

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 441—Chapter 46

“Overpayment Recovery”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 239B.4(6)

State or federal law(s) implemented by the rulemaking: Iowa Code sections 239B.2, 239B.3, 239B.7, and 239B.14

Public.Hearing

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

November 6, 2024 2 to 3 p.m. Microsoft Teams Meeting ID: 238
807 808 374 Passcode: sCAuM5

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 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

The proposed chapter outlines what an overpayment is, how repayment of an overpayment can be made, and the procedure for recoupments.

Analysis.of.Impact.

1. Persons affected by the proposed rulemaking: Classes of persons that will bear the costs of the proposed rulemaking:

No costs were identified.

- Classes of persons that will benefit from the proposed rulemaking:

Those interested in a fair and equitable program 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:

For State Fiscal Year 2023, \$235,773 was collected for Family Investment Program (FIP) overpayments.

Qualitative description of impact:

These proposed rules play an important role in providing a framework needed to provide clarity and a legal basis for decisions made by the Department.

3. Costs to the State:

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

The Department incurs personnel costs to implement the program.

- Anticipated effect on state revenues:

There are no additional costs beyond those already appropriated.

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

If this chapter did not exist, there would be no standard for what an overpayment is, how repayment of an overpayment can be made, and the procedure for recoupments. This would cause this process to be inconsistent.

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

A less costly method has not been identified to achieve the purpose of this chapter.

6. Alternative methods considered by the agency: Description of any alternative methods that were seriously considered by the agency:

None.

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

Some of the benefit can be achieved through forms prescribed by the Department and internal documents. However, additional framework is needed to provide clarity and a legal basis for decisions made by the Department.

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?

There is no impact on small business.

Text.of.Proposed.Rulemaking.

Item1. Rescind 441—Chapter 46 and adopt the following **new** chapter in lieu thereof:

CHAPTER 46

OVERPAYMENT RECOVERY

441—46.1(239B) Definitions.

»Agency.error« .in overpayments means:

1. The same circumstances as described in 441—subrule 45.4(1) pertaining to underpayments, or
2. Any error that is not a client or procedural error.

»Client« .means a current or former applicant or recipient of the family investment program.

»Client.error« .means and may result from:

1. False or misleading statements, oral or written, regarding the client's income, resources, or other circumstances that may affect eligibility or the amount of assistance received;

2. Failure to timely report changes in income, resources, or other circumstances as required by rule 441—40.7(239B);

3. Failure to refund to child support services any nonexempt payment from the absent parent received after the date the decision on eligibility was made; or

4. Access of benefits issued via the electronic access card at a prohibited location pursuant to subrule 41.6(7).

»Overpayment« .means any assistance payment received in an amount greater than the amount the eligible group is entitled to receive or the amount of any payment accessed and any associated fees for accessing the benefits at a prohibited location pursuant to subrule 41.6(7).

»Procedural.error« .means a technical error that does not in and of itself result in an overpayment. Procedural errors include:

1. Failure to secure a properly signed application at the time of initial application or reapplication.

2. Failure to secure a properly signed form prescribed by the department to request FIP beyond 60 months as described in 441—subrule 41.11(3).

3. Failure of the department to conduct the interviews described in 441—subrules 40.4(2) and 40.7(1).

4. Failure to request a review form prescribed by the department at the time of a semiannual or annual review.

5. Failure of department staff to cancel the family investment program benefits when the client submits a review form prescribed by the department that is not complete as defined in 441—paragraph 40.7(4)»b«. However, overpayments of grants as defined above based on incomplete reports are subject to recoupment.

»Recoup« .means reimburse, return, or repay an overpayment.

»Recoupment« .means the repayment of an overpayment, either by a payment from the client or an amount withheld from the assistance grant or both.

441—46.2(239B) Monetary standards.

46.2(1) Amount.subject.to.recoupment;.All family investment program overpayments will be subject to recoupment.

46.2(2) Grant.issued;.When recoupment is made by withholding from the family investment program grant, the grant issued will be for no less than \$10.

441—46.3(239B) Notification and appeals. All clients will be notified by the department of inspections, appeals, and licensing, as described in 441—paragraph 7.4(3)»i?.when it is determined that an overpayment exists. Notification will include the amount, date and reason for the overpayment. The department will provide additional information regarding the computation of

the overpayment upon the client's request. The client may appeal the computation of the overpayment and any action to recover the overpayment through benefit reduction in accordance with 441—paragraph 7.4(3)»i;

441—46.4(239B) Determination of overpayments. All overpayments due to agency or client error or due to assistance paid pending an appeal decision will be recouped. A procedural error alone does not result in an overpayment.

46.4(1) Agency.error;When an overpayment is due to an agency error, recoupment will be made, including those instances when errors by the department prevent the requirements in 441—subrule 41.3(4) or 41.3(5) from being met or when the client receives a duplicate grant.

a;An overpayment of any amount is subject to recoupment with one exception: when the client receives a grant that exceeds the amount on the most recent notice from the department, recoupment will be made only when the amount received exceeds the amount on the notice by \$10 or more.

b;An overpayment due to agency error will be computed as if the information had been acted upon timely

46.4(2) Assistance.paid.pending.appeal.decision;Recoupment of overpayments resulting from assistance paid pending a decision on an appeal hearing will begin no later than the month after the month in which the final decision is issued.

46.4(3) Client.error;

a;An overpayment due to client error will be computed as if the information had been reported and acted upon timely.

b;Overpayments due to failure to refund payments received from the absent parent will be the total nonexempt support payment made for members of the eligible group at the time the support payment was received. In addition, assistance payments made to meet the needs of the eligible group may also be subject to recoupment under provisions in 441—subrule 41.3(4).

c;An overpayment due to a recipient's accessing benefits via the electronic access card at a prohibited location will be the total of the transactions and any associated fees for accessing the benefits at the prohibited location pursuant to 441—subrule 41.6(7).

46.4(4) Failure.to.cooperate;Failure to cooperate in the investigation of alleged overpayments will result in ineligibility for the months in question and the overpayment will be the total amount of assistance received during those months.

441—46.5(239B) Source of recoupment. Recoupment will be made from basic needs. The minimum recoupment amount will be the amount prescribed in subrule 46.5(1). Regardless of the source, the client may choose to make a lump sum payment, make periodic installment payments when an agreement to do this is made with the department of inspections, appeals, and licensing, or have repayment withheld from the grant. The client shall sign a form prescribed by the department when requested to do so by the department of inspections, appeals, and licensing. When the client fails to make the agreed upon payment, the agency will reduce the grant.

46.5(1) Basic needs;

a;Recoupment by withholding from basic needs for overpayments due to client error or a combination of client and agency errors will be 10 percent of the basic needs standard in accordance with the schedule in 441—subrule 41.9(2).

b;Recoupment by withholding from basic needs for overpayments due to the continuation of benefits pending a decision on an appeal as provided under 441—Chapter 7 or a combination of continued benefits and agency or client errors will be 10 percent of the basic needs standard in accordance with the schedule in 441—subrule 41.9(2).

c;Recoupment by withholding from basic needs for overpayments due to agency error will be 1 percent of the basic needs standard in accordance with the schedule in 441—subrule 41.9(2).

46.5(2) Reserved.

441—46.6(239B) Procedures for recoupment.

46.6(1) Referral;When the department determines that an overpayment exists, the case will be referred to the department of inspections, appeals, and licensing for investigation, recoupment, or referral for possible prosecution.

46.6(2) Change of circumstances;When financial circumstances change, any agreement to pay a debt is subject to revision.

46.6(3) Collection;Recoupment for overpayments will be made from the parent or nonparental relative who was the caretaker relative, as defined in 441—subrule 41.3(1), at the time the overpayment occurred. When both parents were in the home at the time the overpayment occurred, both parents are equally responsible for repayment of the overpayment.

46.6(4) Suspension and waiver;Recoupment will be suspended on nonfraud overpayments when the case is canceled and the amount of the overpayment is less than \$35. If the case is reopened within three years, recoupment is initiated again. Recoupment will be waived on nonfraud overpayments of less than \$35 that have been held in suspense for three years.

441—46.7(239B) Fraudulent misrepresentation of residence. A person convicted in a state or federal court, or in an administrative hearing, of having made a fraudulent statement or representation of the person's place of residence in order to receive assistance simultaneously from two or more states will be ineligible for assistance for ten years. For the purpose of this rule, the term "assistance" means assistance under Titles IV-A or XIX of the Social Security Act, or the Food Stamp Act of 1977, or benefits in two or more states under the Supplemental Security Income program under Title XVI. The ten-year period begins on the date the person is convicted. The prohibition does not apply to a convicted person who is pardoned by the President of the United States, beginning with the month after the pardon is given.

These rules are intended to implement Iowa Code sections 239B.2, 239B.3, 239B.7, and 239B.14.