Call In Number: (866) 685-1580
Conference Code: 515 281 5606

AGENDA
IOWA STATE BOARD OF HEALTH
SEPTEMBER 11, 2013 – 10:00 A.M.
STATE HYGIENIC LABORATORY
UNIVERSITY OF IOWA RESEARCH PARK
2490 CROSSPARK ROAD
CORALVILLE, IA 52241

In accordance with its statutory duties, the Iowa State Board of Health is the policy-making body for the Iowa Department of Public Health. The board's mission is to protect and promote the health of all Iowans by reviewing the field of public health and making recommendations to the department, the Iowa General Assembly, and the Governor on a wide range of public health issues. The board also adopts rules consistent with the law for the protection of the public health and the prevention of substance abuse.

CALL TO ORDER

ROLL CALL

I. Minutes

A. Approval of July 10, 2013 Minutes

II. Rules

A. Department of Public Health [641] – Barb Nervig
   1. Adopted and Filed
      a) Chapter 95, "Vital Records: General Administration"
      b) Chapter 96, "Birth Registration," and Chapter 99, "Vital Records Modifications"
      c) Chapter 134, "Trauma Care Facility Categorization and Verification"
      d) Chapter 135, "Trauma Triage and Transfer Protocols"
      e) Chapter 137, "Trauma Education and Training"
   2. Notice of termination
      a) Chapter 28, "Plumbing and Mechanical systems Board – Licensure Fees"
   3. Notice of Intended Action
      a) Chapter 11, "Acquired Immune Deficiency Syndrome (AIDS)"
      b) Chapter 28, "Plumbing and Mechanical Systems Board – Licensure Fees"
      c) Chapter 93, "Abuse Education Review Panel"
      d) Chapter 138, "Trauma System Evaluation Quality Improvement Committee"

B. Department of Inspections and Appeals [481] – Dave Werning
   1. Adopted and Filed
      a) Chapter 56, "Fining and Citations"
      b) Chapter 58, "Nursing Facilities"
   2. Notice of Intended Action
      a) Chapter 54, "Governor's Award for Quality Care," Chapter 57, "Residential Care Facilities," Chapter 58, "Nursing Facilities," Chapter 62, "Residential

Care Facilities for Persons with Mental Illness (RCF/PMI)," Chapter 63, "Residential Care Facilities for the Intellectually Disabled," Chapter 64, "Intermediate Care Facilities for the Intellectually Disabled," and Chapter 65, "Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI)."

b) Chapter 57, "Residential Care Facilities," Chapter 58, "Nursing Facilities," Chapter 62, "Residential Care Facilities for Persons with Mental Illness (RCF/PMI)," Chapter 63, "Residential Care Facilities for the Intellectually Disabled," Chapter 64, "Intermediate Care Facilities for the Intellectually Disabled," and Chapter 65, "Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI)."

c) Chapter 57, "Residential Care Facilities," Chapter 58, "Nursing Facilities," Chapter 62, "Residential Care Facilities for Persons with Mental Illness (RCF/PMI)," Chapter 63, "Residential Care Facilities for the Intellectually Disabled," and Chapter 65, "Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI)."

III. Substance Abuse

A. Report from Substance Abuse/Problem Gambling Treatment Program Committee – Jay Hansen

IV. Department Reports

A. Director's Information - Director Miller-Meeks

1. IDPH Strategic Plan

B. Staff Reports

1. Iowa Health Update – Dr. Quinlisk

V. Old Business

VI. New Business

A. IDPH Strategic Plan – Dr. Miller-Meeks

VII. Next Meeting

VIII. Adjournment

A. Tour of the Hygienic Lab

All meetings held by the Iowa Department of Public Health are accessible to everyone. If you have special needs to participate, please call deaf Relay (Hearing or Speech Impaired) 1-800-735-2941; Internet: www.idph.state.ia.us

Call In Number: (866) 685-1580
Conference Code: 515 281 5606

AGENDA
IOWA STATE BOARD OF HEALTH
JULY 10, 2013 – 10:00 A.M.
5TH FLOOR SOUTH CONFERENCE ROOMS #517-518
LUCAS STATE OFFICE BUILDING
321 EAST 12TH STREET, DES MOINES, IA

In accordance with its statutory duties, the Iowa State Board of Health is the policy-making body for the Iowa Department of Public Health. The board's mission is to protect and promote the health of all Iowans by reviewing the field of public health and making recommendations to the department, the Iowa General Assembly, and the Governor on a wide range of public health issues. The board also adopts rules consistent with the law for the protection of the public health and the prevention of substance abuse.

CALL TO ORDER

ROLL CALL

I. Minutes

A. Approval of May 8, 2013 Minutes

Jay Hansen made a motion to accept the May 8th minutes, and seconded by Kenneth Wayne. Motion carried.

1. Introduction of new BOH member

   Norman Pawlewski is the only new member to the Board of Health, and is a former director of the Department of Public Health and Chair of the Iowa Public Health Association.

2. Acknowledgement of outgoing BOH member

   Justine Morton did not apply for reappointment to the Board of Health. We will be sending Justine a letter of gratitude for her long service and dedication to the State Board of Health.

II. Rules

A. Department of Public Health [641] – Barb Nervig

1. Adopted and Filed

   a) Chapter 133, "White Flashing Light Authorization"

   The rules in Chapter 133 describe the standards for shite flashing lights that may be used by emergency medical care providers for identification of vehicles. These amendments update the definitions contained in the rules and add direction to the Department's Web site for the white light permit form. A motion was made by Maggie Tinsman and seconded by Diane Thomas to accept Chapter 133. Motion carried.

2. Notice of Intended Action

   a) Chapter 27, "Plumbing and Mechanical Systems Board – Administrative and Regulatory Authority"

The proposed amendments to the rule incorporate new disciplines; mechanical, HVAC-refrigeration, and sheet metal; identified in SF427 into definitions for license and licensee. The new disciplines are also incorporated into the purpose of the board, and one of the sub rules addressing investigations of violations.

b) Chapter 28, "Plumbing and Mechanical Systems Board – Licensure Fees"
These amendments are necessary to implement Senate File 427, which became effective upon enactment on April 26, 2013 by operation of section 36 of the senate file. The proposed amendments identify the licensee fees associated with apprentice, journey, master, medical gas piping certificate, inactive license, contractor, and specialty licenses. The fees are applicable to initial licenses, reciprocal licenses, and renewal licenses. In addition, all licenses are issued for a period of three years and until June 29, 2017 those renewing for less than 3 years will be prorated using a one-sixth deduction for each six-month period. Late fees and requirements for lapsed licenses are also included. A fee for converting an HVAC-refrigeration or hydronics license to a mechanical license is also included.

c) Chapter 29, "Plumbing and Mechanical Systems Board – Application, Licensure, and Examination"
The Amendments to Chapter 29 are necessary to implement Senate File 427, which became effective upon enactment on April 26, 2013 by operation of section 36 of the senate file.

d) Chapter 30, "Continuing Education for Plumbing and Mechanical Systems Professionals"
e) The Amendments to Chapter 30 are necessary to implement Senate File 427, which became effective upon enactment on April 26, 2013 by operation of section 36 of the senate file.

f) Chapter 32, "Plumbing and Mechanical Systems Board – Licensee Discipline"

The Amendments to Chapter 32 are necessary to implement Senate File 427, which became effective upon enactment on April 26, 2013 by operation of section 36 of the senate file.

g) Chapter 35, ""Plumbing and Mechanical Systems Board – Licensure of Nonresident Applicant – Reciprocity"

These amendments are necessary to implement Senate File 427, which became effective upon enactment on April 26, 2013 by operation of section 36 of the senate file. The proposed amendments identify three new disciplines; mechanical, HVAC-refrigeration, and sheet metal; which will be added to the disciplines recognized for the purpose of reciprocity.

h) Chapter 95, "Vital Records: General Administration"
The rules in Chapter 95 describe the general administration of vital records including definitions, fees, the handling of records, access to records, issuance of certified copies and confidentially. These proposed amendments increase certain fees related to vital records beginning January 1, 2014. These fees will revert back to current levels beginning July 1, 2019. The additional monies generated by this time-limited fee increase will support the development and implementation of the Iowa Vital Events System. This includes the electronic registration and issuance of new events and the conversion of historical events into one system to manage the Civil Registry and health data collected and managed by the Department.

i) Chapter 96, "Birth Registration," and Chapter 99, "Vital Records Modifications"
The rules in Chapter 96 describe the responsibilities and process for the registration of births. The proposed amendments in Chapter 96 institute a process for establishing parentage on the birth certificate for married lesbian couples when one of the parties to the marriage delivers a child.
The rules in Chapter 99 describe the processes in place for amending vital records. The proposed amendments in Chapter 99 clarify who an entitled person is for requesting corrections of a minor error or amending a birth certificate; clarify how intended parents are established on a record following a birth by gestational surrogate arrangement; and clarify terminology changing "father" to "parent" and "husband" to "spouse". These changes are necessary to comply with the Gartner v. Iowa Department of Public Health, Supreme Court Decision No. 12-0243.

B. Department of Inspections and Appeals [481] – Dave Werning

1. Adopted and Filed

a) Chapter 50, "Health Care Facilities Administration," Chapter 57, "Residential Care Facilities," Chapter 58, "Nursing Facilities," Chapter 62, "Residential Care Facilities for Persons with Mental Illness (RCF/PMI)," Chapter 63, "Residential Care Facilities for the Intellectually Disabled," Chapter 64, "Intermediate Care Facilities for the Intellectually Disabled," and Chapter 65, "Intermediate Care Facilities for persons with mental Illness (ICF/PMI)"
The adopted amendments implement legislative changes, including those in 2013 Iowa Acts, Senate File 347, to Iowa Code section 135C.33, which

requires criminal record checks and child and dependent adult abuse record checks of prospective employees of health care facilities and of students of certified nurse aide training programs.
A motion was made by Jay Hansen and seconded by Dr. George to accept the amendments. Motion carried.

b) Chapter 64, "Intermediate Care Facilities for the Intellectually Disabled"
Iowa Code section 135C.2(3)d requires the Department to cause the Interpretive Guidelines to be published in the Iowa Administrative Bulletin and the Iowa Administrative Code. The section further state that the publication of the guidelines is not subject to the rulemaking provisions of Iowa Code sections 17A.4 and 17A.5. The current guidelines were first published in 1989 and have not been updated since.
A motion was made by Maggie Tinsman and seconded by Diane Thomas to accept the amendments. Motion carried.

2. Notice of Intended Action
   a) Chapter 56, "Fining and Citations"
   The amendments describe the process for the informal conference on a contested citation, provided for in Iowa Code section 135C.42, and incorporate legislative changes made by the 2013 General Assembly in Senate File 394.

   b) Chapter 57, "Residential Care Facilities," Chapter 58, "Nursing Facilities," Chapter 62, "Residential Care Facilities for Persons with Mental Illness (RCF/PMI)," Chapter 63, "Residential Care Facilities for the Intellectually Disabled," and Chapter 65, "Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI)"
   Currently, Iowa Code chapter 155A, Iowa Administrative Code rule 637-8.32, and Senate File 353, enacted in 2013, give pharmacists some authority to administer certain immunizations. The department's rules limit the administration of injectable medications to qualified nurses or physicians. The amendments allow pharmacists to administer injectable medications as permitted by Iowa law.

   c) Chapter 58, "Nursing Facilities"
   Effective with services furnished on or after January 1, 2011, Section 1814(a)(2) of the federal Social Security Act, which was amended by section 3108 of the federal Affordable Care Act, authorizes physician assistants who are not employed by the facility to perform Skilled Nursing Facility level of care certifications and re-certifications. The amendments adopt the federal

law in order to maintain consistency between federal regulations and state rules.

III. Substance Abuse

A. Report from Substance Abuse/Problem Gambling Treatment Program Committee – Jay Hansen

We approved two 3-years, one 270-day, and one deemed status license. We denied one license and found one complaint unsupported.

IV. Department Reports

A. Director's Information - Director Miller-Meeks

Julie McMahon, Division Director of health promotion and chronic disease prevention, will be retiring in September.

IDPH will be attending the State Fair with the Healthiest State Initiative.

Our tobacco prevalence rate is down to 18.1% from 20.4% according to the CDC. This is based on the new trend line set up with the new BRFSS methodology.

The Colorectal Cancer coaster campaign by staff at IDPH has received many awards and will be presenting at the American Public Health Conference in the fall. The campaign was an extremely inexpensive campaign that was very creative.

The environmental health tracking will be going up soon that will retain data that can be shared with the public and stakeholders.

State Innovation Model Grant is from April to September. We are in the design faze right now, and public health is represented on the workgroups to help public health be involved in the healthcare delivery system.

The EMS Taskforce was vetoed by the Governor, but we feel that through the EMS Advisory Council we will be able to do as much of that as possible. Reimbursement through Medicaid was the goal of the group.

$2 million was appropriated this session to go towards medical residencies in Iowa. The goal is to get more physicians to practice in rural Iowa.

B. Staff Reports

1. Iowa Health Update – Dr. Quinlisk

Middle East Respiratory Syndrome (MERS), we have had two incidents in Iowa from those that have traveled abroad. Both tests by the Hygienic Lab came back negative.

We have had one case of West Nile in Iowa so far, but this is not unexpected. We would expect the biggest part of the season will be in late summer and early fall. Last year there were 31 cases.

During RAGBRAI, we will be doing a heat study to help keep the people safe in the summer.

Dr. Quinlisk handed out a fact sheet about Cyclospora, a rare parasitic disease that causes 57 days of horrible diarrhea. To identify Cyclospora, you have to do a very specific acid stain on stool. As of this morning, we are up to 38 cases in 11 counties in Iowa. Nebraska and a couple other states also have had a significant

amount of Cyclospora cases. Usually cyclospora is traced back to fruits and vegetables. Treatment is usually 7-10 days.

V. Old Business

A. Fluoroscopy Ruling – Heather Adams

Heather handed out the ruling. In 2009 the Nursing Board adopted a rule that ARNPs are able to supervise fluoroscopy, and the Iowa State Board of Health followed suit in 2010. The Iowa Medical Society had followed suit and the Iowa Supreme Court upheld the Nursing and Board of Health rules. The Court found it within the scope of the Nursing Board to determine that ARNPs can supervise fluoroscopy.

VI. New Business

A. Election of New Officers – Chair and Vice-Chair

Jay Hansen nominates Michael Wolnerman for Chair of the Iowa Board of Health. Dr. Wayne seconded, and the motion carried.

Norm Pawlewski nominates Dr. George for Vice-Chair. Maggie Tinsman seconded and the motion carried.

B. Iowa e-Health SFY 2014 Budget – Kim Norby

Kim had sent out a copy of the Budget to all Board of Health members prior to the meeting. Jay Hansen made a motion to approve the e-Health SFY 2014 Budget, and the motion was seconded by Maggie Tinsman. Motion carried.

C. Iowa e-Health Amendments to the Privacy and Security Policies – Kim Norby

Kim had sent out a copy of the Amendments to all Board of Health members prior to the meeting. Dr. Wayne made a motion to approve of the e-Health Amendments to the Privacy and Security Policies, and Dr. George seconded. Motion carried.

VII. Next Meeting

Items for September 11, 2013

VIII. Adjournment

Diane Thomas made a motion to adjourn, and Maggie Tinsman seconded. Motion carried.

All meetings held by the Iowa Department of Public Health are accessible to everyone. If you have special needs to participate, please call deaf Relay (Hearing or Speech Impaired) 1-800-735-2941; Internet: www.idph.state.ia.us

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 144.3 and 144.46, the Department of Public Health hereby amends Chapter 95, "Vital Records: General Administration," Iowa Administrative Code.

The rules in Chapter 95 describe the general administration of vital records including definitions, fees, the handling of records, access to records, issuance of certified copies and confidentiality. These amendments increase certain fees related to vital records beginning January 1, 2014. These fees will revert back to current levels beginning July 1, 2019. The additional moneys generated by this time-limited fee increase will support the development and implementation of the Iowa Vital Events System. This includes the electronic registration and issuance of new events and the conversion of historical events into one system to manage the Civil Registry and health data collected and managed by the Department.

Notice of Intended Action was published in the August 7, 2013, Iowa Administrative Bulletin as **ARC 0926C**. A public hearing was held on August 27, 2013 with a conference call for the public to call in any comments. Comments received from the Iowa Funeral Directors Association were in opposition to the increase. No other comments were received. No action has been taken by the Department due to the sunset clause for the fee increase and the fees will revert to the current amount on July 1, 2019. The adopted rules are identical to those published under Notice.

The State Board of Health adopted these rules on September 11, 2013.

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

These amendments are intended to implement Iowa Code sections 144.46 and 144.46A.

These amendments will become effective on January 1, 2014.

The following amendments are adopted.

ITEM 1. Amend subrule **95.6(1)** as follows:

95.6(1) *Fees for services provided by state registrar or county registrar.* The following fees shall be charged and remitted for the various services provided by the state registrar or the county registrar.

a. The state registrar or county registrar, as applicable, shall charge a fee of ~~$15~~ $20 to conduct a search for a record. On and after July 1, 2019, this fee will revert to $15.

(1) The search fee shall include one certified copy of the record.

(2) For each additional certified copy of the same record, a ~~$15~~ $20 fee shall be charged. On and after July 1, 2019, this fee will revert to $15.

(3) If, following a search, no record is found, the ~~$15~~ $20 fee shall be retained. On and after July 1, 2019, this fee will revert to $15.

b. The state registrar shall charge a fee of ~~$15~~ $20 to prepare an adoption certificate, to amend a certificate, to amend a certificate of live birth to reflect a legal change of name, to prepare a delayed certificate, to process other administrative or legal actions, or for the search and preparation of copies of supporting documents on file in the state registrar's office. On and after July 1, 2019, this fee will revert to $15. No fee shall be charged for establishment of paternity.

c. and *d.* No change.

e. The state registrar shall charge a fee of ~~$15~~ $20 to amend an abstract or other legal documentation in support of the preparation of a new certificate. On and after July 1, 2019, this fee will revert to $15.

f. No change.

g. The state registrar shall charge a fee of ~~$15~~ $20 to conduct a search for a certificate of fetal death for the purpose of issuing an uncertified copy of a certificate of birth resulting in stillbirth pursuant to ~~2012 Iowa Acts, House File 2368, section 1~~ Iowa Code section 144.31A. On and after July 1, 2019, this fee will revert to $15.

ITEM 2. Amend subrule **95.6(2)** as follows:

95.6(2) *Overpayments.* Any overpayment of less than ~~$15~~ $20 received by the state registrar for the copying of or search for vital records, or for the preparation or amending of a certificate, shall not be refunded. The state registrar shall retain the first ~~$9~~ $14 of any overpayment with any remaining amount to be deposited in the general fund of the state. On and after July 1, 2019, the overpayment amount will revert to $15 and the amount retained by the state registrar will revert to $9.

ITEM 3. Amend subrule **95.6(5)** as follows:

95.6(5) *Distribution of fees.*

a. All fees collected by the county registrar and the state registrar shall be distributed as follows:

(1) For fees collected by a county registrar, with the exception of the fee in subrule 95.6(4), the county registrar shall retain $4 of each ~~$15~~ $20 fee collected by that office~~, which~~. On and after July 1, 2019, this $20 fee will revert to $15. Fees collected shall be divided as follows:

1. For a birth certificate or a marriage certificate, the state registrar shall receive ~~$8~~ $13, and $3 shall be deposited in the general fund of the state, except for the fee collected pursuant to paragraph 95.6(1)*"f."* On and after July 1, 2019, the amount received by the state registrar will

revert to $8.

2. For a death certificate, the state registrar shall receive ~~$6~~ $11, the office of the state medical examiner shall receive $3, and $2 shall be deposited in the general fund of the state. On and after July 1, 2019, the amount received by the state registrar will revert to $6.

(2) For fees collected by the state registrar, the state registrar shall retain all fees, with the exception of the fees in paragraph 95.6(1)*"a,"* of which the state registrar shall retain ~~$9~~ $14 of each ~~$15~~ $20 fee collected for the issuance of certified copies. On and after July 1, 2019, the fee collected will revert to $15 and the amount retained by the state registrar will revert to $9. The $6 balance of certified copy fees collected by the state registrar shall be divided as follows:

1. For a birth certificate or a marriage certificate, $6 shall be deposited in the general fund of the state.

2. For a death certificate, the office of the state medical examiner shall receive $3, and $3 shall be deposited in the general fund of the state.

b. All fees retained by the state registrar shall be added to the vital records fund established by the department pursuant to Iowa Code section 144.46A.

c. All fees received by the office of the state medical examiner shall be added to the operating budget established for the operation of that office.

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Files

Pursuant to the authority of Iowa Code section 144.3, the Department of Public Health hereby amends Chapter 96, "Birth Registration," and Chapter 99, "Vital Records Modifications," Iowa Administrative Code.

The rules in Chapter 96 describe the responsibilities and process for the registration of births. The proposed amendments in Chapter 96 institute a process for establishing parentage on the birth certificate for married lesbian couples when one of the parties to the marriage delivers a child.

The rules in Chapter 99 describe the processes in place for amending vital records. The proposed amendments in Chapter 99 clarify who an entitled person is for purposes of requesting corrections of a minor error or amending a birth certificate; clarify how intended parents are established on a record following a birth by gestational surrogate arrangement; and clarify terminology changing "father" to "parent" and "husband" to "spouse." These changes are necessary to comply with the *Gartner v. Iowa Department of Public Health*, Supreme Court Decision No. 12-0243.

Notice of Intended Action was published in the August 7, 2013, Iowa Administrative Bulletin as **ARC 0925C**. No comments were received. The adopted rules are identical to those published under Notice.

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

These amendments are intended to implement *Gartner v. Iowa Department of Public Health*, Supreme Court Decision No. 12-0243.

These amendments will become effective on November 6, 2013.

The following amendments are adopted.

ITEM 1. Amend paragraph **96.5(1)"b"** as follows:

b. Obtain the signature of the mother or her legal ~~husband~~ spouse or other signature as directed by the state registrar;

ITEM 2. Amend paragraph **96.6(2)"c"** as follows:

c. The original Iowa official birth worksheet completed and signed by the mother, or her legal ~~husband~~ spouse, or as directed by the state registrar; and

ITEM 3. Amend paragraph **96.7(1)"c"** as follows:

c. The ~~father or the~~ mother ~~of the infant~~ or her legal spouse.

ITEM 4. Amend subrule **96.7(5)** as follows:

96.7(5) The official non-institution birth worksheet shall include a notarized signature of the mother or her legal ~~husband~~ spouse and shall be accompanied by a clear photocopy of that person's current government-issued photo identification. If photo identification is unavailable, other identifying documentation may be acceptable to the state registrar.

ITEM 5. Amend subparagraph **96.18(2)"b"(5)** as follows:

(5) The full name of the ~~father~~ mother's legal spouse. However, if the mother was not married ~~to the father of the child~~ at the time of conception or birth or at any time during the period between conception and birth, the name of ~~the father~~ a second parent shall not be entered on the delayed certificate unless the child has been adopted or legitimated or parentage has been determined by a court of competent jurisdiction ~~or there is evidence of acknowledgment of paternity by both parents~~.

ITEM 6. Amend subrule **99.4(2)** as follows:

99.4(2) For a certificate of live birth, entitled persons include in the following descending

order of priority:

a. ~~The single parent or both parents~~ Either parent as shown on the child's certificate of live birth; or

~~*b.* The mother, in the case of the death or incapacity of the father;~~

~~*c.* The father if listed on the birth certificate, in the case of the death or incapacity of the mother; or~~

~~*d.*~~ *b.* The legal guardian or agency having legal custody of the child.

ITEM 7. Amend paragraphs **99.5(1)"b"** and **"c"** as follows:

b. The mother, in the case of the death or incapacity of the ~~father~~ second parent;

c. The ~~father~~ second parent if listed on the birth certificate, in the case of the death or incapacity of the mother; or

ITEM 8. Amend subrule **99.6(2)** as follows:

99.6(2) For a certificate of live birth, entitled persons include in the following descending order of priority:

a. ~~The single parent or both parents~~ Either parent as shown on the child's certificate of live birth;

b. The mother, in the case of the death or incapacity of the ~~father~~ second parent;

c. The ~~father~~ second parent if listed on the birth certificate, in the case of the death or incapacity of the mother; or

d. The legal guardian or agency having legal custody of the child.

ITEM 9. Rescind subrules **99.15(4)** to **99.15(12)** and adopt the following **new** subrules in lieu thereof:

99.15(4) Two intended parents—both intended parents are biological parents to the child.

If the intended mother is the egg donor and the intended father is the sperm donor to the child being carried by the gestational surrogate:

a. After the birth of the child, the intended parents shall petition a court of competent jurisdiction to establish legal paternity and maternity of the child.

b. The court shall enter an order requiring the state registrar to reestablish the certificate of live birth naming the intended mother and father as the legal mother and father and requiring the state registrar to seal the original birth certificate and all related documentation.

c. The court order shall:

(1) Identify the child's full name as stated on the original certificate of live birth;

(2) State the child's date of birth and place of birth;

(3) Identify the full names of the birth mother and her legal spouse, if married;

(4) Disestablish the birth mother and her legal spouse, if married, as the legal parents of the child; and

(5) Identify the intended parents' full names prior to any marriage, full current legal names, dates of birth, birthplaces, social security numbers, and full current residential address including county.

d. The intended parents or their legal representative shall:

(1) Submit a certified copy of the court order to the state registrar;

(2) Remit administrative and certified copy fees pursuant to rule 641—95.6(144); and

(3) Include a notarized written request with mailing instructions for the certified copy of the certificate of live birth.

99.15(5) Two intended parents—intended mother is biological mother to the child; her legal spouse is not a biological parent. If the intended mother is the egg donor but her legal

spouse is not the sperm donor, the intended mother shall petition a court of competent jurisdiction after the birth of the child to establish legal maternity.

a. The court shall enter an order requiring the state registrar to reestablish the certificate of live birth naming the intended mother as the legal mother and shall require the state registrar to seal the original certificate of live birth and all related documents.

b. The court order establishing legal maternity shall:

(1) Identify the child's full name as stated on the original certificate of live birth;

(2) State the child's date of birth and place of birth;

(3) Identify the full names of the birth mother and her legal spouse, if married;

(4) Disestablish the birth mother and her legal spouse, if married, as the legal parents of the child; and

(5) Identify the intended mother's full name prior to any marriage, full current name, date of birth, birthplace, social security number, and full current residential address including county.

c. The intended mother or her legal representative shall:

(1) Submit a certified copy of the court order to the state registrar;

(2) Remit administrative and certified copy fees pursuant to rule 641—95.6(144); and

(3) Include a notarized written request with mailing instructions for the certified copy of the certificate of live birth.

99.15(6) Two intended parents—intended father is biological father to the child; his legal spouse is not a biological parent.

a. If the surrogate birth mother is unmarried and the intended father is the sperm donor, the unmarried surrogate birth mother and the intended father may complete a Voluntary Paternity Affidavit form after the child's birth to place the intended father's name and information on the

certificate of live birth.

b. If the surrogate birth mother is married and the intended father is the sperm donor, the married surrogate birth mother and the intended father shall by court order disestablish the surrogate birth mother's legal spouse as the legal parent and may complete a Voluntary Paternity Affidavit form pursuant to Iowa Code section 144.13.

c. The court order that disestablishes the married surrogate birth mother's legal spouse and the completed Voluntary Paternity Affidavit form shall be submitted to the state registrar.

d. If a certified copy of the certificate of live birth is requested, a notarized written request shall also be submitted to the state registrar with the certified copy fee and mailing instructions.

e. There is no administrative fee to process the completed Voluntary Paternity Affidavit form.

f. Adoption laws shall be followed to reestablish the certificate of live birth by establishing the nonbiological parent on the certificate of live birth pursuant to Iowa Code chapter 600.

99.15(7) Two intended parents—neither biological parent to the child. If the intended parents are neither the egg donor nor sperm donor, adoption laws shall be followed to reestablish the certificate of live birth by disestablishing the birth mother and her legal spouse, if any, and establishing the nonbiological parents on the certificate of live birth pursuant to Iowa Code chapter 600.

99.15(8) One female intended parent—biological mother to the child. If the intended mother is the egg donor to the child being carried by the gestational surrogate:

a. After the birth of the child, the intended mother shall petition a court of competent

jurisdiction to establish legal maternity of the child.

b. The court shall enter an order requiring the state registrar to reestablish the certificate of live birth naming the intended mother as the legal mother and requiring the state registrar to seal the original certificate of live birth and all related documentation.

c. The court order shall:

(1) Identify the child's full name as stated on the original certificate of live birth;

(2) State the child's date of birth and place of birth;

(3) Identify the full names of the birth mother and her legal spouse, if married;

(4) Disestablish the birth mother and her legal spouse, if married, as the legal parents of the child; and

(5) Identify the intended parent's full name prior to any marriage, full current legal name, date of birth, birthplace, social security number, and full current residential address including county.

d. The intended parent or her legal representative shall:

(1) Submit a certified copy of the court order to the state registrar;

(2) Remit administrative and certified copy fees pursuant to rule 641—95.6(144); and

(3) Include a notarized written request with mailing instructions for the certified copy of the certificate of live birth.

99.15(9) One male intended parent—biological father to the child.

a. If the surrogate birth mother is unmarried and the intended father is the sperm donor, the unmarried surrogate birth mother and the intended father may complete a Voluntary Paternity Affidavit form after the child's birth to place the intended father's name and information on the certificate of live birth.

b. If the surrogate birth mother is married and the intended father is the sperm donor, the married surrogate birth mother and the intended father shall by court order disestablish the surrogate birth mother's legal spouse as the legal parent and may complete a Voluntary Paternity Affidavit form pursuant to Iowa Code section 144.13.

c. The court order that disestablishes the married surrogate birth mother's legal spouse and the completed Voluntary Paternity Affidavit form shall be submitted to the state registrar.

d. If a certified copy of the certificate of live birth is requested, a notarized written request shall also be submitted to the state registrar with the certified copy fee and mailing instructions.

e. There is no administrative fee to process the completed Voluntary Paternity Affidavit form.

f. If the intended father has been established as the legal father pursuant to paragraph 99.15(9)*"a"* or *"b"* and the surrogate birth mother and the intended father wish to remove the surrogate birth mother as the legal mother from the certificate of live birth, the parties shall seek a court order. The court order disestablishing legal maternity shall:

(1) Identify the child's full name as stated on the original certificate of live birth;

(2) State the child's date of birth and place of birth;

(3) Identify the full name of the birth mother; and

(4) Disestablish the birth mother as the legal parent of the child.

g. The intended parent or his legal representative shall:

(1) Submit a certified copy of the court order to the state registrar;

(2) Remit administrative and certified copy fees pursuant to rule 641—95.6(144); and

(3) Include a notarized written request with mailing instructions for the certified copy of

the certificate of live birth.

99.15(10) One intended parent—not biological parent to the child. If the intended parent is neither the egg donor nor sperm donor, adoption laws shall be followed to reestablish the certificate of live birth by disestablishing the birth mother and her legal spouse, if any, and establishing the nonbiological parent on the certificate of live birth pursuant to Iowa Code chapter 600.

99.15(11) The state registrar shall seal the original certificate of live birth. The state registrar shall place the original certificate of live birth and all related documents in a sealed file, and the file shall not be opened and inspected except by the state registrar for administrative purposes or upon an order from a court of competent jurisdiction pursuant to Iowa Code section 144.24.

99.15(12) The new certificate of live birth shall not be marked "amended."

ITEM 10. Adopt the following **new** subrules **99.15(13)** and **99.15(14)**:

99.15(13) The new certificate of live birth shall not be on file at the county registrar's office pursuant to rule 641—95.7(144).

99.15(14) A certified copy fee and an administrative fee to replace a parent's information on a certificate of live birth shall be charged and remitted pursuant to rule 641—95.6(144).

ITEM 11. Amend subrule **99.16(1)** as follows:

99.16(1) If the birth mother was legally married at the time of conception or birth or at any time during the period between conception and birth, the name of her ~~husband~~ spouse shall be entered on the certificate of live birth as ~~the father~~ a parent pursuant to Iowa Code section 144.13.

ITEM 12. Amend subrule **99.16(3)** as follows:

99.16(3) If the birth mother was legally married at the time of conception or birth or at any time during the period between conception and birth, and her legal ~~husband~~ spouse is not the biological father, the birth mother and the alleged biological father may:

a. No change.

b. Obtain a court order that disestablishes her legal ~~husband~~ spouse as ~~the biological father~~ a parent; and

c. No change.

ITEM 13. Amend subrule **99.17(1)** as follows:

99.17(1) If the birth mother was married at the time of conception or birth or at any time during the period between conception and birth, the name of ~~the husband~~ her spouse shall be entered on the certificate of live birth as ~~the father~~ a parent unless paternity has been determined otherwise by a court of competent jurisdiction pursuant to Iowa Code section 144.13.

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147A.27, the Department of Public Health hereby amends Chapter 134, "Trauma Care Facility Categorization and Verification," Iowa Administrative Code.

The rules in Chapter 134 describe the process and standards for the categorization and verification of hospitals and emergency care facilities as trauma care facilities. These amendments amend the definition of emergency medical care provider by referencing the definition found in 641—131.1(147A). These amendments also update the reference to the "Iowa Trauma System Regional (Level II) Hospital and Emergency Care Facility Categorization Criteria"; the "Iowa Trauma System Area (Level III) Hospital and Emergency Care Facility Categorization Criteria"; and the "Iowa Trauma System Community (Level IV) Hospital and Emergency Care Facility Categorization Criteria" documents to the 2013 editions.

Notice of Intended Action was published in the May 29, 2013, Iowa Administrative Bulletin as **ARC 0772C**. No comments were received. The adopted amendments are identical to those published under Notice of Intended Action.

The State Board of Health adopted these amendments on September 11, 2013.

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

These amendments are intended to implement Iowa Code section 147A.23.

These amendments will become effective on January 6, 2014.

The following amendments are adopted.

ITEM 1. Amend rule **641—134.1(147A)**, definition of "Emergency medical care provider," as follows:

"Emergency medical care provider" means ~~an individual who has been trained to provide emergency and nonemergency medical care at the first responder, EMT-basic, EMT-intermediate, EMT-paramedic, paramedic specialist or other certification levels recognized by the department before 1984 and who has been issued a certificate by the department~~ emergency medical care provider as defined in 641—131.1(147A).

ITEM 2. Amend subrule 134.2(3) as follows:

134.2(3) Adoption by reference.

a. "Resources for Optimal Care of the Injured Patient" (2006) published by the American College of Surgeons Committee on Trauma is incorporated and adopted by reference for Resource (Level I) hospital and emergency care facility categorization criteria. "Iowa Trauma System Regional (Level II) Hospital and Emergency Care Facility Categorization Criteria" (~~2006~~ 2013) is incorporated and adopted by reference for Regional (Level II) hospital and emergency care facility categorization criteria. "Iowa Trauma System Area (Level III) Hospital and Emergency Care Facility Categorization Criteria" (~~2006~~ 2013) is incorporated and adopted by reference for Area (Level III) hospital and emergency care facility categorization criteria. "Iowa Trauma System Community (Level IV) Hospital and Emergency Care Facility Categorization Criteria" (~~2010~~ 2013) is incorporated and adopted by reference for Community (Level IV) hospital and emergency care categorization criteria. For any differences which may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

b. "Iowa Trauma System Regional (Level II) Hospital and Emergency Care Facility Categorization Criteria" (~~2006~~ 2013), "Iowa Trauma System Area (Level III) Hospital and Emergency Care Facility Categorization Criteria" (~~2006~~ 2013) and "Iowa Trauma System Community (Level IV) Hospital and Emergency Care Facility Categorization Criteria"

(~~2010~~ 2013) are available through the Iowa Department of Public Health, Bureau of ~~Emergency Medical Services~~ EMS, Lucas State Office Building, Des Moines, Iowa 50319-0075, or the bureau of EMS Web site (www.idph.state.ia.us/ems).

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147A.27, the Department of Public Health hereby amends Chapter 135, "Trauma Triage and Transfer Protocols," Iowa Administrative Code.

The rules in Chapter 135 establish the out-of-hospital trauma triage destination decision and the intertrauma care facility triage and transfer protocols. These amendments update the references to "Out-of-Hospital Trauma Triage Destination Decision Protocol" (Adult and Pediatric) documents to the 2013 editions and rescind the references to "Inter-Trauma Care Facility Triage and Transfer Protocol" (August 1996).

Notice of Intended Action was published in the May 29, 2013, Iowa Administrative Bulletin as **ARC 0774C**. No comments were received. Senate File 396 passed the 2013 General Assembly and was signed by the Governor on June 20, 2013. One of the provisions of this bill was to repeal the system evaluation quality improvement committee or SEQIC. Changes have been made in ITEMs 1 and 3 to strike references to this committee which will no longer exist.

The State Board of Health adopted these amendments on September 11, 2013.

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

These amendments are intended to implement Iowa Code section 147A.24(4)"e" and 2013 Iowa Acts, Senate File 396, section 57.

These amendments will become effective on February 1, 2014.

The following amendments are adopted.

ITEM 1. Rescind the definitions of "Intertrauma care facility triage and transfer protocol," "SEQIC," and "System evaluation quality improvement committee" in rule **641—135.1(147A)**.

ITEM 2. Amend rule **641—135.1(147A)**, definition of "Out-of-hospital triage and transfer

destination decision protocol," as follows:

"~~*Out-of-hospital triage and transfer destination decision protocol*~~ *Out-of-Hospital Trauma Triage Destination Decision Protocol*" means written directives to assist in the decision making, established and approved by the department, that address the method of transport and trauma care facility destination to be followed by the service program.

ITEM 3. Amend paragraphs **135.2(1)"a"** to **"c"** as follows:

a. Adoption by reference. The "Out-of-Hospital Trauma Triage Destination Decision Protocol" (Adult ~~and Pediatric~~, ~~November 2001~~ 2013) and the ~~"Inter-Trauma Care Facility Triage and Transfer Protocol" (August 1996)~~ "Out-of-Hospital Trauma Triage Destination Decision Protocol" (Pediatric, 2013) are incorporated by reference and adopted as the out-of-hospital trauma triage destination decision ~~and the intertrauma care facility triage and transfer~~ protocols. For any differences which may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

b. The ~~out-of-hospital trauma triage destination decision protocol (Adult and Pediatric) and the intertrauma care facility triage and transfer protocol~~ protocols adopted by reference in paragraph 135.2(1)*"a"* are available through the Iowa Department of Public Health, Bureau of EMS, Lucas State Office Building, Des Moines, Iowa 50319-0075, or the bureau of EMS Web site (www.idph.state.ia.us/ems).

c. Revisions and modifications to the ~~out-of-hospital trauma triage destination decision protocol and the intertrauma care facility triage and transfer protocol~~ protocols adopted by reference in paragraph 135.2(1)*"a"* may be made upon recommendation to the department from ~~the system evaluation quality improvement committee (SEQIC) or~~ the trauma system advisory council (TSAC). Revisions and modifications shall be approved by the department.

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147A.27, the Department of Public Health hereby amends Chapter 137, "Trauma Education and Training," Iowa Administrative Code.

The rules in Chapter 137 describe trauma education and training for Iowa's trauma system. These amendments clarify the trauma education and training requirements and replace the existing tables with written requirements.

Notice of Intended Action was published in the May 29, 2013, Iowa Administrative Bulletin as **ARC 0773C**. Comments were received from members of the state board of health concerning the requirements for residents and consultants to maintain Advanced Trauma Life Support (ATLS) training. After review of the entire rule in context, it appears clear that the only physicians who are required to maintain ATLS are non-emergency medicine boarded physicians identified by the trauma care facility as a trauma team member and who participate directly in the initial resuscitation of the trauma patient. No changes have been made related to this from the noticed rules.

Also, Senate File 396 passed the 2013 General Assembly and was signed by the Governor on June 20, 2013. One of the provisions of this bill was to repeal the System evaluation quality improvement committee or SEQIC. Changes have been made in ITEMs 1 and 10 to strike references to this committee which will no longer exist.

The State Board of Health adopted these amendments on September 11, 2013.

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

These amendments are intended to implement Iowa Code section 147A.27 and 2013 Iowa Acts, Senate File 396, section 57.

These amendments will become effective on November 6, 2013.

The following amendments are adopted.

ITEM 1. Rescind the definitions of "ARNP," "ATLS," "LPN," "PA," "RN," "RTTDC," "SEQIC," *"System evaluation quality improvement committee"* and "TSAC" in rule **641—137.1(147A)**.

ITEM 2. Adopt the following **new** definitions in rule **641—137.1(147A)**:

"Advanced emergency medical technician" or *"AEMT"* means advanced emergency medical technician as defined in 641—131.1(147A).

"Formal education" means education in standardized educational settings with a curriculum.

"Paramedic" means paramedic as defined in 641—131.1(147A).

ITEM 3. Amend the following definitions in rule **641—137.1(147A)**:

"Advanced registered nurse practitioner ~~(ARNP)~~" or *"ARNP"* means a nurse pursuant to 655—7.1(152) with current licensure as a registered nurse in Iowa who is registered in Iowa to practice in an advanced role. The ARNP is prepared for an advanced role by virtue of additional knowledge and skills gained through a formal advanced practice education program of nursing in a specialty area approved by the board. In the advanced role, the nurse practices nursing assessment, intervention, and management within the boundaries of the nurse-client relationship. Advanced nursing practice occurs in a variety of settings within an interdisciplinary health care team, which provide for consultation, collaborative management, or referral. The ARNP may perform selected medically delegated functions when a collaborative practice agreement exists.

"Advanced trauma life support course®" or *"ATLS®"* means a course for physicians with an emphasis on the first hour of initial assessment and primary management of the injured patient,

starting at the point in time of injury continuing through initial assessment, life-saving intervention, reevaluation, stabilization, and transfer when appropriate.

"*Emergency medical care provider*" means ~~an individual who has been trained to provide emergency and nonemergency medical care at the first responder, EMT-basic, EMT-intermediate, EMT-paramedic, paramedic specialist or other certification levels recognized by the department before 1984 and who has been issued a certificate by the department~~ emergency medical care provider as defined in 641—131.1(147A).

"*Emergency medical services*" or "*EMS*" means emergency medical services as defined in 641—132.1(147A).

"*Emergency medical technician*" or "*EMT*" means emergency medical technician as defined in 641—131.1(147A).

"*Emergency medical technician-ambulance*" or "*EMT-A*" means emergency medical technician-ambulance as defined in 641—131.1(147A).

"*Emergency medical technician-basic*" or "*EMT-B*" means emergency medical technician-basic as defined in 641—131.1(147A).

"*Emergency medical technician-defibrillation*" or "*EMT-D*" means emergency medical technician-defibrillation as defined in 641—131.1(147A).

"*Emergency medical technician-intermediate*" or "*EMT-I*" means emergency medical technician-intermediate as defined in 641—131.1(147A).

"*Emergency medical technician-paramedic*" or "*EMT-P*" means emergency medical technician-paramedic as defined in 641—131.1(147A).

"*First responder*" or "*FR*" means first responder as defined in 641—131.1(147A).

"*First responder-defibrillation*" or "*FR-D*" means first responder-defibrillation as

defined in 641—131.1(147A).

"*Licensed practical nurse*" or "*LPN*" means an individual licensed pursuant to Iowa Code chapter 152.

"*Physician assistant*" or "*PA*" means an individual licensed pursuant to Iowa Code chapter 148C.

"*Paramedic specialist*" or "*PS*" means paramedic specialist as defined in 641—131.1(147A).

"*Registered nurse*" or "*RN*" means an individual licensed pursuant to Iowa Code chapter 152.

"*Service program*" or "*service*" means ~~any medical care ambulance service or nontransport service that has received authorization by the department~~ service program as defined in 641—131.2(147A).

"*Trauma system advisory council*" or "*TSAC*" means the council established by the department pursuant to Iowa Code section 147A.24 to advise the department on issues and strategies to achieve optimal trauma care delivery throughout the state, to assist the department in the implementation of an Iowa trauma care plan, to develop criteria for the categorization of all hospitals and emergency care facilities according to their trauma care capabilities, to develop a process for verification of the trauma care capacity of each facility and the issuance of a certificate of verification, to develop standards for medical direction, trauma care, triage and transfer protocols, and trauma registries, to promote public information and education activities for injury prevention, ~~and~~ to review rules adopted under this division, and to make recommendations to the director for changes to further promote optimal trauma care.

ITEM 4. Amend rule 641—137.2(147A), introductory paragraph, as follows:

641—137.2(147A) Initial trauma education for Iowa's trauma system. Initial trauma education ~~(Table 1)~~ is required of physicians, physician assistants, advanced registered nurse practitioners, registered nurses, and licensed practical nurses who are identified or defined as trauma team members by a trauma care facility and who participate directly in the initial resuscitation of the trauma patient.

ITEM 5. Rescind Table 1 in rule **641—137.2(147A)**.

ITEM 6. Amend paragraph **137.2(1)"b"** as follows:

b. Trauma nursing course objectives ~~(1998)~~ (2007) are incorporated and adopted by reference for all trauma care facilities. For any differences which may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

ITEM 7. Adopt the following **new** subrule **137.2(2):**

137.2(2) Specific requirements for initial trauma education for each provider category are as follows:

a. Physicians, PAs and ARNPs: current ATLS® certification.

b. RNs and LPNs: successful completion of trauma nursing course objectives (2007) recommended by TSAC.

ITEM 8. Amend rule 641—137.3(147A), introductory paragraph, as follows:

641—137.3(147A) Continuing trauma education for Iowa's trauma system. Continuing trauma education ~~(Table 2)~~ is required every four years of physicians, physician assistants, advanced registered nurse practitioners, registered nurses, and licensed practical nurses who are identified or defined as trauma team members by a trauma care facility and who participate directly in the initial resuscitation of the trauma patient.

ITEM 9. Rescind Table 2 in rule **641—137.3(147A)**.

ITEM 10. Amend subrule **137.3(1)** as follows:

137.3(1) Topics for all or part of the continuing trauma education hours may be recommended to the department by ~~SEQIC or~~ TSAC based on trauma care system outcomes.

ITEM 11. Amend subrule **137.3(2)** as follows:

137.3(2) General requirements for continuing trauma education.

a. ~~Three-fourths~~ Sixteen hours of the required continuing trauma education hours may be informal, determined and approved by a trauma care facility from any of the following:

1. to 7. No change.

b. ~~One-fourth~~ Eight hours of the required continuing trauma education hours shall be obtained through any formalized continuing education programs.

ITEM 12. Renumber subrule **137.3(3)** as **137.3(4)**.

ITEM 13. Adopt the following **new** subrule **137.3(3)**:

137.3(3) Specific requirements for each provider category are as follows:

a. Physicians: 24 hours of continuing trauma education is required, with a minimum of 8 hours as formal education.

(1) Physicians who treat trauma patients in the emergency department but are not board-certified in emergency medicine must maintain current ATLS® certification.

(2) Surgeons who are not board-certified in general surgery must maintain current ATLS® certification.

(3) The designated trauma service medical director, regardless of board certification, must maintain current ATLS® certification.

b. PA and ARNP: 24 hours of continuing trauma education is required, with a minimum of 8 hours as formal education. Of the 8 hours of formal education, current ATLS® certification is

required.

c. RN and LPN: 16 hours of continuing trauma education is required, with a minimum of 4 hours as formal education based upon the trauma nursing course objectives (2007) recommended by TSAC.

ITEM 14. Amend renumbered subrule 137.3(4) as follows:

137.3(4) Continuing trauma education is required of certified emergency medical care providers every two years as follows:

a. EMR, FR or FR-D: 2 continuing education hours.

b. EMT, EMT-A, EMT-B, EMT-D: 4 continuing education hours.

c. AEMT, EMT-I: 4 continuing education hours.

d. EMT-P, PS, Paramedic: 6 continuing education hours.

The Plumbing and Mechanical Systems Board (PMSB) and the Department conducted a Public Hearing on August 27, 2013. As a result of public comments that were received, the original Notice of Intended Action for Chapter 28 is being rescinded. The concerns expressed during the public comment period were focused on the fees for the master and contractor. Respondents asked that the Department conduct a review of the costs that were associated with processing and supporting the contractor license, master license and journey license. After the review of costs was completed, it was determined that the new proposed fees align better with the costs occurred in the PMSB office.

The last change in Chapter 28 was an oversight in not including "contractor" in 28.1(11)a. There is a need to expand the 30% reduction in fee that is allowed for those individuals who purchase more than one active master, journey, and/or contractor license in a single transaction.

PUBLIC HEALTH DEPARTMENT[641]

Notice of Termination

Pursuant to the authority of Iowa Code sections 2013 Iowa Acts, Senate File 427, section 35, the Department of Public Health terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on August 7, 2013, as **ARC 0935C**, amending Chapter 28, "Plumbing and Mechanical Systems Board—Licensure Fees," Iowa Administrative Code.

The Notice proposed to amend Chapter 28 by identifying the fees associated with apprentice, journey and master licenses, medical gas piping certificates, inactive licenses, contractor licenses, and specialty licenses. In addition, the Notice proposed all licenses are issued for a period of three years and until June 29, 2017, those renewing for less than three years would have their license fees prorated using a one-sixth deduction for each six-month period. Late fees and requirements for lapsed licenses were also included. A fee for converting an HVAC-refrigeration or hydronics license to a mechanical license was also included.

The Department is terminating the rule making commenced in **ARC 0935C** and will renotice the proposed rules to incorporate different fee amounts and further clarify language related to the fees.

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Pursuant to the authority of 2013 Iowa Acts, Senate File 427, section 35, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 28, "Plumbing and Mechanical Systems Board—Licensure Fees," Iowa Administrative Code.

These amendments are necessary to implement 2013 Iowa Acts, Senate File 427, which became effective upon enactment on April 26, 2013, by operation of section 36 of the senate file. The proposed amendments identify the licensee fees associated with apprentice, journey, master, medical gas piping certificate, inactive license, contractor, and specialty licenses. The fees are applicable to initial licenses, reciprocal licenses, and renewal licenses. In addition, all licenses are issued for a period of three years and until June 29, 2017, those renewing for less than three years will be prorated using a one-sixth deduction for each six-month period. Late fees and requirements for lapsed licenses are also included. A fee for converting an HVAC-refrigeration or hydronics license to a mechanical license is also included.

Any interested person may make written suggestions or comments on these amendments on or before October 22, 2013. Written materials should be directed to Cynthia Houlson, Plumbing and Mechanical Systems Board, 321 E. 12th Street, Des Moines, Iowa 50319-0075; fax (515)281-6114; e-mail cindy.houlson@idph.iowa.gov.

There will be a public hearing on October 22, 2013, from 11:30 a.m. to 12:30 p.m., at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. This hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

Public Library

529 Pierce Street

Sioux City

Crestwood High School

1000 4th Avenue East

Cresco

Public Library, Meeting Room C

415 Commercial Street

Waterloo

Ottumwa Regional Health Center

1001 E. Pennsylvania

Ottumwa

Spirit Lake High School

2701 Hill Avenue

Spirit Lake

Public Library Information Ctr., Kelinson Rm.

2950 Learning Campus Drive

Bettendorf

Lucas State Office Building, Sixth Floor

321 E. 12th Street

Des Moines

Iowa Western Community College – 2

923 East Washington

Clarinda

Burlington High School

421 Terrace Drive

Burlington

Any persons who intend to attend a public hearing and have special requirements, such as hearing or mobility impairments, should contact the Plumbing and Mechanical Systems Board at the above address and advise staff of specific needs.

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

These amendments are intended to implement Iowa Code section 105.9 as amended by 2013 Iowa Acts, Senate File 427.

The following amendments are proposed.

ITEM 1. Amend subrule 28.1(1) as follows:

28.1(1) ~~License fee for~~ Fees for three-year initial licenses are as follows:

a. An apprentice license as defined in 641—subrule 29.2(1) is $50.

b. A journey license as defined in 641—subrule 29.2(2) is ~~$50~~ $180.

c. A master license as defined in 641—subrule 29.2(3) is ~~$125~~ $240.

d. A medical gas pipe certificate as defined in 641—29.3(105) is ~~$50~~ $75.

e. An inactive license as defined in 641—subrules 29.2(5) and 29.2(6) is $50.

f. A contractor license as defined in 641—subrule 29.2(4) is ~~$150~~ $250.

g. A special restricted license as defined in 641—subrules 29.2(8), 29.2(9), 29.2(10), and

29.2(11) is $50.

h. All initial licenses issued for a period less than three years shall be prorated using a one-sixth deduction for each six-month period.

ITEM 2. Amend subrule 28.1(2) as follows:

28.1(2) ~~Reciprocal license fee for~~ Fees for three-year reciprocal licenses are as follows:

a. An apprentice license as defined in 641—subrule 29.2(1) is $50.

b. A journey license as defined in 641—subrule 29.2(2) is ~~$50~~ $180.

c. A master license as defined in 641—subrule 29.2(3) is ~~$125~~ $240.

d. All reciprocal licenses issued for a period of less than three years shall be prorated using a one-sixth deduction for each six-month period.

ITEM 3. Amend subrule 28.1(3) as follows:

28.1(3) ~~Renewal license fee for~~ Fees for renewal of licenses are as follows:

a. An apprentice license as defined in 641—subrule 29.2(1) is $50.

b. A journey license as defined in 641—subrule 29.2(2) is ~~$50~~ $180.

c. A master license as defined in 641—subrule 29.2(3) is ~~$125~~ 240.

d. A medical gas pipe certificate as defined in 641—29.3(105) is ~~$50~~ $75.

e. An inactive license as defined in 641—subrules 29.2(5) and 29.2(6) is $50.

f. A contractor license as defined in 641—subrule 29.2(4) is ~~$150~~ $250.

g. A special restricted license as defined in 641—subrules 29.2(8), 29.2(9), 29.2(10), and 29.2(11) is $50.

h. ~~The renewal fee shall be waived for all licenses renewed from January 1, 2011, through December 31, 2012. However, if applicable, late fees as set forth in subrule 28.1(5) and paper application fees as set forth in subrule 28.1(10) will be applied.~~ Through June 29, 2017, all

licenses renewed for a period less than three years shall be prorated using a one-sixth deduction for each six-month period.

ITEM 4. Amend subrule 28.1(5) as follows:

28.1(5) A late fee for failure to renew before expiration is determined as follows:

a. ~~A~~ Prior to July 1, 2017, a licensee who allows a license to lapse for 30 days or less may reinstate and renew the license with payment of the appropriate renewal fee and without payment of a late fee. Beginning July 1, 2017, a licensee who does not timely renew but renews a license on or before the following July 31 may reinstate and renew the license upon payment of the appropriate renewal fee and without payment of a late fee.

b. ~~A~~ Prior to July 1, 2017, a licensee who allows a license to lapse for more than 30 days but less than 60 days may reinstate and renew the license without examination upon payment of a $60 late fee and the appropriate renewal of license fee. Beginning July 1, 2017, a licensee who does not timely renew but renews a license between the following August 1 and August 31 may reinstate and renew the license without examination upon payment of a $60 late fee and the appropriate renewal of license fee.

c. ~~A~~ Prior to July 1, 2017, a licensee who allows a license to lapse for more than 60 days but not more than 365 days may reinstate and renew the license without examination upon payment of a $100 late fee and the appropriate renewal of license fee. Beginning July 1, 2017, a licensee who does not timely renew but renews a license after the following August 31 and on or before the following June 30 may reinstate and renew the license without examination upon payment of a $100 late fee and the appropriate renewal of license fee. ~~A licensee whose license has lapsed for more than 60 days may not work as a plumbing or mechanical professional or contractor in Iowa until the license is renewed. A licensee who works as a plumbing or~~

~~mechanical professional under a license that has lapsed more than 60 days, including under a special restricted license; works as a geothermal heat pump installer with a lapsed license; or operates as a contractor in the state of Iowa with a lapsed license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code chapter 105, criminal sanctions pursuant to Iowa Code chapter 105, and other available legal remedies.~~

ITEM 5. Amend subrule 28.1(11) as follows:

28.1(11) Combined license.

a. For purposes of this subrule, "combined license" shall mean more than one active master, contractor, or journeyperson license ~~under subrules 28.1(1) through 28.1(3)~~ in one or multiple disciplines held by the same individual.

b. A license fee for a combined license shall be the sum total of each of the separate license fees as set forth in subrules 28.1(1) through 28.1(3) reduced by 30 percent.

c. In order to be eligible for the combined license fee reduction, all individual licenses must be purchased in a single transaction.

ITEM 6. Adopt the following **new** subrule 28.1(12):

28.1(12) The fee for converting an HVAC-refrigeration or hydronics license to a mechanical license is $50. This fee shall not apply at the time of reissue.

ITEM 7. Amend **641—Chapter 28**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter 105~~ section 105.9 as amended by ~~2011~~ 2013 Iowa Acts, ~~House File 392~~ Senate File 427 ~~, and chapter 272C~~.

CHAPTER 11

HUMAN IMMUNODEFICIENCY SYNDROME (HIV) INFECTION AND ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

~~FINANCIAL ASSISTANCE~~

~~TO ELIGIBLE HIV-INFECTED PATIENTS~~

~~Rescinded IAB 12/8/93, effective 1/12/94~~

641—11.1 to **11.~~15~~16** Reserved.

~~CERTIFICATION OF LABORATORIES~~

~~FOR HIV TESTING~~

~~**641—11.16(141) Purpose.** To describe the certification procedures and standards for laboratories that desire to perform HIV testing services.~~

641—11.17(141A) Definitions. For the purpose of rules 641—11.16(139A,141A) to 11.~~3~~74(~~141~~915), the following definitions shall apply:

~~*"AAB"* means American Association of Bioanalysts.~~

~~*"AABB"* means American Association of Blood Banks.~~

"AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

"AIDS-related condition" means any condition resulting from HIV infection that meets the definition of AIDS as established by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

~~*"AOA"* means American Osteopathic Association.~~

"Blood bank" means a facility for the collection, processing, or storage of human blood or blood derivatives, or from which or by means of which human blood or blood derivatives are

distributed or otherwise made available.

~~*"CAP"* means College of American Pathologists.~~

"*CDC"* means Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

"*CLIA"* means Clinical ~~Laboratories~~ Laboratory Improvement ~~Act~~ Amendments as administered by ~~HCFA~~ the Centers for Medicare & Medicaid Services of the United States Department of Health and Human Services for HIV testing.

"*Clinical laboratory"* means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

"~~*Confirmatory*~~ *Confirmed positive test"* means ~~an additional more specific test designed to validate the results of a screening test~~ a reactive result or detectable quantity on any HIV-related test, including an antibody test, an antigen test, a culture, a nucleic acid amplification test, or other test or combination of tests, that is considered to be confirmatory according to prevailing medical technology and algorithms or guidance from CDC. When the confirmed positive test involves more than one test, all test results should be included in any reports to the department.

"*Department"* means Iowa department of public health.

"Director of a plasma center, blood bank, clinical laboratory, or public health laboratory" means the person responsible for direction and operation of the facility, the medical director, or the person designated by the director or medical director to ensure compliance with applicable regulations and requirements.

"*Emergency medical services personnel"* means emergency medical care provider as

defined by 641 – 131.1.

~~*"FDA"* means Food and Drug Administration.~~

~~*"HCFA"* means Health Care Financing Administration.~~

"Health care provider" means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, podiatry, nursing, dentistry, or optometry, or licensed as a physician assistant, dental hygienist, or acupuncturist.

"*HIV*" means the "human immunodeficiency virus~~.~~" identified as the causative agent of AIDS.

"HIV infection" means having acquired the human immunodeficiency virus.

"*HIV-related testi~~ng~~*" means ~~laboratory analysis of a specimen for the purpose of detecting HIV infection~~ a diagnostic test conducted by a laboratory approved pursuant to CLIA for determining the presence of HIV or antibodies to HIV.

~~*"JCAHO"* means Joint Commission on Accreditation of Healthcare Organizations.~~

"*Laboratory*" means a clinical or public health laboratory, a plasma center, or a blood bank inside or outside the boundaries of Iowa.

~~*"Medicare"* means Medicare laboratories certified by HCFA under 42 CFR 482.27, effective September 15, 1986, (Conditions of Participation for Hospitals) or 42 CFR 405.1310 et seq., effective January 1, 1966 (Conditions for Coverage of Services of Independent Laboratories).~~

"*Physician*" means a person currently licensed pursuant to Iowa Code chapter~~s~~ 148~~, 150 or 150A~~.

"Plasma center" means a facility that conducts plasmapheresis.

"Plasmapheresis" means the removal of blood from a human being to obtain plasma

with the subsequent reinfusion of the remaining formed elements into the donor, but excludes such a procedure performed for the purpose of improving the health of the donor.

"Public health laboratory" means a laboratory operated by an agency of city, county or state government for the purpose~~s~~ of supporting disease control activities.

~~*"Screening test"* means the initial test performed to detect antibodies to HIV.~~

~~*"Specimen"* means a human body fluid or tissue sample.~~

"Sexually transmitted disease or infection" means "sexually transmitted disease or infection" as defined in 641—1.1(139A).

~~**641—11.18 (141) Responsibilities of the department.**~~

~~**11.18(1)** The department shall consider for certification those laboratories that desire to perform HIV testing services.~~

~~**11.18(2)** An application package is available from the Iowa Department of Public Health, Division of Health Protection, Lucas State Office Building, Des Moines, Iowa 50319-0075.~~

~~**11.18(3)** The application package shall include:~~

~~*a.* A copy of these rules, and~~

~~*b.* An "Application to Perform HIV Testing."~~

~~**11.18(4)** To determine laboratory compliance with the standards established pursuant to these rules, the department, at the department's discretion, may conduct periodic inspections of:~~

~~*a.* Laboratory facilities,~~

~~*b.* Methods,~~

~~*c.* Procedures,~~

~~*d.* Materials (including reagents),~~

~~*e.* Staff, and~~

~~*f.* Equipment.~~

~~NOTE: The department may delegate this authority to the State Hygienic Laboratory pursuant to the provisions of Iowa Code chapter 141.~~

~~**11.18(5)** The department shall issue a written notice for each certified laboratory that clearly identifies the laboratory and the certification period. The notice shall also specify whether the laboratory is certified to perform screening only, or can perform both screening and confirmatory HIV testing services.~~

~~**11.18(6)** The department shall maintain and furnish upon request a current list of all HIV testing laboratories certified by the department. The list shall also specify whether the laboratories are certified to perform screening only, or can perform both screening and confirmatory HIV testing services.~~

~~**641—11.19(141) Initial application and certification requirements.**~~

~~**11.19(1)** Laboratories desiring to perform HIV testing services shall apply to the department.~~

~~**11.19(2)** Laboratories requesting certification to perform HIV testing shall provide to the department:~~

~~*a.* A completed "Application to Perform HIV Testing."~~

~~*b.* Proof of current accreditation, certification or licensure by AOA, CAP, CLIA, FDA, JCAHO or Medicare.~~

~~*c.* A copy of the documents that describe the interpretive basis for positive, negative and indeterminate screening and confirmatory test results.~~

~~NOTE: Recommended guidelines for interpreting test results are those published by the Committee on HIV Testing, Association of State and Territorial Public Health Laboratory~~

~~Directors, 6728 Old McLean Village Drive, McLean, Virginia 22101, or other guidelines approved by the department.~~

~~*d.* Proof of current enrollment in an HIV proficiency testing program. Proficiency testing programs include, but are not limited to, those administered by AAB, AABB, CAP or CDC.~~

~~**11.19(3)** Acceptable performance must be maintained during the 12-month certification period in all appropriate areas of HIV proficiency testing. Laboratories shall send copies of their proficiency testing results to the State Hygienic Laboratory on a quarterly basis for the purpose of ongoing monitoring and evaluation of performance. The address is: State Hygienic Laboratory, University of Iowa, Oakdale Hall, Iowa City, Iowa 52242.~~

~~**11.19(4)** Acceptable proficiency testing performance is stipulated below:~~

~~*a.* For laboratories providing screening tests, four out of five survey specimens must be interpreted accurately with a minimum of five survey specimens analyzed per quarter.~~

~~*b.* For laboratories providing confirmatory tests, no unacceptable results are permitted for five out of five survey specimens with a minimum of five survey specimens analyzed per quarter.~~

~~**641—11.20** Reserved.~~

~~**641—11.21(141) Renewal of laboratory certification.** Certification to continue HIV testing must be renewed annually. To renew certification, laboratories must submit the following information to the department at least 60 days before their current certification expires:~~

~~1. Proof of continued accreditation, certification or licensure by AOA, CAP, CLIA, FDA, JCAHO or Medicare.~~

~~2. Proof of continued enrollment in a recognized HIV proficiency testing program.~~

~~**641—11.22(141) Reinstatement of certification.** A laboratory whose certification has been~~

~~limited, suspended, or revoked may be reinstated, provided the department receives (within 90 days) documentation that corrective actions have been taken that satisfy the reason(s) for limitation, suspension, or revocation.~~

~~641—11.23(141) Application fees and inspection costs.~~

~~11.23(1)~~ ~~Each laboratory at the time of application shall remit to the department the appropriate application fee. All fees shall be made payable to the "Iowa Department of Public Health" as follows:~~

~~*a. Annual certification.* A fee of $100 is required the first time a laboratory applies for annual certification.~~

~~*b. Renewal.* A fee of $100 is required for laboratories desiring to renew their annual certification.~~

~~*c. Reinstatement.* A fee of $100 is required for laboratories desiring to reinstate their certification. If, however, the reinstatement occurs with less than 2 months remaining in the 12-month certification period, the $100 fee shall be waived.~~

~~NOTE: A reinstatement does not alter a laboratory's previously established certification period.~~

~~11.23(2)~~ ~~Inspection costs. Reimbursement for actual expenses shall be assessed only to those laboratories where an on-site inspection is considered necessary. Expenses shall be reimbursed to the State Hygienic Laboratory for the actual costs incurred for personnel time and travel expenses consistent with state of Iowa travel reimbursement limitations.~~

~~641—11.24(141) Requirements for laboratory personnel.~~

~~11.24(1)~~ ~~Laboratory directors shall meet the qualifications specified by AOA, CAP, CLIA, FDA, JCAHO or Medicare.~~

~~11.24(2)~~ ~~Laboratory supervisors shall meet the qualifications specified by CLIA or~~

~~Medicare.~~

~~**641—11.25(141) Laboratory procedures and procedure manual requirements.**~~

~~**11.25(1)** All laboratories shall have written procedures and a procedure manual which encompasses all current aspects of the HIV testing process including, but not limited to:~~

~~*a.* Specimen acquisition.~~

~~*b.* Specimen and report security.~~

~~*c.* Test performance.~~

~~*d.* Reporting of results.~~

~~*e.* Confirmation of positive test results.~~

~~*f.* Confidentiality.~~

~~**11.25(2)** Procedure manuals shall be readily available for review during any on-site inspection.~~

~~**11.25(3)** Positive and negative controls shall be used each time a test is performed.~~

~~**11.25(4)** Laboratories shall develop criteria for the rejection of specimens.~~

641—11.18 to 11.25 Reserved.

~~**641—11.26(141) Notification of certain changes during a certification period.** Any of the following changes that occur during a certification period shall be reported to the department within ten working days from the date the changes take place:~~

~~1. Change in accreditation, certification or licensure.~~

~~2. Change in address.~~

~~3. Change in method used for screening or confirmatory tests.~~

~~4. Change in laboratory used to perform confirmatory tests.~~

~~5. Change in laboratory director.~~

~~6. Change in laboratory ownership.~~

~~**641—11.27(141) Testing methodologies and confirmation of positive test results.**~~

~~**11.27(1)** Screening tests. The screening test shall be the enzyme-linked immunosorbent assay (ELISA) test or an equivalent test as determined by the department.~~

~~**11.27(2)** Confirmatory tests. Specimens which are reactive as a result of the screening test shall be confirmed by the enzyme-linked immunoelectrotransfer blot (Western blot) test or an equivalent test as determined by the department before being reported by the laboratory to the department as a confirmed positive test result.~~

~~**11.27(3)** Specimens requiring confirmation that cannot be tested by the laboratory performing the screening test shall be referred to a laboratory capable of performing confirmatory testing which has been certified by the department.~~

~~**11.27(4)** Confirmed positive specimens shall be retained at or below minus 20 degrees centigrade for at least six months.~~

~~**641—11.28(141) Record maintenance and documentation of the testing process.** The following information shall be retained for at least two years:~~

~~1. Test results of all specimens.~~

~~2. Relevant quality control documentation that includes the identification and lot number of the kit or reagents used for each batch.~~

641—11.26(141A) HIV testing – obtaining consent – voluntary HIV-related tests for adults who are not pregnant.

11.26(1) Prior to undergoing a voluntary HIV-related test, the health care provider requesting the test shall make information concerning HIV testing and where to obtain additional information regarding HIV infection and risk reduction available to the subject of the test.

11.26(2) All adults who are able must give consent for an HIV test, but a separate written consent solely for the purpose of HIV testing shall not be required. If an individual signs a general consent form for the performance of medical tests or procedures, the signing of an additional consent form for the purpose of consenting to an HIV-related test is not required during the time in which the general consent form is in effect. If an individual has not signed a general consent form for the performance of medical tests and procedures, or if the consent form is no longer in effect, a health care provider shall obtain oral or written consent prior to performing the HIV-related test.

11.26(3) If an individual is unable to give consent, the individual's legal guardian may provide oral or written consent. If the individual's legal guardian cannot be located or is unavailable, a health care provider may authorize the HIV-related test when the test results are necessary for diagnostic purposes to provide appropriate urgent medical care.

11.26(4) Once an adult has been informed of a confirmed positive HIV-related test, no HIV-specific consent for medical procedures and tests shall be required for subsequent medical procedures and tests involved in the care or treatment of the adult with HIV infection.

641—11.27(139A, 141A) HIV testing – obtaining consent – voluntary HIV-related tests for minors who are not pregnant.

11.27(1) A minor shall have the legal capacity to act and give consent to the provision of medical care or services for the prevention, diagnosis, or treatment of HIV by a hospital, clinic, or health care provider. Consent shall not be subject to later disaffirmance by reason of such minority. The consent of another person, including but not limited to the consent of a spouse, parent, custodian, or guardian, shall not be necessary.

11.27(2) Prior to undergoing a voluntary HIV-related test, the health care provider

requesting the test shall make information concerning HIV testing and where to obtain additional information regarding HIV infection and risk reduction available to the subject of the test.

11.27(3) A minor shall be informed prior to testing that, upon confirmation according to prevailing medical technology of a positive HIV-related test result, the minor's legal guardian is required to be informed by the testing facility. Testing facilities where minors are tested shall have available a program to notify the legal guardian of a newly diagnosed minor. The notification process shall emphasize the need for family support and shall assist in making available the resources necessary to accomplish that goal. However, a testing facility which is precluded by federal statute, regulation, or CDC guidelines from informing the legal guardian is exempt from the notification.

11.27(4) Prior to the test, a minor shall give written consent for performance of the HIV-related test and to the notification of the legal guardian should the test be confirmed as positive.

11.27(5) If a minor is unable to provide consent for an HIV-related test, the minor's legal guardian may provide oral or written consent for the minor. If the minor's legal guardian cannot be located or is unavailable, a health care provider may authorize the HIV-related test when the test results are necessary for diagnostic purposes to provide appropriate urgent medical care.

11.27(6) Once a minor has been informed of a confirmed positive HIV-related test and the legal guardian has been notified, no HIV-specific consent for medical procedures and tests shall be required for subsequent medical procedures and tests involved in the care or treatment of a minor with HIV infection.

641—11.28(141A) HIV testing – obtaining consent – voluntary HIV-related tests for pregnant women.

11.28(1) All pregnant women, including minors, shall be tested for HIV infection as part

of the routine panel of prenatal tests. The health care provider requesting the test shall notify a pregnant woman that HIV screening is recommended for all prenatal patients and that the pregnant woman will receive an HIV test as part of the routine panel of prenatal tests unless the pregnant woman objects to the test. No written or oral consent shall be required.

11.28(2) The testing shall occur as early as possible during each pregnancy.

11,28(3) The health care provider requesting the test shall make information about HIV prevention, risk reduction, and treatment opportunities to reduce the possible transmission of HIV to a fetus available to all pregnant women.

11.28(4) A pregnant women who is a minor shall be informed prior to testing that, upon confirmation according to prevailing medical technology of a positive HIV-related test result, the minor's legal guardian is required to be informed by the testing facility. Testing facilities where minors are tested shall have available a program to notify the legal guardian of a newly diagnosed minor. The notification process shall emphasize the need for family support and shall assist in making available the resources necessary to accomplish that goal. However, a testing facility which is precluded by federal statute, regulation, or CDC guidelines from informing the legal guardian is exempt from the notification.

11.28(5) If a pregnant woman objects to and declines the test, the decision shall be documented by the health care provider in the pregnant women's medical record. A health care provider shall encourage women who decline the test early in prenatal care to be tested at a subsequent visit.

11.28(6) Once a pregnant woman has been informed of a confirmed positive HIV-related test and, if the pregnant woman is a minor, the legal guardian has been notified, no HIV-specific consent for medical procedures and tests shall be required for subsequent medical procedures

and tests involved in the care or treatment of a pregnant woman with HIV infection.

New section

641—11.2X(141A) HIV test results – post-test counseling

11.2X(1) At any time that the subject of an HIV-related test is informed of confirmed positive test results, counseling concerning the emotional and physical health effects of HIV infection shall be initiated. Particular attention shall be given to explaining the need for the precautions necessary to avoid transmitting the virus. The subject shall be given information concerning where to obtain additional counseling. If a legal guardian of the subject of the test provided consent to the test, the counseling shall be given to the legal guardian.

11.2X(2) Post-test counseling requirements do not apply to any of the following situations:

a. The performance of an HIV-related test by a health care provider or health facility when the health care provider or health facility procures, processes, distributes, or uses a human body part donated for a purpose specified under the revised uniform anatomical gift Act as provided in chapter 142C, or semen provided prior to July 1, 1988, for the purpose of artificial insemination, or donations of blood, and such test is necessary to ensure medical acceptability of such gift or semen for the purposes intended.

b. A person engaged in the business of insurance who is subject to section 505.15.

c. The performance of an HIV-related test by a health care provider or health facility when the subject of the test is deceased and a documented significant exposure has occurred.

d. The performance of an HIV-related test by a health care provider or health facility when the subject of the test is unable to provide consent and the health care provider or health care facility provided consent for the patient.

641—11.29(141A) Reporting of ~~test results~~ diagnoses and HIV-related tests, events, and conditions to the department.

~~**11.29(1)** Each laboratory shall ensure that:~~

~~*a.* Written procedures have been established for reporting test results and release of information.~~

~~*b.* All test results are reviewed by the director, or a qualified designee, prior to reporting.~~

~~*c.* All test results are clearly identified and that appropriate interpretive information is included with the HIV test report.~~

11.29(1) The following constitute reportable events related to HIV infection:

a. A test result indicating HIV infection, including:

(1) Confirmed positive results on any HIV-related test or combination of tests, including antibody tests, antigen tests, cultures, and nucleic acid amplification tests.

(2) A positive result or report of a detectable quantity on any other HIV detection (non-antibody) tests, and results of all viral loads, including non-detectable levels.

b. AIDS and AIDS-related conditions, including all levels of CD4+ T-lymphocyte counts.

c. Birth of an infant to an HIV-infected mother (perinatal exposure) or any (positive, negative, or undetectable) non-antibody detection test (antigen test, viral culture, viral load, or qualitative PCR detection test) on an infant less than or equal to 18 months of age.

d. Death resulting from an AIDS-related condition, or death of a person with HIV infection.

11.29(2) Within seven days of the receipt of a person's confirmed positive test result indicating HIV infection, the director of a ~~blood~~ plasma center, blood bank, clinical laboratory or

public health laboratory that performed the test or that requested the confirmatory test shall make a report to the department on a form provided by the department. ~~The report shall include:~~

~~*a.* The person's age, race, marital status and other information deemed necessary by the department for epidemiological purposes or as much of that information as the director may possess, but shall not include the person's name or address without the written authorization of the person.~~

~~*b.* The name, address and telephone number of the blood plasma center, blood bank, clinical laboratory or public health laboratory that performed or requested the test.~~

~~*c.* The address of the physician or other health care practitioner that requested the test. This paragraph, however, shall not apply to a blood plasma center or blood bank.~~

~~NOTE: Iowa Code requires the performance of a confirmatory test for any screening test result which is reactive. However, only confirmatory test results that are positive are to be reported to the department.~~

11.29(3) Within seven days of the receipt of a test result indicating HIV infection, which has been confirmed as positive according to prevailing medical technology, or immediately after the initial examination or treatment of an individual infected with HIV, the physician or other health care provider at whose request the test was performed or who performed the initial examination or treatment shall make a report to the department on a form provided by the department.

11.29(4) Within seven days of diagnosing a person as having AIDS or an AIDS-related condition, the diagnosing physician shall make a report to the department on a form provided by the department.

11.29(5) Within seven days of the death of a person with HIV infection, the attending

physician shall make a report to the department on a form provided by the department.

11.29(6) Within seven days of the birth of an infant to an HIV-infected mother or a receipt of a laboratory result (positive, negative, or undetectable) of a non-antibody detection test (antigen test, viral culture, viral load, or qualitative PCR detection test) on an infant less than or equal to 18 months of age, the attending physician shall make a report to the department on a form provided by the department.

11.29(7) The report shall include:

a. The patient's name, address, date of birth, gender, race and ethnicity, marital status, and telephone number.

b. The name, address and telephone number of the plasma center, blood bank, clinical laboratory or public health laboratory that performed or requested the test, if a test was performed.

c. The address of the physician or other health care provider that requested the test.

d. If the patient is female, whether the patient is pregnant.

11.29(8) All patients receiving services in the state, regardless of state of residence, shall be reported.

New section

641-11.XX(141A) Penalties.

11.XX(1) An individual who repeatedly fails to file the report required pursuant to these rules is subject to a report being made to the licensing board governing the professional activities of the individual. The department shall notify the individual each time the department determines that the individual has failed to file a required report. The department shall inform the individual in the notification that the individual may provide information to the department to

explain or dispute the failure to report.

11.XX(2) A public, private, or hospital clinical laboratory that repeatedly fails to make the report required under these rules is subject to a civil penalty of not more than one thousand dollars per occurrence. The department shall not impose the penalty without prior written notice and opportunity for hearing.

~~**641—11.30(141) Complaints or noncompliance.**~~

~~**11.30(1)** The department shall accept complaints of alleged problems or noncompliance, provided they relate to the laboratory's HIV testing performance. The complainant shall state in as specific a manner as possible the basis for the complaint. The complaint shall be presented in writing or in person to the Iowa Department of Public Health, Division of Health Protection, Lucas State Office Building, Des Moines, Iowa 50319-0075.~~

~~**11.30(2)** Within 20 working days following the department's receipt of the complaint, the department shall communicate with the laboratory director for initial evaluation of the specific matters alleged in the complaint.~~

~~**11.30(3)** Based upon the nature of the complaint, the department may request technical assistance from the State Hygienic Laboratory in order to properly assess the alleged problem.~~

~~**11.30(4)** The laboratory shall receive a written report of the department's findings relating to the complaint investigation and the complainant shall be informed of any action taken by the department.~~

~~**11.30(5)** Upon a determination by the department that a laboratory has violated these rules, the department may immediately move to limit, suspend, revoke or deny that laboratory's certification.~~

641-11.30(141A) Immunity.

11.30(1) A person making a report in good faith pursuant to these rules is immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of the report.

~~**641—11.31(141) Adverse actions and the appeal process.**~~

~~**11.31(1)** Laboratories shall receive written notice by certified mail, return receipt requested, setting forth the reason(s) for any limitation, suspension, revocation or denial of certification.~~

~~**11.31(2)** The adverse action shall become effective 30 days after the aggrieved party has received the department's notice unless the aggrieved party, within 30 days, gives written notice to the department requesting a hearing. In that event, the notice shall be deemed to be suspended.~~

~~**11.31(3)** Contested cases. The procedures for contested cases, as set out in Iowa Code chapter 17A and the rules adopted by the department in 641—Chapter 173, shall be followed in all cases where proper notice has been made to the department of the intent to formally contest any limitation, suspension, revocation or denial of certification.~~

~~Rules 11.16(141) to 11.31(141) are intended to implement Iowa Code section 141.7~~.

641—11.~~32~~31 to **11.34** Reserved.

TRAINING PROGRAMS

641—11.35(~~141~~135) Purpose. The purpose is to describe ~~what constitutes an approved training program,~~ the required content of ~~acquired immune deficiency syndrome~~ AIDS training programs and to identify the groups of personnel involved.

11.35(1) *Nonemergency personnel.* Within six months of their initial employment, all supervisory and patient care personnel of any agency listed below shall complete a minimum of

two hours of training concerning ~~acquired immune deficiency syndrome~~ AIDS-related conditions and the prevention of HIV infection:

a. A licensed hospice,

b. A homemaker-home health aide provider agency which receives state homemaker-home health aide funds, or

c. An agency which provides respite care services and receives funds.

~~NOTE: New employees shall complete the training within six months of their initial employment. Existing employees shall complete the training on or before January 1, 1989. AIDS education programs conducted on or after January 1, 1987, shall count as satisfying the two-hour requirement when attendance and course content can be verified~~.

11.35(2) *Content.* Training programs must address the following topics:

a. HIV disease processes,

b. Signs and symptoms,

c. Transmission,

d. High-risk activities,

e. Prevention recommendations, and

f. ~~Universal~~ Standard precautions as defined by the CDC and the Occupational Safety and Health Administration of the U.S. Department of Labor. ~~according to the following Morbidity and Mortality Weekly Reports published by the U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333:~~

~~(1) Volume 36, Number 2S, Supplement, dated August 21, 1987, entitled "Recommendations for Prevention of HIV Transmission in Health-Care Settings," and~~

~~(2) Volume 37, Number 24, dated June 24, 1988, entitled "Update: Universal Precautions~~

~~for Prevention of Transmission of Human Immunodeficiency Virus, Hepatitis B Virus, and Other Bloodborne Pathogens in Health-Care Settings.~~"

11.35(3) *Emergency and law enforcement personnel.* All emergency medical services personnel, firefighters, and law enforcement personnel shall complete a minimum of two hours of training concerning ~~acquired immune deficiency syndrome~~ AIDS-related conditions and the prevention of ~~human immunodeficiency virus~~ HIV infection.

11.35(4) *Content.* Training programs must address the following topics:

a. HIV disease processes,

b. Signs and symptoms,

c. Transmission,

d. High-risk activities,

e. Prevention recommendations, and

f. ~~Universal~~ Standard precautions as defined by the CDC and the Occupational Safety and Health Administration of the U.S. Department of Labor. ~~according to the following Morbidity and Mortality Weekly Reports published by the U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333:~~

~~(1) Volume 36, Number 2S, Supplement, dated August 21, 1987, entitled "Recommendations for Prevention of HIV Transmission in Health-Care Settings," and~~

~~(2) Volume 37, Number 24, dated June 24, 1988, entitled "Update: Universal Precautions for Prevention of Transmission of Human Immunodeficiency Virus, Hepatitis B Virus, and Other Bloodborne Pathogens in Health-Care Settings."~~

This rule is intended to implement Iowa Code section~~s~~ 135.11~~, 135.39, 139B.1(2)"*f*" and 141.1 to 141.10~~.

641—11.36 to **11.39** Reserved.

PARTNER NOTIFICATION SERVICES AND DIRECT NOTIFICATION OF AN IDENTIFIABLE THIRD PARTY

641—11.40(139A,141A) Purpose. To establish~~, as a part of the~~ a voluntary partner notification program, to include a procedure to allow a physician or the department to notify an identifiable third party of a patient directly that he or she has been exposed to HIV when the patient will not participate in the voluntary partner notification program ~~for the notification by a physician or the department of an identifiable third party who is a sexual partner of or who shares intravenous equipment with a person who has tested positive for the human immunodeficiency virus~~.

641—11.41(139A,141A) Definitions. For the purpose of rules 641-11.40(139A,141A) to 11.4X(139A,141A) the following definitions shall apply:

"Identifiable third party" means a sexual partner or a person who shares drug injecting equipment with a patient who has been diagnosed with HIV infection.

"*Partner notification*" means services provided to a person who has tested positive for a sexually transmitted disease or infection or to his or her sexual or needle-sharing partners or social contacts. These services include, but are not limited to, counseling about the nature of the disease, modes of transmission, and risk reduction techniques; treatment or linkage to medical care and treatment; assessment for and referral to social or medical services; elicitation of exposed partners' names and contact information; testing for other diseases or conditions; and provision of or referral to other prevention services.

641—11.42(139A,141A) Partner notification services by the department.

11.42(1) The department shall maintain a partner notification program for persons known to have tested positive for sexually transmitted diseases or infections. In administering the

program, the department shall provide for the following:

a. A physician or other health care provider shall encourage a person who tests positive for a sexually transmitted disease or infection to refer for counseling and testing any person with whom the newly diagnosed person has had sexual relations or has shared drug injecting equipment.

b. The physician or other health care provider attending the person may provide to the department any relevant information provided by the person regarding any person with whom the tested person has had sexual relations or has shared drug injecting equipment.

11.42(2) When making contact with partners of a person with a sexually transmitted disease or infection, the department shall not disclose the identity of the person who provided the names of the partners and shall protect the confidentiality of the partners that are contacted.

11.42(3) The department may delegate its partner notification duties under section 11.41(1) for persons who have tested positive for HIV infection to local health authorities unless the authority refuses or neglects to conduct the partner notification program in a manner deemed to be effective by the department.

11.43(4) The department may delegate its partner notification duties under section 11.41(1) for persons who have tested positive for sexually transmitted diseases other than HIV infection to local health authorities or a physician or other health care provider unless the authority or physician or other health care provider refuses or neglects to conduct the partner notification program in a manner deemed to be effective by the department.

11.42(5) In addition to the provisions for partner notification provided under these rules and notwithstanding any provision to the contrary, a county medical examiner or deputy medical examiner performing official duties pursuant to sections 331.801 through 331.805 or the state

medical examiner or deputy medical examiner performing official duties pursuant to chapter 691, who determines through an investigation that a deceased person was infected with HIV, may notify directly, or request that the department notify, the immediate family of the deceased or any person known to have had a significant exposure from the deceased of the finding.

641—11.43(141A) Direct notification of an identifiable third party by a physician or the department.

11.4~~0~~3(1) This procedure shall be used when an HIV-infected person is having continuing contact with a sex or needle-sharing partner who is unaware of the person's infection and ~~only~~ when both of the following situations exist:

a. A physician for the HIV-infected person is of the good faith opinion that the nature of the continuing contact through sexual intercourse or the sharing of ~~intravenous~~ injecting equipment poses an imminent danger of ~~human immunodeficiency virus infection~~ HIV transmission to the third party.

b. When the physician believes in good faith that the HIV-infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program.

11.4~~0~~3(2) ~~A~~ The department or a physician may reveal the identity of a person who has tested positive for ~~the human immunodeficiency virus~~ HIV infection pursuant to this rule only to the extent necessary to protect a third party from the direct threat of transmission. Notification of a person pursuant to this rule shall be made confidentially. Nothing in this rule shall be interpreted to create a duty to warn third parties of the danger of exposure to ~~human immunodeficiency virus~~ HIV through contact with a person who tests positive for ~~the human immunodeficiency virus~~ HIV infection.

11.4~~0~~3(3) When the physician is of the good faith opinion and belief that third-party notification should be performed, notification of a person pursuant to this rule shall be made:

a. Directly by the physician according to the procedures stated in subrules 11.4~~0~~3(4), 11.4~~0~~3(5) and 11.4~~0~~3(10), or

b. By the department at the request of the physician according to subrules 11.4~~0~~3(6) to 11.4~~0~~3(10).

11.4~~0~~3(4) Notification by the physician. Prior to notification of a third party by an infected person's physician, the physician shall make reasonable efforts to inform, in writing, the person who has tested positive for ~~the human immunodeficiency virus~~ HIV infection. The written information shall state that due to the nature of the person's continuing contact through sexual intercourse or the sharing of ~~intravenous~~ injecting equipment with a third party, and the physician's belief that the infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program, the physician is forced to take action to provide notification to the third party. The physician, when reasonably possible, shall provide the following information to the person who has tested positive for ~~the human immunodeficiency virus~~ HIV infection:

a. The nature of the disclosure and the reason for the disclosure.

b. The anticipated date of disclosure.

c. The name of the party or parties to whom disclosure is to be made.

NOTE: Reasonable efforts to inform, in writing, the person who has tested positive for ~~the human immunodeficiency virus~~ HIV infection shall be deemed satisfied when the physician delivers the written notice in person or directs a written notice to the person's last-known address by restricted certified mail, return receipt requested, at least five days prior to the anticipated date of

disclosure to the third party.

11.4~~0~~3(5) When performed by the infected person's physician, notification of the third party and any disclosure concerning the purpose of that notification shall be made in person. However, initial contact with the third party may be made by telephone, mail, or other electronic means to arrange the meeting. ~~The third party may be requested by telephone or by ordinary mail to arrange to meet~~ with the physician at the earliest opportunity to discuss an important health matter. The nature of the health matter to be discussed shall not be revealed in the telephone call, ~~or~~ letter, or other electronic message.

11.4~~0~~3(6) Notification by the department.

a. The physician attending the patient shall provide by telephone to the department any relevant information provided by the person regarding any person with whom the tested person has had sexual relations or has shared drug injecting equipment. The information may include the third party's name, address, telephone number, and any other locating information known to the physician. The department shall use the information in accordance with procedures established for the voluntary partner notification program.

b. Notification of the third party and any disclosure concerning the purpose of that notification shall be made in person. However, initial contact with the third party may be made by telephone, mail, or other electronic means to arrange the meeting with the department representative. The nature of the matter to be discussed shall not be revealed in the telephone call, letter, or other electronic message.

~~When referring to the department, the infected person's physician shall first make reasonable efforts to inform the infected person by delivering a written notice in person or by directing a written notice to the person's last known address by restricted certified mail, return~~

~~receipt requested, at least five days prior to the anticipated date of referral to the department. The notice shall state that due to the nature of the person's continuing contact through sexual intercourse or the sharing of intravenous equipment with a third party, and the physician's belief that the infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program, the physician is forced to take action by requesting that the department notify the third party. The notice shall also state that the following information is being reported to the department for purposes of third-party notification:~~

~~*a*. The infected person's name and address.~~

~~*b*. The third party's name, address, telephone number and any other locating information known to the physician.~~

~~NOTE: A copy of the letter provided to the infected person pursuant to this subrule shall accompany the physician's request for third-party notification by the department.~~

~~**11.40(7)** A physician's request to the department to notify a third party shall be made by certified mail, return receipt requested. The department's address for this purpose is: Iowa Department of Public Health, Division of Disease Prevention, AIDS Prevention Program, Lucas State Office Building, Des Moines, Iowa 50319-0075. The request shall include:~~

~~*a*. The infected person's name and address.~~

~~*b*. The third party's name, address, telephone number and any other locating information known to the physician.~~

~~*c*. A statement of the facts and circumstances which satisfy the requirements of subrule 11.40(1).~~

~~**11.40(8)** It shall be the department's responsibility prior to making a third-party~~

~~notification, when reasonably possible, to provide, in writing, the following information to the person who has tested positive for the human immunodeficiency virus infection:~~

~~*a*. The nature of the disclosure and the reason for the disclosure.~~

~~*b*. The anticipated date of disclosure.~~

~~*c*. The name of the third party or parties to whom disclosure is to be made.~~

~~NOTE: Reasonable efforts to inform, in writing, the person who has tested positive for the human immunodeficiency virus infection shall be deemed satisfied when the department directs a written notice to the person's last-known address by restricted certified mail, return receipt requested, at least five days prior to the anticipated date of disclosure to the third party.~~

~~**11.40(9)** When performed by the department, notification of the third party and any disclosure concerning the purpose of that notification shall be made in person. The third party may be requested by telephone or by restricted certified mail, return receipt requested, to arrange to meet with a department representative at the earliest opportunity to discuss an important health matter. The nature of the matter to be discussed shall not be revealed in the telephone call or letter.~~

11.40~~3~~(~~10~~7) Confidentiality. The infected person's physician and the department shall protect the confidentiality of the third party and the infected person. The identity of the infected person shall remain confidential unless it is necessary to reveal it to the third party so that the third party may avoid exposure to ~~the human immunodeficiency virus infection~~ HIV. If the identity of the infected person is revealed, the third party shall be presented with a statement in writing at the time of disclosure which includes the following or substantially similar language: "Confidential information revealing the identity of a person infected with ~~the human immunodeficiency virus~~ HIV has been disclosed to you. The confidentiality of this information

is protected by state law. State law prohibits you from making any further disclosure of the information without the specific written consent of the person to whom it pertains. Any breach of the required confidential treatment of this information subjects you to legal action and civil liability for monetary damages. A general authorization for the release of medical or other information is not sufficient for this purpose."

11.43(8) Immunity. A health care provider attending a person who tests positive for HIV infection has no duty to disclose to or to warn third parties of the dangers of exposure to HIV through contact with that person and is immune from any liability, civil or criminal, for failure to disclose to or warn third parties of the condition of that person.

This rule is intended to implement Iowa Code section~~s~~ ~~135.11, 135.39, 139B.1(2)"*f*,"~~ 141A.~~1~~5 ~~to 141.10 and 141.22A(17)~~.

641—~~11.41 to~~ 11.44 Reserved.

~~EMERGENCY~~ CARE PROVIDERS

EXPOSED TO CONTAGIOUS OR

INFECTIOUS DISEASES

641—11.45(139~~B~~A~~,141~~) Purpose. The purpose of these rules is to implement Iowa Code section~~s~~ 139A.19~~B.1(2)"*f*" and 141.22A(17)~~, relating to ~~emergency~~ care providers who are exposed to contagious or infectious diseases.

641—11.46(139~~B~~A~~,141~~) Definitions. For the purpose of rules 641—11.45(139A~~B,141~~) to 11.53(139A~~B,141~~) the following definitions shall apply:

"AIDS" means acquired ~~immunodeficiency~~ immune deficiency syndrome as defined by CDC.

"Blood-borne viral hepatitis" means hepatitis B or hepatitis C.

"Care provider" means an individual who is trained and authorized by federal or state law to provide health care services or services of any kind in the course of the individual's official duties, for compensation or in a voluntary capacity, who is a health care provider, emergency medical care provider as defined in section 147A.1, fire fighter, or peace officer. "Care provider" also means an individual who renders emergency care or assistance in an emergency or due to an accident as described in section 613.17.

"CDC" means Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

"Certification of a significant exposure report" means the determination by an authorized infection preventionist, occupational health professional, or other personnel trained in infection control or infectious disease medicine and designated by a facility to review significant exposure reports that the incident described by the exposed care provider meets the definition of a significant exposure as defined in rule 11.46 (139A).

"Contagious or infectious disease" means blood-borne viral hepatitis, meningococcal disease, AIDS or HIV, tuberculosis, and any other disease ~~with the exception of AIDS or HIV infection as defined in Iowa Code section 141.21,~~ determined to be life-threatening to a person exposed to the disease as established by the department based upon a determination by the state epidemiologist and in accordance with guidelines from CDC ~~of the Centers for Disease Control of the U.S. Department of Health and Human Services~~.

~~*"Department"* means the Iowa department of public health.~~

"Designated ~~officer~~ representative" means a person who is designated by a department, agency, division, or service organization to act on behalf of the exposed care provider as ~~an infection control liaison officer~~ a liaison with the facility that received the source patient when

the exposure occurred in the field or during patient transport.

~~*"Emergency care provider"* means a person who renders direct emergency aid without compensation or a person who is trained and authorized by federal or state law to provide emergency medical assistance or treatment, for compensation or in a voluntary capacity including, but not limited to, all of the following:~~

~~1. A basic emergency medical care provider as defined in Iowa Code section 147.1.~~

~~2. An advanced emergency medical care provider as defined in Iowa Code section 147A.1.~~

~~3. A health care provider as defined in this rule.~~

~~4. A firefighter.~~

~~5. A peace officer.~~

~~6. Any other person who is not part of an emergency care provider service who renders direct emergency aid without compensation.~~

"Exposure" means ~~the risk of contracting disease~~ a specific eye, mouth, other mucous membrane, nonintact skin, or parenteral contact with blood or other potentially infectious bodily fluids.

"*HBV*" means hepatitis B virus.

"*Health care facility*" means a health care facility as defined in section 135C.1, an ambulatory surgical center, or a clinic.

"Health care provider" means ~~a person licensed or certified under Iowa Code chapter 148, 148C, 150, 150A, 152, or 153 to provide professional health care services to a person during the person's medical care, treatment or confinement~~ a person licensed to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, podiatry, nursing,

dentistry, optometry, or as a physician assistant, dental hygienist, or acupuncturist.

"*HIV* ~~*infection*~~" means the human immunodeficiency virus ~~infection~~ identified as the causative agent of AIDS. ~~as defined in Iowa Code section 141.21~~.

"*Home-health services*" means health care services provided by a care provider in a patient's home or other residence.

"*Infectious* ~~*body*~~ *bodily fluids*" means ~~body~~ bodily fluids capable of transmitting HIV ~~infection~~ as listed in "Guidelines for Prevention of Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Health-Care and Public-Safety Workers," found in Morbidity and Mortality Weekly Report, dated June 23, 1989, Volume 38, Number S-6, published by the U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333, or subsequent CDC ~~Centers for Disease Control~~ statements on this topic. To prevent HIV and blood-borne viral hepatitis ~~B~~ disease transmission, this reference indicates that ~~universal~~ standard precautions should be followed for exposure to the following infectious ~~body~~ bodily fluids: blood, amniotic fluid, pericardial fluid, peritoneal fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen, vaginal secretions, and saliva contaminated with blood. HIV and blood-borne viral hepatitis ~~B~~ disease transmission has not occurred from feces, nasal secretions, sputum, sweat, tears, urine, vomitus, and saliva when it is not contaminated with blood.

~~"*Report of exposure to infectious disease*" means the report form provided by the department and is the only form authorized for the reporting of an exposure to blood-borne hepatitis B or the reporting of a significant exposure to HIV. The report form may be incorporated into the Iowa prehospital care report, the Iowa prehospital advanced care report, or a similar report used by an ambulance, rescue, or first responder service or law enforcement~~

~~agency.~~

"Respite care services" means health care services provided by a care provider in a patient's home or other residence on a short-term, temporary basis as relief to those who are caring for family members.

"Significant exposure" means ~~the risk of contracting HIV infection by means of exposure to a person's infectious body fluids in a manner capable of transmitting HIV infection as determined by the Centers for Disease Control of the U.S. Department of Health and Human Services~~ a situation in which there is a risk of contracting disease through exposure to a person's infectious bodily fluids in a manner capable of transmitting an infectious agent as determined by CDC. Exposure includes contact with blood or other infectious ~~body~~ bodily fluids to which ~~universal~~ standard precautions apply through percutaneous inoculation or contact with an open wound, nonintact skin, or mucous membranes during the performance of normal job duties. Significant exposures ~~for HIV reportable to the hospital, or to the office or clinic of a health care provider to initiate the notification procedure regarding an exposure to an infectious body fluid are~~ include:

1. Transmission of blood, ~~or~~ bloody fluids, or other infectious bodily fluids of the patient onto a mucous membrane (mouth, nose, or eyes) of the ~~emergency~~ care provider.

2. Transmission of blood, ~~or~~ bloody fluids, or other infectious bodily fluids onto an open wound or lesion with significant breakdown in the skin barrier, including a needle puncture with a needle contaminated with blood, bloody fluids, or other infectious bodily fluids.

"Significant exposure report" means the Report of Exposure to HIV or Other Infectious Disease form provided by the department. It is the only form authorized to be used to document a significant exposure to infectious bodily fluids such that the source is deemed to consent to a

test to determine if the individual has a contagious or infectious disease, and is deemed to consent to notification of the care provider of the results of the test, pursuant to Iowa Code section 139A.19.

641—11.47(139~~B~~A,141A) ~~General provisions~~Exposures in non-clinical settings.

11.47(1) If a care provider sustains a significant exposure from an individual while rendering health care or other services, other than home-health or respite care services, outside of a health care facility or hospital, the care provider shall file a significant exposure report as soon as reasonably possible following the exposure. When the exposure occurred outside a clinical setting, a care provider who has sustained a significant exposure should file this report with the infection control, occupational health, or other designated office of the facility to which the patient was transported.

11.47(2) The individual to whom the care provider was exposed is deemed to consent to a test to determine if the individual has a contagious or infectious disease and is deemed to consent to notification of the care provider or the designated representative of the results of the test, upon submission of a significant exposure report, and certification of the significant exposure by an authorized infection preventionist, occupational health professional, or other professional trained in infectious disease control. No further consent from the source patient is required. However, source patients shall be notified that an exposure has occurred, and shall be told which specific tests are being performed to determine the presence of contagious or infectious diseases. If the source of the exposure is a minor, the minor shall be informed prior to an HIV-related test that, upon positive confirmation of an HIV-related test result, the minor's legal guardian shall be informed of the positive result, pursuant to Iowa Code 141A.7 paragraph 3.

11.47(~~1~~3) ~~A hospital~~ Hospitals, clinics, or other health facilities, institutions administered

by the department of corrections, and jails ~~licensed under Iowa Code chapter 135B~~ shall have written policies and procedures for reviewing and certifying significant exposure report forms, testing a source patient, and notifying a ~~notification of an emergency~~ care provider who sustained a significant exposure while ~~renders~~ rendering health care services or other services to the patient when the source patient is delivered to the facility and the exposure occurred prior to the delivery. ~~assistance or treatment to a patient when in the course of admission, care, or treatment of that patient, the patient is diagnosed or is confirmed as having a contagious or infectious disease.~~ The policies and procedures shall include the possibility for the care provider to designate a representative to whom notification shall be provided and who shall, in turn, notify the care provider. The identity of the designated representative of the care provider shall not be revealed to the individual tested. The designated representative shall inform the hospital, clinic, or other health facility, institution administered by the department of corrections, or jail of those parties who received the notification, and following receipt of this information and upon request of the individual tested, the hospital, clinic, or other health facility, institution administered by the department of corrections, or jail shall inform the individual of the parties to whom notification was provided.

11.47(4) The hospital, clinic, or other health facility to whom the individual is delivered shall conduct the test. If the individual is delivered to an institution administered by the Iowa department of corrections, the test shall be conducted by the staff physician of the institution. If the individual is delivered to a jail, the test shall be conducted by the attending physician of the jail or the county medical examiner. If the patient was deemed to consent upon certification of a significant exposure report, the sample and test results shall only be identified by a number.

11.47(5) If a test result is positive, the hospital, clinic, or other health facility, or other

person performing the test shall notify the subject of the test and make any required reports to the department pursuant to Iowa Code sections 139A.3 and 141A.6. The report to the department shall include the name of the individual tested.

11.47(~~2~~6) If a patient who is a source of a significant exposure is diagnosed or confirmed as having a contagious or infectious disease, the hospital, clinic, or other health facility, or other person performing the test shall notify the care provider or the designated ~~officer~~ representative of ~~an emergency~~ the care provider who shall then notify the care provider ~~service who shall notify persons involved in attending or transporting the patient. For blood-borne contagious or infectious diseases, notification shall only take place upon the filing of a report form with the hospital.~~ If the patient is a minor and is diagnosed with HIV infection, the hospital, clinic, or other health facility, or other person performing the test shall notify the legal guardian of the minor.

~~**11.47(3)** The person who renders direct emergency aid without compensation as identified in rule 11.46(139B,141), "emergency care provider," paragraph "6," who is exposed to a patient who has a contagious or infectious disease shall also receive notification from the hospital when the hospital has received a report form.~~

11.47(4~~7~~) The notification shall advise the ~~emergency~~ care provider of possible exposure to a particular contagious or infectious disease and recommend that the provider seek medical attention. The notification shall be provided as soon as reasonably possible following determination that the patient has a contagious or infectious disease. The notification shall not include the name of the individual tested for the contagious or infectious disease unless the individual consents. If the care provider who sustained a significant exposure determines the identity of the individual diagnosed or confirmed as having a contagious or infectious disease,

the identity of the individual shall be confidential information and shall not be disclosed by the care provider to any other person unless a specific written release is obtained from the individual diagnosed with or confirmed as having a contagious or infectious disease.

11.47(8) This section does not preclude a hospital, clinic, other health facility, or a health care provider from providing notification to a care provider under circumstances in which the hospital's, clinic's, other health facility's, or health care provider's policy provides for notification of the hospital's, clinic's, other health facility's, or health care provider's own employees of exposure to a contagious or infectious disease that is not life-threatening if the notice does not reveal a patient's name, unless the patient consents.

~~**11.47(5)** The emergency care provider shall file exposure and significant exposure reports with the hospital or health care provider as soon as reasonably possible following the exposure.~~

11.47(~~6~~9) The ~~hospital~~ infection control, occupational health, or other designated office of the facility shall maintain a record of all ~~exposure or~~ significant exposure reports it receives and shall retain each report for a period of five years.

11.47(~~7~~10) The report form "Report of Exposure to HIV or Other Infectious Disease" is a confidential record pursuant to Iowa Code section 141A.~~22A~~9.

11.47(~~8~~11) The employer of ~~an emergency~~ a care provider who ~~submits a report form~~ sustained a significant exposure pursuant to these rules shall pay the cost of ~~HIV counseling and~~ testing for the ~~emergency care provider and testing of the patient pursuant to subrule 11.50(1) or 11.51(2)~~ individual who is the source of the significant exposure and of the testing of the care provider, if the significant exposure was sustained during the course of employment. ~~The department shall provide HIV counseling and testing at alternate testing sites~~

~~for an emergency care provider who has rendered direct emergency aid without compensation as identified in rule 11.46(139B,141), "emergency care provider," paragraph "6."~~ However, the department shall assist an individual who is the source of the significant exposure in finding resources to pay for the costs of the testing and shall assist a care provider who renders direct aid without compensation in finding resources to pay for the cost of the test.

11.47(12) A hospital's, clinic's, other health facility's, or health care provider's duty to notify under these rules is not continuing. It is limited to the diagnosis of a contagious or infectious disease made in the course of admission, care, and treatment following the rendering of health care services or other services to the individual who was the source of the significant exposure.

11.47(13) Notwithstanding subrule 11.47(12), the hospital, clinic, or other health facility may notify the exposed care provider if, following discharge from or completion of care or treatment by the hospital, clinic, or other health facility, the individual who was the source of the significant exposure, and for whom a significant exposure report was submitted that did not result in notification of the exposed care provider, wishes to provide information regarding the source individual's contagious or infectious disease status to the exposed care provider.

11.47(14) Notwithstanding any other provision of law to the contrary, a care provider may transmit cautions regarding contagious or infectious disease information, with the exception of AIDS or HIV pursuant to section 80.9B, in the course of the care provider's duties over the police radio broadcasting system under chapter 693 or any other radio-based communications system if the information transmitted does not personally identify an individual.

641—11.48(139A, 141A) Exposures in clinical settings.

11.48(1) If a care provider sustains a significant exposure from an individual while

rendering health care services or other services within a hospital, clinic, or other health care facility, or while delivering home-health or respite care services, the care provider shall file a report as soon as reasonably possible following the exposure. A care provider who has sustained a significant exposure should file the report with the infection control, occupational health, or other office designated by the facility in which the exposure occurred, or by the facility which has oversight for the delivery of home-health or respite care services.

a. If a general consent form was signed and in effect at the time of the significant exposure and the source of the exposure is an adult, a significant exposure report form shall not be required to document the significant exposure. The health care facility or hospital may use an employee incident report or other similar form for this purpose. The individual to whom the care provider was exposed is deemed to consent to a test to determine if the individual has a contagious or infectious disease and is deemed to consent to notification of the care provider or the designated representative of the results of the test, upon submission and review of an employee incident report, and certification of the significant exposure by an authorized infection preventionist, occupational health professional, or other professional trained in infectious disease control. No further consent from the source patient is required. However, source patients shall be notified that an exposure has occurred, and shall be told which specific tests are being performed. Prior to undergoing an HIV-related test, information shall be made available to the subject of the test concerning testing and a means of obtaining additional information regarding HIV infection and risk reduction pursuant to Iowa Code section 141A.6.

b. If no consent form was signed or in effect at the time of the exposure, or if the source of the exposure is a minor, the individual to whom the care provider was exposed is deemed to consent to a test to determine if the individual has a contagious or infectious disease and is

deemed to consent to notification of the care provider or the designated representative of the results of the test upon submission of a significant exposure report form and certification of the significant exposure by an authorized infection preventionist, occupational health professional, or other professional trained in infectious disease control. Source patients shall be notified that an exposure has occurred, and shall be told which specific tests are being performed to determine the presence of contagious or infectious diseases. If the source of the exposure is a minor, the minor shall be informed prior to an HIV-related test that, upon positive confirmation of an HIV-related test result, the minor's legal guardian shall be informed of the positive result, pursuant to Iowa Code 141A.7 paragraph 3.

11.48(2) Hospitals, clinics, or other health facilities, institutions administered by the department of corrections, and jails shall have written policies and procedures for reviewing and certifying significant exposure report forms or other employee incident report forms, testing a source patient, and notifying a care provider who sustained a significant exposure while rendering health care services or other services to a patient during the admission, care, or treatment of the patient at the facility, or while delivering home-health or respite care services.

11.48(3) The hospital, clinic, or other health facility where exposure occurred or which has oversight for the delivery of home-health or respite care services shall conduct the test. If a general consent form was signed and in effect and the source patient was an adult, the sample and test results shall be identified by name. If the patient was deemed to consent to a test and to notification of the care provider upon certification of a significant exposure report pursuant to subrule 11.48(1) because no general consent was signed and in effect at the time of the exposure or because the source patient was a minor, the sample and test results shall only be identified by a number.

11.48(4) If a test result is positive, the hospital, clinic, or other health facility, or other person performing the test shall notify the subject of the test and make any required reports to the department pursuant to Iowa Code sections 139A.3 and 141A.6. The report to the department shall include the name of the individual tested.

11.48(5) If a patient who is a source of a significant exposure is diagnosed or confirmed as having a contagious or infectious disease, the hospital, clinic, or other health facility, or other person performing the test shall notify the care provider or the designated representative of the care provider who shall then notify the care provider. If the patient is a minor and is diagnosed with HIV infection, the hospital, clinic, or other health facility, or other person performing the test shall notify the legal guardian of the minor.

11.48(6) The notification shall advise the care provider of possible exposure to a particular contagious or infectious disease and recommend that the provider seek medical attention. The notification shall be provided as soon as reasonably possible following determination that the patient has a contagious or infectious disease.

11.48(7) This section does not preclude a hospital, clinic, other health facility, or a health care provider from providing notification to a care provider under circumstances in which the hospital's, clinic's, other health facility's, or health care provider's policy provides for notification of the hospital's, clinic's, other health facility's, or health care provider's own employees of exposure to a contagious or infectious disease that is not life-threatening if the notice does not reveal a patient's name, unless the patient consents.

11.48(8) The infection control, occupational health, or other designated office of the facility shall maintain a record of all significant exposure reports it receives and shall retain each report for a period of five years.

11.48(9) The report form "Report of Exposure to HIV or Other Infectious Disease" is a confidential record pursuant to Iowa Code section 141A. 9.

11.48(10) The employer of a care provider who sustained a significant exposure pursuant to these rules shall pay the cost of testing for the individual who is the source of the significant exposure and of the testing of the care provider, if the significant exposure was sustained during the course of employment.

11.48(11) A hospital's, clinic's, other health facility's, or health care provider's duty to notify under these rules is not continuing. It is limited to the diagnosis of a contagious or infectious disease made in the course of admission, care, and treatment following the rendering of health care services or other services to the individual who was the source of the significant exposure.

11.48(12) Notwithstanding subrule 11.48(11), the hospital, clinic, or other health facility may notify the exposed care provider if, following discharge from or completion of care or treatment by the hospital, clinic, or other health facility, the individual who was the source of the significant exposure, and for whom a significant exposure report was submitted that did not result in notification of the exposed care provider, wishes to provide information regarding the source individual's contagious or infectious disease status to the exposed care provider.

~~**641—11.48(139B,141) Contagious or infectious diseases, not including HIV—hospitals.**~~

~~**11.48(1)** Notification for blood-borne viral hepatitis shall take place only upon the filing of an exposure report form with the hospital.~~

~~**11.48(2)** Notification shall take place whether or not an exposure report form has been filed for the following contagious or infectious diseases if the identity of the emergency care provider or the designated officer is known:~~

~~*a.* Meningococcal meningitis.~~

~~*b.* Tuberculosis (communicable). Tuberculosis may require six to ten weeks for disease confirmation.~~

~~**11.48(3)** These rules do not require a hospital to administer a test for the express purpose of determining the presence of a contagious or infectious disease.~~

~~**11.48(4)** The notification shall not include the name of the patient with the contagious or infectious disease unless the patient gives written consent.~~

~~**11.48(5)** These rules do not preclude a hospital from providing notification to an emergency care provider or health care provider under circumstances in which the hospital's policy provides for notification of the hospital's own employees of an exposure to a disease that is not life-threatening. The exposure report shall not reveal the patient's name unless the patient gives written consent.~~

~~**11.48(6)** A hospital's duty of notification under these rules is not continuing. It is limited to a diagnosis of a contagious or infectious disease made in the course of admission, care, and treatment following the rendering of emergency assistance or treatment for which the notification requirements of these rules apply.~~

~~**641—11.49(139B,141) Contagious or infectious diseases, not including HIV—health care providers.**~~

~~**11.49(1)** A health care provider may provide the notification required of hospitals in these rules to emergency care providers if a patient who has a contagious or infectious disease is transported by an emergency care provider to the office or clinic of a health care provider.~~

~~**11.49(2)** These rules do not require a health care provider to administer a test for the express purpose of determining the presence of a contagious or infectious disease.~~

~~**11.49(3)** Notification shall not include the name of the patient who has the contagious or infectious disease unless the patient gives written consent.~~

~~**11.49(4)** A health care provider's duty of notification under these rules is not continuing, but is limited to a diagnosis of a contagious or infectious disease made in the course of care and treatment following the rendering of emergency assistance or treatment for which the notification requirements of these rules apply.~~

~~**641—11.50(139B,141) HIV infection—hospitals.**~~

~~**11.50(1)** These rules do not require or permit a hospital to administer a test for the express purpose of determining the presence of HIV infection except that testing may be performed if the patient consents and if the requirements of Iowa Code section 141.22 are satisfied.~~

~~**11.50(2)** Following submission of a significant exposure report by the emergency care provider to the hospital and a determination that the exposure reported was a significant exposure as defined in rule 11.46(139B,141), and a diagnosis or confirmation by the attending physician that the patient has HIV infection, a hospital shall provide notification of possible exposure to HIV pursuant to subrule 11.50(3) to the designated officer of the emergency care provider who provided assistance or treatment to the patient.~~

~~**11.50(3)** Notification to the emergency care provider of exposure to HIV infection shall be made in accordance with both of the following:~~

~~*a.* The hospital shall inform the patient, when the patient's condition permits, that a significant exposure occurred to an emergency care provider and that a significant exposure report has been filed.~~

~~*b.* The patient may provide consent for HIV testing or voluntarily disclose HIV status to~~

~~the hospital and consent to the provision of notification.~~

~~**11.50(4)** Notwithstanding subrule 11.50(3), notification shall be made when the patient denies consent for or consent is not reasonably obtainable for serological testing, and in the course of admission, care, and treatment of the patient, the patient is diagnosed or is confirmed as having HIV infection.~~

~~**11.50(5)** The hospital shall notify the designated officer of the emergency care provider service. The designated officer shall notify those emergency care providers who submitted a significant exposure report and attended or transported the patient. The identity of the designated officer shall not be revealed to the patient.~~

~~**11.50(6)** The designated officer shall advise the emergency care providers who are notified to seek immediate medical attention and of the provisions of confidentiality under rule 11.53(139B,141).~~

~~**11.50(7)** The designated officer shall inform the hospital of the names of the emergency care providers to whom notification was made.~~

~~**11.50(8)** Hospitals shall inform the patient that they have a record of the names of the emergency care providers to whom notification was provided and, if requested by the patient, the hospital shall inform the patient of those names.~~

~~**11.50(9)** A person who renders direct emergency aid without compensation as identified in rule 11.46(139B,141), "emergency care provider," paragraph "6," who is exposed to a patient who has HIV infection, shall receive notification directly from the hospital in accordance with the procedures established in subrules 11.50(1) to 11.50(4).~~

~~**11.50(10)** The process for notification under these rules shall be initiated as soon as reasonably possible consistent with protocols for postexposure prophylaxis, according to "Public~~

~~Health Service Statement on Management of Occupational Exposure to Human Immunodeficiency Virus, Including Considerations Regarding Zidovudine Postexposure Use," found in the Morbidity and Mortality Weekly Report, dated January 26, 1990, Volume 39, Number RR-1, published by the U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333, or subsequent Centers for Disease Control statements on this topic.~~

~~11.50(11)~~ ~~A hospital's duty of notification under these rules is not continuing. It is limited to the diagnosis of HIV infection made in the course of admission, care, and treatment of the patient with the disease.~~

~~11.50(12)~~ ~~Notwithstanding subrule 11.50(11), if, following discharge or completion of care or treatment, a patient, for whom a report form was submitted that did not result in notification, wishes to provide information regarding the patient's HIV infection status to the care provider, the hospital shall provide a procedure for notifying the care provider.~~

~~641—11.51(139B,141) HIV infection—health care providers.~~

~~11.51(1)~~ ~~A health care provider, with written consent of the patient, may provide the notification required of hospitals in these rules to emergency care providers if a patient who has HIV infection is transported by an emergency care provider to the office or clinic of the health care provider. Notification shall take place only upon submission of a significant exposure report by the emergency care provider to the health care provider and after determination by the health care provider that a significant exposure has occurred.~~

~~11.51(2)~~ ~~These rules do not require or permit a health care provider to administer a test for the express purpose of determining the presence of HIV infection except that testing may be performed if the patient consents and if the requirements of Iowa Code section 141.22 are~~

~~satisfied.~~

641—11.~~52~~49(139~~B~~A~~,141~~) Immunity. Hospitals, clinics, health care providers, or other persons participating in good faith in complying with provisions authorized or required under these rules ~~making a report under these rules, upon filing of a report form or a report under similar procedures to notify their own employees or in failing to make a report under these rules~~ are immune from any liability, civil or criminal, which may otherwise be incurred or imposed.

641—11.50(139A) Duty to Test. A hospital, clinic, other health facility, health care provider, or other person who is authorized to perform a test under these rules has no duty to perform the test authorized.

~~**641—11.53(139B,141) Confidentiality.**~~

~~**11.53(1)** Notifications made pursuant to these rules shall not disclose the identity of the patient who is diagnosed or confirmed as having HIV infection unless the patient provides a specific written release as provided in Iowa Code section 141.23, subsection 1, paragraph "*a*."~~

~~**11.53(2)** If during these notification procedures an emergency care provider determines the identity of a patient with confirmed HIV infection, the identity of the patient shall be confidential information and shall not be disclosed by the emergency care provider to any other person unless a specific written release is obtained from the patient.~~

~~**11.53(3)** The procedures followed under rules 11.50(139B,141) to 11.51(139B,141) shall provide for the anonymity of the patient and all documentation shall be maintained in a confidential manner.~~

Rules 11.45(139~~B~~A~~,141~~) to 11.5~~3~~0(139~~B~~A~~,141~~) are intended to implement Iowa Code sections ~~139B.1(2)"*f*" and 141.22A(17)~~. 139A.19.

641—11.54~~1~~ to **11.69** Reserved.

HIV-RELATED TEST FOR CONVICTED OR ALLEGED

SEXUAL-ASSAULT OFFENDERS AND THE VICTIMS

641—11.70(~~709B~~915) Purpose. The purpose of these rules is to describe procedures to follow for testing of a convicted or alleged offender for ~~the human immunodeficiency virus~~ HIV pursuant to ~~1998 Iowa Acts, House File 2369, and 1998 Iowa Acts, House File 2527~~ Iowa Code section 915, and to establish procedures to follow to provide for counseling, health care, and support services to the victim.

641—11.71(~~709B~~915) Definitions. For the purpose of these rules, the following definitions shall apply:

"AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

"Alleged offender" means a person who has been charged with the commission of a sexual assault or a juvenile who has been charged in juvenile court with being a delinquent as a result of actions that would constitute a sexual assault.

"Authorized representative" means an individual authorized by the victim to request an HIV-related test of a convicted or alleged offender who is any of the following:

1. The parent, guardian, or custodian of the victim if the victim is a minor.

2. The physician of the victim.

3. The victim counselor or person requested by the victim who is authorized to provide the counseling ~~required pursuant to Iowa Code section 141.22~~ regarding the HIV-related test and results.

4. The victim's spouse.

5. The victim's legal counsel.

"*Convicted offender*" means a person convicted of a sexual assault or a juvenile who has been adjudicated delinquent for an act of sexual assault.

"*Department*" means the Iowa department of public health.

"*Department of corrections*" means the Iowa department of corrections.

"*Division*" means the crime victims assistance division of the office of the attorney general.

"*HIV*" means the human immunodeficiency virus identified as the causative agent of AIDS.

"*HIV-related test*" means a ~~positive result for the HIV antibody, a positive result for HIV nucleic acid, a positive result for p24 antigen, or a positive result for HIV virus isolation~~ a diagnostic test conducted by a laboratory approved pursuant to CLIA for determining the presence of HIV or antibodies to HIV.

"*Petitioner*" means a person who is the victim of a sexual assault which resulted in alleged significant exposure, or the parent, guardian, or custodian of a victim if the victim is a minor, for whom the county attorney files a petition with the district court to require the convicted offender to undergo an HIV-related test.

"*Sexual assault*" means sexual abuse as defined in Iowa Code section 709.1, or any other sexual offense by which a victim has allegedly had sufficient contact with a convicted or an alleged offender to be deemed a significant exposure.

"*Significant exposure*" means contact of the victim's ruptured or broken skin or mucous membranes with the blood or ~~body~~ bodily fluids, other than tears, saliva, or perspiration, of the convicted or alleged offender. "Significant exposure" is presumed to have occurred when there is a showing that there was penetration of the convicted or alleged offender's penis into the

victim's vagina or anus, contact between the mouth and genitalia, or contact between the genitalia of the convicted or alleged offender and the genitalia or anus of the victim.

"Victim" means a petitioner or a person who is the victim of a sexual assault which resulted in significant exposure, or the parent, guardian, or custodian of such a victim if the victim is a minor, for whom the victim or the peace officer files an application for a search warrant to require the alleged offender to undergo an HIV-related test. "Victim" includes an alleged victim.

"Victim counselor" means a person who is engaged in a crime victim center as defined in Iowa Code section ~~236A.1~~915.20A, who is certified as a counselor by the crime victim center, and who has completed at least 20 hours of training provided by the Iowa coalition against sexual assault or a similar agency.

641—11.72(~~709B~~915) HIV-related test—convicted or alleged sexual assault offender.

11.72(1) Unless a petitioner chooses to be represented by private counsel, the county attorney shall represent the victim's interest in all proceedings under Iowa Code chapter ~~709B~~915.

11.72(2) If a person is convicted of sexual assault or adjudicated delinquent for an act of sexual assault, the county attorney, if requested by the petitioner, shall petition the court for an order requiring the convicted offender to submit to an HIV-related test, provided that all of the following conditions are met:

a. The sexual assault for which the offender was convicted or adjudicated delinquent included sufficient contact between the victim and the convicted offender to be deemed a significant exposure pursuant to 641—11.71(~~709B~~915).

b. The authorized representative of the petitioner, the county attorney, or the court sought

to obtain written informed consent to the testing from the convicted offender.

c. Written informed consent was not provided by the convicted offender.

11.72(3) If a person is an alleged offender, the county attorney, if requested by the victim, shall make application to the court for the issuance of a search warrant, in accordance with Iowa Code chapter 808, for the purpose of requiring the alleged offender to submit to an HIV-related test, if all of the following conditions are met:

a. The ~~applicant~~ application states that the victim believes that the sexual assault for which the alleged offender is charged included sufficient contact between the victim and the alleged offender to be deemed a significant exposure pursuant to 641—11.71(~~709B~~915) and states the factual basis for the belief that a significant exposure exists.

b. The authorized representative of the victim, the county attorney, or the court sought to obtain written informed consent to the testing from the alleged offender.

c. Written informed consent was not provided by the alleged offender.

11.72(4) Upon receipt of the petition or application, the court shall:

a. Prior to the scheduling of a hearing, refer the victim for counseling by a victim counselor or a person requested by the victim who is authorized to provide the counseling ~~required pursuant to Iowa Code section 141.22,~~ regarding the nature, reliability and significance of the HIV-related test and of any test results of the convicted or alleged offender. ~~The counselor shall have a certificate of attendance from the department of public health-sponsored workshop on HIV serologic test counseling.~~

b. Schedule a hearing to be held as soon as is practicable.

c. Cause written notice to be served on the convicted or alleged offender who is the subject of the proceeding, in accordance with the Iowa Rules of Civil Procedure relating to the

service of original notice, or if the convicted or alleged offender is represented by legal counsel, provide written notice to the convicted or alleged offender and the convicted or alleged offender's legal counsel.

d. Provide for the appointment of legal counsel for a convicted or alleged offender if the convicted or alleged offender desires but is financially unable to employ counsel.

e. Furnish legal counsel with copies of the petition or application, written informed consent, if obtained, and copies of all other documents related to the petition or application, including, but not limited to, the charges and orders.

11.72(5) A hearing under these rules shall be conducted in an informal manner consistent with orderly procedure and in accordance with the Iowa Rules of Evidence.

a. The hearing shall be limited in scope to the review of questions of fact only as to the issue of whether the sexual assault for which the offender was convicted or adjudicated delinquent or for which the alleged offender was charged provided sufficient contact between the victim and the convicted or alleged offender to be deemed a significant exposure, and to questions of law.

b. In determining whether the contact should be deemed a significant exposure for a convicted offender, the court shall base the determination on the testimony presented during the proceedings on the sexual assault charge, the minutes of the testimony or other evidence included in the court record, or if a plea of guilty was entered, based upon the complaint or upon testimony provided during the hearing. In determining whether the contact should be deemed a significant exposure for an alleged offender, the court shall base the determination on the application and the factual basis provided in the application for the belief of the applicant that a significant exposure exists.

c. The victim may testify at the hearing, but shall not be compelled to testify. The court shall not consider the refusal of a victim to testify at the hearing as material to the court's decision regarding issuance of an order or search warrant requiring testing.

d. The hearing shall be in camera unless the convicted or alleged offender and the petitioner or victim agree to a hearing in open court and the court approves. The report of the hearing proceedings shall be sealed and no report of the proceeding shall be released to the public, except with the permission of all parties and the approval of the court.

e. Stenographic notes or electronic or mechanical recording shall be taken of all court hearings unless waived by the parties.

11.72(6) Following the hearing, the court shall require a convicted or alleged offender to undergo an HIV-related test only if the petitioner or victim proves all of the following by a preponderance of evidence.

a. The sexual assault constituted a significant exposure.

b. An authorized representative of the petitioner or victim, the county attorney, or the court sought to obtain written informed consent from the convicted or alleged offender.

c. Written informed consent was not provided by the convicted or alleged offender.

11.72(7) A convicted or alleged offender who is required to undergo an HIV-related test may appeal to the court for review of questions of law only, but may appeal questions of fact if the findings of fact are clearly erroneous.

641—11.73(~~709B~~915) Medical examination costs. The cost of a medical examination for the purpose of gathering evidence and the cost of treatment for the purpose of preventing venereal disease shall be paid from the victim compensation fund as established in Iowa Code

chapter ~~709B~~915~~, and 1998 Iowa Acts, House File 2527, section 55~~. Information is available from the department of justice, crime victim assistance program, telephone (515)281-5044.

641—11.74(~~709B~~915) Testing, reporting, and counseling—penalties.

11.74(1) The physician or other practitioner who orders the test of a convicted or alleged offender for HIV under Iowa Code chapter ~~709B~~915 shall disclose the results of the test to the convicted or alleged offender, and to the victim counselor or a person requested by the victim who is authorized to provide the counseling regarding the HIV-related test and results~~required~~ ~~pursuant to Iowa Code section 141.22~~, who shall disclose the results to the petitioner.

11.74(2) Prior to undergoing an HIV-related test, information shall be available to the subject of the test concerning testing and where to obtain additional information on HIV transmission and risk reduction, pursuant to Iowa Code 141A.6. ~~All testing under this chapter shall be accompanied by pretest and posttest counseling as required under Iowa Code section 141.22~~ The department may be contacted for brochures that may assist in meeting the requirements of Iowa Code section ~~141.22~~141A.6.

11.74(3) At any time that the subject of an HIV-related test is informed of confirmed positive test results, counseling concerning the emotional and physical health effects of HIV shall be initiated, as required under Iowa Code section 141A.7, and the physician or other practitioner who ordered the test shall make any required reports to the department pursuant to Iowa Code section 141A.6.

a. The physician or other practitioner shall encourage a person who tests positive for HIV infection to participate in the voluntary partner notification program pursuant to section 11.17.

b. The physician or other practitioner may provide to the department any relevant

information provided by the person regarding any person with whom the tested person has had sexual relations or has shared drug injecting equipment.

~~Subsequent testing arising out of the same incident of exposure shall be conducted in accordance with the procedural and confidentiality requirements of 641—11.70(709B) to 641—11.74(709B).~~

11.74(4) Subsequent testing arising out of the same incident of exposure shall be conducted in accordance with the procedural and confidentiality requirements of 641—11.70(915) to 641—11.74(915).

11.74(4~~5~~) Results of a test performed under 641—11.70(~~709B~~915) to 641—11.74(~~709B~~915), except as provided in subrule 11.74(6), shall be disclosed only to the physician or other practitioner who orders the test of the convicted or alleged offender, the convicted or alleged offender, the victim, the victim counselor or person requested by the victim who is authorized to provide the counseling regarding the HIV-related test and results ~~required pursuant to Iowa Code section 141.22~~, the physician of the victim if requested by the victim, the parent, guardian, or custodian of the victim, if the victim is a minor, and the county attorney who filed the petition for the HIV-related testing under 641—11.70(~~709B~~915) to 641—11.74(~~709B~~915), who may use the results to file charges of criminal transmission of HIV. Results of a test performed under these rules shall not be disclosed to any other person without the written, informed consent of the convicted or alleged offender. A person to whom the results of a test have been disclosed under 641—11.70(~~709B~~915) to 641—11.74(~~709B~~915) is subject to the confidentiality provision of Iowa Code section ~~141.23~~141A.9, and shall not disclose the results to another person except as authorized by Iowa Code section ~~141.23, subsection 1~~141A.9.

11.74(~~5~~6) If HIV-related testing is ordered under 641—11.70(~~709B~~915) to 641—

11.74(~~709B~~915), the court shall also order periodic testing of the convicted offender during the period of incarceration, probation, or parole or of the alleged offender during a period of six months following the initial test if the physician or other practitioner who ordered the initial test of the convicted or alleged offender certifies that, based upon prevailing scientific opinion regarding the maximum period during which the results of an HIV-related test may be negative for a person after being HIV-infected, additional testing is necessary to determine whether the convicted or alleged offender was HIV-infected at the time the sexual assault or alleged sexual assault was perpetrated. The results of the subsequent periodic tests conducted pursuant to subrule 11.74(6) shall be released only to the physician or other practitioner who orders the test of the convicted or alleged offender, the convicted or alleged offender, the victim counselor or person requested by the victim ~~who is authorized~~ to provide the counseling regarding the HIV-related test and results ~~required pursuant to Iowa Code section 141.22~~, who shall disclose the results to the petitioner, the physician of the victim if requested by the victim and the county attorney who may use the results as evidence in the prosecution of the sexual assault or in the prosecution of the offense of criminal transmission of HIV.

11.74(~~6~~7) The court shall not consider the disclosure of an alleged offender's serostatus to an alleged victim, prior to conviction, as a basis for a reduced plea or reduced sentence.

11.74(~~7~~8) The fact that ~~an~~ HIV-related tests were ~~test was~~ performed under 641—11.70(~~709B~~915) to 641—11.74(~~709B~~915) and the results of the tests shall not be included in the convicted offender's medical or criminal record unless otherwise included in department of corrections records.

11.74(~~8~~9) The fact that ~~an~~ HIV-related tests were ~~test was~~ performed under 641—11.70(~~709B~~915) to 641—11.74(~~709B~~915) and the results of the ~~test~~ tests shall not be used as a

basis for further prosecution of a convicted offender in relation to the incident which is the subject of the testing, to enhance punishments, or to influence sentencing.

11.74(~~9~~10) If the serologic status of a convicted offender, which is conveyed to the victim, is based upon an HIV-related test other than a test which is authorized as a result of the procedures established in 641—11.70(~~709B~~915) to 641—11.74(~~709B~~915), legal protections which attach to such testing shall be the same as those which attach to an initial test under 641—11.70(~~709B~~915) to 641—11.74(~~709B~~915), and the rights to a predisclosure hearing and to appeal provided under Iowa Code section 915 ~~1998 Iowa Acts, House File 2527, section 35,~~ shall apply.

11.74(~~10~~11) HIV-related testing required under 641—11.70(~~709B~~915) to 641—11.74(~~709B~~915) shall be conducted by the state hygienic laboratory.

11.74(~~11~~12) Notwithstanding the provision of these rules requiring initial testing, if a petition is filed with the court under Iowa Code section 915.42 ~~1998 Iowa Acts, House File 2527, section 35,~~ requesting an order for testing and the order is granted, and if a test has previously been performed on the convicted offender while under the control of the department of corrections, the test results shall be provided in lieu of the performance of an initial test of the convicted offender, in accordance with 641—11.70(~~709B~~915) to 641—11.74(~~709B~~915).

11.74(~~12~~13) Test results shall not be disclosed to a convicted offender who elects against disclosure.

11.74(~~13~~14) In addition to the counseling received by a victim, referral to appropriate health care and support services shall be provided. ~~Referral information is available at state alternate test sites. Alternate test site information is available from the Iowa department of public health, STD/HIV prevention program, telephone (515)281-4936~~.

11.74(~~14~~15) In addition to persons to whom disclosure of the results of a convicted or alleged offender's HIV-related test results is authorized under these rules, the victim may also disclose the results to the victim's spouse, persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault, or members of the victim's family within the third degree of consanguinity.

11.74(~~15~~16) A person to whom disclosure of a convicted offender's HIV-related test results is authorized under these rules shall not disclose the results to any other person for whom disclosure is not authorized under these rules. A person who intentionally or recklessly makes an unauthorized disclosure in violation of this subrule is subject to a civil penalty of $1000. The attorney general or the attorney general's designee may maintain a civil action to enforce these rules. Proceedings maintained under this subrule shall provide for the anonymity of the test subject, and all documentation shall be maintained in a confidential manner.

These rules are intended to implement Iowa Code section 915.40 to 915.43 ~~1998 Iowa Acts, House File 2527, and 1998 Iowa Acts, House File 2369~~.

641—11.75 to **11.79** Reserved.

~~HIV HOME COLLECTION~~

~~**641—11.80(126) Purpose.** The purpose of these rules is to implement Iowa Code section 126.25(1) as amended by 1997 Iowa Acts, Senate File 300.~~

~~**641—11.81(126) Definitions.** For the purpose of these rules, the following definitions shall apply:~~

~~*"CLIA"* means the Clinical Laboratories Improvement Act as administered by the Health Care Financing Administration.~~

~~*"FDA"* means the U.S. Food and Drug Administration.~~

~~*"HIV"* means the human immunodeficiency virus identified as the causative agent of AIDS.~~

~~*"HIV home collection kit"* means a product for human immunodeficiency virus testing that provides for the specimen to be collected by an individual and then submitted to a laboratory, for determination of test results.~~

~~*"HIV home testing kit"* means a product for human immunodeficiency virus testing that provides for specimen collection and determination of test results by an individual without the utilization of a laboratory.~~

~~*"Laboratory"* means a laboratory meeting the CLIA requirements for HIV testing.~~

~~*"Specimen"* means a human body fluid or tissue sample.~~

~~**641—11.82(126) HIV home testing kit.** An HIV home testing kit shall not be advertised for sale, offered for sale, or sold in this state.~~

~~**641—11.83(126) HIV home collection kit.** An HIV home collection kit approved by the FDA may be advertised for sale, offered for sale, or sold in this state.~~

AIDS DRUG ASSISTANCE PROGRAM (ADAP)

641—11.84(141A) Definitions. For purposes of these rules, the following definitions shall apply:

"ADAP advisory committee" means the committee appointed by the bureau of HIV, STD, and hepatitis to provide advice and technical assistance to the department regarding ADAP.

"ADAP formulary" means the list of drugs approved for use in ADAP by the bureau upon recommendation of the ADAP advisory committee

"*AIDS*" means acquired immune deficiency syndrome as defined by the Centers for Disease Control

and Prevention of the United States Department of Health and Human Services.

"*AIDS drug assistance program*" or "*ADAP*" means the Iowa AIDS drug assistance program administered by the bureau of HIV, STD, and hepatitis within the department and includes two components, the medication assistance program and the health insurance assistance program.

"*Bureau*" means the bureau of HIV, STD, and hepatitis within the department.

"*Deductible*" means an amount of money that an insured person must pay out of pocket before any benefits from the health insurance policy can be used.

"*Department*" means the Iowa department of public health.

"*Director*" means the director of the Iowa department of public health.

"*Health insurance assistance program*" means a component of ADAP that purchases health insurance and pays insurance premiums, copayments for medications, and deductibles for eligible enrollees in ADAP.

"*HIV*" means the human immunodeficiency virus identified as the causative agent of AIDS.

"*Household*" means a group of individuals residing together who are related by birth, marriage, or adoption; or an individual who does not reside with any other individual to whom the individual is related by birth, marriage, or adoption.

~~"*Household income*" means the combined gross earned and unearned income of all individuals within the household.~~

"Medication assistance program" means a component of ADAP that provides medications directly to eligible enrollees in ADAP.

"Modified Adjusted Gross Income" or *"MAGI"* means the calculation of income based upon applicable Internal Revenue Code and regulations of the Centers for Medicare & Medicaid Services of the U.S. Department of Health and Human Services.

"Payer of last resort" means a requirement to coordinate services and seek payment from all other sources before Ryan White funds are used.

641—11.85(141A) Purpose. The AIDS drug assistance program is a state-administered program that provides certain HIV/AIDS medications to eligible low-income individuals diagnosed with HIV if adequate funding is available for administration of the program. There are two components to the Iowa AIDS drug assistance program: the medication assistance program and the health insurance assistance program. The AIDS drug assistance program is authorized under Part B of Title XXVI of the Public Health Service (PHS) Act, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Public Law 111-87). This legislation requires that the Ryan White program, including the AIDS drug assistance program, be the payer of last resort for HIV-related services. ADAP is not an entitlement program and does not create a right to assistance. In the event that funding is exhausted or terminated or there are changes in state or federal guidelines, programs, or regulations that impact funding available to ADAP, the department reserves the right to close enrollment, cease to provide medication assistance or health insurance assistance, or alter eligibility criteria until such time that funding is again sufficient.

641—11.86(141A) Ensuring payer of last resort. To ensure that ADAP is the payer of last resort, the Iowa Medicaid enterprise shall grant the department access to client-level information for persons enrolled in Medicaid.

641—11.87(141A) Eligibility requirements.

11.87(1) An applicant is eligible to participate in the ADAP Medication assistance program if the applicant:

a. Applies for enrollment in ADAP on a form provided by the department;

b. Has no health insurance to cover the cost of the drugs that are or may become available from ADAP;

c. Is currently being prescribed a drug on the ADAP formulary;

d. Has an annual MAGI ~~gross household income~~ that is less than or equal to 200 percent of the poverty level as determined by the most recent federal poverty guidelines published annually by the United States Department of Health and Human Services for the size of the household (this income shall be determined after a $500 work-related allowance is deducted from the monthly ~~gross~~ salary of an employed person with HIV/AIDS);

e. Has a medical diagnosis of HIV infection or AIDS or is an unborn infant or an infant under 18 months of age who has an HIV-infected mother; and

f. Is a resident of Iowa.

11.87(2) An applicant is eligible to participate in the ADAP health insurance assistance program if the applicant:

a. Applies for enrollment in ADAP on a form provided by the department;

b. Has creditable health insurance coverage;

c. Is currently being prescribed a drug on the ADAP formulary;

d. Has an annual MAGI ~~gross household income~~ that is less than or equal to 400 percent of the poverty level as determined by the most recent federal poverty guidelines published annually by the United States Department of Health and Human Services for the size of the household;

e. Has a medical diagnosis of HIV infection or AIDS or is an unborn infant or an infant under 18 months of age who has an HIV-infected mother; and

f. Is a resident of Iowa.

~~**11.87(3)** For purposes of paragraphs 11.87(1)"*d*" and 11.87(2)"*d*," an individual may report annual household income by using actual household income for the most recent 12 months or by using estimated annual household income determined by multiplying the current monthly household income by 12.~~

641—11.88(141A) Enrollment process.

11.88(1) The department shall review each completed application and shall determine enrollment based upon applicant eligibility, the date on which the application was completed, and the availability of funds. When the department determines that an applicant is eligible for enrollment, the applicant may be enrolled for six months commencing with the date of the determination or may be enrolled for a shorter time period at the discretion of the department.

11.88(2) An applicant shall provide the department with all requested information and shall execute any consent forms or releases of information necessary for the department to verify eligibility.

641—11.89(141A) Discontinuation of services.

11.89(1) The department shall review eligibility semiannually after enrollment unless one of the following events occurs within the six-month period to end eligibility:

a. The enrolled individual dies;

b. The enrolled individual is determined eligible and enrolled to fully receive medical services through a third-party payer and is able to fully pay the insurance deductibles and copayments;

c. The enrolled individual's annual ~~household income~~ MAGI increases to an amount above the respective ADAP component's income guidelines;

d. The enrolled individual establishes residency outside the state of Iowa;

e. The enrolled individual does not request drugs ~~within~~ over a 90-day period; or

f. The enrolled individual is placed in an institution such as a nursing home, state prison, or jail for more than 30 days.

11.89(2) An applicant must submit renewal documentation on a semiannual basis, accompanied by all information requested by the department.

641—11.90(141A) Distribution requirements.

11.90(1) Enrolled individuals shall be eligible to receive financial assistance only for drugs that:

a. Have received Food and Drug Administration approval to treat HIV or prevent the deterioration of health due to HIV, coinfections, or opportunistic infections; and

b. Are on the ADAP formulary.

11.90(2) The primary care provider shall write each drug prescription for an applicant or enrolled individual.

11.90(3) The enrolled individual must obtain the approved drug from the department's contracted pharmacy unless an exception to this requirement is granted by the department.

641—11.91(141A) ADAP waiting list.

11.91(1) If an applicant is eligible for ADAP and sufficient funds are available to provide services to the applicant, the department shall enroll the applicant. If the applicant is eligible for ADAP and sufficient funds are not available to provide services to the applicant, the department shall place the applicant's name on the ADAP waiting list in the order provided for in this rule.

11.91(2) The department shall place names on the waiting list in chronological order based upon the date of receipt of a completed application by the department.

11.91(3) To verify that applicants on the waiting list continue to meet ADAP eligibility requirements, the department shall require applicants on the waiting list to submit reapplication forms semiannually.

11.91(4) The department shall remove applicants from the waiting list in the chronological order in which their completed applications were approved, provided all updates were received by the department.

641—11.92(141A) Appeals. The department shall cause an applicant to be notified of the department's decision to approve or deny an application or to place an applicant on the ADAP waiting list. In the event an applicant is dissatisfied with the department's decision, the applicant may submit a formal appeal in writing to the ADAP advisory committee. Such request shall be delivered in person or shall be mailed by certified mail, return receipt requested, to ADAP Advisory Committee, Iowa Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Upon receipt of such an appeal, the ADAP advisory committee shall review the case and issue a written determination within 15 days of receipt of the request. The decision shall refer to the applicant by initials or other nonidentifying means. The ADAP advisory committee's decision shall be final and binding. This appeal process does not constitute a contested case proceeding as defined in Iowa Code chapter 17A.

641—11.93(141A) Confidentiality. The ADAP application and all information received or maintained by the department in connection with ADAP shall be considered confidential information in accordance with Iowa Code section 141A.9.

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 141A.2(2), the Department of Public Health hereby gives Notice of Intended Action to rescind Chapter 11, "Acquired Immune Deficiency Syndrome (AIDS)" and to adopt the following new Chapter 11, "Human Immunodeficiency Syndrome (HIV) Infection and Acquired Immune Deficiency Syndrome (AIDS)," Iowa Administrative Code.

The rules in Chapter 11 describe procedures and programs related to HIV/AIDS, including laboratory certification, training programs, notification and testing of exposed persons, and the AIDS Drug Assistance Program (ADAP). The proposed new chapter 11 rules implement changes that have been made to Iowa Code 141A and 139A, including removing the laboratory certification procedures; describing reportable events and conditions for HIV/AIDS; defining and describing partner notification services; updating procedures for occupational exposures to blood-borne pathogens; and removing prohibitions on home testing. In addition to the Code changes, the rules clarify and add detail to consent procedures for HIV testing. They also update references and Code citations, and change the method of calculating income for eligibility for the AIDS Drug Assistance Program to conform to methodology used by the Centers for Medicare & Medicaid Services of the U.S. Department of Health and Human Services.

Any interested person may make written comments or suggestions on the proposed amendment on or before October 22, 2013. Such written comments should be directed to Randy Mayer, Bureau of HIV, STD and Hepatitis, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to Randall.Mayer@idph.iowa.gov.

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

This amendment is intended to implement Iowa Code 141A, 135.11 subsections 20 – 22, 139A.19, 139A.33, and 915.40 through 915.43.

The following amendment is proposed.

Rescind 641—Chapter 11 and adopt the following **new** chapter in lieu thereof:

CHAPTER 11

HUMAN IMMUNODEFICIENCY SYNDROME (HIV) INFECTION AND ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

641—11.1(141A) Definitions. For the purpose of rules 641—11.1(139A,141A) to 11.34(915), the following definitions shall apply:

"*AIDS*" means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

"*AIDS-related condition*" means any condition resulting from HIV infection that meets the definition of AIDS as established by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

"*Blood bank*" means a facility for the collection, processing, or storage of human blood or blood derivatives, or from which or by means of which human blood or blood derivatives are distributed or otherwise made available.

"*CDC*" means Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

"*CLIA*" means Clinical Laboratory Improvement Amendments as administered by the Centers for Medicare & Medicaid Services of the United States Department of Health and Human Services for HIV testing.

"*Clinical laboratory*" means a facility for the microbiological, serological, chemical,

hematological, radiobioassay, cytological, immunohematological, pathological or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

"*Confirmed positive test*" means a reactive result or detectable quantity on any HIV-related test, including an antibody test, an antigen test, a culture, a nucleic acid amplification test, or other test or combination of tests, that is considered to be confirmatory according to prevailing medical technology and algorithms or guidance from CDC. When the confirmed positive test involves more than one test, all test results should be included in any reports to the department.

"*Department*" means Iowa department of public health.

"*Director of a plasma center, blood bank, clinical laboratory, or public health laboratory*" means the person responsible for direction and operation of the facility, the medical director, or the person designated by the director or medical director to ensure compliance with applicable regulations and requirements.

"*Emergency medical services personnel*" means emergency medical care provider as defined by 641 – 131.1.

"*Health care provider*" means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, podiatry, nursing, dentistry, or optometry, or licensed as a physician assistant, dental hygienist, or acupuncturist.

"*HIV*" means the "human immunodeficiency virus" identified as the causative agent of AIDS.

"*HIV infection*" means having acquired the human immunodeficiency virus.

"*HIV-related test*" means a diagnostic test conducted by a laboratory approved pursuant to CLIA for determining the presence of HIV or antibodies to HIV.

"*Laboratory*" means a clinical or public health laboratory, a plasma center, or a blood bank inside or outside the boundaries of Iowa.

"*Physician*" means a person currently licensed pursuant to Iowa Code chapter 148.

"*Plasma center*" means a facility that conducts plasmapheresis.

"*Plasmapheresis*" means the removal of blood from a human being to obtain plasma with the subsequent reinfusion of the remaining formed elements into the donor, but excludes such a procedure performed for the purpose of improving the health of the donor.

"*Public health laboratory*" means a laboratory operated by an agency of city, county or state government for the purpose of supporting disease control activities.

"*Sexually transmitted disease or infection*" means "sexually transmitted disease or infection" as defined in 641—1.1(139A).

641—11.2(141A) HIV testing – obtaining consent – voluntary HIV-related tests for adults who are not pregnant.

11.2(1) Prior to undergoing a voluntary HIV-related test, the health care provider requesting the test shall make information concerning HIV testing and where to obtain additional information regarding HIV infection and risk reduction available to the subject of the test.

11.2(2) All adults who are able must give consent for an HIV test, but a separate written consent solely for the purpose of HIV testing shall not be required. If an individual signs a general consent form for the performance of medical tests or procedures, the signing of an additional consent form for the purpose of consenting to an HIV-related test is not required during the time in which the general consent form is in effect. If an individual has not signed a general consent form for the performance of medical tests and procedures, or if the consent form is no longer in effect, a health care provider shall obtain oral or written consent prior to

performing the HIV-related test.

11.2(3) If an individual is unable to give consent, the individual's legal guardian may provide oral or written consent. If the individual's legal guardian cannot be located or is unavailable, a health care provider may authorize the HIV-related test when the test results are necessary for diagnostic purposes to provide appropriate urgent medical care.

11.2(4) Once an adult has been informed of a confirmed positive HIV-related test, no HIV-specific consent for medical procedures and tests shall be required for subsequent medical procedures and tests involved in the care or treatment of the adult with HIV infection.

641—11.3(139A, 141A) HIV testing – obtaining consent – voluntary HIV-related tests for minors who are not pregnant.

11.3(1) A minor shall have the legal capacity to act and give consent to the provision of medical care or services for the prevention, diagnosis, or treatment of HIV by a hospital, clinic, or health care provider. Consent shall not be subject to later disaffirmance by reason of such minority. The consent of another person, including but not limited to the consent of a spouse, parent, custodian, or guardian, shall not be necessary.

11.3(2) Prior to undergoing a voluntary HIV-related test, the health care provider requesting the test shall make information concerning HIV testing and where to obtain additional information regarding HIV infection and risk reduction available to the subject of the test.

11.3(3) A minor shall be informed prior to testing that, upon confirmation according to prevailing medical technology of a positive HIV-related test result, the minor's legal guardian is required to be informed by the testing facility. Testing facilities where minors are tested shall have available a program to notify the legal guardian of a newly diagnosed minor. The notification process shall emphasize the need for family support and shall assist in making

available the resources necessary to accomplish that goal. However, a testing facility which is precluded by federal statute, regulation, or CDC guidelines from informing the legal guardian is exempt from the notification.

11.3(4) Prior to the test, a minor shall give written consent for performance of the HIV-related test and to the notification of the legal guardian should the test be confirmed as positive.

11.3(5) If a minor is unable to provide consent for an HIV-related test, the minor's legal guardian may provide oral or written consent for the minor. If the minor's legal guardian cannot be located or is unavailable, a health care provider may authorize the HIV-related test when the test results are necessary for diagnostic purposes to provide appropriate urgent medical care.

11.3(6) Once a minor has been informed of a confirmed positive HIV-related test and the legal guardian has been notified, no HIV-specific consent for medical procedures and tests shall be required for subsequent medical procedures and tests involved in the care or treatment of a minor with HIV infection.

641—11.4(141A) HIV testing – obtaining consent – voluntary HIV-related tests for pregnant women.

11.4(1) All pregnant women, including minors, shall be tested for HIV infection as part of the routine panel of prenatal tests. The health care provider requesting the test shall notify a pregnant woman that HIV screening is recommended for all prenatal patients and that the pregnant woman will receive an HIV test as part of the routine panel of prenatal tests unless the pregnant woman objects to the test. No written or oral consent shall be required.

11.4(2) The testing shall occur as early as possible during each pregnancy.

11.4(3) The health care provider requesting the test shall make information about HIV prevention, risk reduction, and treatment opportunities to reduce the possible transmission of

HIV to a fetus available to all pregnant women.

11.4(4) A pregnant women who is a minor shall be informed prior to testing that, upon confirmation according to prevailing medical technology of a positive HIV-related test result, the minor's legal guardian is required to be informed by the testing facility. Testing facilities where minors are tested shall have available a program to notify the legal guardian of a newly diagnosed minor. The notification process shall emphasize the need for family support and shall assist in making available the resources necessary to accomplish that goal. However, a testing facility which is precluded by federal statute, regulation, or CDC guidelines from informing the legal guardian is exempt from the notification.

11.4(5) If a pregnant woman objects to and declines the test, the decision shall be documented by the health care provider in the pregnant women's medical record. A health care provider shall encourage women who decline the test early in prenatal care to be tested at a subsequent visit.

11.4(6) Once a pregnant woman has been informed of a confirmed positive HIV-related test and, if the pregnant woman is a minor, the legal guardian has been notified, no HIV-specific consent for medical procedures and tests shall be required for subsequent medical procedures and tests involved in the care or treatment of a pregnant woman with HIV infection.

641—11.5(141A) HIV test results – post-test counseling

11.5(1) At any time that the subject of an HIV-related test is informed of confirmed positive test results, counseling concerning the emotional and physical health effects of HIV infection shall be initiated. Particular attention shall be given to explaining the need for the precautions necessary to avoid transmitting the virus. The subject shall be given information concerning where to obtain additional counseling. If a legal guardian of the subject of the test

provided consent to the test, the counseling shall be given to the legal guardian.

11.5(2) Post-test counseling requirements do not apply to any of the following situations:

a. The performance of an HIV-related test by a health care provider or health facility when the health care provider or health facility procures, processes, distributes, or uses a human body part donated for a purpose specified under the revised uniform anatomical gift Act as provided in chapter 142C, or semen provided prior to July 1, 1988, for the purpose of artificial insemination, or donations of blood, and such test is necessary to ensure medical acceptability of such gift or semen for the purposes intended.

b. A person engaged in the business of insurance who is subject to section 505.15.

c. The performance of an HIV-related test by a health care provider or health facility when the subject of the test is deceased and a documented significant exposure has occurred.

d. The performance of an HIV-related test by a health care provider or health facility when the subject of the test is unable to provide consent and the health care provider or health care facility provided consent for the patient.

641—11.6(141A) Reporting of diagnoses and HIV-related tests, events, and conditions to the department.

11.6(1) The following constitute reportable events related to HIV infection:

a. A test result indicating HIV infection, including:

(1) Confirmed positive results on any HIV-related test or combination of tests, including antibody tests, antigen tests, cultures, and nucleic acid amplification tests.

(2) A positive result or report of a detectable quantity on any other HIV detection (non-antibody) tests, and results of all viral loads, including non-detectable levels.

b. AIDS and AIDS-related conditions, including all levels of CD4+ T-lymphocyte

counts.

c. Birth of an infant to an HIV-infected mother (perinatal exposure) or any (positive, negative, or undetectable) non-antibody detection test (antigen test, viral culture, viral load, or qualitative PCR detection test) on an infant less than or equal to 18 months of age.

d. Death resulting from an AIDS-related condition, or death of a person with HIV infection.

11.6(2) Within seven days of the receipt of a person's confirmed positive test result indicating HIV infection, the director of a plasma center, blood bank, clinical laboratory or public health laboratory that performed the test or that requested the confirmatory test shall make a report to the department on a form provided by the department.

11.6(3) Within seven days of the receipt of a test result indicating HIV infection, which has been confirmed as positive according to prevailing medical technology, or immediately after the initial examination or treatment of an individual infected with HIV, the physician or other health care provider at whose request the test was performed or who performed the initial examination or treatment shall make a report to the department on a form provided by the department.

11.6(4) Within seven days of diagnosing a person as having AIDS or an AIDS-related condition, the diagnosing physician shall make a report to the department on a form provided by the department.

11.6(5) Within seven days of the death of a person with HIV infection, the attending physician shall make a report to the department on a form provided by the department.

11.6(6) Within seven days of the birth of an infant to an HIV-infected mother or a receipt of a laboratory result (positive, negative, or undetectable) of a non-antibody detection test

(antigen test, viral culture, viral load, or qualitative PCR detection test) on an infant less than or equal to 18 months of age, the attending physician shall make a report to the department on a form provided by the department.

11.6(7) The report shall include:

a. The patient's name, address, date of birth, gender, race and ethnicity, marital status, and telephone number.

b. The name, address and telephone number of the plasma center, blood bank, clinical laboratory or public health laboratory that performed or requested the test, if a test was performed.

c. The address of the physician or other health care provider that requested the test.

d. If the patient is female, whether the patient is pregnant.

11.6(8) All patients receiving services in the state, regardless of state of residence, shall be reported.

641-11.7(141A) Penalties.

11.7(1) An individual who repeatedly fails to file the report required pursuant to these rules is subject to a report being made to the licensing board governing the professional activities of the individual. The department shall notify the individual each time the department determines that the individual has failed to file a required report. The department shall inform the individual in the notification that the individual may provide information to the department to explain or dispute the failure to report.

11.7(2) A public, private, or hospital clinical laboratory that repeatedly fails to make the report required under these rules is subject to a civil penalty of not more than one thousand

dollars per occurrence. The department shall not impose the penalty without prior written notice and opportunity for hearing.

641-11.8(141A) Immunity. A person making a report in good faith pursuant to these rules is immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of the report.

641—11.9 to **11.10** Reserved.

TRAINING PROGRAMS

641—11.11(135) Purpose. The purpose is to describe the required content of AIDS training programs and to identify the groups of personnel involved.

11.11(1) *Nonemergency personnel.* Within six months of their initial employment, all supervisory and patient care personnel of any agency listed below shall complete a minimum of two hours of training concerning AIDS-related conditions and the prevention of HIV infection:

a. A licensed hospice,

b. A homemaker-home health aide provider agency which receives state homemaker-home health aide funds, or

c. An agency which provides respite care services and receives funds.

11.11(2) *Content.* Training programs must address the following topics:

a. HIV disease processes,

b. Signs and symptoms,

c. Transmission,

d. High-risk activities,

e. Prevention recommendations, and

f. Standard precautions as defined by the CDC and the Occupational Safety and Health

Administration of the U.S. Department of Labor.

11.11(3) *Emergency and law enforcement personnel.* All emergency medical services personnel, firefighters, and law enforcement personnel shall complete a minimum of two hours of training concerning AIDS-related conditions and the prevention of HIV infection.

11.11(4) *Content.* Training programs must address the following topics:

a. HIV disease processes,

b. Signs and symptoms,

c. Transmission,

d. High-risk activities,

e. Prevention recommendations, and

f. Standard precautions as defined by the CDC and the Occupational Safety and Health Administration of the U.S. Department of Labor.

This rule is intended to implement Iowa Code section 135.11.

641—11.12 to **11.14** Reserved.

PARTNER NOTIFICATION SERVICES AND DIRECT NOTIFICATION OF AN IDENTIFIABLE THIRD PARTY

641—11.15(139A,141A) Purpose. To establish a voluntary partner notification program, to include a procedure to allow a physician or the department to notify an identifiable third party of a patient directly that he or she has been exposed to HIV when the patient will not participate in the voluntary partner notification program.

641—11.16(139A,141A) Definitions. For the purpose of rules 641-11.15(139A,141A) to 11.18(139A,141A) the following definition shall apply:

"Identifiable third party" means a sexual partner or a person who shares drug injecting

equipment with a patient who has been diagnosed with HIV infection.

"*Partner notification*" means services provided to a person who has tested positive for a sexually transmitted disease or infection or to his or her sexual or needle-sharing partners or social contacts. These services include, but are not limited to, counseling about the nature of the disease, modes of transmission, and risk reduction techniques; treatment or linkage to medical care and treatment; assessment for and referral to social or medical services; elicitation of exposed partners' names and contact information; testing for other diseases or conditions; and provision of or referral to other prevention services.

641—11.17(139A,141A) Partner notification services by the department.

11.17(1) The department shall maintain a partner notification program for persons known to have tested positive for sexually transmitted diseases or infections. In administering the program, the department shall provide for the following:

a. A physician or other health care provider shall encourage a person who tests positive for a sexually transmitted disease or infection to refer for counseling and testing any person with whom the newly diagnosed person has had sexual relations or has shared drug injecting equipment.

b. The physician or other health care provider attending the person may provide to the department any relevant information provided by the person regarding any person with whom the tested person has had sexual relations or has shared drug injecting equipment.

11.17(2) When making contact with partners of a person with a sexually transmitted disease or infection, the department shall not disclose the identity of the person who provided the names of the partners and shall protect the confidentiality of the partners that are contacted.

11.17(3) The department may delegate its partner notification duties under section

11.17(1) for persons who have tested positive for HIV infection to local health authorities unless the authority refuses or neglects to conduct the partner notification program in a manner deemed to be effective by the department.

11.17(4) The department may delegate its partner notification duties under section 11.17(1) for persons who have tested positive for sexually transmitted diseases other than HIV infection to local health authorities or a physician or other health care provider unless the authority or physician or other health care provider refuses or neglects to conduct the partner notification program in a manner deemed to be effective by the department.

11.17(5) In addition to the provisions for partner notification provided under these rules and notwithstanding any provision to the contrary, a county medical examiner or deputy medical examiner performing official duties pursuant to sections 331.801 through 331.805 or the state medical examiner or deputy medical examiner performing official duties pursuant to chapter 691, who determines through an investigation that a deceased person was infected with HIV, may notify directly, or request that the department notify, the immediate family of the deceased or any person known to have had a significant exposure from the deceased of the finding.

641—11.18(141A) Direct notification of an identifiable third party by a physician or the department.

11.18(1) This procedure shall be used when an HIV-infected person is having continuing contact with a sex or needle-sharing partner who is unaware of the person's infection and when both of the following situations exist:

a. A physician for the HIV-infected person is of the good faith opinion that the nature of the continuing contact through sexual intercourse or the sharing of injecting equipment poses an imminent danger of HIV transmission to the third party.

b. When the physician believes in good faith that the HIV-infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program.

11.18(2) The department or a physician may reveal the identity of a person who has tested positive for HIV infection pursuant to this rule only to the extent necessary to protect a third party from the direct threat of transmission. Notification of a person pursuant to this rule shall be made confidentially. Nothing in this rule shall be interpreted to create a duty to warn third parties of the danger of exposure to HIV through contact with a person who tests positive for HIV infection.

11.18(3) When the physician is of the good faith opinion and belief that third-party notification should be performed, notification of a person pursuant to this rule shall be made:

a. Directly by the physician according to the procedures stated in subrules 11.18(4), 11.18(5) and 11.18(7), or

b. By the department at the request of the physician according to subrules 11.18(6) to 11.18(7).

11.18(4) Notification by the physician. Prior to notification of a third party by an infected person's physician, the physician shall make reasonable efforts to inform, in writing, the person who has tested positive for HIV infection. The written information shall state that due to the nature of the person's continuing contact through sexual intercourse or the sharing of injecting equipment with a third party, and the physician's belief that the infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program, the physician is forced to take action to provide notification to the third party. The physician, when reasonably possible, shall provide the following information to

the person who has tested positive for HIV infection:

a. The nature of the disclosure and the reason for the disclosure.

b. The anticipated date of disclosure.

c. The name of the party or parties to whom disclosure is to be made.

NOTE: Reasonable efforts to inform, in writing, the person who has tested positive for HIV infection shall be deemed satisfied when the physician delivers the written notice in person or directs a written notice to the person's last-known address by restricted certified mail, return receipt requested, at least five days prior to the anticipated date of disclosure to the third party.

11.18(5) When performed by the infected person's physician, notification of the third party and any disclosure concerning the purpose of that notification shall be made in person. However, initial contact with the third party may be made by telephone, mail, or other electronic means to arrange the meeting with the physician at the earliest opportunity to discuss an important health matter. The nature of the health matter to be discussed shall not be revealed in the telephone call, letter, or other electronic message.

11.18(6) Notification by the department.

a. The physician attending the patient shall provide by telephone to the department any relevant information provided by the person regarding any person with whom the tested person has had sexual relations or has shared drug injecting equipment. The information may include the third party's name, address, telephone number, and any other locating information known to the physician. The department shall use the information in accordance with procedures established for the voluntary partner notification program.

b. Notification of the third party and any disclosure concerning the purpose of that notification shall be made in person. However, initial contact with the third party may be made

by telephone, mail, or other electronic means to arrange the meeting with the department representative. The nature of the matter to be discussed shall not be revealed in the telephone call, letter, or other electronic message.

11.18(7) Confidentiality. The infected person's physician and the department shall protect the confidentiality of the third party and the infected person. The identity of the infected person shall remain confidential unless it is necessary to reveal it to the third party so that the third party may avoid exposure to HIV. If the identity of the infected person is revealed, the third party shall be presented with a statement in writing at the time of disclosure which includes the following or substantially similar language: "Confidential information revealing the identity of a person infected with HIV has been disclosed to you. The confidentiality of this information is protected by state law. State law prohibits you from making any further disclosure of the information without the specific written consent of the person to whom it pertains. Any breach of the required confidential treatment of this information subjects you to legal action and civil liability for monetary damages. A general authorization for the release of medical or other information is not sufficient for this purpose."

11.18(8) Immunity. A health care provider attending a person who tests positive for HIV infection has no duty to disclose to or to warn third parties of the dangers of exposure to HIV through contact with that person and is immune from any liability, civil or criminal, for failure to disclose to or warn third parties of the condition of that person.

This rule is intended to implement Iowa Code section 141A.5.

641—11.19 to 11.20 Reserved.

CARE PROVIDERS

EXPOSED TO CONTAGIOUS OR

INFECTIOUS DISEASES

641—11.21(139A) Purpose. The purpose of these rules is to implement Iowa Code section 139A.19, relating to care providers who are exposed to contagious or infectious diseases.

641—11.22(139A) Definitions. For the purpose of rules 641—11.21(139A) to 11.26(139A) the following definitions shall apply:

"*AIDS*" means acquired immune deficiency syndrome as defined by CDC.

"*Blood-borne viral hepatitis*" means hepatitis B or hepatitis C.

"*Care provider*" means an individual who is trained and authorized by federal or state law to provide health care services or services of any kind in the course of the individual's official duties, for compensation or in a voluntary capacity, who is a health care provider, emergency medical care provider as defined in section 147A.1, fire fighter, or peace officer. "Care provider" also means an individual who renders emergency care or assistance in an emergency or due to an accident as described in section 613.17.

"*CDC*" means Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

"*Certification of a significant exposure report*" means the determination by an authorized infection preventionist, occupational health professional, or other personnel trained in infection control or infectious disease medicine and designated by a facility to review significant exposure reports that the incident described by the exposed care provider meets the definition of a significant exposure as defined in rule 11.27 (139A).

"*Contagious or infectious disease*" means blood-borne viral hepatitis, meningococcal

disease, AIDS or HIV, tuberculosis, and any other disease determined to be life-threatening to a person exposed to the disease as established by the department based upon a determination by the state epidemiologist and in accordance with guidelines from CDC.

"Designated representative" means a person who is designated by a department, agency, division, or service organization to act on behalf of the exposed care provider as a liaison with the facility that received the source patient when the exposure occurred in the field or during patient transport.

"Exposure" means a specific eye, mouth, other mucous membrane, nonintact skin, or parenteral contact with blood or other potentially infectious bodily fluids.

"*HBV*" means hepatitis B virus.

"*Health care facilit*y" means a health care facility as defined in section 135C.1, an ambulatory surgical center, or a clinic.

"Health care provider" means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, podiatry, nursing, dentistry, optometry, or as a physician assistant, dental hygienist, or acupuncturist.

"HIV" means the human immunodeficiency virus identified as the causative agent of AIDS.

"Home-health services" means health care services provided by a care provider in a patient's home or other residence.

"Infectious bodily fluids" means bodily fluids capable of transmitting HIV as listed in "Guidelines for Prevention of Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Health-Care and Public-Safety Workers," found in Morbidity and Mortality Weekly Report, dated June 23, 1989, Volume 38, Number S-6, published by the U.S. Department of

Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333, or subsequent CDC statements on this topic. To prevent HIV and blood-borne viral hepatitis disease transmission, this reference indicates that standard precautions should be followed for exposure to the following infectious bodily fluids: blood, amniotic fluid, pericardial fluid, peritoneal fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen, vaginal secretions, and saliva contaminated with blood. HIV and blood-borne viral hepatitis disease transmission has not occurred from feces, nasal secretions, sputum, sweat, tears, urine, vomitus, and saliva when it is not contaminated with blood.

"Respite care services" means health care services provided by a care provider in a patient's home or other residence on a short-term, temporary basis as relief to those who are caring for family members.

"Significant exposure" means a situation in which there is a risk of contracting disease through exposure to a person's infectious bodily fluids in a manner capable of transmitting an infectious agent as determined by CDC. Exposure includes contact with blood or other infectious bodily fluids to which standard precautions apply through percutaneous inoculation or contact with an open wound, nonintact skin, or mucous membranes during the performance of normal job duties. Significant exposures include:

1. Transmission of blood, bloody fluids, or other infectious bodily fluids of the patient onto a mucous membrane (mouth, nose, or eyes) of the care provider.

2. Transmission of blood, bloody fluids, or other infectious bodily fluids onto an open wound or lesion with significant breakdown in the skin barrier, including a needle puncture with a needle contaminated with blood, bloody fluids, or other infectious bodily fluids.

"Significant exposure report" means the Report of Exposure to HIV or Other Infectious

Disease form provided by the department. It is the only form authorized to be used to document a significant exposure to infectious bodily fluids such that the source is deemed to consent to a test to determine if the individual has a contagious or infectious disease, and is deemed to consent to notification of the care provider of the results of the test, pursuant to Iowa Code section 139A.19.

641—11.23(139A,141A) Exposures in non-clinical settings.

11.23(1) If a care provider sustains a significant exposure from an individual while rendering health care or other services, other than home-health or respite care services, outside of a health care facility or hospital, the care provider shall file a significant exposure report as soon as reasonably possible following the exposure. When the exposure occurred outside a clinical setting, a care provider who has sustained a significant exposure should file this report with the infection control, occupational health, or other designated office of the facility to which the patient was transported.

11.23(2) The individual to whom the care provider was exposed is deemed to consent to a test to determine if the individual has a contagious or infectious disease and is deemed to consent to notification of the care provider or the designated representative of the results of the test, upon submission of a significant exposure report, and certification of the significant exposure by an authorized infection preventionist, occupational health professional, or other professional trained in infectious disease control. No further consent from the source patient is required. However, source patients shall be notified that an exposure has occurred, and shall be told which specific tests are being performed to determine the presence of contagious or infectious diseases. If the source of the exposure is a minor, the minor shall be informed prior to an HIV-related test that, upon positive confirmation of an HIV-related test result, the minor's legal guardian shall be

informed of the positive result, pursuant to Iowa Code 141A.7 paragraph 3.

11.23(3) Hospitals, clinics, or other health facilities, institutions administered by the department of corrections, and jails shall have written policies and procedures for reviewing and certifying significant exposure report forms, testing a source patient, and notifying a care provider who sustained a significant exposure while rendering health care services or other services to the patient when the source patient is delivered to the facility and the exposure occurred prior to the delivery. The policies and procedures shall include the possibility for the care provider to designate a representative to whom notification shall be provided and who shall, in turn, notify the care provider. The identity of the designated representative of the care provider shall not be revealed to the individual tested. The designated representative shall inform the hospital, clinic, or other health facility, institution administered by the department of corrections, or jail of those parties who received the notification, and following receipt of this information and upon request of the individual tested, the hospital, clinic, or other health facility, institution administered by the department of corrections, or jail shall inform the individual of the parties to whom notification was provided.

11.23(4) The hospital, clinic, or other health facility to whom the individual is delivered shall conduct the test. If the individual is delivered to an institution administered by the Iowa department of corrections, the test shall be conducted by the staff physician of the institution. If the individual is delivered to a jail, the test shall be conducted by the attending physician of the jail or the county medical examiner. If the patient was deemed to consent upon certification of a significant exposure report, the sample and test results shall only be identified by a number.

11.23(5) If a test result is positive, the hospital, clinic, or other health facility, or other person performing the test shall notify the subject of the test and make any required reports to the

department pursuant to Iowa Code sections 139A.3 and 141A.6. The report to the department shall include the name of the individual tested.

11.23(6) If a patient who is a source of a significant exposure is diagnosed or confirmed as having a contagious or infectious disease, the hospital, clinic, or other health facility, or other person performing the test shall notify the care provider or the designated representative of the care provider who shall then notify the care provider. If the patient is a minor and is diagnosed with HIV infection, the hospital, clinic, or other health facility, or other person performing the test shall notify the legal guardian of the minor.

11.23(7) The notification shall advise the care provider of possible exposure to a particular contagious or infectious disease and recommend that the provider seek medical attention. The notification shall be provided as soon as reasonably possible following determination that the patient has a contagious or infectious disease. The notification shall not include the name of the individual tested for the contagious or infectious disease unless the individual consents. If the care provider who sustained a significant exposure determines the identity of the individual diagnosed or confirmed as having a contagious or infectious disease, the identity of the individual shall be confidential information and shall not be disclosed by the care provider to any other person unless a specific written release is obtained from the individual diagnosed with or confirmed as having a contagious or infectious disease.

11.23(8) This section does not preclude a hospital, clinic, other health facility, or a health care provider from providing notification to a care provider under circumstances in which the hospital's, clinic's, other health facility's, or health care provider's policy provides for notification of the hospital's, clinic's, other health facility's, or health care provider's own employees of exposure to a contagious or infectious disease that is not life-threatening if the

notice does not reveal a patient's name, unless the patient consents.

11.23(9) The infection control, occupational health, or other designated office of the facility shall maintain a record of all significant exposure reports it receives and shall retain each report for a period of five years.

11.23(10) The report form "Report of Exposure to HIV or Other Infectious Disease" is a confidential record pursuant to Iowa Code section 141A.9.

11.23(11) The employer of a care provider who sustained a significant exposure pursuant to these rules shall pay the cost of testing for the individual who is the source of the significant exposure and of the testing of the care provider, if the significant exposure was sustained during the course of employment. However, the department shall assist an individual who is the source of the significant exposure in finding resources to pay for the costs of the testing and shall assist a care provider who renders direct aid without compensation in finding resources to pay for the cost of the test.

11.23(12) A hospital's, clinic's, other health facility's, or health care provider's duty to notify under these rules is not continuing. It is limited to the diagnosis of a contagious or infectious disease made in the course of admission, care, and treatment following the rendering of health care services or other services to the individual who was the source of the significant exposure.

11.23(13) Notwithstanding subrule 11.23(12), the hospital, clinic, or other health facility may notify the exposed care provider if, following discharge from or completion of care or treatment by the hospital, clinic, or other health facility, the individual who was the source of the significant exposure, and for whom a significant exposure report was submitted that did not result in notification of the exposed care provider, wishes to provide information regarding the

source individual's contagious or infectious disease status to the exposed care provider.

11.23(14) Notwithstanding any other provision of law to the contrary, a care provider may transmit cautions regarding contagious or infectious disease information, with the exception of AIDS or HIV pursuant to section 80.9B, in the course of the care provider's duties over the police radio broadcasting system under chapter 693 or any other radio-based communications system if the information transmitted does not personally identify an individual.

641—11.24(139A, 141A) Exposures in clinical settings.

11.24(1) If a care provider sustains a significant exposure from an individual while rendering health care services or other services within a hospital, clinic, or other health care facility, or while delivering home-health or respite care services, the care provider shall file a report as soon as reasonably possible following the exposure. A care provider who has sustained a significant exposure should file the report with the infection control, occupational health, or other office designated by the facility in which the exposure occurred, or by the facility which has oversight for the delivery of home-health or respite care services.

a. If a general consent form was signed and in effect at the time of the significant exposure and the source of the exposure is an adult, a significant exposure report form shall not be required to document the significant exposure. The health care facility or hospital may use an employee incident report or other similar form for this purpose. The individual to whom the care provider was exposed is deemed to consent to a test to determine if the individual has a contagious or infectious disease and is deemed to consent to notification of the care provider or the designated representative of the results of the test, upon submission and review of an employee incident report, and certification of the significant exposure by an authorized infection preventionist, occupational health professional, or other professional trained in infectious disease

control. No further consent from the source patient is required. However, source patients shall be notified that an exposure has occurred, and shall be told which specific tests are being performed. Prior to undergoing an HIV-related test, information shall be made available to the subject of the test concerning testing and a means of obtaining additional information regarding HIV infection and risk reduction pursuant to Iowa Code section 141A.6.

b. If no consent form was signed or in effect at the time of the exposure, or if the source of the exposure is a minor, the individual to whom the care provider was exposed is deemed to consent to a test to determine if the individual has a contagious or infectious disease and is deemed to consent to notification of the care provider or the designated representative of the results of the test upon submission of a significant exposure report form and certification of the significant exposure by an authorized infection preventionist, occupational health professional, or other professional trained in infectious disease control. Source patients shall be notified that an exposure has occurred, and shall be told which specific tests are being performed to determine the presence of contagious or infectious diseases. If the source of the exposure is a minor, the minor shall be informed prior to an HIV-related test that, upon positive confirmation of an HIV-related test result, the minor's legal guardian shall be informed of the positive result, pursuant to Iowa Code 141A.7 paragraph 3.

11.24(2) Hospitals, clinics, or other health facilities, institutions administered by the department of corrections, and jails shall have written policies and procedures for reviewing and certifying significant exposure report forms or other employee incident report forms, testing a source patient, and notifying a care provider who sustained a significant exposure while rendering health care services or other services to a patient during the admission, care, or treatment of the patient at the facility, or while delivering home-health or respite care services.

11.24(3) The hospital, clinic, or other health facility where exposure occurred or which has oversight for the delivery of home-health or respite care services shall conduct the test. If a general consent form was signed and in effect and the source patient was an adult, the sample and test results shall be identified by name. If the patient was deemed to consent to a test and to notification of the care provider upon certification of a significant exposure report pursuant to subrule 11.24(1) because no general consent was signed and in effect at the time of the exposure or because the source patient was a minor, the sample and test results shall only be identified by a number.

11.24(4) If a test result is positive, the hospital, clinic, or other health facility, or other person performing the test shall notify the subject of the test and make any required reports to the department pursuant to Iowa Code sections 139A.3 and 141A.6. The report to the department shall include the name of the individual tested.

11.24(5) If a patient who is a source of a significant exposure is diagnosed or confirmed as having a contagious or infectious disease, the hospital, clinic, or other health facility, or other person performing the test shall notify the care provider or the designated representative of the care provider who shall then notify the care provider. If the patient is a minor and is diagnosed with HIV infection, the hospital, clinic, or other health facility, or other person performing the test shall notify the legal guardian of the minor.

11.24(6) The notification shall advise the care provider of possible exposure to a particular contagious or infectious disease and recommend that the provider seek medical attention. The notification shall be provided as soon as reasonably possible following determination that the patient has a contagious or infectious disease.

11.24(7) This section does not preclude a hospital, clinic, other health facility, or a health

care provider from providing notification to a care provider under circumstances in which the hospital's, clinic's, other health facility's, or health care provider's policy provides for notification of the hospital's, clinic's, other health facility's, or health care provider's own employees of exposure to a contagious or infectious disease that is not life-threatening if the notice does not reveal a patient's name, unless the patient consents.

11.24(8) The infection control, occupational health, or other designated office of the facility shall maintain a record of all significant exposure reports it receives and shall retain each report for a period of five years.

11.24(9) The report form "Report of Exposure to HIV or Other Infectious Disease" is a confidential record pursuant to Iowa Code section 141A. 9.

11.24(10) The employer of a care provider who sustained a significant exposure pursuant to these rules shall pay the cost of testing for the individual who is the source of the significant exposure and of the testing of the care provider, if the significant exposure was sustained during the course of employment.

11.24(11) A hospital's, clinic's, other health facility's, or health care provider's duty to notify under these rules is not continuing. It is limited to the diagnosis of a contagious or infectious disease made in the course of admission, care, and treatment following the rendering of health care services or other services to the individual who was the source of the significant exposure.

11.24(12) Notwithstanding subrule 11.24(11), the hospital, clinic, or other health facility may notify the exposed care provider if, following discharge from or completion of care or treatment by the hospital, clinic, or other health facility, the individual who was the source of the significant exposure, and for whom a significant exposure report was submitted that did not

result in notification of the exposed care provider, wishes to provide information regarding the source individual's contagious or infectious disease status to the exposed care provider.

641—11.25(139A) Immunity. Hospitals, clinics, health care providers, or other persons participating in good faith in complying with provisions authorized or required under these rules are immune from any liability, civil or criminal, which may otherwise be incurred or imposed.

641—11.26(139A) Duty to Test. A hospital, clinic, other health facility, health care provider, or other person who is authorized to perform a test under these rules has no duty to perform the test authorized.

Rules 11.21(139A) to 11.26(139A) are intended to implement Iowa Code section 139A.19.

641—11.27 to **11.29** Reserved.

HIV-RELATED TEST FOR CONVICTED OR ALLEGED

SEXUAL-ASSAULT OFFENDERS AND THE VICTIMS

641—11.30(915) Purpose. The purpose of these rules is to describe procedures to follow for testing of a convicted or alleged offender for HIV pursuant to Iowa Code section 915, and to establish procedures to follow to provide for counseling, health care, and support services to the victim.

641—11.31(915) Definitions. For the purpose of these rules, the following definitions shall apply:

"*AIDS*" means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

"*Alleged offender*" means a person who has been charged with the commission of a sexual assault or a juvenile who has been charged in juvenile court with being a delinquent as a

result of actions that would constitute a sexual assault.

"Authorized representative" means an individual authorized by the victim to request an HIV-related test of a convicted or alleged offender who is any of the following:

1. The parent, guardian, or custodian of the victim if the victim is a minor.

2. The physician of the victim.

3. The victim counselor or person requested by the victim who is authorized to provide the counseling regarding the HIV-related test and results.

4. The victim's spouse.

5. The victim's legal counsel.

"Convicted offender" means a person convicted of a sexual assault or a juvenile who has been adjudicated delinquent for an act of sexual assault.

"Department" means the Iowa department of public health.

"Department of corrections" means the Iowa department of corrections.

"Division" means the crime victims assistance division of the office of the attorney general.

"HIV" means the human immunodeficiency virus identified as the causative agent of AIDS.

"HIV-related test" means a diagnostic test conducted by a laboratory approved pursuant to CLIA for determining the presence of HIV or antibodies to HIV.

"Petitioner" means a person who is the victim of a sexual assault which resulted in alleged significant exposure, or the parent, guardian, or custodian of a victim if the victim is a minor, for whom the county attorney files a petition with the district court to require the convicted offender to undergo an HIV-related test.

"Sexual assault" means sexual abuse as defined in Iowa Code section 709.1, or any other sexual offense by which a victim has allegedly had sufficient contact with a convicted or an alleged offender to be deemed a significant exposure.

"Significant exposure" means contact of the victim's ruptured or broken skin or mucous membranes with the blood or bodily fluids, other than tears, saliva, or perspiration, of the convicted or alleged offender. "Significant exposure" is presumed to have occurred when there is a showing that there was penetration of the convicted or alleged offender's penis into the victim's vagina or anus, contact between the mouth and genitalia, or contact between the genitalia of the convicted or alleged offender and the genitalia or anus of the victim.

"Victim" means a petitioner or a person who is the victim of a sexual assault which resulted in significant exposure, or the parent, guardian, or custodian of such a victim if the victim is a minor, for whom the victim or the peace officer files an application for a search warrant to require the alleged offender to undergo an HIV-related test. "Victim" includes an alleged victim.

"Victim counselor" means a person who is engaged in a crime victim center as defined in Iowa Code section 915.20A, who is certified as a counselor by the crime victim center, and who has completed at least 20 hours of training provided by the Iowa coalition against sexual assault or a similar agency.

641—11.32(915) HIV-related test—convicted or alleged sexual assault offender.

11.32(1) Unless a petitioner chooses to be represented by private counsel, the county attorney shall represent the victim's interest in all proceedings under Iowa Code chapter 915.

11.32(2) If a person is convicted of sexual assault or adjudicated delinquent for an act of sexual assault, the county attorney, if requested by the petitioner, shall petition the court for an

order requiring the convicted offender to submit to an HIV-related test, provided that all of the following conditions are met:

a. The sexual assault for which the offender was convicted or adjudicated delinquent included sufficient contact between the victim and the convicted offender to be deemed a significant exposure pursuant to 641—11.31(915).

b. The authorized representative of the petitioner, the county attorney, or the court sought to obtain written informed consent to the testing from the convicted offender.

c. Written informed consent was not provided by the convicted offender.

11.32(3) If a person is an alleged offender, the county attorney, if requested by the victim, shall make application to the court for the issuance of a search warrant, in accordance with Iowa Code chapter 808, for the purpose of requiring the alleged offender to submit to an HIV-related test, if all of the following conditions are met:

a. The application states that the victim believes that the sexual assault for which the alleged offender is charged included sufficient contact between the victim and the alleged offender to be deemed a significant exposure pursuant to 641—11.31(915) and states the factual basis for the belief that a significant exposure exists.

b. The authorized representative of the victim, the county attorney, or the court sought to obtain written informed consent to the testing from the alleged offender.

c. Written informed consent was not provided by the alleged offender.

11.32(4) Upon receipt of the petition or application, the court shall:

a. Prior to the scheduling of a hearing, refer the victim for counseling by a victim counselor or a person requested by the victim who is authorized to provide the counseling regarding the nature, reliability and significance of the HIV-related test and of any test results of

the convicted or alleged offender.

b. Schedule a hearing to be held as soon as is practicable.

c. Cause written notice to be served on the convicted or alleged offender who is the subject of the proceeding, in accordance with the Iowa Rules of Civil Procedure relating to the service of original notice, or if the convicted or alleged offender is represented by legal counsel, provide written notice to the convicted or alleged offender and the convicted or alleged offender's legal counsel.

d. Provide for the appointment of legal counsel for a convicted or alleged offender if the convicted or alleged offender desires but is financially unable to employ counsel.

e. Furnish legal counsel with copies of the petition or application, written informed consent, if obtained, and copies of all other documents related to the petition or application, including, but not limited to, the charges and orders.

11.32(5) A hearing under these rules shall be conducted in an informal manner consistent with orderly procedure and in accordance with the Iowa Rules of Evidence.

a. The hearing shall be limited in scope to the review of questions of fact only as to the issue of whether the sexual assault for which the offender was convicted or adjudicated delinquent or for which the alleged offender was charged provided sufficient contact between the victim and the convicted or alleged offender to be deemed a significant exposure, and to questions of law.

b. In determining whether the contact should be deemed a significant exposure for a convicted offender, the court shall base the determination on the testimony presented during the proceedings on the sexual assault charge, the minutes of the testimony or other evidence included in the court record, or if a plea of guilty was entered, based upon the complaint or upon

testimony provided during the hearing. In determining whether the contact should be deemed a significant exposure for an alleged offender, the court shall base the determination on the application and the factual basis provided in the application for the belief of the applicant that a significant exposure exists.

c. The victim may testify at the hearing, but shall not be compelled to testify. The court shall not consider the refusal of a victim to testify at the hearing as material to the court's decision regarding issuance of an order or search warrant requiring testing.

d. The hearing shall be in camera unless the convicted or alleged offender and the petitioner or victim agree to a hearing in open court and the court approves. The report of the hearing proceedings shall be sealed and no report of the proceeding shall be released to the public, except with the permission of all parties and the approval of the court.

e. Stenographic notes or electronic or mechanical recording shall be taken of all court hearings unless waived by the parties.

11.32(6) Following the hearing, the court shall require a convicted or alleged offender to undergo an HIV-related test only if the petitioner or victim proves all of the following by a preponderance of evidence.

a. The sexual assault constituted a significant exposure.

b. An authorized representative of the petitioner or victim, the county attorney, or the court sought to obtain written informed consent from the convicted or alleged offender.

c. Written informed consent was not provided by the convicted or alleged offender.

11.32(7) A convicted or alleged offender who is required to undergo an HIV-related test may appeal to the court for review of questions of law only, but may appeal questions of fact if the findings of fact are clearly erroneous.

641—11.33(915) Medical examination costs. The cost of a medical examination for the purpose of gathering evidence and the cost of treatment for the purpose of preventing venereal disease shall be paid from the victim compensation fund as established in Iowa Code chapter 915. Information is available from the department of justice, crime victim assistance program, telephone (515)281-5044.

641—11.34(915) Testing, reporting, and counseling—penalties.

11.34(1) The physician or other practitioner who orders the test of a convicted or alleged offender for HIV under Iowa Code chapter 915 shall disclose the results of the test to the convicted or alleged offender, and to the victim counselor or a person requested by the victim who is authorized to provide the counseling regarding the HIV-related test and results, who shall disclose the results to the petitioner.

11.34(2) Prior to undergoing an HIV-related test, information shall be available to the subject of the test concerning testing and where to obtain additional information on HIV transmission and risk reduction, pursuant to Iowa Code 141A.6. The department may be contacted for brochures that may assist in meeting the requirements of Iowa Code section 141A.6.

11.34(3) At any time that the subject of an HIV-related test is informed of confirmed positive test results, the physician or other practitioner who ordered the test shall initiate counseling concerning the emotional and physical health effects of HIV infection, as required under Iowa Code section 141A.7, and shall make any required reports to the department pursuant to Iowa Code section 141A.6.

a. The physician or other practitioner shall encourage a person who tests positive for HIV infection to participate in the voluntary partner notification program pursuant to section 11.17.

b. The physician or other practitioner may provide to the department any relevant information provided by the person regarding any person with whom the tested person has had sexual relations or has shared drug injecting equipment.

11.34(4) Subsequent testing arising out of the same incident of exposure shall be conducted in accordance with the procedural and confidentiality requirements of 641—11.30(915) to 641—11.34(915).

11.34(5) Results of a test performed under 641—11.30(915) to 641—11.34(915), except as provided in subrule 11.34(6), shall be disclosed only to the physician or other practitioner who orders the test of the convicted or alleged offender, the convicted or alleged offender, the victim, the victim counselor or person requested by the victim who is authorized to provide the counseling regarding the HIV-related test and results, the physician of the victim if requested by the victim, the parent, guardian, or custodian of the victim, if the victim is a minor, and the county attorney who filed the petition for the HIV-related testing under 641—11.30(915) to 641—11.34(915), who may use the results to file charges of criminal transmission of HIV. Results of a test performed under these rules shall not be disclosed to any other person without the written, informed consent of the convicted or alleged offender. A person to whom the results of a test have been disclosed under 641—11.30(915) to 641—11.34(915) is subject to the confidentiality provision of Iowa Code section 141A.9, and shall not disclose the results to another person except as authorized by Iowa Code section 141A.9.

11.34(6) If HIV-related testing is ordered under 641—11.30(915) to 641—11.34(915), the court shall also order periodic testing of the convicted offender during the period of incarceration, probation, or parole or of the alleged offender during a period of six months following the initial test if the physician or other practitioner who ordered the initial test of the

convicted or alleged offender certifies that, based upon prevailing scientific opinion regarding the maximum period during which the results of an HIV-related test may be negative for a person after being HIV-infected, additional testing is necessary to determine whether the convicted or alleged offender was HIV-infected at the time the sexual assault or alleged sexual assault was perpetrated. The results of the subsequent periodic tests conducted pursuant to subrule 11.34(6) shall be released only to the physician or other practitioner who orders the test of the convicted or alleged offender, the convicted or alleged offender, the victim counselor or person requested by the victim to provide the counseling regarding the HIV-related test and results, who shall disclose the results to the petitioner, the physician of the victim if requested by the victim and the county attorney who may use the results as evidence in the prosecution of the sexual assault or in the prosecution of the offense of criminal transmission of HIV.

11.34(7) The court shall not consider the disclosure of an alleged offender's serostatus to an alleged victim, prior to conviction, as a basis for a reduced plea or reduced sentence.

11.34(8) The fact that HIV-related tests were performed under 641—11.30(915) to 641—11.34(915) and the results of the tests shall not be included in the convicted offender's medical or criminal record unless otherwise included in department of corrections records.

11.34(9) The fact that HIV-related tests were performed under 641—11.30(915) to 641—11.34(915) and the results of the tests shall not be used as a basis for further prosecution of a convicted offender in relation to the incident which is the subject of the testing, to enhance punishments, or to influence sentencing.

11.34(10) If the serologic status of a convicted offender, which is conveyed to the victim, is based upon an HIV-related test other than a test which is authorized as a result of the procedures established in 641—11.30(915) to 641—11.34(915), legal protections which attach to

such testing shall be the same as those which attach to an initial test under 641—11.30(915) to 641—11.34(915), and the rights to a predisclosure hearing and to appeal provided under Iowa Code section 915 shall apply.

11.34(11) HIV-related testing required under 641—11.30(915) to 641—11.34(915) shall be conducted by the state hygienic laboratory.

11.34(12) Notwithstanding the provision of these rules requiring initial testing, if a petition is filed with the court under Iowa Code section 915.42 requesting an order for testing and the order is granted, and if a test has previously been performed on the convicted offender while under the control of the department of corrections, the test results shall be provided in lieu of the performance of an initial test of the convicted offender, in accordance with 641—11.30(915) to 641—11.34(915).

11.34(13) Test results shall not be disclosed to a convicted offender who elects against disclosure.

11.34(14) In addition to the counseling received by a victim, referral to appropriate health care and support services shall be provided.

11.34(15) In addition to persons to whom disclosure of the results of a convicted or alleged offender's HIV-related test results is authorized under these rules, the victim may also disclose the results to the victim's spouse, persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault, or members of the victim's family within the third degree of consanguinity.

11.34(16) A person to whom disclosure of a convicted offender's HIV-related test results is authorized under these rules shall not disclose the results to any other person for whom disclosure is not authorized under these rules. A person who intentionally or recklessly makes an

unauthorized disclosure in violation of this subrule is subject to a civil penalty of $1000. The attorney general or the attorney general's designee may maintain a civil action to enforce these rules. Proceedings maintained under this subrule shall provide for the anonymity of the test subject, and all documentation shall be maintained in a confidential manner.

These rules are intended to implement Iowa Code sections 915.40 to 915.43.

641—11.35 to **11.39** Reserved.

AIDS DRUG ASSISTANCE PROGRAM (ADAP)

641—11.40(141A) Definitions. For purposes of these rules, the following definitions shall apply:

"*ADAP advisory committee*" means the committee appointed by the bureau of HIV, STD, and hepatitis to provide advice and technical assistance to the department regarding ADAP.

"*ADAP formulary*" means the list of drugs approved for use in ADAP by the bureau upon recommendation of the ADAP advisory committee.

"*AIDS*" means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

"*AIDS drug assistance program*" or "*ADAP*" means the Iowa AIDS drug assistance program administered by the bureau of HIV, STD, and hepatitis within the department and includes two components, the medication assistance program and the health insurance assistance program.

"*Bureau*" means the bureau of HIV, STD, and hepatitis within the department.

"*Deductible*" means an amount of money that an insured person must pay out of pocket before any benefits from the health insurance policy can be used.

"*Department*" means the Iowa department of public health.

"*Director*" means the director of the Iowa department of public health.

"*Health insurance assistance program*" means a component of ADAP that purchases health insurance and pays insurance premiums, copayments for medications, and deductibles for eligible enrollees in ADAP.

"*HIV*" means the human immunodeficiency virus identified as the causative agent of AIDS.

"*Household*" means a group of individuals residing together who are related by birth, marriage, or adoption; or an individual who does not reside with any other individual to whom the individual is related by birth, marriage, or adoption.

"*Medication assistance program*" means a component of ADAP that provides medications directly to eligible enrollees in ADAP.

"*Modified Adjusted Gross Income*" or "*MAGI*" means the calculation of income based upon applicable Internal Revenue Code and regulations of the Centers for Medicare & Medicaid Services of the U.S. Department of Health and Human Services.

"*Payer of last resort*" means a requirement to coordinate services and seek payment from all other sources before Ryan White funds are used.

641—11.41(141A) Purpose. The AIDS drug assistance program is a state-administered program that provides certain HIV/AIDS medications to eligible low-income individuals diagnosed with HIV if adequate funding is available for administration of the program. There are two components to the Iowa AIDS drug assistance program: the medication assistance program and the health insurance assistance program. The AIDS drug assistance program is authorized under Part B of Title XXVI of the Public Health Service (PHS) Act, as amended by the Ryan White

HIV/AIDS Treatment Extension Act of 2009 (Public Law 111-87). This legislation requires that the Ryan White program, including the AIDS drug assistance program, be the payer of last resort for HIV-related services. ADAP is not an entitlement program and does not create a right to assistance. In the event that funding is exhausted or terminated or there are changes in state or federal guidelines, programs, or regulations that impact funding available to ADAP, the department reserves the right to close enrollment, cease to provide medication assistance or health insurance assistance, or alter eligibility criteria until such time that funding is again sufficient.

641—11.42(141A) Ensuring payer of last resort. To ensure that ADAP is the payer of last resort, the Iowa Medicaid enterprise shall grant the department access to client-level information for persons enrolled in Medicaid.

641—11.43(141A) Eligibility requirements.

11.43(1) An applicant is eligible to participate in the ADAP Medication assistance program if the applicant:

a. Applies for enrollment in ADAP on a form provided by the department;

b. Has no health insurance to cover the cost of the drugs that are or may become available from ADAP;

c. Is currently being prescribed a drug on the ADAP formulary;

d. Has an annual MAGI that is less than or equal to 200 percent of the poverty level as determined by the most recent federal poverty guidelines published annually by the United States Department of Health and Human Services for the size of the household (this income shall be determined after a $500 work-related allowance is deducted from the monthly salary of an employed person with HIV/AIDS);

e. Has a medical diagnosis of HIV infection or AIDS or is an unborn infant or an infant under 18 months of age who has an HIV-infected mother; and

f. Is a resident of Iowa.

11.43(2) An applicant is eligible to participate in the ADAP health insurance assistance program if the applicant:

a. Applies for enrollment in ADAP on a form provided by the department;

b. Has creditable health insurance coverage;

c. Is currently being prescribed a drug on the ADAP formulary;

d. Has an annual MAGI that is less than or equal to 400 percent of the poverty level as determined by the most recent federal poverty guidelines published annually by the United States Department of Health and Human Services for the size of the household;

e. Has a medical diagnosis of HIV infection or AIDS or is an unborn infant or an infant under 18 months of age who has an HIV-infected mother; and

f. Is a resident of Iowa.

641—11.44(141A) Enrollment process.

11.44(1) The department shall review each completed application and shall determine enrollment based upon applicant eligibility, the date on which the application was completed, and the availability of funds. When the department determines that an applicant is eligible for enrollment, the applicant may be enrolled for six months commencing with the date of the determination or may be enrolled for a shorter time period at the discretion of the department.

11.44(2) An applicant shall provide the department with all requested information and shall execute any consent forms or releases of information necessary for the department to verify eligibility.

641—11.45(141A) Discontinuation of services.

11.45(1) The department shall review eligibility semiannually after enrollment unless one of the following events occurs within the six-month period to end eligibility:

a. The enrolled individual dies;

b. The enrolled individual is determined eligible and enrolled to fully receive medical services through a third-party payer and is able to fully pay the insurance deductibles and copayments;

c. The enrolled individual's annual MAGI increases to an amount above the respective ADAP component's income guidelines;

d. The enrolled individual establishes residency outside the state of Iowa;

e. The enrolled individual does not request drugs over a 90-day period; or

f. The enrolled individual is placed in an institution such as a nursing home, state prison, or jail for more than 30 days.

11.45(2) An applicant must submit renewal documentation on a semiannual basis, accompanied by all information requested by the department.

641—11.46(141A) Distribution requirements.

11.46(1) Enrolled individuals shall be eligible to receive financial assistance only for drugs that:

a. Have received Food and Drug Administration approval to treat HIV or prevent the deterioration of health due to HIV, coinfections, or opportunistic infections; and

b. Are on the ADAP formulary.

11.46(2) The primary care provider shall write each drug prescription for an applicant or enrolled individual.

11.46(3) The enrolled individual must obtain the approved drug from the department's contracted pharmacy unless an exception to this requirement is granted by the department.

641—11.47(141A) ADAP waiting list.

11.47(1) If an applicant is eligible for ADAP and sufficient funds are available to provide services to the applicant, the department shall enroll the applicant. If the applicant is eligible for ADAP and sufficient funds are not available to provide services to the applicant, the department shall place the applicant's name on the ADAP waiting list in the order provided for in this rule.

11.47(2) The department shall place names on the waiting list in chronological order based upon the date of receipt of a completed application by the department.

11.47(3) To verify that applicants on the waiting list continue to meet ADAP eligibility requirements, the department shall require applicants on the waiting list to submit reapplication forms semiannually.

11.47(4) The department shall remove applicants from the waiting list in the chronological order in which their completed applications were approved, provided all updates were received by the department.

641—11.48(141A) Appeals. The department shall cause an applicant to be notified of the department's decision to approve or deny an application or to place an applicant on the ADAP waiting list. In the event an applicant is dissatisfied with the department's decision, the applicant may submit a formal appeal in writing to the ADAP advisory committee. Such request shall be delivered in person or shall be mailed by certified mail, return receipt requested, to ADAP Advisory Committee, Iowa Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Upon receipt of such an appeal, the ADAP advisory committee shall review the case and issue a written determination within 15 days of receipt of

the request. The decision shall refer to the applicant by initials or other nonidentifying means. The ADAP advisory committee's decision shall be final and binding. This appeal process does not constitute a contested case proceeding as defined in Iowa Code chapter 17A.

641—11.49(141A) Confidentiality. The ADAP application and all information received or maintained by the department in connection with ADAP shall be considered confidential information in accordance with Iowa Code section 141A.9.

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 93, "Abuse Education Review Panel," Iowa Administrative Code.

These proposed amendments are necessary to implement 2013 Iowa Acts, Senate File 396, section 49. This section of the Senate File strikes the language which established an abuse education review panel and makes the review and approval of mandatory reporter training curricula a duty of the department.

Any interested person may make written comments or suggestions on the proposed amendments on or before October 22, 2013. Such written comments should be directed to Diana Nicholls Blomme, Division of Behavioral Health, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to diana.nicholls-blomme@idph.iowa.gov.

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

These amendments are intended to implement Iowa Code section 135.11, subsection 24 as amended by 2013 Iowa Acts, Senate File 396.

The following amendments are proposed.

ITEM 1. Amend **641—Chapter 93**, title, as follows:

~~ABUSE EDUCATION REVIEW PANEL~~ MANDATORY REPORTER TRAINING CURRICULA

ITEM 2. Amend rule **641—93.1(135)** as follows:

641—93.1(135) Purpose. The purpose of the ~~abuse education review panel~~ mandatory reporter training curricula process is to provide an objective method by which curricula for child and

dependent adult abuse mandatory reporter training are reviewed and approved. Approved curricula are to be taught to persons who work in a position classification that under law makes the persons mandatory reporters of child or dependent adult abuse and the position classification does not have a mandatory reporter training curriculum approved by a licensing or examining board.

ITEM 3. Rescind and reserve rules **641—93.2(135)** and **641—93.3(135).**

ITEM 4. Strike the word "panel" wherever it appears in **641—Chapter 93** and insert "department" in lieu thereof.

ITEM 5. Strike the word "panel's" in subrule **93.6(1)** and insert "department's" in lieu thereof.

ITEM 6. Strike the work "chairperson" in rule **641—93.7(135)** and insert "department" in lieu thereof.

ITEM 7. Amend **641—Chapter 93**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 135.11, subsection 24 as amended by ~~2001~~ 2013 Iowa Acts, ~~chapter 122, section 1~~ Senate File 396.

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 147A.27, the Department of Public Health hereby gives Notice of Intended Action to rescind Chapter 138, "Trauma System Evaluation Quality Improvement Committee," Iowa Administrative Code.

The rules in Chapter 138 describe the make-up and duties of the trauma system evaluation quality improvement committee. 2013 Iowa Acts, Senate File 396 was signed by the Governor on June 20, 2013. One of the provisions of this bill was to repeal the system evaluation quality improvement committee or SEQIC. This proposed amendment rescinds the Iowa Administrative Code Chapter that pertains to SEQIC. The duties of SEQIC will be assigned to the trauma system advisory council or TSAC.

Any interested person may make written comments or suggestions on the proposed amendment on or before October 22, 2013. Such written comments should be directed to Rebecca Curtiss, Bureau of EMS, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E–mail may be sent to Rebecca.Curtiss@idph.iowa.gov.

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

These amendments are intended to implement 2013 Iowa Acts, Senate File 396, section 57.

The following amendment is proposed.

Rescind and reserve 641—Chapter 138.

INSPECTIONS AND APPEALS DEPARTMENT[481]
Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 56, "Fining and Citations," Iowa Administrative Code.

The rulemaking describes the process for the informal conference on a contested citation issued to a facility licensed pursuant to Iowa Code chapter 135C, which is provided for in Iowa Code section 135C.42, and incorporates legislative changes made by 2013 Iowa Acts, Senate File 394.

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

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 7, 2013, as **ARC 0922C**. Comments were received from the Iowa Health Care Association and LeadingAge Iowa. After consideration of the comments, subrule 56.14(3)"c"(2) was amended to allow facilities to submit supporting documentation for the informal conference after the deadline established, but only as permitted by the independent reviewer upon good cause shown.

The State Board of Health reviewed the proposed amendments at its July 10, 2013, meeting, and subsequently approved the rulemaking at its September 11, 2013, meeting.

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

These amendments are intended to implement Iowa Code sections 135C.14 and 135C.42 and 2013 Iowa Acts, Senate File 394.

The amendments shall become effective November 6, 2013.

The following amendments are adopted.

ITEM 1. Amend subrule **56.14(3)** as follows:

56.14(3) *Informal conference.* If the facility desires to contest a citation for a class I, class II or class III violation, the facility shall notify ~~the director of~~ the department of inspections and appeals in writing that it desires to contest such citation and request in writing an informal conference with ~~a representative of the department of inspections and appeals~~ an independent reviewer. The informal conference will be held concurrently with any informal dispute resolution held pursuant to 42 CFR Section 488.331 for those health care facilities certified under Medicare or the medical assistance program.

a. Definition. For purposes of this subrule, "independent reviewer" means an attorney licensed in the state of Iowa who is not currently and has not been employed by the department in the past eight years, or has not appeared in front of the department on behalf of a health care facility in the past eight years. Preference shall be given to an attorney with background knowledge, experience or training in long-term care.

b. Request for informal conference. The request for an informal conference must be in writing, addressed to the compliance officer and include the following:

(1) Identification of the citation(s) being disputed;

(2) The type of informal conference requested: face-to-face or telephone conference; and

(3) A request for surveyor worksheets for the citation(s) being disputed, if desired.

c. Submission of documentation. Within the same ten-day period required for submission of a plan of correction pursuant to 481—subrule 50.10(7), the facility shall submit the following:

(1) The names of those who will be attending the informal conference, including legal

counsel; and

(2) Documentation supporting the facility's position. The facility must highlight or use some other means to identify written information pertinent to the disputed deficiency(ies). Supporting documentation that is not submitted within the required time frame will not be considered, except as otherwise permitted by the independent reviewer upon good cause shown. "Good cause" means substantial or adequate grounds for failing to submit documentation in a timely manner. In determining whether the facility has shown good cause, the independent reviewer shall consider what circumstances kept the facility from submitting the supporting documentation within the required time frame.

d. Face-to-face or telephone conference. A face-to-face or telephone conference, if requested, will be scheduled to occur within ten business days of the receipt of the written request, all supporting documentation, and the plan of correction required by 481—subrule 50.10(7).

(1) Failure to submit supporting documentation will not delay scheduling.

(2) The conference will be scheduled for one hour to allow the facility to informally present information and explanation concerning the contested deficiencies. Due to the confidential nature of the conference, attendance may be limited.

(3) If additional information is requested during the informal conference, the facility will have two business days to deliver the additional materials to the department.

(4) When extenuating circumstances preclude a face-to-face conference, a telephone conference will be held or the facility may be given one opportunity to reschedule the face-to-face conference.

e. Results. The results of the informal conference will generally be sent within ten

business days after the date of the informal conference, or within ten business days after the receipt of additional information, if requested.

(1) The independent reviewer may affirm or may modify or dismiss the citation. The independent reviewer shall state in writing the specific reasons for the affirmation, modification or dismissal of the citation.

(2) The department will issue an amended (changes in factual content) or corrected (changes in typographical/data errors) citation if changes result from the informal conference.

(3) The facility must submit to the department a new plan of correction for the amended or corrected citation within ten calendar days from the date of the letter conveying the results of the informal conference.

ITEM 2. Amend rule **481—56.15(135C)** as follows:

481—56.15(135C) Procedure for facility after informal conference. After the conclusion of an informal conference requested by the licensee and provided pursuant to 56.14(3):

56.15(1) If the facility does not desire to further contest an affirmed or modified citation for a class I, class II or class III violation, the facility shall, within five ~~working~~ business days after the informal conference, or within five ~~working~~ business days after receipt of the written decision and explanation of the ~~department of inspections and appeals' representative at the informal conference~~ independent reviewer, whichever occurs later, comply with the provisions of subrule 56.14(1).

56.15(2) If the facility does desire to further contest an affirmed or modified citation for a class I, class II or class III violation, the facility shall, within five ~~working~~ business days after the informal conference, or within five ~~working~~ business days after receipt of the written decision and explanation of the ~~department of inspections and appeals' representative at the informal~~

~~conference, as the case may be,~~ independent reviewer, whichever occurs later, notify the department of inspections and appeals in writing of the facility's intent to formally contest the citation.

INSPECTIONS AND APPEALS DEPARTMENT[481]
Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 58, "Nursing Facilities," Iowa Administrative Code.

Effective with services furnished on or after January 1, 2011, Section 1814(a)(2) of the federal Social Security Act, which was amended by Section 3108 of the federal Affordable Care Act, authorizes physician assistants who are not employed by the facility to perform skilled nursing facility level of care certifications and recertifications. This rulemaking adopts the federal law in order to maintain consistency between federal regulations and state rules.

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

The State Board of Health initially reviewed the proposed amendment at its July 10, 2013, meeting, and subsequently approved the rulemaking at its September 11, 2013, meeting.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 7, 2013, as **ARC 0923C**. The only comment received on the proposed amendments voiced support for the rulemaking. As such, no changes were made to the amendments published under Notice of Intended Action.

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

This amendment is intended to implement Iowa Code section 135C.14.

This amendment shall become effective November 6, 2013.

The following amendment is adopted.

Amend subrule **58.14(8)** as follows:

58.14(8) Physician delegation of tasks. Each resident shall be visited by or shall visit the resident's physician at least twice a year. The year period shall be measured from the date of admission and is not to include preadmission physicals.

a. For a skilled nursing patient, the resident must be seen by a physician for the initial comprehensive visit. Additional visits are required at least once every 30 days for 90 days after admission and at least once every 60 days thereafter. After the initial comprehensive visit, alternate required visits may be performed by an advanced registered nurse practitioner, clinical nurse specialist or physician assistant who is working in collaboration with a physician, as outlined in Table 1. (III)

b. Notwithstanding the provisions of 42 CFR 483.40, any required physician task or visit in a nursing facility may also be performed by an advanced registered nurse practitioner, clinical nurse specialist, or physician assistant who is working in collaboration with a physician, as outlined in Table 1. (III)

c. In dually certified skilled nursing/nursing facilities, the advanced registered nurse practitioner, clinical nurse specialist, and physician assistant must follow the skilled nursing facility requirements for services for skilled nursing facility stays. For nursing facility stays in skilled nursing/nursing facilities, any required physician task or visit may be performed by an advanced registered nurse practitioner, clinical nurse specialist, or physician assistant working in collaboration with the physician. (III)

d. Nurse practitioners, clinical nurse specialists, and physician assistants may perform other tasks that are not reserved to the physician such as visits outside the normal schedule

needed to address new symptoms or other changes in medical status. (III)

Table 1: Authority for non-physician practitioners to perform visits, sign orders, and sign certifications/recertifications when permitted by state law*

	Initial Comprehensive Visit/Orders	Other Required Visits[1]	Other Medically Necessary Visits and Orders[2]	Certification/ Recertification
Skilled Nursing Facilities				
~~Nurse~~ Physician assistant, nurse practitioner and clinical nurse specialist employed by the facility	May not perform/May not sign	May perform alternate visits	May perform and sign	May not sign
~~Nurse~~ Physician assistant, nurse practitioner and clinical nurse specialist not a facility employee	May not perform/May not sign	May perform alternate visits	May perform and sign	May sign subject to state requirements
~~Physician assistant regardless of employer~~	~~May not perform/May not sign~~	~~May perform~~	~~May perform and sign~~	~~May not sign~~
Nursing Facilities				
Nurse practitioner, clinical nurse specialist, and physician assistant employed by the facility	May not perform/May not sign	May not perform	May perform and sign	~~May sign subject to state requirements~~ Not applicable[+]
Nurse practitioner, clinical nurse specialist, and physician assistant not a facility employee	May perform/May sign	May perform	May perform and sign	~~May sign subject to state requirements~~ Not applicable[+]

*As permitted by state law governing the scope and practice of nurse practitioners, clinical nurse specialists, and physician assistants.

[1] Other required visits include the skilled nursing resident monthly visits that may be alternated between physician and advanced registered nurse practitioners, clinical nurse specialists, or physician assistants after the initial comprehensive visit is completed.

[2] Medically necessary visits may be performed prior to the initial comprehensive visit.

[+] This requirement relates specifically to coverage of Part A Medicare stays, which can take place only in a Medicare-certified skilled nursing facility.

INSPECTIONS AND APPEALS DEPARTMENT[481]
Notice of Intended Action

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 54, "Governor's Award for Quality Care," Chapter 57, "Residential Care Facilities," Chapter 58, "Nursing Facilities," Chapter 62, "Residential Care Facilities for Persons with Mental Illness (RCF/PMI)," Chapter 63, "Residential Care Facilities for the Intellectually Disabled," Chapter 64, "Intermediate Care Facilities for the Intellectually Disabled," and Chapter 65, "Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI)," Iowa Administrative Code.

The proposed amendments are technical, and delete references to the resident advocate committee at a health care facility. Resident advocate committees with oversight by the state office of the long-term care ombudsman are no longer in existence, having been repealed by 2013 Acts, SF184, and replaced with the certified volunteer long-term care ombudsman program established in Iowa Code section 231.45. In addition, the technical amendments remove references to resident advocate committees and the state office of the long-term care ombudsman from Administrative Code chapters481—62, 481—63, 481—64 and 481—65. These chapters regulate facilities primarily serving persons with mental illness or intellectual disabilities, which the state office of the long-term care ombudsman does not serve, pursuant to Iowa Code section 231.42(2)(a).

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

The State Board of Health reviewed the proposed amendments at its September 11, 2013, meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 22, 2013. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, IA 50319-0083; faxed to (515) 242-6863; or e-mailed to david.werning@dia.iowa.gov.

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

The proposed amendments are intended to implement Iowa Code sections 135C.14 and 2013 Acts, SF 184 (GA 85).

The following amendments are proposed:

ITEM 1. Amend rule 481—54.4 as follows:

481—54.4(135C) Applicant eligibility. Eligible nominations shall be made by a resident, family member of a resident~~, member of a resident advocacy committee,~~ or another health care facility. A health care facility cannot nominate itself for the award; however, this prohibition shall not apply to facilities with common ownership.

ITEM 2. Rescind rule **481—57.24(135C)** and adopt the following **new** rule in lieu thereof:

481—57.24(135C) *Certified volunteer long-term care ombudsman program.* A certified volunteer long-term care ombudsman appointed in accordance with Iowa Code section 231.45 shall operate within the scope of the rules for volunteer ombudsman promulgated by the Office of State Long-Term Care Ombudsman and Iowa Department on Aging.

ITEM 3. Amend subrule **57.37(3)** as follows:

57.37(3) The facility shall post in a prominent area the name, telephone number, and address of the ombudsman, survey agency, local law enforcement agency, and ~~resident advocate committee members~~ certified volunteer long-term care ombudsman and the text of Iowa Code section 135C.46 to provide to residents a further course of redress.

ITEM 4. Rescind rule **481—58.27** and adopt the following **new** rule in lieu thereof:

481—58.27(135C) *Certified volunteer long-term care ombudsman program.* A certified volunteer long-term care ombudsman appointed in accordance with Iowa Code section 231.45 shall operate within the scope of the rules for volunteer ombudsman promulgated by the Office of State Long-Term Care Ombudsman and Iowa Department on Aging.

ITEM 5. Amend subrule 58.41(3) as follows:

58.41(3) The facility shall post in a prominent area the name, telephone number, and address of the ombudsman, survey agency, local law enforcement agency, and ~~resident advocate committee members~~ certified long-term care ombudsman and the text of Iowa Code section 135C.46 to provide to residents a further course of redress. (II)

ITEM 6. Rescind and reserve subparagraph 481—62.9(4) “b”.

ITEM 7. Amend subparagraph 62.14(4)“b”(3) as follows:

(3) The type of hearing shall be determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident~~,~~ and legal guardian~~, and Iowa department on aging long-term care resident’s advocate/ombudsman of record~~, not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident, or legal guardian that they have a right to appear at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present or represented at the hearing. If only

one party appears or is represented, the hearing shall proceed with one party present. ~~The Iowa department on aging's long-term care resident's advocate/ombudsman shall have the right to appear at the hearing.~~ (II)

ITEM 8. Amend subparagraph 62.14(4)"b"(5) as follows:

(5) Based upon all testimony and material submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by regular mail to the licensee, resident~~,~~ and responsible party~~, and department on aging long-term care ombudsman~~ within 10 working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

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

ITEM 9. Amend subparagraph 62.14(4)"b"(6) as follows:

(6) A copy of the notice required by 62.14(4) shall be personally delivered to the resident and a copy placed in the resident's record. A copy shall also be transmitted to the department, the resident's legal guardian, physician, <u>and</u> the person or agency responsible for the resident's placement, maintenance, and care in the facility~~, and the department on aging's long-term care resident's advocate/ombudsman~~. (II)

ITEM 10. Rescind and reserve rule **481—62.22(135C).**

ITEM 11. Amend subrule **62.23(9)** as follows:

62.23(9) Posting of names. The facility shall post in a prominent area the name, telephone number, and address of the ~~long-term care resident's advocate/ombudsman,~~ survey agency, local law enforcement agency~~, care review committee members,~~ and the protection and advocacy agency designated pursuant to Iowa Code section 135C.2(4) ~~Iowa Protection and Advocacy Services, Inc.~~, and text of Iowa Code section 135C.46, to provide to residents another course of redress. (II)

ITEM 12. Rescind and reserve rule **481—63.22(135C)**.

ITEM 13. Amend subrule **63.35(3)** as follows:

63.35(3) The facility shall post in a prominent area the name, telephone number, and address of the ombudsman, survey agency~~,~~ and local law enforcement agency~~, care review committee members,~~ and the text of Iowa Code section 135C.46~~, etc.~~, to provide to residents a further course of redress. (II)

ITEM 14. Amend subparagraph **63.34(1)"f"** as follows:

f. The type of hearing shall be determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident, and responsible party~~, and Iowa department of elder affairs long-term care ombudsman of record~~ not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident or responsible party that they have a right to appear at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or

is represented, the hearing shall proceed with one party present. ~~The Iowa department of elder affairs long-term care ombudsman shall have the right to appear at the hearing.~~

ITEM 15. Amend subparagraph **64.36(1)"h"** as follows:

h. Based upon all testimony and material submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, and responsible party~~, and department of elder affairs long-term care ombudsman~~ within 10 working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

ITEM 16. Amend subparagraph **64.36(1)"i"** as follows:

i. A copy of the notice required by 64.36(1)*"c"* shall be personally delivered to the resident and a copy placed in the resident's record. A copy shall also be transmitted to the department, the resident's responsible party, physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility~~, and the department of elder affairs long-term care ombudsman~~.

ITEM 17. Rescind and reserve rule **481—64.35(135C)**.

ITEM 18. Amend subparagraph **64.36(1)"f"** as follows:

f. The type of hearing shall be determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident, and responsible party~~, and Iowa department of elder affairs long-term care ombudsman of record~~ not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident or responsible party that they have a right to appear

at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. ~~The Iowa department of elder affairs long-term care ombudsman shall have the right to appear at the hearing.~~

ITEM 19. Amend subparagraph **64.36(1)"h"** as follows:

h. Based upon all testimony and material submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, and responsible party~~, and department of elder affairs long-term care ombudsman~~ within 10 working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

ITEM 20. Amend subparagraph **64.36(1)"i"** as follows:

i. A copy of the notice required by 64.36(1)*"c"* shall be personally delivered to the resident and a copy placed in the resident's record. A copy shall also be transmitted to the department, the resident's responsible party, physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility~~, and the department of elder affairs long-term care ombudsman~~.

ITEM 21. Rescind and reserve paragraph **481—65.2(2)"f"**.

ITEM 22. Rescind and reserve paragraph **481—65.2(2)"g"**.

ITEM 23. Rescind and reserve subparagraph **481—65.8(1)"c"(14)**.

ITEM 24. Rescind and reserve paragraph **481—65.9(4)"b"**.

ITEM 25. Amend subparagraph **65.16(6)"a"** as follows:

a. The type of hearing determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by United States mail or delivered in person to the licensee, resident, and legal guardian~~, and Iowa department on aging's long-term care resident's advocate/ombudsman of record~~ not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident, and legal guardian that they have a right to appear at the hearing in person or be represented by their attorneys or other individuals. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. ~~The Iowa department on aging's long-term care resident's advocate/ombudsman shall have the right to appear at the hearing.~~ (II)

ITEM 26. Amend subparagraph **65.16(6)"c"** as follows:

c. Based upon all testimony and materials submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact, conclusions of law, and issue a decision and order. This decision shall be mailed by regular mail to the licensee, resident, and legal guardian, ~~and department on aging's long-term care resident's advocate/ombudsman~~ within ten working days after the hearing has been concluded. (II)

ITEM 27. Amend subparagraph **65.16(6)"d"** as follows:

d. Based upon all testimony and material submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, and responsible party~~, and department on aging's long-term care resident's advocate/ombudsman~~ within 10

working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

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

ITEM 28. Amend subparagraph **65.16(6)"e"** as follows:

e. A copy of the notice required by 65.16(4) shall be personally delivered to the resident by the licensed facility and a copy placed in the resident's record. A copy shall also be transmitted to the department, the resident's legal guardian, physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility~~, and the department on aging's long-term care resident's advocate/ombudsman~~. (II)

ITEM 29. Rescind and reserve rule **481—65.24(135C)**.

ITEM 30. Rescind subparagraph **481—65.25(10)** and replace with the following:

65.25(10) *Posting of names.* The facility shall post in a prominent area the name, telephone number, and address of the survey agency, local law enforcement agency, administrator, members of the board of directors, corporate headquarters, and the protection and advocacy agency designated pursuant to Iowa Code section 135C.2(4) and text of Iowa Code section 135C.46, to provide to residents another course of redress. (II)

INSPECTIONS AND APPEALS DEPARTMENT[481]
Notice of Intended Action

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 57, "Residential Care Facilities," Chapter 58, "Nursing Facilities," Chapter 62, "Residential Care Facilities for Persons with Mental Illness (RCF/PMI)," Chapter 63, "Residential Care Facilities for the Intellectually Disabled," Chapter 64, "Intermediate Care Facilities for the Intellectually Disabled," and Chapter 65, "Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI)," Iowa Administrative Code.

The amendments make technical changes by removing references to Iowa Code chapter 235B, "Dependent Adult Abuse Services – Information Registry," and replacing them with references to Iowa Code chapter 235E, "Dependent Adult Abuse in Facilities and Programs," and 481—chapter 52, "Dependent Adult Abuse in Facilities and Programs." Chapter 235E specifically addresses dependent adult abuse in facilities and programs regulated by the department.

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

The Board of Health reviewed the proposed amendments at its September 11, 2013, meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 22, 2013. Such written materials should be addressed to the

Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, IA 50319-0083; faxed to (515) 242-6863; or e-mailed to david.werning@dia.iowa.gov.

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

The proposed amendments are intended to implement Iowa Code section 135C.14 and Iowa Code chapter 235E.

The following amendments are proposed:

ITEM 1. Amend rule **481—57.39(135C)**, introductory paragraph, as follows:

481—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, sexual, and verbal abuse, exploitation, neglect, and physical injury. Each resident shall be free from chemical and physical restraints, except in an emergency for the shortest amount of time necessary to protect the resident from injury to the resident or to others, pending the immediate transfer to an appropriate facility. The decision to use restraints on an emergency basis shall be made by the designated charge person who shall promptly report the action taken to the physician and the reasons for using restraints shall be documented in the resident's record. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

ITEM 2. Rescind subrule 57.39(4) and adopt the following in lieu thereof:

57.39(4) *Allegations of dependent adult abuse.* Allegations of dependent adult abuse shall be reported and investigated pursuant to Iowa Code chapter 235E and 481—chapter 52. (I, II, III)

ITEM 3. Rescind and reserve subrule **57.39(5).**

ITEM 4. Rescind and reserve subrule **57.39(6)**.

ITEM 5. Amend rule **481—58.43(135C)**, introductory paragraph, as follows:

481—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, sexual, and verbal abuse, exploitation, neglect, and physical injury. Each resident shall be free from chemical and physical restraints except as follows: when authorized in writing by a physician for a specified period of time; when necessary in an emergency to protect the resident from injury to the resident or to others, in which case restraints may be authorized by designated professional personnel who promptly report the action taken to the physician; and in the case of an intellectually disabled individual when ordered in writing by a physician and authorized by a designated qualified intellectual disabilities professional for use during behavior modification sessions. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

ITEM 6. Rescind subrule **58.43(9)** and adopt the following in lieu thereof:

58.43(9) *Allegations of dependent adult abuse.* Allegations of dependent adult abuse shall be reported and investigated pursuant to Iowa Code chapter 235E and 481—chapter 52. (I, II, III)

ITEM 7. Rescind and reserve subrule **58.43(10)**.

ITEM 8. Rescind and reserve subrule **58.43(11)**.

ITEM 9. Amend rule 481—62.1(135C) as follows:

481—62.1(135C) Definitions. For the purposes of these rules, the following terms shall have the meaning indicated in this chapter. The definitions set out in Iowa Code section 135C.1 shall be

considered incorporated verbatim in the rules. The use of the words “shall” and “must” indicate these standards are mandatory.

~~*“Abuse”* means any of the following as a result of the willful or negligent acts or omissions of a caretaker:~~

~~1. Physical abuse~~

~~2. Physical injury to or unreasonable confinement or cruel punishment of a resident~~

~~3. Sexual abuse~~

~~4. Mental abuse~~

~~5. Verbal abuse~~

~~6. Exploitation of a resident~~

~~7. The deprivation of the minimum food, shelter, clothing, supervision, physical and mental health care, and other care necessary to maintain a resident’s life or health as a result of the acts or omissions of the resident.~~

“Dependent adult abuse” is as defined in 481—rule 52.1.

ITEM 10. Amend subrule **62.23(23)** as follows:

62.23(23) Resident abuse prohibited. Each resident shall receive kind and considerate care at all times and shall be free from physical, sexual, mental and verbal abuse, exploitation, neglect, and physical injury. (I, II)

ITEM 11. Rescind subrule **62.23(24)** and adopt the following in lieu thereof:

62.23(24) *Allegations of dependent adult abuse.* Allegations of dependent adult abuse shall be reported and investigated pursuant to Iowa Code chapter 235E and 481—chapter 52. (I, II, III)

ITEM 12. Rescind and reserve subrule **62.23(25)**.

ITEM 13. Amend the implementation sentence at the end of rule **481—62.23(135C)** as follows:

This rule is intended to implement Iowa Code sections 135C.14~~(8)~~, ~~and~~ 135C.24, and Iowa Code chapter 235E.

ITEM 14. Amend rule **481—63.37(135C)**, introductory paragraph as follows:

481—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, sexual, and verbal abuse, exploitation, neglect, and physical injury. Each resident shall be free from chemical and physical restraints, except in an emergency for the shortest amount of time necessary to protect the resident from injury to the resident or to others, pending the immediate transfer to an appropriate facility. The decision to use restraints on an emergency basis shall be made by the designated charge person who shall promptly report the action taken to the physician and the reasons for using restraints shall be documented in the resident's record. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

ITEM 15. Rescind subrule **63.37(4)** and adopt the following in lieu thereof:

63.37(4) *Allegations of dependent adult abuse.* Allegations of dependent adult abuse shall be reported and investigated pursuant to Iowa Code chapter 235E and 481—chapter 52. (I, II, III)

ITEM 16. Rescind and reserve subrule **63.37(5)**.

ITEM 17. Rescind and reserve subrule **63.37(6)**.

ITEM 18. Amend the implementation sentence at the end of rule **481—63.37(135C)** as follows:

This rule is intended to implement Iowa Code sections 135C.14, 135C.24 and Iowa Code chapter 235E ~~subsections 235B.3(1) and 235B.3(11)~~.

ITEM 19. Rescind rule **481—64.33(235B)** adopt the following in lieu thereof:

481—64.33(135C) Allegations of dependent adult abuse.

64.33(1) *Allegations of dependent adult abuse.* Allegations of dependent adult abuse shall be reported and investigated pursuant to Iowa Code chapter 235E and 481—chapter 52. (I, II, III)

64.33(2) *Separation of accused abuser and victim.* Upon a claim of dependent adult abuse of a resident being reported, the administrator of the facility shall separate the victim and accused abuser immediately and maintain the separation until the department's abuse investigation is completed and an abuse determination is made. (I, II)

ITEM 20. Amend rule **481—65.1** as follows:

481—65.1(135C) Definitions. For the purposes of these rules, the following terms shall have the meaning indicated in this chapter. The definitions set out in Iowa Code section 135C.1 shall be considered incorporated verbatim in the rules. The use of the words "shall" and "must" indicate these standards are mandatory.

~~*"Abuse"* means any of the following as a result of the willful or negligent acts or omissions of a caretaker:~~

~~1. Physical abuse;~~

~~2. Physical injury to or unreasonable confinement or cruel punishment of a resident;~~

~~3. Sexual abuse;~~

~~4. Mental abuse;~~

~~5. Verbal abuse;~~

~~6. Exploitation of a resident; or~~

~~7. The deprivation of the minimum food, shelter, clothing, supervision, physical and mental health care, and other care necessary to maintain a resident's life or health as a result of the acts or omissions of the caretaker.~~

"Dependent adult abuse" is as defined in 481—rule 52.1.

ITEM 21. Amend subrule **65.25(3)** as follows:

65.25(3) *Resident abuse prohibited.* Each resident shall receive kind and considerate care at all times and shall be free from physical, sexual, mental and verbal abuse, exploitation, neglect, and physical injury. (I, II)

ITEM 22. Rescind subrule **65.25(4)** adopt the following in lieu thereof:

65.25(4) *Allegations of dependent adult abuse.* Allegations of dependent adult abuse shall be reported and investigated pursuant to Iowa Code chapter 235E and 481—chapter 52. (I, II, III)

ITEM 23. Rescind and reserve subrule **65.25(5)**.

ITEM 24. Add the following implementation sentence at the end of rule **481—65.25**.

These rules are intended to implement Iowa Code section 135C.14 and Iowa Code chapter 235E.

INSPECTIONS AND APPEALS DEPARTMENT[481]
Notice of Intended Action

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 57, "Residential Care Facilities," Chapter 58, "Nursing Facilities," Chapter 62, "Residential Care Facilities for Persons with Mental Illness (RCF/PMI)," Chapter 63, "Residential Care Facilities for the Intellectually Disabled," and Chapter 65, "Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI)," Iowa Administrative Code.

Currently, Iowa Code chapter 155A, Iowa Administrative Code rule 657—8.32(124,155A), and 2013 Iowa Acts, Senate File 353, give pharmacists some authority to administer certain immunizations. The Department's rules limit the administration of injectable medications to qualified nurses or physicians. The proposed amendments allow pharmacists to administer injectable medications as permitted by Iowa law.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 7, 2013, as **ARC 0907C**. Comments were received from the Iowa Physician Assistant Society, which noted inconsistencies with the proposed rules and Iowa Code chapter 148C. Under this chapter, physician assistants are authorized to administer medications including injections in licensed health care facilities as delegated by a supervising physician. As a result, the rules have been amended to physician assistants among those individuals authorized to administer medications to residents in health care facilities.

The Department does not believe that the proposed amendments impose any financial

hardship on any regulated entity, body, or individual.

The State Board of Health initially reviewed the proposed amendments at its July 10, 2013, meeting; and subsequently approved them at the Board's September 11, 2013, meeting.

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

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

These amendments shall become effective on November 6, 2013.

The following amendments are adopted.

ITEM 1. Amend paragraph **57.19(3)"h"** as follows:

h. Injectable medications shall be administered as permitted by Iowa law by a qualified nurse, ~~or~~ physician, ~~or~~ pharmacist, or physician assistant (PA).

ITEM 2. Amend paragraph **58.21(15)"a"** as follows:

a. Injectable medications shall ~~not~~ be administered as permitted by Iowa law by ~~anyone other than~~ a qualified nurse, ~~or~~ physician, ~~or~~ pharmacist, or physician assistant (PA). In the case of a resident who has been certified by the resident's physician or physician assistant (PA) as capable of taking the resident's own insulin, the resident may inject the resident's own insulin. (II)

ITEM 3. Amend paragraph **62.15(2)"j"** as follows:

j. Injectable medications shall be administered as permitted by Iowa law by a qualified nurse, ~~or~~ physician, ~~or~~ pharmacist, or physician assistant (PA).

ITEM 4. Amend paragraph **63.18(3)"i"** as follows:

i. Injectable medications shall be administered as permitted by Iowa law by a qualified nurse, ~~or~~ physician, ~~or~~ pharmacist, or physician assistant (PA).

ITEM 5. Amend paragraph **65.17(1)"i"** as follows:

i. Injectable medications shall ~~not~~ be administered as permitted by Iowa law by ~~anyone other than a prescriber or licensed~~ a qualified nurse, physician, ~~or~~ pharmacist, or physician assistant (PA) ~~except when residents have been certified by a physician as capable of taking their insulin~~. ~~When~~ In the case of a resident who has been certified by the resident's physician or physician assistant (PA) as capable of taking the resident's own insulin, the resident may prepare and inject the resident's own insulin. (II)

ITEM 6. Amend paragraph **67.5(6)"a"** as follows:

a. The administration of medications shall be provided by a registered nurse, licensed practical nurse or advanced registered nurse practitioner registered in Iowa or by ~~unlicensed assistive personnel~~ certified and noncertified staff in accordance with ~~requirements in 655—Chapter 6 governing nurse delegation~~ subrule 67.9(5) or a physician assistant (PA) in accordance with IAC 645--327. Injectable medications shall be administered as permitted by Iowa law by a registered nurse, licensed practical nurse, advanced registered nurse practitioner, physician ~~or~~ pharmacist or physician assistant (PA).