of attendance and leaves; (III)
- h. Correspondence pertaining to the resident; (III)
- i. Periodic updating of the information recorded at the time of admission; (III)
- j. Appropriate authorizations and consents. (III)

64.21(7) At the time of discharge from the facility, a discharge summary shall be prepared. (III)

64.21(8) Rescinded, effective 7/14/82.

64.21(9) The record shall be the property of the facility, whose responsibility it shall be to secure the information against loss, defacement, tampering, or use by unauthorized persons. (III)

64.21(10) There shall be written policies governing access to, duplication of, and dissemination of information from the record. (III)

64.21(11) Rescinded, effective 7/14/82.

64.21(12) The facility shall maintain an organized central record service for the collection and dissemination of information regarding residents. (III)

64.21(13) Records shall be readily accessible to authorized personnel where a centralized system is used. Appropriate records shall be available in the resident living units. (III)

64.21(14) There shall be a master alphabetical index of all residents admitted to the facility. (III)

64.21(15) Records shall be retained as follows:

a. Records shall be retained in the health care facility for five years following termination of services. (III)

b. Records shall be retained within the health care facility upon change of ownership. (III)

c. When the facility ceases to operate, the resident's record shall be released to the facility to which the resident is transferred. If no transfer occurs, the record shall be released to the individual's physician. (III)

64.21(16) There shall be available sufficient, appropriately qualified staff and necessary supporting personnel to facilitate the accurate processing, checking, indexing, filing, and prompt retrieval of records and record data. (III)

64.21(17) To provide efficient and effective record services there shall be adequate space, facilities, equipment, and supplies. (III)

470—64.22(135C) Clothing.

64.22(1) Each resident shall have an adequate allowance of neat, clean, suitable, and seasonable clothing. (III)

64.22(2) Each resident shall have his or her own clothing which is, when necessary, properly marked with the resident's name. (III)

64.22(3) Residents shall be dressed daily in their own clothing, unless contraindicated in written medical orders. (III)

64.22(4) Residents shall as appropriate, be trained and encouraged to:

a. Select their daily clothing; (III)

b. Dress themselves; (III)

c. Change their clothes to suit the activities in which they engage. (III)

64.22(5) Storage space for clothing to which the resident (including those in wheel-chairs) has access shall be provided. (III)

470—64.23(135C) Health, hygiene and grooming.

64.23(1) Residents shall be trained to exercise maximum independence in health, hygiene, and grooming practices, including bathing, brushing teeth, shampooing, combing and brushing hair, shaving and caring for toenails and fingernails. (III)

64.23(2) Every resident who does not eliminate appropriately and independently shall be engaged in a toilet training program. (III)

a. The toilet training program shall be applied systematically and regularly. (III)

b. Records shall be kept of the progress of each resident receiving toilet training. (III)

64.23(3) Residents who are incontinent shall be immediately bathed or cleansed upon voiding and soiling, unless specifically contraindicated by the training program in which they are enrolled, and all soiled items shall be changed. (III)

64.23(4) Procedures shall be established for:

a. Monthly weighing of residents, with greater frequency for those with special needs; (III)

b. Quarterly measurement of height, until the age of maximum growth; (III)

c. Maintenance of weight and height records; (III)

d. Assuring that residents maintain normal weights. (III)

64.23(5) Orders prescribing bed rest or prohibiting residents from being taken out-of-doors shall be reviewed by a physician at least every three days. (III)

64.23(6) Provisions shall be made to furnish and maintain in good repair, and to encourage the use of dentures, eyeglasses, hearing aids, braces, and other prosthetic appliances as prescribed by appropriate specialists. (III)

470—64.24(135C) Grouping and organization of living units.

64.24(1) Residents of grossly different ages, developmental levels, and social needs shall not be housed in close physical or social proximity, unless such housing is planned to promote the growth and development of all those housed together. (III)

64.24(2) Residents who are mobile nonambulatory, deaf, blind or epileptic shall be integrated with peers of comparable social and intellectual development, and shall not be segregated on the basis of their handicaps. (III)

470—64.25(135C) Training and habilitation services.

64.25(1) Training and habilitation services defined as the facilitation of the intellectual, sensorimotor, and affective development of the individual, shall be available to all residents, regardless of chronological age, degree of retardation, or accompanying disabilities or handicaps. (II, III)

64.25(2) Individual evaluations of residents shall:

a. Be based upon the use of empirically reliable and valid instruments, whenever such tools are available; (III)

b. Provide the basis for prescribing an appropriate program of training experiences for the resident. (III)

64.25(3) There shall be written training and habilitation objectives for each resident that are:

a. Based upon complete and relevant diagnostic and prognostic data; (III)

b. Stated in specific behavioral terms that permit the progress of the individual to be assessed. (III)

64.25(4) There shall be evidence of training and habilitation services activities designed to meet the training and habilitation objectives set for every resident. (II, III)

64.25(5) There shall be a functional training and rehabilitation record for each resident, maintained by and available to the training and habilitation staff. (III)

64.25(6) Appropriate training and habilitation programs shall be provided residents with hearing, vision, perceptual, or motor impairments, in co-operation with appropriate staff. (II, III)

commissioner and facility administrator shall act under the same guidelines concerning who shall be appointed and within time limits in the Code. (III)

e. Membership of the care review committee shall be evaluated by the department prior to renewal of license each year. The department shall be notified in writing of all appointments to care review committees including the names and addresses, within thirty days of an appointment. (III)

f. A care review committee found to be functioning unsatisfactorily by the department may be required to be replaced. (III)

g. The members of the care review committee shall not have ownership in the facility, nor be employed by the facility, nor be related to an employee or licensee, nor be a public employee involved with the sponsoring or placement of residents, nor be one who inspects or otherwise evaluates the facility or residents. (III)

h. The committee shall elect a chairperson and secretary at its first meeting and shall meet at least quarterly and on such occasions as required to accomplish its purposes. (III)

i. Information concerning the operation of the facility and residents residing therein is a privileged communication and shall not be disclosed publicly in such manner as to identify individuals or the facility except in accordance with section 135C.19 of the Code. (III)

j. The committee shall be made acquainted and knowledgeable by the administrator of the rules and regulations of the department governing the operating of the facility and the services it is licensed to provide. (III)

64.35(2) Responsibilities of the committee.

a. The committee shall determine whether the facility and the contract for services and program of care are as agreed upon in the contract. (III)

b. The committee may function for more than one facility. (III)

c. Each resident shall be reviewed on at least an annual basis. (III)

d. The committee shall determine through its observations, conference with the resident, and consultation with others that services are being provided in accordance with the resume of care. Determination shall be made regarding the following: Cleanliness of resident, types of tasks given residents are in accordance with the physician's orders and whether resident employee may receive remuneration, consideration of the residents' personal and social needs, situations affecting residents' welfare and safety, absence of signs of malnutrition and dehydration, preservation of the highest level of independent functioning in relation to each individual's physical and mental capabilities, sanitation of the facility and grounds, that the physical structure of the facility contains no physical barriers which would prevent any resident from freely using the services of the facility or exiting to the outside. Physical barriers preventing the exit from a facility shall not apply to remotely operated devices previously approved by the department for the safety of the resident. (III)

e. The committee shall submit a report to the administrator at the conclusion of each meeting. (III)

f. The committee shall report to the department for counsel and guidance in situations where the administrator fails to acknowledge the intent of their findings and recommendations. (III)

g. The committee shall be available to meet with the department upon request. (III)

h. Any official agency will have the privilege of meeting with the committee to discuss problems in the facility pertinent to the agency's official capacity, providing that information exchanged is treated as privileged communication and is kept confidential in accordance with section 135C.19 of the Code. (III)

64.35(3) Limitations of the committee.

a. The medical treatment of the individual resident shall not be an area of concern for the care review committee. (III)

b. The committee shall not have access to the medical or financial record of the resident. (III)

c. The committee shall not have access to the confidential record of the resident prepared by the staff of the social services department. The person responsible for the social services shall be available to the committee to interpret the psychosocial needs of the individual. (III)

64.35(4) Role of committee in complaint investigations.

a. The department shall notify the facility's care review committee of a complaint from the public.

b. The department may refer complaints to the committee for initial evaluation or investigation. After such initial evaluation or investigation, the committee shall report to the department in writing the results of the evaluation or investigation within ten days any pertinent information it may have regarding the complaint.

c. The department shall notify the committee and the Iowa commission on aging of its findings upon conclusion of its investigation.

d. Results of complaint investigations initiated by the committee that detect violations of the Code or rules of the department shall be forwarded to the department within ten days of completion of the investigation.

e. The committee shall be responsible, upon department request, to monitor correction of justified complaints.

64.35(5) Reserved, 9/1/78.**64.35(6) Assistance to the committee.**

a. All physicians admitting residents to the facility shall have the responsibility of assisting the committee when necessary. (III)

b. The physician's certification of care shall be made available to the committee by the administrator. (III)

c. The licensee of the facility shall meet with the committee on a consultation basis and furnish information upon request to the committee. (III)

d. Committee members may seek advice and counsel from allied health professions, from specialists in the community, or from appropriate state agencies. (III)

470—64.36(135C) Fire safety.

64.36(1) The facility shall meet such provisions of the Life Safety Code of the National Fire Protection Association (1973 Edition) as are applicable to institutional occupancies. (I, II)

64.36(2) For facilities of fifteen beds or less, the lodging or rooming houses section of the residential occupancy requirements of the code may apply for institutions for the mentally retarded or persons with related conditions, all of whose residents are currently certified by a physician or psychologist as defined in 64.1(21)'a' in this chapter, as:

a. Ambulatory; (III)

b. Engaged in active programs for rehabilitation which are designated to and can reasonably be expected to lead to independent living, or in the case of an institution for the mentally retarded or persons with related conditions, receiving active treatment; (III)

c. Capable of following directions and taking appropriate action for self-preservation under emergency conditions. (III)

470—64.37(135C) Safety.

64.37(1) There shall be a written staff organization plan and detailed, written procedures, which are clearly communicated to, and periodically reviewed with, staff for meeting all potential emergencies and disasters pertinent to the area such as fire, severe weather, and missing persons. (III)

64.37(2) The emergency and disaster plans and procedures shall be posted at suitable locations throughout the facility. (III)

64.37(3) Evacuation drills shall be held at least quarterly, for each shift of facility personnel and under varied conditions in order to:

a. Ensure that all personnel on all shifts are trained to perform assigned tasks; (III)

b. Ensure that all personnel on all shifts are familiar with the use of firefighting equipment in the facility; (III)

c. Evaluate the effectiveness of disaster plans and procedures. (III)

64.37(4) Evacuation drills shall include actual evacuation of residents to safe areas during at least one drill each year, on each shift. (III)

- a. Written procedures shall be established and implemented for daily and weekly cleaning schedules. (III)
- b. Each resident unit shall be cleaned on a routine schedule. (III)
- c. All rooms, corridors, storage areas, linen closets, attics, and basements shall be kept in a clean, orderly condition free of unserviceable furniture and equipment and accumulations of refuse. (III)
- d. A hallway or corridor shall not be used for storage of equipment. (III)
- e. All odors shall be kept under control by cleanliness and proper ventilation. (III)
- f. Clothing worn by personnel shall be clean and washable. (III)
- g. Housekeeping and maintenance personnel shall be provided with well constructed and properly maintained equipment appropriate to the function for which it is to be used. (III)
- h. All furniture, bedding, linens, and equipment shall be cleaned periodically and before use by another resident. (III)
- i. Polishes used on floors shall provide a nonslip finish. (III)
- j. Throw or scatter rugs shall not be permitted. (III)
- k. Entrances, exits, steps, and outside walkways shall be kept free from ice, snow, and other hazards. (II, III)
- l. Residents shall not have access to storage areas for cleaning agents, bleaches, insecticides, or any other poisonous, dangerous, or flammable materials. (II, III)
- m. Sufficient numbers of noncombustible trash containers which have covers, shall be available. (III)
- n. Definite procedures shall be established for training housekeeping personnel (III)
- o. Employees engaged in housekeeping or laundry services shall not be simultaneously involved in the preparation of food, food service, or resident care. (III)
- p. There shall be provisions for the cleaning and storage of housekeeping equipment and supplies for each nursing unit. (III)
- q. Bathtubs, shower stalls, or lavatories shall not be used for laundering, cleaning of utensils and mops, or for storage. (III)
- r. Bedside utensils shall be stored in enclosed cabinets. (III)
- s. Kitchen sinks shall not be used for the cleaning of mops, soaking of laundry, cleaning of bedside utensils, nursing utensils, or dumping of waste water. (III)
- t. Personal possessions of residents which may constitute hazards to themselves or to others shall be removed and stored. (III)
- u. Screens of sixteen mesh per square inch shall be provided at all hold-open openings. (III)

64.41(5) Each facility shall establish a maintenance program in writing to insure the continued maintenance of the facility, to promote good housekeeping procedures, and to insure sanitary practices throughout the facility. (III)

- a. The building, grounds, and other buildings shall be maintained in a clean, orderly condition and in good repair. (III)
- b. Draperies and furniture shall be clean and in good repair. (III)
- c. Cracks in plaster, peeling wallpaper or paint, and tears or spilt in floor coverings shall be promptly repaired or replaced in a professional manner. (III)
- d. The electrical systems, including appliances, cords, and switches, shall be maintained to guarantee safe functioning and comply with the national electrical code. (III)
- e. All plumbing fixtures shall function properly and comply with the state plumbing code. (III)
- f. Yearly inspections of the heating and cooling systems shall be made to guarantee safe operation. Documentation of these inspections shall be available for review. (III)
- g. The building, grounds, and other buildings shall be kept free of breeding areas for flies, other insects, and rodents. (III)
- h. The facility shall be kept free of flies, other insects and rodents. (III)

470—64.42(135C) Animals. No animals shall be allowed within the facility except with written approval of the department and under controlled conditions. (III)

470—64.43(135C) Facilities for physically handicapped.

The facility shall be accessible to and functional for residents, personnel, and the public. All necessary accommodations are made to meet the needs of persons with semiambulatory disabilities, sight and hearing disabilities, disabilities of coordination, as well as other disabilities in accordance with the following standards:

64.43(1) The facility grounds shall be graded to the same level as the primary entrance so that the building is accessible to the physically handicapped. (III)

64.43(2) The width and grade of walks used by residents and public shall be designed so that they can be utilized by the handicapped. (III)

64.43(3) If the facility has a parking lot, there shall be properly designated parking space available near the building, allowing room for the physically handicapped to get in and out of an automobile onto a surface suitable for wheeling and walking. (III)

64.43(4) Ramps shall be designed so that they can be negotiated by individuals in wheelchairs. (III)

64.43(5) There shall be a primary entrance usable by persons in wheelchairs. (III)

64.43(6) Doors used by residents and public shall be of sufficient width and so equipped and of a weight to permit persons in wheelchairs to open them with a single effort. (III)

64.43(7) Stairs that may be used by the physically handicapped shall be of a height and design that allows such individuals to negotiate them without assistance. (III)

64.43(8) Stairs that may be used by the physically handicapped shall be equipped with handrails, at least one of which extends past the top and bottom steps. (III)

64.43(9) Floors shall be nonslip and on a common level or connected by a negotiable ramp on each story. (III)

64.43(10) There shall be an appropriate number of toilet rooms accessible to and usable by the handicapped. (III)

64.43(11) There shall be an appropriate number of water fountains accessible to and usable by the handicapped. (III)

64.43(12) There shall be an appropriate number of public telephones accessible to and usable by the handicapped. (III)

64.43(13) If the facility is a multistory building, elevators shall be accessible to and usable by the handicapped at entrance level and all levels normally used by the public. (III)

64.43(14) Switches and controls of frequent or essential use shall be within reach of wheelchair users. (III)

64.43(15) The facility shall provide appropriate means for the blind to identify rooms, facilities, and hazardous areas. (III)

64.43(16) The facility shall provide simultaneous audible and visual warning signals. (III)

64.43(17) The facility shall exercise safeguards to eliminate hazards for the handicapped. (III)

64.43(18) Resident closets shall be accessible to and usable by the physically handicapped. (III)

64.43(19) Resident beds shall be of a height that permits an individual in a wheelchair to get in and out of bed unassisted. (III)

470—64.44(135C) Research. If the facility conducts research, it shall follow, and comply with the American Association on Mental Deficiency Statement on the use of human subjects for research, and shall provide a statement of assurance adopting those principles. (III)

470—64.45(135C) Residents' rights in general.

64.45(1) Each facility shall ensure that policies and procedures are written and implemented which include, at a minimum, all of the following provisions (subrules 64.45(2) to 64.45(6)) and which govern all areas of service provided by the facility. These policies and pro-

cedures shall be available to staff, residents, their families or legal representatives and the public and shall be reviewed annually. (II)

64.45(2) Policies and procedures regarding the admission, transfer, and discharge of residents shall assure that:

a. Only those persons are accepted whose needs can be met by the facility directly or in cooperation with community resources or other providers of care with which it is affiliated or has contracts. (II)

b. As changes occur in residents' physical or mental condition, necessitating services or care which cannot be adequately provided by the facility, they are transferred promptly to other appropriate facilities. (II)

64.45(3) Policies and procedures regarding the use of chemical and physical restraints shall define the use of said restraints and identify the individual who may authorize the application of physical restraints in emergencies, and describe the mechanism for monitoring and controlling their use. (II)

64.45(4) Policies and procedures shall include a method for submitting complaints and recommendations by residents or their responsible party and for assuring a response and disposition by the facility. (II)

64.45(5) Policies and procedures shall include provisions governing access to, duplication of, and dissemination of information from the residents' records. (II)

64.45(6) Policies and procedures shall include a provision that each resident shall be fully informed of his/her rights and responsibilities as a resident and of all rules governing resident conduct and responsibilities. This information must be provided upon admission or in the case of residents already in the facility, upon the facility's adoption or amendment of resident right policies. (II)

a. The facility shall make known to residents what they may expect from the facility and its staff, and what is expected from them. The facility shall communicate these expectations during the period of not more than two weeks before or five days after admission. The communication shall be in writing, e.g., in a separate handout or brochure describing the facility, and interpreted verbally, e.g., as part of a preadmission interview, resident counseling, or in individual or group orientation sessions following admission. (II)

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

c. A statement shall be signed by the resident, or his/her responsible party, indicating an understanding of these rights and responsibilities, and shall be maintained in the record. The statement shall be signed no later than five days after admission, and a copy of the signed statement shall be given to the resident or responsible party, if applicable. In the case of a mentally retarded resident, the signature shall be witnessed by a person not associated with or employed by the facility. The witness may be a parent, guardian, Medicaid agency representative, etc. (II)

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

e. All residents shall be advised within thirty days following changes made in the statement of residents' rights and responsibilities. Appropriate means shall be utilized to inform non-English speaking, deaf, or blind residents of such changes. (II)

64.45(7) Each resident or responsible party shall be fully informed in a contract as required in rule 64.17(135C), prior to or at the time of admission and during his/her stay, of services available in the facility, and of related charges including any charges for services not covered under the Title XIX program or not covered by the facility's basic per diem rate. (II)

64.45(8) Each resident or responsible party shall be fully informed by a physician of his/her health and medical condition unless medically contraindicated (as documented by a

physician in his/her resident record). Each resident shall be afforded the opportunity to participate in the planning of his/her total care and medical treatment, which may include, but is not limited to, nursing care, nutritional care, rehabilitation, restorative therapies, activities, and social work services. Each resident only participates in experimental research conducted under the department of health and human services protection from research risks policy and then only upon his/her informed written consent. Each resident has the right to refuse treatment except as provided by chapter 229, The Code. In the case of a confused or mentally retarded individual, the responsible party shall be informed by the physician of the resident's medical condition and be afforded the opportunity to participate in the planning of his/her total care and medical treatment, to be informed of the medical condition, and to refuse to participate in experimental research. (II)

a. The requirement that residents shall be informed of their conditions, involved in the planning of their care, and advised of any significant changes in either, shall be communicated to every physician responsible for the medical care of residents in the facility. (II)

b. The administrator or his/her designee shall be responsible for working with attending physicians in the implementation of this requirement. (II)

c. If the physician determines or in the case of a confused or mentally retarded resident the responsible party determines that informing the resident of his/her condition is contraindicated, this decision and reasons for it shall be documented in the resident's record by the physician. (II)

d. The resident's plan of care shall be based on the physician's orders. It shall be developed upon admission by appropriate facility staff and shall include participation by the resident if capable. Residents shall be advised of alternative courses of care and treatment and their consequences when such alternatives are available. The resident's preference about alternatives shall be elicited and honored, if feasible.

e. Any clinical investigation involving residents must be under the sponsorship of an institution with a human subjects review board functioning in accordance with the requirements of Public Law 93-348, as implemented by Part 46 of Title 45 of the Code of Federal Regulations, as amended to December 1, 1981 (45 CFR 46). A resident being considered for participation in experimental research must be fully informed of the nature of the experiment, e.g., medication, treatment, and understand the possible consequences of participating or not participating. The resident's (or responsible party's) written informed consent must be received prior to participation. (II)

470—64.46(135C) Involuntary discharge or transfer.

64.46(1) A facility shall not involuntarily discharge or transfer a resident from a facility except: For medical reasons; for the resident's welfare or that of other residents; for nonpayment for the resident's stay (as contained in the contract for the resident's stay), except as prohibited by Title XIX of the Social Security Act, 42 U.S.C. 1396 to 1396k by reason of action pursuant to chapter 229, The Code; by reason of negative action by the Iowa department of social services; and by reason of negative action by the professional standards review organization. A resident shall not be transferred or discharged solely because the cost of the resident's care is being paid under chapter 249A, The Code, or because the resident's source of payment is changing from private support to payment under chapter 249A. (I, II)

a. "Medical reasons" for transfer or discharge are based on the resident's needs and are determined and documented in the resident's record by the attending physician. Transfer or discharge may be required to provide a different level of care. In the case of transfer or discharge for the reason that the resident's condition has improved so that he or she no longer needs the level of care being provided by the facility, the determination that medical reason exists is the exclusive province of the professional standards review organization or utilization review process in effect for residents whose care is paid in full or in part by Title XIX. (II)

b. "Welfare" of a resident or that of other residents refers to their social, emotional, or physical well-being. A resident might be transferred or discharged because his/her behavior poses a continuing threat to himself/herself (e.g., suicidal) or to the well-being of other

residents or staff (e.g., his/her behavior is incompatible with their needs and rights). Evidence that the resident's continued presence in the facility would adversely affect their own welfare or that of other residents shall be made by the administrator or his/her designee and shall be in writing and shall include specific information to support this determination. (II)

c. Involuntary transfer or discharge of a resident from a facility shall be preceded by a written notice to the resident or responsible party at least thirty days in advance of the proposed transfer or discharge. The thirty-day requirement shall not apply in any of the following instances:

(1) If an emergency transfer or discharge is mandated by the resident's health care needs and is in accord with the written orders and medical justification of the attending physician. Emergency transfers or discharges may also be mandated to protect the health, safety, or well-being of other residents and staff from the resident being transferred. (II)

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

(3) If the discharge or transfer is the result of a final, nonappealable decision by the department of social services or the professional standards review organization.

d. The notice required by paragraph "c" shall contain all of the following information:

(1) The stated reason for the proposed transfer or discharge. (II)

(2) The effective date of the proposed transfer or discharge. (II)

(3) A statement in not less than twelve-point type (elite), which reads: "You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa State Department of Health (hereinafter referred to as "Department") within seven days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than fourteen days after receipt of your request by the Department and you will not be transferred prior to a final decision. Provision may be made for extension of the fourteen-day requirement upon request to the Health Department designee in emergency circumstances. If you lose the hearing, you will not be transferred before the expiration of thirty days following receipt of the original notice of the discharge or transfer, or no sooner than five days following final decision of such hearing. To request a hearing or receive further information, call the Department at (515) 281-4130 or you may write to the Department to the attention of: Chief, Division of Health Facilities, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319". (II)

e. A request for a hearing made under paragraph "d"(3) shall stay a transfer or discharge pending a hearing or appeal decision. (II)

f. The hearing shall be held in the facility and the hearing shall be determined by a representative of the department. Notice of the date, time and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident, responsible party, and Iowa commission on aging long term care ombudsman of record not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident or responsible party, that they have a right to appear at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. The Iowa commission on aging long term care ombudsman shall have the right to appear at the hearing.

g. The hearing shall be heard by a health department designee pursuant to chapter 17A, The Code. (The hearing shall be public unless the resident or his/her representative requests in writing that it be closed.) The licensee or his/her designee shall have the opportunity to present to the representative of the department any oral testimony or written materials to show by a preponderance of the evidence just cause why a transfer or discharge may be made. The resident and responsible party shall also have an opportunity to present to the representative of the department any oral testimony or written material to show just cause why a transfer or

discharge should not be made. In a determination as to whether a transfer or discharge is authorized, the burden of proof rests on the party requesting the transfer or discharge.

h. Based upon all testimony and materials submitted to the representative of the Department, the representative shall issue, in accordance with chapter 17A, The Code, contested hearings, a written findings of fact, conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, responsible party, and commission on aging long term care ombudsman within ten working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

Appeals from any decision or order of the representative must be made in writing and mailed to the commissioner of public health by certified mail return receipt requested or by personal service within ten days after the mailing of the decision or order to the aggrieved party. A party who has exhausted all adequate administrative remedies and is aggrieved by the final action of the department may petition for judicial review in the manner provided by chapter 17A.

i. A copy of the notice required by paragraph "c" shall be personally delivered to the resident and a copy placed in the resident's record. A copy shall also be transmitted to the Department, the resident's responsible party, physician, the person or agency responsible for the resident's placement, maintenance, and care in the facility, and the commission on aging long term care ombudsman.

j. If the basis for an involuntary transfer or discharge is the result of a negative action by the Iowa department of social services or the professional standards review organization (Iowa foundation for medical care), appeals shall be filed with those agencies as appropriate. Continued payment shall be consistent with rules of those agencies.

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

l. The involuntary transfer or discharge shall be discussed with the resident, the resident's responsible party, and the person or agency responsible for the resident's placement, maintenance, and care in the facility within forty-eight hours after notice of discharge has been received. The explanation and discussion of the reasons for involuntary transfer or discharge shall be given by the facility administrator or other appropriate facility representative as the administrator's designee. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions and made a part of the resident's record. (II)

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

(1) Counseling shall be provided by a qualified individual who meets one of the following criteria:

1. Has a bachelor's or master's degree in social work from an accredited college. (II)
2. Is a graduate of an accredited four-year college and has had at least one year of full-time paid employment in a social work capacity with a public or private agency. (II)
3. Has been employed in a social work capacity for a minimum of four years in a public or private agency. (II)
4. Is a licensed psychologist or psychiatrist. (II)
5. Is any other person of the resident's choice. (II)

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

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

n. In the case of an emergency transfer or discharge as outlined in paragraph "c"(1), the resident must still be given a written notice prior to or within forty-eight hours following

transfer or discharge. A copy of this notice must be placed in the resident's file and it must contain all the information required by paragraph "a"(1) and (2). In addition, the notice must contain a statement in not less than twelve-point type (elite), which reads: "You have a right to appeal the facility's decision to transfer or discharge you on an emergency basis. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa State Department of Health within seven days after receiving this notice. If you request a hearing, it will be held no later than fourteen days after receipt of your request by the Department. You may be transferred or discharged before the hearing is held or before a final decision is rendered. If you win the hearing, you have the right to be transferred back into the facility. To request a hearing or receive further information, call the Department at (515) 281-4130 or you may write to the Department to the attention of: Chief, Division of Health Facilities, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319". A hearing requested pursuant to this subrule shall be held in accordance with paragraphs "f", "g", and "h". (II)

o. Residents shall not have the right to a hearing to contest an involuntary discharge or transfer resulting from the revocation of the facility's license by the Department of Health. In the case of a facility voluntarily closing, a period of thirty days must be allowed for an orderly transfer of residents to other facilities.

64.46(2) Intrafacility transfer:

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

(1) Incompatibility with or disturbing to other roommates, as documented in the resident's record.

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

(3) For medical, nursing or psychosocial reasons, as documented in the resident's record, as judged by the attending physician, nurse or social worker in the case of a facility which groups residents by medical, nursing or psychosocial needs.

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

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

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

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

(1) Change from private pay status to Title XIX, except as outlined in paragraph "a"(5). (II)

(2) As punishment or behavior modification (except as specified in paragraph "a"(1)). (II)

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

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

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

470—64.47(135C) Resident rights. Each resident shall be encouraged and assisted throughout his/her period of stay, to exercise his/her rights as a resident and as a citizen and may voice grievances and recommend changes in policies and services to administrative staff or to

outside representatives of his/her choice, free from interference, coercion, discrimination, or reprisal. (II)

64.47(1) The facility shall provide ongoing opportunities for residents to be aware of and to exercise their rights as residents. Residents shall be kept informed of issues or pending decisions of the facility that affect them and their views shall be solicited prior to action. (II)

64.47(2) The facility shall implement a written procedure for registering and resolving grievances and recommendations by residents or their responsible party. The procedure shall ensure protection of the resident from any form of reprisal or intimidation. The written procedure shall include:

a. Designation of an employee responsible for handling grievances and recommendations. (II)

b. A method of investigating and assessing the validity of a grievance or recommendation. (II)

c. Methods of resolving grievances. (II)

d. Methods of recording grievances and actions taken. (II)

64.47(3) The facility shall post in a prominent area the name, phone number, and address of the ombudsman, survey agency, local law enforcement agency, care review committee members, the text of section 135C.46, The Code, etc., to provide to residents a further course of redress. (II)

470—64.48(135C) Financial affairs—management. Each resident, who has not been assigned a guardian or conservator by the court, may manage his/her personal financial affairs, and to the extent, under written authorization by the resident that the facility assists in management, the management shall be carried out in accordance with chapter 135C.24, The Code. (II)

64.48(1) The facility shall maintain a written account of all residents' funds received by or deposited with the facility. (II)

64.48(2) An employee shall be designated in writing to be responsible for resident accounts. (II)

64.48(3) The facility shall keep on deposit personal funds over which the resident has control in accordance with 135C.24(2). Should the resident request these funds, they shall be given to him/her on request with receipts maintained by the facility and a copy to the resident. In the case of a confused or mentally retarded resident, the resident's responsible party shall designate a method of disbursing their funds. (II)

64.48(4) If the facility makes financial transactions on a resident's behalf, the resident must receive or acknowledge that he/she has seen an itemized accounting of disbursements and current balances at least quarterly. A copy of this statement shall be maintained in the resident's financial or business record. (II)

470—64.49(135C) Resident abuse prohibited. Each resident shall receive kind and considerate care at all times and shall be free from mental and physical abuse. Each resident shall be free from chemical and physical restraints except as follows: When authorized in writing by a physician for a specified period of time; when necessary in an emergency to protect the resident from injury to himself/herself or to others, in which case restraints may be authorized by designated professional personnel who promptly report the action taken to the physician; and in the case of a mentally retarded individual when ordered in writing by a physician and authorized by a designated qualified mental retardation professional for use during behavior modification sessions. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

64.49(1) Mental abuse includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation. (II)

64.49(2) Physical abuse includes, but is not limited to, corporal punishment and the use of restraints as punishment. (II)

64.49(3) Drugs such as tranquilizers may not be used as chemical restraints to limit or control resident behavior for the convenience of staff. (II)

64.49(4) Physicians' orders are required to utilize all types of physical restraints and shall be renewed at least quarterly. (II) Physical restraints are defined as the following:

Type I—the equipment used to promote the safety of the individual but is not applied directly to their person. Examples: Divided doors and totally enclosed cribs.

Type II—the application of a device to the body to promote safety of the individual. Examples: Vest devices, soft-tie devices, hand socks, geriatric chairs.

Type III—the application of a device to any part of the body which will inhibit the movement of that part of the body only. Examples: Wrist, ankle or leg restraints and waist straps.

64.49(5) Physical restraints are not to be used to limit resident mobility for the convenience of staff and must comply with life safety requirements. If a resident's behavior is such that it may result in injury to himself/herself or others and any form of physical restraint is utilized, it should be in conjunction with a treatment procedure(s) designed to modify the behavioral problems for which the resident is restrained or, as a last resort, after failure of attempted therapy. (I, II)

64.49(6) Each time a Type II or III restraint is used documentation on the nurses' progress record shall be made which includes type of restraint and reasons for the restraint and length of time resident was restrained. The documentation of the use of Type III restraint shall also include the time of position change. (II)

64.49(7) Each facility shall implement written policies and procedures governing the use of restraints which clearly delineate at least the following:

a. Physicians' orders shall indicate the specific reasons for the use of restraints. (II)

b. Their use is temporary and the resident will not be restrained for an indefinite amount of time. (I, II)

c. A qualified nurse or qualified mental retardation professional shall make the decision for the use of a Type II or Type III restraint for which there shall be a physician's order. (II)

d. A resident placed in a Type II or III restraint shall be checked at least every thirty minutes by appropriately trained staff. This shall be documented on a check sheet. No form of restraint shall be used or applied in such a manner as to cause injury or the potential for injury and provide a minimum of discomfort to resident restrained. (I, II)

e. Reorders are issued only after the attending physician reviews the resident's condition. (II)

f. Their use is not employed as punishment, for the convenience of the staff, or as a substitute for supervision or program. (I, II)

g. The opportunity for motion and exercise shall be provided for a period of not less than ten minutes during each two hours in which Type II and Type III restraints are employed, except when resident is sleeping. However, when resident awakens, this shall be provided. This shall be documented each time. A check sheet may serve this purpose. (I, II)

h. Locked restraints or leather restraints shall not be permitted except in life threatening situations. Straight jackets and secluding residents behind locked doors shall not be employed. (I, II)

i. Nursing assessment of the resident's need for continued application of a Type III restraint shall be made every twelve hours and documented on the nurse's progress record. Documentation shall include the type of restraint, reason for the restraint and the circumstances. Nursing assessment of the resident's need for continued application of either a Type I or Type II restraint and nursing evaluation of the resident's physical and mental condition shall be made every seven days and documented on the nurses' progress record. (II)

j. A divided door equipped with a securing device that may be readily opened by personnel shall be considered an appropriate means of temporarily confining a resident in his or her room. (II)

k. Divided doors shall be of the type that when the upper half is closed the lower section shall close. (II)

l. Methods of restraint shall permit rapid removal of the resident in the event of fire or other emergency. (I, II)

m. The facility shall provide orientation and ongoing education programs in the proper use of restraints. (II)

64.49(8) In the case of a mentally retarded individual who participates in a behavior modification program involving use of restraints or aversive stimuli, the program shall be conducted only with the informed consent of his/her parent or responsible party. Where restraints are employed, an individualized program shall be developed by the interdisciplinary team with specific methodologies for monitoring its progress. (II)

a. The resident's responsible party shall receive a written account of the proposed plan of the use of restraints or aversive stimuli and have an opportunity to discuss the proposal with a representative(s) of the treatment team. (II)

b. The responsible party must consent in writing prior to the use of the procedure. Consent may also be withdrawn in writing. (II)

470—64.50(135C) Resident records. Each resident shall be ensured confidential treatment of all information contained in his/her records, including information contained in an automatic data bank. His/her written consent shall be required for the release of information to persons not otherwise authorized under law to receive it. (II)

64.50(1) The facility shall limit access to any medical records to staff and consultants providing professional service to the resident. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

64.50(2) Similar procedures shall safeguard the confidentiality of residents' personal records, e.g., financial records and social services records. Only those personnel concerned with the financial affairs of the residents may have access to the financial records. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

64.50(3) The resident, or his/her responsible party, shall be entitled to examine all information contained in his/her record and shall have the right to secure full copies of the record at reasonable cost upon request, unless the physician determines the disclosure of the record or section thereof is contraindicated in which case this information will be deleted prior to making the record available to the resident or responsible party. This determination and the reasons for it must be documented in the resident's record. (II)

470—64.51(135C) Dignity preserved. The resident shall be treated with consideration, respect, and full recognition of his/her dignity and individuality, including privacy in treatment and in care for his/her personal needs. (II)

64.51(1) Staff shall display respect for residents when speaking with, caring for, or talking about them, as constant affirmation of their individuality and dignity as human beings. (II)

64.51(2) Schedules of daily activities shall allow maximum flexibility for residents to exercise choice about what they will do and when they will do it. Residents' individual preferences regarding such things as menus, clothing, religious activities, friendships, activity programs, entertainment, sleeping and eating, also times to retire at night and arise in the morning shall be elicited and considered by the facility. (II)

64.51(3) Residents shall be examined and treated in a manner that maintains the privacy of their bodies. A closed door or a drawn curtain shall shield the resident from passersby. People not involved in the care of the residents shall not be present without the resident's consent while he/she is being examined or treated. (II)

64.51(4) Privacy of resident's body also shall be maintained during toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance. (II)

64.51(5) Staff shall knock and be acknowledged before entering a resident's room unless the resident is not capable of a response. This shall not apply under emergency conditions. (II)

470—64.52(135C) Resident work. No resident may be required to perform services for the facility, except as provided by sections 219.14 and 253.5, The Code. (II)

64.52(1) Residents may not be used to provide a source of labor for the facility against their will. Physician's approval is required for all work programs. (I, II)

64.52(2) If the plan of care requires activities for therapeutic or training reasons, the plan

for these activities shall be professionally developed and implemented. Therapeutic or training goals must be clearly stated and measurable and the plan shall be time limited and reviewed at least quarterly. (II)

64.52(3) Residents who perform work for the facility must receive remuneration unless work is part of their approved training program. Persons on the resident census performing work shall not be used to replace paid employees in fulfilling staffing requirements. (II)

470—64.53(135C) Communications. Each resident may communicate, associate, and meet privately with persons of his/her choice, unless to do so would infringe upon the rights of other residents, and may send and receive his/her personal mail unopened. (II)

64.53(1) Subject to reasonable scheduling restrictions, visiting policies and procedures shall permit residents to receive visits from anyone they wish. Visiting hours shall be posted. (II)

64.53(2) Reasonable, regular visiting hours shall not be less than twelve hours per day and shall take into consideration the special circumstances of each visitor. A particular visitor(s) may be restricted by the facility for one of the following reasons:

a. The resident refuses to see the visitor(s). (II)

b. The resident's physician documents specific reasons why such a visit would be harmful to the resident's health. (II)

c. The visitor's behavior is unreasonably disruptive to the functioning of the facility (this judgment must be made by the administrator and the reasons shall be documented and kept on file). (II)

64.53(3) Decisions to restrict a visitor are reviewed and re-evaluated: Each time the medical orders are reviewed by the physician; at least quarterly by the facility's staff; or at the resident's request. (II)

64.53(4) Space shall be provided for residents to receive visitors in reasonable comfort and privacy. (II)

64.53(5) Telephones consistent with ANSI standards (405.1134(c)), shall be available and accessible for residents to make and receive calls with privacy. Residents who need help shall be assisted in using the phone. (II)

64.53(6) Arrangements shall be made to provide assistance to residents who require help in reading or sending mail. (II)

64.53(7) Residents shall be permitted to leave the facility and environs at reasonable times unless there are justifiable reasons established in writing by the attending physician, qualified mental retardation professional or facility administrator for refusing such permission. (II)

64.53(8) Residents shall not have their personal lives regulated beyond reasonable adherence to meal schedules, bedtime hours, and other written policies which may be necessary for the orderly management of the facility and as required by these rules. However, residents shall be encouraged to participate in recreational programs. (II)

470—64.54(135C) Resident activities. Each resident may participate in activities of social, religious, and community groups at his/her discretion unless contraindicated for reasons documented by the attending physician or qualified mental retardation professional as appropriate in his/her resident record. (II)

64.54(1) Residents who wish to meet with or participate in activities of social, religious, or other community groups in or outside of the facility shall be informed, encouraged, and assisted to do so. (II)

64.54(2) All residents shall have the freedom to refuse to participate in these activities. (II)

470—64.55(135C) Resident property. Each resident may retain and use his/her personal clothing and possessions as space permits and provided such use is not otherwise prohibited by these rules. (II)

64.55(1) Residents shall be permitted to keep reasonable amounts of personal clothing and

possessions for their use while in the facility. The personal property shall be kept in a safe location which is convenient to the resident. (II)

64.55(2) Residents shall be advised, prior to or at the time of admission, of the kinds and amounts of clothing and possessions permitted for personal use, and whether the facility will accept responsibility for maintaining these items, e.g., cleaning and laundry. (II)

64.55(3) Any personal clothing or possessions retained by the facility for the resident during his/her stay shall be identified and recorded on admission and a record placed on the resident's chart. The facility shall be responsible for secure storage of such items, and they shall be returned to the resident promptly upon request or upon discharge from the facility. (II)

470—64.56(135C) Family visits. Each resident, if married, shall be ensured privacy for visits by his/her spouse; if both are residents in the facility, they shall be permitted to share a room, if available. (II)

64.56(1) The facility shall provide for needed privacy in visits between spouses. (II)

64.56(2) Spouses who are residents in the same facility shall be permitted to share a room, if available, unless one of their attending physicians documents in the medical record those specific reasons why an arrangement would have an adverse effect on the health of the resident. (II)

64.56(3) Family members shall be permitted to share a room, if available, if requested by both parties, unless one of their attending physicians documents in the medical record those specific reasons why an agreement would have an adverse effect on the health of the resident. (II)

470—64.57(135C) Choice of physicians. Each resident shall be permitted free choice of a physician and a pharmacy, if accessible. The facility may require the pharmacy selected to utilize a drug distribution system compatible with the system currently used by the facility. (II)

470—64.58(135C) Incompetent residents.

64.58(1) Each facility shall provide that all rights and responsibilities of the resident devolve to the resident's responsible party, when a resident is adjudicated incompetent in accordance with state law, or when the attending physician or qualified mental retardation professional has documented in the resident's record the specific impairment that has rendered the resident incapable of understanding these rights. The resident's specific impairment shall be re-evaluated annually by the attending physician or qualified mental retardation professional. (II)

64.58(2) The fact that a resident has been adjudicated incompetent does not absolve the facility from advising the resident of these rights to the extent the resident is able to understand them. The facility shall also advise the responsible party, if any, and acquire a statement indicating an understanding of residents' rights. (II)

These rules are intended to implement section 135C.14, The Code, as amended by the Acts of the Sixty-ninth General Assembly, 1981 Regular Session, Chapter 60.

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PLANNING AND PROGRAMMING[630]

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630—13.1(17A) Purpose and technical assistance information. The local government personnel service center (LGPSC) was established "to provide personnel management services and labor management relations services for all Iowa cities and counties upon request," March 1, 1972, by the governor pursuant to the requirements of the Intergovernmental Personnel Act of 1970.

13.1(1) Those parties interested in applying for technical assistance on personnel management and labor management relations services should contact in writing or orally the Chief, Local Government Personnel Service Center, Division of Municipal Affairs, Office for Planning and Programming, 523 East 12th Street, Des Moines, Iowa 50319; (515) 281-3850.

13.1(2) Upon receiving a request for technical assistance, a representative of the LGPSC will contact the interested party, noting when the approximate initiation of services will commence.

13.1(3) There shall be no fees charged for any of the services performed by the LGPSC in accordance with the Intergovernmental Personnel Act of 1970.

13.1(4) Rescinded, effective 7/27/81

13.1(5) All inquiries on the services available from the LGPSC should be directed to the Chief, Local Government Personnel Services Center, Division of Municipal Affairs, Office for Planning and Programming, 523 East 12th Street, Des Moines, Iowa 50319.

[Filed July 15, 1975]

[Filed emergency 7/27/81—published 8/19/81, effective 7/27/81]

CHAPTER 14 YOUTH AFFAIRS

630—14.1(7A) General purpose and guidelines. The state youth co-ordinator's office was established by the governor of Iowa pursuant to the Manpower Training and Development Act of 1962 as amended.

14.1(1) The state youth co-ordinator's office was placed in the state office for planning and programming (OPP) by the governor of Iowa on October 1, 1971.

14.1(2) The purpose of the state youth co-ordinator's office is "to administer youth related programs as designated by the governor of Iowa and to provide comprehensive planning services in affairs related to youth," pursuant to chapter 7A of the Code.

14.1(3) All inquiries on the state youth co-ordinator's office shall be directed in writing or orally to the State Youth Co-ordinator, Office for Planning and Programming, 523 East 12th Street, Des Moines, Iowa 50319; (515) 281-3927.

630—14.2(7A,69GA,SF2216) Iowa Youth Corps. The state youth co-ordinator's office is responsible for administering the Iowa Youth Corps, pursuant to Acts of the Sixty-ninth General Assembly, Senate File 2216, to provide meaningful and productive public service jobs for youth, assist youth in securing unsubsidized employment, and develop opportunities for youth to engage in community service volunteer activities.

14.2(1) *Components.* The Iowa Youth Corps consists of three program components: An in-school public service employment program for disadvantaged and handicapped youth; a summer employment program for youth from all social and economic classifications; and a year-round volunteer program.

14.2(2) *Funds allocated between components.* Funds appropriated to the Iowa Youth Corps shall be allocated to the three program components as follows: Sixty-five percent to the in-school public service employment program; thirty percent to the summer employment program; and five percent to the year-round volunteer program.

630—14.3(7A,69GA,SF2216) Summer component.

14.3(1) *Objectives.* The objectives of the summer employment program are to accomplish needed conservation work on public lands, to provide gainful employment for fifteen through eighteen-year-old youth from all social, economic, ethnic and racial backgrounds, and to develop in participating youth an understanding and appreciation of Iowa's natural environment and heritage.

14.3(2) *Participating agencies.* Nonprofit private and public agencies will be chosen to operate summer employment programs through a request for proposal process. The request for proposal, application form and selection criteria are available upon request in writing or orally from the State Youth Co-ordinator, Office for Planning and Programming, 523 East 12th Street, Des Moines, Iowa 50319, (515) 281-3927. Selection criteria for participating agencies will follow 14.3(3). Each participating agency is required to provide thirty percent of its total project costs as the local matching requirement. Of the thirty percent, no more than ten percent may be in-kind services: The remaining twenty percent must be in the form of cash.

14.3(3) Selection system. Before applications are rated for funding, the State Youth Coordinator will review the applications for six mandatory items. Deletion of any one of the six items will automatically disqualify the application from consideration. The six mandatory items are: (1) Thirty percent of the total project costs must be provided from local sources with a minimum of twenty percent cash and a maximum of ten percent in-kind services; (2) Proposed objectives must be related to the goals of the summer component of the Iowa Youth Corps; (3) An environmental awareness component is included in the proposed program; (4) A health and safety plan for staff and participants is outlined; (5) The proposed recruitment and selection system provides for the random selection of program participants and equal consideration for males and females; (6) The description of proposed work projects demonstrates the applicant's understanding of the program's goals.

After the applications are screened for the six mandatory items, three persons will independently score each application using an one-hundred point system. The three scores will then be averaged and the applications ranked from highest to lowest average score. The fifteen applications receiving the highest scores will be awarded contracts for a summer program of the Iowa Youth Corps. A maximum of twenty-five points will be given for budget factors (includes accuracy of budget calculations, budget detail provided, allowability of costs, firm commitments of local match, etc.); fifty points for program design factors (includes variety and quality of work projects, quality of environmental program, comprehensiveness of health and safety program, equitability and fairness of recruiting and selection system, completeness of responses, etc.); and twenty-five points for experience of applicant (past performance with youth employment and training programs, qualifications of staff, experience with other related programs, etc.).

14.3(4) Youth served. To be eligible for the summer employment program youth must be at least fifteen years of age as of June 1 of the year they wish to participate in the program and no older than eighteen years of age as of August 31 of the year they wish to participate in the program and be able to participate in strenuous physical activity.

These rules are intended to implement section 7A.3, The Code and Acts of the Sixty-ninth General Assembly, 1982 Session, Senate File 2216.

[Filed July 15, 1975]

[Filed emergency 5/12/82—published 6/9/82, effective 5/12/82]

CHAPTER 15*
STATE WINTERIZATION PROGRAM

630—15.1(66GA,Ch110,HF1589) Purpose. The purpose of the program is to assist lower income elderly persons to winterize their homes.

The program shall be administered by the director, state office for planning and programming (OPP) pursuant to the provisions of the Acts of the 66GA, chapter 110, sections 14 and 15 as amended by House File 1589.

630—15.2(66GA,Ch110,HF1589) Guidelines. The office for planning and programming (OPP) shall distribute the sum of money appropriated under section 4 of House File 1589 to those political subdivisions or their agencies or other local organizations within each of the sixteen planning regions which best demonstrate an ability to provide assistance in winterizing the homes of lower income elderly persons in that region.

15.2(1) "*Best demonstrating an ability to provide assistance*" means the ability to deliver adequate assistance to the largest number of persons within each planning region.

15.2(2) "*Lower income*" means persons whose income, as defined in section 425.17(1) of the Code, is less than nine thousand dollars per year.

15.2(3) A limit of not more than one hundred fifty dollars of state funds shall be used to winterize a living unit. Preference shall be given in the distribution of state funds to elderly homeowners.

630—15.3(66GA,Ch110,HF1589) Administration. The appropriated sum shall be allocated or contracted by the director of the office for planning and programming (OPP) equally between each of the office's sixteen planning regions.

15.3(1) Notwithstanding the provisions of section 8.33 of the Code, funds appropriated for the fiscal period beginning July 1, 1975 and ending June 30, 1977 shall be expended in their entirety and shall not revert to the general fund of the state in accordance with House File 1589, section 4.

15.3(2) The office for planning and programming (OPP) shall account to the state comptroller for any actual expenditure of funds appropriated.

630—15.4(66GA,Ch110,HF1589) Public information. All parties interested in further information concerning the state winterization program or guidelines for developing and administering regional winterization programs shall contact in writing or orally, the Director, Office for Planning and Programming, 523 East 12th Street, Des Moines, Iowa 50319; (515) 281-5888.

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[Filed Emergency 6/25/76—published 7/12/76, effective 6/25/76]

PUBLIC INSTRUCTION DEPARTMENT[670]

See also Vocational Education Advisory Council

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students involved may request a determination of eligibility from the governing body of the organization involved. All parties directly interested shall be given an opportunity to present their views to the governing board.

A determination of eligibility by the governing board shall be based upon fairness and the best interests of the students.

In the event that one or more parties involved in the request for determination before the governing board are dissatisfied with the decision of the governing board, an appeal may be made by the dissatisfied party to the state board of public instruction under the provisions of 670—9.17(280). A decision of the state board in the matter shall be final.

The above provisions shall apply insofar as applicable to changes of organization entered into between two or more nonpublic schools.

This rule is intended to implement section 280.13, The Code.

670—9.20(280)* Co-operative student participation. Notwithstanding any other provision of this chapter, in the event a school does not directly make participation in an interscholastic activity available to its students, the governing board of the school may, by formally adopted policy if among its own attendance centers, or by written agreement with the governing board of another member school or schools, provide for the eligibility of its students in interscholastic activities provided by another school or schools. The eligibility of students under a policy, insofar as applicable, or a written agreement is conditioned upon the following:

9.20(1) All terms and conditions of the agreement are in writing;

9.20(2) The attendance boundary of each school which is party to the agreement is contiguous to or contained within the attendance boundary of each of the other schools. For the purposes of this rule, nonpublic school members will utilize the attendance boundaries of the public school in which its attendance center is located;

9.20(3) All parties to the agreement must be engaged in a joint employment or sharing agreement under the provisions of section 280.15, The Code, a sharing of instructors and services arrangement under section 257.26, The Code, or some other co-operative venture in academic programming under any other provision of law;

9.20(4) Any interscholastic activity not available to students of the schools participating in the agreement may be included in the agreement. A school's students may be engaged in co-operative activities under the terms of only one agreement;

9.20(5) Agreements are not for terms of less than two years. In the event an agreement is terminated before the specified time for termination, parties to the agreement may not enter into other agreements with other schools until the time of existence specified in the original agreement has expired. Amendments may be made to agreements, including allowing additional member schools to join an existing agreement, without necessarily extending the time of existence of the agreement;

9.20(6) All students participating under the agreement are enrolled in one of the schools, are in good standing and meet all other eligibility requirements of these rules;

9.20(7) A copy of the written agreement between the governing boards of the particular schools involved is filed with the respective governing organization no later than December 31 for the subsequent school year;

9.20(8) Interscholastic competition is engaged in only under the name of the host school.

It is the purpose of this rule to allow individual students participation in interscholastic competition in activities not available to them in the school in which they attend, through local policy or arrangements made between the governing boards of the schools involved, so long as the interscholastic activities of other schools are not substantially prejudiced. Substantial prejudice shall include, but not necessarily be limited to situations where a co-operative effort may result in an unfair domination of an activity, or substantial disruption of activity classifications and management. In the event an activity organization determines, after investigation, that an agreement between schools developed under the terms of these subrules results in substantial prejudice to other schools engaged in the activity, or the terms of the agreement are not in conformity with the purpose and terms of this rule, the activity organization may give

*See last paragraph of this rule.

timely notice to the schools involved that the local policy or agreement between them is null and void for the purposes of this rule, insofar as co-operative student participation is concerned with a particular activity. Any such determinations are appealable to the state board of public instruction under the terms of 670—9.17(280). For notice to be timely, it must be given at least forty-five days prior to the beginning of the activity season.

For the 1982-83 school year, and appropriate summer programs only, the governing board of each organization may approve agreements in each activity as pilot programs where the activity has been dropped or is likely to be dropped due to lack of appropriate numbers of students for competition or for financial reasons. Those pilot programs will meet the spirit of the above provisions.

The last paragraph of this rule shall become effective on August 1, 1982, and the remainder of this rule shall become effective on July 1, 1983. This rule shall be rescinded on June 30, 1986.

This rule is intended to implement section 280.13, The Code.

[Filed December 13, 1966; amended December 15, 1972, October 12, 1973, July 25, 1975]

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[Filed 5/20/82, Notice 2/17/82—published 6/9/82, effective 8/1/82, 7/1/83*]

*See rule 9.20(280), last paragraph.

TITLE VIII
SCHOOL LUNCH

CHAPTER 10
SCHOOL LUNCH DIVISION

670—10.1(283A) Authority of state department. Chapter 283A of the Code authorizes the department of public instruction to administer the school lunch program in the public schools of the state.

670—10.2(283A) Agreement with participating schools. All school lunch programs operating in public schools and approved for federal assistance must operate according to the terms of an agreement or contract executed between the department of public instruction and the individual school. This agreement or contract is continuous and remains in effect until terminated or canceled by either party. The agreement may be terminated upon ten days' notice on the part of either party, provided, however, that the department of public instruction may cancel the agreement immediately upon receipt of evidence that the terms and conditions of the agreement have not been fully complied with by the individual school.

670—10.3(283A) State plan.

10.3(1) Advisory committees. The proposed state plans for the National School Lunch Act and the Child Nutrition Act of 1966 shall be developed annually for each fiscal year according to federal regulations. A copy of such regulations may be obtained at no more than actual cost of reproduction by contacting the Iowa department of public instruction.

Advisory committees shall be established by the state superintendent when appropriate. Members shall be appointed by the state superintendent. Persons interested in participating in such advisory committees may contact the state superintendent. Any advisory committee at the state level shall be established according to federal regulations. Actual cost for lodging and meals for the state level advisory committee shall be paid by the department of public instruction at current state rates.

Public meetings shall be arranged by the state superintendent as desired to assist in preparing the state plan.

10.3(2) Public involvement and participation. A description of the proposed state plan shall be made available for publication in at least one newspaper in the geographical area covered by each area community college. The entire plan shall be available for public view and comment for forty-five days beginning April 1 and ending May 15 at the area community college library.

Public hearings shall be held as directed by the state superintendent.

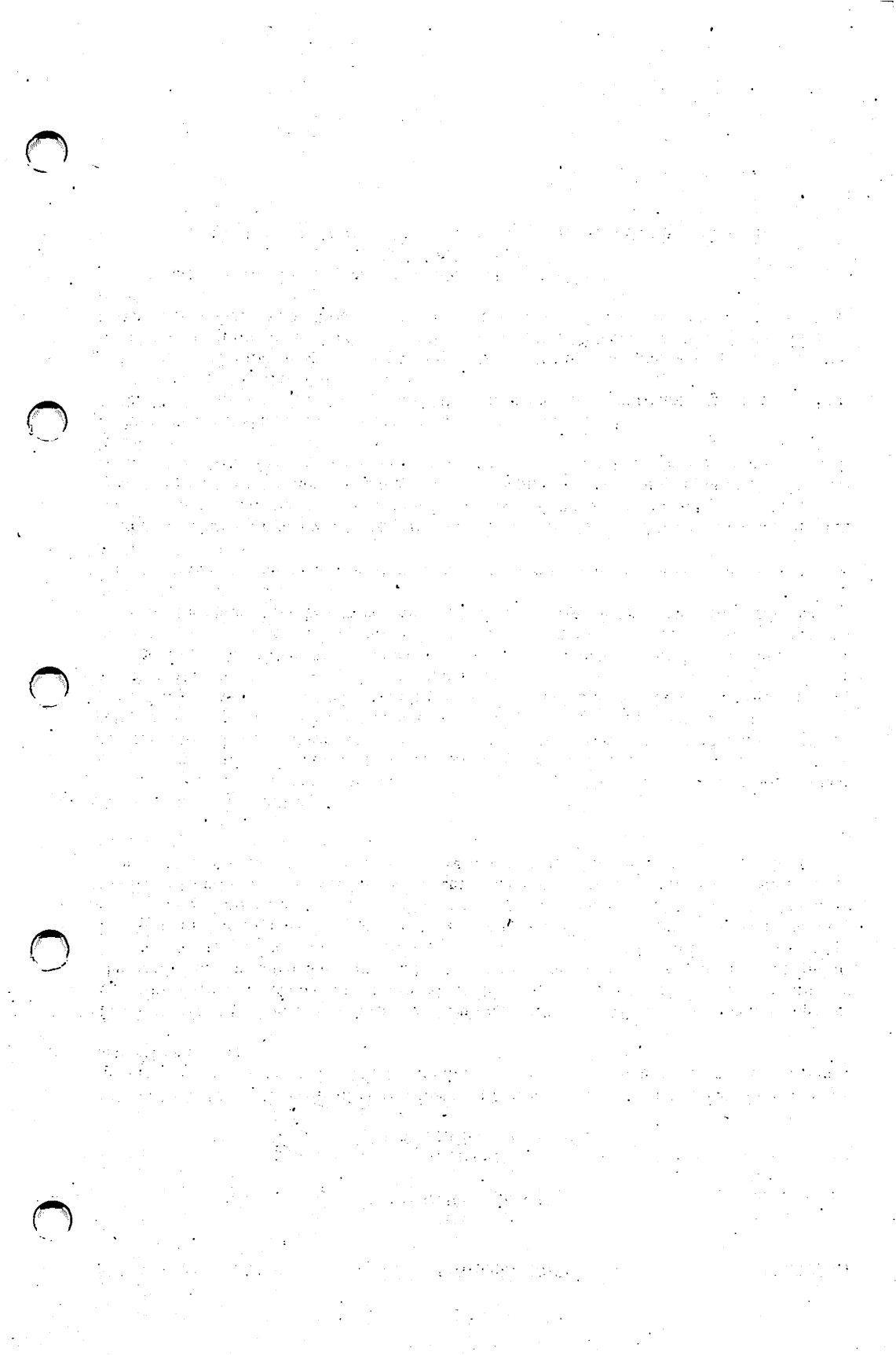
10.3(3) Final plan. The final plan shall be implemented in participating schools and institutions on the first day of the fiscal year.

10.3(4) Geographical area. The geographical area for the National School Lunch Act and the Child Nutrition Act of 1966 is the entire state of Iowa. When a service as defined in these two Acts is available in a school or institution, it shall be available to all children in the school or institution.

This rule is intended to implement chapter 283A, The Code.

[Filed prior to 7/4/52]

[Filed 3/27/81, Notice 2/4/81—published 4/15/81, effective 5/20/81]



670—50.11(260,272A) Rules of evidence—recommendations. In hearings involving recommendations, the hearing panel will consider itself bound by the factual findings of the commission and will not receive evidence on any issue upon which the parties had a full and fair opportunity to present evidence to the commission, unless the panel finds that the interests of justice require relaxing the principle of *res judicata*. The burden of establishing that the issue was not fully and fairly explored before the commission or that the interests of justice require consideration of additional evidence shall be upon the proponent of the evidence.

This rule is intended to implement section 272A.6, The Code.

670—50.12(260,272A) Communications.

50.12(1) Except when parties who have received notice are absent from proceedings, board and hearing panel members shall not communicate directly or indirectly in connection with any issue of fact or law in that contested case with any person or party except upon notice and opportunity for all parties to participate. However, board and hearing panel members may communicate with the members of the department and may have the aid and advice of persons other than those with a personal interest in, or those directly engaged in prosecuting or advocating in either the case under consideration or a similar case pending involving the same parties.

50.12(2) Parties or their representatives shall not communicate directly or indirectly in connection with any issue of fact or law with board or hearing panel members except upon notice and opportunity for all parties to participate, as are provided for by department rules. The recipient of any prohibited communication shall submit the communication, if written, or a summary of the communication, if oral, for inclusion in the record of the proceeding.

50.12(3) Any or all of the following sanctions may be imposed upon a party who violates communications rules: Censure, suspension or revocation of the privilege to practice before the department, or the rendering of a decision against a party who violates the rules.

670—50.13(260,272A) Record.

50.13(1) Oral testimony shall be open to the public and shall be recorded by mechanized means or by certified shorthand reporters. Oral proceedings in whole or in part shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party.

50.13(2) All recording or stenographic notes of oral proceedings or the transcriptions thereof shall be maintained and preserved by the department for at least five years from the date of decision.

50.13(3) The record of a hearing under this chapter shall include:

- a. All pleadings, motions and intermediate rulings.
- b. All evidence received or considered and all other submissions.
- c. A statement of matters officially noticed.
- d. All questions and offers of proof, objections, and rulings thereon.
- e. All proposed findings and exceptions.
- f. Any decision, opinion or report by the presiding officer presented at the hearing.

670—50.14(260,272A) Proposed decision.

50.14(1) The presiding officer, with the advice of the other professional staff members, shall make a proposed decision which shall include findings of fact and conclusions of law.

50.14(2) Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record.

50.14(3) Findings of fact, if set forth in statutory language, shall be accompanied by concise and explicit statement of underlying facts supporting the findings.

50.14(4) Each conclusion of law shall be supported by cited authority or by a reasoned opinion.

50.14(5) The proposed decision or order shall be in writing or stated in the record.

50.14(6) No individual who participates in the making of any decision shall have advocated in connection with the hearing, the specific controversy underlying the case, or other pending factually related matters. Nor shall any individual who participates in the making of any decision be subject to the authority, direction, or discretion of any person who has advocated in connection with the hearing, the specific controversy underlying the hearing, or a pending related matter involving the same parties.

50.14(7) A party to a hearing may file a timely and sufficient affidavit asserting disqualification because of advocacy in the hearing proceeding, or asserting personal bias of an individual participating in the making of any decision in that case. The hearing panel shall determine the matter as part of the record in the case.

50.14(8) Copies of proposed decisions, findings of fact and conclusions of law shall be delivered to all parties, either by personal service, as in civil actions, or by certified mail, return receipt requested, within ten days following the rendering of the proposed decision.

670—50.15(260,272A) Finality of decision.

50.15(1) A proposed decision shall become the final decision unless appealed to or reviewed on the motion of the board with thirty days of the issuance of the proposed decision.

50.15(2) In the case of appeals or successful motions to review, each party shall be afforded the opportunity to file exceptions, present briefs and present oral arguments to the board which shall render the final decision. All parties shall have reasonable notice of any limitation of issues subject to review. The length of time allowed for each party's oral presentation shall be equal and shall be determined in advance of the presentation. No new evidence may be presented on appeal or review.

50.15(3) The decision of the board following a rehearing upon appeal or motion shall be a final decision in the matter.

50.15(4) All final decisions by the board on matters appealed to or reviewed by them under this chapter shall be made with no less than two-thirds of the members eligible to vote being in attendance.

50.15(5) No individual who participates in the making of any final decision shall have advocated in connection with the hearing, appeal or review, of the specific controversy underlying the case, or other pending factually related matters. Nor shall any individual who participates in the making of any final decision be subject to the authority, direction, or discretion of any person who has advocated in connection with the hearing, appeal or review, of the specific controversy underlying the hearing, or a pending related matter involving the same parties.

50.15(6) A party to a hearing shall file a timely and sufficient affidavit asserting disqualification because of advocacy in the hearing proceeding, appeal or review, or asserting personal bias of an individual participating in the making of any final decision in that case. The board shall determine the matter as part of the record.

670—50.16(260,272A) Application for rehearing.

Any party may file an application for rehearing stating the specific grounds therefor, and the relief sought, within twenty days after the issuance of any final decision by the board. A copy of such application shall be timely mailed by the applicant to all parties of record not joining therein. Such application for rehearing shall be deemed to have been denied unless the board grants the application within thirty days after its filing.

These rules are intended to implement sections 260.23 and 272A.6, The Code.

[Filed July 3, 1975]

[Filed 5/21/82, Notice 3/3/82—published 6/9/82, effective 7/14/82]

730—71.9(428,441) Reconciliation report. The assessor's report of any revaluation required by section 428.4 of the Code shall be made on the reconciliation report prescribed and furnished by the department of revenue. The assessor shall enter on said report all information required thereon by the department. The reconciliation report shall be a part of the abstract of assessment required by section 441.45 of the Code and shall be reviewed and considered by the director in equalizing valuations of classes of property.

This rule is intended to implement sections 428.4 and 441.45, The Code, as amended by Acts of the Sixty-eighth General Assembly, 1979 Session, Chapter 25.

730—71.10(421) Assessment/sales ratio study.

71.10(1) Basic data. Basic data shall be that submitted to the department of revenue by county recorders and city and county assessors on forms prescribed and provided by the department, information furnished by parties to real estate transactions, and information obtained by field investigations made by the department of revenue.

71.10(2) Responsibility of recorders and assessors. County recorders and city and county assessors shall complete the prescribed forms as required by section 421.17(6) of the Code to the best of their abilities and in accordance with instructions issued by the department. Assessed values entered on the prescribed form shall be those established as of January first of the year in which the sale takes place.

71.10(3) Normal sales. All real estate transfers shall be considered by the department of revenue to be normal sales unless there exists definite information which would indicate the transfer was not an arms-length transaction or is of an excludable nature as provided in section 441.21 of the Code.

This rule is intended to implement section 421.17, The Code.

730—71.11(441) Equalization of assessments by class of property. Commencing in 1977 and every two years thereafter, the director of revenue shall order the equalization of the levels of assessment of each class of property as hereinafter set forth in rule 71.12(441) by adding to or deducting from the valuation of each class of property, as reported to the department on the abstract of assessment and reconciliation report which shall be a part of said abstract, such percentage in each case as may be necessary to bring the same to its actual value as defined in section 441.21 of the Code. Equalization orders shall be issued to the county auditor if the director determines that the aggregate valuation of a class of property as reported on the abstract of assessment submitted by the assessor is at least five percent above or below the aggregate valuation for that class of property as determined by the director pursuant to rule 71.12(441). Equalization orders of the director shall be restricted to equalizing the aggregate valuations of entire classes of property among the several assessing jurisdictions. All classifications of real estate established in these rules shall be applied uniformly throughout the state of Iowa.

*Equalization percentage adjustments determined for residential realty located outside incorporated areas and not located on agricultural land shall apply to buildings located on agricultural land outside incorporated areas, which are primarily used or intended for human habitation, as defined in subrule 71.1(4).

Equalization percentage adjustments determined for residential realty located within incorporated cities and not located on agricultural land shall apply to buildings located on agricultural land within incorporated cities which are primarily used or intended for human habitation as defined in subrule 71.1(4).

This rule is intended to implement sections 441.21, 441.47, 441.48 and 441.49, The Code.

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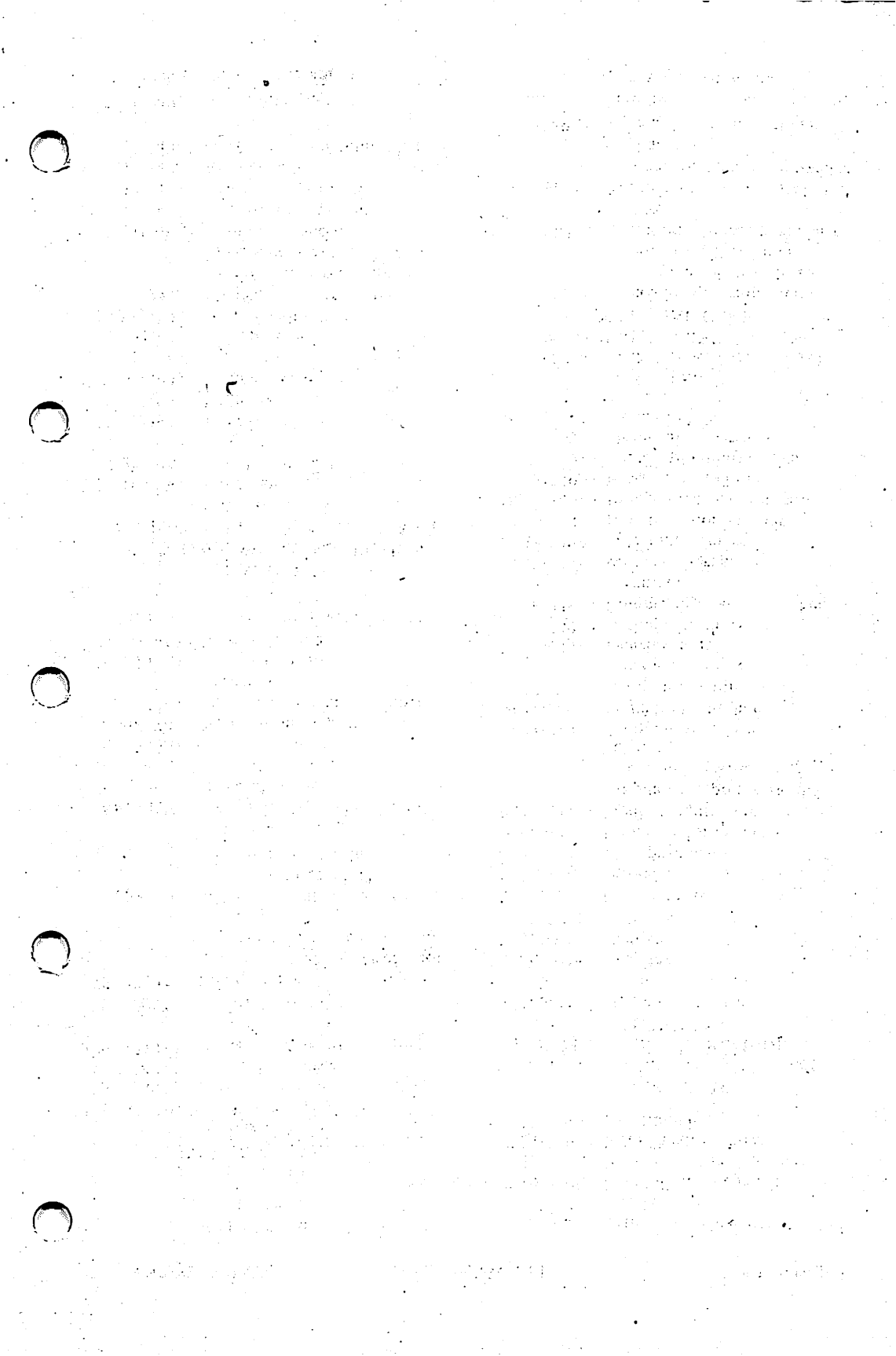
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CHAPTER 41
GRANTING ASSISTANCE

770—41.1(239) Eligibility factors specific to child.

41.1(1)* Age. Aid to dependent children shall be available to a needy child under the age of eighteen years. A child is eligible for the entire month in which the child's eighteenth birthday occurs, unless the birthday falls on the first day of the month.

41.1(2) Citizenship and alienage. An aid to dependent children assistance grant may include the needs of a child who is a resident of the United States only when such child is either a citizen or an alien lawfully admitted for permanent residence or otherwise legally permanently residing in the United States as evidenced by suitable documentary proof furnished by the immigration and naturalization service of the United States Department of Justice.

41.1(3) Residing with relative. The child shall be living in the home of one of the relatives specified in subrule 41.2(3). When an unwed mother intends to place her child for adoption shortly after birth, the child shall be considered as living with the mother until such time as custody is actually relinquished.

a. Living with relatives implies primarily the existence of a relationship involving an accepted responsibility on the part of the relative for the child's welfare, including the sharing of a common household.

b. Home is the family setting maintained or in the process of being established as evidenced by the assumption and continuation of responsibility for the child by the relative.

41.1(4)* Rescinded effective 7/1/80.

41.1(5) Deprivation of parental care and support.

a. A child shall be considered as deprived of parental support or care when the parent is out of the home in which the child lives under the following conditions. When these conditions exist, the parent may be absent for any reason, and may have left only recently or some time

previously. A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

(1) The nature of the absence is such as either to interrupt or to terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and

(2) The known or indefinite duration of the absence precludes relying on the parent to plan for the present support or care of the child.

b. Aid to dependent children is available to a child of unmarried parents the same as to a child of married parents when all eligibility factors are met. When the natural father desires to be a payee or a member of the eligible group and there is no legal father, paternity shall be acknowledged by written affidavit or a court order. Paternity shall be established by affidavit, court order, or other reliable written evidence before the paternal relatives can qualify as specified relatives.

c. A parent is considered incapacitated when a clearly identifiable physical or mental defect has a demonstrable effect upon earning capacity or the performance of the homemaking duties required to maintain a home for the child. Such incapacity shall be expected to last for a period of at least thirty days from the date of application.

(1) The determination of incapacity shall be supported by medical or psychological evidence. Such evidence may be submitted either by letter from the physician or on form PA-2126-5, Report on Incapacity.

(2) When an examination is required and other resources are not available to meet the expense of the examination, the physician shall be authorized to make the examination and submit the claim for payment on form PA-5113-0, Authorization for Examination and Claim for Payment.

(3) A finding of eligibility for social security benefits or supplemental security income benefits based on disability or blindness is acceptable proof of incapacity for aid to dependent children purposes.

(4) Any recipient participating in a vocational rehabilitation program under the department of public instruction, rehabilitation education and services branch, shall be considered incapacitated and no other determination of disability shall be made.

(5) A parent who is considered incapacitated shall be referred to the department of public instruction, rehabilitation education and services branch, for evaluation and services. Acceptance of these services is optional.

*d. ** When a child is deprived of support or care of a natural parent, the presence of an able-bodied stepparent in the home shall not disqualify a child for assistance, provided that other eligibility factors are met.

This rule is intended to implement sections 239.1, 239.2 and 239.5, The Code.

770—41.2(239) Eligibility factors specific to payee.

41.2(1) Reserved.

41.2(2) *Citizenship and alienage.* An aid to dependent children assistance grant may include the needs of an adult who is a resident of the United States only when such adult is either a citizen or an alien lawfully admitted for permanent residence or otherwise legally

permanently residing in the United States as evidenced by suitable documentary proof furnished by the immigration and naturalization service of the United States Department of Justice.

41.2(3) Specified relationship. A child may be considered as meeting the requirement of living with a specified relative if such child's home is with one of the following or with a spouse of such relative even though the marriage is terminated by death or divorce:

Father—adoptive father.

Mother—adoptive mother.

Grandfather—grandfather-in-law, meaning the subsequent husband of the child's natural grandmother, i.e., stepgrandfather—adoptive grandfather.

Grandmother—grandmother-in-law, meaning the subsequent wife of the child's natural grandfather, i.e., stepgrandmother—adoptive grandmother.

Great-grandfather—great-great-grandfather.

Great-grandmother—great-great-grandmother.

Stepfather, but not his parents.

Stepmother, but not her parents.

Brother—brother-of-half-blood—stepbrother—brother-in-law—adoptive brother.

Sister—sister-of-half-blood—stepsister—sister-in-law—adoptive sister.

Uncle—aunt, of whole or half blood.

Uncle-in-law—aunt-in-law.

Great uncle—great-great-uncle.

Great aunt—great-great-aunt.

First cousins—nephews—nieces.

41.2(4) Liability of relatives. All appropriate steps shall be taken to secure support from legally liable persons on behalf of all persons in the eligible group, including the establishment of paternity.

a. When necessary to establish eligibility, the local office shall make the initial contact with the absent parent at the time of application. Subsequent contacts shall be made by the child support recovery unit.

b. When contact with the aid to dependent children family or other sources of information indicates that relatives other than parents and spouses of the eligible children are contributing toward the support of members of the eligible group, have contributed in the past, or are of such financial standing they might reasonably be expected to contribute, the local office shall contact such persons to verify current contributions or arrange for contributions on a voluntary basis.

41.2(5) Referral to child support recovery unit. The local office shall provide prompt notice to the child support recovery unit whenever assistance is furnished with respect to a child whose eligibility is based on the continued absence of a parent from the home or when any member of the eligible group is entitled to support payments.

"Prompt notice" means within two working days of the date assistance is approved.

41.2(6) Co-operation in obtaining support. Each applicant for or recipient of aid to dependent children shall co-operate with the department in establishing paternity and securing support for persons whose needs are included in the assistance grant, except when good cause as defined in 41.2(8) for refusal to co-operate is established.

a. The applicant or recipient shall co-operate in the following areas:

(1) Identifying and locating the parent of the child for whom aid is claimed.

(2) Establishing the paternity of a child born out of wedlock for whom aid is claimed.

(3) Obtaining support payments for the applicant or recipient and for a child for whom aid is claimed.

(4) Obtaining any other payments or property due the applicant, recipient, or child.

b. Co-operation is defined as including the following actions by the applicant or recipient:

(1) Appearing at the local office or the child support recovery unit to provide verbal or written information or documentary evidence known to, possessed by, or reasonably obtained by the applicant or recipient that is relevant to achieving the objectives of the child support recovery program. This includes completing and signing the Support Information, CS-1101-5, upon request of the local office.

(2) Appearing as a witness at judicial or other hearings or proceedings.

(3) Providing information, or attesting to the lack of information, under penalty of perjury.

(4) Paying to the department any cash support payments received after the application for assistance has been approved.

c. The applicant or recipient shall co-operate with the local office in supplying information with respect to the absent parent, the receipt of support, and the establishment of paternity, to the extent necessary to establish eligibility for assistance and permit an appropriate referral to the child support recovery unit.

d. The applicant or recipient shall co-operate with the child support recovery unit to the extent of supplying all known information and documents pertaining to the location of the absent parent and taking such action as may be necessary to secure support payments or establish paternity.

e. The income maintenance unit in the local office shall make the determination of whether or not the client has co-operated.

f. Failure to co-operate shall result in the individual's need being removed from the grant and a protective payee established.

41.2(7)* *Assignment of support payments.* Each applicant for or recipient of assistance shall assign to the department any rights to support from any other person as the applicant or recipient may have. This shall include rights to support in the applicant or recipient's own behalf or in behalf of any other family member for whom the applicant or recipient is applying for or receiving assistance and which have accrued at the time the assignment is executed. An assignment is effective the same date the local office reaches a decision on eligibility and is effective for the entire period for which assistance is paid.

a. The following applicants or recipients living in the home with the child on whose behalf an application is made or assistance is received are required to complete the assignment forms and take whatever action is necessary to assign support payments being received or anticipated on behalf of the child or the caretaker:

(1) The parent, except when both parents are in the home.

(2) The nonparental relative who acts as the applicant, recipient, or payee for the assistance grant, when that relative possesses legal authority to execute legal instruments on behalf of the child.

b. All applicants and recipients as defined in paragraph "a" shall complete the Assignment of Support Payments, CS-3101-5.

Such assignment is effective the same date the local office reaches a decision on eligibility and is effective for the entire period for which assistance is paid.

c. Assignment shall be made by that individual or agency official who possesses legal authority to execute legal instruments on behalf of the child when the child is in aid to dependent children foster care or the caretaker relative is not legally responsible for the child.

d. The needs of the parent or other caretaker relative who fails to complete the Assignment of Support Payments, CS-3101-5, when required shall not be included in the assistance grant and a protective payee arrangement shall be established.

*Emergency, pursuant to §17A.5(2)"b"(2), The Code.

d. The local office shall make a good cause determination based on the corroborative evidence supplied by the applicant or recipient only after it has examined the evidence and found that it actually verifies the good cause claim.

e. Prior to making a final determination of good cause for refusing to co-operate, the local office shall:

(1) Afford the child support recovery unit the opportunity to review and comment on the findings and basis for the proposed determination, and

(2) Consider any recommendation from the child support recovery unit.

f. The child support recovery unit may participate in any appeal hearing that results from an applicant's or recipient's appeal of an agency action with respect to a decision on a claim of good cause.

g. Assistance shall not be denied, delayed, or discontinued pending a determination of good cause for refusal to co-operate when the applicant or recipient has specified the circumstances under which good cause can be claimed and provided the corroborative evidence and any additional information needed to establish good cause.

h. The local office shall:

(1) Periodically, but not less frequently than at each redetermination of eligibility, review those cases in which the agency has determined that good cause exists based on a circumstance that is subject to change.

(2) When it determines that circumstances have changed so that good cause no longer exists, rescind its findings and proceed to enforce the requirements pertaining to co-operation in establishing paternity and securing support.

41.2(11) Proof of good cause. The applicant or recipient who claims good cause shall provide corroborative evidence within twenty days from the day the claim was made. In exceptional cases where the local office determines the applicant or recipient requires additional time because of the difficulty in obtaining the corroborative evidence, the local office shall allow a reasonable additional period of time upon approval by the worker's immediate supervisor.

a. A good cause claim may be corroborated with the following types of evidence.

(1) Birth certificates or medical or law enforcement records which indicate that the child was conceived as the result of incest or forcible rape.

(2) Court documents or other records which indicate that legal proceedings for adoption are pending before a court of competent jurisdiction.

(3) Court, medical, criminal, child protective services, social services, psychological, or law enforcement records which indicate that the putative father or absent parent might inflict physical or emotional harm on the child or caretaker relative.

(4) Medical records which indicate emotional health history and present emotional health status of the caretaker relative or the child for whom support would be sought; or written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the caretaker relative or the child for whom support would be sought.

(5) A written statement from a public or licensed private social agency that the applicant or recipient is being assisted by the agency to resolve the issue of whether to keep the child or relinquish the child for adoption.

(6) Sworn statements from individuals other than the applicant or recipient with knowledge of the circumstances which provide the basis for the good cause claim.

b. When, after examining the corroborative evidence submitted by the applicant or recipient, the local office wishes to request additional corroborative evidence which is needed to permit a good cause determination, the local office shall:

(1) Promptly notify the applicant or recipient that additional corroborative evidence is needed, and

(2) Specify the type of document which is needed.

c. When the applicant or recipient requests assistance in securing evidence, the local office shall:

(1) Advise the applicant or recipient how to obtain the necessary documents, and

(2) Make a reasonable effort to obtain any specific documents which the applicant or recipient is not reasonably able to obtain without assistance.

d. When a claim is based on the applicant's or recipient's anticipation of physical harm and corroborative evidence is not submitted in support of the claim:

(1) The local office will investigate the good cause claim when the office believes that the claim is credible without corroborative evidence and corroborative evidence is not available.

(2) Good cause will be found when the claimant's statement and investigation which is conducted satisfies the office that the applicant or recipient has good cause for refusing to cooperate.

(3) A determination that good cause exists will be reviewed and approved or disapproved by the worker's immediate supervisor and the findings will be recorded in the case record.

e. The local office may further verify the good cause claim when the applicant's or recipient's statement of the claim together with the corroborative evidence do not provide sufficient basis for making a determination. When the local office determines that it is necessary, it may conduct an investigation of good cause claims to determine that good cause does or does not exist.

f. When it conducts an investigation of a good cause claim, the local office will:

(1) Contact the absent parent or putative father from whom support would be sought when such contact is determined to be necessary to establish the good cause claim.

(2) Prior to making such necessary contact, notify the applicant or recipient so the applicant or recipient may present additional corroborative evidence or information so that contact with the parent or putative father becomes unnecessary, withdraw the application for assistance or have the case closed, or have the good cause claim denied.

41.2(12) Enforcement without caretaker's co-operation. When the local office makes a determination that good cause exists, it shall also make a determination of whether or not child support enforcement can proceed without risk of harm to the child or caretaker relative when the enforcement or collection activities do not involve their participation.

a. Prior to making such determination, the child support recovery unit shall have an opportunity to review and comment on the findings and basis for the proposed determination and the local office shall consider any recommendation from the unit.

b. The determination shall be in writing, contain the local office's findings and basis for determination, and be entered into the aid to dependent children case record.

c. When the local office excuses co-operation but determines that the child support recovery unit may proceed to establish paternity or enforce support, it will notify the applicant or recipient to enable such individual to withdraw the application for assistance or have the case closed.

41.2(13) Furnishing of social security number. As a condition of eligibility each applicant for or recipient of and all members of the eligible group must furnish a social security account number or proof of application for such a number if it has not been issued or is not known and provide the number upon its receipt. Such requirement shall not apply to a payee who is not a member of the eligible group.

a. Assistance shall not be denied, delayed, or discontinued pending the issuance or verification of such numbers when the applicant or recipient has complied with the requirements of 41.2(13).

b. When the mother of the newborn child is a current recipient, the mother shall have until the second month following the mother's discharge from the hospital to apply for a social security account number for the child.

This rule is intended to implement sections 239.1, 239.2, 239.3 and 239.5, The Code, and Acts of the Sixty-ninth General Assembly, 1982 Session, House File 2476.

c. Life insurance which has no cash surrender value. The owner of the life insurance policy is the individual paying the premium on the policy with the right to change the policy as he/she sees fit.

d. An equity not to exceed a value of \$1500 in one motor vehicle. When a person has more than one motor vehicle, the equity value of the additional motor vehicle(s) shall be counted toward the resource limitation in 41.6(1)"e". When a motor vehicle(s) is modified with special equipment for the handicapped, the special equipment shall not increase the value of the motor vehicle(s).

e. A reserve of other property, real or personal, not to exceed \$1000 for the eligible group. Resources of the eligible group shall be determined in accordance with subrule 41.6(2).

f. *Money which is counted as income in a month, during that same month.*

g. Payments which are exempted for consideration as income and resources under subrule 41.7(6).

h. Irrevocable funeral contracts or burial trusts.

i. Burial plot(s) when a deed or contract indicates the plot(s) is unavailable.

j. Insurance settlements for payment of medical expenses.

k. Life estates.

l. When the value of any resource is exempted in part, that portion of the value which exceeds the exemption shall be considered in computing whether the eligible group's property is within the reserve defined in paragraph "e".

41.6(2)* *Persons considered.*

a. Resources of persons in the eligible group shall be considered in establishing property limitations.

b. Resources of the parent who has elected to be excluded from the eligible group or the parent whose needs have been removed from the eligible group because the parent refuses to co-operate with the department in the work incentive program or refuses to assign support or co-operate in establishing paternity or securing support payments or refuses to apply for benefits from other sources or refuses to comply with 41.2(13) and the minor payee living with a self-supporting parent shall be considered in the same manner as if the parent or payee were included in the eligible group.

c. Resources of the stepparent living in the home with the eligible group shall be considered only when determining eligibility of the spouse, with one exception: The resources of a stepparent included in the eligible group shall be considered in the same manner as a parent. The resources of the parent who is ineligible because of the stepparent's resources shall be considered as if the parent were included in the eligible group.

d. The resources of supplemental security income recipients shall not be counted in establishing property limitations.

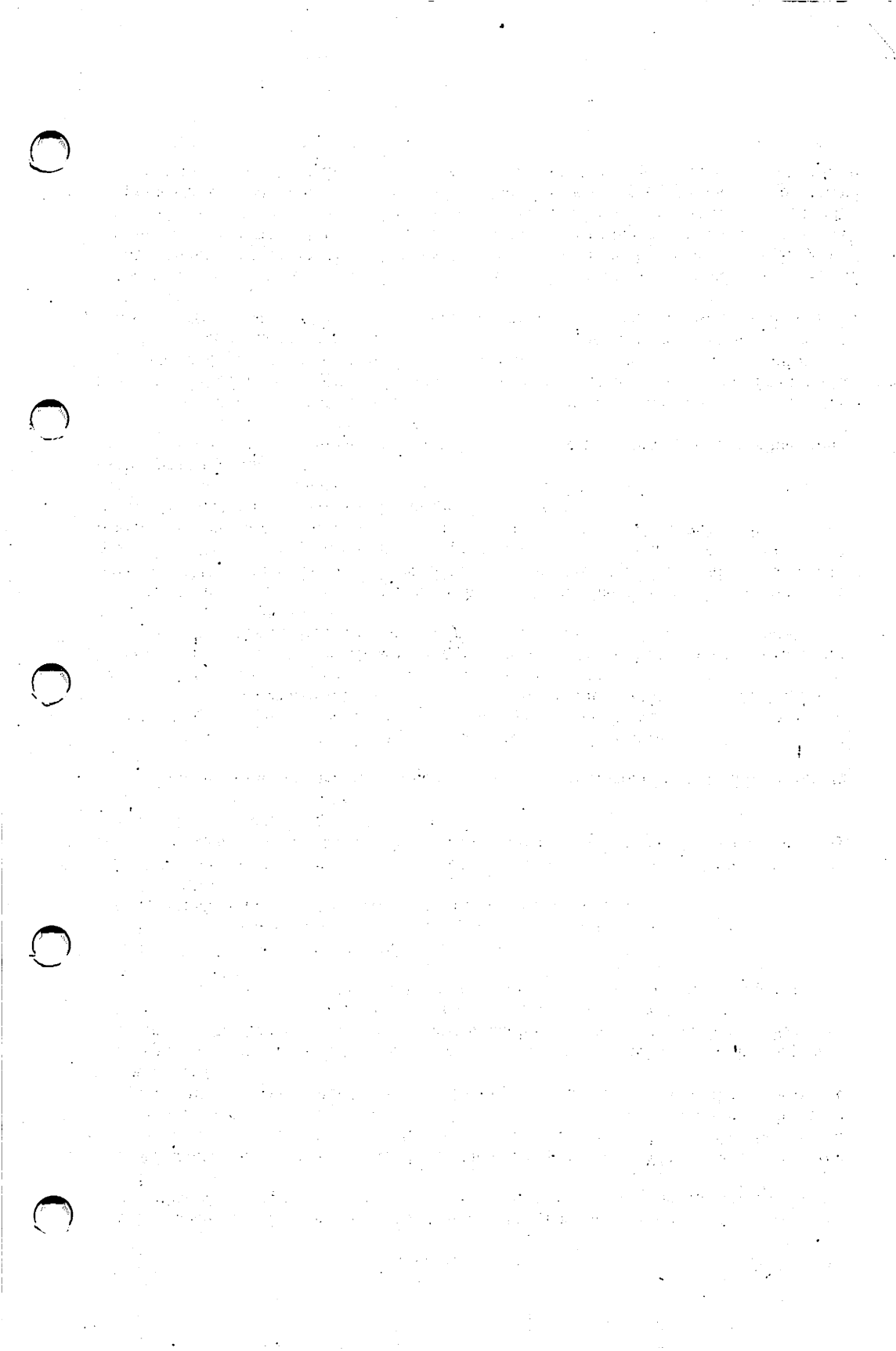
e. The resources of a nonparental relative who elects to be included in the eligible group shall be considered in the same manner as a parent.

f. When a sponsor is financially responsible for an alien according to subrule 41.7(10), the resources of the sponsor or sponsor's spouse receiving supplemental security income or aid to dependent children shall not be considered in determining an alien's resource limitation.

g. Resources applied to sponsored aliens shall not be considered in determining the needs of unsponsored members of the alien's family except to the extent the resources are actually available.

41.6(3)* *Homestead defined.* The homestead consists of the house, used as a home, and may contain one or more contiguous lots or tracts of land, including buildings and appurtenances. When within a city plat, it shall not exceed one-half acre in area. When outside a city plat it shall not contain, in the aggregate, more than forty acres. When property used as a home exceeds these limitations, the equity value of the excess property shall be determined by counting the market value of the excess property less the proportionate amount of legal debts, claims or liens against the total property.

*Emergency, pursuant to §17A.5(2)"b"(1) and (2), The Code.



41.6(4)* Liquidation. When proceeds from the sale of resources, together with other nonexempted resources, exceed the property limitations, the recipient is ineligible to receive assistance until the amount in excess of the maximum exemption has been expended unless immediately used to purchase a homestead, or reduce the mortgage on a homestead.

a. The resource value of a negotiable mortgage or contract is the amount for which it can be sold or discounted.

b. When the mortgage or contract is a negotiable resource or is a discounted contract retained by the individual, only that portion of the payment received representing interest is considered unearned income. When the interest payment is used to purchase a homestead or reduce a mortgage on a homestead, the monthly interest amount received which is in excess of the monthly payment shall be considered unearned income.

c. When the mortgage or contract is not negotiable, or has no discounted value, it is not considered a resource and the payments received, including principal and interest, shall be considered unearned income.

d. When property is sold on a non-negotiable contract basis and the proceeds are used to purchase a homestead or reduce the mortgage on a homestead, the monthly payments received in excess of the payments made on the homestead mortgage or purchase shall be considered as income.

41.6(5) Net market value defined. Net market value is the gross price for which property or an item can currently be sold on the open market, less any legal debts, claims, or liens against such property or item.

41.6(6) Availability.

a. A resource must be available in order for it to be counted toward resource limitations. A resource is considered available under the following circumstances:

(1) The applicant/recipient owns the property in part or in full and has control over it; that is, it can be occupied, rented, leased, sold, or otherwise used or disposed of at the individual's discretion.

(2) The applicant/recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance.

b. An applicant/recipient shall take all appropriate action to gain title and control of any resource the value of which would affect eligibility.

c. When property is owned by more than one person, unless otherwise established, it is assumed that all individuals hold equal shares in the property.

d. When the applicant/recipient cannot readily convert an available resource, the value of which would affect eligibility, to cash, the resource shall be considered exempt as long as all of the following conditions exist:

(1) The resource has been publicly advertised for sale and remains for sale, and

(2) The asking price for the resource is reasonable, and

(3) The applicant/recipient has not refused a reasonable offer on the resource.

41.6(7) *Damage judgments and insurance settlements.*

a. Payment resulting from damage to or destruction of an exempt resource shall be considered a resource to the applicant/recipient the month following the month the payment was received. When the applicant/recipient signs a legal binding commitment no later than the month after the month the payment was received, the funds shall be considered exempt for the duration of the commitment providing the terms of the commitment are met within eight months from the date of commitment.

b. Payment resulting from damage to or destruction of a nonexempt resource shall be considered a resource in the month following the month in which payment was received.

41.6(8) *Trusts.* When a member of the eligible group is a beneficiary of a trust or conservatorship, except a trust or conservatorship set up for medical expenses, which when added to other real and personal reserves exceeds resource limitations, such person shall present a petition to the court requesting release of the funds to help meet current basic or special needs. Failure to file a petition shall result in the beneficiary's needs being removed from the grant. Payments received from the trust or conservatorship for basic or special needs are considered income.

41.6(9)* *Special alien cases.* When a sponsor is financially responsible for an alien according to subrule 41.7(10), the resources of the sponsor and the sponsor's spouse in excess of \$1500 shall be applied to the alien's resource limitation.

a. When the person described in subrule 41.7(10) sponsors two or more aliens who apply for assistance on or after November 1, 1981, the resources of the sponsor and the sponsor's spouse in excess of \$1500 shall be divided equally among the aliens.

b. The resources of a sponsor or sponsor's spouse receiving supplemental security income or aid to dependent children shall be treated in accordance with subrule 41.6(2).

This rule is intended to implement section 239.5, The Code.

770—41.7(239)* *Income.* All unearned and earned income, unless specifically exempted, disregarded, or deducted for work expenses as defined in these rules, shall be considered in determining initial and continuing eligibility and the amount of the aid-to-dependent-children grant. Initial and continuing aid-to-dependent-children assistance shall be granted only when the countable gross nonexempt unearned and earned income as defined in 41.7(2), exclusive of the aid-to-dependent-children grant, received by the eligible group and available to meet the current month's needs is no more than one hundred fifty percent of the basic needs schedule defined in subrule 41.8(2), plus any special need allowable under subrule 41.8(3), and the countable net unearned and earned income is less than the total of the amount designated as basic needs according to the schedule of basic needs in subrule 41.8(2) and any special need allowable under subrule 41.8(3). Child support assigned to the department in accordance with subrule 41.2(7) shall be considered unearned income for the purpose of determining continuing eligibility.

41.7(1) *Unearned income.* Unearned income is any income in cash or in kind that is not gained by labor or service. Net unearned income shall be determined by deducting reasonable income producing costs from the gross unearned income.

*Emergency, pursuant to §17A.5(2)"b"(2), The Code.

- b. The value of the coupon allotment in the food stamp program.
 - c. The value of the United States department of agriculture donated foods (surplus commodities).
 - d. The value of supplemental food assistance received under the Child Nutrition Act and the special food service program for children under the National School Lunch Act.
 - e. Any benefits received under Title III-C, Nutrition Program for the Elderly, of the Older Americans Act.
 - f. Any assistance that is provided in cash or in kind under the emergency energy conservation services program.
 - g. Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the Federal-Aid Highway Act of 1968.
 - h. Any judgment funds that have been or will be distributed per capita or held in trust for members of any Indian tribe. When the payment, in all or part, is converted to another type of resource, that resource is also exempt.
 - i. Payments to volunteers in volunteers in service to America.
 - j. Payments for supporting services or reimbursement of out-of-pocket expenses received by volunteers in any of the programs established under Titles II and III of the Domestic Volunteer Services Act.
 - k. Tax-exempt portions of payments made pursuant to the Alaskan Native Claims Settlement Act.
 - l. Experimental housing allowance program payments made under annual contribution contracts entered into prior to January 1, 1975, under section 23 of the U.S. Housing Act of 1936 as amended.
 - m. The income of a supplemental security income recipient.
 - n. Income of a child when the payee has elected to exclude the child from the eligible group.
 - o. The \$30.00 weekly incentive allowance and any payment for training and employment related expenses made under the Comprehensive Employment and Training Act of 1973.
 - *p. Earning and allowances from youth employment demonstration programs established under the Comprehensive Employment and Training Act of 1973.
 - q. Loans and grants obtained and used under conditions that preclude their use for current living costs.
 - r. Any loan or grant to any undergraduate student for educational purposes made or insured under any program administered by the United States commissioner of education.
 - s. All earned income of the undergraduate student in a college work-study program administered by the United States commissioner of education.
 - t. Extended social security benefits paid to individuals between the ages of eighteen and twenty-two because of their status as full-time students.
- 41.7(7)* Exempt as income.** The following are exempt as income.
- a. Rescinded, effective 11/1/81.
 - b. Reimbursement from the employer for job-related expenses.
 - c. The following nonrecurring lump sum payments:
 - (1) Income tax refund.
 - (2) Retroactive supplemental security income benefits.
 - (3) Insurance settlements for the payment of medical expenses.
 - (4) Refunds of security deposits on rental property or utilities.
 - d. Payments received by the family providing foster care to a child or children when the family is operating a licensed foster home.
 - e. Any income which is restricted to the sole use of a child being removed from the eligible group to be placed in aid to dependent children-foster care.
 - f. Contributions, gifts, and winnings received on less than a quarterly basis, with no assurance of continuance.
 - g. Income of less than \$5.00 per month from any one source.
 - h. Supplementation from county funds providing:

*Emergency, pursuant to §17A.5(2)"b"(2), The Code.

(1) The assistance does not duplicate any of the basic needs as recognized by the aid to dependent children program, or

(2) The assistance, if a duplication of any of the basic needs, is made on an emergency basis, not as ongoing supplementation.

i. Any payment received as a result of an urban renewal or low cost housing project from any governmental agency unless the cost of shelter is furnished in full.

j. A retroactive corrective payment.

k. The training allowance issued by the rehabilitation education and services branch of the department of public instruction.

l. The following payments from the work incentive program:

(1) The monthly incentive allowance and daily training allowance for transportation and lunches for individuals in vocational classroom training and work experience program.

(2) The payment for child care.

m. The payment for training related expenses to individuals in an individual education and training plan.

n. The training allowance issued by the commission for the blind.

o. Payment(s) from a passenger(s) in a car

41.7(8)* Treatment of income in sanction/stepparent cases.

a. A parent removed from the eligible group for an income maintenance sanction or not included because of the resource restriction in 41.6(2)"c", or who has elected to be excluded from the eligible group is not eligible for the \$30.00 plus one-third earned income disregard, and shall be permitted to retain only that part of the parent's income to meet the parent's needs as determined by the difference between the needs of the eligible group with the parent included and the needs of the eligible group with the parent excluded. All remaining income of the parent shall be applied against the needs of the eligible group.

b. The income of a stepparent who is not included in the eligible group, but is living with the parent in the home of the eligible child(ren), shall be given the same consideration and treatment as that of a natural parent, subject to the limitations of subparagraphs (1), (2), (3) and (4) below.

(1) The stepparent's monthly gross nonexempt earned income, earned as an employee or monthly net profit from self-employment, shall receive a standard work expense deduction as prescribed in 41.7(2)"a".

(2) Any amounts actually paid by the stepparent to individuals not living in the home, who are claimed by the stepparent as dependents for federal income tax purposes, shall be deducted from the total nonexempt monthly earned and unearned income of the stepparent.

(3) The stepparent shall also be allowed a deduction from nonexempt monthly earned and unearned income for alimony and child support payments made to individuals not living in the home with the stepparent.

(4) The nonexempt monthly earned and unearned income of the stepparent remaining after application of the deductions in 41.7(8)"b"(1), (2) and (3) above shall be used to meet the needs of the stepparent and the stepparent's dependents living in the home, when the dependents' needs are not included in the eligible group and the stepparent claims the dependents for federal income tax purposes. These needs shall be determined in accordance with the aid-to-dependent-children standard of need, including special needs, for a family group of the same composition. Any remaining income in excess of these needs shall be applied as unearned income to the needs of the eligible group.

c. When the income of the stepparent, not in the eligible group, is insufficient to meet the needs of the stepparent and the stepparent's dependent, but ineligible, child(ren) living in the home, the income of the parent may be diverted to meet the unmet needs of the child(ren) of the current marriage.

d. When the needs of the stepparent, living in the home, are not included in the eligible group, the eligible group and any dependent but ineligible child(ren) of the parent shall be considered as one unit, and the stepparent and the stepparent's dependents, other than the spouse, shall be considered a separate unit.

*Emergency, pursuant to §17A.5(2)"b"(1) and (2), The Code.

770—41.10(239) Rescinded, effective 7/1/81.

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CHAPTER 42

Rescinded, effective 7/1/81, IAB 7/22/81

CHAPTER 43
ALTERNATE PAYEES

770—43.1(239) Conservatorship or guardianship.

43.1(1) When application is filed for aid to dependent children by a person under conservatorship or guardianship, a copy of the court order shall be secured by the local office. Assistance payments shall be made to the conservator or guardian to be allocated for the support and care of the dependent child.

43.1(2)* The department may petition the probate court to appoint a conservator over any payee when the department has reason to believe any payments of aid to dependent children are not being used or may not be used in the best interests of the child. Assistance payments shall be made to the conservator to be allocated for the support and care of the dependent child(ren).

43.1(3)* Rescinded, effective 7/1/81.

This rule is intended to implement section 239.5, The Code.

770—43.2(239) Protective payments.

43.2(1) Protective payments shall be made to a protective payee when a recipient has demonstrated severe difficulties in managing money, but has the capacity to learn, in a relatively short time, to manage funds in a reasonably adequate manner. Protective payments shall be utilized in the following instances:

a. When the aid to dependent children payee has clearly demonstrated such inability to manage funds that the needs of the children have not been reasonably served.

b. When the aid to dependent children payee, who has been deemed appropriate for employment or vocational training, without good cause refuses such employment or training.

*c.** When a parent or other adult fails to co-operate in establishing paternity or securing support without good cause.

43.2(2) Consideration shall be given to the appointment of a protective payee when there is clear and specific evidence that the aid to dependent children payee persistently mismanages the assistance payments to the detriment of the children. Such evidence includes, but is not limited to:

a. Continued refusal or inability to properly feed and clothe the dependent children.

b. Continued expenditures made for nonessentials or for other items so as to threaten the children's chances for healthy growth and development.

c. Continued, persistent, and deliberate failure to meet obligations for rent, food, school supplies, or other essentials.

d. Repeated evictions or incurrence of debts with attachments or levies made against current income.

e. Continued inability to plan and spread necessary expenditures over the usual period between assistance checks.

43.2(3) The local office has the responsibility for determining whether to recommend a protective payee, in selecting the payee, recommending termination of the arrangement, and providing casework services directed toward increasing money management skills of the recipient.

43.2(4) The selection and appointment of a protective payee shall be in accordance with the following standards.

a. Interest in and concern with the well-being of the recipient family. This interest may have been demonstrated by regular and frequent visits to the family or past efforts to help the family at time of crisis.

*Emergency, pursuant to §17A.5(2)*b*(2), The Code.

b. Interest, ability, and the time to help the family to make proper use of the assistance payment in connection with ordinary household budgeting. This ability may have been demonstrated by past experience in purchasing food and clothing and household supplies within a restricted income or other knowledge of effective household money management practices.

c. Geographical proximity or means of transportation to the family to be accessible for frequent consultation on household budgeting and other household money payment problems.

d. Ability to establish and maintain positive relationships with members of the family. The protective payee must assume a teaching role to facilitate the acquisition of new money management skills.

e. A responsible, dependable, and reliable individual with the capacity to handle highly confidential family information and to handle money which is vital and essential to another family's daily well-being.

f. Not an individual with a direct or indirect interest in the disposition of the assistance payment, such as the executive officer of the agency, landlord, grocer, or other vendor of goods and services dealing with the recipient.

g. Not an employee of the local office.

43.2(5) The protective payee shall manage or supervise and make basic decisions about the expenditure of the assistance payment. As the recipient demonstrates the ability to use the funds appropriately, the protective payee shall gradually increase self management until the recipient is able to manage the entire assistance payment. The protective payee shall make a quarterly report to the local office of general expenditures and progress being made by the recipient in money management within thirty days following the end of each three-month period.

43.2(6) A protective payment arrangement for persons specified in subrule 43.2(1)"a" shall be limited to twelve months.

43.2(7) All protective payment arrangements shall be evaluated at least every three months to determine whether the protective payee is carrying out the responsibilities in the best interests of the child or children. In addition, a decision shall be made for each protective payment arrangement for persons specified in subrule 43.2(1)"a" whether to:

a. Restore the recipient to regular money payment status,

b. Continue the recipient under protective payment status, or

c. Arrange for the appointment of a conservator when it appears that the recipient is unable to respond to the beneficial effects of the protective payment plan or progress is so slow as to require continuation of the plan beyond the time limitation on protective payments.

43.2(8) Protective payments for persons specified in subrule 43.2(1)"a" shall be limited to ten percent of the total aid to dependent children caseload.

This rule is intended to implement sections 239.3 and 239.5, The Code, and Acts of the Sixty-ninth General Assembly, 1982 Session, House File 2476.

770—43.3(239) Vendor payments.

43.3(1) A vendor payment or payments may be made in an emergency situation when the recipient has become so involved financially that proper care for the family may be secured only with a guarantee of payment from the department. A vendor payment or payments may be made upon the request of the recipient or when the local office determines it is necessary to extricate the family from financial difficulties or to comply with the provisions of the work incentive program. Emergency situations include, but are not limited to:

a. Eviction and inability to find other shelter.

b. Termination of or refusal to provide utilities by the utility company.

c. The necessity to provide such essentials as food, clothing, and shelter for dependent children.

d. Continued inability on the part of the payee to manage funds for the benefit of the family, but time is needed to secure a protective payee or a conservator or guardian.

43.3(2) Vendor payments shall be authorized subject to the following limitations:

a. Vendor payments shall be authorized only by the local administrator.

b. Vendor payments shall be authorized only with the knowledge and consent of the recipient except in those instances where the vendor payment provision is utilized on an emergency basis to protect the family pending the completion of other arrangements.

c. Vendor payments shall be authorized only to meet emergent situations which limit the recipient's ability to furnish care for children.

d. Vendor payments shall be authorized monthly. When such payments are needed for a period in excess of two months, approval shall be granted by the district income maintenance supervisor or designee.

e. Vendor payments shall be a part of the limitation specified in subrule 43.2(8).

43.3(3) The amount of vendor payment shall be established in the following manner:

a. A vendor payment or payments shall be for a specific item or items of need.

b. The recipient, worker, and vendor shall mutually agree upon the quantity, kinds, and quality of goods or services to be provided and the amount to be paid, except in those instances where the vendor payment is necessary as described in subrule 43.3(1) without the consent of the payee.

c. The entire item of need established in 43.3(3)"a" shall be covered by the vendor payment except in those instances where the aid to dependent children grant is less than the amount needed for the vendor payment. In such instances the amount of the vendor payment shall not exceed the amount of the assistance grant.

d. Before a vendor payment is established, consideration shall be given to the family's entire financial situation so that the vendor payment will not jeopardize the funds needed for the family's other expenses.

e. When a vendor payment is established because of a recipient's failure to participate in the work incentive program, such payment shall be fifty percent or more of the total assistance paid for the month.

f. The balance of the assistance payment not used for the vendor payment shall be paid to the recipient in the form of a regular assistance warrant.

43.3(4) The local office shall send the vendor two copies of form PA-3157-5, Authorization for Vendor Payment. The vendor shall complete and return one copy of the form to the local office along with a copy of the billing, invoice or statement.

770—43.4(239) **Emergency payee.** Payments may be made to persons acting for relatives who have been receiving assistance for a child in emergency situations that deprive the child of the relatives' care. These payments shall be made for a temporary period, not to exceed three months, to allow time to make and implement plans for the child's continuing care and support.

This rule is intended to implement section 239.5, The Code.

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CHAPTER 44
AID TO DEPENDENT CHILDREN FOSTER CARE

770—44.1(239) **Eligibility.** A child is eligible to receive aid to dependent children foster care when the following requirements are met.

44.1(1) The child must have been receiving aid to dependent children in the home of the child's parents or a specified relative in or for the month in which court proceedings

were initiated for removal from the home, or would have received assistance had application been made; or had, within six months prior to the month in which the proceedings were initiated, been living with a specified relative, and would have received assistance in and for the month in which the proceedings were begun had the child continued to live with that relative and application had been made.

44.1(2) The child continues to meet the aid to dependent children eligibility requirements as specified in chapter 41 of rules of the department of social services.

a. The eligibility requirement of deprivation of parental care and support shall be established by the circumstances of the child's natural or adoptive parents. When parental rights have been terminated subsequent to initial determination of eligibility, the child continues to meet the eligibility factor of deprivation.

b. The eligibility requirement of need shall be established by the income and resources of the child.

44.1(3) The child is placed in a licensed foster home, in a private, nonprofit child-caring institution, or under the care of a licensed child-placing agency.

44.1(4) The child must have been removed from the home by judicial determination after April 30, 1961.

44.1(5) As a condition of eligibility, responsibility for placement and supervision of the child is to be given by the court to the Iowa department of social services.

770—44.2(239) **Plan of care.** The service worker shall develop a plan of care for each child in aid to dependent children foster care which takes into consideration the individual needs of the child and assures proper care while in a foster home or child-caring institution. Such plan shall be reviewed at least every six months.

770—44.3(239) **Application.** An application for aid to dependent children foster care shall be filed on behalf of the child by the income maintenance worker. When a child is placed in a nonparental home in which eligibility for either regular aid to dependent children or aid to dependent children—foster care may be established, the nonparental caretaker shall have the option of applying for either program.

770—44.4(239) **Payment.** Payment shall be made in accordance with chapter 137 of rules of the department of social services with the exception that no payment shall be made for a period prior to the date of the court order giving responsibility for placement and supervision to the department.

770—44.5(239) **Income.** Any income which is restricted to the sole use of the child being removed from the eligible group of an active aid to dependent children case shall be made available to the child and shall be considered in the computation of the aid to dependent children foster care payment when made available.

770—44.6(239) **Services.** Services shall be available to the child, parents, and foster parents in an aid to dependent children foster care case the same as in the regular foster care program.

These rules are intended to implement section 239.2(1) of the Code.

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CHAPTER 45

[Ch 45, January 1974 IDR Supplement, renumbered as Ch 42]

PAYMENT

770—45.1(239) **Address.** Assistance warrants shall be mailed to the recipient's current address or, upon request to a post office box, bank, or to any other address for which the

**CHAPTER 46
RECOUPMENT****770—46.1(239) Definitions.**

46.1(1) *Willful withholding of information.* “Willful withholding of information” means and may result from:

a. False or misleading statements, oral or written, regarding the client’s income, resources, or other circumstances which may affect eligibility or the amount of assistance received;

b. Failure to timely report changes in income, resources, or other circumstances which may affect eligibility or the amount of assistance received;

c. Failure to timely report the receipt of and, if applicable, to refund assistance in excess of the amount shown on the most recent Notice of Decision, form PA-3102-0, or the receipt of a duplicate warrant; or

d. Failure to refund to the child support recovery unit any payment from the absent parent received after the date the decision on eligibility was made.

e. * False or misleading statements regarding income or resources of the sponsor and the sponsor’s spouse, when a sponsor is financially responsible for an alien according to 41.7(10).

46.1(2) *Overpayment.* “Overpayment” means any assistance payment received in an amount greater than the amount the eligible group is entitled to receive.

*Emergency, pursuant to §17A.5(2)“b”(2), The Code.

46.1(3) Recoupment. "Recoupment" means the repayment of an overpayment, either by a payment from the client or an amount withheld from the assistance warrant or both.

46.1(4) Recoup. "Recoup" means reimburse, return, or repay an overpayment.

46.1(5) Liquid resources. "Liquid resources" means assets in the form of cash or items easily and readily converted to cash, such as checking or savings accounts, stocks, or bonds.

46.1(6) Client. "Client" means a current or former applicant or recipient of aid to dependent children.

46.1(7) Administrative error. "Administrative error" in overpayments means the same as circumstances described in 45.4(1) pertaining to underpayments.

46.1(8) Good cause. "Good cause" for not reporting income or resources means the change results in a monthly error of less than \$10.00.

46.1(9) Without fault. "Without fault" means an alien's sponsor is "without fault" when the department fails to determine that an alien has a sponsor, fails to count the sponsor's income and resources in determining the alien's eligibility or an overpayment results from an administrative error.

770—46.2(239)* Monetary standards.

46.2(1) Amount subject to recoupment. All aid-to-dependent-children overpayments shall be subject to recoupment.

46.2(2) Warrant issued. When recoupment is made by withholding from the aid-to-dependent-children grant, the warrant issued shall be for no less than \$10.00.

770—46.3(239) Notification. All clients shall be promptly notified of the amount of an overpayment subject to recoupment, the reason for the overpayment, and the action being taken.

770—46.4(239)* Determination of overpayments. Overpayments shall be recouped.

46.4(1) Administrative error. When an overpayment is due to an administrative error recoupment shall be made. Recoupment shall be made when the client receives a warrant that exceeds the amount on the most recent notice from the department by ten dollars or more or receipt of a duplicate warrant. Recoupment shall be made when errors by the department prevent the requirements in subrules 41.2(6), 41.2(7) or 41.4(6) from being met. The client is required to timely report receipt of excess assistance under 40.7(4).

46.4(2) Assistance paid pending appeal decision. Recoupment of overpayments resulting from assistance paid pending a decision on an appeal hearing shall begin no later than the month after the month in which the final decision is issued.

46.4(3) Willful withholding of information.

a. An overpayment due to willful withholding of information shall be computed as if the information had been reported and acted upon timely. Exception: When the client, without good cause, fails to report income as specified in subrule 40.7(4) the deductions in subrule 41.7(2) "a", "b" and "c" shall not be allowed.

b. Overpayments due to failure to refund payments received from the absent parent shall be the total payment made for members of the eligible group at the time the support payment was received.

46.4(4) Failure to co-operate. Failure to co-operate in the investigation of alleged overpayments shall result in ineligibility for the months in question and the overpayment shall be the total amount of assistance received during those months.

46.4(5)* Overpayment in special alien cases. An overpayment due to willful withholding of information regarding the income and resources of the alien's sponsor and the sponsor's spouse shall be recouped from the alien or from the resources of the sponsor and the sponsor's spouse which were available to the alien according to 41.6(9). Exception: When the sponsor is found to have "good cause" or to be "without fault" recoupment shall be from the alien.

*Emergency pursuant to §17A.5(2)"b"(2), The Code.

770—46.5(239)* Source of recoupment. Recoupment shall be made from liquid resources, earned income disregard, the basic needs or the resources of a sponsor or sponsor's spouse which were deemed available to the alien according to 41.6(9). Regardless of the source, the client may choose to make a lump sum payment, make periodic installment payments, or have repayment withheld from the warrant. The client shall sign form PA-3164-0, Agreement to Repay. When the client refuses to designate a method of recoupment or fails to make the agreed upon payment, the agency is empowered to make a warrant reduction. Recoupment, whether it be by a lump sum payment, periodic installment payments, or withholding from the warrant, can be made from one or any combination of the following sources:

46.5(1) Liquid resources. Recoupment from liquid resources is limited to the amount of the resource.

46.5(2) Earned income disregard. Recoupment from earned income disregard is limited to fifty percent of the thirty plus one-third disregard, unless the client elects to pay more.

46.5(3) Basic needs. Recoupment by withholding from basic needs is limited to ten percent of the basic needs standard in accordance with the schedule in subrule 41.8(2), unless the client elects to have more withheld.

46.5(4)* Recoupment in special alien cases. Recoupment shall be made from the resources deemed to be an alien according to 41.6(9) when

- a. The sponsor is financially responsible for the alien according to 41.7(10),
- b. The alien and sponsor failed to provide accurate information regarding the sponsor's income or resources, and
- c. An overpayment resulted.

770—46.6(239)* Sequence of recoupment. The source of the recoupment shall be first, liquid resources, second, earned income disregard and third, basic needs.

770—46.7(239) Procedures for recoupment.

46.7(1) Initiating recoupment. When the local office starts recoupment proceedings, recoupment shall begin as soon as the amount of the overpayment has been established.

46.7(2) Referral. When the local office does not start recoupment proceedings, the case shall be referred to the office of investigation for investigation, recoupment, or referral for possible prosecution.

46.7(3)* Canceled cases. Canceled cases with an unpaid overpayment shall be referred to the office of investigation for investigation, recoupment, or referral for possible prosecution. When a canceled case with an unpaid overpayment is reopened, responsibility for recoupment may be transferred to the local office to begin or continue recoupment according to these rules.

46.7(4) Change of circumstances. When financial circumstances change, the recoupment plan is subject to revision.

46.7(5)* Collection. Recoupment for overpayments shall be made from the individual, as defined in 41.2(3), who was the recipient at the time the overpayment occurred, except as provided in 46.4(5).

770—46.8(239) Appeals. The client has the right to appeal the amount of the overpayment and the amount to be withheld from the warrant.

These rules are intended to implement sections 239.2, 239.5, 239.6, 239.14 and 239.17, The Code, and 45CFR 233.20(a)(12).

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CHAPTERS 47 to 49

Reserved

TITLE V

STATE SUPPLEMENTARY ASSISTANCE

CHAPTER 50

APPLICATION FOR ASSISTANCE

770—50.1(249) Definitions.

50.1(1) *Payment for residential care.* "Payment for residential care" shall mean payment to a recipient living in a residential care facility who is determined to be in need of such care and payment is made on a per diem basis.

CHAPTER 52
PAYMENT

770—52.1(249) Assistance standards. Assistance standards are the amounts of money allowed on a monthly basis to recipients of state supplementary assistance in determining financial need and the amount of assistance granted.

52.1(1)* Protective living arrangement. The following assistance standards have been established for state supplementary assistance for individuals living in a protective living arrangement:

Family life home certified under rules in chapter 111.
\$292.90 care allowance
<u>35.00</u> personal allowance
\$327.90 Total

52.1(2)* Dependent relative. The following assistance standards have been established for state supplementary assistance for dependent relatives residing in a recipient's home.

- a. Aged or disabled client and a dependent relative \$397.30
- b. Aged or disabled client, eligible spouse, and a dependent relative \$529.60
- c. Blind client and a dependent relative \$419.30
- d. Blind client, aged or disabled spouse and a dependent relative \$551.60
- e. Blind client, blind spouse and a dependent relative \$573.60

52.1(3)* Residential care. Payment to a recipient in a residential care facility shall be made on a flat per diem rate of \$10.90 or on a cost-related per diem rate of no more than \$15.90. A cost-related per diem rate shall be established for each facility choosing such method of payment according to rule 54.3(249).

a. All available income of a recipient after disregards shall be applied to meet the cost of care before payment is made through the state supplementary assistance program, except during the month of approval. Income for the month of approval is considered exempt. The income of the recipient shall have the following monthly disregards:

- (1) \$39.00 allowance to meet personal expenses.
- (2) When income is earned, \$65.00 plus one-half of any remaining earned income.
- (3) Established unmet medical needs, excluding private health insurance.
- (4) Funds to meet the basic needs of dependents living in the home of the recipient according to subrule 51.3(4).

b. Payment is made for only the days the recipient is a resident of the facility. Payment shall be made for the date of entry into the facility, but not the date of death or discharge.

c. Payment shall be made in the form of a grant to the recipient on a post payment basis.

d. Eligibility for payment is based on a thirty-one day month. When income is sufficient to pay the cost of care in a month with less than thirty-one days, no state supplementary assistance payment shall be made, but the recipient shall remain eligible for all other benefits of the program.

*Emergency, pursuant to §17A.5(2)*b'(1) and (2), The Code.

e. Payment will be made for periods the resident is absent overnight for the purpose of visitation or vacation. The facility will be paid to hold the bed for a period not to exceed thirty days during any calendar year, unless the department of social services caseworker has devised a service plan which justifies the allowance of additional leave. The number of days for which a recipient is eligible is based upon the date of entry into the program at the rate of two and one-half days per month for the remaining months in the current calendar year.

f. Payment will be made for a period not to exceed ten days in any calendar month when the resident is absent due to hospitalization. Payment will not be authorized for over ten days for any continuous hospital stay whether or not the stay extends into a succeeding month or months.

g. The per diem rate established for recipients of state supplementary assistance shall not exceed the average rate established by the facility for private pay residents.

(1) Residents placed in a facility by another governmental agency are not considered private paying individuals. Payments received by the facility from such an agency shall not be included in determining the average rate for private paying residents.

(2) To compute the facility-wide average rate for private paying residents, the facility shall accumulate total monthly charges for those individuals over a six-month period and divide by the total patient days care provided to this group during the same period of time.

52.1(4) *Blind.* The standard for a blind recipient not receiving another type of state supplementary assistance is \$22.00 per month.

52.1(5) *In-home health related care.* Payment to a person receiving in-home health related care shall be made in accordance with rules in chapter 148.

52.1(6) *Minimum income level cases.* The income level of those persons receiving old age assistance, aid to the blind, and aid to the disabled in December 1973 shall be maintained at the December 1973 level as long as the recipient's circumstances remain unchanged and that income level is above current standards. In determining the continuing eligibility for the minimum income level, the income limits, resource limits, and exclusions which were in effect in October 1972 shall be utilized.

This rule is intended to implement section 249.3, The Code, and Acts of the Sixty-ninth General Assembly, 1982 Session, S.F. 2301, section 102.

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- [Filed emergency 5/21/82—published 6/9/82, effective 7/1/82]

CHAPTER 53

[Ch 53, 1973 IDR, renumbered as Ch 7]

Reserved

d. Transportation of the body from the place of death to the place of interment. However, transportation from the place of death to the place where the child lived prior to his removal from the place for hospitalization or medical treatment at the time of terminal illness shall not be considered a part of the burial costs.

e. Cremation.

f. Services of a second funeral director.

56.3(4) Additional benefits. The cost of the following goods and services shall also be included within the two hundred fifty dollar statutory maximum except when they were available prior to death or are furnished by friends or relatives who do not have a legal liability to support the child.

a. Clothing.

b. Burial lot.

c. Opening and closing the grave.

d. Clergyman's fee.

e. Music.

f. Flowers.

**g.* Automobiles furnished for the burial procession.

h. Gravemarker or headstone.

This rule is intended to implement section 239.9, The Code.

770—56.4(239, 249) Claim. The vendor's claim for burial services shall be filed within ninety days of the date of interment at the office of the county department of social services on forms provided by the department. When more than one individual or firm has rendered service in caring for or burying the body of the deceased, the claim shall be submitted and signed by only one individual or firm, who shall be responsible for reimbursing the other parties involved.

770—56.5(239,249)† Payments between July 1, 1981 and June 30, 1983. Notwithstanding the maximum amounts in these rules which limit payment for funerals, between July 1, 1981 and June 30, 1983 the department shall pay not more than four hundred dollars toward the cost of a funeral when the conditions specified in Acts of the Sixty-ninth General Assembly 1981 Session, Senate File 566, section 10, are met.

This rule is intended to implement Acts of the Sixty-ninth General Assembly, 1981 Session, Senate File 566, section 10.

[Filed May 3, 1974]

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†Objection, see filed rules published IAC Supp. 3/23/77, 5/4/77

†Emergency, pursuant to section 17A.5(2) "b"(2), The Code.

CHAPTER 57

[Rescinded, July 1, 1982, IAB 6/9/82]

CHAPTER 58*
CO-ORDINATED MANPOWER SERVICES PROGRAM

770—58.1(69GA,SF2304) Registration requirements. Aid to dependent children recipients who reside in counties designated as mandatory and who do not qualify for an exemption shall register for and participate in the co-ordinated manpower services program as a condition of receiving aid to dependent children. Recipients who are exempt from registration and participation may volunteer for services. Recipients shall be exempt from registration when they qualify for one of the following exemptions:

58.1(1) A child who is under the age of sixteen or between the ages of sixteen and eighteen attending elementary, secondary or vocational or technical school full time.

58.1(2) A person who is over age sixty-five or who is prevented in engaging in employment or training because of a temporary or permanent medically determinable physical or mental impairment.

58.1(3) A person who lives too far away from any work project to effectively participate. The individual is exempt if a total of more than ten hours including two hours for transportation would be required for a normal work or training day including a round trip by reasonably available public transportation or automobile from home to the project.

58.1(4) A person who is required in the household on a substantially continuous basis because of a medically determinable condition of another member of the household.

58.1(5) A parent or other eligible caretaker relative of a child under the age of six who personally provides care for the child with only very brief and infrequent absences from the child.

58.1(6) A parent or other eligible caretaker relative of a child where another adult relative in the home is registered.

58.1(7) A person who is employed in unsubsidized employment for eighty hours or more per month. For self-employed persons, hours shall be determined by dividing gross earnings by minimum wage.

770—58.2(69GA,SF2304) Deregistration requirements. A recipient who is registered for the co-ordinated manpower services program shall be deregistered when the aid to dependent children case is closed, a co-ordinated manpower services sanction has been imposed, the registrant qualifies for a co-ordinated manpower services exemption, or a recipient volunteer withdraws.

770—58.3(69GA,SF2304) Penalty for refusing to register. The needs of any individual who is required to register for the co-ordinated manpower services program and fails to do so shall not be included in determining the amount of the aid to dependent children assistance payment. Assistance shall be provided to other eligible members of the family.

770—58.4(69GA,SF2304) Call-up. Co-ordinated manpower services staff will select from the file of those who have registered individuals to be "called up". The priority of call-up will be in the following order:

58.4(1) All clients volunteering for services.

58.4(2) All unemployed registrants.

58.4(3) All registrants who are employed part time.

770—58.5(69GA,SF2304) Registrant assessment. Every registrant who is called up shall be assessed to determine employability potential and to determine services which may be needed to facilitate employment. Every registrant shall complete Vocational/Social Assessment, Form CMS-4101, to provide a social and vocational profile and shall sign Your Rights and Responsibilities, CMS-2301, acknowledging that a complete explanation of the co-ordinated manpower services program has been provided.

*Emergency, pursuant to §17A.5(2)'b'(1), The Code.

770—58.6(69GA,SF2304) Medical examinations. An individual shall complete a medical examination to document claimed illness or disability upon a request by co-ordinated manpower services staff.

770—58.7(69GA,SF2304) Self-initiated training. Registrants who at the time of appraisal are already enrolled in self-initiated vocational classroom training, including other manpower training programs, can be required to participate in co-ordinated manpower services activities when their training program does not meet acceptable criteria as proscribed by 770—chapter 55.

770—58.8(69GA,SF2304) Case plan. Prior to active participation a case plan shall be developed for each registrant. The case plan must be signed by the registrant, worker, and project supervisor before the registrant can become an active participant. Although the case plan must, to the maximum extent possible, reflect the goals of the registrant, final authority for content rests with the co-ordinated manpower services staff.

770—58.9(69GA,SF2304) Registrant/participant status. Clients shall be considered “registrants” prior to case plan approval. After the case plan has been approved and signed by the project supervisor, clients shall be considered “participants”.

770—58.10(69GA,SF2304) Arranging for services. Co-ordinated manpower services staff are responsible for providing/arranging for the following employment oriented services, as required, to facilitate the registrants’ successful participation in co-ordinated manpower services:

- 58.10(1)** Client assessment/case management.
- 58.10(2)** Employment education.
- 58.10(3)** Child care.
- 58.10(4)** Transportation.
- 58.10(5)** Referral for medical examination.

770—58.11(69GA,SF2304) Assignment to components. Co-ordinated manpower services program components include vocational classroom training (provided by the individual education and training plan program), job club and community experience. Registrants shall first participate in either vocational classroom training or job club prior to community work experience. Registrants who are unemployed within sixty days after termination of vocational classroom training without a firm job offer shall be assigned to job club. Job club participants who after four weeks are not able to secure employment shall be required to participate in community work experience. Co-ordinated manpower services staff may also require participants who have not been employed for at least three consecutive years prior to registration or have not held a previous job for more than three months to participate in job seeking skills training followed by placement in community work experience prior to participating in job search activities. Participants shall be assigned to one co-ordinated manpower services component at a time.

58.11(1) Assignment to vocational classroom training. Registrants who demonstrate positive potential for pursuing vocational classroom training and who express a desire to participate in vocational classroom training shall be enrolled in the individual education and training plan program in accordance with that program’s policy.

58.11(2) Assignment to job club. Registrants who are assigned to job club shall receive one week of job seeking skills training and shall then participate in a structured employment search activity for a period not to exceed three weeks. Participants shall participate a maximum of four hours per day in scheduled job club activities. Participants shall contact a minimum of twenty-five employers per day to schedule employment interviews unless fewer contacts are required by co-ordinated manpower services staff. Scheduled activities and required hours of participation may be varied at the discretion of co-ordinated manpower services staff for job clubs operated in rural locales.

a. Job club participants will receive a \$60.00 transportation allowance for the month that they participate as well as an allowance for child care, if required, not to exceed the going rate in the community. When child care is required, participants shall submit Estimate of Cost, Form PA-8121-5, which documents actual charges.

b. Reserved.

58.11(3) Assignment to community work experience. Participants who are unemployed after four weeks of job club shall participate in community work experience positions. Registrants who have been unemployed for at least three consecutive years prior to registration or have not held previous jobs for more than three consecutive months may be directly assigned to community work experience positions. Registrants may not volunteer for direct community work experience placement.

a. Registrants whose children do not require child care shall be selected for community work experience participation based on the following priority:

- (1) Parents whose children are fourteen years of age or older.
- (2) All other registrants.

b. The maximum hours per week that a participant shall be required to participate in community work experience shall be determined by dividing the amount of the aid to dependent children client receives (excluding special need allowances) by the prevailing minimum wage and then dividing the result by 4.3 with the final figure rounded down to the nearest whole number.

(1) Maximum participation in community work experience is limited to four days per week, eight hours per day plus one day per week in job search. Community work experience participants who have children thirteen years of age or younger shall be required to participate only those hours and those days when their children are in school. Reduced hours of participation shall also be permitted if a community work experience job site requires fewer hours than required by the participation formula or when available transportation limits the number of hours an individual can participate.

(2) Structured job search activities for community work experience participants shall include contacting a minimum of five employers, unless fewer are specified by co-ordinated manpower services staff and participating in employment interviews.

(3) Community work experience assignments shall not exceed nine months in duration. Participants who are placed directly in community work experience may be reassigned to job club before completing nine months when it is felt that sufficient work experience has been gained to begin a job search. Individuals who complete nine months of community work experience participation shall be reassigned to that portion of job club which will facilitate their employment into regular jobs. Participants who are still unable to secure regular employment may then be reassigned to community work experience.

c. Community work experience work sites shall provide participants with work experience and on-the-job training opportunities while providing services which are of direct benefit to the community. Community work experience work sites shall be limited to public and non-profit agencies.

(1) Employers who participate in the community work experience program will be referred to as "sponsors". Sponsors who request community work experience participant placements shall complete Sponsors Request for CWEP Placement, Form CMS-1102, for each type of position which they wish to fill and shall include a complete job description specifying all tasks performed by the participant. Community work experience positions must contain the same job description and performance requirements that would exist if the sponsor were hiring an individual for the same position. Co-ordinated manpower services staff have final authority to determine suitability of any community work experience position offered by a sponsor. They may not in any way be related to political, electoral or partisan activities. They may not be developed in response to or in any way associated with the existence of a strike, lockout or other bona fide labor dispute. They shall not violate any existing labor agreement between employees and employer. They shall comply with applicable state and federal health and safety standards.

(2) Community work experience positions may not be used by sponsors to displace current

employees nor may they be used in place of hiring staff of funded vacant positions.

(3) Vocational skills and interests which the registrant possesses shall be matched as closely as possible with the job description and skills requirement specified by the sponsor.

(4) Participants shall interview for and accept positions offered by community work experience sponsors. Participants shall present Referral for CWEP Placement, Form CMS-1103, to the sponsor at the interview. The form shall be completed by the sponsor and returned to co-ordinated manpower services.

(5) Although sponsors are expected to accept for placement community work experience referrals made by the co-ordinated manpower services program, sponsors may refuse any referrals they deem inappropriate for the position which they have available. Sponsors who refuse a referral must notify co-ordinated manpower services staff in writing of the reason for the refusal.

(6) Sponsors shall complete and provide to co-ordinated manpower services and to the participant a monthly evaluation of the participant's performance using Community Work Experience Participant Evaluation, Form CMS-4301.

(7) Sponsors shall complete Community Work Experience Participant Evaluation, Form CMS-4301, at the time of termination for each community work experience participant. When termination occurs at sponsor request the sponsor shall specify the reason for termination and identify those areas of individual performance which were unsatisfactory. For participants who leave to accept regular employment or reach their community work experience placement time limit, the sponsor's evaluation shall indicate whether or not a positive job reference would be provided if the participant requested one.

d. Community work experience participants shall receive a monthly allowance of \$25.00 plus fifteen percent of the basic aid to dependent children grant received, not to exceed \$95.00 per month, to be used for transportation and work expense. Allowances shall be prorated in weekly increments for each five consecutive work-day period that a participant is absent from the community work experience site.

770—58.12(69GA,SF2304) Participation requirements. Individuals who qualify for an exemption but volunteer for co-ordinated manpower services may withdraw from the program at any time without financial penalty. When a volunteer registrant/participant withdraws from co-ordinated manpower services after grounds for sanction have occurred, the individual shall be deregistered with sanction. Individuals who are designated as mandatory registrants must register for and participate in the program or shall be subject to sanctions.

58.12(1) Sanctions for volunteers. Volunteer registrants/participants who refuse to co-operate or participate as specified in these rules shall be deregistered. Volunteers are not subject to financial sanctions. However, reinstatement shall follow the requirements and time frames specified for reinstatement of mandatory registrants. Volunteers whose registrant status changes from volunteer to mandatory during a sanction period shall be reregistered and the volunteer sanction period dropped.

58.12(2) Refusal to co-operate. Mandatory registrants who refuse to co-operate during assessment and prior to case plan approval shall be deregistered and their needs shall be removed from the aid to dependent children grant. Reregistration shall be allowed only after the individual has completed appraisal and has signed the case plan.

58.12(3) Refusal to participate. Mandatory participants who refuse to participate in accordance with requirements specified in these rules shall be deregistered and shall have their needs removed from the aid to dependent children grant for a three-month period. Individuals who reregister after sanction and again refuse to participate once the case plan has been approved shall be deregistered from co-ordinated manpower services and the individual's needs shall be removed from the aid to dependent children grant for six months. Subsequent refusals to participate shall result in six-month sanctions.

58.12(4) Dangerous behavior. Behavior on the part of any registrant or participant that is physically dangerous to the well-being and safety of other clients, sponsors, workers or staff shall result in deregistration with sanctions applied for twelve months. Physically dangerous is defined as:

a. Having a dangerous weapon in one's possession and either threatening with or using the weapon.

b. Committing assault.

58.12(5) Refusal to participate in vocational classroom training. Mandatory participants who refuse to participate in vocational classroom training in accordance with policies specified in 770—chapter 55, shall participate in job club.

58.12(6) Sanctionable issues.

a. Registrants who refuse to appear for scheduled appointments, refuse to participate in appraisal activities, refuse to complete required physical examinations and refuse to take required vocational/aptitude tests shall be considered refusing to co-operate.

b. Sanctionable issues for participants who refuse to participate in job club or community work experience are as follows:

(1) Participants who are more than fifteen minutes late without good cause on two occasions shall be placed on probation; a third lateness shall be considered refusal to participate. Participants who are absent without good cause shall be placed on probation. A second absence without good cause shall be considered refusal to participate. Good cause includes:

Illness. When participant is ill more than three consecutive days, staff may require medical documentation of the illness. Medical documentation may also be required if illness is habitual.

Required in the home due to illness of another family member. Co-ordinated manpower services staff may require medical documentation for the same reasons as when a participant is ill.

Family emergency.

Bad weather.

Lack of transportation.

(2) Participant failure to notify community work experience sponsor or job club staff of absence may be considered an unexcused absence.

(3) Participants who cause disruptive behavior shall be placed on probation; a second offense shall be considered a refusal to participate. Disruptive behavior means the participant hinders the performance of other participants or staff, the participant refuses to follow instructions, or the participant uses abusive language.

(4) Participant refuses to complete a required physical examination.

(5) Participant makes physical threats to other participants or staff. Physical threats shall result in immediate sanction.

(6) Participant refuses to accept a community work experience assignment. Refusal shall result in immediate sanction.

(7) A participant who fails to appear for a community work experience interview shall be placed on probation. A second failure shall be considered a refusal to participate.

(8) A participant who refuses an offer of employment. Refusal shall result in immediate sanction. Jobs must pay at least minimum wage and must not violate applicable state or federal health and safety standards.

58.12(7) Duration of probationary periods. Job club participants who are placed on probation shall remain in a probationary status for the duration of job club participation. Community work experience participants who are placed on probation shall remain in a probationary status for sixty days. A second offense while a participant is on probation shall be considered refusal to participate and sanctions shall be imposed.

58.12(8) Written notification. Registrants/participants shall receive written notification of scheduled appointments, component assignments and probationary periods. Individuals who fail to appear for scheduled appointments after the first written notice has been sent shall be

sent a second notice. A second failure to appear shall result in sanction.

770—58.13(69GA,SF2304) Notice of decision. The co-ordinated manpower services worker is responsible for notifying each co-ordinated manpower services registrant/participant of any agency action which affects the individual's case. Notice is given when:

- 58.13(1)** Services are approved, rejected or renewed.
- 58.13(2)** Service is changed as a result of a review.
- 58.13(3)** Services are canceled.
- 58.13(4)** A sanction is imposed.

770—58.14(69GA,SF2304) Right of appeal. Each applicant/recipient is entitled to a fair hearing regarding application for services, services being received or services which have been denied, reduced, canceled or inadequately provided.

770—58.15(69GA,SF2304) Worker's compensation. The department shall provide worker's compensation coverage for all community work experience participants.

These rules are intended to implement Acts of the Sixty-ninth General Assembly, 1982 Session, Senate File 2304, Section 92.

[Filed emergency 5/21/82—published 6/9/82, effective 7/1/82]

CHAPTERS 59 to 63

[Ch 58, 1973 IDR, renumbered as Ch 55]

Reserved

**CHAPTER 64
RELIEF FOR NEEDY INDIANS**

770—64.1(252)* Relief for Indians. The program of relief for needy Indians provides for the state department of social services, upon authorization of the tribal council of the settlement in Tama county, to order the state comptroller to write warrants, in favor of an Indian residing on the settlement for those items designated by the department of social services. Warrants may also be issued to meet special needs when recommended by the tribal council and approved, on an individual basis, by the state department of social services.

This rule is intended to implement section 252.43, The Code.

*Emergency, pursuant to §17A.5(2)"b"(2), The Code.

770—64.2(252) Eligibility requirements.

64.2(1) *Determining amount of assistance.* The standards used in the aid to dependent children program shall be used for those items for which provision is made through the program of relief for needy Indians.

64.2(2) *Need.* Need exists when an applicant lacks sufficient income and resources to meet established requirements.

64.2(3) *Age.* There are no age limitations.

64.2(4) *Resources and income.* See rules 41.1(1) and 41.2 (aid to dependent children).

64.2(5) *Support from relatives.* Responsible relatives shall be interviewed at the time of application and review. Any contribution made by the relative shall be taken into consideration in determining the amount of the grant.

64.2(6) *Applications.* See rules contained in chapter 40 (aid to dependent children).

64.2(7) *Investigations.* See rules contained in chapter 40 (aid to dependent children).

64.2(8) *Payment.* Payment shall be made directly to the vendor by the state department of social services for goods or services provided.

64.2(9)* *Limitations on expenditures.* The state department shall notify the tribal council, each month, of funds available for that month. The tribal council may not issue orders in excess of such amount.

64.2(10) *Review.* A review of cases receiving assistance on a regular basis shall be made as frequently as the circumstances require but in no instance shall the period of time between reviews be in excess of six months. In cases where temporary assistance is granted in emergencies the situation should be evaluated at any time additional assistance is requested.

This rule is intended to implement section 252.43, The Code

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TITLE VII
FOOD STAMP PROGRAM
CHAPTER 65
ADMINISTRATION

770—65.1(234)* Definitions.

65.1(1) *Project area.* "Project area" means the state of Iowa as a whole is the administrative unit for food stamp program operations.

65.1(2) *Parent.* "Parent" means natural, legal, or step mother or father.

770—65.2(234)* *Application.* Persons in need of food stamps may apply at the local office of social services by completing form FP-2101-0 or FP-2101-1, food stamps application, except when any person in the household is applying for or receiving aid through the aid to dependent children program, the shelter assistance program, or the child medical assistance program. These persons shall complete form PA-2207-0, Public Assistance Application, or form A-2227-5, Public Assistance Review, as appropriate.

770—65.3(234)* *Administration of program.* The food stamp program shall be administered in accordance with the Food Stamp Act of 1977 and in accordance with federal regulation, Title 7, Parts 270 through 282 as amended to December 8, 1981.

A copy of such federal law and regulations may be obtained at no more than the actual cost of reproduction by contacting the Director of Food Programs, Department of Social Services, Hoover State Office Building, Des Moines, Iowa 50319, 515/281-3573.

*Emergency, pursuant to §17A.5(2)"b"(2), The Code.

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parental support according to 41.1(5) or were living with a specified relative according to 41.1(3) or if the aid to dependent children program provided for payment for the needs of the unborn during the entire term of pregnancy shall be eligible for medical assistance. Individuals under age twenty-one who are voluntarily excluded from an aid to dependent children eligible group shall be eligible for medical assistance if the individual meets the financial criteria set forth below.

a. Financial eligibility shall be established using the income and resource standards in effect in the aid to dependent children program for the family size of which the individual is a member. An unborn child is not considered a member of the family for the purpose of establishing the number of persons in the family.

(1) When an individual is living with the individual's parents or spouse, the individual shall be eligible for medical assistance when the total income and resources of all family members does not exceed the income and resource limitations in effect in the aid to dependent children program for an eligible group of the same size. Application for medical assistance shall be made by the parent or parents when the individual is residing with them. An individual shall be considered to be living with a parent when the individual is temporarily absent from the parents' home to secure education or training and the parent retains supervision, care, and control of the individual.

(2) An individual who is living apart from the individual's parents or spouse shall be considered to be a family of one and shall make application in the individual's own name.

(3) Individuals residing in a family in which some members are receiving aid to dependent children and who have been excluded from the assistance eligible group shall be eligible for medical assistance under this rule when income and resources attributed to that individual do not exceed the limits established for a family of one, unless the family members excluded from the assistance eligible group include a parent. In this case, the excluded parent's income shall be considered in determining the eligibility for medical assistance for any children who are also excluded from the assistance eligible group.

b. Parents who would be eligible for aid to dependent children except for failure to cooperate on a point of eligibility shall be ineligible for medical assistance under this rule.

c. Medical assistance under this rule may be established no earlier than the first of the month in which conception occurred, and in accordance with 770—76.5(249A). Pregnancy shall be verified in writing by a licensed physician and the verification shall establish the probable date of conception. When an examination to establish pregnancy is required and other resources are not available to meet the expense of the examination, the physician shall be authorized to make the examination and submit the claim for payment.

d. A review of all eligibility factors shall be made at least every six months.

e. Eligibility for medical assistance under this rule shall terminate effective with the first of the month following the month in which one of the following occurs:

(1) The income or resource standard is exceeded; or

(2) The individual's twenty-first birthday occurs, unless the individual's birthday occurs on the first day of the month, in which case the individual is ineligible effective the day of the twenty-first birthday; or

(3)* March 31, 1983.

75.1(16) Nonqualifying parent in an aid to dependent children—unemployed parent family. Medical assistance shall be available to the nonqualifying parent in an aid to dependent children—unemployed parent family when the nonqualifying parent is the natural or adoptive parent of the dependent child or children in the eligible group and is living with the child(ren). Medical assistance provided under this rule shall terminate when the aid to dependent children—unemployed parent eligible group ceases to be recipients of aid to dependent children, or March 31, 1983, whichever comes first.

This rule is intended to implement sections 249A.3, 249A.4 and 249A.6, The Code, and Acts of the Sixty-ninth General Assembly, 1982 Session, Senate File 2304, Sections 91 and 94.

*Emergency pursuant to §17A.5(2)"b"(1), (2), The Code.

770—75.2(249A) Medical resources. Medical resources include health and accident insurance, eligibility for care through Veterans Administration, Crippled Childrens Program, Title XVIII of the Social Security Act (Medicare) and other resources for meeting the cost of medical care which may be available to the recipient. Such resources must be used when reasonably available. Payment will be approved only for those services or that part of the cost of a given service for which no medical resources exist. Persons who have been approved by the social security administration for supplemental security income shall complete form MA-2120-0, Request for Information Re Private Health Insurance Coverage and Other Medical Benefits, and return such form to the local office of the department of social services. Persons eligible for Part B of the Medicare program shall make assignment to the department on form MA-2106-6, Statement Regarding Assignment of Claims—Part B, Medicare.

This rule is intended to implement section 249A.4, The Code.

770—75.3(249A) Acceptance of other financial benefits. An applicant or recipient shall take all steps necessary to apply for and, if entitled, accept any income or resources for which such applicant or recipient may qualify, unless the applicant or recipient can show an incapacity to do so. Sources of such benefits may be, but are not limited to, contributions, annuities, pensions, retirement or disability benefits, veteran's compensation and pensions, old-age, survivors, and disability insurance, railroad retirement benefits, black lung benefits, or unemployment compensation.

This rule is intended to implement sections 249A.3 and 249A.4, The Code.

770—75.4(249A) Right of subrogation.

75.4(1) The agency within the department of social services responsible for administration of the department's right of subrogation is the bureau of medical services. All notifications to the department required by law shall be directed to the bureau of medical services. Notification shall be considered made as of the time such notification is deposited so addressed, postage prepaid in the United States postal service system. The act of notification shall not in any way be considered to give the agreement of the commissioner or designee to any compromise under which the department would receive less than full reimbursement of the amounts it expended.

75.4(2) The department may pursue its rights to recover either directly from any third party or from any recovery obtained by or on behalf of any medical assistance recipient. A reduction for attorney fees from the full amount of the department's claim shall be allowed only where the department's recovery is obtained from the proceeds recovered by or on behalf of the recipient. The department will provide computer generated documents or claim forms describing the services for which it has paid upon request of any affected recipient or such recipient's attorney. Such documents may also be provided to a third party where necessary to establish the extent of the department's claim.

75.4(3) In those cases where appropriate notification is not given to the department or where the department's recovery rights are otherwise adversely affected by an action of the recipient or one acting on the recipient's behalf, medical assistance benefits shall be terminated. Subsequent eligibility for medical assistance benefits shall be denied until such time as an amount equal to the unrecovered claim has been reimbursed to the department or the individual produces documentation of incurred medical expense equal to the amount of the unrecovered claim. Such incurred medical expense shall not be paid by the medical assistance program.

This rule is intended to implement section 249A.6, The Code.

770—75.5(249A)* Computation of countable income and resources for persons in a medical institution.

75.5(1) *Individual with no spouse.* All income and resources available to an applicant or recipient in a medical institution shall be considered in determining eligibility and financial participation by the resident.

75.5(2) *Member of couple whose noninstitutionalized spouse is eligible for medical assistance as aged, blind or disabled.*

a. The resources of the couple shall be considered as available to each other for the first six months after the month they cease to live together and evaluated against the resource limitation for a couple. After this six-month period, each member of the couple shall be treated as an individual with respect to resources.

b. The income of each spouse shall be used to determine eligibility for medical assistance for that spouse effective the month following the month the couple ceases to live together. No diversion of the institutionalized spouse's income shall be made for the maintenance needs of the noninstitutionalized spouse in determining the financial participation by the institutionalized spouse.

75.5(3) *Member of a couple whose noninstitutionalized spouse is ineligible for medical assistance as aged, blind, or disabled.* The institutionalized individual shall be treated as an individual with regard to income and resources after the month in which the couple ceases to live together, except that if the institutionalized spouse is determined to be eligible for medical assistance, a diversion from the institutionalized spouse's income shall be made for the maintenance needs of the noninstitutionalized spouse or the noninstitutionalized spouse and dependent children of the institutionalized spouse, not to exceed the following amounts:

a. For the maintenance needs of a noninstitutionalized spouse only, an amount which, when combined with the noninstitutionalized spouse's own income, equals the supplemental security income federal benefit rate for an individual in his/her own home.

b. For the maintenance needs of a noninstitutionalized spouse and dependent children, an amount which, when combined with the income of the noninstitutionalized spouse and dependent children, equals the payment level for a family of the same size in the aid to dependent children program.

75.5(4) *Members of a couple who are both institutionalized.*

a. Members of a couple who are residing in the same room in a medical institution shall be subject to the resource limitation for a couple and the combined income of the couple shall be less than twice the amount of the income limit established in 75.1(7) to establish financial eligibility for medical assistance. Financial participation in the cost of care for each member of the couple shall be based on one-half of the couple's combined income.

b. Members of a couple who are both institutionalized, although not residing in the same room of the institution, shall be treated as individuals effective the month after the month the members of the couple cease living together.

This rule is intended to implement section 249A.3(2)"a", The Code.

770—75.6(69GA,ch82) Disposal of resources for less than fair market value.

75.6(1) In determining eligibility for medical assistance of individuals described in 75.1(4), 75.1(6), 75.1(7), 75.1(9) and 75.1(13), resources which were not exempt at the time of transfer which the individual gave away or sold at less than fair market value for the purpose of establishing eligibility for medical assistance shall be counted as resources still available to the individual for the following period of time:

a. For uncompensated value of \$12,000 or less: 24 months from the date of transfer.

b. For uncompensated value between \$12,001 and \$24,000: 36 months from the date of transfer.

c. For uncompensated value between \$24,001 and \$36,000: 48 months from the date of transfer.

d. For uncompensated value between \$36,001 and \$50,000: 60 months from the date of transfer.

e. For uncompensated value over \$50,000: 72 months from the date of transfer.

*Emergency pursuant to §17A.5(2)"b"(2), The Code;

75.6(2) Transfers of resources as described in 75.6(1) shall be presumed to be for the purpose of establishing eligibility for medical assistance unless the individual furnishes convincing evidence to establish that the transaction was exclusively for some other purpose. In addition to giving away or selling for less than fair market value, examples of transferring resources include but are not limited to establishing a trust, contributing to a charity or other organization, removing a name from a joint bank account, or decreasing the extent of ownership interest in a resource or any other transfer as defined in the supplemental security income program.

a. Convincing evidence to establish that the transaction was exclusively for a purpose other than establishing eligibility may include documents, letters, and contemporaneous writings, as well as other circumstantial evidence.

b. In rebutting the presumption that the resource was transferred to establish eligibility, the burden of proof is on the individual to establish:

(1) The fair market value of the compensation and

(2) That the compensation was provided pursuant to an agreement, contract, or expectation in exchange for the resource and

(3) That the agreement, contract, or expectation was established at the time of transfer.

75.6(3) Uncompensated value is defined as the fair market value of the resource minus the amount of compensation received by the individual in exchange for the resource. In no case will the amount of uncompensated value exceed the amount which would have been counted toward the resource limit (as of the date of transfer) if the resource had been retained.

a. Fair market value is defined as the price that the item can reasonably be expected to sell for on the open market in the particular geographic area involved and may be established by independent appraisal.

b. Compensation is defined as all money, real or personal property, food, shelter or services received by the individual in exchange for the resource if such money, property, food, shelter or services are provided in reliance on an agreement made at the time of transfer.

This rule is intended to implement section 249A.3, The Code, as amended by Acts of the Sixty-ninth General Assembly, 1981 Session, Chapter 82.

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CHAPTER 79
OTHER POLICIES RELATING TO PROVIDERS OF
MEDICAL AND REMEDIAL CARE

770—79.1(249A)* Principles governing reimbursement of providers of medical and remedial care. Payment for services of providers of care participating in the medical assistance program will be made on the basis of "reasonable cost" for institutional providers (hospitals, skilled nursing facilities, home health agencies, rehabilitation agencies, and independent laboratories). The determination of reasonable cost for institutional providers will be made utilizing the methods and criteria in effect for these providers in the Medicare program. (Title XVIII of the Social Security Act)

Payment for services provided by noninstitutional providers of care participating in the program will be based on reasonable charges utilizing the methods and criteria in effect for these providers in the Medicare program except for physicians (doctors of medicine and osteopathy) where reimbursement will be established on the basis of the statewide prevailing fee as determined by the methods in effect in the Medicare program but subject to a maximum five percent annual increase in fees. For providers of service not participating in Medicare, the department with the advice of the various professional groups participating in the program has developed schedules of maximum allowances for use in determining payment. Providers of care must accept reimbursement based upon reasonable charges as determined by the department making no additional charge to the recipient.

79.1(1) Prohibition against reassignment of claims. No payment under the medical assistance program for any care or service provided to a patient by any health care provider shall be made to anyone other than such providers. However with respect to physicians, dentists, or other individual practitioners direct payment may be made to the employer of the practitioner if the practitioner is required as a condition of employment to turn over fees to the employer; or where the care or service was provided in a facility, to the facility in which the care or service was provided if there is a contractual arrangement between the practitioner and the facility whereby the facility submits the claim for reimbursement; or to a foundation, plan or similar organization including a health maintenance organization which furnishes health care through an organized health care delivery system if there is a contractual agreement between organization and the person furnishing the service under which the organization bills or receives payment for such person's services. Payment may be made in accordance with an assignment from the provider to a government agency or an assignment made pursuant to a court order. Payment may be made to a business agent, such as a billing service or accounting firm, which renders statements and receives payment in the name of the provider when the agent's compensation for this service is (1) reasonably related to the cost of processing the billing; (2) not related on a percentage or other basis to the dollar amounts to be billed or collected; and (3) not dependent upon the actual collection of payment. Nothing in this rule shall preclude making payment to the estate of a deceased practitioner.

79.1(2) Prohibition against factoring. Payment under the medical assistance program for any care or service furnished to an individual by providers as specified in 79.1(1) shall not be made to or through a factor either directly or by virtue of power of attorney given by the provider to the factor. A factor is defined as an organization, collection agency, or service bureau which, or an individual who, advances money to a provider for accounts receivable which have been assigned or sold or otherwise transferred including transfer through the use of power of attorney to such organization or individual for an added fee or reduction of a portion of such accounts receivable. The term factor does not include business representatives such as billing agents or accounting firms which render statements and receive payments in the name of the individual provider provided that the compensation of such business representative for such service is reasonably related to the cost of processing the billings and is not related on a percentage or other basis to the dollar amounts to be billed or collected.

*Emergency, pursuant to §17A.5(2)"b"(1), The Code.

79.1(3) Reasonable charges for services, supplies, and equipment. For selected medical services, supplies, and equipment, including equipment servicing, which in the judgment of the secretary of the department of health, education, and welfare generally do not vary significantly in quality from one provider to another, the upper limits for payments shall be the lowest charges for which such devices are widely and consistently available in a locality. For those selected services and items furnished under part B of Medicare and Medicaid, the upper limits shall be the lowest charge levels recognized under Medicare. For those selected services and items furnished only under Medicaid, the upper limits shall be the lowest charge levels determined by the department according to the Medicare reimbursement method.

a. For any noninstitutional item or service furnished under both Medicare and Medicaid, the department shall pay no more than the reasonable charge established for that item or service by the part B Medicare carrier serving part or all of Iowa. Noninstitutional services do not include practitioner's services, such as physicians, pharmacies, or out-patient hospital services.

b. For all other noninstitutional items or services furnished only under Medicaid, the department shall pay no more than the customary charge for a provider or the prevailing charges in the locality for comparable items or services under comparable circumstances, whichever is lower.

79.1(4)* Copayment by recipient. A copayment in the amount specified shall be charged to recipients for the following covered services:

a. The recipient shall pay \$.50 copayment on each covered drug prescription, including each refill, and for total covered service rendered on a given date for chiropractor's services and services of independently practicing physical therapists.

b. The recipient shall pay \$1.00 copayment for total covered service rendered on a given date for podiatrist's services.

c. The recipient shall pay \$2.00 copayment for total covered service rendered on a given date for medical equipment and appliances, prosthetic devices and sickroom supplies as defined in 770—78.10(249A); orthopedic shoes; services of audiologists, services of hearing aid dealers except the hearing aid, optometrists, opticians, rehabilitation agencies, psychologists and ambulance services.

d. The recipient shall pay \$3.00 copayment for total covered service rendered on a given date for dental services and hearing aids.

e. Copayment charges are not applicable to any of the above services when received by a child under the age of twenty-one when indicated by examination under the early and periodic screening, diagnosis, and treatment program, 770—chapter 84. Dental services provided to an individual under age twenty-one are considered to be a part of the early and periodic screening, diagnosis, and treatment program.

f. Copayment charges are not applicable to family planning services or supplies.

g. Copayment charges are not applicable for a recipient in a skilled nursing facility, intermediate care facility, or residential care facility.

h. Copayment charges are not applicable on Medicare Part B covered services rendered to a Medicare eligible recipient when the provider is billing the Medicare program for the service as well as the medical assistance program.

i. All providers are prohibited from offering or providing copayment related discounts, rebates, or similar incentives for the purpose of soliciting the patronage of medical assistance recipients.

*Emergency, pursuant to §17A.5(2)*b*(1),(2), The Code.

79.1(5)* After reimbursement for medical assistance has been determined in accordance with appropriate procedures in place for each provider, this amount shall be reduced by a factor of two and one-half percent except for payments made to physicians, an intermediate care facility, intermediate care facility for the mentally retarded, state mental health institutes, hospitals after October 1, 1982, and the ingredient cost on prescription drugs.

This rule is intended to implement section 249A.4, The Code, and Acts of the Sixty-ninth General Assembly, 1982 Session, Senate File 2304, Section 98.

770—79.2(249A) Sanctions against provider of care. The department reserves the right to impose sanctions against any practitioner or provider of care who has violated the requirements for participation in the medical assistance program.

79.2(1) Definitions.

a. *"Provider"* means an individual, firm, corporation, association, or institution which is providing or has been approved to provide medical assistance to a recipient pursuant to the state medical assistance program.

b. *"Person"* means any natural person, company, firm, association, corporation, or other legal entity.

c. *"Affiliates"* means persons having an overt or covert relationship such that anyone of them directly or indirectly controls or has the power to control another.

d. *"Fiscal agent"* means an organization which processes and pays provider claims on behalf of the department.

e. *"Probation"* means a specified period of conditional participation in the medical assistance program.

f. *"Termination from participation"* means a permanent exclusion from participation in the medical assistance program.

g. *"Suspension from participation"* means an exclusion from participation for a specified period of time.

79.7(6) Duties. The medical assistance advisory council shall:

- a. Make recommendations on the reimbursement for medical services rendered by providers of services.
- b. Assist in identifying unmet medical needs and maintenance needs which affect health.
- c. Make recommendations for objectives of the program and for methods of program analysis and evaluation, including utilization review.
- f. Recommend ways in which needed medical supplies and services can be made available most effectively and economically to the program recipients.
- g. Advise on such administrative and fiscal matters as the commissioner of the department of social services may request.
- h. Advise professional groups and act as liaison between them and the department.
- i. Report at least annually to the appointing authority.
- j. Perform such other functions as may be provided by state or federal law or regulation.
- k. Communicate information considered by the council to the member organizations and bodies.

79.7(7) Responsibilities.

- a. Recommendations of the council shall be advisory and not binding upon the department of social services or the member organizations and bodies. The department will consider all advice and counsel of the council.
- b. The council may choose subjects for consideration and recommendation. It shall consider all matters referred to it by the department of social services.
- c. Any matter referred by a member organization or body shall be considered upon an affirmative vote of the council.
- d. The department shall provide the council with reports, data, and proposed and final amendments to rules, regulations, laws, and guidelines, for its information, review, and comment.
- e. The department shall present the biennial budget for the medical assistance program for review and comment.
- f. The department shall permit staff members to appear before the council to review and discuss specific information and problems.
- g. The department shall maintain a current list of members and alternates on the council.

770—79.8(249) Requests for prior authorization. When the fiscal agent has not reached a decision on a request for prior authorization after sixty days from the date of receipt by the fiscal agent, the request will be approved.

79.8(1) All requests for prior authorization shall be made on Form XIX P Auth (SDC), Request for Prior Authorization.

79.8(2) The policy applies to services or items specifically designated as requiring prior authorization.

79.8(3) The provider shall receive a notice of approval or denial for all requests.

79.8(4) Prior authorizations approved because a decision is not timely made shall not be considered a precedent for future similar requests.

79.8(5) Approved prior authorization applies to covered services and does not apply to the recipient's eligibility for medical assistance.

This rule is intended to implement section 249A.4, The Code.

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CHAPTERS 117 to 129

Reserved

TITLE XIII

SOCIAL SERVICE RESOURCES

CHAPTER 130

GENERAL PROVISIONS

770—130.1(234) Definitions.**130.1(1) Family.** "Family" includes the following members:

- a. Legal spouses (including common law) who reside in the same household.
- b. Natural, adoptive, or step mother or father, and children who reside in the same household.
- c. An individual who lives alone or who resides with a person, or persons, other than a spouse or minor child.
- d. A child or minor siblings who reside with a person, or persons, not legally responsible for their support.

130.1(2) Reserved.

This rule is intended to implement section 234.6 of the Code.

770—130.2(234) Application.**130.2(1)* Application** for social services shall be made at the local office of the department of social services on the form Application for Social Services, RS-1120-0, available at the local office.**130.2(2)** The application may be filed by the applicant, the applicant's authorized representative, or where the applicant is incompetent or incapacitated, someone acting responsibly for the applicant.**130.2(3)** The date of application is the date the application form is signed and dated.**130.2(4)** The application shall be approved or denied within thirty days from the date of application and the applicant notified of the decision. The decision shall be mailed or given to the applicant on the date the determination is made.**130.2(5)** Eligibility shall be redetermined in the same manner as an application at least every six months except that for individuals whose family gross monthly income is derived exclusively from social security benefits, or supplemental security income, or a combination thereof, redetermination shall be made at least every twelve months.

This rule is intended to implement section 234.6 of the Code.

770—130.3(234) Eligibility.**130.3(1)** Eligibility for services is based on individual need for service, financial eligibility and service availability in the pre-expenditure report or service availability through other department resources.

- a. Individual need is established when the service to be provided is directed at and will facilitate an individual in reaching or maintaining one of the goals and objectives in 130.7(1). The department shall establish need for service and the number of units to be provided.

- b. The block grant service to be provided shall be contained in the pre-expenditure report and listed for the specific district and county. Service available through the department and funded by resources other than the social service block grant is identified in rules for that specific service.

- c. Service shall be provided only when funds are available for service delivery.

- d. Persons are financially eligible for services when they are in one of the following categories:

- (1) Income maintenance status. They are recipients of aid to dependent children, or their needs were taken into account in determining the needs of aid to dependent children recipients, or they are recipients of supplemental security income or state supplementary assistance, or

*Emergency pursuant to §17A.5(2)"b"(2), The Code.

(2) Income eligible status. The monthly gross income according to family size is less than the following amounts: (Title XX regulations require that gross income be used.)

Family Size	All Services Monthly Gross Income Below
1 Member	\$ 400
2 Members	523
3 Members	646
4 Members	769
5 Members	892
6 Members	1,015
7 Members	1,038
8 Members	1,061
9 Members	1,084
10 Members	1,107

When a family has more than ten members, the monthly maximum income, rounded to the nearest whole number, is increased by three percent of the family income for a family of four for each additional person.

130.3(2) To be eligible for services the person must be living in the state of Iowa. Living in the state shall include those persons living in Iowa for a temporary period, other than for the purpose of vacation.

130.3(3) In determining gross income, all income received by an individual from sources identified by the U.S. Census Bureau in computing median income is considered and includes money wages or salary, net income from nonfarm self-employment, net income from farm self-employment, social security, dividends, interest, income from estates or trusts, net rental income and royalties, public assistance or welfare payments, pensions and annuities, unemployment compensation, worker's compensation, alimony, child support; and veterans pensions. Excluded from the computation of monthly gross income are the following:

- a. Per capita payments to or funds held in trust for any individual in satisfaction of a judgment of the Indian claims commission or the court of claims.
- b. Payments made pursuant to the Alaska Claims Settlement Act to the extent such payments are exempt from taxation under section 21(a) of the Act.
- c. Money received from the sale of property, unless the person was engaged in the business of selling such property.
- d. Withdrawals of bank deposits.
- e. Money borrowed.
- f. Tax refunds.
- g. Gifts.
- h. Lump sum inheritances or insurance payments or settlements.
- i. Capital gains.
- j. The value of the coupon allotment under the Food Stamp Act of 1964, as amended, in excess of the amount paid for the coupons.
- k. The value of USDA donated foods.
- l. The value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food program for children under the National School Lunch Act, as amended.
- m. Earnings of a child fourteen years of age or under.
- n. Loans and grants obtained and used under conditions that preclude their use for current living expenses.
- o. Any grant or loan to any undergraduate student for educational purposes made or insured under the Higher Education Act.
- p. Home produce utilized for household consumption.
- q. Earnings received by any youth under Title III, Part C—Youth Employment Demonstration Program of the Comprehensive Employment and Training Act of 1973.
- r. Stipends received by persons for participating in the foster grandparent program.
- s.* The first sixty-five dollars plus fifty percent of the remainder of income earned in a sheltered workshop or work activity setting.

130.3(4) Eligibility shall not be determined for protective services for children or adults or for information or referral services.

130.3(5) Temporary absence. The composition of the family group does not change when one, or more, of the group members is temporarily absent from the household.

“Temporary absence” means:

- a. A medical absence anticipated to be less than three months.
 - b. An absence for the purpose of education or employment.
 - c. When a family member is absent and intends to return home within three months.
- This rule is intended to implement section 234.6, The Code.

770—130.4(234)* Fees. The department may set fees to be charged to clients for services received. Such 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, except as specified in 770—chapter 149. Nothing in these rules shall preclude a client from voluntarily contributing toward the cost of service.

130.4(1) Collection. The provider shall collect fees from clients. The provider shall maintain records of fees collected, and such records shall be available for audit by the department or its representative. When a client does not pay the fee, the provider shall demonstrate that a reasonable effort has been made to collect the fee. Reasonable effort to collect means an original billing and two follow-up notices of nonpayment.

*Emergency, pursuant to §17A.5(2)“b”(1), The Code.

130.4(2) Monthly income. The amount of the fee shall be determined by monthly income according to family size. When an otherwise eligible client has monthly income above that shown on the table, no Title XX funds are available for the service, and the client or another resource shall pay the full cost of the service. Monthly income is shown in the following table.

MAXIMUM MONTHLY INCOME ACCORDING TO FAMILY SIZE

	1	2	3	4	5	6	7	8	9	10
A	\$ 288.00	\$ 375.00	\$ 464.00	\$ 551.00	\$ 640.00	\$ 727.00	\$ 744.00	\$ 761.00	\$ 776.00	\$ 793.00
B	344.00	449.00	555.00	660.00	766.00	871.00	891.00	911.00	930.00	950.00
C	400.00	523.00	646.00	769.00	892.00	1015.00	1038.00	1061.00	1084.00	1107.00
D	457.00	598.00	738.00	879.00	1019.00	1161.00	1186.00	1213.00	1239.00	1265.00
E	514.00	672.00	831.00	989.00	1147.00	1305.00	1335.00	1364.00	1394.00	1423.00
F	571.00	747.00	923.00	1099.00	1274.00	1450.00	1483.00	1516.00	1549.00	1581.00
G	629.00	822.00	1015.00	1208.00	1402.00	1595.00	1631.00	1667.00	1703.00	1739.00
H	686.00	897.00	1107.00	1318.00	1529.00	1740.00	1779.00	1819.00	1858.00	1897.00
I	743.00	971.00	1200.00	1428.00	1657.00	1885.00	1928.00	1971.00	2013.00	2055.00
J	800.00	1046.00	1292.00	1538.00	1784.00	2030.00	2076.00	2122.00	2168.00	2213.00

When a family has more than ten members, monthly income is determined by:

- a. Multiplying each income figure in the four member eligibility column by three percent, and round to the nearest dollar.
- b. Multiplying the result in paragraph "a" by the number in the family in excess of ten.
- c. Adding the results from paragraph "b" to the amounts shown in the column for a ten-member family.

130.4(3) Day care. The fees for child day care in a licensed center or registered family day care home are shown in the following table.

Child Day Care

	Per Day	Per ½ Day	Per Hour
A	.00	.00	.00
B	.60	.30	.06
C	.75	.37	.08
D	1.00	.50	.10
E	1.50	.75	.15
F	2.00	1.00	.20
G	2.50	1.25	.25
H	3.00	1.50	.30
I	3.50	1.75	.35
J	4.00	2.00	.40

c. A summary of all pertinent information relating to the client and the client's situation relative to need, and containing, but not limited to, the following:

- (1) Emotional behavior.
- (2) Social aspects.
- (3) Historical perspective.
- (4) Reasons for success or lack of success.

d. Information on case entries that will substantiate the client's eligibility for service.

e. A target date for re-evaluation of the case plan based on assessment of need, which shall not exceed six months.

f. A review of financial eligibility in accordance with 130.2(5).

g. The reason for termination or reduction of any or all services.

130.7(3) The re-evaluation of the service plan shall include all components listed under 130.7(2).

This rule is intended to implement section 234.6, The Code.

770—130.8(234) Monitoring and evaluation. The department of social services shall evaluate and monitor client eligibility, on a sample basis, by verifying all eligibility factors, including income, and evaluating the services actually received.

This rule is intended to implement section 234.6, The Code.

770—130.9(234) Entitlement. There is no automatic right to ongoing service in any service category from one fiscal year to the next.

This rule is intended to implement section 234.6, The Code.

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CHAPTER 131*
SOCIAL SERVICES BLOCK GRANT

770—131.1(234) Definitions.

131.1(1) Direct services. "Direct services" means services provided by staff of the department of social services to clients. This includes the administrative support necessary to maintain and oversee services. Direct services are funded with state and federal dollars.

131.1(2) State purchase services. "State purchase services" means those services the department purchases in every county statewide. State purchase services are funded with state and federal funds.

131.1(3) Local purchase services. "Local purchase services" means those services available in a county. These services may vary from county to county. Local sources provide a twenty-five percent match for these services and the state and federal governments provide seventy-five percent.

131.1(4) Protective day care. "Protective day care" means day care provided to children to prevent or alleviate child abuse or neglect. This purchase service is available throughout the state. Protective day care is funded with federal funds.

131.1(5) County administrative costs. "County administrative costs" include the rent, utilities and other related costs the county must pay to maintain a county social services office. These costs are funded from state, federal and county sources.

131.1(6) District offices. "District offices" means the department of social services' eight field offices which co-ordinate all service delivery. The eight district offices are located in Cedar Rapids, Council Bluffs, Davenport, Des Moines, Mason City, Ottumwa, Sioux City, and Waterloo.

770—131.2(234) Development of pre-expenditure report.

131.2(1) The department of social services shall develop the social services block grant pre-expenditure report on an annual basis. The report shall be developed in accordance with federal regulations, Code of Federal Regulations 45 CFR 96 as amended October 1, 1981. The report shall describe the services to be funded, in what areas services are available and the amount of funding available. The plan shall also indicate the source of funding.

131.2(2) The department shall issue a proposed pre-expenditure report prior to publication of the final report. The proposed report shall be available for public review and comment in each district office of the Iowa department of social services during regular business hours for a two-week period.

131.2(3) The time and scope of public review will be announced each year. The announcement will indicate the time the proposed report can be viewed. The department shall make this information available to the media, post signs in each district and local social services office and may publish ads in each district listing the time of review.

131.2(4) The department shall accept comments about the pre-expenditure report during the specified public review and comment period. The advisory committees, individuals or groups may submit written comments to the district or to the Iowa Department of Social Services, Division of Community Program, Title XX Unit, Hoover State Office Building, Des Moines, Iowa 50319. Public hearings may be arranged by the district administrator at which time testimony will be accepted.

Comments concerning locally purchased services will be forwarded to the county boards of supervisors within the district.

131.2(5) The department shall consider the public comment when developing the final pre-expenditure report.

131.2(6) A copy of the final pre-expenditure report will be available in each district office.

770—131.3(234) Amendments to pre-expenditure report.

131.3(1) The pre-expenditure report may be amended throughout the year. The department may file an amendment changing the kind, scope or duration of a service. Decisions to

*Emergency, pursuant to §17A.5(2)"b"(1), The Code.

change a direct service, state purchase service or protective day care will be made by the department; decisions to change the kind or duration local purchase services will be made by county boards of supervisors.

Prior to filing an amendment the department and the county boards of supervisors will evaluate available funds and the effect any change will have on clients.

131.3(2) An amendment in the pre-expenditure report will be posted in the district and local offices affected by the amendment at least thirty days prior to the effective date of the change. However, in the event funding for the service has been exhausted, an amendment may be posted immediately notifying the public that the service will no longer be available. The district administrator will, whenever possible, give advance notice of a service termination made necessary because funds have been exhausted.

131.3(3) The advisory committees, individuals or groups may submit written comments to the district or to the Iowa Department of Social Services, Division of Community Programs, Title XX Unit, Hoover State Office Building, Des Moines, Iowa 50319. Comments regarding amendments to local purchase services should also be directed to the county boards of supervisors in the county in which a change is being made.

131.3(4) Nothing in this rule will supersede the requirement for notifying clients of adverse action as provided in 770—130.5(234).

770—131.4(234) Service availability.

131.4(1) A client shall apply for services in the appropriate office of the Iowa department of social services.

a. The department shall determine eligibility according to 770—130.3(234).

b. The department shall develop a case plan to monitor the client's progress toward achieving goals as identified in 770—130.7(234).

131.4(2) An eligible client may receive a service for which he or she is eligible, subject to the funding provisions of 770—chapter 130, when the service is listed in the geographic area in which the client resides. The geographic area for a local purchase service is the county; the geographic area for direct, state purchase and protective day care is the state.

131.4(3) Funding for any service listed in the county's section of the pre-expenditure report is available for any client who resides in that county, subject to the provisions of the report. The county will provide the twenty-five percent match for all services listed. However, nothing in this section shall preempt a county's ability to make claims against other counties or the state as provided in chapters 222, 229, and 252, The Code.

770—131.5(234) Allocation of block grant funds.

131.5(1) The amount of social services block grant dollars allocated to direct services shall be determined by estimating the cost of performing each direct service function. These estimates shall consider costs for direct staff salaries, administrative salaries and support costs, including data processing costs, rent, utilities, and similar items. The department will follow a cost allocation plan for determining the appropriate costs of the department's central office to be funded with block grant money.

131.5(2) The amount of funding allocated to state purchase services shall be based on the need for the service and on previous use of that service. Each district will receive state purchase funds.

a. The available family planning dollars will be divided among the districts at fifty percent of the funds on the basis of poverty population and fifty percent of the funds on the basis of the previous year's allocation.

b. The available foster care dollars are allocated among the districts based on previous utilization.

c. Administrative support dollars which are used for volunteer services are divided equally among the eight districts.

131.5(3) The amount of funding available for local purchase services shall be based on previous use of these funds.

a. The amount of funding available for local purchase services shall then be divided among the districts based on the following formula: Fifty percent of the available funds will be divided on the basis of poverty population and fifty percent of the funds will be divided on the basis of the previous year's allocation.

b. Funds allocated to each district will be distributed to counties within the district by the district administrator using the following formula: Fifty percent based on the poverty population within a county and fifty percent based on the county's previous utilization. For state fiscal year 1983, eighteen months of county utilization history will be the base.

131.5(4) The amount of funding available for protective day care is based on each district's projection of need.

131.5(5) The amount of funding available for county administration is determined by examining past utilization.

770—131.6(234) Local purchase planning process.

131.6(1) The county boards of supervisors in each county will determine what services they wish to provide with the social services block grant funds allocated to the county. They will choose services from a list provided by the department. The county boards of supervisors will determine how much funding they wish to place in each service and for what period of time during the pre-expenditure report year they wish to fund the services. However, in making these decisions, the supervisors must consider and comply with all provisions of these rules and 770—chapter 130.

In making decisions about which services to fund, the supervisors may consult with consumers, providers, Title XX advisory committee members and other interested parties.

131.6(2) The county shall sign a county participation agreement describing the responsibilities of the county and the department. This agreement shall include the county's assertion that the county will provide a twenty-five percent match for all local purchase services.

131.6(3) In no event shall a county be granted reimbursement for more state and federal funds than are allocated to it.

131.6(4) The district administrator will notify the affected county boards of supervisors when available block grant funding for a service has been exhausted.

131.6(5) The district administrator shall maintain a system for recording the encumbrance of local purchase funds. In monitoring the balance of funds in a county, the district administrator shall consider the number of clients in a service, the number of clients expected to use a service and the cost of those services. The district administrator will then determine if the remaining funds for a service within a county are sufficient; if not, the district administrator will so notify the affected county board of supervisors.

In the event funds are depleted and the county board of supervisors does not wish to transfer federal and state block grant funds available to the county from another service, the district administrator shall terminate the service.

131.6(6) When, based on encumbrance records maintained by the district administrator, a county does not appear to require all funds allocated to it, the district administrator may transfer funds to other counties in the district. At least thirty days prior to a transfer, the district administrator will present to the county board of supervisors the reasons he or she believes the county will have surplus funds. The county board of supervisors will have ten days after receipt of the notice to respond. The county board of supervisors may present evidence agreeing or disagreeing with the reasons provided by the district administrator. The district administrator may consider the evidence before transferring funds.

The district administrator shall have the authority to transfer funds.

770—131.7(234) Advisory committees. Advisory committees may be established and members may be selected by the district administrator. Persons interested in participating in the district advisory committees may contact the district administrator. An advisory committee at the state level may be established. This committee shall consist of members from each district level committee. Costs for meals, lodging, and travel for the state level advisory com-

mittee shall be paid by the department of social services at the same rate as state employees traveling within the state. For a one-day meeting, only one overnight expenditure will be allowed. The department of social services shall maintain and utilize the state and district advisory committees established for providing recommendations on the allocation and uses of federal social services block grant funds during the fiscal year ending June 30, 1983.

These rules are intended to implement section 234.6, The Code.

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CHAPTER 132
CHILD DAY CARE SERVICES

770—132.1(234) Definitions.

132.1(1) Project manager. "Project manager" means a department employee who is designated as responsible for the development, monitoring, and evaluation of purchase of service agreements with child day care facilities.

132.1(2) Caseworker. "Caseworker" means a department employee who is responsible for eligibility determination, assessment, development of a case plan, and assuring that ongoing service provision is consistent with the case plan.

132.1(3) Provider. "Provider" means

a. A licensed child care center which has an approved purchase of services agreement with the department to provide child day care services.

b. A registered family day care home which has an approved child care placement agreement with the department to provide child day care services.

c. A home of the child's relative which has an approved child care placement agreement with the department to provide child day care services.

d. A caretaker who has an approved child care placement agreement with the department to provide care for a child in the child's home.

132.1(4) Department. "Department" means the Iowa department of social services.

132.1(5) Mental retardation. "Mental retardation" means a condition which reflects subaverage intellectual functioning that causes social incompetence.

132.1(6) Handicap. "Handicap" means a condition that prevents a child from functioning according to age appropriate expectations in the areas of affective, cognitive, communicative, perceptual-motor, physical, or social development to such an extent that the child requires special help, program adjustments, and related services, on a regular basis, in order to function in an adaptive manner.

132.1(7) Child day care. "Child day care" means a service that provides child care in the absence of parents for a portion of the day, but less than twenty-four hours. Day care supplements parental care by providing care and protection for children who need care in or outside their homes for part of the day. Child day care provides experiences for each child's social, emotional, intellectual, and physical development. Child day care may involve comprehensive child development care or it may include special services for a mentally retarded or handicapped child. Components of this service include supervision, food services, program/activities, and transportation.

132.1(8) Vocational training. "Vocational training" means department approved training that meets the same requirements as specified in 770—55.2(249C).

132.1(9) Supervision. "Supervision" means the care, protection, and guidance of a child.

132.1(10) Food services. "Food services" means the preparation and serving of meals and snacks.

132.1(11) Program/activities. "Program/activities" means the daily schedule of experiences in a day care setting.

132.1(12) Transportation. "Transportation" means the movement of children in a four or more wheeled motorized vehicle designed to carry passengers, such as a car, van, or bus, between home and facility.

770—132.2(234) Requests. A request for approval to provide services and receive payment for eligible clients may be initiated by the provider or by the child's parent. Approval by the department shall be made only when the provider meets the standards set forth in these rules. Child care center requests shall be initiated by the use of the purchase of service agreement addressed to the project manager in the county or district where the child care center is located. Requests for family day care, family day care in the home of a relative, or in-home care may be verbal or in writing.

770—132.3(234) Conditions of approval.

132.3(1) *Child care center.* The department may enter into a purchase of service agreement with a provider that is licensed by the department and meets all child care standards required under Title XX of the Social Security Act. The child care center shall be approved by the department as complying with all standards or notified of specific deficiencies and the action necessary to bring the child care center into full compliance with the standards. Payment will be made only after the purchase of service agreement is approved and signed by all necessary department administrators.

132.3(2) *Family day care home.* The department may enter into a child care placement agreement with a family day care home that meets all the requirements for registration, has a certificate of registration and meets all the child care standards required under Title XX of the Social Security Act. The family day care home shall be approved by the department as complying with all standards or notified of specific deficiencies and the action necessary to bring the family day care home into full compliance with the standards. Payment will be made only after the family day care home has been approved by the department.

132.3(3) *Family day care in the home of a relative.* The department may enter into a child care placement agreement with a relative's family day care home that meets all the requirements for registration. The home shall be approved by the department as complying with all standards or notified of specific deficiencies and the action necessary to bring the family day care home into compliance with the standards. Payment will be made only after the family day care home has been approved by the department.

132.3(4) *In-home care.* The department may enter into a child care placement agreement with an adult caretaker who meets the minimum requirements for a family day care home provider, and when the home is safe, sanitary, and free of hazards in accordance with the minimum requirements required for family day care home registration. The child's home shall be approved by the department as complying with all standards or the parent notified of specific deficiencies and the action necessary to bring the home into compliance with the standards. The caretaker shall be an adult. Payment will be made only after the home and the caretaker have been approved by the department.

132.3(5) *Standards for purchase of child day care services.* Child day care services have been divided into different levels according to age. A purchase of service agreement shall list the levels of care that are to be purchased under the agreement. Each level contains the components of supervision, food services, and program/activities. Transportation is an optional component that may be included. The components of supervision, food services, and transportation shall meet the minimum licensing and registration requirements. The program/activities component shall meet the following standards for each level of care:

a. *Level one—age zero to two years.* For each infant, activities and a program shall be planned that provides stimulation; opportunities for crawling and exploration; noises and sounds to encourage language development; sensory experiences for touching, tasting, seeing, and smelling; equipment that can be grasped and encourages discrimination and manipulation skills, such as stacking blocks, rings, and pull toys; furniture that is child size; and consistency in staff, physical environment, and daily routine.

b. *Level two—age two years to four years.* A program with a schedule of activities shall be planned that is flexible, but routine enough for children to feel comfortable and secure. Child size equipment shall be provided.

(1) The program shall provide each child with opportunities to play alone and explore, to play in groups, to rest, for large muscle development, for small muscle development, for language development, for learning independence, for fostering a positive self-image, for eye-hand co-ordination, for problem solving, and to interact with adults alone and in groups.

(2) Activities shall include art, music, science, drama, outside play, field trips, story telling and story book reading, nutrition, and safety and health.

c. *Level three—age four to kindergarten.* A program with a schedule of activities shall be planned that is flexible, but routine enough for children to feel comfortable and secure. Child size equipment shall be provided.

(1) The program shall provide each child with opportunities to play alone and explore, to play in groups, to rest, for large muscle development, for small muscle development, for language development, for learning independence, for fostering a positive self-image, for eye-hand co-ordination, for problem solving, and to interact with adults alone and in groups.

(2) Activities shall include art, music, science, drama, outside play, field trips, story telling and story book reading, nutrition, and safety and health.

d. Level four—school-age children. A program with a schedule of activities shall be planned that is independent of the child's school experience, but meets the needs of the school-age child.

(1) Activities for the kindergarten child at the center part of the day shall include art, crafts, science, music, large and small muscle development, problem solving, and individual interaction with adults.

(2) Activities for children beyond kindergarten who are in child day care before and after school shall provide opportunities for quiet, solitary play and a variety of active, large muscle activities.

770—132.4(234) Eligibility.

132.4(1) Provider. Child day care shall be purchased by the department only from a provider whose facility has been approved as set forth in these rules.

132.4(2) Client. Child day care shall be provided only to children under eighteen years of age. Each client shall meet program and service requirements as set forth in these rules and eligibility requirements as set forth in rule 770—130.3(234). Recipients of aid to dependent children, refugee cash assistance or refugee medical assistance, shall not be eligible for child day care services under this chapter when the recipient is eligible for child day care as a work expense or training allowance under 770—chapter 41 and 770—chapter 55.

132.4(3) Service requirements. Every child eligible for child day care services shall receive supervision, food services, and program/activities. The child or parents of the child shall meet one or more of the following requirements in order to be eligible for child day care services:

a. The parent or parents are in vocational training.

b. The parent is employed thirty or more hours per week, or is employed an average of thirty or more hours per week during the month. Child care services may be provided for the hours of employment of a single parent or the coinciding hours of employment of both parents in a two-parent home, and for actual travel time between home, child care facility, and place of employment.

c. The child is mentally retarded or handicapped and the parent or parents are unable to provide adequate and necessary care.

d. The need for day care is part of a protective service plan to prevent or alleviate child abuse or neglect.

e. The need for day care is because the person who normally cares for the child is absent from the home due to hospitalization, physical or mental illness, or death. Care under this paragraph is limited to a maximum of one month, unless extenuating circumstances are justified and approved after case review by the district administrator.

132.4(4) Transportation. In order for a child to be eligible for transportation:

a. The child must be eligible for child day care services under one of the service requirements in 132.4(3), and

b. Transportation must be available under the facility's purchase of service agreement, and,

c. The parent or parents have no private means of transportation, and live more than one-half mile from the facility.

This rule is intended to implement section 234.6(6)“a”, The Code.

770—132.5(234) Individual service plan. An individual service plan for child care services shall be developed by the caseworker. The individual service plan shall contain, as a minimum, program eligibility for child care services, service goals appropriate to the parent or parents and child's needs for child care services, time frames for services, and schedule for follow-up visits or reassessment of child care service needs and service eligibility.

770—132.6(234) Provider's individual program plan. An individual program plan shall be developed by the child care center for each child within thirty days after placement. The program plan shall be supportive of the caseworker's individual service plan. The program plan shall contain goals, services to be provided, and time frames for review.

770—132.7(234) Follow-up and review. The service plan of the provider shall be reviewed at least semiannually by the caseworker.

770—132.8(234) Termination. Child day care services shall be terminated by the department when the child or family is no longer eligible for the service as set forth in these rules. The parent or parents may terminate services by giving the department or provider notice of the termination. Services may be terminated by the provider when the parent or parents fail to co-operate in the written plan of day care or when the child leaves the center in accordance with the center's discharge policy.

Rules 132.1 to 132.6 are intended to implement section 234.6(6)'a', The Code.

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