

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 441—Chapter 11
“Collection of Debt”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 8A.504
State or federal law(s) implemented by the rulemaking: Iowa Code sections 217.34, 234.12, 239B.14, and 249A.5

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 28, 2023
10 a.m.

meet.google.com/nkg-jzin-yvp

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Health and Human Services (HHS) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Purpose and Summary

Proposed Chapter 11 defines debt offset procedures for the legacy Department of Public Health (641—Chapter 179) and Department of Human Services (441—Chapter 11). Debt offset is intended to recoup overpayment or other debt owed to HHS. HHS impacted programs include but are not limited to Supplemental Nutrition Assistance Program, Family Investment Program, Medicaid, PROMISE JOBS, and Child Care Assistance.

Through the debt offset program, money is collected from individuals or entities having been identified as receiving an overpayment or otherwise owing funds to HHS. Repayment may include withholding part or all of federal or state tax refunds or other state payments owed to the debtor. Money collected is credited back to the program(s) making the claim.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Individuals or entities having been identified as receiving an overpayment or otherwise owing funds to the HHS will bear the cost.
 - Classes of persons that will benefit from the proposed rulemaking:
Other persons who depend on and utilize HHS program funds will benefit.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
Over the last five fiscal years, HHS has cumulatively collected \$4.2 million in recoupment under the debt offset program, with an average of \$839,000 recovered each year (median \$859,000). Money

collected is used for additional service delivery or program development. Note: Debt offsets collected by programs moved out of HHS in the government reorganization have not been included in this analysis.

Identified Impacts*

	SFY 2018	SFY 2019	SFY 2020	SFY 2021	SFY 2022	Five-Year Total
Costs						
HHS Implementation	-\$1,210,000	-\$1,363,000	-\$1,298,000	-\$1,283,000	-\$1,387,000	-\$6,541,000
Service Delivery	-\$665,000	-\$1,045,000	-\$906,000	-\$859,000	-\$718,000	-\$4,193,000
Benefits						
Recouped Debts	\$665,000	\$1,045,000	\$906,000	\$859,000	\$718,000	\$4,193,000
Increased Public Trust	Intangible	Intangible	Intangible	Intangible	Intangible	Intangible
Net Value	-\$1,210,000	-\$1,363,000	-\$1,298,000	-\$1,283,000	-\$1,387,000	-\$6,541,000

*All monetary figures have been rounded to the nearest thousand.

- Qualitative description of impact:

By recouping the overpaid funds, programs will have more funds to offer other participants enrolled in their programs.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

HHS incurs personnel costs for those team members tasked with completing the debt offset procedure, as well as technology expenses.

The Iowa Department of Revenue (IDR) oversees the debt offset procedure for executive branch agencies; this was previously managed by the Department of Administrative Services (DAS). The Department of Inspections, Appeals, and Licensing (DIAL) provides investigation and customer service support for HHS debt collections. Implementation costs borne by these agencies have not been included in this analysis.

- Anticipated effect on state revenues:

Though the cost-benefit analysis shows a negative financial outcome, recoupment ensures publicly funded services are implemented as intended by the Iowa legislature and in compliance with state and federal regulations. This leads to public trust in HHS systems and programs. Further, collection of moneys owed to HHS confers a public benefit through use of returned funds to support qualifying service recipients and/or public program development.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

HHS is implementing the debt offset program according to the parameters detailed in the Iowa Code and the procedure described in IDR administrative rules (previously DAS).

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Not applicable.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Not applicable.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

In the newly combined department, HHS does not require multiple debt offset chapters. HHS seeks to repeal the legacy Department of Public Health chapter and repromulgate all necessary rules under the legacy Department of Human Services 441—Chapter 11.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind 441—Chapter 11 and adopt the following **new** chapter in lieu thereof:

CHAPTER 11 COLLECTION OF DEBT

441—11.1(217) Definitions.

“*Current*” means that amount which is due and owing within the previous 12 months from the date of submission to the department of administrative services or that amount which is due and owing from the date the repayment agreement or court order is implemented, if less than 12 months, before the date of submission to the department of administrative services.

“*Current repayment*” means that payment of the cumulative sum due and owing in accordance with a repayment agreement or court order for the preceding 12 months or the date of the order or agreement if the order or agreement is more recent.

“*Debtor*” means a current or former recipient of public assistance that has been determined by the department to be responsible for the repayment of a particular debt. For supplemental nutrition assistance program (SNAP), “debtor” shall include all adult members of the SNAP household participating at the time the SNAP overpayment or program violation occurred and shall include nonrecipients found guilty of violating SNAP rules by committing an act such as, but not limited to, trafficking. For child care assistance, “debtor” may include the current or former provider or current or former recipient of child care assistance. For Medicaid, “debtor” shall include any current or former Medicaid member, or the parents of a current or former Medicaid member who was under the age of 21 when the parents completed the application and had responsibility for reporting changes, who received services or benefits as a result of client or agency error or administrative overpayment or who owes a debt of unpaid premium payments for medical assistance.

“*Public assistance*” means family investment program, SNAP, Medicaid, state supplementary assistance, PROMISE JOBS, child care assistance, refugee cash assistance, and hawki program.

“*Repayment agreement*” means an agreement entered into voluntarily between the department and the debtor for the repayment of debts and detailed on a form issued by the department.

“*Written notification*” means the notification sent to a debtor by the department on a form issued by the department.

441—11.2(217) Establishment of claim.

11.2(1) *Accounts.* The department will maintain an account for each debt that has occurred containing the following information:

- a. A debtor name and account number.
- b. Program in which the debt occurred.
- c. Date the debt was discovered.
- d. Inclusive dates of the debt.
- e. Total dollar amount of each debt.
- f. Primary cause of the debt.
- g. Any transaction applied to this debt.

11.2(2) *Notice of debt.* A claim is established when the first written notice of the debt is issued to the household.

11.2(3) *Change in debt.* An additional written notification of debt will be issued if a change occurs in the amount or period of the debt.

11.2(4) *Collection action.* No collection action will be initiated on:

- a. A debt for which no notice of debt has been issued to the household.
- b. A debt that is in appeal status.
- c. A debt that is in suspended status due to an exception to policy.

441—11.3(217) Application of payment. Payment will be applied only to debts subject to collection pursuant to subrule 11.2(4).

11.3(1) *Application of payment to a single program area.*

a. If there is more than one debt in a program, payment will be applied:

- (1) First to all debts which have an agreement in chronological order of discovery, and
- (2) Then to debts which do not have an agreement in chronological order of discovery until all debts have been paid in full or the full payment amount has been exhausted.

b. For SNAP, payment will be applied first to all debts with an agreement and then to debts without an agreement. Within those two groupings, payment will be applied in the following order:

- (1) First to state-only debts in chronological order of discovery,
- (2) Then to intentional program violation (IPV) debts in chronological order of discovery,
- (3) Then to inadvertent household error (IHE) debts in chronological order of discovery, and
- (4) Then to agency error debts in chronological order of discovery.

11.3(2) *Application of payment to multiple program areas.* If there are debts in more than one program area of public assistance, payments received will be applied to those program areas as indicated by the mode of repayment (SNAP benefits, FIP benefits) or as indicated by the client at the time of payment.

11.3(3) *Application of undesignated cash payment.* If an undesignated cash payment is received, it will be applied to each program area proportionally based on the cumulative balance of all debts in all program areas combined.

441—11.4(217) Setoff against state income tax refund, rebate, or other state payments, including, for example, state employee wages.

11.4(1) *Criteria for setoff.*

a. A claim against a debtor may be made by the department for public assistance debts when:

- (1) A debtor has failed to negotiate a repayment agreement for that program area of public assistance, or

- (2) A repayment agreement is not current, and
- (3) The cumulative balance of the applicable debts in 11.4(1)“a”(1) and (2) exceeds \$50.

b. A claim against a debtor will not be made by the department for debts when:

- (1) The debt is in suspended status due to an exception to policy or is in an appeal status, or
- (2) The debt is being recovered through grant or benefit reduction.

11.4(2) *Frequency of submission.* The department will submit to the department of administrative services twice each month a list of those debtors who have a debt meeting the criteria in subrule 11.4(1).

11.4(3) *Pre-setoff notice.* The department will mail written notification to a debtor to inform the debtor of the amount the department intends to claim and apply to debts in each program when:

- a. The department is notified by the department of administrative services that the debtor is entitled to a state income tax refund, rebate, or other state payment;
- b. The department makes claim against the debtor.

11.4(4) *Method for division of joint payments.* When either spouse wishes to request a division of a jointly or commonly owned right to payment, a written request shall be submitted to the department within 15 days after the written notification is mailed. When the request is received within the 15-day limit, the spouse's proportionate share of a jointly or commonly owned right to payment, as determined by the department of administrative services, shall be released by the department of administrative services unless:

- a. Other claims are made on that portion of the jointly or commonly owned right to payment, or
- b. That spouse was also a member of the same household and the spouse's income and resources were or should have been considered in the calculation of public assistance.

11.4(5) *Appeal rights.* When a debtor wishes to contest the claim of the department, a written request shall be submitted to the department within 15 days after the written notification is mailed. When the request is received within the 15-day limit, a hearing will be granted pursuant to rules in 441—Chapter 7.

- a. If the department is upheld in the final decision, the setoff process will continue and the refund, rebate, or other state payment will be applied to the appropriate delinquent debts.
- b. If the department is reversed in the final decision, the debtor's refund, rebate, or other state payment shall be released to the debtor by the department of administrative services.

11.4(6) *Debt setoff.* If the department has not received a request for an appeal hearing or a request for division of a jointly or commonly owned right to payment within 15 days after the date the written notification is mailed, the department will notify a debtor of the final decision regarding the claim by mail.

11.4(7) *Application of setoff.* The department will apply any setoff received from the department of administrative services as a result of this rule to the debtor's debts as indicated on the written notification mailed to the debtor and in accordance with rule 441—11.3(217).

Any amount remaining after the setoff shall be released back to the individual.

441—11.5(234) Setoff against federal income tax refund or other federal payments, including, for example, federal employee wages.

11.5(1) *Criteria for setoff.*

a. Debtors not participating in SNAP shall be subject to collection action through the treasury offset program (TOP) which includes, but is not limited to, federal salary offset and federal tax refund offset.

(1) Debtors shall be referred to TOP if they are delinquent in repaying their SNAP debt and there is a claim or combination of claims with an unpaid balance which exceeds \$25.

(2) No claim which is less than three months old or more than ten years old as of January 31 of the offset year shall be referred. EXCEPTION: Claims which have had a final judgment entered are not subject to the ten-year time limit.

(3) Debtors are delinquent in repaying their SNAP debt if:

1. A repayment agreement has not been signed and 120 days have elapsed since the due date of the demand letter as defined in 441—subrule 65.21(4) minus any days the claim was not subject to collection action because of an appeal.

2. A repayment agreement has been signed but the debtor has failed to make the agreed-upon payments and has failed to make up the missed payments. The debtor shall be referred to TOP when

120 days have elapsed since the first of the month following the month that the debtor failed to make the agreed-upon payment and has not subsequently made up the missed payment.

b. A claim against an individual will not be referred to TOP by the department of inspections, appeals, and licensing (DIAL) for debts when:

- (1) The debt is in suspended status due to an exception to policy or is in an appeal status, or
- (2) The debt is being recovered through benefit reduction.

11.5(2) *Setoff under TOP.* DIAL shall, by December 1 of each year, submit a notification of liability for delinquent claims to the Department of the Treasury.

11.5(3) *Pre-setoff notice.* DIAL shall notify a debtor identifying the amount the department intends to refer to TOP for offset.

11.5(4) *Offset fee.* For each offset that the Treasury Department effects against an individual referred to TOP, Treasury will charge the individual a fee.

11.5(5) *Appeal rights.* When an individual wishes to contest the delinquent status of a claim as identified by DIAL, a written request shall be submitted to DIAL within 60 days of the date of the pre-offset notice. When the request is received within the 60-day limit, a review shall be granted.

DIAL shall determine if the claim is past due and legally enforceable and shall notify the individual in writing of the decision.

11.5(6) *Application of setoff.* DIAL shall apply any setoff received as a result of this rule to the individual's SNAP debts.

Any amount remaining after the setoff shall be released back to the individual.

These rules are intended to implement Iowa Code sections 217.34, 234.12, 239B.14, and 249A.5.