

Council on Human Services

THURSDAY, JANUARY 12, 2023

10 A.M. – 11:30 P.M.

[CLICK TO JOIN ZOOM MEETING](#)

Join by Phone: 1-551-285-1373

Meeting ID: 1618827935 Passcode: 497162

AGENDA

10:00 a.m. Call to Order

10:05 a.m. Approval of December 8, 2022, meeting minutes

10:05 a.m. Rules

R-1. Amendments to Chapter 58, “Emergency Assistance-Disaster Assistance),” Iowa Administrative Code. (Align rules with current practice and Iowa Code).

Chapter 58 provides a state program of financial assistance and case management services to meet disaster-related expenses, food-related expenses, or serious needs of individuals and families who are adversely affected by a state-declared emergency. The program is intended to meet needs that cannot be met by other means of financial assistance. Definitions were updated. Administrative rules are clarified that reimbursement of food or personal property may be in the form of checks or gift cards. Rules are clarified to state the applicant must provide proof of their annual household income and an itemized list of the items that were damaged in the disaster. The rule making allows insurance deductibles to be reimbursed up the \$5,000 limit per household as long as the household provides a denial letter from their insurance company. Rules are updated regarding preexisting conditions, repairs, and amount of temporary housing coverage. Timeframes for the application period and length of time for approving grants were also clarified. This review is part of the department’s five-year rules review process.

R-2. Amendments to Chapter 80, “Procedure and Method of Payment,” Iowa Administrative Code. (Aligns rules with current practice and Iowa Code)

Chapter 80 provides information for providers of medical care participating in Medicaid on submitting claims to receive payment. This rules review resulted in proposed technical changes. References to federal regulations were updated to provide accurate listings. Outdated references were removed. This review is part of the department’s five-year rules review process.

R-3. Amendments to Chapter 82, “Intermediate Care Facilities for Persons with an Intellectual Disability (Implements HF 2578).

This rule making implements HF 2578 to increase reimbursement rates for Intermediate Care Facilities for Persons with an Intellectual Disability (ICF ID) over the rates in effect on June 30, 2022.

The entire rate increase is to be used for the wages and associated costs specific to wages, benefits and required withholding for direct support professionals and frontline management. These amendments adopt a new wage add-on factor for community based ICF ID facilities to be included in the rates effective July 1, 2022, and after. The wage add-on factor is to be added to the maximum allowable base rate.

R-4. Amendments to Chapter 87, “Family Planning Program,” (Align rules with current practice and the Iowa Code).

Chapter 87 defines the state family planning program which is a state funded program with an allocated portion within the Medical Assistance program. These rules add language to allow Afghan parolees and the Compacts of Free Association (COFA) with three Pacific Island nations to clarify their eligibility for the program. Minor updates and clarifications to eligibility criteria were part of the review process. Definitions are updated to provide clarify and correct references to other chapters. Enterprise is removed from Iowa Medicaid to be consistent across all Medicaid chapters. References to federal regulations was updated to provide accurate listings. This review is part of the department’s five-year rules review process.

R-5. Amendments to Chapter 90, “Case Management Services,” Iowa Administrative Code. (Align rules with current practice and the Iowa Code).

Chapter 90 provides information on case management services and when those services are available to members. This rules review resulted in technical changes. Definitions are updated to provide correct references in other chapters. References to federal regulations were updated to provide accurate listings. This review is part of the department’s five-year rules review process.

R-6. Amendments to Chapter 98, “Support Enforcement Services,” Iowa Administrative Code. (Align rules with current practice and federal regulations)

Chapter 98 outlines the enforcement services provided by the Child Support Recovery Unit. This rules review resulted in proposed technical changes. These rules update legal references for the Iowa Rules of Civil Procedure. Form names and numbers are updated. References to the Iowa Code and federal regulations are also being updated to provide accurate listings. The name of the food assistance program is being updated to replace it with the federal name of the Supplemental Nutrition and Assistance Program. This review is part of the department’s five-year rules review process.

R-7. Amendments to Chapter 99, “Support Establishment and Adjustment Services,” Iowa Administrative Code. (Implements HF 761)

Chapter 99 outlines the rules governing the provision of services provided by the Child Support Recovery Unit regarding the establishment of paternity, the establishment of support obligations, the review and adjustment of support obligations, the modification of support obligations and the suspension and termination of support obligations. This rules review resulted in technical changes. These amendments are updated to align the rules with the current procedures for paternity establishment in the Iowa code. References to federal regulations and Iowa Code are updated to provide accurate listings. Outdated guidance on establishment of support obligations and guidelines for setting support awards are rescinded. This review is part of the department’s five-year rules review process.

R-8. Amendments to Chapter 152, “Foster Care Contracting,” Iowa Administrative Code. (Align rules with current practice, the Iowa Code, and federal regulations).

Chapter 152 outlines the contracting process used for providers of foster group care, child welfare emergency services shelter and supervised apartment living. This chapter provides the rules for rate-

setting, payments, and provider monitoring. The amendments update definitions. Form names and numbers and legal references are also updated. This review is part of the department's five-year rules review process.

The following amendments to the administrative rules are presented as Noticed rules.

N-1. Amendments to Chapter 73, “Managed Care,” Iowa Administrative Code. (Align rules with current practice and Iowa Code).

For ease of review, we are proposing to rescind and replace the entire chapter. Proposed changes include updating definitions to include terms to managed care plans, managed care organizations and prepaid ambulatory health plan. In addition, proposed revisions add correct terminology, update federal and state citations and regulations, and align federal and contract provisions. This review is part of the department's five-year rules review process.

N-2. Amendments to Chapter 108, “Licensing and Regulation of Child Placing Agencies,” Iowa Administrative Code. (Aligns rules with current practice and Iowa Code)

Chapter 108 establishes licensing procedures for all child-placing agencies. The rules review removed outdated form names, added information on documents that must be submitted when requesting a record check and clarified the process for record check evaluations. Cross-references to rules regarding notices and appeal rights were also updated. This review is part of the department's five-year rules review process. Qualifications for caseworkers are updated. Rules are clarified when mandatory child abuse reporter training is required for foster parents. This review is part of the department's five-year rules review process.

N-3. Amendments to Chapter 113, “Licensing and Regulation of Foster Family Homes,” (Aligns rules with current practice and Iowa Code).

Chapter 113 provides the administrative rules for the licensing and regulation of foster family homes. New definitions for “kin” and “fictive kin” are being added due to an increase of kin and fictive kin becoming licensed foster parents and to align with the Code of Iowa chapter 232. Definitions of “child” and “children” are being updated. Communicable disease language is being added to replace HIV language. Changes to whooping cough vaccine requirements is being updated to allow religious exemptions.

N-4. Amendments to Chapter 114, “Licensing and Regulation of Group Care,” (Align rules with current practice and the Iowa Code).

Chapter 114 outlines the basic licensing standards for all group living foster care facilities and contains the basic licensing standards applicable to community residential facilities for children. Proposed Amendments update definitions defined in the Iowa Code and provide additional clarity. Qualifications are amended to provide further information on related human service fields and experience in social work or experience in the delivery of human services in a public or private agency as additional ways to qualify as a caseworker. Rules are being updated to provide information on the record check process. This review is part of the department's five-year rules review process.

N-5. Amendments to Chapter 115, “Licensing and Regulation of Comprehensive Residential Facilities,” Iowa Administrative Code. (Align rules with current practice and the Iowa Code).

Chapter 115 outlines the licensing and regulation standards for comprehensive regulations of residential care facilities for children. Changes include updating language on adding additional contact time requirements with caseworkers per provider requests. Chemical restraint language is being removed. Expanded documentation requirements regarding the use of the control room is being updated to align with other chapters. This review is part of the department's five-year rules review process.

N-6. Amendments to Chapter 156, "Payments for Foster Care," Iowa Administrative Code. (Align rules with current practice the Iowa Code and federal regulations)

Chapter 156 was reviewed as part of the Department's rules review. References to difficulty of care payments for therapeutic foster care were removed. The rate was updated for kinship caregiver payments to match what has previously been approved in the budget. Rates paid for clothing allowances and when they can be issued were also updated. Runaway and family visits were added as allowable reserve bed payment types under shelter care. Changed rate setting methodology for shelter care to reflect the rates are set in the contracts. This review is part of the department's five-year rules review process.

N-7. Amendments to Chapter 170, "Child Care Assistance," Iowa Administrative Code. (Align rules with current practice, the Iowa Code and federal regulations).

Chapter 170 was reviewed as part of the Department's five-year rules review. The rule making removes all reference to the term "relatives" as this term has no standing in the child care assistance program. The rule making includes language relating to foster care child eligibility for child care assistance to reflect a current policy. Definitions are updated to be consistent across programs. A reference to Iowa's Food Assistance Program is being updated to the Supplemental Nutrition Assistance Program (SNAP) to be consistent with the name of the federal program.

N-8. Amendments to Chapter 176, "Dependent Adult Abuse," Iowa Administrative Code. (Align rules with current practice the Iowa Code and federal regulations)

Chapter 176 is being reviewed as part of the Department's five-year rules review. Definitions are being updated to align with the Code of Iowa and provide consistency. The word "dependent" is being added to adult abuse to ensure dependent abuse is correctly identified. The proposed rules clarify the relationships of all parties involved in the assessment process.

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| 10:35 a.m. | Refugee Services Update – Chief of Strategic Operations Matt Highland & Bureau Chief of Refugee Services Mak Sucaska |
| 10:50 a.m. | Introduction – Community Access Director Erin Drinnin |
| 11:00 a.m. | Child Protective Services Update – Family Well Being & Protection Director Janee Harvey & Child Protection Bureau Chief Lori Frick |
| 11:15 a.m. | Director's Report – HHS Director Kelly Garcia |
| 11:25 a.m. | Council Update |
| 11:30 p.m. | Adjourn |

This meeting is accessible to persons with disabilities. (If you have special needs, please contact the Department of Human Services (515) 281-5452 two days prior to the meeting.) Note: Times listed on agenda for specific items are approximate and may vary depending on the length of discussion for preceding items. Please plan accordingly.

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to emergency assistance.

The Human Services Department hereby amends Chapter 58, "Emergency Assistance," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 29C.20"A" and 217.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 29C.20A and 217.6.

Purpose and Summary

Chapter 58 was reviewed as part of the Department's five-year rules review. This rule making adds a new definition for the term "mitigation" and updates other definitions to match the definitions in Iowa Code chapter 321. The names of forms are removed to eliminate unnecessary future changes as form names change. This rule making clarifies that reimbursement for replacement of food or personal property through the Iowa Individual Assistance Grant Program (IIAGP) may be given in the form of checks or gift cards and the applicant must sign a promise to purchase replacement food or personal property.

Requirements relating to submission of receipts for claimed expenses and a request to participate in a voucher system are removed; however, an applicant must provide proof of the household's annual income and an itemized list of items that were damaged by a disaster. Applications are to be submitted within 45 days of a disaster declaration; however, the rule making allows the application period to be extended beyond 45 days if the Governor extends the disaster proclamation.

This rule making allows insurance deductibles to be reimbursed up to the \$5,000 limit per household as long as the household provides a denial letter from the insurance company. This rule making clarifies that home repair assistance will be denied if preexisting conditions are the cause of the damage. Repairs to rental dwellings, dwelling units or landlord-owned equipment are excluded under this program. This rule making clarifies that grant funding is limited to personal property, food assistance, home repair and temporary housing and cannot exceed \$5,000. The list of items that may be considered personal property is being revised to recategorize items in a more logical manner and remove maximum limits for each personal property type. The list of authorized home repair assistance is also being revised to remove maximum limits for each repair type. This rule making increases the total temporary housing assistance from \$2,500 to \$5,000 and includes this assistance as part of disaster assistance.

Requirements for notices of adverse action were moved from Chapter 7 to Chapter 16, effective April 15, 2020. Chapter 7 is updated to reflect that change. The rule making increases the amount of time from 15 days to 30 days that a household may request reconsideration or file an appeal regarding an eligibility determination or a disagreement with the amount of assistance awarded.

This rule making clarifies that the program shall commence on the day following the Governor's disaster proclamation and shall be provided for a period of up to 180 days. The program may be extended in 90-day intervals when adequate justification is presented, but it cannot exceed 730 days from the date of the proclamation. If the disaster becomes a presidentially declared disaster and a Federal Emergency Management Agency (FEMA) disaster care management (DCM) grant is approved, then assistance may be provided for a period of up to 24 months from the date of the proclamation.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 30, 2022, as ARC 6690C.

The Department received comments from two community action agencies.

COMMENT 1:

One respondent commented that the proposed changes were positive changes that were needed to make a more efficient program. The chapter was revised to clarify the expenses that were eligible for grant funding, including vehicle replacement or repairs. The respondent is concerned that the \$5,000 limit on funds makes it difficult to purchase an appropriate, reliable car. The respondent also questions if the funds could be used as a down payment for a car.

RESPONSE 1:

The Department appreciates the comment submitted by the respondent. While the respondent makes a valid point that it may be difficult for applicants to purchase a reliable car within the limit imposed on grant funding, the Department has no authority to authorize additional funding. The Code of Iowa Section 29C.20A(3) clearly states the amount of the grant for a household shall not exceed \$5,000.

Grant funding shall be limited to personal property, food assistance, home repair and temporary housing and shall not exceed a total of \$5,000. Recipients may choose to use the funds as a down payment for a car, but no additional funds will be provided if the purchase price of the vehicle exceeds the grant maximum. No changes were made based on this comment.

COMMENT 2:

One respondent commented on the proposed change to 441 IAC 58.4(4) that requires the applicant to provide a denial letter from an insurance company. The respondent suggested the verbiage be changed to clarify the applicant must provide claim documentation from the insurance company, instead of a denial letter, as there may be times when a household is approved by insurance, but their insurance doesn't cover the entire need.

RESPONSE 2:

The department agrees with this comment and will make the change. Based on the respondent's comment, Item 7, subrule 58.4(4) will be amended as follows:

58.4(4) The household has unmet disaster-related expenses or serious needs that are not covered by insurance. The applicant must provide ~~a denial letter~~ claim documentation from the insurance company.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on January 12, 2023.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441_1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on July 1, 2023.

The following rule-making action is adopted:

Please see attached.

Adopted and filed rules for Chapter 58.

Adopt the following rules:

ITEM 1. Adopt the following **new** paragraph **7.3(3)“c”**:

c. A final decision from a previous hearing with a presiding officer has been implemented.

ITEM 2. Amend paragraphs **7.4(3)“d”** and **“e”** as follows:

d. *Iowa individual disaster assistance program.* For appeals pertaining to the Iowa individual disaster assistance program, the appellant must appeal on or before the ~~fifteenth~~ thirtieth day following the date of the department’s reconsideration decision, pursuant to 441—subrule 58.7(1).

e. *Iowa disaster case management program.* For appeals pertaining to the Iowa disaster case management program, the appellant must appeal on or before the ~~fifteenth~~ thirtieth day following the date of the department’s reconsideration decision, pursuant to 441—subrule 58.7(1).

ITEM 3. Adopt the following **new** definition of “Mitigation” in rule **441—58.1(29C)**:

“*Mitigation*” means the effort to reduce the loss of life and property by lessening the impact of disasters to reduce human and financial consequences later.

ITEM 4. Amend rule **441—58.1(29C)**, definitions of “Bona fide residence,” “Fifth-wheel travel trailer,” “Manufactured home,” “Manufactured or mobile home,” “Motor home” and “Travel trailer,” as follows:

“*Bona fide residence*” or “*bona fide address*,” as set forth in Iowa Code section 321.1(6C), means the pre-disaster street or highway address of an individual’s dwelling or dwelling unit. The bona fide residence of a person with more than one dwelling is the dwelling for which the person claims a homestead tax credit under Iowa Code chapter 425, if applicable. The bona fide residence of a homeless person is a primary nighttime residence meeting one of the criteria listed in Iowa Code section ~~48A.2(2)~~ 48A.2(3).

“*Fifth-wheel travel trailer*,” as set forth in Iowa Code section ~~321.1(36C)“e,”~~ 321.1(36D)“c,” means a type of travel trailer which is towed by a pickup by a connecting device known as a fifth wheel. However, this type of travel trailer may have an overall length which shall not exceed 45 feet. ~~If the vehicle is used in this state as a place of human habitation for more than 180 consecutive days in one location, the vehicle shall be classed as a manufactured or mobile home regardless of the size limitations provided in this definition.~~

“*Manufactured home*” or “*modular home*,” as set forth in Iowa Code section ~~321.1(36B)~~ 321.1(36C), is a factory-built structure constructed under authority of 42 U.S.C. §5403 as amended to August 25, 2022, which is required by federal law to display a seal from the United States Department of Housing and Urban Development, and was constructed on or after June 15, 1976.

“*Manufactured or mobile home*,” as set forth in Iowa Code section ~~321.1(36C)“a,”~~ 321.1(36D)“a,” means any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed, or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons.

“*Motor home*,” as set forth in Iowa Code section ~~321.1(36C)“d,”~~ 321.1(36D)“d,” means a motor vehicle designed as an integral unit to be used as a conveyance upon the public streets and highways and for use as a temporary or recreational dwelling and having at least four, two of which shall be systems specified in paragraph “1,” “4,” or “5” of this definition, of the following permanently installed systems which meet American National Standards Institute and National Fire Protection Association standards in effect on the date of manufacture:

1. Cooking facilities.
2. Ice box or mechanical refrigerator.
3. Potable water supply including plumbing and a sink with faucet either self-contained or with

connections for an external source, or both.

4. Self-contained toilet or a toilet connected to a plumbing system with connection for external water disposal, or both.

5. Heating or air conditioning system or both, separate from the vehicle engine or the vehicle engine electrical system.

6. A 110- to 115-volt alternating current electrical system separate from the vehicle engine electrical system either with its own power supply or with a connection for an external source, or both, or a liquefied petroleum system and supply. ~~If the vehicle is used in this state as a place of human habitation for more than 90 consecutive days in one location, the vehicle shall be classed as a manufactured or mobile home regardless of the size limitations provided in this definition.~~

“Travel trailer,” as set forth in Iowa Code section ~~321.1(36C)“b,”~~ 321.1(36D)“b,” means a vehicle without motive power used, manufactured, or constructed to permit its use as a conveyance upon the public streets and highways and designed to permit its use as a place of human habitation by one or more persons. The vehicle may be up to 8 feet, 6 inches in width and its overall length shall not exceed 45 feet. The vehicle shall be customarily or ordinarily used for vacation or recreational purposes and not used as a place of permanent habitation. If the vehicle is used in this state as a place of human habitation for more than 180 consecutive days in one location, the vehicle shall be classed as a manufactured or mobile home regardless of the size limitations provided in this definition.

ITEM 5. Amend subrule 58.2(2) as follows:

58.2(2) *Voucher system.* The IIAGP will be implemented through a reimbursement or voucher system. Reimbursement may include checks or gift cards provided to the applicant for replacement food or personal property only. The applicant must sign a promise to purchase replacement food or personal property.

ITEM 6. Amend rule 441—58.3(29C) as follows:

441—58.3(29C) Application for assistance. To request assistance for disaster-related expenses, the household shall complete Form 470-4448, ~~Individual Disaster Assistance Application,~~ and submit it within 45 days of the disaster declaration to the contracted administrative entity ~~along with: (1) receipts for the claimed expenses or (2) a request to participate in a voucher system.~~

58.3(1) No change.

58.3(2) The application shall include:

a. A declaration of the household’s annual income, accompanied by:

~~(1) A a current pay stub, W-2 form, or income tax return, or~~

~~(2) Documentation of current enrollment in an assistance program administered by the department, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), or other subsidy program.~~

b. to e. No change.

f. A short, handwritten narrative of how the disaster event caused the claimed loss, including an itemized list of items damaged by the disaster.

g. A copy of a picture identification document for ~~each~~ the adult applicant.

h. No change.

58.3(3) The application period may be extended beyond 45 days through an extension of the governor’s disaster proclamation. If the forty-fifth day falls on a Saturday, Sunday, or holiday, the deadline is moved to the following business day.

ITEM 7. Amend subrules 58.4(4) to 58.4(6) as follows:

58.4(4) The household has unmet disaster-related expenses or serious needs that are not covered by insurance ~~or that are less than the deductible amount. This program will not reimburse the amount of the insurance deductible when the claim exceeds the deductible amount. The applicant must provide a denial letter claim documentation from the insurance company.~~

58.4(5) The household has not previously received assistance from this program or another

program for the same loss in the same disaster.

58.4(6) Household eligibility for home repair assistance for a dwelling or dwelling unit damaged due to a proclaimed disaster is only available for a household that owns and occupies the dwelling or dwelling unit being repaired.

a. Assistance will be denied if preexisting conditions are the cause of the damage.

b. Repairs to rental dwellings, dwelling units, or landlord-owned equipment are excluded under this program.

ITEM 8. Amend rule 441—58.5(29C) as follows:

441—58.5(29C) Eligible categories of assistance. ~~The maximum assistance available~~ Expenses eligible for grant funding shall be limited to a household in a single disaster is personal property, food assistance, home repair and temporary housing and shall not exceed a total of \$5,000. Assistance is available under the program for the following disaster-related expenses:

58.5(1) Personal property and food assistance may be issued for damage to personal property or ~~loss of food, including replacement.~~ Eligible items for personal property assistance may include but are not limited to the following items, based on the item's condition:

a. ~~Kitchen items, excluding large appliances up to a maximum of \$560, including~~ Appliances or equipment, including:

(1) Small household appliances, e.g., toaster, blender, microwave, and including, but not limited to:

1. Toasters,
2. Blenders,
3. Microwaves,
4. Vacuums,
5. Dehumidifiers, and
6. Window air conditioners.

(2) ~~Furnishings (e.g., tables, chairs)~~ Large household appliances, if the appliance is owned by the household and not a landlord.

(3) Outdoor equipment, including:

1. Lawn mowers, and
2. Snow blowers.

~~b. Large kitchen appliances or laundry appliances, up to a maximum of \$700 per appliance and a maximum per household not to exceed \$2,800, if the appliances are owned by the household and not a landlord.~~

~~c. Food, up to a maximum of \$50 for one person plus \$25 for each additional person in the household.~~

~~d. Personal hygiene items, up to a maximum of \$30 per person and \$150 per household.~~

~~e. Bedroom furnishings, up to \$500 per person. Basic household items, including but not limited to:~~

- ~~(1) Furnishings (e.g., tables, chairs, dressers, couches, end tables),~~
- ~~(2) Beds (e.g., mattresses, bedding),~~
- ~~(3) Curtains or window treatments,~~
- ~~(4) Car or booster seats,~~
- ~~(5) Strollers,~~
- ~~(6) Storage totes,~~
- ~~(7) Televisions,~~
- ~~(8) Laptop or desktop computers, and~~
- ~~(9) Area rugs.~~

~~f. e. Clothing, up to a maximum of \$145 per person.~~

~~g. f. Living area furnishings, such as: couch, chair, end tables, and television, up to a maximum of \$1,000. Short-term transportation, such as bus passes.~~

- ~~h-~~ g. Other items, including: Debris removal.
- ~~(1) Dehumidifier, up to a maximum of \$250.~~
- ~~(2) One window air conditioner, up to a maximum of \$250.~~
- ~~i-~~ h. Vehicle repair, up to a maximum of \$500 or replacement, if a total loss has occurred.
- i. Other personal property items, as determined by the department, in order to assist the household in making the dwelling or dwelling unit safe, sanitary, and secure.

58.5(2) Home repair assistance may be issued for home repair for an owner-occupied dwelling or dwelling unit as needed to make the dwelling or dwelling unit safe, sanitary, and secure, up to a maximum of \$5,000.

- a. No change.
- ~~b. Assistance may be authorized for: Repairs to rental dwellings or dwelling units or landlord-owned equipment are excluded under this program.~~
- ~~(1) The repair of structural components, such as the foundation and roof.~~
- ~~(2) The repair of floors, walls, ceilings, doors, windows, and carpeting of essential interior living space that was occupied at the time of the disaster.~~
- ~~(3) Debris removal, including trees, up to a maximum of \$1,000.~~
- ~~c. Repairs to rental dwellings or dwelling units or landlord-owned equipment are excluded under this program. Assistance may be authorized for:~~
- ~~(1) The repair of structural components, such as the foundation and roof.~~
- ~~(2) The repair of floors, walls, ceilings, doors, windows, and carpeting of essential interior living space that was occupied at the time of the disaster.~~

- ~~(3) Mitigation measures.~~
- ~~(4) Debris removal, including trees.~~
- ~~d- (5) Bathroom, up to a maximum of \$1,500, including toilet, sink, and tub/shower.~~
- ~~e- (6) Sump pump installation (in a flood event only), up to a maximum of \$200 installed.~~
- ~~f- (7) Electrical or mechanical repairs, up to a maximum of \$2,000.~~
- ~~g- (8) Water heater, up to a maximum of \$1,500 installed.~~
- ~~h- (9) Heating systems, up to a maximum of \$2,100 installed.~~
- ~~i- (10) Air-conditioning systems, up to a maximum of \$2,100 installed.~~
- ~~j- (11) Water well repair for dwellings or dwelling units with no other source of water available, up to a maximum of \$2,000.~~
- ~~k- (12) Water softener repair, up to a maximum of \$500.~~

58.5(3) Temporary housing assistance may be issued to a household, up to a limit of \$65 per day, for lodging at a licensed establishment, such as a hotel or motel. The household's home must be considered to be destroyed, uninhabitable, inaccessible, or unavailable to the household. ~~Temporary housing assistance may also be granted for deposits for a new dwelling.~~ Total temporary housing assistance may not exceed ~~\$2,500~~ \$5,000 and is included as part of disaster assistance.

Temporary housing assistance may also be granted for rental unit application fees, deposits, and first month's rent for a new dwelling.

58.5(4) No change.

ITEM 9. Amend paragraph **58.6(3)“b”** as follows:

- b. Notify the applicant household of the eligibility decision in accordance with notice requirements in 441—Chapter 16.

ITEM 10. Amend paragraphs **58.7(1)“b”** and **“c”** as follows:

- b. To request reconsideration, the household shall submit a written request to the DHS Division of Field Operations—Emergency Assistance, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, within ~~15~~ 30 days of the date of the letter notifying the household of the department's decision.

- c. The department shall review any additional evidence or documentation submitted and issue a reconsideration decision within ~~15~~ 30 days of receipt of the request.

ITEM 11. Amend paragraph **58.7(2)“a”** as follows:

a. Appeals must be submitted in writing, either on Form 470-0487 or 470-0487(S), ~~Appeal and Request for Hearing~~, or in any form that provides comparable information, to the DHS Appeals Section, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, within ~~45~~ 30 days of the date of the reconsideration decision.

ITEM 12. Amend subrule 58.8(1) as follows:

58.8(1) Deferral to federal assistance. Upon declaration of a disaster by the President of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. Sections 5121 to ~~5206~~ 5207, the Iowa individual assistance grant program administered under this chapter shall be discontinued in the geographic area ~~included in the presidential declaration~~ designated by the federal individual assistance program. Upon issuance of the presidential declaration:

a. to *c.* No change.

ITEM 13. Amend paragraphs **58.23(1)“a”** to **“e”** as follows:

a. The program shall be in effect only in those counties named in the proclamation. ~~Assistance for a state only proclamation shall be provided for a period of up to 180 days from the date of proclamation.~~

b. ~~A request for an additional 90-day extension to the period of performance will be considered when adequate justification is presented to the department.~~ The program shall commence on the day following the governor’s disaster proclamation and shall be provided for a period of up to 180 days from the date of proclamation.

c. ~~The program shall commence on the day following proclamation of a disaster by the governor and remain in effect through 180 intervals up to 90 days even if the disaster becomes a presidentially proclaimed disaster that authorizes individual assistance when adequate justification is presented to the department, but not to exceed 730 days from the date of the proclamation.~~

d. ~~The period of performance for~~ If the disaster transforms to become a presidentially proclaimed declared disaster is and a Federal Emergency Management Agency (FEMA) disaster care management (DCM) grant is approved, then assistance may be provided for a period of up to 24 months from the date of the presidential proclamation.

e. The reporting of the numbers of contacts, cases opened, cases pending, cases closed, and other required reports requested by the department shall be submitted ~~weekly on~~ with a day frequency determined by the department.

ITEM 14. Amend paragraphs **58.31(1)“b”** and **“c”** as follows:

b. To request reconsideration, the household shall submit a written request to the DHS Division of Field Operations—Emergency Assistance, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, within ~~45~~ 30 days of the date of the letter notifying the household of the contracted entity’s decision.

c. The department shall review any additional evidence or documentation submitted and issue a reconsideration decision within ~~45~~ 30 days of receipt of the request.

ITEM 15. Amend paragraph **58.31(2)“a”** as follows:

a. Appeals must be submitted in writing, either on Form 470-0487 or 470-0487(S), ~~Appeal and Request for Hearing~~, or in any form that provides comparable information, to the DHS Appeals Section, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, within ~~45~~ 30 days of the date of the reconsideration decision.



Iowa Department of Human Services
Information on Proposed Rules

Table with 3 columns: Name of Program Specialist (Christie Templeton), Telephone Number (515-281-8746), Email Address (ctemple@dhs.state.ia.us)

1. Give a brief purpose and summary of the rulemaking:

This chapter was reviewed as part of the Department’s five-year rules review. The proposed rule making adds a new definition for the term “mitigation” and updates other definitions to match the definitions in Iowa Code Chapter 321. The names of forms are proposed to be removed to eliminate unnecessary future changes as form names change. This proposed rule making clarifies that reimbursement for replacement of food or personal property through the Iowa Individual Assistance Grant Program (IIAGP) may be given in the form of checks or gift cards and the applicant must sign a promise to purchase replacement food or personal property.

Requirements relating to submission of receipts for claimed expenses and a request to participate in a voucher system are removed within the proposed rule making, however, the applicant must provide proof of the household’s annual income and an itemized list of items that were damaged by the disaster. Applications are to be submitted within 45 days of the disaster declaration, however, the proposed rule making allows the application period to be extended beyond 45 days if the Governor extends the disaster proclamation.

The proposed rule making allows insurance deductibles to be reimbursed up to the \$5,000 limit per household as long as the household provides a denial letter from the insurance company. This proposed rule making clarifies home repair assistance will be denied if preexisting conditions are the cause of the damage. Repairs to rental dwellings, dwelling units or landlord-owned equipment are excluded under this program. This proposed rule making clarifies grant funding is limited to personal property, food assistance, home repair and temporary housing and cannot exceed \$5,000. The list of items that may be considered personal property is revised to recategorize items in a more logical manner and remove maximum limits for each personal property type. The list of authorized home repair assistance is also revised to remove maximum limits for each repair type. This proposed rule making increases the total temporary housing assistance from \$2,500 to \$5,000 and is included as part of disaster assistance.

Requirements for notices of adverse action were moved from Chapter 7 to Chapter 16, effective April 15, 2020. This chapter is updated to reflect that change. The proposed rule making increases the amount of time a household may request reconsideration or file an appeal regarding an eligibility determination or disagreement with the amount of assistance awarded from 15 days to 30 days.

This proposed rule making clarifies the program shall commence on the day following the Governor’s disaster proclamation and shall be provided for a period of up to 180 days. The program may be extended in 90-day intervals when adequate justification is presented, but it cannot exceed 730 days from the date of the proclamation. If the disaster becomes a Presidentially-declared disaster and a Federal Emergency Management Agency (FEMA) disaster care management (DCM) grant is approved, then assistance may be provided for a period of up to 24 months from the date of the proclamation.

2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):

Iowa Code 29C.20(A) and 217.6

3. Describe who this rulemaking will positively or adversely impact.

This rulemaking will positively impact any future applicants who apply for the Iowa Individual Assistance Grant Program. This rulemaking provides clarifications to existing policies and removes limits from personal property and home repair assistance. The proposed rule making increases the total temporary

housing assistance from \$2,500 to \$5,000 and is included as part of disaster assistance. The timeframes to file a reconsideration or appeal regarding an eligibility determination disagreement with the amount of assistance awarded are increased to allow applicants more time for due process.

4. Does this rule contain a waiver provision? If not, why?

The proposed amendments do not include waiver provisions because they confer benefits on those affected and are pursuant to federal law that does not provide for waivers, given that the process is optional. Individuals may request a waiver under the Department's general rule on exceptions at Iowa Admin. Code 441—1.8.

5. What are the likely areas of public comment?

As the proposed amendments are believed to be positive changes for individuals applying for Emergency Assistance, there is no likely area of public comment.

6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)

The proposed amendments have no impact on private-sector jobs and employment opportunities in Iowa.



Administrative Rule Fiscal Impact Statement

Date: August 30, 2022

Agency: Human Services
IAC citation: 441 IAC Chapter 7 and 58
Agency contact: Denise Dutton/Christie Templeton

Summary of the rule:

Chapter 7 allows for contested case proceedings regarding the Iowa Individual Disaster Assistance and Iowa Disaster Care Management Program. Chapter 58 provides financial assistance to meet disaster-related expenses, food-related costs, or serious needs of individuals or families who are adversely affected by a state-declared disaster emergency. The program is intended to meet needs that cannot be met by other means of financial assistance.

This chapter is being reviewed as part of the Department's five-year rules review. The proposed rule making updates definitions, removes form names, and clarifies policies for the Iowa Individual Assistance Grant Program (IIAGP), and clarifies timeframes for reconsideration, appeals, and the administration of the program. Applications are to be submitted within 45 days of the disaster declaration, however, the proposed rule making allows the application period to be extended beyond 45 days if the Governor extends the disaster proclamation.

The proposed rule making allows insurance deductibles to be reimbursed up to the \$5,000 limit per household as long as the household provides a denial letter from the insurance company. This proposed rule making clarifies grant funding is limited to personal property, food assistance, home repair and temporary housing and cannot exceed \$5,000. The list of items that may be considered personal property is revised to recategorize items in a more logical manner and remove maximum limits for each personal property type. The list of authorized home repair assistance is also revised to remove maximum limits for each repair type. This proposed rule making increases the total temporary housing assistance from \$2,500 to \$5,000 and is included as part of disaster assistance.

Fill in this box if the impact meets these criteria:

- No fiscal impact to the state.
- Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
- Fiscal impact cannot be determined.

Brief explanation:

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

There is no fiscal impact to the state. No additional costs to the regulated community or State of Iowa as a whole are anticipated.

Fill in the form below if the impact does not fit the criteria above:

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

Assumptions:

There is no fiscal impact to the state. While the total temporary housing assistance is changing from \$2,500 to \$5,000 for disaster assistance, individuals have always been eligible for up to \$5,000 total in funds for disaster assistance. An individual previously could have only used half of those \$5,000 in funds for housing assistance. The rule change removes that restriction but still keeps the \$5,000 total limit for funds. As the total limit has not changed, we do not believe there to be a fiscal impact.

Describe how estimates were derived:

There are no potential costs estimated for this rule as the total limit of disaster assistance has not changed.

Estimated Impact to the State by Fiscal Year

	Year 1 (FY 2023)	Year 2 (FY 2024)
Revenue by each source:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL REVENUE	_____	_____
Expenditures:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL EXPENDITURES	_____	_____
NET IMPACT	0.00	0.00

This rule is required by state law or federal mandate.

Please identify the state or federal law:

Identify provided change fiscal persons:

Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

Funding has not been provided for the rule.
Please explain how the agency will pay for the rule change:
There is no fiscal impact to the state.

Fiscal impact to persons affected by the rule:

There is no fiscal impact. There is no fiscal impact to the state. No additional costs to the regulated community or State of Iowa as a whole are anticipated.

Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):

These rule changes have no impact on private-sector jobs and employment opportunities in Iowa.

Agency representative preparing estimate: Rob Beran

JH 10/14/2022, JB 10/17/22

Telephone number: 281-6188

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to procedure and method of payment.

The Human Services Department hereby amends Chapter 80, "Procedure And Method Of Payment," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 249A and Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 249A and Iowa Code section 249A.4.

Purpose and Summary

Chapter 80 was reviewed as part of the Department's five-year rules review. Chapter 80 provides information on submitting claims to receive payment for providers of medical care participating in Medicaid.

The rules review resulted in the following technical changes. Form names and numbers were updated. Cross-references to other chapters were revised for accuracy. "Enterprise" was removed from the Iowa Medicaid name to be consistent across all chapters related to Medicaid. References to federal regulations were updated to provide accurate listings. Rules that are outdated were removed.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 16, 2022, as ARC 6641C.

No public comments were received.

No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on January 12, 2023.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441_1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on April 1, 2023.

The following rule-making action is adopted:

Please see attached.

Adopted and filed rules for Chapter 80.

Adopt the following rules:

ITEM 1. Amend rule 441—80.2(249A) as follows:

441—80.2(249A) Submission of claims. Providers of medical and remedial care participating in the program shall submit claims for services rendered to the Iowa Medicaid enterprise on at least a monthly basis. All nursing facilities and providers of home- and community-based services shall submit claims for services after the end of the calendar month in which the services are provided. Following audit of the claim, ~~the Iowa Medicaid enterprise~~ will make payment to the provider of care.

80.2(1) Electronic submission. Providers are ~~encouraged~~ required to submit claims electronically whenever possible.

~~a. Ambulance service providers may bill electronically only when the procedures performed are identified by codes based on the ones that Medicare recognizes as emergency and support medical necessity without a review by the Iowa Medicaid enterprise.~~

~~b. a.~~ When filing electronic claims, pharmacies shall use the format prescribed by the National Council for Prescription Drug Programs.

~~e. b.~~ Claims submitted electronically ~~after implementation of the Health Insurance Portability and Accountability Act of 1996~~ shall be filed on the American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X12N 837 transaction, Health Care Claim. ~~The department shall send all providers written notice when the Act is implemented.~~

(1) Providers listed as filing claims on Form CMS-1500 or on the Claim for Targeted Medical Care shall file claims on the professional version of the 837 Health Care Claim.

(2) Providers listed as filing claims on Form CMS-1450 ~~or on the Iowa Medicaid Long Term Care Claim or UB04~~ shall file the institutional version of the 837 Health Care Claim.

(3) Dentists shall file the dental version of the 837 Health Care Claim.

(4) Pharmacists providing drugs and injections shall use the format prescribed by the National Council for Prescription Drug Programs.

~~d. c.~~ If a claim submitted electronically requires attachments or supporting clinical documentation and a national electronic attachment has not been adopted, the provider shall:

(1) Use ~~Form 470-3969, Claim Attachment Control, as the cover sheet for the paper attachments or supporting clinical documentation~~ the Iowa Medicaid portal access (IMPA) system to submit supporting documents when billing Medicaid fee for service claims; and

(2) Reference ~~on Form 470-3969~~ the attachment control number submitted on the ASC X12N 837 electronic transaction.

80.2(2) Claim forms. Claims for payment for services provided recipients shall be submitted on Form CMS-1500, Health Insurance Claim Form, except as noted below.

a. The following providers shall submit claims on Form UB-04, CMS-1450:

(1) Home health agencies providing services other than home- and community-based services.

(2) Hospitals providing inpatient care or outpatient services, including inpatient psychiatric hospitals.

(3) Psychiatric medical institutions for children.

(4) Rehabilitation agencies.

(5) Hospice providers.

(6) Medicare-certified nursing facilities.

(7) Nursing facilities for the mentally ill.

(8) Special population nursing facilities as defined in rule ~~441—81.6(249A)~~ 441—Chapter 81.

(9) Out-of-state nursing facilities.

(10) Health insurance premium payment (HIPP) providers.

b. All other nursing facilities and intermediate care facilities for persons with an intellectual disability shall file claims using an electronic version of Form UB-04 CMS-1450.

c. Pharmacies shall submit claims on the Universal Pharmacy Claim Form when filing paper claims.

d. Dentists shall submit claims on the dental claim form approved by the American Dental Association.

~~*e.* Rescinded IAB 8/1/07, effective 9/5/07.~~

~~*f.* *e.* Providers of home- and community-based waiver services, including home health agencies, shall submit claims on Form 470-2486, Claim for Targeted Medical Care. In the event of the death of the member, the case manager or service worker shall sign and date the claim form if the services were delivered.~~

~~*g.* *f.* Case management providers billing services provided pursuant to 441—Chapter 90 to fee-for-service members shall submit claims using a HIPAA-compliant electronic claim.~~

~~*h.* *g.* For fee-for-service members, providers billing claims for Medicare beneficiaries that do not cross over electronically to the Iowa Medicaid enterprise must submit the following electronically, in accordance with the All Providers, IV. Billing Iowa Medicaid manual, located at dhs.iowa.gov/sites/default/files/All-IV.pdf:~~

~~(1) Form UB-04.~~

~~(2) Form CMS-1500. The Explanation of Medicare Benefits (EOMB) is only required when requested by the Iowa Medicaid enterprise.~~

~~*i.* *h.* For managed care members, providers billing claims for Medicare beneficiaries that do not cross over electronically must submit the following electronically:~~

~~(1) Form UB-04 and the Explanation of Medicare Benefits (EOMB); and~~

~~(2) Form CMS-1500 and the Explanation of Medicare Benefits (EOMB).~~

~~*j.* *i.* Health insurance premium payment (HIPP) providers shall submit Form 470-5475; Health Insurance Premium Payment (HIPP) Provider Invoice, along with an explanation of benefits (EOB).~~

80.2(3) No change.

~~This rule is intended to implement Iowa Code section 249A.4.~~

ITEM 2. Amend rule 441—80.3(249A) as follows:

441—80.3(249A) Payment from other sources. This rule applies to claims for the department, managed care organizations, and the Public Health Associate Program (PHAP).

80.3(1) No change.

80.3(2) Third-party liability.

a. When a third-party liability for medical expenses exists, this resource shall be utilized for payment of a claim before the Medicaid program makes payment unless:

~~*a.* (1)~~ The department pays the total amount allowed under the Medicaid payment schedule and then seeks reimbursement from the liable third party. This “pay and chase” provision applies to claims for:

~~(1) 1.~~ Preventive pediatric services, and

~~(2) 2.~~ All services provided to a person for whom there is court-ordered medical support.

~~*b.* (2)~~ Otherwise authorized by the department.

b. All claims must be clean claims. A clean claim is defined as a claim that has no defect or impropriety (including any lack of required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment of the claim.

80.3(3) Recovery from third parties legally responsible to pay for health care. Parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service shall:

~~a. Respond to~~ No later than 60 days after receiving any inquiry by the state regarding a claim for payment for any health care item or service that is submitted no later than three years after the date of the provision of the item or service, respond to such inquiry, pursuant to 42 U.S.C. Section 1396a(25)(I)(iii), effective March 13, 2022.

~~b. Agree not to deny any claim submitted by the state solely because of the date of submission of the claim, the type or format of the claim form, or a failure to present proper documentation at the point of sale that is the basis of the claim, or, in the case of a responsible third party (other than the original Medicare fee-for-service program under Parts A and B of 42 U.S.C. Chapter 7, Subchapter XVIII, a Medicare Advantage plan offered by a Medicare Advantage organization under Part C of 42 U.S.C. Chapter 7, Subchapter XVIII, a reasonable cost of reimbursement plan under 42 U.S.C. Section 1395mm, a health care prepayment plan under 42 U.S.C. Section 1395l, or a prescription drug plan (PDP) offered by a PDP sponsor under Part D of 42 U.S.C. Chapter 7, Subchapter XVIII), a failure to obtain a prior authorization for the item or service for which the claim is being submitted, if both of the following conditions are met:~~

(1) The claim is submitted to the entity by the state within the three-year period beginning on the date on which the item or service was furnished.

(2) Any action by the state to enforce its rights with respect to the claim is commenced within six years of the date that the claim was submitted by the state.

~~c. Reimburse the Medicaid program within 90 days of the request for repayment.~~

d. Agree not to deny any claim submitted by the state solely because of lack of prior authorization.

~~This rule is intended to implement Iowa Code chapter 249A.~~

ITEM 3. Amend rule 441—80.4(249A) as follows:

441—80.4(249A) Time limit for submission of claims and claim adjustments.

80.4(1) *Submission of claims.* Payment will not be made on any claim when the amount of time that has elapsed between the date the service was rendered and the date the initial claim is received by the Iowa Medicaid enterprise exceeds 365 days. The department shall consider claims submitted beyond the 365-day limit for payment only if retroactive eligibility on newly approved cases is made that exceeds 365 days or if attempts to collect from a third-party payer delay the submission of a claim. In the case of retroactive eligibility, the claim must be received within 365 days of the first notice of eligibility by the department.

80.4(2) *Claim adjustments and resubmissions.* A provider's request for an adjustment to a paid claim or resubmission of a denied claim must be received by the Iowa Medicaid enterprise within 365 days from the date the claim was last adjudicated in order to have the adjustment or resubmission considered. In no case will a claim be paid if the claim is received beyond two years from the date of service.

80.4(3) No change.

~~This rule is intended to implement Iowa Code sections 249A.3, 249A.4 and 249A.12.~~

ITEM 4. Amend subrule 80.5(1) as follows:

80.5(1) *Identification cards.* The department shall issue ~~Form 470-1911~~, a Medical Assistance Eligibility Card, to members for use in securing medical and health services available under the program except as provided in ~~441—76.6(249A)~~ 441—Chapter 76.

~~a. The department shall issue the Medical Assistance Eligibility Card:~~

(1) When the member's eligibility is initially determined.

~~(2) Annually thereafter.~~

~~(3) (2)~~ Upon the member's request for replacement of a lost, stolen, or damaged card.

~~b. The Medical Assistance Eligibility Card is valid only for months in which the member has established eligibility, as indicated on the department's eligibility verification system (ELVS). Payment will be made for services provided to an ineligible person when ELVS indicates that the person was eligible for the period in which the service was provided.~~

ITEM 5. Amend subrule 80.6(1) as follows:

80.6(1) *Medical assistance corrective payments.* Payment may be made to the client or county relief agency in accordance with ~~rule 441—75.8(249A)~~ 441—Chapter 75.

ITEM 6. Amend rule 441—80.7(249A) as follows:

441—80.7(249A) Health care data match program. As a condition of doing business in Iowa, health insurers shall provide, upon the request of the state, information with respect to individuals who are eligible for or are provided medical assistance under the state's medical assistance state plan to determine (1) during what period the member or the member's spouse or dependents may be or may have been covered by a health insurer and (2) the nature of the coverage that is or was provided by the health insurer. This requirement applies to self-insured plans, group health plans as defined in the federal Employee Retirement Income Security Act of 1974 (Public Law 93-406), service benefit plans, managed care organizations, pharmacy benefits managers, and other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service.

80.7(1) *Agreement required.* The parties shall sign a data use agreement for the purposes of this rule. ~~The A~~ A data use agreement shall prescribe the specific detail elements required, in addition to any privacy protections, in the manner in which information shall be provided to the department of human services, or its designee, and the acceptable uses of the information provided.

a. The initial provision of data shall include the data necessary to enable the department or its designee to match covered persons and identify third-party payers for the two-year period before the initial provision of the data. The data shall include the name, address, and identifying number of the plan.

b. No change.

80.7(2) *Agreement form.*

~~*a.* An agreement with the department shall be in substantially the same form as Form 470-4415, Agreement for Use of Data.~~

~~*b.* An agreement with the department's designee shall be in a form approved by the designee, which shall include privacy protections equivalent to those provided in Form 470-4415, Agreement for Use of Data.~~

80.7(3) 80.7(2) *Confidentiality of data.* The exchange of information carried out under this rule shall be consistent with all laws, regulations, and rules relating to the confidentiality or privacy of personal information or medical records, including but not limited to:

a. The federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191; and

b. Regulations promulgated in accordance with that Act and published in 45 CFR Parts 160 through 164 as amended to April 11, 2022.

ITEM 7. Amend **441—Chapter 80**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~section 249A.4~~ chapter 249A.



Iowa Department of Human Services
Information on Proposed Rules

Name of Program Specialist Lisa Cook	Telephone Number 515-321-7899	Email Address lcook1@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:
 - Identify and eliminate any rules that are outdated, redundant , inconsistent or incompatible with statute
 - Look for policy that is not accurate or is outdated
 - Check all rule references and cross-references to ensure they are accurate
 - Check division names and bureau names
 - Check chapter titles
 - Update form names and numbers
 - Look for obsolete references
 - Look for spelling or grammatical errors
2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):
Iowa Code 17A.7
3. Describe who this rulemaking will positively or adversely impact.
Neutral, technical in nature
4. Does this rule contain a waiver provision? If not, why?
No. Revisions were made in accordance with Iowa Code 17A.7.
5. What are the likely areas of public comment?
None.
6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)
No.



Administrative Rule Fiscal Impact Statement

Date: July 18, 2022

Agency: Human Services

IAC citation: 441 IAC Ch 80

Agency contact: Lisa Cook

Summary of the rule:

The rule provides Medicaid claim payment information.

Fill in this box if the impact meets these criteria:

- No fiscal impact to the state.
- Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
- Fiscal impact cannot be determined.

Brief explanation:

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

The purpose for this rulemaking is to clarify rule references, correct grammatical errors, and make technical corrections as part of the five year rule review process. There is no fiscal impact expected with the technical corrections.

Fill in the form below if the impact does not fit the criteria above:

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

Assumptions:

All revisions are technical in nature in accordance with Iowa Code 17A.7.

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY 23)</u>	<u>Year 2 (FY 24)</u>
Revenue by each source:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL REVENUE	<u>0.00</u>	<u>0.00</u>
Expenditures:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL EXPENDITURES	<u>0.00</u>	<u>0.00</u>
NET IMPACT	<u>0.00</u>	<u>0.00</u>

This rule is required by state law or federal mandate.

Please identify the state or federal law:

Identify provided change fiscal persons:

Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

Funding has not been provided for the rule.

Please explain how the agency will pay for the rule change:

There is no fiscal impact.

Fiscal impact to persons affected by the rule:

There is no fiscal impact expected to persons affected by the rule.

Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):

There is no fiscal impact expected to counties or other local governments.

Agency representative preparing estimate: Soraya Miller

JH 07/25/2022

Telephone number: 515-281-6017

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to ICF IDs.

The Human Services Department hereby amends Chapter 82, "Intermediate Care Facilities For Persons With An Intellectual Disability," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 249A.12 and 249A.16.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 249A.12 and 249A.16.

Purpose and Summary

During the 2022 Legislative Session, House File 2578, section 31, appropriated funds to increase reimbursement rates for intermediate care facilities for persons with an intellectual disability (ICFs/ID) over the rates in effect on June 30, 2022. The entire rate increase is to be used for the wages and associated costs specific to wages, benefits and required withholding for direct support professionals and frontline management.

These amendments adopt a new wage add-on factor for community-based ICFs/ID to be included in the rates effective July 1, 2022, and after. The wage add-on factor is added to the maximum allowable base rate.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 30, 2022, as ARC 6691C.

No public comments were received.

No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on January 12, 2023.

Fiscal Impact

For the fiscal year beginning July 1, 2022, reimbursement rates for ICF/ID shall be increased over the rates in effect on June 30, 2022, within the \$1,339,971 appropriated for this purpose. The entire rate increase shall be used for the wages and associated costs specific to wages, benefits and required withholding of direct support professionals and frontline management.

Jobs Impact

There is a potential to impact wages as providers will be able to increase wages for direct support staff in ICF/ID settings statewide. This may not increase the number of new jobs but instead increase wages for current positions.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441_1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on April 1, 2023.

The following rule-making action is adopted:

Adopt the following rules:

Adopt the following new subrule 82.5(17):

82.5(17) *Wage add-on factor.* A wage add-on factor of \$8.86 per day for community-based ICFs/ID shall be included in rates effective July 1, 2022, and after, not subject to the maximum allowable cost ceiling in paragraph 82.5(14)“e,” until rates are established using the cost reports for the period ending June 30, 2023.

a. In accordance with 2022 Iowa Acts, House File 2578, section 31, the entire wage add-on factor shall be used for wages and associated costs specific to wages, benefits, and required withholding of direct support professionals and frontline management.

b. The wage add-on factor of \$8.86 per day shall be added to the maximum allowable base rate in subparagraph 82.5(14)“d”(1) until the next rebase using cost reports for the period ending June 30, 2024.

c. The wage add-on factor of \$8.86 per day shall be added to the maximum allowable cost ceiling, eightieth percentile of costs of all participating facilities in paragraph 82.5(14)“e,” until the eightieth percentile maximum is established using the December 31, 2023, compilation for rates effective beginning July 1, 2024.



Iowa Department of Human Services
Information on Proposed Rules

Name of Program Specialist Jessica McBride	Telephone Number 515-201-4157	Email Address jmcbrid@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:

For the fiscal year beginning July 1, 2022 reimbursement rates for ICF/ID shall be increased over the rates in effect on June 30, 2022 within the \$1,339,971.00 appropriated for this purpose. The entire rate increase shall be used for the wages and associated costs specific to wages, benefits, and required withholding of direct support professionals and frontline management.

2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):

HHS Appropriation Bill 2578

3. Describe who this rulemaking will positively or adversely impact.

ICF/ID providers and staff

4. Does this rule contain a waiver provision? If not, why?

N/A

5. What are the likely areas of public comment?

Comments may be received regarding the appropriated amount for wage increases.

6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)

Yes, it allows providers to increase wages for direct support staff in an ICF/ID setting statewide.



Administrative Rule Fiscal Impact Statement

Date: October 24, 2022

Agency: Human Services

IAC citation: 441 IAC Ch. 82

Agency contact: Jessica McBride

Summary of the rule:

For the fiscal year beginning July 1, 2022 reimbursement rates for ICF/ID shall be increased over the rates in effect on June 30, 2022 within the \$1,339,971 appropriated for this purpose. The entire rate increase shall be used for the wages and associated costs specific to wages, benefits, and required withholding of direct support professionals and frontline management.

Fill in this box if the impact meets these criteria:

- No fiscal impact to the state.
- Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
- Fiscal impact cannot be determined.

Brief explanation:

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

Fill in the form below if the impact does not fit the criteria above:

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

Assumptions:

Annual Medicaid ICF/ID days are estimated at 407,216
FMAP calculations exclude the COVID increase so as not to create an unfunded need when the COVID increased FMAP ends.

Describe how estimates were derived:

Target increase is \$3,609,836 (total); \$1,339,971 (state share)

\$3,609,836 total increase / 407,216 paid Medicaid days = \$8.86 wage add-on.

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY 2023)</u>	<u>Year 2 (FY 2024)</u>
Revenue by each source:		
General fund	1,339,971.00	1,339,971.00
Federal funds	2,269,865.00	2,269,865.00
Other (specify):		
TOTAL REVENUE	<u>3,609,836.00</u>	<u>3,609,836.00</u>
Expenditures:		
General fund	1,339,971.00	1,339,971.00
Federal funds	2,269,865.00	2,269,865.00
Other (specify):		
TOTAL EXPENDITURES	<u>3,609,836.00</u>	<u>3,609,836.00</u>
NET IMPACT	<u>0.00</u>	<u>0.00</u>

This rule is required by state law or federal mandate.

Please identify the state or federal law:

Identify provided change fiscal persons:

2022 HHS Appropriation Bill (HF 2578)

Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

State appropriations were increased by \$1,339,971 to cover the cost of this increase.

Funding has not been provided for the rule.

Please explain how the agency will pay for the rule change:

Fiscal impact to persons affected by the rule:

ICF/ID providers will see increased Medicaid reimbursement.

Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):

None anticipated.

Agency representative preparing estimate: Joe Havig 10/25/22, Jess Benson, 10/25/22

Telephone number: 515-281-6022

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to family planning program.

The Human Services Department hereby amends Chapter 87, "Family Planning Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 217.41B.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 217.41B.

Purpose and Summary

Chapter 87 was reviewed as part of the Department's five-year rules review. Chapter 87 defines the state family planning program, which is a state-funded program within the Medical Assistance program. This rule making adds language to allow eligibility for Afghan parolees and members of three Pacific Island nations' populations included in the Compacts of Free Association (COFA) to clarify their eligibility for this program. Minor updates and clarifications to eligibility criteria are updated as part of the review.

The rules review also resulted in the following technical changes. Definitions are updated to provide clarity and correct references to other chapters. "Enterprise" is removed from the Iowa Medicaid name to be consistent across all chapters related to Medicaid. References to federal regulations are also updated to provide accurate listings. References to Iowa Code section 232.2(20B) refer to that section as enacted by 2022 Iowa Acts, House File 2507.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 16, 2022, as ARC 6642C.

No public comments were received.

No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on January 12, 2023.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any pursuant to 441_1.8(17A, 217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on April 1, 2023.

The following rule-making action is adopted:

Please see attached.

Adopted and filed rules for chapter 87.

The following rule-making actions are adopted:

ITEM 1. Amend **441—Chapter 87**, preamble, as follows:

PREAMBLE

This chapter defines and structures the family planning program administered by the department pursuant to ~~2017 Iowa Acts, House File 653, section 90~~ Iowa Code section 217.41B. The purpose of this program is to provide family planning services to individuals who are not enrolled in medical assistance under 441—Chapter 74 or 441—Chapter 75. The department is not receiving federal financial participation for expenditures under the family planning program. Therefore, this chapter shall remain in effect only as long as state funding is available.

The family planning program shall replicate the eligibility requirements and other provisions included in the Medicaid family planning network waiver, as approved by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services in effect on June 30, 2017, but shall provide for distribution of the family planning services program funds in accordance with this chapter.

Distribution of family planning program funds under this chapter shall be made in a manner that continues access to family planning services.

ITEM 2. Amend rule 441—87.1(217) as follows:

441—87.1(217) Definitions.

“Applicant” means a person who applies for assistance under the family planning program described in this chapter.

“Authorized Title X agency” means an agency or entity with an executed memorandum of understanding (MOU) with the Iowa department of human services authorizing the agency to perform point-of-service eligibility determinations for the family planning program.

“Citizen” or *“citizenship”* includes both citizens of the United States and nationals of the United States as defined in 8 U.S.C. Section 1101(a)(22).

“Creditable qualifying quarters” means ~~all of the qualifying quarters of coverage as defined under Title II of the Social Security Act worked by a parent of an alien while the alien was under the age of 18, and qualifying quarters worked by a spouse of an alien during their marriage if the alien remains married to the spouse or was married to the spouse at the spouse’s death, except for quarters beginning after December 31, 1996, if the parent or spouse of the alien received any federal means tested public benefit during the period for which the qualifying quarter is credited.~~

“Department” means the Iowa department of human services.

“Family planning services” means pregnancy prevention and related reproductive health services.

“Federal poverty level” means the levels published and updated periodically in the Federal Register by the United States Department of Health and Human Services (DHHS) under the authority of 42 U.S.C. Section 9902(2) and revised annually on April 1.

“Member” means a person who has been determined eligible and is a current or former recipient of the family planning program services.

“Noncitizen” means the same as the term “alien” as defined at 8 U.S.C. Section 1101(a)(3).

“Qualified noncitizen” means the same as the term “qualified alien” as defined at 8 U.S.C. Section 1641(b) and (c) and refers to a person who is:

1. Lawfully admitted for permanent residence in the United States under the Immigration and Nationality Act (INA);

2. Granted asylum in the United States under Section 208 of the INA;

3. A refugee admitted to the United States under Section 207 of the INA;

4. Paroled into the United States under Section 212(d)(5) of the INA for a period of at least one year;

5. A person whose deportation from the United States is withheld under Section 243(h) of the INA as in effect before April 1, 1997, or under Section 241(b)(3) of the INA;

6. Granted conditional entry to the United States pursuant to Section 203(a)(7) of the INA as in effect before April 1, 1980;

7. An Amerasian admitted to the United States as described in 8 U.S.C. Section 1612(b)(2)(A)(i)(V);

8. A Cuban/Haitian entrant to the United States as described in 8 U.S.C. Section 1641(b)(7);

9. A battered noncitizen as described in 8 U.S.C. Section 1641(c);

10. Certified as a victim of trafficking as described in Section 107(b)(1)(A) of Public Law 106-386;

11. An American Indian born in Canada to whom Section 289 of the INA applies or a member of a federally recognized Indian tribe as defined in 25 U.S.C. Section 450b(e);

12. Under the age of 21 and lawfully residing in the United States as allowed by 42 U.S.C. Section 1396b(v)(4)(A)(ii); or

13. Lawfully residing in the United States in accordance with a Compact of Free Association with the government of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau as described in 8 U.S.C. Section 1612(b)(2)(G) as amended by Section 208 of Division CC of Public Law 116-260.

“Qualifying quarters” means all of the qualifying quarters of coverage as defined under Title II of the Social Security Act worked by a parent of a noncitizen while the noncitizen was under the age of 18 and all of the qualifying quarters worked by a spouse of the noncitizen during their marriage if the noncitizen remains married to the spouse or the spouse is deceased. No qualifying quarters of coverage that are creditable under Title II of the Social Security Act for any period beginning after December 31, 1996, may be credited to a noncitizen if the parent or spouse of the noncitizen received any federal means-tested public benefit during the period for which the qualifying quarter is credited.

ITEM 3. Amend subrule 87.2(2) as follows:

87.2(2) *Furnishing of social security number.* As a condition of eligibility, except as provided by paragraph 87.2(2) “a,” an applicant or member must provide to the department or authorized Title X agency, as applicable, all social security numbers issued to each individual (including children) for whom family planning services are sought ~~must be furnished to the department.~~

a. The requirement of furnishing a social security number does not apply to an individual who:

(1) Is not eligible to receive a social security number;

(2) Does not have a social security number and may only be issued a social security number for a valid nonwork reason in accordance with 20 CFR ~~§ 422.104~~ § 422.104 as amended to March 15, 2022; or

(3) Refuses to obtain a social security number because of a well-established religious objection.

For this purpose, a well-established religious objection means that the individual:

1. Is a member of a recognized religious sect or division of a sect; and

2. Adheres to the tenets or teachings of the sect or division of the sect and for that reason is conscientiously opposed to applying for or using a national identification number.

b. If a required social security number has not been issued or is not known, the individual seeking coverage under the family planning program must ~~apply~~ cooperate with the department or authorized Title X agency, as applicable, in applying for a social security number with the Social Security Administration or request in requesting the Social Security Administration to furnish the number.

ITEM 4. Amend paragraph **87.2(4)“a”** as follows:

a. To be eligible for the family planning program, a person must be one of the following:

(1) A citizen or national of the United States.

(2) A qualified ~~alien residing~~ noncitizen continuously present (as described in Interim Guidance

on Verification of Citizenship, Qualified Alien Status and Eligibility, under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) at 62 CFR §61415 dated November 11, 1997) in the United States ~~before~~ since August 22, 1996.

(3) A qualified ~~alien~~ noncitizen under the age of 21.

(4) A refugee admitted to the United States under Section 207 of the Immigration and Nationality Act (INA).

(5) ~~An alien~~ A noncitizen who has been granted asylum under Section 208 of the INA.

(6) ~~An alien~~ A noncitizen whose deportation is withheld under Section 243(h) or 241(b)(3) of the INA.

(7) A qualified ~~alien~~ noncitizen veteran who has an honorable discharge that is not due to alienage.

(8) A qualified ~~alien~~ noncitizen who is on active duty in the armed forces of the United States other than active duty for training.

(9) A qualified ~~alien~~ noncitizen who is the spouse or unmarried dependent child of a qualified ~~alien~~ noncitizen described in subparagraph 87.2(4)“a”(7) or 87.2(4)“a”(8), including a surviving spouse who has not remarried.

(10) A qualified ~~alien~~ noncitizen who has resided in the United States for a period of at least five years beginning on the date of the qualified noncitizen’s entry into the United States with a status within the meaning of subparagraph 87.2(4)“a”(1), 87.2(4)“a”(4), or 87.2(4)“a”(9) under the definition of “qualified noncitizen” in rule 441—87.1(217).

(11) An Amerasian admitted as described in 8 U.S.C. Section 1612(b)(2)(A)(i)(V).

(12) A Cuban/Haitian entrant as described in 8 U.S.C. Section 1641(b)(7).

(13) A certified victim of trafficking as described in Section 107(b)(1)(A) of Public Law 106-386 ~~as amended to December 20, 2010.~~

(14) An American Indian born in Canada to whom Section 289 of the INA applies or who is a member of a federally recognized Indian tribe as defined in 25 U.S.C. Section 450b(e).

(15) An Iraqi or Afghan immigrant treated as a refugee pursuant to Section 1244(g) of Public Law 110-181 ~~as amended to December 20, 2010,~~ or to Section 602(b)(8) of Public Law 111-8 ~~as amended to December 20, 2010.~~

(16) An Afghan paroled into the United States treated as a refugee pursuant to Section 2502 of public law 117-43.

(17) A qualified noncitizen lawfully residing in the United States in accordance with a Compact of Free Association with the government of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau as described in 8 U.S.C. Section 1612(b)(2)(G) as amended by Section 208 of Division CC of Public Law 116-260.

(18) A conditional entrant pursuant to Section 203(a)(7) of the INA as in effect before April 1, 1980.

ITEM 5. Amend paragraph **87.2(4)“b”** as follows:

b. As a condition of eligibility, all applicants for or members of the family planning program shall attest to their citizenship or ~~alien~~ qualified noncitizen status by signing the application or review form.

ITEM 6. Amend paragraph **87.2(4)“c”** as follows:

c. Except as provided in paragraph ~~87.2(4)“f,”~~ 87.2(4)“h,” applicants or members for whom an attestation of United States citizenship has been made pursuant to paragraph 87.2(4)“b” shall present satisfactory documentation of citizenship ~~or nationality~~ as ~~defined~~ described in paragraph ~~87.2(4)“d,”“e,” or “i.”~~ 87.2(4)“d” or “e.” A reference to a form in paragraph 87.2(4)“d” or “e” includes any successor form. An applicant or member who attests to citizenship must also verify the applicant’s identity. An applicant or member shall have a reasonable period to obtain and provide required documentation of citizenship or nationality.

(1) For the purposes of this requirement, the “reasonable period” begins on the date a written request for documentation ~~or a notice pursuant to subparagraph 87.2(4)“i”(2)~~ is issued to an applicant

or member, ~~whichever is later~~, and continues for 90 days.

(2) Family planning services shall be approved for new applicants and continue for members not previously required to provide documentation of citizenship or nationality until the end of the reasonable period to obtain and provide required documentation of citizenship or nationality. ~~However, the receipt of family planning services pending documentation of citizenship or nationality is limited to one reasonable period of up to 90 days for each individual. An applicant or member who has already received benefits during any portion of a reasonable period shall not be granted coverage for a second reasonable period.~~

ITEM 7. Amend paragraph 87.2(4)“d” as follows:

d. Any one of the following documents ~~shall~~ must be accepted as satisfactory documentation of citizenship ~~or nationality and identity~~:

(1) A United States passport, including a U.S. passport card issued by the U.S. Department of State, without regard to any expiration date as long as such passport or card was issued without limitation.

(2) ~~Form N-550 or N-570 (Certificate of Naturalization) issued by the U.S. Citizenship and Immigration Services~~ A Certificate of Naturalization.

(3) ~~Form N-560 or N-561 (Certificate of United States Citizenship) issued by the U.S. Citizenship and Immigration Services~~ A Certificate of United States Citizenship.

(4) A valid U.S. state-issued driver’s license ~~or other identity document described in Section 274A(b)(1)(D) of the INA~~, but only if the state issuing the license ~~or document~~ does either of the following prior to issuance of the license:

1. Requires proof of United States citizenship ~~before issuance of the license or document~~; or
2. Obtains a social security number from the applicant and verifies before certification that the number is valid and is assigned to the applicant who is a citizen.

(5) Documentation issued by a federally recognized Indian tribe ~~showing membership or enrollment in or affiliation with that tribe~~, as described at 42 CFR §435.407 as amended to March 15, 2022, including but not limited to a tribal enrollment card, a Certificate of Degree of Indian Blood, a tribal census document, or a document on tribal letterhead issued under the signature of the appropriate tribal official. Acceptable documentation:

1. Identifies the federally recognized Indian tribe that issued the document;
2. Identifies the individual by name; and
3. Confirms the individual’s membership, enrollment, or affiliation with the tribe.

(6) Another document that provides proof of United States citizenship ~~or nationality~~ and provides a reliable means of documentation of personal identity, as the Secretary of the U.S. Department of Health and Human Services may specify by regulation pursuant to 42 U.S.C. Section 1396b(x)(3)(B)(v).

ITEM 8. Amend paragraph 87.2(4)“e” as follows:

e. Satisfactory documentation of citizenship ~~or nationality and identity~~ may also be demonstrated by the combination of any identity document described in paragraph 87.2(4)“f” and any one of the following:

(1) ~~Any identity document described in Section 274A(b)(1)(D) of the INA or any other documentation of personal identity that provides a reliable means of identification, as the Secretary of the U.S. Department of Health and Human Services finds by regulation pursuant to 42 U.S.C. Section 1396b(x)(3)(D)(ii); and~~

(2) Any one of the following:

1. A certificate of birth in the United States.
2. Form FS-545 or Form DS-1350 (Certification of Birth Abroad) issued by the U.S. Citizenship and Immigration Services.
3. Form I-97 (United States Citizen Identification Card) issued by the U.S. Citizenship and Immigration Services.
4. Form FS-240 (Report of Birth Abroad of a Citizen of the United States) issued by the U.S.

Citizenship and Immigration Services.

5. Another document that provides proof of United States citizenship or nationality, as the Secretary of the U.S. Department of Health and Human Services may specify pursuant to 42 U.S.C. Section 1396b(x)(3)(C)(v).

(1) A U.S. public birth certificate showing birth in one of the 50 states, the District of Columbia, Puerto Rico (if born on or after January 13, 1941), Guam, the U.S. Virgin Islands, American Samoa, Swain's Island, or the Commonwealth of the Northern Mariana Islands (CNMI) (if born after November 4, 1986 (CNMI local time)). The birth record document may be issued by a state, commonwealth, territory, or local jurisdiction. If the document shows that the individual was born in Puerto Rico or the Northern Mariana Islands before the applicable date referenced in this paragraph, the individual may be a collectively naturalized citizen. The following establishes U.S. citizenship for collectively naturalized individuals:

1. Puerto Rico: Evidence of birth in Puerto Rico and the applicant's statement that the applicant was residing in the U.S., a U.S. possession, or Puerto Rico on or after January 13, 1941.

2. CNMI (formerly part of the Trust Territory of the Pacific Islands (TTPI)):

• Evidence of birth in the CNMI; evidence of TTPI citizenship and residence in the CNMI, the U.S., or a U.S. territory or possession on or after November 3, 1986 (CNMI local time); and the applicant's statement that the applicant did not owe allegiance to a foreign state on November 4, 1986 (CNMI local time);

• Evidence of TTPI citizenship, continuous residence in the CNMI since before November 3, 1981 (CNMI local time); voter registration before January 1, 1975; and the applicant's statement that the applicant did not owe allegiance to a foreign state on November 4, 1986 (CNMI local time);

• Evidence of continuous domicile in the CNMI since before January 1, 1974, and the applicant's statement that the applicant did not owe allegiance to a foreign state on November 4, 1986 (NMI local time).

Note: If a person entered the CNMI as a nonimmigrant and lived in the CNMI since January 1, 1974, this does not constitute continuous domicile and the individual is not a U.S. citizen.

(2) A Certification of Report of Birth, issued to U.S. citizens who were born outside the U.S.

(3) A Report of Birth Abroad of a U.S. citizen.

(4) A certificate of birth in the U.S.

(5) A U.S. Citizen I.D. card.

(6) A Northern Marianas Identification Card issued by the U.S. Department of Homeland Security (or predecessor agency).

(7) A final adoption decree showing the child's name and U.S. place of birth or, if an adoption is not final, a statement from a state-approved adoption agency that shows the child's name and U.S. place of birth.

(8) Evidence of U.S. Civil Service employment before June 1, 1976.

(9) A U.S. military record showing a U.S. place of birth.

(10) Documentation that a child meets the requirements of Section 101 of the Child Citizenship Act of 2000 as amended (8 U.S.C. Section 1431).

(11) Medical records, including but not limited to hospital, clinic, or doctor records or admission papers from a nursing facility, skilled care facility, or other institution that indicate a U.S. place of birth.

(12) A life, health, or other insurance record that indicates a U.S. place of birth.

(13) An official religious record recorded in the U.S. showing that the birth occurred in the U.S.

(14) School records, including preschool, Head Start, and day care, showing the child's name and U.S. place of birth.

(15) Federal or state census records showing U.S. citizenship or a U.S. place of birth.

If the applicant does not have one of the documents listed in paragraph 87.2(4) "d" or subparagraphs 87.2(4) "e"(1) through (15), the applicant may submit an affidavit using Form 470-4373 or 470-4373(S), signed under penalty of perjury by another individual who can reasonably

attest to the applicant's citizenship. Such affidavit must contain the applicant's name, date of birth, and place of U.S. birth. The affidavit is not required to be notarized.

ITEM 9. Rescind paragraph **87.2(4)“f”** and adopt the following **new** paragraph in lieu thereof:

f. Any of the following documents must be accepted as satisfactory documentation of identity, provided the document has a photograph or other identifying information sufficient to establish identity, including but not limited to name, age, sex, race, height, weight, eye color, or address:

(1) Identity documents listed at 8 CFR §274a.2(b)(1)(v)(B)(1) as amended to March 15, 2022, except a driver's license issued by a Canadian government authority.

(2) A driver's license issued by a state or territory.

(3) A school identification card.

(4) A U.S. military card or draft record.

(5) An identification card issued by the federal, state, or local government.

(6) A military dependent's identification card.

(7) A U.S. Coast Guard Merchant Mariner card.

(8) For children under age 19, a clinic, doctor, hospital, or school record, including preschool or day care records.

(9) Two other documents containing consistent information that corroborates an applicant's identity. Such documents include, but are not limited to, employer identification cards; high school, high school equivalency, and college diplomas; marriage certificates; divorce decrees; and property deeds or titles.

(10) A finding of identity from a federal agency or another state agency, including but not limited to a public assistance, law enforcement, internal revenue or tax bureau, or corrections agency, if the agency has verified and certified the identity of the individual.

If the applicant does not have any document specified in subparagraphs 87.2(4)“f”(1) through (10), the applicant may submit an affidavit using Form 470-4386 or 470-4386(S), signed under penalty of perjury by another individual who can reasonably attest to the applicant's identity. Such affidavit must contain the applicant's name and other identifying information establishing identity, as described in paragraph 87.2(4)“f.” The affidavit is not required to be notarized.

ITEM 10. Rescind paragraph **87.2(4)“g”** and adopt the following **new** paragraph in lieu thereof:

g. The department or authorized Title X agency, as applicable, must accept a photocopy, facsimile, scanned, or other copy of a document listed in paragraph 87.2(4)“d,” “e,” or “f” to the same extent as an original document, unless information on the submitted copy is inconsistent with other information available or there is reason to question the validity of, or information in, the document. The department must provide assistance in a timely manner to persons who need assistance in securing satisfactory documentation of citizenship or identity.

ITEM 11. Rescind paragraph **87.2(4)“h”** and adopt the following **new** paragraph in lieu thereof:

h. A person for whom an attestation of United States citizenship has been made pursuant to paragraph 87.2(4)“b” is not required to present documentation of citizenship and identity for the family planning program if any of the following circumstances apply:

(1) The person is entitled to or enrolled for benefits under any part of Title XVIII of the federal Social Security Act (Medicare).

(2) The person is receiving federal social security disability insurance (SSDI) benefits under Title II of the federal Social Security Act, Section 223 or 202, based on disability (as defined in Section 223(d) of the Act).

(3) The person is receiving supplemental security income (SSI) benefits under Title XVI of the federal Social Security Act.

(4) The person is or was exempted while assisted by child welfare services funded under Part B of Title IV of the federal Social Security Act on the basis of being a child in foster care as defined in Iowa Code section 232.2(20B). This exemption does not apply, and the person is subject to the citizenship and identity documentation requirements described in paragraph 87.2(4)“c,” when

services under Part B of Title IV were terminated due to failure to meet citizenship requirements.

(5) The person is or was exempted while assisted by foster care as defined in Iowa Code section 232.2(20B) or adoption assistance funded under Part E of Title IV of the federal Social Security Act. This exemption does not apply, and the person is subject to the citizenship and identity documentation requirements described in paragraph 87.2(4)“c,” when services under Part E of Title IV were terminated due to failure to meet citizenship requirements.

(6) The person has previously presented satisfactory documentation of citizenship and identity, as specified by the United States Secretary of Health and Human Services.

(7) The person was deemed eligible for medical assistance pursuant to 42 U.S.C. Section 1396a(e)(4) on or after July 1, 2006, as the newborn of a Medicaid-eligible mother.

(8) The person was eligible for medical assistance pursuant to 42 U.S.C. Section 1397ll(e) as the newborn of a mother eligible for assistance under a State Children’s Health Insurance Program (SCHIP) pursuant to Title XXI of the Social Security Act.

ITEM 12. Rescind paragraph **87.2(4)“i”** and adopt the following **new** paragraph in lieu thereof:

i. Except as provided in paragraph 87.2(4)“h,” applicants or members for whom an attestation of qualified noncitizen status has been made pursuant to paragraph 87.2(4)“b” shall present satisfactory documentation of qualified noncitizen status. Satisfactory documentation of qualified noncitizen status is documentation issued by the U.S. Citizenship and Immigration Services (USCIS) (formerly Immigration and Naturalization Service (INS)) of the Department of Homeland Security that identifies the person’s qualified noncitizen status.

ITEM 13. Amend subrule 87.2(5) as follows:

87.2(5) Deeming of ~~alien~~ sponsor’s income.

a. When ~~an alien~~ a qualified noncitizen admitted for lawful permanent residence is sponsored by a person who executed an affidavit of support as described in 8 U.S.C. Section 1631(a)(1) on behalf of the alien qualified noncitizen, ~~the income of the alien shall be deemed to include the income of the sponsor (and of the sponsor’s spouse if living with the sponsor) shall be deemed to determine eligibility for the sponsored qualified noncitizen.~~ The amount deemed to the sponsored alien qualified noncitizen shall be the total countable income of the sponsor ~~and the sponsor’s spouse~~, determined pursuant to paragraphs 87.2(3)“b” through “d.”

b. An indigent alien qualified noncitizen is exempt from the deeming of a sponsor’s income for 12 months after indigence is determined. ~~An alien~~ A qualified noncitizen shall be considered indigent if:

- (1) The alien qualified noncitizen does not live with the sponsor; and
- (2) The alien’s qualified noncitizen’s gross income, including any income actually received from or made available by the sponsor, is less than 100 percent of the federal poverty level for the sponsored alien’s qualified noncitizen’s household size.

c. A battered alien qualified noncitizen as described in 8 U.S.C. Section 1641(c) is exempt from the deeming of a sponsor’s income for 12 months.

d. Deeming of the sponsor’s income does not apply when:

- (1) The sponsored alien qualified noncitizen attains citizenship through naturalization pursuant to Chapter 2 of Title II of the INA.
- (2) The sponsored alien qualified noncitizen has earned 40 qualifying quarters of coverage as defined in Title II of the Social Security Act or can be credited with 40 creditable qualifying quarters as defined in rule 441—87.1(217).
- (3) The sponsored alien qualified noncitizen or the sponsor dies.
- (4) The sponsored alien qualified noncitizen is a child under the age of 21 as allowed by 42 U.S.C. Section 1396b(v)(4)(A)(ii).

ITEM 14. Amend subrule 87.2(6) as follows:

87.2(6) Residency requirements. Residency in Iowa is a condition of eligibility for the family planning ~~services~~ program.

a. Definition of resident. A resident of Iowa is one:

(1) Who is living in Iowa voluntarily with the intention of making that person's home there and not for a temporary purpose. A ~~child person~~ is a resident of Iowa when living there on other than a temporary basis. Residence ~~may~~ shall not depend upon the reason for which the individual entered the state, except insofar as it may bear upon whether the individual is there voluntarily or for a temporary purpose; or

(2) Who, at the time of application, is living in Iowa, is not receiving assistance from another state, and entered Iowa with a job commitment or seeking employment in Iowa, whether or not currently employed. ~~Under this definition, the child is a resident of the state in which the parent or caretaker is a resident.~~

b. Retention of residence. Residence is retained until abandoned. Temporary absence from Iowa, with subsequent returns to Iowa, or intent to return when the purposes of the absence have been accomplished does not interrupt continuity of residence.

ITEM 15. Amend subrule 87.2(7) as follows:

87.2(7) *Investigation by quality control or the department of inspections and appeals.* As a condition of eligibility, an applicant or member shall cooperate with the department when the applicant's or member's case is selected by quality control or the department of inspections and appeals for verification of eligibility unless the investigation revolves solely around the circumstances of a person whose income ~~and resources do~~ does not affect family planning program eligibility. (See More information can be found in department of inspections and appeals rules in 481—Chapter 72.) Failure to cooperate shall serve as a basis for denial of an application or cancellation of family planning program eligibility. Once a person's eligibility is denied or canceled for failure to cooperate, the person may reapply but shall not be determined eligible until cooperation occurs.

ITEM 16. Amend subrule 87.3(1) as follows:

87.3(1) *Application.* An individual who requests assistance for family planning services shall file an application Form 470-5485, ~~Family Planning Program Application~~. A woman eligible under paragraph 87.2(1)"a" is not required to file an application for assistance under this program. The department will automatically redetermine eligibility upon loss of other Medicaid eligibility within 12 months after the month when the 60-day postpartum period ends.

ITEM 17. Amend subrule 87.3(3) as follows:

87.3(3) *Information or verification needed to determine eligibility.* The department or authorized Title X agency, as applicable, shall notify the applicant or member, authorized representative, or responsible person in writing of the information or verification required to establish eligibility. This notice shall be provided to the applicant or member, authorized representative, or responsible person personally or by mail or fax.

a. The department or authorized Title X agency, as applicable, shall allow the applicant or member, authorized representative, or responsible person ten calendar days to supply the information or verification requested.

b. The department or authorized Title X agency, as applicable, may extend the deadline for a reasonable period of time when the applicant or member, authorized representative, or responsible person is making reasonable efforts but is unable to secure the required information or verification.

c. If benefits are denied for failure to provide information or verification and the information or verification is provided within 14 calendar days of the effective date of the denial, the department or authorized Title X agency, as applicable, shall complete the eligibility determination as though the information or verification were received timely. If the fourteenth calendar day falls on a weekend or state holiday, the applicant or member, authorized representative, or responsible person shall have until the next business day to provide the information.

ITEM 18. Amend subrule 87.3(4) as follows:

87.3(4) *Annual review.* An individual who requests that assistance continue for family planning services shall complete Form 470-4071, ~~Family Planning Program Review~~. The member must submit

the completed review form before the end of the eligibility period to any location specified in subrule 87.3(2).

ITEM 19. Amend subrule 87.3(5) as follows:

87.3(5) *Time limit for decision.* An application or review form shall be processed by the ~~family planning agency~~ department or authorized Title X agency with which the application form was filed. A determination of eligibility shall be made within 45 days of receipt of the application or review form.

ITEM 20. Amend subrule 87.6(1) as follows:

87.6(1) *Required changes to report.* An individual applying for or receiving family planning services under this program shall report the following changes within ten days from the date the change is known:

- a. Change in mailing address;
- b. No longer a resident of Iowa;
- c. A woman becomes pregnant;
- d. No longer capable of bearing or fathering children;
- e. Becomes Medicaid or Iowa health and wellness plan eligible, except women meeting criteria in paragraph 87.2(1) "a"; or
- f. Turns 55 years of age.

ITEM 21. Amend subrule 87.8(1) as follows:

87.8(1) Sterilization is a covered service subject to the limitations in ~~441—paragraphs 78.1(16) "a" through "i."~~ 441—Chapter 78.

ITEM 22. Amend subrule 87.10(1) as follows:

87.10(1) Family planning providers that participate in the program shall submit claims to ~~the Iowa Medicaid enterprise~~ for services rendered no later than 45 days from the last day of the month in which services were provided.

ITEM 23. Amend rule 441—87.11(217) as follows:

441—87.11(217) Providers eligible to participate.

87.11(1) Providers must be enrolled with the Iowa Medicaid program, subject to ~~rule 441—79.14(249A)~~ 441—Chapter 79, and otherwise qualified to provide family planning services under Medicaid, subject to the limitations related to abortions, as specified above under subrule 87.7(1). Effective July 1, 2018, as a condition of eligibility as a provider under the family planning services program, each distinct location of a nonprofit health care delivery system shall enroll in the program as a separate provider, be assigned a distinct provider identification number, and complete an attestation that abortions are not performed at the distinct location. For the purposes of this subrule, "nonprofit health care delivery system" shall have the same meaning as provided under subrule 87.7(1).

87.11(2) Process for enrollment. Providers wishing to enroll under the state family planning program must complete the following steps:

- a. Must complete enrollment with Iowa Medicaid ~~enterprise~~.
- b. Must complete Form 470-5484, ~~Family Planning Program Provider Attestation~~, regarding nonprovision of abortions, pursuant to requirements referenced above under subrule 87.7(1).
- c. Forms referenced in this subrule must be sent to Iowa Medicaid ~~Enterprise~~, Provider Enrollment Unit, P.O. Box 36450, Des Moines, Iowa 50315.

ITEM 24. Amend ~~441—Chapter 87~~, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 217.41B ~~as amended by 2018 Iowa Acts, Senate File 2418, section 83.~~



Iowa Department of Human Services
Information on Proposed Rules

Name of Program Specialist Kelly Lindsay	Telephone Number 515/418-3773	Email Address klindsa@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:
Added language to allow for FPP eligibility for Afghan parolees and COFA populations
Minor updates and clarifications to eligibility criteria as required by the five-year rule review process.
2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):
Rules review mandate, Iowa Code 17A.7
3. Describe who this rulemaking will positively or adversely impact.
Allows for FPP coverage for COFA population
4. Does this rule contain a waiver provision? If not, why?
No. FPP is a state-funded program.
5. What are the likely areas of public comment?
Unknown.
6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)
No.



Administrative Rule Fiscal Impact Statement

Date: July 12, 2022

Agency: Human Services

IAC citation: 441 IAC 87

Agency contact: Kelly Lindsay

Summary of the rule:

Added language to allow for FPP eligibility for Afghan parolees and COFA populations
Minor updates and clarifications to eligibility criteria as required by the five-year rule review process.

Fill in this box if the impact meets these criteria:

- No fiscal impact to the state.
- Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
- Fiscal impact cannot be determined.

Brief explanation:

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

The rule adds language to allow for FPP eligibility for Afghan parolees and COFA populations and makes clarifications to eligibility criteria as part of the five year rule process. Including these populations in the FPP should not have an impact on the current amounts appropriated. The state family planning program is a state funded program with an allocated portion within the Medical Assistance appropriation. Minimal fiscal impact is expected and will be absorbed within the Medical Assistance appropriation.

Fill in the form below if the impact does not fit the criteria above:

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY 23)</u>	<u>Year 2 (FY 24)</u>
Revenue by each source:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL REVENUE	<u>0.00</u>	<u>0.00</u>
Expenditures:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL EXPENDITURES	<u>0.00</u>	<u>0.00</u>
NET IMPACT	<u>0.00</u>	<u>0</u>

This rule is required by state law or federal mandate.

Please identify the state or federal law:

Identify provided change fiscal persons:

Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

Expenditures will be absorbed within the Medical Assistance appropriation

Funding has not been provided for the rule.

Please explain how the agency will pay for the rule change:

Fiscal impact to persons affected by the rule:

There is no fiscal impact expected to persons affected by the rule.

Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):

There is no fiscal impact expected to counties or other local governments

Agency representative preparing estimate: Soraya Miller

JH 07/15/2022

Telephone number:

515-281-6017

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to case management services.

The Human Services Department hereby amends Chapter 90, "Case Management Services," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4.

Purpose and Summary

Chapter 90 was reviewed as part of the Department's five-year rules review. Chapter 90 provides information on case management services and when those services are available to members.

This rules review resulted in the following technical amendments. Definitions are updated to provide correct references to other chapters. "Enterprise" is removed from the phrase "Iowa Medicaid enterprise" to be consistent across all chapters related to Medicaid. References to federal regulations are also updated to provide accurate listings

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 16, 2022, as ARC 6643C.

No public comments were received.

No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on January 12, 2023.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441_1.8(17A,217)

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on April 1, 2023.

The following rule-making action is adopted:

Please see attached.

Adopted and filed rules for chapter 90.

The following rule-making actions are adopted:

ITEM 1. Amend rule ~~441—90.1(249A)~~, definitions of “Care coordination,” “Chronic mental illness,” “Integrated health home,” “Intellectual disability,” “Major incident,” “Managed care organization” and “Medical institution,” as follows:

“*Care coordination*” means the case management services provided by an integrated health home to members who are also receiving home- and community-based habilitation services pursuant to ~~rule 441—78.27(249A)~~ 441—Chapter 78 or HCBS children’s mental health waiver services pursuant to ~~rules 441—83.121(249A) through 441—83.129(249A)~~ 441—Chapter 83.

“*Chronic mental illness*” means a condition present in adults who have a persistent mental or emotional disorder that seriously impairs their functioning relative to such primary aspects of daily living as personal relations, living arrangements, or employment. The definition of chronic mental illness and qualifying criteria are found ~~at rule 441—24.1(225C)~~ in 441—Chapter 24. For purposes of this chapter, people with mental disorders resulting from Alzheimer’s disease or substance abuse shall not be considered chronically mentally ill.

“*Integrated health home*” or “*IHH*” means a provider of health home services that is a Medicaid-enrolled provider and that is determined through the provider enrollment process to have the qualifications, systems and infrastructure in place to provide IHH services pursuant to ~~rule 441—77.47(249A)~~ 441—Chapter 77. IHH covered services and member eligibility for IHH enrollment are also governed by ~~rule 441—78.53(249A)~~ 441—Chapter 78 and the health home state plan amendment. The IHH provides care coordination services for enrolled habilitation and children’s mental health waiver members.

“*Intellectual disability*” means a diagnosis of intellectual disability (intellectual developmental disorder), global developmental delay, or unspecified intellectual disability (intellectual developmental disorder). Diagnosis criteria are outlined in ~~rule 441—83.61(249A)~~ 441—Chapter 83.

“*Major incident*” means an occurrence that involves a member who is enrolled in an HCBS waiver, targeted case management, or habilitation services and that:

1. to 5. No change.

6. Constitutes a prescription medication error or a pattern of medication errors that leads to the outcome in numbered paragraph “1,” “2,” or “3”; or

~~6-7.~~ Involves a member’s location being unknown by provider staff who are responsible for protective oversight.

“*Managed care organization*” or “*MCO*” means the same as defined in ~~rule 441—73.1(249A)~~ 441—Chapter 73.

“*Medical institution*” means an institution that is organized, staffed, and authorized to provide medical care as set forth in the most recent amendment to 42 Code of Federal Regulations Section 435.1009 as amended to October 20, 2022. A residential care facility is not a medical institution.

ITEM 2. Amend subrule 90.2(1) as follows:

90.2(1) Eligibility for targeted case management. A person who meets all of the following criteria shall be eligible for targeted case management:

a. The person is eligible for Medicaid or is conditionally eligible under ~~441—subrule 75.1(35)~~ 441—Chapter 75;

b. to f. No change.

ITEM 3. Amend paragraph **90.2(3)“b”** as follows:

b. *Application decision for targeted case management.* The case manager shall inform the applicant, or the applicant’s guardian or representative, of any decision to approve, deny, or delay the

service in accordance with the notification requirements at ~~rule 441—16.3(17A)~~ 441—Chapter 16.

ITEM 4. Amend subrule 90.3(2) as follows:

90.3(2) The provider shall notify the member or the member's guardian or representative in writing of the termination of targeted case management, in accordance with ~~rule 441—16.3(17A)~~ 441—Chapter 16.

ITEM 5. Amend subrule 90.6(1) as follows:

90.6(1) *Documentation of contacts*. Subrule 90.6(1) applies to all categories of case management and all populations covered by case management.

a. Documentation of case management services contacts shall include:

- (1) The name of the individual case manager;
- (2) The need for, and occurrences of, coordination with other case managers within the same agency or referral or transition to another case management agency; and
- (3) Other requirements as outlined in ~~rule 441—79.3(249A)~~ 441—Chapter 79 to support payment of services.

b. Targeted case management providers serving FFS members must also adhere to ~~441—subrule 24.4(4)~~ 441—Chapter 24.

ITEM 6. Amend subrule 90.7(3), introductory paragraph, as follows:

90.7(3) *Quality assurance*. Case management services providers shall cooperate with quality assurance activities conducted by ~~the~~ Iowa Medicaid ~~enterprise~~ or a Medicaid managed care organization, as well as any other state or federal entity with oversight authority to ensure the health, safety, and welfare of Medicaid members. These activities may include, but are not limited to:



Iowa Department of Human Services
Information on Proposed Rules

Name of Program Specialist LeAnn Moskowitz	Telephone Number 515-321-8922	Email Address lmoskow@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:
The purpose for this rulemaking is to make technical corrections including:
 - Correcting the definition of Major Incident
 - Changing Iowa Medicaid Enterprise to Iowa Medicaid
2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):
Section 249A.4
3. Describe who this rulemaking will positively or adversely impact.
This rulemaking will positively impact providers by ensuring that the language in rule is up to date, accurate and relevant.
4. Does this rule contain a waiver provision? If not, why?
A waiver provision is not necessary. 441 -1.8(17A, 217) provides for waiver of administrative rules in exceptional circumstances
5. What are the likely areas of public comment?
Public comment is not anticipated for the technical corrections.
6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)
No impact on private sector jobs.



Administrative Rule Fiscal Impact Statement

Date: June 30, 2022

Agency: Human Services
IAC citation: 441 IAC 90
Agency contact: LeAnn Moskowitz

Summary of the rule:

The purpose for this rulemaking is to make technical corrections including:

- Correcting the definition of Major Incident
- Changing Iowa Medicaid Enterprise to Iowa Medicaid

Fill in this box if the impact meets these criteria:

- No fiscal impact to the state.
 Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
 Fiscal impact cannot be determined.

Brief explanation:

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

The purpose for this rulemaking is part of the five year rule review process including correcting the definition of Major Incident and changing Iowa Medicaid Enterprise to Iowa Medicaid. There is no fiscal impact expected with the technical corrections.

Fill in the form below if the impact does not fit the criteria above:

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY 23)</u>	<u>Year 2 (FY 24)</u>
Revenue by each source:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL REVENUE	<u>0.00</u>	<u>0.00</u>
Expenditures:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL EXPENDITURES	<u>0.00</u>	<u>0.00</u>
NET IMPACT	<u>0.00</u>	<u>0.00</u>

This rule is required by state law or federal mandate.

Please identify the state or federal law:

Identify provided change fiscal persons:

Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

Funding has not been provided for the rule.

Please explain how the agency will pay for the rule change:

There is no fiscal impact

Fiscal impact to persons affected by the rule:

There is no fiscal impact expected to persons affected by the rule

Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):

There is no fiscal impact expected to counties or other local governments

Agency representative preparing estimate: Soraya Miller

JH 07/15/2022

Telephone number:

515-281-6017

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to child support enforcement services.

The Human Services Department hereby amends Chapter 98, "Support Enforcement Services," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 252B.9.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 252B.9.

Purpose and Summary

Chapter 98 was reviewed as part of the Department's five-year rules review. Chapter 98 outlines the enforcement services provided by the Child Support Recovery Unit. These amendments update legal references for the Iowa Rules of Civil Procedure. Form names and numbers are also updated. References to the Iowa Code and to federal regulations are also updated to provide accurate listings. The name of the food assistance program is updated to replace it with the federal name of the Supplemental Nutrition and Assistance Program to be consistent across all programs.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 16, 2022, as ARC 6644C.

No public comments were received.

No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on January 12, 2023.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441_1.8(17A, 217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on April 1, 2023.

The following rule-making action is adopted:

Please see attached.

Adopted and Files Rules for Chapter 98.

The following rule-making actions are adopted.

ITEM 1. Amend rule 441—98.5(252E) as follows:

441—98.5(252E) Health benefit plan information. The unit shall gather information concerning a health benefit plan.

98.5(1) Information from an employer. The unit shall gather information concerning a health benefit plan an employer may offer an obligor as follows:

a. The unit may send Form 470-0177M, ~~Employment and Health Insurance Questionnaire~~, whenever a potential employer is identified.

b. The unit shall secure information about health care coverage from a known employer on Form 470-2743, ~~Employer Medical Support Information~~, when Form 470-3818, ~~National Medical Support Notice~~, or an order has been forwarded to the employer pursuant to Iowa Code section 252E.4.

98.5(2) Information from an obligor. The unit may secure medical support information from an obligor on Form 470-0413, ~~Obligor Insurance Questionnaire~~.

98.5(3) Disposition of information. The unit shall provide the information:

a. To the Medicaid agency and to the obligee, when requested, when the dependent is a recipient of Medicaid.

b. To the obligee, when requested, when the dependent is not a recipient of Medicaid.

ITEM 2. Amend paragraph **98.7(2)“a”** as follows:

a. If an obligor was ordered to provide health care coverage under an order but did not comply with the order, the child support recovery unit may implement the order by forwarding to the employer a copy of the order, an ex parte order as provided in Iowa Code section 252E.4, or Form 470-3818, ~~National Medical Support Notice~~.

ITEM 3. Amend subrule 98.7(3) as follows:

98.7(3) Termination of employment. When the child support recovery unit receives information indicating the obligor’s employment has terminated, the unit shall secure the status of the health benefit plan by sending Form 470-3218, ~~Employer Insurance Notification~~, to the employer.

If no response is received within 30 days of sending Form 470-3218, the unit shall send a second request on Form 470-3219, ~~Employer Insurance Second Notification~~, to the employer.

ITEM 4. Amend paragraph **98.8(2)“a”** as follows:

a. The obligor shall be entitled to only one informal conference for each new employer to which the unit has forwarded Form 470-3818, ~~National Medical Support Notice~~, or an order under Iowa Code section 252E.4 to enforce medical support.

ITEM 5. Amend subrule 98.42(1) as follows:

98.42(1) Notice to employer. The unit may send notice to the employer or other income provider by regular mail or by electronic means in accordance with Iowa Code chapter 252D. If the unit is sending notice by regular mail, it shall send Form 470-3272, ~~Income Withholding for Support~~, or a notice in the standard format prescribed by 42 U.S.C. §666(b)(6)(A). If the unit is sending the notice by electronic means, it may include notice of more than one obligor’s order and need only state once provisions which are applicable to all obligors, such as the information in paragraphs 98.42(1)“*d*,” “*f*,” “*g*,” and “*i*.” The statement of provisions applicable to all obligors may be sent by regular mail or electronic means. The notice of income withholding shall contain information such as the following:

a. to *j*. No change.

ITEM 6. Amend subrule 98.42(2) as follows:

98.42(2) Notice to obligor. Form 470-2624, ~~Initiation of Income Withholding/Medical Support Enforcement~~, shall be sent to the last-known address of the obligor by regular mail. The notice shall contain the following information:

a. to f. No change.

ITEM 7. Amend subrule 98.42(3) as follows:

98.42(3) Standard format. As provided in Iowa Code section 252D.17, an order or notice of an order for income withholding shall be in a standard format prescribed by the child support recovery unit. Form 470-3272, ~~Income Withholding for Support~~, is the standard format prescribed by the child support recovery unit, and the unit shall make a copy of the form available to the state court administrator and the Iowa state bar association.

ITEM 8. Amend **441—Chapter 98**, Division II, Part C, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~Supplement~~ chapters 252D and 252E.

ITEM 9. Amend subrule 98.61(5) as follows:

98.61(5) Good cause. The name of the obligor shall not be included when there has been a finding of good cause for noncooperation with the child support recovery unit in a public assistance case pursuant to ~~441—subrule 41.2(8) or 441—subrule 75.14(1)~~ ~~441—Chapter 41 or 441—Chapter 75~~ and a determination has been made that enforcement may not proceed without risk of harm to the child or caretaker.

ITEM 10. Amend subrule 98.62(2) as follows:

98.62(2) Availability of list. Once released, the list shall be provided to other persons upon payment of an amount to cover the cost of producing a copy as specified in ~~441—subrule 9.3(7)~~ ~~441—Chapter 9~~. Requests shall be directed to the Bureau of Collections, Fifth Floor, Hoover State Office Building, Des Moines, Iowa 50319-0114.

ITEM 11. Amend rule 441—98.73(252B) as follows:

441—98.73(252B) Method and requirements of reporting. The obligor shall complete Form 470-3155, ~~Report of Seek Employment Activity~~, which shall be submitted to the unit on a weekly basis throughout the duration of the order unless the obligor has a valid reason for not complying with the order. The obligor shall document at least five new attempts to find employment on the form each week. The same employer may not be reported more than once per week.

The obligor shall include the names, addresses, and the telephone numbers of each of the five employers or businesses with whom the obligor attempted to seek employment and the name of the individual contact to whom the obligor made application for employment or to whom the inquiry was directed.

ITEM 12. Amend subrule 98.74(2) as follows:

98.74(2) Temporary illness or disability. Temporary illness or disability of the obligor or other household member is considered a valid reason upon receipt of completed Form 470-3158, ~~Physician's Statement~~, verifying the obligor's inability to seek or accept employment.

ITEM 13. Amend subrule 98.74(6) as follows:

98.74(6) Job training. Participation in a job training or job seeking program through the department of employment services as a result of receiving ~~food stamps~~ benefits from the Supplemental Nutrition Assistance Program (SNAP) is considered a valid reason upon receipt of verification from the department of employment services.

ITEM 14. Amend rule 441—98.75(252B) as follows:

441—98.75(252B) Method of service. The seek employment order shall be served on the obligor by regular mail. Proof of service shall be completed ~~in accordance with Iowa Rules~~ according to Rule of Civil Procedure, Number 82 1.442.

ITEM 15. Amend rule ~~441—98.81(252B)~~, definition of “Delinquent support,” as follows:

“*Delinquent support*” means a payment, or portion of a payment, including interest, not received by the clerk of the district court or other designated agency at the time it was due. In addition, delinquent support shall also include payments for parental liabilities not received as specified pursuant to ~~rule 441—156.2(234)~~ 441—Chapter 156.

ITEM 16. Amend subrule 98.84(8) as follows:

98.84(8) *Offset notice, appeal, and refund.* The federal Department of the Treasury will send notice that a federal income tax refund or federal nontax payment owed to the obligor has been intercepted. When the unit receives information from the federal Office of Child Support Enforcement regarding the offset, or when the individual whose name was submitted for federal offset notifies the department that the individual has received an offset notice, the department shall issue to that individual Form 470-3684, ~~Appeal Rights for Federal Offsets~~.

a. to c. No change.

ITEM 17. Amend rule 441—98.94(252I) as follows:

441—98.94(252I) Notice to financial institution. The unit may send a notice to the financial institution with which the account is placed, directing that the financial institution forward to the collection services center all or a portion of the moneys in the obligor’s account or accounts on the date the notice is received. The notice shall be sent by first-class mail, with proof of service completed according to ~~rule of civil procedure 82~~ Rule of Civil Procedure 1.442. The notice to the financial institution shall contain all of the information specified in Iowa Code chapter 252I.

ITEM 18. Amend rule 441—98.95(252I) as follows:

441—98.95(252I) Notice to support obligor. The unit shall notify an obligor, and any other party known to have an interest in the account, of the action. The notice shall contain all of the information specified in Iowa Code chapter 252I. The unit shall forward the notice by first-class mail within two working days of sending the notice to the financial institution. Proof of service shall be completed according to ~~Iowa Rules~~ Rule of Civil Procedure 82 1.442.

ITEM 19. Amend subrule 98.101(2) as follows:

98.101(2) *Subpoena or warrant.* An individual must have failed to comply with a subpoena or warrant, as defined in Iowa Code chapter 252J, relating to a paternity or support proceeding. If a subpoena was issued, the individual must have failed to comply with either Form 470-3413 ~~, Child Support Recovery Unit Subpoena~~, or an Interstate Subpoena as provided in ~~paragraph 96.2(1) “a”~~ subrule 96.2(1) within 15 days of the issuance of the subpoena, and proof of service of the subpoena was completed according to ~~Rule of Civil Procedure 82~~ 1.442.

ITEM 20. Amend subrule 98.102(2) as follows:

98.102(2) *Temporary illness or disability.* Temporary illness or disability of the individual or illness or disability of another household member which requires the presence of the individual in the home as caretaker is considered a valid reason for exemption upon receipt of a completed Form 470-3158, ~~Physician’s Statement~~, verifying the individual’s or household member’s inability to work.

ITEM 21. Amend subrule 98.102(4) as follows:

98.102(4) *Job training.* Participation in a job-training or job-seeking program through the department of employment services as a result of receiving ~~food stamps~~ benefits from the Supplemental Nutrition Assistance Program is considered a valid reason for exemption upon receipt of verification from the department of employment services or verification through online information available to CSRU or upon receipt of a written statement from an income maintenance worker.

ITEM 22. Amend subrule 98.103(3) as follows:

98.103(3) *Certificate of noncompliance.* If an individual fails to respond in writing to the notice within 20 days, or if the individual requests a conference and fails to appear, the unit shall issue a

Certificate of Noncompliance, ~~Form 470-3274~~, to applicable licensing authorities in accordance with Iowa Code section 252J.3.

ITEM 23. Amend rule 441—98.104(252J) as follows:

441—98.104(252J) Conference.

98.104(1) *Scheduling of conference.* Upon receipt from an individual of a written request for a conference, CSRU shall schedule a conference not more than 30 days in the future. At the request of either CSRU or the individual, the conference may be rescheduled one time. When setting the date and time of the conference, if notice was sent to an obligor under subrule 98.103(1), CSRU shall request the completion of Form 470-0204, ~~Financial Statement~~, and other financial information from both the obligor and the obligee as may be necessary to determine the obligor's ability to comply with the support obligation.

98.104(2) *Payment calculation.* If notice was sent to an obligor under subrule 98.103(1) during the conference held in compliance with the provisions of Iowa Code section 252J.4, CSRU shall determine if the obligor's ability to pay varies from the current support order by applying the mandatory supreme court guidelines as contained in 441—Chapter 99, Division I, with the exception of subrules 99.4(3) and 99.5(5). If further information from the obligor is necessary for the calculation, CSRU may schedule an additional conference no less than ten days in the future in order to allow the obligor to present additional information as may be necessary to calculate the amount of the payment. If, at that time, the obligor fails to provide the required information, CSRU shall issue a Certificate of Noncompliance, ~~Form 470-3274~~, to applicable licensing authorities. If the obligee fails to provide the necessary information to complete the calculation, CSRU shall use whatever information is available. If no income information is available for the obligee, CSRU shall determine the obligee's income in accordance with 441—subrules 99.1(2) and 99.1(4). This calculation is for determining the amount of payment for the license sanction process only, and does not modify the amount of support obligation contained in the underlying court order.

98.104(3) *Referral for review and adjustment.* If the amount calculated in subrule 98.104(2) meets the criteria for review and adjustment as specified in rule 441—99.62(252B,252H), or administrative modification as specified in rule 441—99.82(252H) and subrules 441—99.83(1), 99.83(2) and 99.83(6) at the time CSRU provides the payment agreement to the obligor, CSRU shall also provide the obligor with any necessary forms to request a review and adjustment or administrative modification of the support obligation. The payment agreement remains in effect during the review and adjustment or administrative modification process.

ITEM 24. Amend rule 441—98.105(252J) as follows:

441—98.105(252J) Payment agreement. The License Sanction Payment Agreement, ~~Form 470-3273~~, shall require the obligor to pay the lower of the amount calculated in subrule 98.104(2) or the maximum amount payable under an income withholding order as specified in rule 441—98.24(252D).

98.105(1) *Duration of payment agreement.* The License Sanction Payment Agreement signed under this division shall remain in effect for at least one year from the date of issuance unless CSRU determines the obligor has a valid reason for exemption as specified in rule ~~98.102 (252J)~~ 441—98.102(252J). Except in those cases in which review and adjustment are in process, CSRU may, at the end of the year, begin the process of reviewing the case to ensure that the payment amount continues to accurately reflect the obligor's ability to pay as calculated in subrule 98.104(1).

98.105(2) *Failure to comply.* If at any time following the signing of a payment agreement the obligor fails to comply with all the terms of the agreement, CSRU shall issue ~~a Certificate of Noncompliance~~, Form 470-3274, to applicable licensing authorities in accordance with the provisions of Iowa Code chapter 252J.

ITEM 25. Amend rule 441—98.106(252J) as follows:

441—98.106(252J) Staying the process due to full payment of support. If the obligor, at any time, pays the total support owed, both current and past due, or an individual complies with the subpoena or warrant, CSRU shall stay the process, and any ~~Certificate of Noncompliance~~, Form 470-3274, ~~which that~~ has been issued shall be withdrawn by CSRU.

ITEM 26. Amend rule 441—98.107(252J) as follows:

441—98.107(252J) Duration of license sanction. ~~The Certificate of Noncompliance~~, Form 470-3274, shall remain in effect until the obligor pays all support owed, both arrears and current; or the obligor enters into a payment agreement with CSRU; or the obligor meets one of the criteria for exemption specified at subrules 98.102(1), 98.102(2), and 98.102(4); or the individual complies with the subpoena or warrant.

ITEM 27. Amend **441—Chapter 98**, Division VIII, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 252J ~~as amended by 1997 Iowa Acts, House File 612, Division X.~~

ITEM 28. Amend **441—Chapter 98**, Division X, preamble, as follows:

This division implements provisions of ~~1997 Iowa Acts, House File 612, sections 35 and 244~~ Iowa Code chapter 252B, which ~~provide~~ provides for enforcement of child support arrearages by external sources. These sources are entities under contract to collect difficult-to-collect arrearages and private attorneys acting independently of the unit but with the unit's consent. The rules provide criteria and procedures for referral of delinquent support to collection contractors, assessment of the statutory surcharge, and opportunity for the delinquent parent to contest. The rules also provide a procedure to allow state payment to private attorneys enforcing child support recovery unit (CSRU) cases and provide criteria to exempt cases from the procedure.

ITEM 29. Amend rule 441—98.121(252B) as follows:

441—98.121(252B) Difficult-to-collect arrearages. The child support recovery unit may refer difficult-to-collect arrearages to a collection entity under contract with the unit or with another state entity. Upon referral, a surcharge, in addition to the support, shall be due and payable by the obligor as provided in ~~1997 Iowa Acts, House File 612, section 244~~ Iowa Code chapter 252B.

98.121(1) *Difficult-to-collect arrearage.* A difficult-to-collect arrearage is one based upon a court or administrative order which meets all the following criteria:

- a. There is no order for current support and only an arrearage is owing.
- b. There has been no payment, except for federal or state tax refund offset payments, in the past three months.
- c. There is no valid reason for exemption from the referral and surcharge process. Valid reasons for exemption and acceptable verification are those listed in subrules 98.102(1), 98.102(3), and 98.102(6). Upon verification of those conditions, the child support recovery unit shall bypass or exempt the obligor's arrearages from the referral and surcharge process. When the information to verify the exemption is not available to the child support recovery unit through online sources, the child support recovery unit shall request, and the obligor shall provide, verification of the reason for exemption.

98.121(2) *Notice of the possibility of referral and surcharge.* The child support recovery unit shall provide notice of the possibility of a referral and surcharge to the obligor as required by ~~1997 Iowa Acts, House File 612, section 244~~ Iowa Code chapter 252B. The notice shall be provided at least 15 days before the unit sends the notice of referral and surcharge to the obligor, subject to the following:

- a. *Notification contained in order.* When the support order under which the arrearage has accrued contains language advising of statutory provisions for referral and surcharge, no other preliminary notice shall be required.
- b. *Notification issued by the child support recovery unit.* When the support order under which the arrearage has accrued does not contain language regarding the statutory provisions for referral and

surcharge, or was entered under a foreign jurisdiction and notification was not included in the support order or provided as a separate written notice, the child support recovery unit shall issue a notice to the obligor. The notice shall be sent by regular mail to the obligor's last-known address.

98.121(3) Notice of referral and surcharge. The child support recovery unit shall send notice of a referral and surcharge to the obligor by regular mail to the obligor's last-known address, with proof of service completed according to Rule of Civil Procedure ~~82~~ 1.442. The notice shall contain all the information required by ~~1997 Iowa Acts, House File 612, section 244~~ Iowa Code chapter 252B. The notice shall be sent at least 30 days before the unit refers the arrearage to the collection entity.

98.121(4) Contesting the referral and surcharge. An obligor may contest the referral and surcharge. The right to contest is limited to a mistake of fact including but not limited to a mistake in the identity of the obligor, a mistake as to whether there was a payment in the three months before the date of the notice specified in subrule 98.121(3), a mistake as to whether an exemption in paragraph 98.121(1) "c" applies, or a mistake in the amount of arrearages.

a. An obligor may contest the referral and surcharge by submitting a written request for a review to the unit within 20 days of the date on the notice of referral and surcharge specified in subrule 98.121(3). Upon receipt of a written request for review, the unit shall follow the criteria and procedures specified in ~~1997 Iowa Acts, House File 612, section 244~~, Iowa Code chapter 252B for resolving the request.

(1) and (2) No change.

b. No change.

c. Following the issuance of a notice of determination of a review under paragraph 98.121(4) "a," or issuance of a notice of determination of an additional review under paragraph 98.121(4) "b," the obligor may request a district court hearing. The obligor shall make a request by sending a written request for a hearing to the unit within ten days of the date of the unit's written determination of the review, or within ten days of the date of the bureau chief's written determination of an additional review, whichever is later. Procedures for a district court hearing are specified in ~~1997 Iowa Acts, House File 612, section 244~~ Iowa Code chapter 252B.

d. The unit shall not refer arrearages and assess a surcharge until after completion of any review, additional review or judicial hearing process.

98.121(5) No change.

This rule is intended to implement ~~1997 Iowa Acts, House File 612, section 244~~ Iowa Code chapter 252B.

ITEM 30. Amend rule 441—98.122(252B), introductory paragraph, as follows:

441—98.122(252B) Enforcement services by private attorney entitled to state compensation. An attorney licensed to practice law in Iowa may utilize judicial proceedings to collect support, at least a portion of which is assigned support, and be entitled to compensation by the state as provided in ~~1997 Iowa Acts, House File 612, section 35~~ Iowa Code chapter 252B.

ITEM 31. Amend subrule 98.122(1) as follows:

98.122(1) Eligible cases. To be eligible for attorney services with compensation under this rule, a case must meet all of the following:

a. The child support recovery unit is providing services under Iowa Code chapter 252B.

b. The current support obligation is terminated and only arrearages are due under the administrative or court order.

c. There has been no payment under any order in the case for at least a 12-month period prior to the provision of the notice from the attorney to the unit under paragraph 98.122(1) "f."

d. At least a portion of the arrearages due under any order in the case is assigned to the state because cash assistance was paid under ~~1997 Iowa Acts, Senate File 516, sections 2 through 24 and 35~~ Iowa Code chapter 252B.

e. The case does not have any of the following characteristics:

(1) There has been a finding of good cause or other exception pursuant to Iowa Code section

252B.3 as amended by 1997 Iowa Acts, House File 612, section 26.

(2) A portion of the arrears is assigned to another state because of public assistance provided by that state.

(3) Another attorney has already notified the unit of the intent to initiate a judicial proceeding to collect support due under any order in the same case under this rule, and either the time to receive the collection has not expired or the unit has not received a notice from the other attorney that the judicial proceeding has concluded prior to the expiration of the time period.

(4) If the notice from the attorney under paragraph 98.122(1) "f" specifies contempt of court as the judicial proceeding, and the unit has generated a seek employment order to the obligor under Iowa Code section 252B.21 less than nine months prior to the date on the notice from the attorney.

(5) The case or arrearages have been referred by the child support recovery unit to a collection entity under Iowa Code section 252B.5, subsection 3, as amended by 1997 Iowa Acts, House File 612, section 30, or 1997 Iowa Acts, House File 612, section 244, 252B.5(3) less than nine months prior to the date on the notice from the attorney.

(6) The obligor has filed for bankruptcy and collection activities are stayed.

(7) The notice from the attorney under paragraph 98.122(1) "f" lists a specific judicial proceeding and the unit has already initiated the same type of proceeding in court.

(8) The case has been referred to the U.S. Attorney's office and is still pending at that office.

f. The attorney has provided written notice to the central office of the child support recovery unit in Des Moines, as specified in subrule 98.122(2), and to the last-known address of the obligee of the intent to initiate a specified judicial proceeding to collect support on any identified court or administrative order involving the obligor and obligee in the case.

g. The attorney has provided documentation of insurance to the unit as required by 1997 Iowa Acts, House File 612, section 35 Iowa Code chapter 252B.

h. The collection must be received by the collection services center within 90 days of the notice from the attorney in paragraph 98.122(1) "f," or within a subsequent 90-day extension period.

ITEM 32. Amend paragraph 98.122(2) "c" as follows:

c. If the case is eligible under this rule, the attorney may initiate judicial proceedings after 30 days after providing the notice to the child support recovery unit in paragraph 98.122(2) "a." Section 35 of 1997 Iowa Acts, House File 612, Iowa Code chapter 252B defines "judicial proceedings."

ITEM 33. Amend subrule 98.122(3) as follows:

98.122(3) Collection and payment to attorney.

a. Upon compliance with the requirements of 1997 Iowa Acts, House File 612, section 35, Iowa Code chapter 252B and this rule, the attorney shall be entitled to compensation from the state as provided for in this rule.

b. Upon receipt of a file-stamped copy of a court order which identifies the amount of support collected as a result of the judicial proceeding and which does not order the payment of attorney fees by the obligor, and the receipt of the collection by the collection services center, all the following apply:

(1) Section 35 of 1997 Iowa Acts, House File 612, Iowa Code chapter 252B specifies the formula to calculate the compensation due the attorney from the state. The child support recovery unit shall calculate the compensation due the attorney based upon the amount of support which is credited to arrearages due the state at the time the collection is received by the collection services center. After calculating the amount due the attorney, the unit shall reduce the amount due the attorney by the amount of any penalty or sanction imposed upon the state as a result of any other judicial proceeding initiated by that attorney under 1997 Iowa Acts, House File 612, section 35 Iowa Code chapter 252B. The child support recovery unit shall send the attorney a notice of the amount of the compensation due from the state.

(2) The collection services center shall disburse any support due an obligee prior to payment of compensation to the attorney.

(3) The child support recovery unit shall not authorize disbursement of compensation to the

attorney until the later of 30 days after receipt of the collection and the file-stamped copy of the order, or resolution of any timely appeal by the obligor or obligee.

(4) The amount of compensation due the attorney is subject to judicial review upon application to the court by the attorney.

ITEM 34. Amend rule ~~441—98.122(252B)~~, implementation sentence, as follows:

This rule is intended to implement ~~1997 Iowa Acts, House File 612, section 35~~ Iowa Code chapter 252B.



Iowa Department of Human Services
Information on Proposed Rules

Table with 3 columns: Name of Program Specialist (Paula Burns), Telephone Number (515-650-9853), Email Address (pburns@dhs.state.ia.us)

1. Give a brief purpose and summary of the rulemaking:

The purpose of this rulemaking is to update 441 IAC Chapter 98 as a result of CSRU's five-year review of rules (Iowa Code § 17A.7(2)). We are requesting the following rules changes:

- Subrule 98.74(6): Striking "food stamps" and replacing with "SNAP."
• Subrule 98.101(2): Striking 96.2(1)"a" since it no longer exists and replacing with 96.2(1).
• Subrule 98.102(4): Striking "food stamps" and replacing with "SNAP."
• Rules 98.75, 98.94, and 98.95 and subrules 98.101(2) and 98.121(3): Striking references to Rule of Civil Procedure 82 and replacing with Rule of Civil Procedure 1.442. The former is an old version of the Iowa Rules of Civil Procedure.

2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):

Iowa Code Chapters 252B.9(f)(7)
7 U.S.C. § 2013

3. Describe who this rulemaking will positively or adversely impact.

These proposed amendments will positively impact CSRU customers by providing current and accurate information.

4. Does this rule contain a waiver provision? If not, why?

No. These rules do not contain waiver provisions. The proposed amendments are technical changes to bring the rules in line with current program terminology and to correct outdated references.

5. What are the likely areas of public comment?

CSRU does not anticipate public comment on these proposed amendments.

6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)

No, these rules do not have an impact on private-sector jobs or employment opportunities in Iowa.



Administrative Rule Fiscal Impact Statement

Date: August 1, 2022

Agency: Human Services
IAC citation: 441 IAC 98
Agency contact: Paula Burns / Diane Barrett (fiscal)

Summary of the rule:
Support Enforcement Services

Fill in this box if the impact meets these criteria:

- No fiscal impact to the state.
 Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
 Fiscal impact cannot be determined.

Brief explanation:

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

The proposed amendments are technical changes to bring the rules in line with current program terminology and to correct outdated references. Rules changes can be made by current staff.

Fill in the form below if the impact does not fit the criteria above:

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY 2023)</u>	<u>Year 2 (FY 2024)</u>
Revenue by each source:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL REVENUE	_____	_____
Expenditures:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL EXPENDITURES	_____	_____
NET IMPACT	0.00	0.00

This rule is required by state law or federal mandate.

Please identify the state or federal law:

Identify provided change fiscal persons:

Iowa Code Chapters 252B.9(f)(7)

7 U.S.C. § 2013

Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

Funding has not been provided for the rule.

Please explain how the agency will pay for the rule change:

There is no fiscal impact.

Fiscal impact to persons affected by the rule:

N/A

Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):

N/A

Agency representative preparing estimate: Diane Barrett

JH 08/02/2022

Telephone number:

515-281-6024

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to child support establishment and adjustment services.

The Human Services Department hereby amends Chapter 99, "Support Establishment And Adjustment Services," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapters 252B, 252C and 252F.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 252B, 252C and 252F.

Purpose and Summary

Chapter 99 was reviewed as part of the Department's five-year rules review. Chapter 99 outlines the rules governing the provision of services provided by the child support recovery unit regarding the establishment of paternity, the establishment of support obligations, the review and adjustment of support obligations, the modification of support obligations, and the suspension and reinstatement of support obligations.

These amendments align the rules with the current procedures for paternity establishment in the Iowa Code. References to the Iowa Code and federal regulations are updated to provide accurate listings. Outdated guidance on establishment of support obligations and guidelines for setting support awards are rescinded.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 30, 2022, as ARC 6692C.

No public comments were received.

No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on January 12, 2023.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441_1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on April 1, 2023.

The following rule-making action is adopted:

Please see attached.

Adopted and filed rules for Chapter 99.

The following rules are adopted.

ITEM 1. Amend rule 441—99.22(252F) as follows:

441—99.22(252F) Mother’s certified statement. Before initiating an action under Iowa Code chapter 252F, the unit may obtain a signed ~~Child Support Information~~, Form 470-3877 ~~;~~ or ~~Establishment Questionnaire~~, Form 470-3929 ~~;~~ or a similar document from the child’s caretaker. The unit shall obtain the ~~Mother’s Written Statement Alleging Paternity~~, Form 470-3293 ~~;~~ from the child’s mother certifying, in accordance with Iowa Code section 622.1, that the man named is or may be the child’s biological father. Government records, including but not limited to an application for public assistance, ~~which that~~ that substantially meet the requirements of Iowa Code section 622.1 may also be used. In signing Form 470-3293, the mother acknowledges that the unit may initiate a paternity action against the alleged father, ~~and she agrees to accept service of all notices and other documents related to that action by first-class mail.~~ The mother shall sign and return Form 470-3293 to the unit within ten days of the date of the unit’s request.

ITEM 2. Amend rule 441—99.23(252F) as follows:

441—99.23(252F) Notice of alleged paternity and support debt. Following receipt of the ~~Mother’s Written Statement Alleging Paternity~~, Form 470-3293 ~~;~~ or government records, including but not limited to an application for public assistance, ~~which that~~ that substantially meet the requirements of Iowa Code section 622.1, the unit shall serve a notice of alleged paternity and support debt as provided in Iowa Code section 252F.3.

ITEM 3. Amend rule 441—99.24(252F) as follows:

441—99.24(252F) Conference to discuss paternity and support issues. ~~The alleged father~~ A party may request a conference as provided in Iowa Code section ~~252F.3, subsection (1),~~ 252F.3(1) with the office that issued the notice to discuss paternity establishment and the amount of support he may be required to pay.

ITEM 4. Amend rule 441—99.29(252F) as follows:

441—99.29(252F) Agreement to entry of paternity and support order. If the alleged father admits paternity and reaches agreement with the unit on the entry of an order for support, the father may acknowledge his consent on the ~~Child Support Declaration~~, Form 470-4084. If the mother does not contest paternity within the allowed time period or if the mother waives the time period for contesting paternity, the unit may file the ~~Child Support Declaration form~~, if applicable, and Administrative Paternity Order with the court in accordance with Iowa Code section 252F.6.

ITEM 5. Amend rule 441—99.30(252F) as follows:

441—99.30(252F) Entry of order establishing paternity only. ~~If the alleged father~~ a party requests a court hearing on support issues and paternity is not contested, or if paternity was contested but neither party filed a timely challenge of the paternity test results, the unit shall prepare an order establishing paternity and reserving the support issues for determination by the court. The unit shall present the order and other documents supporting the entry of the ex parte paternity-only order to the court for review and approval prior to the hearing on the support issues.

ITEM 6. Amend rule ~~441—99.36(598,600B)~~, definition of “Disestablishment,” as follows:

“Disestablishment” means paternity which is legally overcome under the conditions specified in Iowa Code section 600B.41A or ~~section 598.21, subsection 4A~~ 598.21E.

ITEM 7. Amend subparagraph **99.39(1)“a”(2)** as follows:

(2) For actions under Iowa Code section ~~598.21~~ 598.21E, the written statement was filed and a guardian ad litem was appointed for the child.

ITEM 8. Amend subrule 99.41(1) as follows:

99.41(1) *When order may be established.* The bureau chief may establish a child or medical support obligation against a responsible person through the administrative process. This does not preclude the child support recovery unit from pursuing the establishment of an ongoing support obligation through other available legal proceedings. When gathering information to establish a support order, the unit may obtain a signed ~~Child Support Information~~, Form 470-3877, or ~~Establishment Questionnaire~~, Form 470-3929, or a similar document from the child’s caretaker.

ITEM 9. Amend subrule 99.41(2) as follows:

99.41(2) *Support debt.* When public assistance is paid to or Medicaid is received by a child of the responsible person, or the dependent child’s caretaker, a support debt is created and ~~owed~~ assigned to the department. When no public assistance is paid or Medicaid is received, the debt is owed to the individual caretaker.

ITEM 10. Amend subrule 99.62(2) as follows:

99.62(2) *Review by request.* A review shall be conducted upon the request of the child support recovery agency of another state or upon the written request of either parent subject to the order submitted on Form 470-2749, ~~Request to Modify a Child Support Order~~. One review may be conducted every two years when the review is being conducted at the request of either parent. The request for review may be no earlier than two years from the filing date of the support order or most recent modification or the last completed review, whichever is later.

ITEM 11. Amend subrule 99.63(1) as follows:

99.63(1) *Notice of right to request review.* The child support recovery unit shall notify each parent of the right to request review of the order and the appropriate place and manner in which the request should be made. Notification shall be provided on Form 470-0188, ~~Application For Nonassistance Support Services~~, or Form 470-1981, ~~Notice of Continued Support Services~~, or through another printed or electronic format.

ITEM 12. Amend rule 441—99.83(252H), introductory paragraph, as follows:

441—99.83(252H) Modification of child support obligations. Permanent child support obligations meeting the criteria set forth in rule 441—99.82(252H) may be modified at the initiative of the unit, or upon written request of either parent subject to the order submitted on Form 470-2749, ~~Request to Modify a Child Support Order~~. Any action shall be limited to adjustment, modification, or alteration of the child support or medical provisions of the support order. The duration of the underlying order shall not be modified. The procedures used by the child support recovery unit to determine if a modification is appropriate are as follows:

ITEM 13. Amend subrule 99.85(3) as follows:

99.85(3) *Guidelines calculations.* The unit shall determine:

~~a. The unit shall determine:~~

(1) a. The appropriate amount of the child support obligation (excluding cost-of-living alteration amounts) as described in rules 441—99.1(234,252B) through 441—99.5(234,252B), and

(2) b. Medical support provisions as described in Iowa Code chapter 252E and rules 441—98.1(252E) through 441—98.7(252E).

~~b. If the modification action is due to noncompliance by a minor obligor, as defined in Iowa Code section 598.21B(2)“e” or 598.21G, the unit will impute an income to the obligor equal to a 40-hour workweek at the state minimum wage unless the parent’s education, experience, or actual earnings justify a higher income.~~

ITEM 14. Amend paragraph **99.104(1)“a”** as follows:

a. A request for suspension shall be submitted to the local child support unit providing services using Form 470-3033, ~~Request to Suspend Support~~, and Form 470-3032, ~~Affidavit Regarding Suspension of Support~~.

ITEM 15. Amend paragraph **99.110(1)“a”** as follows:

a. A request for suspension shall be submitted to the local child support unit providing services using Form 470-5348, ~~Request from the Payor to Suspend Support~~.

ITEM 16. Amend subrule 99.110(2) as follows:

99.110(2) Submitting an affidavit. After receiving a valid request for suspension, the local unit shall provide the requestor with Form 470-5349, ~~Affidavit Requesting Suspension of Support Based on Payor’s Request~~.

a. to c. No change.

ITEM 17. Amend paragraph **99.111(2)“a”** as follows:

a. The unit shall serve Form 470-5351, ~~Notice of Intent to Payee to Suspend a Child Support Obligation Based on Payor’s Request~~, and Form 470-5352, ~~Payee’s Affidavit Objecting to Suspension of Support~~, and supporting documents on the obligee by any means provided in Iowa Code section 252B.26. The notice to the obligee shall include all of the following:

(1) to (4) No change.



Iowa Department of Human Services
Information on Proposed Rules

Table with 3 columns: Name of Program Specialist (Paula Burns), Telephone Number (515-650-9853), Email Address (pburns@dhs.state.ia.us)

1. Give a brief purpose and summary of the rulemaking:

The purpose of this rulemaking is to update 441 IAC Chapter 99 as a result of CSRU’s five-year review of rules (Iowa Code § 17A.7(2)). We are requesting the following rules changes:

- Rules 441—99.22, 441—99.24, and 441—99.30: Updating to align the rules with current procedures for paternity establishment in Iowa Code 252F.
Rule 441—99.36 and subparagraph 99.39(1)“a”(2): Updating legal references from 598.21 to 598.21E.
Subrule 99.41(2): Striking “owed” and replacing with “assigned.”
Paragraph 99.85(3)“b”: Rescinding the paragraph on imputing income to follow the Department of Health and Human Services, Administration for Children and Families federal regulations published on December 20, 2016, specifically, the rulemaking changes that impacted 45 CFR 303.4, Establishment of support obligations, and 45 CFR 302.56, Guidelines for setting child support awards.
Subrule 99.85(3): Renumbering accordingly.

2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):

Iowa Code Chapters 252B, 252C, 252F and Section 598.21
Title 45, Code of Federal Regulations 302.56 and 303.4

3. Describe who this rulemaking will positively or adversely impact.

These proposed amendments will positively impact CSRU customers by providing current and accurate information.

4. Does this rule contain a waiver provision? If not, why?

No. These rules do not contain waiver provisions. The proposed amendments are technical changes to bring the rules in line with federal regulations and current program terminology and to correct outdated references.

5. What are the likely areas of public comment?

CSRU does not anticipate public comment on these proposed amendments.

6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)

No, these rules do not have an impact on private-sector jobs or employment opportunities in Iowa.



Administrative Rule Fiscal Impact Statement

Date: August 1, 2022

Agency: Human Services
IAC citation: 441 IAC 98
Agency contact: Paula Burns / Diane Barrett (fiscal)

Summary of the rule:
Support Enforcement Services

Fill in this box if the impact meets these criteria:

- No fiscal impact to the state.
- Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
- Fiscal impact cannot be determined.

Brief explanation:

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

The proposed amendments are technical changes to bring the rules in line with current program terminology and to correct outdated references. Rules changes can be made by current staff.

Fill in the form below if the impact does not fit the criteria above:

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY 2023)</u>	<u>Year 2 (FY 2024)</u>
Revenue by each source:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL REVENUE	_____	_____
Expenditures:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL EXPENDITURES	_____	_____
NET IMPACT	0.00	0.00

- This rule is required by state law or federal mandate.
Please identify the state or federal law:
 Identify provided change fiscal persons:
 Iowa Code Chapters 252B.9(f)(7)
 7 U.S.C. § 2013
- Funding has been provided for the rule change.
Please identify the amount provided and the funding source:
- Funding has not been provided for the rule.
Please explain how the agency will pay for the rule change:
 There is no fiscal impact.

Fiscal impact to persons affected by the rule:

N/A

Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):

N/A

Agency representative preparing estimate: Diane Barrett JH 08/02/2022
 Telephone number: 515-281-6024

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to foster care contracting.

The Human Services Department hereby amends Chapter 152, “Foster Care Contracting,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 217.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 217.6.

Purpose and Summary

Chapter 152 was reviewed as part of the Department’s five-year rules review. Chapter 152 outlines the contracting process used for providers of foster group care, child welfare emergency services shelter, and supervised apartment living. The chapter provides the rules for rate-setting, payments, and provider monitoring.

These amendments update definitions, form names and numbers, and legal references.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 30, 2022, as ARC 6693C.

No public comments were received.

No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on January 12, 2023.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441_1.8(17A,218).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on April 1, 2023.

The following rule-making action is adopted:

ITEM 1. Rescind the definition of "Level of care" in rule 441—152.1(234).

ITEM 2. Amend rule 441—152.1(234), definition of "Child," as follows:

"Child" means a person under 18 years of age or a person 18, ~~or 19,~~ or 20 years of age who meets the criteria in Iowa Code section 234.1.

ITEM 3. Amend subparagraph 152.2(4)"a"(2) as follows:

(2) Form 470-3055, ~~Referral and Authorization for Child Welfare Services.~~

ITEM 4. Amend subrule 152.2(6) as follows:

152.2(6) *Cost report.* Providers shall complete Form 470-5421, ~~Combined Cost Report~~, as required by contract. The instructions for the cost report are found in Comm. 502 (~~7/16~~), ~~Instructions for the Combined Cost Report.~~

a. Due date. The cost report shall be submitted to the department no later than three months after the close of the provider's established fiscal year. The provider may request a one-month extension from the ~~chief of the~~ bureau of service contract support.

b. and c. No change.

ITEM 5. Amend paragraph 152.4(1)"h" as follows:

h. Failing to submit the cost report on time or failing to submit complete responses to follow-up questions from the department or its fiscal consultant within 14 days of request without written approval from the ~~chief of the~~ bureau of service contract support.

ITEM 6. Amend rule 441—152.5(234) as follows:

441—152.5(234) Adverse actions. Notice of adverse actions ~~and the~~ shall be given in accordance with 441—Chapter 16. The right to appeal the licensing decision shall be given to applicants and licensees in accordance with 441—Chapter 7.



Iowa Department of Human Services
Information on Proposed Rules

Name of Program Specialist Kristin Konchalski	Telephone Number 515-281-9368	Email Address kkoncha@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:

The rules in Chapter 152 were reviewed as part of the Department's five-year rules review project. As a result, the following changes were made:

- Removed outdated definition of Level of Care
- Removed form number date for Instructions for Cost Report
- Replaced chief of bureau of service contract support with entire bureau for the entity who extensions can be requested from for Cost Reports

2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):

237.3 gives the administrator of ACFS the authority to write rules.

3. Describe who this rulemaking will positively or adversely impact.

It is expected that clarifying our rules and providing updated information will provide a positive benefit to members of the public and potential contractors for foster care services.

4. Does this rule contain a waiver provision? If not, why?

No

5. What are the likely areas of public comment?

We do not expect any public comment on these rules.

6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)

No impact is expected to private sector jobs or employment opportunities in Iowa.



Administrative Rule Fiscal Impact Statement

Date: September 14, 2022

Agency: Human Services
IAC citation: 441 IAC 152
Agency contact: David O. Philmon, Jr.

Summary of the rule:

The rules in Chapter 152 were reviewed as part of the Department's five-year rules review project. As a result changes were made to the language.

Fill in this box if the impact meets these criteria:

- No fiscal impact to the state.
- Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
- Fiscal impact cannot be determined.

Brief explanation:

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

The rules in Chapter 152 were reviewed as part of the Department's five-year rules review project. There is no impact to the state as the result of the review were the removal of an outdated definition of Level of Care, and the removal of a form number date for Instructions for Cost Report, and it replaced chief of bureau of service contract support with entire bureau for the entity who extensions can be requested from for Cost Reports.

Fill in the form below if the impact does not fit the criteria above:

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY 2023)</u>	<u>Year 2 (FY 2024)</u>
Revenue by each source:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL REVENUE	_____	_____
Expenditures:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL EXPENDITURES	_____	_____
NET IMPACT	0.00	0.00

This rule is required by state law or federal mandate.

Please identify the state or federal law:

Identify provided change fiscal persons:

Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

Funding has not been provided for the rule.

Please explain how the agency will pay for the rule change:

No fiscal impact.

Fiscal impact to persons affected by the rule:

No fiscal impact.

Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):

No fiscal impact.

Agency representative preparing estimate: David O. Philmon, Jr.

JH 09/16/2022

Telephone number: 404-345-1088

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

**Proposing rule making related to managed care
and providing an opportunity for public comment**

The Human Services Department hereby proposes to rescind Chapter 73, “Managed Care,” Iowa Administrative Code, and to adopt a new Chapter 73 with the same title.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4.

Purpose and Summary

Chapter 73 was reviewed as part of the Department’s five-year review of rules. For ease of review and adoption, the Department is proposing to rescind and replace the entire chapter. Proposed changes include updates to the definitions to include the terms “managed care plan,” “managed care organizations” and “prepaid ambulatory health plan.” In addition, proposed revisions add correct terminology, update federal and state citations and regulations and align federal and contract provisions. Proposed changes include using the term “dental wellness plan” when the provision applies to prepaid ambulatory health plans. The spelling for the Hawki program is also being updated.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 31, 2023. Comments should be directed to:

Nancy Freudenberg
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Rescind 441—Chapter 73 and adopt the following **new** chapter in lieu thereof:

TITLE VIII
MEDICAL ASSISTANCE
CHAPTER 73
MANAGED CARE

PREAMBLE

This chapter provides that most Iowa medical assistance program benefits will be provided through managed care. Notwithstanding any provisions of 441—Chapters 74 through 91, program benefits shall be provided through managed care as provided in this chapter. The program benefits provided through managed care will be paid for by the managed care plan participating in the program pursuant to this chapter, subject to the conditions, procedures, and payment rates or methodologies established by the managed care plan, consistent with this chapter and with the contract between the department and the managed care plan.

Implementation of managed care pursuant to this chapter is subject to approval by the Secretary of the United States Department of Health and Human Services (Secretary) of any Iowa state plan amendments and any waivers of the requirements of Title XIX of the Social Security Act that are required to allow for federal funding. This chapter shall be construed to comply with all requirements for federal funding under Title XIX of the Social Security Act or under the terms of any applicable waiver granted by the Secretary. To the extent this chapter is inconsistent with any applicable federal funding requirement under Title XIX or the terms of any applicable waiver, the requirements under Title XIX or the terms of the waiver shall prevail.

441—73.1(249A) Definitions.

“*Behavioral health services*” means mental health and substance use disorder treatment services.

“*Capitated payment*” means a monthly payment to the MCP on behalf of each enrollee for the provision of health or dental services under the contract. Payment is made regardless of whether the enrollee receives services during the month.

“*Choice counseling*” means the provision of unbiased information on MCPs or provider options and answers to related questions and access to personalized assistance to help members understand the materials provided by the MCPs or the state, to answer questions about each of the options available, and to facilitate enrollment with an MCP.

“*Claim*” means a formal request for payment for benefits received or services rendered.

“*Clean claim*” means a claim that has no defect or impropriety (including any lack of required substantiating documentation) or particular circumstance requiring special treatment that prevents timely

payment of the claim. “Clean claim” does not include a claim from a provider that is under investigation for fraud or abuse or a claim under review for medical necessity.

“CMS” means the Centers for Medicare and Medicaid Services, a division of the U.S. Department of Health and Human Services.

“Code of Federal Regulations” or “CFR” means the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government.

“Community-based case management” means a collaborative process of planning, facilitation, and advocacy for options and services to meet an enrollee’s needs through communication and available resources to promote high-quality, cost-effective outcomes.

“Contract” means a contract between the department and an MCP. These contracts shall meet all applicable requirements of state and federal law, including the requirements of 42 CFR 434 as amended to July 19, 2022.

“Covered services” means physical health, behavioral health, dental, and long-term care services set forth in rule 441—73.5(249A).

“Department” means the Iowa department of human services.

“Discharge planning” means the process, which begins at admission, of determining a continued need for treatment services and of developing a plan to address ongoing needs.

“Electronic visit verification system” means, with respect to personal care services or home health care services described in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

“Emergency medical condition” means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in the following:

1. Placing the health of the individual (or, for a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;
2. Serious impairment to bodily functions;
3. Serious dysfunction of any bodily organ or part.

“Emergency services” means covered inpatient and outpatient services that are as follows:

1. Furnished by a provider that is qualified to furnish these services.
2. Needed to evaluate or stabilize an emergency medical condition.

“EMTALA” means the Emergency Medical Treatment and Active Labor Act.

“Enrollee” means a hawki, Iowa health and wellness plan, dental wellness plan or Medicaid member who is eligible for MCP enrollment and has been enrolled with an MCP as defined in subrule 73.3(2).

“Enrollment broker” means the entity the department uses to enroll persons in an MCP. The enrollment broker must be conflict-free and meet all applicable requirements of state and federal law, including 42 CFR 438.10 as amended to July 19, 2022.

“Hawki program” means the healthy and well kids in Iowa program as set forth in 441—Chapter 86, the Iowa program to provide health care coverage for uninsured children of eligible families as authorized by Title XXI of the federal Social Security Act.

“HIPA” means the health insurance premium payment program.

“Home- and community-based services” or “HCBS” means services that are provided as an alternative to long-term care institutional services in a nursing facility or an intermediate care facility for persons with an intellectual disability (ICF/ID) or to delay or prevent placement in a nursing facility or ICF/ID.

“Incident reporting” means the reporting of critical events or incidents deemed sufficiently serious to warrant near-term review and follow-up by an appropriate authority. Such incidents may include but are not limited to:

1. Abuse and neglect;
2. The unauthorized use of restraint, seclusion or restrictive interventions;

3. Serious injuries that require medical intervention or result in hospitalization, or both;
4. Criminal victimization;
5. Death;
6. Financial exploitation;
7. Medication errors; and
8. Other incidents or events that involve harm or risk of harm to a participant.

“*Insolvency*” means a financial condition that exists when an entity is unable to pay its debts as they become due in the usual course of business or when the liabilities of the entity exceed its assets.

“*Iowa health and wellness plan*” means the medical assistance program set forth in 441—Chapter 74.

“*Level of care*” means an evaluation to determine and establish an individual’s need for the level of care provided in a hospital, a nursing facility, or an ICF/ID within the near future.

“*Long-term care (LTC)*” or “*long-term services and supports (LTSS)*” means the services of a nursing facility (NF), an intermediate care facility for persons with an intellectual disability (ICF/ID), state resource centers or services funded through Section 1915(c) home- and community-based services waivers, Section 1915(i) state plan home- and community-based habilitation program and the PACE program.

“*Managed care organization*” or “*MCO*” means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of “health maintenance organization” in Iowa Code section 514B.1.

“*Managed care plan*” or “*MCP*” refers to managed care organizations (MCOs) and prepaid ambulatory health plans (PAHPs).

“*Mandatory enrollment*” means mandatory participation in a managed care plan as specified in subrule 73.3(2).

“*Medical loss ratio*” or “*MLR*” means the percentage of capitation payments that is used to pay medical or dental expenses.

“*Medically necessary services*” means those covered services that are, under the terms and conditions of the contract, determined through MCP utilization management to be:

1. Appropriate and necessary for the symptoms, diagnosis or treatment of the condition of the member.
2. Provided for the diagnosis or direct care and treatment of the condition of the member to enable the member to make reasonable progress in treatment.
3. Within standards of professional practice and given at the appropriate time and in the appropriate setting.
4. Not primarily for the convenience of the member, the member’s physician or other provider; and
5. The most appropriate level of covered services that can safely be provided.

“*Medical records*” means all medical, dental, behavioral health, and long-term care histories; records, reports and summaries; diagnoses; prognoses; record of treatment and medication ordered and given; X-ray and radiology interpretations; physical therapy charts and notes; lab reports; other individualized medical, behavioral health, and long-term care documentation in written or electronic format; and analyses of such information.

“*Member*” means any person determined by the department to be eligible for the hawki program, the Iowa health and wellness plan, the dental wellness plan, or the Medicaid program.

“*Money Follows the Person (MFP) Rebalancing Demonstration Grant*” means a federal grant that will assist Iowa in transitioning individuals from a nursing facility or ICF/ID into the community and in rebalancing long-term care expenditures.

“*Needs-based eligibility*” means an evaluation to determine and establish an individual’s need for habilitation services.

“*Network*” or “*provider network*” means a group of participating health or dental care providers (both individual and group practitioners) linked through contractual arrangements to the MCP to supply a range of health or dental care services.

“*Out-of-network provider*” means any provider that is not directly or indirectly employed by or does not have a provider agreement with the MCP or any of its subcontractors pursuant to the contract between the department and the MCP.

“*PACE*” means the program for all-inclusive care for the elderly.

“*Participating providers*” means the providers of covered physical health, behavioral health, dental, and long-term care services that have contracted with a managed care plan.

“*Passive enrollment process*” means the process by which the department assigns a member to a managed care plan and which, in accordance with 42 CFR 438.54 as amended to July 19, 2022, seeks to preserve existing provider-member relationships and relationships with providers that have traditionally served Medicaid members, if possible. In the absence of existing relationships, the process ensures that members are equally distributed among all available managed care plans.

“*Prepaid ambulatory health plan*” or “*PAHP*” has the meaning set forth in 42 CFR 438.2 as amended to July 19, 2022.

“*Prior authorization*” means the process of obtaining prior approval as to the appropriateness of a service or medication. Prior authorization does not guarantee coverage.

“*Warm transfer*” means a telecommunications mechanism in which the person answering the call facilitates transfer to a third party, announces the caller and issue and remains engaged as necessary to provide assistance.

441—73.2(249A) Contracts with a managed care plan (MCP).

73.2(1) The department may enter into a contract with an MCP licensed under the provisions of insurance division rules set forth in 191—Chapter 40 for the scope of services as described in rule 441—73.6(249A).

73.2(2) The department shall determine that the MCP meets the following requirements:

- a. The MCP shall make available the services it provides to enrollees as established in the contract.
- b. The MCP shall provide satisfaction to the department against the risk of insolvency and ensure that neither Medicaid members nor the state shall be responsible for the MCP’s debts if the MCP becomes insolvent. The MCP shall comply with insurance division provisions set forth in rule 191—40.12(514B) regarding net worth and rule 191—40.14(514B) containing reporting requirements.
- c. The MCP shall attain and maintain accreditation by the National Committee for Quality Assurance (NCQA) or URAC (formerly known as the Utilization Review Accreditation Commission).

73.2(3) If not already accredited, the MCP must demonstrate it has initiated the accreditation process as of the contract effective date and must achieve accreditation at the earliest date allowed by NCQA or URAC. Prior to the contract effective date, the MCP must be licensed and in good standing in the state of Iowa as a health maintenance organization in accordance with insurance division rules set forth in 191—Chapter 40.

73.2(4) The contract shall meet the following minimum requirements. The contract shall:

- a. Be in writing.
- b. Specify the duration of the contract period.
- c. List the services that must be covered.
- d. Describe service access and provide access information.
- e. List conditions for nonrenewal, termination, suspension, and modification.
- f. Specify the method and rate of reimbursement.
- g. Provide for disclosure of ownership and subcontracted relationships.
- h. Specify that all subcontracts shall be in writing, shall comply with the provisions of the contract between the department and the MCP, and shall include any general requirements of the contract that are appropriate to the service or activity covered by the subcontract.
- i. Specify appeal and grievance rights.
- j. Specify all operational and service delivery expectations.
- k. Specify reporting requirements.
- l. Specify requirements for utilization management and quality improvement.
- m. Specify requirements for program integrity.

- n. Specify termination requirements and assessment of penalties.
- o. Require MCP and the fee-for-service Medicaid program to utilize a uniform prior authorization process.

The process will include forms, information requirements, and time frames.

441—73.3(249A) Enrollment.

73.3(1) Enrollment area. The coverage area for enrollment shall be statewide.

73.3(2) Members subject to enrollment. All hawki program, Iowa health and wellness plan, and dental wellness plan members shall be subject to mandatory enrollment in an MCP. All Medicaid members, with the exception of the following, shall be subject to mandatory enrollment in an MCP:

- a. Members who are medically needy as described at 441—Chapter 75.
- b. Individuals eligible only for emergency medical services because the individuals do not meet citizenship or alienage requirements, pursuant to 441—Chapter 75.
- c. Persons who are currently presumptively eligible as defined in 441—Chapter 75.
- d. Persons eligible for the program of all-inclusive care for the elderly (PACE) who voluntarily elect PACE coverage as described in Division II of 441—Chapter 88.
- e. Persons enrolled in the health insurance premium payment program (HIPP) pursuant to 441—Chapter 75.
- f. Persons eligible only for the Medicare savings program as described in 441—Chapters 75 and 76.
- g. American Indian and Alaska Native populations who are exempt from mandatory enrollment pursuant to 42 CFR 438.50(d)(2) but who may enroll voluntarily.
- h. Persons who have a Medicaid eligibility period that is retroactive as described in 441—Chapter 76.
- i. Persons who are inmates of a public institution and ineligible for Medicaid benefits as described in 441—Chapter 75.
- j. Persons residing in the Iowa Veterans Home as described in rule 801—10.1(35D).
- k. Effective July 1, 2017, persons who are eligible only for the family planning waiver as described in 441—Chapter 75.

73.3(3) Enrollment process. The department shall notify members who must be enrolled in an MCP of enrollment and the effective date of enrollment. The department will implement an enrollment process in accordance with federal funding requirements, including 42 CFR 438 as amended to July 19, 2022.

a. *General.* Members may receive MCP choice counseling from the enrollment broker. The enrollment broker will provide information about individual MCP benefit structures, services and network providers, as well as information about other Medicaid programs as requested by the Medicaid member to assist the member in making an informed selection.

b. *Passive assignment.* Effective no earlier than the first day of the month of the member's application to Medicaid, the member shall be assigned to an MCP using the department's passive enrollment process and offered the opportunity to choose from the available MCPs within a time frame specified in the passive assignment letter.

c. *Request to change enrollment.* An enrollee may, within 90 days of initial enrollment, request to change enrollment from one MCP and enroll in another MCP. The request may be made on a form designated by the department, in writing, or by telephone call to the enrollment broker's toll-free member telephone line. Enrollment changes are effective no later than the first day of the second month beginning after the date on which the enrollment broker receives the enrollee's written or verbal request.

d. *Ongoing enrollment.* Enrollees shall remain enrolled with the chosen MCP for a total of 12 months.

e. *Enrollment cycle.* Prior to the end of the enrollee's annual enrollment period, the enrollee shall be notified of the option to maintain enrollment with the current MCP or to enroll with a different MCP.

73.3(4) Benefit reimbursement prior to enrollment.

a. Prior to the effective date of MCP enrollment, except as provided in paragraph 73.3(4) “b,” the department shall reimburse providers for covered program benefits pursuant to 441—Chapters 74 to 91, as applicable for eligible members.

b. The MCP shall be responsible for covering newly retroactive Medicaid eligibility periods prior to the effective date of enrollment for babies born to Medicaid-enrolled women who are retroactively eligible to the month of birth.

441—73.4(249A) Disenrollment process.

73.4(1) *Enrollee-requested disenrollment.* An enrollee may request disenrollment with an MCP as follows:

a. During the first 90 days following the date of the enrollee’s initial enrollment with the MCP, the enrollee may request disenrollment, for any reason, in writing or by a telephone call to the enrollment broker’s toll-free member telephone line.

b. After the 90 days following the date of the enrollee’s enrollment with the MCP, when an enrollee is requesting disenrollment due to good cause, the enrollee member shall first make a verbal or written filing of the issue through the MCP’s grievance system. If the member does not experience resolution, the MCP shall direct the member to the enrollment broker. The enrolled member may request disenrollment in writing or by a telephone call to the enrollment broker’s toll-free member telephone line and must request a good-cause change for enrollment. Good-cause changes include the following:

(1) The MCP does not, because of moral or religious objections, cover the service the member seeks.

(2) The member needs related services to be performed at the same time, not all related services are available within the network, and the member’s primary care provider or another provider determines that receiving the services separately would subject the member to unnecessary risk.

(3) Other reasons, including but not limited to poor quality of care, lack of access to services covered under the contract, lack of access to providers experienced in dealing with the member’s health or dental care needs, or eligibility and choice to participate in a program not available in managed care (for example, PACE).

c. The final decision for disenrollment shall be determined by the department.

73.4(2) *Disenrollment by department.* Disenrollment will occur when:

a. The contract between the department and the MCP is terminated.

b. The enrollee becomes ineligible for Medicaid, the hawki program, the Iowa health and wellness plan, or the dental wellness plan. If the enrollee becomes ineligible and is later reinstated to these programs, enrollment in the MCP will also be reinstated.

c. The enrollee transfers to an eligibility group excluded from managed care plan enrollment. “Enrollee” is defined in rule 441—73.1(249A).

d. The department has determined that participation in the HIPP program as described in 441—Chapter 75 is more cost-effective than enrollment in managed health care.

e. The enrollee dies.

f. The enrollee has changed residence to another state.

73.4(3) *Managed care plan-requested disenrollment.* An MCP shall not disenroll an enrollee or encourage an enrollee to disenroll for any reason, including the enrollee’s health or dental care needs or change in health or dental care status or because of the enrollee’s utilization of medical services, diminished capacity, or uncooperative or disruptive behavior resulting from the enrollee’s special needs (except when the enrollee’s continued enrollment seriously impairs the MCP’s ability to furnish services to either this particular enrollee or other enrollees). In instances where the exception applies, the MCP shall provide evidence to the department that continued enrollment of an enrollee seriously impairs the MCP’s ability to furnish services to either this particular enrollee or other enrollees. The MCP shall have methods by which the department is assured that disenrollment is not requested for another reason.

73.4(4) *Disenrollment effective date.*

a. The effective date of a department-approved disenrollment shall be no later than the first day of the second calendar month beginning after the month in which:

- (1) The enrollee requests disenrollment pursuant to subrule 73.4(1);
- (2) The department notifies the enrollee and MCP of disenrollment pursuant to subrule 73.4(2); or
- (3) The MCP requests disenrollment pursuant to subrule 73.4(3).

b. The enrollee shall remain enrolled in the MCP and the MCP will be responsible for services covered under the contract until the effective date of disenrollment unless the enrollee is in an inpatient setting at the time of disenrollment. If the enrollee is in an inpatient setting at the time of disenrollment, the managed care organization shall be responsible for the inpatient services for 60 days or until the enrollee is discharged.

441—73.5(249A) MCP covered services.

73.5(1) Required services—MCOs. A managed care organization shall provide:

a. For enrollees other than Iowa health and wellness plan enrollees and hawki program enrollees, services as set forth in 441—Chapters 78, 81, 82, 83, 84, 85, and 87, with the exception of the following:

- (1) Area education agency services.
- (2) Dental services not provided in an outpatient hospital setting.
- (3) Infant and toddler program services.
- (4) Local education agency services.
- (5) State of Iowa Veterans Home services.
- (6) Money Follows the Person Grant-funded services.

b. Services as set forth in 441—Chapter 74 for Iowa health and wellness plan enrollees.

c. Services as set forth in 441—Chapter 86 for hawki program enrollees.

73.5(2) Community-based case management service. The managed care organization is required to provide services that meet requirements specified in the contract and in 441—Chapter 90.

73.5(3) Health home services. The managed care organization is required to provide services that meet the requirements specified in 441—Chapter 78 and as specified in the contract.

73.5(4) Value-added services. A managed care organization may develop optional services and supports to address the needs of enrollees. These services and supports shall be implemented only after approval by the department.

73.5(5) Required services—PAHPs. A PAHP shall provide services to enrollees under the contract with the state agency and on the bases of prepaid capitation payments or other payment arrangements that do not use state plan payment rates. PAHPs shall provide:

a. For enrollees other than Iowa health and wellness plan enrollees and hawki program enrollees, services as set forth in 441—Chapter 73, 74, 78, and 88 with the exception of the following:

- (1) Area education agency services.
- (2) Inpatient hospital or institutional services.
- (3) Advance directive requirements in dental nonclinical services such as transportation.
- (4) Long-term care (skilled nursing facilities, intermediate care facilities, residential care facilities, state resource centers, or intermediate care facilities for persons with an intellectual disability).
- (5) Inpatient psychiatric care provided at the state-administered mental health institutes.
- (6) Services provided at specialized adolescent psychiatric facilities.
- (7) Day treatment and partial hospitalization services for persons aged 20 or under.
- (8) Enhanced services provided to certain eligible recipients.

b. Services as set forth in 441—Chapter 74 for Iowa health and wellness plan enrollees.

c. Services as set forth in 441—Chapter 86 for hawki program enrollees.

441—73.6(249A) Amount, duration and scope of services.

73.6(1) The MCP shall provide, at a minimum, all benefits and services deemed medically necessary that are covered under the contract with the department. In accordance with federal funding requirements, including 42 CFR 438.210(a)(3) as amended to July 19, 2022, the MCP shall furnish covered services in an amount, duration and scope reasonably expected to achieve the purpose for which the services are furnished. The MCP shall not arbitrarily deny or reduce the amount, duration and scope of a required service solely because of diagnosis, type of illness, or condition of the enrollee.

With the exception of court-ordered services, the managed care organization shall require as a condition of payment managed care organization approval of admissions to a nursing facility, an intermediate care facility for persons with an intellectual disability, a psychiatric medical institution for children, and a mental health institute. Managed care organizations shall also require managed care organization approval of out-of-state placements as a condition of payment.

73.6(2) The MCP may place appropriate limits on services on the basis of medical necessity criteria for the purpose of utilization management, provided the services can reasonably be expected to achieve their purpose in accordance with the contract. The MCP shall not:

a. Avoid costs for services covered in the contract by referring members to publicly supported health or dental care resources.

b. Deny reimbursement of covered services based on the presence of a preexisting condition.

73.6(3) The MCP shall allow each enrollee to choose a health or dental professional, to the extent possible and appropriate, within the MCP's provider network. The MCP shall ensure compliance with the Americans with Disabilities Act (ADA) in the delivery and approval of all services.

441—73.7(249A) Emergency services.

73.7(1) Emergency services shall be available 24 hours a day, seven days a week.

73.7(2) In accordance with federal funding requirements, including 42 CFR 438.114 as amended to July 19, 2022, the MCP shall:

a. Cover emergency services without the need for prior authorization and shall not limit reimbursement to network providers.

b. Cover and pay for emergency services regardless of whether the provider that furnishes the services is enrolled with Iowa Medicaid or has a contract with the MCP.

c. Pay noncontracted providers for emergency services the amount that would have been paid if the service had been provided under the state's fee-for-service Medicaid program.

d. Cover the medical screening examination, as described by EMTALA, provided to a member who presents to an emergency department with an emergency medical condition. This requirement applies to managed care organizations only.

73.7(3) The MCP shall not deny payment for:

a. Treatment obtained when an enrollee has an emergency medical condition.

b. Treatment obtained when a representative of the MCP instructs the enrollee to seek emergency medical services.

441—73.8(249A) Access to service.

73.8(1) The MCP shall ensure enrollees have access to services as specified in the contract. In general, the MCP shall provide available, accessible, and adequate numbers of institutional facilities, service locations, and service sites and professional, allied, and paramedical personnel for the provision of covered services, including all emergency services, on a 24-hours-a-day, seven-days-a-week basis. At a minimum, access to services shall comply with the standards described in the contract. For areas of the state where provider availability is insufficient to meet these standards, for example, in health or dental professional shortage areas and medically underserved areas, the access standards shall meet the usual and customary standards for the community. Exceptions to the requirements contained in this rule shall be justified and documented to the state on the basis of community standards. All other services not specified in this rule shall meet the usual and customary standards for the community.

73.8(2) Choice of providers. An enrollee shall use the MCP's provider network unless the MCP has authorized a referral to a nonparticipating provider for provision of a service or treatment plan or as specified for provision of emergency services set forth in rule 441—73.7(249A). In accordance with federal funding requirements, including 42 CFR 431.51(b)(2) as amended to July 19, 2022, the managed care organization shall allow enrollees freedom of choice of providers of any department-enrolled family planning service provider including those providers who are not in the MCP network.

73.8(3) Continuity of care. The MCP shall have policies and procedures that provide for the continuity of care of treatment to ensure that a new enrollee's existing services are honored as required in the contract.

73.8(4) Adequate service referral support and after-hours call-in coverage. The MCP shall ensure enrollee access to service information and medical coverage 24 hours a day, 7 days a week, 365 days a year.

a. Member helpline. The MCP shall maintain a dedicated toll-free member services helpline as established in the contract to handle a variety of member inquiries and to provide warm transfer of enrollees to outside entities, such as provider offices, and to internal MCP departments, such as care coordinators.

b. Nurse call line. The managed care organization shall operate a toll-free nurse call line that provides nurse triage telephone services for members to receive medical advice 24 hours a day, seven days a week from trained medical professionals.

73.8(5) An enrollee's primary care provider shall be responsible for providing preventative and primary health or dental care to the enrollee; for initiating referrals for specialist care, where appropriate; and for maintaining the continuity of patient care. Primary care providers may be physicians, advanced registered nurse practitioners, or physician assistants, licensed and practicing in accordance with state law.

441—73.9(249A) Incident reporting.

73.9(1) The managed care organization shall develop and implement a critical incident reporting and management system for participating providers in accordance with the department requirements for reporting incidents for Section 1915(c) HCBS waivers, for the Section 1915(i) habilitation program, and as required for licensure of programs through the department of inspections and appeals.

73.9(2) The managed care organization shall develop and implement policies and procedures, subject to department review and approval, to:

- a.* Address and respond to incidents;
- b.* Report incidents to the appropriate entities in accordance with required time frames; and
- c.* Track and analyze incidents.

441—73.10(249A) Discharge planning. The managed care organization shall establish policies and procedures, subject to approval by the department, that protect an individual from involuntary discharge that may lead to placement in an inappropriate or more restrictive setting. The managed care organization shall facilitate a seamless transition whenever a member transitions between facilities or residences.

441—73.11(249A) Level of care assessment and annual reviews. The managed care organization shall establish policies and procedures to ensure the implementation of level of care and needs-based eligibility assessments and reassessments as required in the contract and consistent with the department's level of care and needs-based eligibility assessment process and the requirements provided in 441—Chapters 75, 78, 81, 82, 83, and 85. Waiver level of care determinations must be consistent with those made for the appropriate institutional level of care under the state plan.

73.11(1) Initial level of care assessment. Managed care organizations are responsible for conducting level of care and needs-based eligibility assessments for a current enrollee who requires a level of care or a needs-based eligibility assessment. The managed care organization shall perform the assessment using department-approved assessment tools. The results of the assessment shall be submitted to the Iowa Medicaid medical services unit for determination of level of care or needs-based eligibility.

73.11(2) Annual continued stay reviews, continued care reviews and redeterminations. When an enrollee requires a continued stay review, a continued care review or a redetermination, the managed care organization shall use department-approved assessment tools. If the managed care organization becomes aware that the enrollee's functional or medical status has changed in a way that may affect the enrollee's level of care or needs-based eligibility, the managed care organization shall submit the

assessment findings to the Iowa Medicaid medical services unit for determination of level of care or needs-based eligibility.

73.11(3) At any time, if the managed care organization becomes aware that the enrollee's functional or medical status has changed in a way that may affect level of care or needs-based eligibility, the managed care organization shall conduct a level of care or needs-based assessment using the department-approved tools and submit the assessment to the Iowa Medicaid medical services unit for determination of level of care or needs-based eligibility.

441—73.12(249A) Appeal of MCP actions. The MCPs shall have written appeal policies and procedures for an enrollee, or an enrollee's authorized representative, to appeal an MCP action. The policies must address contractual requirements and federal funding requirements, including 42 CFR 438, Subpart F, as amended to July 19, 2022.

73.12(1) MCP appealable actions. MCP actions that may be appealed include:

- a. Denial or limited authorization of a requested service, including the type or level of service.
- b. Reduction, suspension, or termination of a previously authorized service.
- c. Denial, in whole or in part, of payment of service.
- d. Failure to provide services in a timely manner as described by the department.
- e. Failure to act within the required time frames set forth in federal funding requirements, including 42 CFR 438.408(b) as amended July 19, 2022.
- f. For a resident of a rural area who has only one appropriate provider of a needed service, the denial of an enrollee's request to exercise the enrollee's right to obtain services outside of the MCO's network.

g. The denial of an enrollee's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other enrollee financial liabilities.

73.12(2) Appeal process. The MCP appeal process shall be approved by the department and shall:

- a. Allow for the appeal request to be submitted in writing or verbally.
- b. Require acknowledgment of the receipt of a request for an appeal within three working days.
- c. Allow for participation by the enrollee and the provider.
- d. Provide for resolution of nonexpedited appeals to be concluded within 30 calendar days of receipt of the request unless an extension is requested.
- e. Provide for resolution of expedited appeals where the standard time period could seriously jeopardize the member's health or ability to maintain or regain maximum function to be within 72 hours of receipt of the notice pursuant to federal funding requirements, including 42 CFR 438.402 as amended to July 19, 2022.

f. Ensure that the review will be made by qualified professionals who were not involved with the original action.

g. Ensure issuance of a notice of decision for each appeal. These notices shall contain the member's appeal rights with the department and shall contain an adequate explanation of the action taken and the reason for the decision.

441—73.13(249A) Appeal to department. If the enrollee is not satisfied with the final decision rendered by the MCP through the managed care plan's appeal process, the enrollee may appeal an action in accordance with the appeal process available to all persons receiving Medicaid-funded services as set forth in 441—Chapter 7.

441—73.14(249A) Continuation of benefits. The MCP shall be required to continue the member's benefits during the appeal in accordance with federal funding requirements, including 42 CFR 438.420 as amended to July 19, 2022.

73.14(1) If the benefits are continued or reinstated while the appeal is pending, the benefits must be continued until one of the following occurs:

- a. The enrollee withdraws the appeal request;

b. Ten days pass after the MCP mailed the notice providing the resolution of the appeal against the enrollee, unless the enrollee, within the ten-day time frame, has requested a state fair hearing with continuation of benefits until a state fair hearing decision is reached; or

c. The time period or service limits of a previously authorized service have been met.

73.14(2) If the final resolution of the appeal is adverse to the enrollee, that is, it upholds the MCP's action, the MCP may recover the cost of the services furnished to the enrollee while the appeal is pending, to the extent that services were furnished solely because of the requirements to maintain benefits during the appeal.

73.14(3) If the MCP or state fair hearing officer reverses a decision to deny, limit, or delay services that were not furnished while the appeal was pending, the MCP must authorize and provide the disputed services promptly and as expeditiously as the member's health or dental condition requires. If the MCP or the state fair hearing officer reverses a decision to deny authorization of services and the enrollee received the disputed services while the appeal was pending, the MCP must pay for these services.

441—73.15(249A) Grievances. The MCP shall have policies and procedures for review of any nonclinical incidents, nonclinical complaints, or nonclinical concerns. Grievances may be communicated verbally or in writing and require that the review be conducted by someone other than the person or persons involved in the grievance. All policies related to the review of grievances shall be approved by the department prior to implementation.

441—73.16(249A) Written record. All MCP enrollee appeals and grievances shall be logged and reported to the department. The log shall include the status and resolution of all appeals and grievances.

441—73.17(249A) Information concerning procedures relating to the review of MCP decisions and actions. The MCP's written procedures for the review of MCP's decisions and actions shall be provided to each new enrollee, to participating providers in a provider manual, and to nonparticipating providers upon request.

441—73.18(249A) Records and reports.

73.18(1) Records system. The MCPs shall document and maintain clinical and fiscal records in accordance with federal and state requirements, including 441—Chapter 79 and 42 CFR 456 as amended to July 19, 2022, throughout the course of the contract. The records system shall:

a. Identify transactions with or on behalf of each enrollee by the state identification number assigned to the enrollee by the department.

b. Provide a rationale for, and documentation of, decisions made by the MCP based upon medical necessity.

c. Permit effective professional review for medical audit processes.

d. Facilitate an adequate system for monitoring treatment reimbursed by the managed care organization including follow up of the implementation of discharge plans and referral to other providers.

73.18(2) Content of individual treatment record. The MCP shall ensure that participating providers maintain an adequate record-keeping system that includes a complete medical, dental, or service record for each enrolled member including documentation of all services provided to each enrollee in compliance with the contract and provisions of 441—Chapter 79 and pursuant to federal funding requirements, including 42 CFR 456 as amended to July 19, 2022. Beginning January 1, 2021, the managed care organization shall require use of an electronic visit verification system for personal care services.

73.18(3) Confidentiality of health care, mental health care, and substance abuse information. The MCP shall protect and maintain the confidentiality of health care, mental health care, dental care and substance abuse information by implementing policies for staff and through contract terms with participating providers. The policies must comply with applicable state and federal laws.

441—73.19(249A) Audits. The department or its designee and the U.S. Department of Health and Human Services (HHS) may evaluate through inspections or other means the quality, appropriateness, and timeliness of services performed by the MCP. The department or HHS may audit and inspect any records of an MCP, or the subcontractor of the MCP, that pertain to services performed and the determination of amounts paid under the contract. These records will be made available at times, at places, and in a manner as authorized representatives of the department, its designee or HHS may request.

441—73.20(249A) Marketing. MCP marketing activities and materials shall comply with applicable laws and regulations regarding marketing by the MCP and contract terms. The department shall approve all marketing materials, which must comply with federal funding requirements, including 42 CFR 438.10 and 42 CFR 438.104 as amended to July 19, 2022.

441—73.21(249A) Enrollee education.

73.21(1) Use of services. The MCP shall provide written information to all enrollees on the use of services the MCP is responsible to arrange, monitor, and reimburse. Information must include the array of services covered; how to access covered services; the providers participating; an explanation of the process for the review of MCP decisions and actions, including the enrollee's right to a fair hearing under 441—Chapter 7 and how to access that fair hearing process; provision of after-hours and emergency care; procedures for notifying enrollees of a change in benefits or office sites; how to request a change in providers; a statement of consumer rights and responsibilities; out-of-area use of service information; availability of toll-free telephone information and crisis assistance; and the appropriate use of the referral system.

73.21(2) Outreach to members with special needs. The MCP shall provide enhanced outreach to members with special needs including, but not limited to, persons with a psychiatric disability, an intellectual disability or other cognitive impairments; illiterate persons; non-English-speaking persons; and persons with visual impairments or who are deaf or hard of hearing.

73.21(3) Patient rights and responsibilities. The MCP shall have in effect a written statement of patient rights and responsibilities that is available upon request as well as issued to all new enrollees. This statement shall be part of the packet of enrollment information provided to all new enrollees.

441—73.22(249A) Payment to the MCP.

73.22(1) Capitation rate. In consideration for all services rendered by an MCP under a contract with the department, the MCP will receive a payment each month for each enrolled member. The monthly reimbursement may be reduced by amounts withheld for pay-for-performance components of the contract. The withheld amounts will be distributed based on the terms described in the managed care contract. Additionally, the department will make an allowance for obligations resulting from Section 9010 of the Patient Protection and Affordable Care Act, the health insurance providers fee. This capitation rate, inclusive of the amounts withheld and the health insurance providers fee, represents the total obligation of the department with respect to the costs of medical care and services provided to enrolled members under the contract except as otherwise designated in the contract rate. Pay-for-performance terms will allow for incentive reimbursement if the MCP meets metrics described in the MCP contract.

73.22(2) Determination of rate. The actuarially sound capitation rate will be determined according to the terms of federal funding requirements, including 42 CFR 438.6 as amended to July 19, 2022, Actuarial Standards of Practice 49, and other related CMS regulations and generally accepted actuarial principles and practices.

73.22(3) Third-party liability. If an enrolled member has health insurance coverage or a responsible party other than the Medicaid program available for payment of medical or dental expenses, it is the right and responsibility of MCP to investigate these third-party resources and attempt to obtain payment.

a. The MCP shall have a time limit to attempt to collect from third-party resources. The time limit shall be determined by the department.

- b. The MCP shall retain all funds collected from third-party resources during the time limit.
- c. A complete record of all third-party collections must be maintained and made available to the department on request.
- d. In the event that the MCP no longer contracts with the department, the department has the right to seek recovery of any third-party collections not collected by the time the contract ends and retain the funds. This includes but is not limited to subrogation cases.
- e. The department has the right to retain all funds collected from third-party resources after the MCP time limit.

73.22(4) Medical loss ratio. The MCP shall report the experienced medical loss ratio for each contract rate period. In the event that the medical loss ratio falls below the department-designated target, the department shall recoup excess capitation paid to the MCP.

441—73.23(249A) Claims payment by the MCP.

73.23(1) The managed care organizations shall pay or deny:

- a. Ninety percent of all clean claims within 30 calendar days of receipt,
- b. Ninety-nine point five percent of all clean claims within 90 calendar days of receipt, and
- c. Ninety-five percent of all claims within 45 calendar days of receipt.

73.23(2) The PAHP shall pay or deny:

- a. Ninety percent of all clean claims within 14 calendar days of receipt,
- b. Ninety-nine percent of all clean claims within 90 calendar days of receipt, and
- c. Ninety-five percent of all claims within 21 calendar days of receipt.

73.23(3) Managed care limits on payment responsibility for services.

- a. The MCP is not required to reimburse providers for the provision of services that do not meet the criteria of medical necessity.
- b. The MCP has the right to require prior authorization of covered services and to deny reimbursement to providers that do not comply with such requirements.
- c. Payment responsibilities for emergency room services are as provided in rule 441—73.7(249A).

73.23(4) Payment to nonparticipating providers. In reimbursing nonparticipating providers, the managed care organization is obligated to pay 80 percent of the payment to participating providers.

441—73.24(249A) Quality assurance. The MCP shall have in effect an internal quality assurance and performance improvement system that meets the requirements of any or all applicable state and federal laws.

441—73.25(249A) Certifications and program integrity. The MCP shall develop and implement policies, procedures and a mandatory compliance plan to ensure compliance with the contract requirements for certification, program integrity and prohibited affiliations. The MCP shall cooperate and collaborate with the department on all program integrity activities. The MCP shall comply with state and federal laws pertaining to these requirements, including 42 CFR 438.608 and 42 CFR 455 as amended to July 19, 2022.

These rules are intended to implement Iowa Code section 249A.4.



Iowa Department of Human Services
Information on Proposed Rules

Table with 3 columns: Name of Program Specialist (Joanne Bush), Telephone Number (515-322-7982), Email Address (jbush@dhs.state.ia.us)

1. Give a brief purpose and summary of the rulemaking:

The following changes and updates have been made to the proposed draft:

- 1. 441-73.1(249A) Definitions – update definitions to include the term PAHP and MCP:
- “Managed care plan” or “MCP” refers to managed care organizations (MCOs) and prepaid ambulatory health plans (PAHPs).
- Clarification to include PAHP (Prepaid ambulatory Health Plan) for dental managed care provisions.
- Correct the spelling for Hawki program
2. 441—73.2(249A) language clean up, add correct terminology, confirm federal citations, update to align with federal and contract provisions:
- Use the term MCP when the provision applies to MCOs and PAHPs. MCO when the provision applies to MCOs only. PAHP when the provision applies to PAHP only.
- Add ‘dental’ when a provision applies to both medical and dental manage care provisions
- Confirm Federal citations and references.
3. 441—73.3(249A) Enrollment, 441—73.4(249A) Disenrollment process, 441—73.5(249A) Covered services, 441—73.6(249A) Amount, duration and scope of services, 441—73.7(249A) Emergency services, 441—73.8(249A) Access to service, 441—73.12(249A) Appeal of managed care, 441—73.13(249A) Appeal to department, 441—73.14(249A) Continuation of benefits, 441—73.15(249A) Grievances, 441—73.17(249A) Information concerning procedures relating to the review of managed care plan decisions and actions, 441—73.18(249A) Records and reports, 441—73.19(249A) Audits, 441—73.20(249A) Marketing, 441—73.21(249A) Enrollee education, 441—73.22(249A) Payment to the managed care plan, 441—73.23(249A) Claims payment by the managed care plan, 441—73.24(249A) Quality assurance, 441—73.25(249A) Certifications and program integrity, language clean up, add correct terminology, confirm federal citations, update to align with federal and contract requirements:
- Use the term Dental Wellness Plan when the provision applies to PAHP.
- Correct the spelling for Hawki program
- Confirm Federal and State citations and references.
- Update language to comply with federal regulations (e.g., timely payment – claims processing)
- Use the term MCP when the provision applies to MCOs and PAHPs
- Add ‘dental’ when a provision applies to both medical and dental manage care provisions

2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):

249A

3. Describe who this rulemaking will positively or adversely impact.

Adding Prepaid Ambulatory Health Plan (PAHP - Dental) to Chapter 73.

Defining Manage Care Plan (MCP) and clarification to include Managed Care Organization and PAHP.

4. Does this rule contain a waiver provision? If not, why?

No, because under 441 rule 1.8 we have a separate rule to address individual waiver requests.

5. What are the likely areas of public comment?

None, because this rule review is just updating definitions, confirming federal and state provision, and incorporating PAHPs under Chapter 73.

6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)

No impact on jobs.



Administrative Rule Fiscal Impact Statement

Date: July 20, 2022

Agency: Human Services

IAC citation: 441 IAC 73

Agency contact: Joanne Bush

Summary of the rule:

Rules are updated to add Prepaid Ambulatory Health Plan (PAHP - Dental) to Chapter 73. and to define Manage Care Plan (MCP) to include Managed Care Organization and PAHP.

Fill in this box if the impact meets these criteria:

- No fiscal impact to the state.
- Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
- Fiscal impact cannot be determined.

Brief explanation:

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

The purpose of this rule is to update Chapter 73 definitions, update terminology to include Managed care plan or MCP which refers to managed care organizations (MCO's) and prepaid ambulatory health plans (PAHP's), include prepaid ambulatory health plans PAHP for dental managed care provisions (revised from Chp. 88 to be included in this chapter), and makes technical corrections. This rule also uses the term Dental Wellness Plan when the provision applies to PAHP, and updates language to comply with state and federal regulations. This rule reflects current policy; there is no expected fiscal impact. Any expenditures will be absorbed within the Medicaid appropriation.

Fill in the form below if the impact does not fit the criteria above:

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY 23)</u>	<u>Year 2 (FY 24)</u>
Revenue by each source:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL REVENUE	<u>0.00</u>	<u>0.00</u>
Expenditures:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL EXPENDITURES	<u>0.00</u>	<u>0.00</u>
NET IMPACT	<u>0.00</u>	<u>0.00</u>

This rule is required by state law or federal mandate.

Please identify the state or federal law:

Identify provided change fiscal persons:

Section 249A

Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

Funding has not been provided for the rule.

Please explain how the agency will pay for the rule change:

There is no fiscal impact.

Fiscal impact to persons affected by the rule:

There is no fiscal impact expected to persons affected by the rule.

Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):

There is no fiscal impact to counties or other local governments.

Agency representative preparing estimate: Soraya Miller

JH 8/1/2022

Telephone number:

515-281-6017

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

**Proposing rule making related to five-year rules review
and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 108, “Licensing and Regulation of Child-Placing Agencies,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 237.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 237.3.

Purpose and Summary

The rules in Chapter 108 were reviewed as part of the Department’s five-year rules review. This proposed rule making establishes licensing procedures for all child-placing agencies.

The rules review resulted in the following proposed changes:

- Remove outdated form names.
- Add form numbers for documents that must be submitted by a requested entity when submitting a request for a record check evaluation.
- Clarify that record check evaluations for child-placing agency staff will include a review of an individual’s founded dependent adult abuse report in addition to the individual’s criminal conviction record or a founded child abuse report.
- Add that the Department will consider the likelihood that the person will commit a crime or founded abuse again when conducting a record check evaluation in accordance with the Iowa Code.
- Provide cross-references to rules regarding notices and appeal rights.
- Modify qualifications for caseworkers.
- Clarify when foster parents shall obtain child abuse mandatory reporter training.
- Add a requirement that child-placing agencies shall provide hygiene items for youth.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 31, 2023. Comments should be directed to:

Nancy Freudenberg
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule ~~441—108.1(238)~~, definition of “Child,” as follows:

“Child” ~~shall mean~~ means the same as defined by Iowa Code section 234.1.

ITEM 2. Amend subrule 108.2(2) as follows:

~~108.2(2) Application. An agency or person applying for a license shall complete Form 470-0723, Application for License or Certificate of Approval. The application shall be completed and signed by the administrator or the appropriate officer and submitted to the department.~~

a. to c. No change.

ITEM 3. Amend subrule 108.2(5) as follows:

~~108.2(5) Certificate of license. The department shall issue or renew Form 470-3623, Certificate of License, every three years, without cost, to any child-placing agency which meets the minimum requirements applicable to child-placing agencies as defined by Iowa Code chapter 238 and this chapter. The license shall be posted in a conspicuous place on the licensed premises.~~

ITEM 4. Amend subrules 108.2(10) and 108.2(11) as follows:

~~108.2(10) Method and content of notice. The notice of denial, revocation, or suspension shall be sent by restricted certified mail and shall include the following: pursuant to 441—Chapter 16.~~

~~*a.*—A specific description of the condition requiring the suspension, denial or revocation.~~

~~*b.*—The specific laws or rules violated.~~

~~*c.*—The effective date of denial, revocation or suspension.~~

~~108.2(11) Right to appeal. Any agency which disagrees with the department’s licensing decision may appeal to the department in accordance with 441—Chapter 7. The appeal shall be filed within 30 days of receipt on or before the thirtieth day following the date of notice of the licensing decision.~~

ITEM 5. Amend subrule 108.4(1) as follows:

~~108.4(1) Qualifications for a ll staff. A c hild-placing a gency e mployee o r v olunteer s hall be emotionally stable and have the experience and education to perform the duties assigned. The agency shall not employ any person or give any person direct volunteer responsibility for a child or access to a child when the child is alone if that person has been convicted of a crime involving the mistreatment or exploitation of a child or dependent adult. The agency shall not employ any person or give any person direct volunteer responsibility for a child or access to a child when the child is alone if that person has a record of a criminal conviction or founded child or dependent adult abuse report unless the department~~

has evaluated the crime or abuse and determined that the crime or abuse does not merit prohibition of volunteering or employment. If the child-placing agency is out of state, the agency shall complete that state's child or dependent adult abuse record check and a criminal record check.

a. If a record of criminal conviction or founded child or dependent adult abuse exists, the person shall be offered the opportunity to complete and submit Iowa's Record Check Evaluation form Form 470-2310.

b. In its evaluation, the department shall consider:

(1) to (3) No change.

(4) The degree of rehabilitation; and

(5) The likelihood that the person will commit the crime or founded abuse again; and

(6) The number of crimes or founded abuses committed by the person involved.

c. The agency shall maintain the following information with respect to each staff person:

(1) No change.

(2) A written, signed and dated statement furnished by the staff person which discloses any founded reports of child or dependent adult abuse on the person that may exist prior to the staff person's providing any care or services to or on behalf of the facility.

(3) Documentation that a child or dependent adult abuse record check of the staff person has been completed with the Iowa central abuse registry for any founded reports of child or dependent adult abuse prior to the staff person's providing any care or services directly or indirectly to children under the care of the agency. A copy of the department's evaluation of this child or dependent adult abuse record check shall be kept in the staff record.

ITEM 6. Amend paragraph **108.4(4)“c”** as follows:

c. Graduation from an accredited four-year college or university with a bachelor's degree in a human service field related to social work, psychology, or a related behavioral science or in education and the equivalent of ~~two years~~ one year of full-time experience in social work or experience in the delivery of human services in a public or private agency.

ITEM 7. Amend paragraph **108.6(5)“d”** as follows:

d. Record of founded child or dependent adult abuse reports and the department's evaluation of same.

ITEM 8. Rescind paragraph **108.7(1)“e.”**

ITEM 9. Amend paragraph **108.7(12)“b”** as follows:

b. A child shall have a physical examination at least annually. This shall be performed by a licensed physician, ~~physician's~~ physician assistant or licensed nurse practitioner.

ITEM 10. Amend paragraph **108.8(1)“a”** as follows:

a. Availability of applications. The agency may provide Form 470-0689, ~~Foster Family Home License Application~~, to anyone requesting to be licensed.

ITEM 11. Amend subparagraph **108.8(1)“c”(13)** as follows:

(13) Record checks. The licensed child-placing agency shall submit record checks for each applicant and for anyone who is 14 years of age or older living in the home of the applicant to determine whether they have any founded child or dependent adult abuse reports or criminal convictions or have been placed on the sex offender registry. The licensed child-placing agency shall use Form 470-0643, ~~Request for Child Abuse Information~~, and Form 595-1396, ~~DHS Criminal History Record Check, Form B~~, for this purpose. ~~Each person subject to record checks shall also be fingerprinted for a national criminal history check.~~ The department's contractor for the recruitment and retention of resource families shall assist applicants in completing required record checks, including fingerprinting. Any criminal or abuse records discovered shall be evaluated according to the procedures in rule 441—113.13(237).

ITEM 12. Amend subrule 108.8(6) as follows:

108.8(6) Foster family training. The agency shall ensure that each foster home recommended for foster family license has complied with the training requirements in rule 441—113.8(237).

~~Within six months of Prior to~~ licensure and every three years thereafter, each foster parent shall obtain mandatory reporter training relating to identification and reporting of child abuse.

ITEM 13. Rescind subparagraph **108.9(1)“a”(8)**.

ITEM 14. Amend paragraph **108.9(4)“d”** as follows:

d. Record checks. The licensed child-placing agency shall perform record checks for each applicant and for the other persons living in the home of the applicant as follows:

(1) The records of the applicants shall be checked:

1. On the Iowa central abuse registry using ~~the Request for Child Abuse Information form~~ Form 470-0643;

2. By the Iowa division of criminal investigation, using ~~the DHS Criminal History Record Check Form B 595-1396~~;

3. No change.

4. On the child or dependent adult abuse registry of any state where the applicant has lived during the five years prior to the issuance of the investigative report; and

5. No change.

(2) The records of persons aged 14 or older living in the home of the applicant shall be checked:

1. On the Iowa central abuse registry using ~~the Request for Child Abuse Information form~~ Form 470-0643;

2. By the Iowa division of criminal investigation, using ~~the DHS Criminal History Record Check Form B 595-1396~~; and

3. No change.

(3) Out-of-state child and dependent adult abuse checks and national criminal history checks may be completed on any adult in the home of the applicant if the certified adoption investigator has reason to do so.

(4) and (5) No change.

ITEM 15. Amend paragraph **108.9(4)“e”** as follows:

e. Evaluation of record. If the applicant or anyone living in the home has record of founded child or dependent adult abuse, a criminal conviction, or placement on the sex offender registry, the applicant shall not be approved to adopt unless an evaluation determines that the abuse or criminal conviction does not warrant prohibition of approval.

(1) No change.

(2) The person with the criminal conviction or founded child or dependent adult abuse report shall complete and return ~~the Record Check Evaluation form~~ Form 470-2310 within ~~40~~ ten calendar days of the date on the form to be used to assist in the evaluation. Failure of the person to complete and return the form within the specified time frame may result in a written denial of approval for adoption.

(3) If the applicant, or anyone living in the home of the applicant, has been convicted of a simple misdemeanor or a serious misdemeanor that occurred five or more years prior to application, the evaluation and decision may be made by the ~~licensed child-placing agency~~ department's centralized service area. The ~~licensed child-placing agency~~ department's centralized service area shall notify the applicant of the results of the evaluation.

(4) If the applicant, or any person living in the home of the applicant, has a founded child or dependent adult abuse report, has been convicted of an aggravated misdemeanor or felony at any time, or has been convicted of a simple or serious misdemeanor that occurred within five years prior to application, the licensed child-placing agency shall initially conduct the evaluation.

1. If the licensed child-placing agency determines that the abuse or crime does warrant prohibition of approval, the licensed child-placing agency shall notify the applicant of the results of the evaluation in writing. The notice shall contain information on appeal rights pursuant to 441—Chapter 7.

2. If the child-placing agency determines that the applicant should be approved despite the abuse or criminal conviction, the agency shall provide copies of ~~the Record Check Evaluation form~~ Form 470-2310 and the written notice to the applicant to the Administrator, Division of Adult, Children and Family Services, Department of Human Services, 1305 East Walnut Street, Des Moines, Iowa

50319-0114. Within 30 days, the administrator shall determine whether the abuse or crime merits prohibition of approval and shall notify the child-placing agency in writing of that decision.

ITEM 16. Amend subparagraph **108.9(4)“g”(4)** as follows:

(4) The applicant or any person residing in the home has a record of founded child or dependent adult abuse, unless an evaluation of the founded child or dependent adult abuse has been made by the department which concluded that the founded child or dependent adult abuse does not merit prohibition of approval.

ITEM 17. Amend subparagraph **108.9(4)“h”(1)** as follows:

(1) The child and dependent adult abuse and criminal history record checks, except for the national criminal history check, shall be repeated. Any abuses or convictions of crimes since the last record check shall be evaluated using the same process.

ITEM 18. Amend subparagraph **108.9(4)“i”(2)** as follows:

(2) When a person aged 14 or older moves into the home, the agency shall perform checks on the Iowa central abuse registry, by the division of criminal investigation, and on the sex offender registry. The record check evaluation process shall be completed if the person has a criminal conviction or founded child or dependent adult abuse report or is on the sex offender registry.

ITEM 19. Amend paragraph **108.9(6)“a”** as follows:

a. International adoptions preplacement investigation. Preplacement investigations for the purpose of international adoptions shall meet the requirements of the United States ~~Citizen~~ Citizenship and Immigration Service Services.

ITEM 20. Amend subrule 108.9(9) as follows:

108.9(9) Right to appeal. An adoptive applicant or an adoptive family may appeal an adverse decision made by a licensed agency pursuant to 441—Chapter 7. The appeal shall be filed with the department within 30 days of the notice of decision to the applicant or family by the licensed agency.

ITEM 21. Amend paragraph **108.10(3)“c”** as follows:

c. Supervision to assist the child in developing the needed structure to live in this setting and in locating and using other needed services. Supervision shall include guidance, oversight, and behavior monitoring.

(1) to (3) No change.

(4) The agency shall ~~provide a means for children in a scattered site setting to contact agency personnel 24 hours a day, seven days a week~~ provide a means for children in a scattered site setting to contact agency personnel 24 hours a day, seven days a week ~~personal care items for youth, and these items shall reflect the individual, cultural, racial, and ethnic needs of the youth living in the agency’s program.~~

(5) ~~The agency shall ensure that each child has access to and is receiving necessary medical care~~ provide a means for children in a scattered site setting to contact agency personnel 24 hours per day, seven days per week.

(6) The agency shall ensure that each child has access to and is receiving necessary medical care.



Iowa Department of Human Services
Information on Proposed Rules

Name of Program Specialist Nancy Swanson	Telephone Number 515-281-6379	Email Address nswanso@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:

The rules in Chapter 108 were reviewed as part of the Department's five-year rules review project. As a result, the following changes were made.

- Caseworker qualifications modified
- Clarification on foster family training timeline
- Requirement of providing hygiene items for youth added

2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):

237.3 gives the administrator of ACFS the authority to write rules.

3. Describe who this rulemaking will positively or adversely impact.

It is expected that clarifying our rules and providing updated information will provide a positive benefit to members of the public, DHS staff, foster care youth and DHS contractors.

4. Does this rule contain a waiver provision? If not, why?

No

5. What are the likely areas of public comment?

We do not expect any public comment on these rules.

6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)

No impact is expected to private sector jobs or employment opportunities in Iowa.



Administrative Rule Fiscal Impact Statement

Date: October 19, 2022

Agency: Human Services

IAC citation: 441 IAC 108

Agency contact: Nancy Swanson

Summary of the rule:

The rules in Chapter 108 were reviewed as part of the Department's five-year rules review project. As a result, the following changes were made: Caseworker qualifications modified, Clarification on foster family training timeline, requirement of providing hygiene items for youth added.

Fill in this box if the impact meets these criteria:

- No fiscal impact to the state.
- Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
- Fiscal impact cannot be determined.

Brief explanation:

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

There is no fiscal impact to the state. The rule change clarified the states foster family training timeline by removing the option to complete training within six months to ensuring training was concluded prior to licensure. The rule also added a requirement of providing hygiene items for youth based on their cultural, racial, and ethnic backgrounds. We do not believe any of these changes to have a fiscal impact.

Fill in the form below if the impact does not fit the criteria above:

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY 2023)</u>	<u>Year 2 (FY 2024)</u>
Revenue by each source:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL REVENUE	_____	_____
Expenditures:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL EXPENDITURES	_____	_____
NET IMPACT	0.00	0.00

This rule is required by state law or federal mandate.

Please identify the state or federal law:

Identify provided change fiscal persons:

Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

Funding has not been provided for the rule.

Please explain how the agency will pay for the rule change:

No fiscal impact is expected.

Fiscal impact to persons affected by the rule:

No fiscal impact is expected.

Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):

No fiscal impact is expected.

Agency representative preparing estimate: David O. Philmon, Jr.

JH 10/20/2022, JB 10/20/22

Telephone number:

404-345-1088

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to licensing and regulation of foster family homes and providing an opportunity for public comment.

The Human Services Department hereby proposes to amend Chapter 113, "Licensing And Regulation Of Foster Family Homes," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 237.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 237.3.

Purpose and Summary

The rules in Chapter 113 were reviewed as part of the Department's five-year rules review. Chapter 113 provides the administrative rules for the licensing and regulation of foster family homes.

The following proposed changes are being made in this review:

- New definitions for kin and fictive kin are being added due to an increase of kin and fictive kin becoming licensed foster parents and to align with the Code of Iowa Chapter 232.
- Definition of "child" or "child(ren)" means the child or children who are in foster care for the purpose of this chapter only.
- "Foster" removed from each reference of "foster child" as placement also includes relative/fictive kin placements and it can be confusing if we use the term "foster care."
- Communicable disease language was added to replace HIV language.
- Changes to whooping cough vaccine requirements.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441_1.8(17A, 217)

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 31, 2023.

Comments should be directed to:

**Nancy Freudenberg
Iowa Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.state.ia.us**

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Please see attached.

PROPOSED NOTICED RULES CHAPTER 113

ITEM 1. Adopt the following **new** definitions of “Child or children,” “Fictive kin,” “Kinship care,” “Kinship caregiver,” “Relative,” “Variance,” and “Waiver” in rule **441—113.2(237)**:

“*Child or children*” means the child or children who are in foster care for the purpose of this chapter only.

“*Fictive kin*” means an adult person who is not a relative of a child but who has an emotionally significant positive relationship with a child or the child’s family.

“*Kinship care*” means the care of a child by a relative or fictive kin providing full-time nurturing and protection.

“*Kinship caregiver*” means a relative or fictive kin providing care for a child.

“*Relative*” means an individual related to the child within the fourth degree of consanguinity or affinity, by marriage, or through adoption. Relative includes the parent of a sibling of the child if the sibling’s parent’s parental rights were not previously terminated in relation to the child.

“*Variance*” means meeting a licensing standard through alternative means.

“*Waiver*” means waiving the licensing standard entirely. A waiver may only be granted for non-safety licensing standards for kinship caregiver.

ITEM 2. Amend rule **441—113.2(237)**, definitions of “Age- or developmentally appropriate activities,” “Corporal punishment,” “Foster family home,” and “Reasonable and prudent parent standard,” as follows:

“Age- or developmentally appropriate activities” means activities or items that are generally accepted as suitable for ~~children~~ the child(ren) of the same chronological age or level of maturity or that are determined to be developmentally appropriate for ~~a child~~ the child(ren), based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.

“Corporal punishment” means the intentional physical punishment of ~~a foster child~~ child(ren).

“Foster family home” means a home in which an individual person or persons or a married couple who wishes to provide or is providing, for a period exceeding 24 consecutive hours, board, room, and care for ~~a child~~ child(ren) in a single-family living unit.

“Reasonable and prudent parent standard” means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of ~~a child~~ the child(ren) while at the same time encourage the emotional and developmental growth of the ~~child~~ child(ren), that a caregiver shall use when determining whether to allow ~~a child~~ the child(ren) in foster care under the responsibility of the state to participate in extracurricular, enrichment, cultural, and social activities. For the purposes of this definition, “caregiver” means a foster parent with whom ~~a child~~ the child(ren) in foster care has been placed or a designated official for a child care institution (including group homes, residential treatment, shelters, or other congregate care settings) in which ~~a child~~ the child(ren) in foster care has been placed.

ITEM 3. Amend paragraphs **113.3(1)**“a” to “e” as follows:

a. Form 595-1396, ~~DHS Criminal History Record Check~~, for each person living in the home who is 14 years of age or older, as required by rule 441—113.13(237).

b. Form 470-0720, ~~Physician's Report for Foster and Adoptive Parents~~, to satisfy the requirements of rule 441—113.11(237).

c. Form 470-0693, ~~Foster Care Private Water Supply Survey~~, if applicable.

d. Form ~~470-4657, Floor Plan~~ 470-5097. The applicant or the recruitment and retention provider shall complete a drawing of the floor plan of the family's home.

e. No changes.

ITEM 4. Amend subrules 113.3(4) and 113.3(5) as follows:

113.3(4) *No change.*

a. No change.

(1) The worker shall hold at least ~~two~~ three face-to-face interviews with the applicant with one of the interviews taking place in the applicant's home.

(2) The worker shall hold at least one face-to-face interview with each member of the household in the applicant's home to observe family functioning and to assess the family's capacity to meet the needs of ~~a child~~ the child(ren) in foster care. The worker will determine whether to interview or just observe each household member based on the household member's age and development.

(3) A physical inspection of the home is required. The worker shall use ~~the Foster Family Survey Report~~ Form 470-0695 to complete the physical inspection of the home to verify compliance with the licensing and regulation standards in this chapter.

b. *Family assessment topics.* The assessment of the prospective foster family shall evaluate the family's ability to parent a special needs ~~child~~ child(ren). The assessment shall include the following:

(1) The applicant's motivation for foster care and whether the family has biological, adopted, or foster ~~children~~ child(ren).

(2) The attitude of the family and the extended family toward accepting a ~~foster child~~ child(ren).

(3) to (4) No change.

(5) Medical, mental, and emotional conditions that may affect the applicant's ability to parent a ~~child~~ the child(ren); treatment history; current status of treatment; and the evaluation of the treatment. Applicants and all household members must disclose any past or current mental health or substance abuse issues, or both. The department may require further documentation or evaluation, or both, to determine the suitability of the home.

(6) All ~~children~~ child(ren) who are household members must be up to date on immunizations jointly recommended by the American Academy of Pediatrics, the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, and the American Academy of Family Physicians, unless the immunization is contrary to the ~~child's~~ child(ren)'s health as documented by a licensed health care professional.

(7) An evaluation of the applicant's willingness to accept a ~~child~~ child(ren) who ~~has~~ have medical problems (such as ~~HIV~~ a communicable disease), an intellectual disability, or emotional or behavioral problems. The applicant shall complete the department form to indicate

choices about caring for ~~children~~ child(ren) who have or are at risk for ~~HIV infection~~ a communicable disease and other medical problems.

(8) The applicant's ability to provide for ~~a child's~~ the child(ren)'s physical, medical, and emotional needs, ~~and to~~ respect the child's child(ren)'s ethnic and religious identity, ~~and to support the child(ren)'s overall well-being and emotional needs.~~

(9) The safety of ~~foster children~~ child(ren) in relation to any animals that live on the applicant's property.

(10) The adjustment of any ~~children~~ child(ren) in the home, including their attitudes toward foster care and adoption, relationships with others, and school performance.

(11) No change.

(12) The applicant's financial information and ability to provide for ~~a child~~ child(ren).

(13) The applicant's attitude toward the ~~foster child's~~ birth parents and siblings of the child(ren) placed in foster care.

(14) The applicant's commitment to and capacity to maintain a ~~foster child's~~ significant relationships of the child(ren) in foster care and work with the ~~child's~~ child(ren)'s parents when the permanency goal is reunification.

(15) to (17) No change.

c. *Written report.* The recruitment and retention contractor shall prepare a written report of the family assessment using Form 470-5436, ~~Resource Parent Home Study~~. ~~The Resource Parent Home Study Form 470-5436~~ shall include a recommendation for the number, age, sex, characteristics, and special needs of ~~a child or children~~ the child(ren) the family can best parent and any other pertinent information in making the licensing recommendation. The home study shall be maintained in the foster family record.

113.3(5) Decision. The department worker shall use the home study to approve or deny a prospective family as an appropriate placement for ~~a child or children~~ the child(ren). The department worker shall notify the family of the licensing decision using Form 470-0709, ~~Notice of Action: Foster Family Home~~.

a. Upon approval, the department shall issue the applicant a foster family home license as described at rule 441—112.4(237). The license shall indicate the licensed capacity for the number of ~~foster children~~ child(ren) approved for placement in the foster family home under subrule 113.4(1).

b. No change.

ITEM 6. Amend rule 441—113.4(237) as follows:

441—113.4(237) Provisions pertaining to the license. On a case-by-case basis, the service area manager or area social work administrator may waive any non-safety standard for a kinship caregiver or grant a variance for any standard for a non-kinship caregiver in this chapter unless:

1. No change.
2. The waiver or variance could have a negative impact on the safety and well-being of ~~a child~~ the child(ren) placed in the foster family home.

113.4(1) Number of children. A foster family home may care for up to five children unless a variance is approved as described in this rule. The license capacity shall be based on the number of the foster family's biological and adoptive children and any relative placements. The license shall be issued for at least one child. ~~A child~~ Child(ren) who ~~has~~ have reached the age of 18 and ~~remains~~ remain eligible for foster family care shall be included in the license capacity. Any variance to this rule must:

a. to b. No change.

c. Meet one of the following criteria:

(1) The foster parents have three or more children in the home and have shown the ability to parent a large number of children. A licensing variance may be approved at initial or renewal licensure to allow the placement of up to three ~~foster~~ children as set forth in the chart below:

No. of Children in the Home (birth/relative/adoptive placements)	Maximum License Capacity:	
	Without variance	With variance
0 children	5	Not applicable
1 child	4	Not applicable
2 children	3	Not applicable
3 children	2	3
4 children	1	3
5 or more children	Not applicable	3

(2) A variance beyond the maximum capacity of the foster home license is needed for the placement of a specific child in foster family care. A child-specific variance shall end when that child leaves the placement or any other change brings the family into licensed capacity. Unless a variance is needed for the placement of a sibling(s) of a ~~foster child~~ the child(ren) already in the home, or to keep siblings together, the maximum number of children in the home shall not exceed eight. On a case-by-case basis, if it is determined the foster parents have shown the parenting skills and have the social support system to meet the children’s needs for parenting more than eight

children, the social work administrator shall approve the foster parents to parent more than eight children. A foster family may have both a licensing and a child-specific variance concurrently.

d. No change.

ITEM 7. Amend subrules 113.5(1) to 113.5(3) as follows:

113.5(1) *General standards.* The foster home shall be safe, clean, well ventilated, properly lighted, properly heated, and free from vermin and rodents to ensure the well-being of the ~~foster children~~ child(ren) residing in the home.

113.5(2) *Grounds.*

a. There shall be safe outdoor space provided according to the age and developmental needs of the ~~foster child~~ child(ren) for active play. The area available shall be documented in the case record.

b. The ~~foster child~~ child(ren) shall be adequately supervised and protected against hazards including, but not limited to, traffic, bodies of water, railroads, waste material, and contaminated water. The foster parent shall provide environmental protections such as door alarms, baby monitors, fences, and foliage barriers as necessary to promote a safe environment.

c. No change.

(1) A child's plastic pool shall be drained daily and shall be inaccessible to ~~children~~ the child(ren) when it is not in use. Swimming pools must have a barrier on all sides at least four feet high.

(2) An aboveground or in-ground swimming pool that is not fenced shall be covered whenever the pool is not in use. The cover shall meet or exceed the ASTM International (formerly known as the American Society for Testing and Materials) specification intended to reduce the risk of drowning by inhibiting access to the water by ~~children~~ child(ren) under five years of age.

Swimming pools must have their methods of access through the barrier equipped with a safety device, such as a bolt lock.

(3) to (4) No change.

(5) Hot tubs and spas must have safety covers that are locked when not in use.

The foster parent or other adult shall provide reasonable supervision according to the ages and swimming abilities of the ~~foster children~~ child(ren) when they are using the pool.

113.5(3) Bedrooms for ~~foster children~~ child(ren) placed in the home.

a. Bedrooms shall either have been constructed for the purpose of providing sleeping accommodation or remodeled for sleeping to provide proper heat and ventilation. Bedroom additions to a home shall meet building code requirements. All bedrooms used by ~~foster children~~ child(ren) placed in the home shall have:

(1) to (2) No change.

(3) An unobstructed, operable window that opens from the inside that is large enough to allow for an unrestricted exit by a ~~foster child~~ child(ren) placed in the home;

(4) A closet, wardrobe, armoire, or dresser for the ~~child's~~ child(ren)'s clothes; and

(5) A standard bed, for infants and toddlers who cannot safely use a standard bed, a crib or crib-like furniture which has a waterproof mattress covering and sufficient bedding to enable a ~~child~~ the child(ren) to rest comfortably and which meets the current standards or recommendations from the U.S. Consumer Product Safety Commission or ASTM International for juvenile products for each child under two years of age if developmentally appropriate. The provider shall follow safe sleep practices as recommended by the American Academy of Pediatrics for infants under the age of one. Safe infant sleep practices shall conform to the following standards:

1. to 2. No change.

3. Infants shall not be allowed to sleep on a bed, sofa, air mattress or other soft surface.

No ~~child~~ child(ren) shall be allowed to sleep in any item not designed for sleeping. This is not referring to a child in a car seat in a car.

4. to 6. No change.

b. The minimum bedroom area per child shall be 40 square feet. However, the service area manager or designee may approve a ~~smaller room size~~ waiver of this non-safety standard for kinship caregivers or a variance when approval is in the best interest of specific children placed or to be placed in the home. Such approvals shall:

(1) No change.

(2) Contain the names and birth dates of the ~~children~~ child(ren) for whom issued; and

(3) No change.

c. No change.

d. The ceiling height for bedrooms shall be adequate for the ~~child~~ child(ren).

e. Except for baby video monitors for ~~children~~ child(ren) birth to two years of age used in their bedrooms, video or surveillance cameras are not allowed in ~~children's~~ child(ren)'s bedrooms or bathrooms.

f. No change.

(1) to (3) No change.

(4) Have provisions, such as a ladder or steps, to ensure that the ~~foster-child~~ child(ren) can safely reach the window if the finished sill height is more than 44 inches above the floor and that the ~~foster-child~~ child(ren) can safely reach ground level if there is a window well that has a depth of 44 inches or higher;

(5) to (6) No change.

ITEM 8. Amend subrules 113.5(6) to 113.5(8) as follows:

113.5(6) Physical care standards for ~~foster children~~ child(ren).

a. Grouping children in bedrooms shall take into consideration the age and sex of ~~children~~ the child(ren) including the individual child(ren)'s need for privacy.

(1) ~~Children~~ Child(ren) over five years of age shall not share a bedroom with ~~a child~~ child(ren) of the opposite sex.

(2) ~~Foster children~~ Child(ren) shall not share a bed with any other child. The social work administrator may approve a waiver of this policy for kinship caregivers or a variance for non-kinship caregivers.

b. ~~Children~~ Child(ren) two years of age or older shall be provided bedroom space other than in the foster parents' bedroom. ~~Foster children~~ Child(ren) under the age of two may share a bedroom with the foster parent in an individual crib.

c. There shall be a plan for isolating healthy ~~children~~ child(ren) from a child who is ill or suspected of having a contagious disease.

d. The foster home shall provide food with good nutritional content and in sufficient quantity to meet the individual needs of the ~~children~~ child(ren).

e. ~~Bedding shall be clean, odor-free, and free of urine and feces.~~ Personal care items must be provided for youth and these items must reflect the individual, cultural, racial, and ethnic needs of the youth living in the foster home.

f. ~~Foster parents shall follow universal precautions to reduce exposure to bloodborne pathogens and other infectious materials when providing care to all children placed in their physical custody.~~ Bedding shall be clean, odor-free, and free of urine and feces.

~~g. Smoking and vaping shall be prohibited in the foster home or any vehicle when the foster child is present.~~ Foster parents shall follow universal precautions to reduce exposure to bloodborne pathogens and other infectious materials when providing care to all child(ren) placed in their physical custody.

~~h. Smoking and vaping shall be prohibited in the foster home or any vehicle when the child(ren) is present.~~

113.5(7) *Lead-based paint.* If the applicant lives in a home built before ~~1960~~ 1978, the applicant shall submit Form 470-4819, ~~Lead Paint Assessment~~, certifying that the applicant:

a. to b. No change.

113.5(8) *Artificial lighting.* Adequate artificial lighting fixtures shall be provided for study in areas where ~~children~~ child(ren) will be studying.

ITEM 9. Amend subrule 113.5(11) as follows:

113.5(11) *Ventilation.* Ventilation shall be provided in all rooms where ~~foster children~~ child(ren) eat, sleep, and play either by windows which can be opened or by mechanical venting systems. Windows and doors used for ventilation shall be screened.

ITEM 10. Amend subrule 113.6(3) as follows:

113.6(3) Private water supply.

a. ~~Each privately operated water supply shall be tested prior~~ Prior to initial licensure and ~~tested before~~ prior to each license renewal, each privately operated water supply shall be tested and evaluated for obvious deficiencies such as open or loose well tops or platforms and poor drainage around the wells.

b. As part of the evaluation, water samples must be collected and submitted by the licensing worker or health sanitarian to the university hygienic laboratory or other laboratory

certified by the hygienic laboratory and analyzed for coliform bacteria. In order to be licensed for the care of ~~children~~ child(ren) under two years of age the nitrate (NO₃) content must be analyzed.

c. to d. No change.

e. When the water sample is not approved, no foster family home license shall be issued until the foster parents provide a written statement that ~~foster children~~ child(ren) will be provided potable water, including where the water will be obtained and how it will be transported and stored.

(1) The statement shall be provided on Form 470-0699, ~~Provisions for Alternate Water Supply~~.

(2) No change.

ITEM 11. Amend paragraph **113.7(1)“a”** as follows:

a. At least one UL (Underwriter’s Laboratory)-approved smoke detector. On floors that are used for sleeping, the smoke detector shall be in a location where sleeping areas can be alerted. For deaf or hard-of-hearing ~~children~~ child(ren), the foster parent shall install a smoke detector in the ~~child’s~~ child(ren)’s bedroom that will use an alternative means of waking the ~~child~~ child(ren).

ITEM 12. Amend paragraph **113.7(2)“b”** as follows:

b. Explosives and flammable substances shall be stored securely and be inaccessible to ~~a child~~ the child(ren). Matches and lighters shall be inaccessible to ~~a child~~ the child(ren).

ITEM 13. Amend subrule 113.7(3) as follows:

113.7(3) *Safety plan.* The family shall have an emergency safety plan to be used for fire, tornado, blizzard, flood, other natural or manmade disasters, accidents, medical issues, and other life-threatening situations for ~~children~~ child(ren) in out-of-home placements. The safety plans shall

state the action that the foster parents and ~~children~~ child(ren) are to take in each situation that may occur and shall be posted in a prominent place in the home.

a. The safety plans for fire and tornadoes shall be reviewed with foster ~~children~~ child(ren) at the time of placement. Fire and tornado plans shall be practiced with the foster ~~children~~ child(ren) within one week of placement and no less than annually thereafter.

b. to d. No change.

ITEM 14. Amend paragraph **113.7(4)“a”** as follows:

a. All prescription medication shall be administered as prescribed and documented in a medication log that is given to the ~~child’s~~ child(ren)’s department caseworker when the ~~child~~ child(ren) leaves the placement.

ITEM 15. Amend paragraph **113.7(4)“c”** as follows:

c. Applicants must prevent the ~~child’s~~ child(ren)’s access, as appropriate for the ~~child’s~~ child(ren)’s age and development, to all medications, poisonous materials, cleaning supplies, other hazardous materials and alcoholic beverages.

ITEM 16. Amend subrule 113.7(5) to 113.7(9) as follows:

113.7(5) Weapons. All weapons, firearms, and ammunition shall be inaccessible to a ~~child~~ child(ren) of any age.

a. The following weapons must be stored in an inoperative condition in a locked area inaccessible to ~~children~~ child(ren):

(1) to (5) No change.

b. No change.

c. The weapons, firearms, and ammunition storage ~~unit~~ units shall not share the same key or matching security code. If a key is used, the key shall be stored in a place inaccessible to the ~~foster child~~ child(ren).

d. Any motor vehicles used to transport ~~foster children~~ child(ren) shall not contain a loaded gun, and any ammunition in the vehicle shall be kept in a separate, locked container.

e. Foster parents who have a permit to carry a firearm shall sign Form 470-4657, ~~Firearms Safety Plan~~. Foster parents who have firearms but do not have a permit to carry shall complete the safety plan section of ~~the Firearms Safety Plan form~~ Form 470-4657.

f. No change.

113.7(6) Transporting ~~foster children~~ child(ren).

a. Foster parents will ensure that if a privately owned vehicle, owned by the applicants, family or friends, is used to transport the ~~child~~ child(ren) in foster care, it must be inspected (if applicable under state law), registered, and insured and meet all applicable state or tribal requirements to be an operable vehicle on the road.

b. No change.

c. Safety restraints will be used that are appropriate to the ~~child's~~ child(ren)'s age, height, and weight.

d. Any motor vehicles used to transport ~~foster children~~ child(ren) shall be smoke-free when ~~foster children~~ child(ren) are being transported.

e. Weapons must not be transported in any vehicle in which the ~~child~~ child(ren) is riding unless the weapons are made inoperable and inaccessible.

f. No change.

113.7(7) Supervision. The foster parents shall provide reasonable and prudent supervision of ~~foster children~~ child(ren) to ensure their safety.

a. Foster parents shall adequately supervise ~~foster children~~ child(ren) while the ~~children~~ child(ren) are using any hazardous or dangerous objects or equipment. In order for ~~foster children~~ child(ren) to participate in age- or developmentally appropriate activities, the foster parent would apply the reasonable and prudent parent standard.

b. Foster parents shall use reasonable and prudent supervision of ~~foster children~~ child(ren) when the ~~foster children~~ child(ren) are using the Internet or other social media.

113.7(8) Household pets. Household pets and any outdoor animals or pets accessible to ~~foster children~~ child(ren) shall have a current veterinary health certificate verifying that the animal's routine immunizations, e.g., rabies, are current.

a. No change.

b. Foster parents who have pets or animals with any history of aggression shall have a written plan that addresses strategies to reduce the risk of aggression by their pets or animals with which the ~~child~~ child(ren) will have contact.

c. ~~Animal waste will be contained and disposed of on a routine basis.~~ Foster parents will complete a written plan on how they will introduce a pet to a child(ren).

d. Animal waste will be contained and disposed of on a routine basis.

113.7(9) Liability. Foster parents who apply the reasonable and prudent parent standard reasonably and in good faith in regard to a ~~foster child~~ child(ren) placed in their home shall have immunity from civil or criminal liability which might otherwise be incurred or imposed. This subrule shall not remove or limit any existing liability protection afforded under any other law.

ITEM 17. Amend subrules 113.8(1) and 113.8(2) as follows:

113.8(1) Preservice training. All foster parent applicants shall complete the following training before licensure and the placement of a ~~child~~ child(ren) in foster care in their home:

a. to b. No change.

c. No change.

(1) to (2) No change.

(3) Mandatory reporter training on child abuse identification, ~~and~~

(4) No change.

(5) Lessons teaching foster parents how to support a child's overall well-being and emotional needs.

d. No change.

113.8(2) In-service training. All licensed foster parents shall complete six hours of in-service training annually as required by rule 441—117.7(237).

Each foster parent shall maintain certification in a face-to-face CPR and first-aid training.

ITEM 18. Amend rules 441—113.9(237) to 441—113.11(237) as follows:

441—113.9(237) Involvement of kin.

113.9(1) Support by foster parents. Foster parents shall support the involvement of biological or adoptive parents and other relatives of the ~~foster-child~~ child(ren) unless this involvement is evaluated and documented by the department to be detrimental to the ~~child's~~ child(ren)'s well-being.

113.9(2) Nature of involvement. The extent and nature of the involvement of the biological or adoptive parents and other relatives shall be determined by the caseworker in consultation with the foster parents, biological or adoptive parents, and others involved with the ~~child~~ child(ren) and family.

113.9(3) Cultural connections. Throughout the provision of care, the foster family shall actively ensure that the ~~foster child~~ child(ren) stays connected to the ~~child's~~ child(ren)'s kin, culture, and community as required in the ~~child's~~ child(ren)'s case permanency plan.

441—113.10(237) Information on the ~~foster child~~ child(ren) placed in the home.

113.10(1) ~~Foster child~~ Child(ren) information. Foster parents shall maintain a separate folder of information on each ~~foster child~~ child(ren) placed in the foster family home. This folder shall be provided to the department or the ~~child's~~ child(ren)'s parent or guardian when the ~~child~~ child(ren) leaves the placement. The folder shall contain:

a. The names and addresses of all doctors, mental health professionals, and dentists who have treated the ~~foster child~~ child(ren); current medications prescribed, including over-the-counter medications; medication log; and the type of medical, dental, vision, and mental health treatments and hearing examinations received while the ~~foster child~~ child(ren) is in the foster home.

b. No change.

c. Date the ~~child~~ child(ren) left the placement.

d. Name, address, and telephone number of the person to whom the ~~child~~ child(ren) is discharged.

113.10(2) Confidentiality. Foster parents shall maintain confidentiality regarding ~~a child~~ the child(ren) in placement except as required to comply with rules on mandatory reporting of child abuse and with the ~~child's~~ child(ren)'s case permanency plan. Foster parents shall not without parent or guardian and department consent post pictures or information concerning ~~a foster child~~ the child(ren) on any Internet Web site or on social media.

441—113.11(237) Health of foster family.

113.11(1) *Health report required.* The foster parents shall furnish the licensing agency with a health report on the family completed no more than six months before the application for licensure. The report shall include information on all family members, including foster parents, their minor ~~children~~ child(ren) who reside in the home, and adult household members. An updated report shall be provided upon request of the department licensing worker or the recruitment and retention contractor.

113.11(2) *Contents of report.* This report shall include a statement from ~~the~~ an impartial health practitioner that there are no physical or mental health problems which would be a hazard to ~~foster children~~ the child(ren) placed in the home and a statement that the foster parents' health would not prevent needed care from being provided to the ~~child~~ child(ren).

113.11(3) *Whooping cough vaccine.* All adult household members who are caregivers must have up-to-date whooping cough vaccines unless contrary to the person's health or sincerely held religious belief.

113.11(4) *Capability for caring for the child.* ~~If there is evidence that the foster parent is unable to provide necessary care for the child, the department licensing worker, the recruitment and retention contractor, or the physician may require additional medical and mental health reports, including a substance abuse evaluation.~~ *Exemption from whooping cough vaccine.* Nothing in this rule shall be construed to require the whooping cough vaccine for adult household members who are a member of a church or religious organization which is against vaccinations. In such instance, a notarized statement from the household member shall be incorporated into the health record.

113.11(5) *Capability for caring for the child(ren).* If there is evidence that the foster parent is unable to provide necessary care for the child(ren), the department licensing worker, the

recruitment and retention contractor, or the physician may require additional medical and mental health reports, including a substance abuse evaluation.

ITEM 19. Amend subrules 113.12(3) to 113.12(5) as follows:

113.12(3) *Religious considerations.* The foster parent shall respect the ~~foster child's~~ child(ren)'s religious background and affiliation.

113.12(4) *Requirements of foster parents.* Foster parents shall be stable, responsible, physically able to care for the type of ~~child~~ child(ren) placed, mature individuals who are not unsuited by reason of substance abuse, lewd or lascivious behavior or other conduct likely to be detrimental to the physical or mental health or morals of the ~~child~~ child(ren). They shall exercise good judgment in caring for ~~children~~ the child(ren) and have a capacity to accept agency supervision.

113.12(5) *Personal characteristics.* The foster parents shall:

- a. No change.
- b. Have realistic expectations of ~~foster children~~ the child(ren).
- c. Have time available to parent ~~foster children~~ the child(ren).
- d. to f. No change.
- g. Include ~~foster children~~ the child(ren) in normal family life.
- h. Have the ability to be accepting and loving toward a ~~foster children~~ the child(ren) entering the home.
- i. Be able to support the case permanency plan for the ~~foster children~~ child(ren) and be willing to cooperate with visits, transportation, or other activities that support the ~~child's~~ child(ren)'s connection to and reunification with the ~~child's~~ child(ren)'s family.

j. Ensure that all family members are aware of having ~~foster children~~ the child(ren) in the home.

k. Articulate their strengths and concerns and limitations which are essential to the department's matching the ~~foster children~~ child(ren) with foster parents appropriately.

ITEM 20. Amend rule 441—113.13(237), introductory paragraph, as follows:

441—113.13(237) Record checks. Record checks are required for each foster parent applicant and for anyone who is 14 years of age or older living in the home of the applicant. The purpose of the record checks is to determine whether any of these persons has any founded child abuse or dependent adult abuse reports or criminal convictions or has been placed on the sex offender registry.

ITEM 21. Amend subparagraphs **113.13(1)“a”(1)** and **(2)** as follows:

(1) The Iowa central abuse registry, using Form 470-0643, ~~Request for Child and Dependent Adult Abuse Information;~~

(2) The Iowa division of criminal investigation, using Form 595-1396, ~~DHS Criminal History Record Check, Form B;~~

ITEM 22. Amend subparagraphs **113.13(2)“a”(1)** and **(2)** as follows:

(1) A felony offense as set forth in Iowa Code section ~~237.8(2)“a”(4)~~ 237.8(3); or

(2) A crime in another state that would be a felony as set forth in Iowa Code section ~~237.8(2)“a”(4)~~ 237.8(3).

ITEM 23. Renumber subparagraphs **113.13(2)“b”(3)** to **113.13(2)“b”(5)** as **113.13(2)“b”(4)** to **113.13(2)“b”(6)**.

ITEM 24. Adopt the following new subparagraph(s) **113.13(2)“b”(3)**:

(3) The circumstances under which the crime or founded abuse was committed,

ITEM 25. Amend paragraph **113.13(2)“c”** as follows:

c. Evaluation form. The person with the founded child or dependent adult abuse or criminal conviction report shall complete and return Form 470-2310, ~~Record Check Evaluation~~, within ten calendar days of the date of receipt to be used to assist in the evaluation. Failure of the person to complete and return Form 470-2310 within the specified time frame shall result in denial of licensure.

ITEM 26. Amend subrule 113.13(3) as follows:

113.13(3) Evaluation decision. ~~The service area manager~~ Centralized service area staff or designee shall conduct the evaluation and make the decision. The department shall issue Form 470-2310, ~~Record Check Evaluation~~, to inform the subject of the decision and describe the basis of the decision using the criteria specified in paragraph 113.13(2) “b.” The department shall mail the form to the person on whom the evaluation was completed:

a. Within 30 days of receipt of the completed Form 470-2310, ~~Record Check Evaluation~~, or ~~Evaluation~~, or

b. No change.

ITEM 27. Amend paragraph **113.14(4)“b”** as follows:

b. Personal qualities of the applicant including the general character, ability to get along with others, ability to deal with ~~children’s~~ the child(ren)’s problem behavior, ability to give affection and care, discussion of use of drugs and alcohol, questions regarding personal difficulties that could be detrimental to ~~a foster child~~ the child(ren).

ITEM 28. Amend paragraph **113.14(4)“f”** as follows:

f. Would the reference feel comfortable leaving ~~a child~~ the child(ren) in this home for a period of time?

ITEM 29. Amend subrule 113.15(1) as follows:

113.15(1) The department's recruitment and retention contractor shall make unannounced visits during periods of the day when the ~~child~~ child(ren) and foster parents would normally be at home and awake, unless there has been a specific complaint about the family and care of the ~~child~~ child(ren).

ITEM 30. Amend paragraphs **113.15(2)**"c" to "e" as follows:

c. Interaction between the foster ~~child~~ child(ren) and foster family and their ~~children~~ child(ren).

d. The foster ~~child's~~ child(ren)'s perception of the foster parents, other ~~children~~ child(ren) and adults in the home, behavioral expectations of foster parents, discipline used by foster parents, religious training, school, contact with natural parents, and purpose of placement in foster care.

e. The foster parents' view of the ~~child~~ child(ren), the ~~child's~~ child(ren)'s problem, placement worker's involvement, plan for the ~~child~~ child(ren), involvement of ~~natural~~ biological parents, and additional services that either the ~~foster child~~ child(ren) or foster parents need.

ITEM 31. Amend subrule 113.15(4) as follows:

113.15(4) The findings from the unannounced visit shall be summarized on Form 470-5438, ~~Progress Notes~~.

a. to *b.* No change.

ITEM 32. Amend paragraphs **113.15(5)**"a" to "c" as follows:

a. When deficiencies are cited that do not appear likely to cause immediate physical or mental harm to the ~~child~~ child(ren), an additional visit may be scheduled. The department

licensing worker and the recruitment and retention contractor shall discuss the deficiencies with the foster parents and make plans for improving the deficiencies.

b. No change.

(1) Report deficiencies to the department licensing worker and to the placement worker for each ~~foster child~~ child(ren) currently placed in the home;

(2) No change.

c. When the reported deficiencies appear likely to cause immediate physical or mental harm to the ~~child~~ child(ren), the service area manager or designee shall immediately:

(1) Direct the placement worker to determine if the ~~child~~ child(ren) should be removed, and

(2) No change.

ITEM 33. Amend rule 441—113.16(237) to 113.20(237) as follows:

441—113.16(237) Planned activities and personal effects.

113.16(1) *Daily routine.* The daily routine shall promote good health and provide an opportunity for activity suitable for the ~~foster child~~ child(ren) with time for rest and play.

113.16(2) *Clothing.*

a. All ~~children~~ child(ren) should have their own clothing.

b. ~~Children~~ Child(ren) shall have training and help in selection and proper care of clothing.

c. to e. No change.

f. There shall be adequate closet and drawer space for ~~children~~ the child(ren) to permit access to their clothing.

113.16(3) Educational opportunity. Every ~~foster~~ child shall be given the opportunity to complete high school or vocational training in accordance with the child's case permanency plan. The foster parent shall be an advocate for the ~~foster~~ child by working with the ~~foster~~-child's school.

113.16(4) Religion and culture. Each child shall be given an opportunity, in consultation with the child's parents, to participate in the child's culture and religion. ~~Children~~ Child(ren) shall not be required to participate in religious training or observances contrary to the wishes of the biological or adoptive family or the religious beliefs of the ~~child~~ child(ren).

113.16(5) Community participation. Every child shall be given the opportunity to develop healthy social relationships through participation in neighborhood, school and other community and group activities. ~~The child~~ Child(ren) shall have the opportunity to invite friends to the foster home and to visit the home of friends.

113.16(6) Work assignments. Work assignments shall be in keeping with the ~~child's~~ children's age and development.

a. Exploitation of the ~~child~~ child(ren) is prohibited. No ~~child~~ child(ren) shall be permitted to do any hazardous tasks or to engage in any work which is in violation of the child labor laws of the state.

b. ~~Each child~~ Child(ren) shall have the opportunity to learn to assume some responsibility for self and for household duties in accordance with the ~~child's~~ child(ren)'s age, health and ability. However, assigned tasks shall not deprive the ~~child~~ child(ren) of school, sleep, play or study periods.

441—113.17(237) Medical examinations and health care of the ~~child~~ child(ren).

113.17(1) *Medical and dental care.* Foster parents shall keep the ~~child's~~ child(ren)'s department case manager informed of any medical and dental appointments and treatments prescribed for the ~~child~~ child(ren).

a. Foster parents shall contact the ~~child's~~ child(ren)'s parents to engage them in the process of accessing routine medical and dental care for their ~~child~~ child(ren) unless parental rights have been terminated.

b. In case of an emergency or urgent situation requiring medical care and treatment of an acute illness, disease or condition of a ~~child~~ child(ren), when a delay or inability to access parental or department consent for medical care or treatment would endanger the health or physical well-being of the ~~child~~ child(ren), the foster parents can provide consent for medical care and treatment.

113.17(2) No change.

441—113.18(237) Training and discipline of ~~foster children~~ child(ren).

113.18(1) *Foster parents' methods of training and discipline.* The home study evaluation of each foster parent applicant shall include a discussion and a written report of the foster parents' methods of training and discipline. Discipline shall be designed to help the ~~child~~ child(ren) develop self-control, self-esteem, and respect for the rights of others.

113.18(2) *Restrictions on training and discipline.* ~~Child training~~ Training and discipline of the child(ren) shall be handled with kindness and understanding.

- a.* ~~A child~~ The child(ren) shall not be locked in a room, closet, box, or other device.
- b.* No ~~child~~ child(ren) shall be deprived of food as punishment.
- c.* No ~~child~~ child(ren) shall be subjected to verbal abuse, threats or derogatory remarks about the ~~child~~ child(ren) or the ~~child's~~ child(ren)'s family.

d. to e. No change.

(1) Reasonable physical force may be used to restrain a ~~child~~ the child(ren) only in order to prevent injury to the ~~child~~ child(ren), injury to others, the destruction of property, or extremely disruptive behavior.

(2) Upon approval of the department, the foster parent may use restraints only in accordance with the written plan of a licensed mental health professional who is working with the ~~child~~ child(ren) and the foster parents.

113.18(3) Reports of mistreatment. Reports of mistreatment coming to the attention of the department licensing worker and caseworker for the ~~foster child~~ child(ren) shall be investigated promptly and referred to the proper authorities when necessary.

441—113.19(237) Emergency care and release of ~~children~~ child(ren).

113.19(1) Supervision and arrangements for emergency care.

a. Foster parents shall provide supervision of foster ~~children~~ child(ren) and ~~children~~ child(ren) in preadoptive placement as dictated by the individual child's specific needs.

b. In case of emergency requiring the foster parents' temporary absence from the home, arrangements shall be made with other licensed foster parents or with designated, responsible persons for the care of the ~~children~~ child(ren) during the period of absence. The ~~child's~~ child(ren)'s placement worker shall be notified of all emergency absences of the foster parents.

113.19(2) Release of ~~foster child~~ child(ren). The foster parents shall release the ~~foster child~~ child(ren) only to the agency, parent or guardian from whom the ~~child~~ child(ren) was received for care, or the person specifically designated by the agency, parent or guardian.

441—113.20(237) Changes in foster family home. Foster parents shall notify the department and the recruitment and retention contractor within seven working days of:

1. Any change in the number of persons living in the home (except for ~~foster children~~ child(ren) placed in the home);

2. No change.

3. Any circumstances in the home that could negatively affect the health, safety or welfare of ~~a child~~ the child(ren) in the family's care.



Iowa Department of Human Services
Information on Proposed Rules

Name of Program Specialist Nancy Swanson	Telephone Number 515-281-6379	Email Address nswanso@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:

The rules in Chapter 113 were reviewed as part of the Department's five-year rules review project. As a result, the following changes were made:

- New definitions for kin and fictive kin were added due to an increase of kin and fictive kin becoming licensed foster parents and to align with the Ch. 232 rewrite
- Definition of "child" and "children" added for this chapter only to mean children who are in foster care
- "foster" taken from each reference of "foster child" to create language that avoids using the term "foster child"
- Communicable disease language was added to replace HIV

2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):

237.3 gives the administrator of ACFS the authority to write rules.

3. Describe who this rulemaking will positively or adversely impact.

It is expected that clarifying our rules and providing updated information will provide a positive benefit to members of the public, potential applicants for foster care, and licensed foster parents.

4. Does this rule contain a waiver provision? If not, why?

No

5. What are the likely areas of public comment?

We do not expect any public comment on these rules.

6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)

No impact is expected to private sector jobs or employment opportunities in Iowa.



Administrative Rule Fiscal Impact Statement

Date: 12/5/2022

Agency: Human Services
IAC citation: 441 IAC 113
Agency contact: Nancy Swanson, Foster Care Program Manager

Summary of the rule:

- New definitions for kin and fictive kin were added due to an increase of kin and fictive kin becoming licensed foster parents and to align with the Ch. 232 rewrite
- Definition of “child” and “children” added for this chapter only to mean children who are in foster care
- “foster” taken from each reference of “foster child” to create language that avoids using the term “foster child”
- Communicable disease language was added to replace HIV

Fill in this box if the impact meets these criteria:

- No fiscal impact to the state.
 Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
 Fiscal impact cannot be determined.

Brief explanation:

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

The rules in Chapter 113 were reviewed as part of the Department’s five-year rules review project, none of the changes created a financial impact. The following changes were made to the rule: Definitions were added to the rule due to those definitions not being a part of the original rule, these do not have a financial impact. Language was removed that also did not have a financial impact. Language was also changed to align more with HHS policy which also did not have a financial impact.

Fill in the form below if the impact does not fit the criteria above:

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY 2023)</u>	<u>Year 2 (FY 2024)</u>
Revenue by each source:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL REVENUE	_____	_____
Expenditures:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL EXPENDITURES	_____	_____
NET IMPACT	<u>0.00</u>	<u>0.00</u>

This rule is required by state law or federal mandate.

Please identify the state or federal law:

Identify provided change fiscal persons:

Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

Funding has not been provided for the rule.

Please explain how the agency will pay for the rule change:

There is no fiscal impact.

Fiscal impact to persons affected by the rule:

There is no fiscal impact.

Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):

There is no fiscal impact.

Agency representative preparing estimate: David Philmon, Jr.

JH 12/06/2022, JB 12/06/22

Telephone number:

12/5/2022

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to licensing and regulation of group care and providing an opportunity for public comment.

The Human Services Department hereby proposes to amend Chapter 114, "Licensing And Regulation Of All Group Living Foster Care Facilities For Children," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 217.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 237.3.

Purpose and Summary

Chapter 14 is being reviewed as part of the Department's five-year rules review. This chapter outlines the basic standards for all group living foster care facilities and contains the basic standards applicable to community residential facilities for children. Proposed amendments update definitions as defined in the Iowa Code and provide additional clarity. Qualifications are amended to provide further information on related human service fields and experience in social work or experience in the delivery of human services in a public or private agency as additional ways to qualify as a caseworker. Rules are being updated to provide information on the record check process.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441_1.8(17A, 217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 14, 2023. Comments should be directed to:

Nancy Freudenberg
Iowa Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Please see attached.

NOTICED RULES CHAPTER 114

ITEM 1. Amend rule 441—114.1(237) as follows:

441—114.1(237) Applicability. This chapter outlines the basic standards for all group living foster care facilities and contains the basic standards applicable to community residential facilities for children. Additional standards applicable to specific levels of group living are discussed in 441—Chapter 115, “Licensing and Regulation of Comprehensive Residential Facilities for Children,” and 441—Chapter 116, “Licensing and Regulation of Residential Facilities for Children with an Intellectual Disability or Brain Injury.”

ITEM 2. Amend rule **441—114.2(237)**, definitions of “Private juvenile detention home,” and “Private juvenile shelter care home,” as follows:

“*Private juvenile detention home*” means a juvenile detention home as defined in Iowa Code section 232.2, which does not meet the requirements of being “county or multicounty” as defined in 441—~~subrule 105.1(2)~~ rule 105.1(232).

“*Private juvenile shelter care home*” means a juvenile shelter care home as defined in Iowa Code section 232.2, which does not meet the requirements of being “county or multicounty” as defined in 441—~~subrule 105.1(2)~~ rule 105.1(232).

ITEM 3. Adopt the following **new** paragraph(s) **114.5(6)“g”**:

g. Personal care items must be provided to the children in care and must reflect the individual, cultural, racial and ethnic needs of the youth living in their programs.

ITEM 4. Adopt the following **new** subparagraph(s) **114.7(3)“b”(8)**:

(8) If the applicant, probationary or temporary employee has completed and submitted Form 470-2310, ~~Record Check Evaluation~~, to the agency, a copy shall be kept in the staff record.

ITEM 5. Amend paragraph **114.8(1)“a”** as follows:

a. A caseworker shall have ~~a bachelor of arts or bachelor of science~~ graduated from a four-year college or university with a bachelor’s degree in a human service field related to social work, psychology or a related behavioral science or education degree and the equivalent of one year of full-time, plus two years of supervised experience in social work or experience in the delivery of human services in a public or private agency; or a bachelor’s degree in social work with one year of supervised experience; or six years of supervised child welfare experience in residential care or a combination of advanced education in the behavioral sciences and experience equal to six years.

ITEM 6. Amend paragraph **114.8(1)“e”** as follows:

e. A person who has a record of a criminal conviction or founded child abuse report shall not be employed, unless an evaluation of the crime or founded child abuse has been made by the department which concludes that the crime or founded child abuse does not merit prohibition of employment. If a record of criminal conviction or founded child abuse exists, the person shall be offered the opportunity to complete and submit Form 470-2310, ~~“Record Check Evaluation.”~~ In its evaluation, the department shall consider the nature and seriousness of the crime or founded abuse in relation to the position sought, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the

degree of rehabilitation, and the number of crimes or founded abuses committed by the person involved.

ITEM 7. Amend subparagraphs **114.9(4)“b”(2)** and **(3)** as follows:

(2) Written policies regarding children’s rights as in ~~114.13(2)~~ 441--114.13(237).

(3) Written policies regarding religion, work or vocational experiences, family involvement, ~~grievance procedures~~ and discipline as in ~~441—114.13(237)~~ 441—114.15(237) to ~~114.18(237)~~ 114.17(237) and 114.20(237).

ITEM 8. Amend rule 441—114.19(237) as follows:

441—114.19(237) Child abuse. Written policies shall prohibit mistreatment, neglect, or abuse of children and specify reporting and enforcement procedures for the facility. Alleged violations shall be reported immediately to the director of the facility and ~~appropriate the~~ the department of human services ~~personnel~~ centralized abuse hotline. Any employee found to be in violation of Iowa Code chapter 232, ~~division~~ subchapter III, part 2, as substantiated by the department of human services’ investigation shall be subject to the agency’s policies concerning dismissal.

ITEM 9. Amend paragraph **114.24(2)“a”** as follows:

a. Scope. The evaluation shall consider the nature and seriousness of the founded child or dependent adult abuse or criminal conviction report in relation to:

(1) to (2) No change.

(3) The circumstances under which the abuse or crime was committed,

~~(3)~~(4) The degree of rehabilitation,

~~(4)~~(5) The likelihood that the person will commit the abuse or crime again, and

~~(5)~~(6) The number of abuses or crimes committed by the person.

ITEM 10. Rescind separate implementation statements in rules 114.1 and 114.3 through 114.25 and replace with the following implementation statement at the end of the chapter:

These rules are intended to implement Iowa Code section 237.3.



Iowa Department of Human Services
Information on Proposed Rules

Name of Program Specialist Kristin Konchalski	Telephone Number 515-281-9368	Email Address kkoncha@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:

The rules in Chapter 114 were reviewed as part of the Department’s five-year rules review project. As a result, the following changes were made:

- Hygiene items language was updated to reflect new expectations
- Caseworker qualifications language was updated to allow for more flexibility for applicants
- Updated child abuse reporting language to DHS Centralized Abuse Hotline

2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):

237.3 gives the administrator of ACFS the authority to write rules.

3. Describe who this rulemaking will positively or adversely impact.

It is expected that clarifying our rules and providing updated information will provide a positive benefit to members of the public, potential providers of group living facilities, and youth residing in the facilities.

4. Does this rule contain a waiver provision? If not, why?

No

5. What are the likely areas of public comment?

We do not expect any public comment on these rules.

6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)

No impact is expected to private sector jobs or employment opportunities in Iowa.



Administrative Rule Fiscal Impact Statement

Date: September 13, 2022

Agency: Human Services

IAC citation: 441 IAC 114

Agency contact: David Philmon, Jr.

Summary of the rule:

The rules in Chapter 114 were reviewed as part of the Department's five-year rules review project and a few changes were made to language.

Fill in this box if the impact meets these criteria:

- No fiscal impact to the state.
- Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
- Fiscal impact cannot be determined.

Brief explanation:

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

No fiscal impact as this was a 5 year rule change that changed the language on the following items:
Hygiene items language was updated to reflect new expectations, Caseworker qualifications language was updated to allow for more flexibility for applicants, Updated child abuse reporting language to DHS Centralized Abuse Hotline

Fill in the form below if the impact does not fit the criteria above:

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY 2023)</u>	<u>Year 2 (FY 2024)</u>
Revenue by each source:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL REVENUE	_____	_____
Expenditures:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL EXPENDITURES	_____	_____
NET IMPACT	0.00	0.00

This rule is required by state law or federal mandate.

Please identify the state or federal law:

Identify provided change fiscal persons:

Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

Funding has not been provided for the rule.

Please explain how the agency will pay for the rule change:

No fiscal impact.

Fiscal impact to persons affected by the rule:

No fiscal impact.

Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):

No fiscal impact.

Agency representative preparing estimate: David Philmon, Jr.

JH 09/16/2022

Telephone number: 404-345-1088

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to licensing and regulation of comprehensive residential facilities and providing an opportunity for public comment.

The Human Services Department hereby proposes to amend Chapter 115, "Licensing And Regulation Of Comprehensive Residential Facilities For Children," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 237.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 237.3.

Purpose and Summary

Chapter 115 is being reviewed as part of the Department's five-year rules review. This chapter outlines the licensing and regulation standards for comprehensive regulations of residential care facilities for children. Proposed changes include updating language on adding additional contact time requirements with caseworkers per provider requests. Chemical restraint language is being removed. Expanded documentation requirements regarding the use of the control room is being proposed to align with other chapters.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441_1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 14, 2023. Comments should be directed to:

Nancy Freudenberg
Iowa Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Please see attached.

NOTICED RULES FOR CHAPTER 115

ITEM 1. Amend subparagraph **115.4(2)“a”(3)** as follows:

(3) ~~At least one additional hour per week per~~ Additional contact as needed with caseworker in other related duties including case intake discussions, staffings of cases, evaluations of caseworker, teaching, and administrative duties.

ITEM 2. Amend implementation statement following rule **115.5** as follows:

This rule is intended to implement Iowa code section 237C.3.

ITEM 3. Amend subrule **115.6(2)** as follows:

115.6(2) *Secure facilities.* Secure facilities may use physical restraints, a control room, locked cottages, and mechanical restraints, ~~and chemical restraints.~~

ITEM 4. Amend paragraph **115.7(2)“c”** as follows:

c. Require documentation in writing of the types of behaviors leading to control room placement and the conditions that will allow the child to return to the living unit. The child shall be informed of these conditions.

Documentation of control room use shall include, but not be limited to, the following:

- (1) Each use of control room.
- (2) The time the intervention began and ended.
- (3) The reason that required the resident to be put in control room.

(4) The name of staff involved in the intervention.

Proposed Rule Changes

ITEM 1. Amend subparagraph 441.115.4(2)(a)(3) as follows:

(3) Additional contact as needed with ~~At least one additional hour per week per~~ caseworker in other related duties including case intake discussions, staffings of cases, evaluations of caseworker, teaching, and administrative duties.

ITEM 2. Amend subrule 441.115.6(2) as follows:

115.6(2) *Secure facilities.* Secure facilities may use physical restraints, a control room, locked cottages, and mechanical restraints, ~~and chemical restraints.~~

ITEM 3. Adopt **new** language in paragraph 441.115.7(2)(c) as follows:

c. Require documentation in writing of the types of behaviors leading to control room placement and the conditions that will allow the child to return to the living unit. The child shall be informed of these conditions. Documentation of control room use shall include, but need not be limited to, the following:

- (1) Each use of control room.
- (2) The time the intervention began and ended.
- (3) The reason that required the resident to be put in a control room.
- (4) The name of staff involved in the intervention.



Administrative Rule Fiscal Impact Statement

Date: September 14, 2022

Agency: Human Services
IAC citation: 441 IAC 115
Agency contact: David O. Philmon, Jr.

Summary of the rule:

The rules in Chapter 115 were reviewed as part of the Department's five-year rules review project. As a result, changes were made to update language and terms.

Fill in this box if the impact meets these criteria:

- No fiscal impact to the state.
- Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
- Fiscal impact cannot be determined.

Brief explanation:

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

The rules in Chapter 115 were reviewed as part of the Department's five-year rules review project. This does not result in a fiscal impact. The result was the following changes were made: Updated language on additional contact time requirements with caseworkers per provider request, Removed chemical restraint language to align with language later in chapter, and Expanded language regarding documentation of control room use to align with other chapters and forms

Fill in the form below if the impact does not fit the criteria above:

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

Assumptions:

Describe how estimates were derived:



Iowa Department of Human Services
Information on Proposed Rules

Name of Program Specialist Kristin Konchalski	Telephone Number 515-281-9368	Email Address kkoncha@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:

The rules in Chapter 115 were reviewed as part of the Department's five-year rules review project. As a result, the following changes were made:

- Updated language on additional contact time requirements with caseworkers per provider request
- Removed chemical restraint language to align with language later in chapter
- Expanded language regarding documentation of control room use to align with other chapters and forms

2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):

237.3 gives the administrator of ACFS the authority to write rules.

3. Describe who this rulemaking will positively or adversely impact.

It is expected that clarifying our rules and providing updated information will provide a positive benefit to members of the public, potential providers of comprehensive group living facilities, and youth residing in the facilities.

4. Does this rule contain a waiver provision? If not, why?

No

5. What are the likely areas of public comment?

We do not expect any public comment on these rules.

6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)

No impact is expected to private sector jobs or employment opportunities in Iowa.

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY 2023)</u>	<u>Year 2 (FY 2024)</u>
Revenue by each source:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL REVENUE	_____	_____
Expenditures:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL EXPENDITURES	_____	_____
NET IMPACT	_____	_____

- This rule is required by state law or federal mandate.
Please identify the state or federal law:
 Identify provided change fiscal persons:
- Funding has been provided for the rule change.
Please identify the amount provided and the funding source:
- Funding has not been provided for the rule.
Please explain how the agency will pay for the rule change:
 No fiscal impact.

Fiscal impact to persons affected by the rule:

No fiscal impact.

Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):

No fiscal impact.

Agency representative preparing estimate: David O. Philmon, Jr. JH 09/16/2022
 Telephone number: 404-345-1088

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

**Proposing rule making related to five-year rules review
and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 156, “Payments for Foster Care,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 237.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 237.3.

Purpose and Summary

The rules in Chapter 156 were reviewed as part of the Department’s five-year rules review. As a result, the following changes are proposed:

- Remove references to difficulty of care payments for therapeutic foster care.
- Update the rate for kinship caregiver payments.
- Update the subrule regarding clothing allowances to address an increase in the allowance and a change in when it can be issued.
- Add runaway and family visits as allowable reserve bed payment types under Shelter Care.
- Remove the date that coincides with Comm. 502, Instructions for the Combined Cost Report.
- Change rate-setting methodology for shelter care to reflect rates set in contract.
- Update language to use the term “department caseworker.”

Fiscal Impact

This proposed rule making removes references to difficulty of care payments for therapeutic foster care. It also updates rates for kinship caregiver payments to match the rates the Department currently has in its contract. The proposed rule making also updates the methodology for rate setting in shelter care to reflect the rates set in the contract. Since those rates are already in the Department’s contract and budget, the Department does not believe any of these amendments to have a fiscal impact beyond the amount that has already been absorbed in the Department’s budget prior to any amendments. The Department is also proposing to update the clothing allowance to match what is currently in the budget. The allowance is being increased from \$237.50 to \$500 for children through the age of 12 and \$750 for children aged 13 and older. This reflects the rates the Department has set aside in the budget, so the proposed amendment does not add any additional fiscal impact.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 31, 2023. Comments should be directed to:

Nancy Freudenberg
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **156.6(4)“c”** as follows:

c. When the foster family’s responsibilities in the case permanency plan include providing transportation related to family or preplacement visits outside the community in which the foster family lives, the department ~~worker~~ caseworker may authorize an additional maintenance payment of \$1 per day. Expenses over the monthly amount may be reimbursed with prior approval by the ~~worker~~ department caseworker. Eligible expenses shall include the actual cost of the most reasonable passenger fare or gas.

ITEM 2. Rescind paragraphs **156.6(4)“d”** and **“e.”**

ITEM 3. Reletter paragraphs **156.6(4)“f”** and **“g”** as **156.6(4)“d”** and **“e.”**

ITEM 4. Amend relettered paragraphs **156.6(4)“d”** and **“e”** as follows:

d. For placements made on or after January 1, 2007, the supervisor may approve an additional maintenance payment above the basic rate in subrule 156.6(1) to meet the child’s special needs as identified by the child’s score on Form 470-4401, ~~Foster Child Behavioral Assessment~~. The ~~placement worker~~ department caseworker shall complete Form 470-4401 within 30 days of the child’s initial entry into foster care.

(1) and (2) No change.

e. All maintenance payments, including difficulty of care payments, shall be documented on Form 470-0716, ~~Foster Family Placement Contract~~.

ITEM 5. Amend subrule 156.6(6) as follows:

156.6(6) Return of overpayments. When a foster family has received payments in excess of those allowed under this chapter, the department caseworker shall ask the foster family to return the overpayment. If the foster family is returning the overpayment to the department, the department

caseworker will note the monthly amount the foster family agrees to pay in the family's case file. The amount returned shall not be less than \$50 per month.

ITEM 6. Amend paragraph **156.7(2)“a”** as follows:

a. For each eligible child living in a kinship placement, ~~the monthly payment for the child shall be \$300~~ a caregiver will receive up to \$310 (\$10 per day) as a result of a court-ordered placement.

ITEM 7. Amend subrule 156.8(1) as follows:

156.8(1) Clothing allowance.

a. When, in the judgment of the ~~worker~~ department caseworker, clothing is needed at the time the child is removed from the child's home and placed in foster care and annually thereafter as needed based on the date the child entered foster care, an allowance may be authorized, not to exceed ~~\$237.50~~ \$500 for the child through the age of 12 and \$750 for the child aged 13 and older, to purchase clothing.

~~a. Once during each calendar year that the child remains in foster care, the department worker may authorize another clothing allowance, not to exceed \$190 for family foster care and \$100 for all other levels when:~~

~~(1) The child needs clothing to replace lost clothing or because of growth or weight change, and~~

~~(2) The child does not have escrow funds to cover the cost.~~

b. When clothing is purchased by the foster family, the foster family shall submit receipts to the ~~worker~~ department caseworker within 30 days of purchase for auditing purposes, using Form 470-1952; ~~Foster Care Clothing Allowance.~~

ITEM 8. Amend subrule 156.8(6) as follows:

156.8(6) School fees. Payment for required school fees of a child in foster family care or supervised apartment living that exceed \$5 may be authorized by the department ~~worker~~ caseworker in an amount not to exceed \$50 per calendar year if the child does not have sufficient escrow funds to cover the cost. Required school fees shall include:

a. Fees required for participation in school or extracurricular activities; and

b. Fees related to enrolling a child in preschool when a mental health professional or an intellectual disabilities professional has recommended school attendance.

ITEM 9. Amend subparagraph **156.10(1)“a”(2)** as follows:

(2) The facility shall notify the ~~worker~~ department caseworker of each visit and its planned length prior to the visit.

ITEM 10. Amend subparagraph **156.10(1)“b”(1)** as follows:

(1) The facility shall contact the ~~worker~~ department caseworker at least 48 hours in advance of a planned hospitalization and within 24 hours after an unplanned hospitalization.

ITEM 11. Amend subparagraph **156.10(1)“c”(1)** as follows:

(1) The facility shall notify the ~~worker~~ department caseworker within 24 hours after the child runs away.

ITEM 12. Amend subparagraph **156.10(2)“c”(1)** as follows:

(1) The foster family shall notify the ~~worker~~ department caseworker within 24 hours after the child runs away.

ITEM 13. Amend subparagraph **156.10(3)“a”(1)** as follows:

(1) The facility shall contact the ~~worker~~ department caseworker at least 48 hours in advance of a planned hospitalization and within 24 hours after an unplanned hospitalization.

ITEM 14. Adopt the following new paragraphs **156.10(3)“c”** and **“d”**:

c. *Family visits.* Reserve bed payment shall be made for days a child is absent from the facility for family visits when the absence is in accord with the following:

(1) The visits shall be consistent with the child's case permanency plan.

(2) The facility shall notify the department caseworker of each visit and its planned length prior to the visit.

- (3) The intent of the department and the facility shall be for the child to return to the facility after the visit.
 - (4) Staff from the facility shall be available to provide support to the child and family during the visit.
 - (5) Payment shall be canceled and payments returned if the facility refuses to accept the child back.
 - (6) If the department agrees that the return would not be in the child's best interest, payment shall be canceled effective the day after the joint decision not to return the child.
 - (7) Payment shall be canceled effective the day after a decision is made by the court or parent in a voluntary placement not to return the child.
 - (8) Payment shall not exceed seven consecutive days, except upon prior written approval of the service area manager. In no case shall payment exceed 14 consecutive days.
 - (9) The provider shall document the use of reserve bed days in the daily log and report the number of reserve bed days claimed in the quarterly report.
- d. Runaways.* Reserve bed payment shall be made for days a child is absent from the facility after the child has run away when the absence is in accord with the following:
- (1) The facility shall notify the department caseworker within 24 hours after the child runs away.
 - (2) The intent of the department and the facility shall be for the child to return to the facility once the child is found.
 - (3) Payment shall be canceled and payments returned if the facility refuses to accept the child back.
 - (4) If the department agrees that the return would not be in the child's best interest, payment shall be canceled effective the day after the joint decision not to return the child.
 - (5) Payment shall be canceled effective the day after a decision is made by the court or parent in a voluntary placement not to return the child.
 - (6) Payment shall not exceed seven consecutive days, except upon prior written approval of the service area manager. In no case shall payment exceed 14 consecutive days.
 - (7) The provider shall document the use of reserve bed days in the daily log and report the number of reserve bed days claimed in the quarterly report.

ITEM 15. Amend rule 441—156.11(234) as follows:

441—156.11(234) Emergency juvenile shelter care payment. ~~Contracted juvenile shelter care facilities approved or licensed in Iowa shall be paid according to the following rate-setting methodology~~ Contracted juvenile shelter care facilities approved or licensed in Iowa shall be paid in accordance with contracted terms, not to exceed the allowable costs as permitted by Iowa Code section 232.141(8).

~~**156.11(1)** The combined service and maintenance reimbursement rate paid to a shelter care provider shall be based on the verified Form 470-5421, Combined Cost Report, submitted to the department, but shall not exceed the prevailing rate. The department shall adjust the provider's reimbursement rate to the provider's actual and allowable cost, plus the inflation factor and the \$3.99 allowance originated under the tobacco settlement fund, or to the prevailing rate, whichever is less, effective the first day of the month following the department's receipt from the fiscal consultant of the provider's verified cost for the most recently reviewed fiscal year.~~

~~**156.11(2)** Net allowable expenditures are limited to those costs that are considered reasonable, necessary, and related to the service provided to the client as set forth in Comm. 502 (7/16), Instructions for the Combined Cost Report.~~

This rule is intended to implement Iowa Code sections 234.6 and 234.39.

ITEM 16. Adopt the following **new** implementation sentence in rule **441—156.14(234,252C)**:
This rule is intended to implement Iowa Code section 234.39.

ITEM 17. Adopt the following **new** implementation sentence in rule **441—156.15(234)**:
This rule is intended to implement Iowa Code section 234.39.



Iowa Department of Human Services
Information on Proposed Rules

Name of Program Specialist Kristin Konchalski	Telephone Number 515-281-9368	Email Address kkoncha@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:

The rules in Chapter 156 were reviewed as part of the Department's five-year rules review project. As a result, the following changes were made:

- Removed references to difficulty of care payments for therapeutic foster care definition of Level of Care
- Updated rate for kinship caregiver payments
- Updated clothing allowance sections to address increase in allowance and change in when it can be issued
- Added runaway and family visits as allowable reserve bed payment types under Shelter Care
- Removed date that coincides with Comm. 502, Instructions for the Cost Report
- Changed rate setting methodology for shelter care to reflect rates set in contract
- Updated language to department caseworker

2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):

237.3 gives the administrator of ACFS the authority to write rules.

3. Describe who this rulemaking will positively or adversely impact.

It is expected that clarifying our rules and providing updated information will provide a positive benefit to members of the public, potential providers of kinship care, foster care, and residential services, and youth residing in foster care and foster care facilities.

4. Does this rule contain a waiver provision? If not, why?

No

5. What are the likely areas of public comment?

We do not expect any public comment on these rules.

6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)

No impact is expected to private sector jobs or employment opportunities in Iowa.



Administrative Rule Fiscal Impact Statement

Date: October 19, 2022

Agency: Human Services
IAC citation: 441 IAC 156
Agency contact: Kristin Konchalski

Summary of the rule:

The rules in Chapter 156 were reviewed as part of the Department’s five-year rules review project. As a result, the following changes were made:

- Removed references to difficulty of care payments for therapeutic foster care definition of Level of Care
- Updated rate for kinship caregiver payments
- Updated clothing allowance sections to address increase in allowance and change in when it can be issued
- Added runaway and family visits as allowable reserve bed payment types under Shelter Care
- Removed date that coincides with Comm. 502, Instructions for the Cost Report
- Changed rate setting methodology for shelter care to reflect rates set in contract
- Updated language to department caseworker

Fill in this box if the impact meets these criteria:

- No fiscal impact to the state.
- Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
- Fiscal impact cannot be determined.

Brief explanation:

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

The rule change removed references to difficulty of care payments for therapeutic foster care definition of Level of Care. It also updated rates for kinship caregiver payments to match the rates we have currently in our contracts.

The rule also updated the methodology for rate setting in shelter care to reflect the rates set in the contract. Since those rates are already in our contract and budget we do not believe any of these changes to have a fiscal impact since their fiscal impact has already been absorbed in our budget prior to any rule changes.

We also updated the clothing allowance to match what we have in the budget. The allowance went from not to exceed \$237.50, to \$500 for children through age 12 and \$750 for the child age 13 and older. This reflects the rates we have set aside in the budget so it does not add any additional fiscal impact by updating this in the rule. Since this is a new cost, the estimated impact is provided below.

Fill in the form below if the impact does not fit the criteria above:

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

Assumptions:

Clothing Allowance

Children age 0-12 get an increase from \$237.50 to \$500 per child/year, when approved by caseworker.

Teens (13 and older) get an increase from \$237.50 to \$750 per year, when approved by caseworker—the \$190 supplemental payment is removed.

20% of children who get a clothing allowance are teens

Percent of children in foster care who get a clothing allowance will increase from 20% to 30%, due to fiscal incentive and increased awareness, a 10% increase in participation.

FMAP Rate of 62%

Describe how estimates were derived:

9,238 - Avg Count of children in Foster care last 5 years

1,816 - Percent who are teens - 19.65 or 20%

Average Annual amount paid for clothing at current rate - \$326,342

Amount expected to pay at new amount - \$1,243,320

Difference in that amount - \$916,978

State Share - \$568,526

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY 23)</u>	<u>Year 2 (FY 24)</u>
Revenue by each source:		
General fund	568,526.00	568,526.00
Federal funds	348,452.00	348,452.00
Other (specify):		
TOTAL REVENUE	<u>916,978.00</u>	<u>916,978.00</u>
Expenditures:		
General fund	568,526.00	568,526.00
Federal funds	348,452.00	348,452.00
Other (specify):		
TOTAL EXPENDITURES	<u>916,978.00</u>	<u>916,978.00</u>
NET IMPACT	<u>0.00</u>	<u>0.00</u>

This rule is required by state law or federal mandate.

Please identify the state or federal law:

Identify provided change fiscal persons:

Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

Funding was identified through cost savings in the Foster Care Population. Population has been decreasing, decreasing the overall expenses in the Foster Care budget. Clothing Allowance increases are not more than the decrease in the Foster Care budget, due to population decreases. Also,

consideration was taken that the \$190 supplemental payment was removed, helping to lessen the impact of the increased clothing allowance.

Funding has not been provided for the rule.

Please explain how the agency will pay for the rule change:

Fiscal impact to persons affected by the rule:

An increase to the clothing allowance will benefit foster families and those in foster care.

Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):

None

Agency representative preparing estimate:	David O. Philmon, Jr.	JH 11/14/2022
Telephone number:	404-345-1088	JB 11/15/22

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

**Proposing rule making related to five-year rules review
and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 170, “Child Care Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 234.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 234.6.

Purpose and Summary

Chapter 170 was reviewed as part of the Department’s five-year rules review. This proposed rule making removes all references to the term “relatives” because this term has no standing in the child care assistance program. The proposed rule making includes language relating to eligibility for child care for foster children to reflect a recent policy change.

The definition of “PROMISE JOBS” is proposed to be updated to be in compliance with the definition in Chapter 40. References are proposed to be added to the definition of “child with special needs” to clarify where the definition of a qualified intellectual disability professional and a mental health professional can be found. The names of forms are proposed to be removed to eliminate unnecessary future changes as form names change. The proposed rule making updates a reference to Iowa’s Food Assistance Program to the Supplemental Nutrition Assistance Program (SNAP) to be consistent with the name of the federal program.

A provider who disagrees with the calculation of a half-day rate may request a review of that decision. After sending a written request to the service area manager and receiving a response, the provider could then file a disagreement with the Bureau of Child Care Services. This proposed rule making updates the name of the bureau, which handles the review of the service area manager’s decision. Requirements of notices of adverse action were moved from Chapter 7 to Chapter 16. This chapter is proposed to be updated to reflect that change.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 31, 2023. Comments should be directed to:

Nancy Freudenberg
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend **441—Chapter 170**, preamble, as follows:

PREAMBLE

The intent of this chapter is to establish requirements for the payment of child care services. Child care services are for children of low-income parents who are in academic or vocational training_; or employed or looking for employment_; or ~~for a limited period of time~~, unable to care for children due to physical or mental illness_; or needing protective services to prevent or alleviate child abuse or neglect. Services may be provided in a licensed child care center, a registered child development home, ~~the home of a relative~~, the child’s own home, or a nonregistered family child care home.

ITEM 2. Rescind the definition of “Relative” in rule **441—170.1(237A)**.

ITEM 3. Amend rule **441—170.1(237A)**, definitions of “Child with protective needs,” “Child with special needs,” “PROMISE JOBS,” “Provider” and “Provider error,” as follows:

“*Child with protective needs*” means a child who is ~~not~~ in foster care ~~and~~ or has a case file that identifies child care as a safety or well-being need to prevent or alleviate the effects of child abuse or neglect. Child care is provided as part of a safety plan during a child abuse or child in need of assistance assessment or as part of the service plan established in the family’s case plan. The child must have:

1. An open child abuse assessment;
2. An open child in need of assistance assessment;
3. An open child welfare case as a result of a child abuse assessment;
4. A petition on file for a child in need of assistance adjudication; or
5. Adjudication as a child in need of assistance.

“*Child with special needs*” means a child with one or more of the following conditions:

1. The child has been diagnosed by a physician or by a person endorsed for service as a school psychologist by the Iowa department of education to have a developmental disability which substantially

limits one or more major life activities, and the child requires professional treatment, assistance in self-care, or the purchase of special adaptive equipment.

2. The child has been determined by a qualified intellectual disability professional as defined in rule 441—83.60(249A) to have a condition which impairs the child’s intellectual and social functioning.

3. The child has been diagnosed by a mental health professional as defined in rule 441—24.1(225C) to have a behavioral or emotional disorder characterized by situationally inappropriate behavior which deviates substantially from behavior appropriate to the child’s age, or which significantly interferes with the child’s intellectual, social, or personal adjustment.

“*PROMISE JOBS*” means the department’s work and training program, promoting independence and self-sufficiency through employment job opportunities and basic skills, as described in 441—Chapter 93.

“*Provider*” means a licensed child care center, a registered child development home, ~~a relative who provides care in the relative’s own home solely for a related child~~, a caretaker who provides care for a child in the child’s home, or a nonregistered child care home.

“*Provider error*” means and may result from:

1. to 4. No change.

5. Failure to maintain a copy of Form 470-4535, ~~Child Care Assistance Billing/Attendance Provider Record~~, signed by the parent and the provider.

ITEM 4. Adopt the following new subparagraph **170.2(1)“b”(5)**:

(5) Child care services for licensed foster parents who need child care for foster children are provided without regard to income.

ITEM 5. Amend subparagraph **170.2(1)“d”(10)** as follows:

(10) The value of the ~~food assistance~~ Supplemental Nutrition Assistance Program (SNAP) allotment under the Food and Nutrition Act of 2008.

ITEM 6. Amend subparagraph **170.2(2)“b”(5)** as follows:

(5) The parent is looking for employment. Child care for job search hours shall be limited to only those hours the parent is actually looking for employment, including travel time. Job search shall be limited to a maximum of 90 consecutive calendar days.

1. For applicants, job search shall be approved for a maximum of 90 consecutive calendar days. If the parent has not started employment within 90 days, assistance shall be canceled.

2. For ongoing participants, job search shall be limited to a maximum of 90 consecutive calendar days and will be treated the same as a temporary lapse in need as described at ~~170.2(2)“b”(9) and (10)~~ subparagraphs **170.2(2)“b”(10)** and (11).

ITEM 7. Renumber subparagraphs **170.2(2)“b”(9)** and (10) as **170.2(2)“b”(10)** and (11).

ITEM 8. Adopt the following new subparagraph **170.2(2)“b”(9)**:

(9) The parent is a licensed foster parent who needs child care for foster children.

ITEM 9. Amend paragraph **170.2(2)“d”** as follows:

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

(1) and (2) No change.

ITEM 10. Amend subrule 170.2(3), introductory paragraph, as follows:

170.2(3) Priority for assistance. Child care services shall be provided only when funds are available. Funds available for child care assistance shall first be used to continue assistance to families currently receiving child care assistance and to families with protective child care needs or licensed foster parents who need child care for foster children. When funds are insufficient, families applying for services must meet the specific requirements in this subrule.

ITEM 11. Adopt the following new subparagraph **170.2(3)“b”(5)**:
(5) Licensed foster parents who need child care for foster children.

ITEM 12. Amend paragraph **170.3(1)“a”** as follows:

a. Application for child care assistance may be made at any local office of the department on:

(1) Form 470-3624 or 470-3624(S), ~~Child Care Assistance Application, or~~

(2) ~~Form 470-0462 or 470-0462(S), Health and Financial Support Application, or~~

(3) (2) Form 470-4377 or 470-4377(S), ~~Child Care Assistance Review~~, when returned after the end of the certification period.

ITEM 13. Adopt the following new paragraph **170.3(2)“f”**:

f. Licensed foster parents who need child care for foster children.

ITEM 14. Amend subparagraph **170.3(3)“a”(2)** as follows:

(2) Inform the family’s provider through the notice of decision or through Form 470-4444, ~~Certificate of Enrollment~~.

ITEM 15. Amend subparagraph **170.3(3)“c”(3)** as follows:

(3) For a family with protective service needs, the effective date of assistance shall be the date the family signs Form 470-0615 or 470-0615(S), ~~Application for All Social Services~~.

ITEM 16. Amend paragraph **170.3(5)“b”** as follows:

b. The department shall use information gathered on Form 470-4377 or 470-4377(S), ~~Child Care Assistance Review~~, to redetermine eligibility, except when the family is not required to complete a review form as provided in paragraph 170.3(5)“c.”

(1) and (2) No change.

ITEM 17. Amend paragraph **170.3(5)“c”** as follows:

c. Families who have children with protective needs, licensed foster parents who need child care for foster children, and families who are receiving child care assistance because the parent is participating in activities under the PROMISE JOBS program are not required to complete Form 470-4377 or 470-4377(S).

(1) and (2) No change.

ITEM 18. Amend paragraph **170.3(6)“b”** as follows:

b. Assistance shall be reinstated without a new application when the case was canceled for failure to provide requested information but all information necessary to determine eligibility, including verification of all changes in circumstances, is provided within 14 calendar days of the effective date of cancellation and eligibility can be reestablished. If the fourteenth calendar day falls on a weekend or state holiday, the family shall have until the next business day to provide the information. The effective date of child care assistance shall be the date that all information required to establish eligibility is provided.

ITEM 19. Amend paragraphs **170.4(3)“a”** and **“b”** as follows:

a. *Licensed child care center.* A child care center shall be licensed by the department to meet the requirements set forth in 441—Chapter 109 and shall have a current ~~Certificate of License~~, Form 470-0618.

b. *Registered child development home.* A child development home shall meet the requirements for registration set forth in 441—Chapter 110 and shall have a current ~~Certificate of Registration~~, Form 470-3498.

ITEM 20. Amend paragraph **170.4(3)“e”** as follows:

e. *In-home care.* The adult ~~caretaker~~ provider selected by the parent to provide care in the child’s own home shall be sent Form 470-2890 or 470-2890(S), ~~Payment Application for Nonregistered Providers~~. The provider shall complete and sign Form 470-2890 or 470-2890(S) and return the form to the department before payment may be made. An identifiable application is an application that contains a legible name and address and that has been signed. Signature on the form certifies the provider’s

understanding of and compliance with the conditions and requirements for nonregistered in-home care providers that include:

(1) to (4) No change.

ITEM 21. Amend paragraph **170.4(3)“h”** as follows:

h. National criminal history record checks for in-home care. If a person who provides in-home care applies to receive public funds as reimbursement for providing child care for eligible clients, the provider shall complete Form DCI-45, ~~Waiver Agreement~~, and Form FD-258, ~~Federal Fingerprint Card~~.

(1) to (5) No change.

ITEM 22. Amend subrule 170.4(7), introductory paragraph, as follows:

170.4(7) Payment. The department shall make payment for child care provided to an eligible family when the family reports their choice of provider to the department and the provider has a completed Form 470-3871 or 470-3871(S), ~~Child Care Assistance Provider Agreement~~, on file with the department. Both the child care provider and the department worker shall sign this form.

ITEM 23. Amend subparagraph **170.4(7)“f”(2)** as follows:

(2) When dissatisfied with the response, the provider may, within 15 calendar days of the response, request a review by the chief of the bureau of ~~financial support~~ child care services chief. The provider shall submit to the bureau chief the original request, the response received, and any additional information desired. The bureau chief shall render a decision in writing within 15 calendar days of receipt of the request.

ITEM 24. Amend subparagraphs **170.4(7)“g”(1)** and **(2)** as follows:

(1) Using Form 470-4534, ~~Child Care Assistance Billing/Attendance~~; or

(2) Using an electronic request for payment submitted through the KinderTrack system. Providers using this method shall print Form 470-4535, ~~Child Care Assistance Billing/Attendance Provider Record~~, to be signed by the provider and the parent. The provider shall keep the signed Form 470-4535 for a period of five years after the billing date.

ITEM 25. Amend subrule 170.5(1) as follows:

170.5(1) Provider agreement. The department may refuse to enter into or may revoke ~~the Child Care Assistance Provider Agreement~~, Form 470-3871 or 470-3871(S), if any of the following occur:

a. to d. No change.

e. The provider fails to comply with any of the terms and conditions of ~~the Child Care Assistance Provider Agreement~~, Form 470-3871 or 470-3871(S).

f. to h. No change.

ITEM 26. Amend subrule 170.5(5) as follows:

170.5(5) Provider agreement sanction. If a ~~Child Care Assistance Provider Agreement~~, Form 470-3871 or 470-3871(S), is terminated for any of the reasons in subrule 170.5(1), the agreement shall remain terminated for the time periods set forth below:

a. to d. No change.

ITEM 27. Amend rule 441—170.6(237A) as follows:

441—170.6(237A) Appeals. Notice of adverse actions ~~and the~~ action shall be given in accordance with 441—Chapter 16. The right of to appeal shall be given in accordance with 441—Chapter 7.

ITEM 28. Amend paragraph **170.9(6)“b”** as follows:

b. The department of inspections and appeals shall initiate recoupment by notifying the debtor of the overpayment on Form 470-4530, ~~Notice of Child Care Assistance Overpayment~~.



Iowa Department of Human Services
Information on Proposed Rules

Table with 3 columns: Name of Program Specialist (Mark Adams), Telephone Number (515-281-5688), Email Address (madams@dhs.state.ia.us)

1. Give a brief purpose and summary of the rulemaking:

This chapter was reviewed as part of the Department’s five-year rules review. The proposed rule making removes all references to the term “relatives” as this term has no standing in the child care assistance program. The proposed rule making includes language relating to foster care child care eligibility to reflect a recent policy change.

The definition of “PROMISE JOBS” is updated to be in compliance with the definition in Chapter 40. References are added to the definition of “Child with special needs” to clarify where the definition of a qualified intellectual disability professional and mental health professional can be found. The names of forms are removed to eliminate unnecessary future changes as form names change. This proposed rule making updates a reference to Iowa’s Food Assistance Program to the Supplemental Nutrition Assistance Program (SNAP) to be consistent with the name of the federal program.

A provider who disagrees with the calculation of a half-day rate may request a review of that decision. After sending a written request to the service area manager and receiving a response, the provider could then file a disagreement with the Bureau of Child Care Services. This proposed rule making updates the name of the bureau who handles the review of the service area manager’s decision. Requirements for notices of adverse action were moved from Chapter 7 to Chapter 16, effective April 15, 2020. This chapter is updated to reflect that change.

2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):

Iowa Code 234.6

3. Describe who this rulemaking will positively or adversely impact.

This rulemaking positively impacts applicants, recipients and providers of child care assistance. The proposed rule making removes outdated terminology and form names, and updates definitions, program names, bureau names and references to the correct Iowa Administrative Code chapters relating to notices of adverse actions.

4. Does this rule contain a waiver provision? If not, why?

The proposed amendments do not include waiver provisions because they confer benefits on those affected and are pursuant to federal law that does not provide for waivers, given that the process is optional. Individuals may request a waiver under the Department’s general rule on exceptions at Iowa Admin. Code 441—1.8.

5. What are the likely areas of public comment?

As the proposed amendments are believed to be positive changes for applicants and recipients, there is no likely area of public comment.

6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)

The proposed amendments have no impact on private-sector jobs and employment opportunities in Iowa.

Proposed Rule Changes

“*Child with special needs*” means a child with one or more of the following conditions:

1. The child has been diagnosed by a physician or by a person endorsed for service as a school psychologist by the Iowa department of education to have a developmental disability which substantially limits one or more major life activities, and the child requires professional treatment, assistance in self-care, or the purchase of special adaptive equipment.

2. The child has been determined by a qualified intellectual disability professional as defined in rule 441—83.60(249A) to have a condition which impairs the child’s intellectual and social functioning.

3. The child has been diagnosed by a mental health professional as defined in rule 441—24.1(225C) to have a behavioral or emotional disorder characterized by situationally inappropriate behavior which deviates substantially from behavior appropriate to the child’s age, or which significantly interferes with the child’s intellectual, social, or personal adjustment.

“*PROMISE JOBS*” means the department’s work and training program, promoting independence and self-sufficiency through employment job opportunities and basic skills, as described in 441—Chapter 93.

“*Provider*” means a licensed child care center, a registered child development home, ~~a relative who provides care in the relative’s own home solely for a related child~~, a caretaker who provides care for a child in the child’s home, or a nonregistered child care home.

“*Provider error*” means and may result from:

1. to 4. No change.

5. Failure to maintain a copy of Form 470-4535, ~~Child Care Assistance~~ Billing/Attendance Provider Record, signed by the parent and the provider.



Administrative Rule Fiscal Impact Statement

Date: November 30, 2022

Agency: Human Services

IAC citation: 441 IAC 170

Agency contact: Mark Adams

Summary of the rule:

This chapter was reviewed as part of the Department's five-year rules review. The proposed rule making removes all references to the term "relatives" as this term has no standing in the child care assistance program. The proposed rule making includes language relating to foster care child care eligibility to reflect a recent policy change.

The definition of "PROMISE JOBS" is updated to be in compliance with the definition in Chapter 40. References are added to the definition of "Child with special needs" to clarify where the definition of a qualified intellectual disability professional and mental health professional can be found. The names of forms are removed to eliminate unnecessary future changes as form names change. This proposed rule making updates a reference to Iowa's Food Assistance Program to the Supplemental Nutrition Assistance Program (SNAP) to be consistent with the name of the federal program.

A provider who disagrees with the calculation of a half-day rate may request a review of that decision. After sending a written request to the service area manager and receiving a response, the provider could then file a disagreement with the Bureau of Child Care Services. This proposed rule making updates the name of the bureau who handles the review of the service area manager's decision. Requirements for notices of adverse action were moved from Chapter 7 to Chapter 16, effective April 15, 2020. This chapter is updated to reflect that change.

Fill in this box if the impact meets these criteria:

- No fiscal impact to the state.
- Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
- Fiscal impact cannot be determined.

Brief explanation:

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

This chapter was reviewed as part of the Department's five-year rules review. The proposed rule making removes outdated terminology and form names, and updates definitions, program names, bureau names and references to the correct Iowa Administrative Code chapters relating to notices of adverse actions.

The changes related to foster care child care eligibility will result in certain child care expenses being paid from the Child Care Assistance appropriation instead of the Child and Family Services appropriation, but in the aggregate this will be budget neutral.

Fill in the form below if the impact does not fit the criteria above:

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY 2023)</u>	<u>Year 2 (FY 2024)</u>
Revenue by each source:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL REVENUE	_____	_____
Expenditures:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL EXPENDITURES	_____	_____
NET IMPACT	<u>0.00</u>	<u>0.00</u>

This rule is required by state law or federal mandate.

Please identify the state or federal law:

Identify provided change fiscal persons:

Iowa Code 234.6

Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

Funding has not been provided for the rule.

Please explain how the agency will pay for the rule change:

No additional funding is necessary to implement these rules.

Fiscal impact to persons affected by the rule:

This rulemaking positively impacts applicants, recipients and providers of child care assistance. The proposed rule making removes outdated terminology and form names, and updates definitions, program names, bureau names and references to the correct Iowa Administrative Code chapters relating to notices of adverse actions.

Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):

No impact is anticipated.

Agency representative preparing estimate: Francis Thurman

JH 12/05/2022, JB 12/05/22

Telephone number:

515-281-6855

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to dependent adult abuse and providing an opportunity for public comment.

The Human Services Department hereby proposes to amend Chapter 176, "Dependent Adult Abuse," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 217.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 235B.

Purpose and Summary

Chapter 176 is being reviewed as part of the Department's five-year rules review. Definitions are proposed to be updated to align with the Code of Iowa and provide consistency. The word "dependent" is being added to adult abuse to ensure dependent adult abuse is correctly identified. The proposed rules clarify the relationships of all parties involved in the assessment process.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441_1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 14, 2023. Comments should be directed to:

Nancy Freudenberg
Iowa Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Please see attached.

Proposed Rule Changes

ITEM 1. Amend rule **441—176.1** definitions of “dependent adult abuse,” “assessment information,” “confidential information,” “confidentiality,” “expungement,” “informed consent,” “ multidisciplinary team,” “preponderance of evidence,” and “registry” as follows:

441—176.1(235B) Definitions.

“*Dependent adult abuse*” means either:

1. Any of the following as a result of the willful or negligent acts or omissions of a caretaker:

- Physical injury to, or injury which is at variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult.
- The commission of a sexual offense under Iowa Code chapter 709 or Iowa Code section 726.2 with or against a dependent adult.
- Exploitation of a dependent adult, which means the act or process of taking unfair advantage of a dependent adult or the adult’s physical or financial resources, without the informed consent of the dependent adult, including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.
- The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult’s life or health.

2. ● Sexual exploitation of a dependent adult by a caretaker. “Sexual exploitation” means any consensual or nonconsensual sexual contact with a dependent adult which includes but is not limited to kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act, as defined in Iowa Code section 702.17. “Sexual exploitation” includes the transmission, display, taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for a purpose not related to treatment or diagnosis or as part of an ongoing assessment, evaluation or investigation. “Sexual exploitation” does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses.

3. ● Personal degradation of a dependent adult, which means a willful act or statement by a caretaker intended to shame, degrade, humiliate, or otherwise harm the personal dignity of a dependent adult, or where the caretaker knew or reasonably should have known the act or statement would cause shame, degradation, humiliation, or harm to the personal dignity of a reasonable person.

2. 4. The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult’s life or health as a result of the acts or omissions of the dependent adult.

“Assessment information” means material and data maintained by the department in a manual or automated data storage system concerning the report, assessment or evaluation, or disposition of dependent adult abuse.

Proposed Rule Changes

“Confidential Information” means any information restricted by Iowa Code Chapter 22, Iowa Code Chapter 217, Iowa Code Chapter 235B, Iowa Code Chapter 229, Iowa Code Chapter 125, 45 CFR 160; 162 and 164, or any other provision in State or Federal law that prohibits disclosure of information.

~~“Confidentiality” means the withholding of information from any manner of communication, public or private.~~

“Expungement” means the process of destroying or erasing dependent adult abuse information in compliance with Iowa Code 235B.9.

~~“Informed consent” (as used in Iowa Code section 235B.2(5)“e”)~~ As used in the definition of exploitation in the Iowa Code section 235B.2(5) means a dependent adult’s agreement to allow something to happen that is based on a full disclosure of known facts and circumstances needed to make the decision intelligently, i.e., knowledge of risks involved or alternatives.

~~“Multidisciplinary team” shall~~ means a membership of individuals who possess knowledge and skills related to the diagnosis, assessment, and disposition of dependent adult abuse cases and who are professionals practicing in the disciplines of medicine, public health, social work, law, law enforcement and other disciplines relative to dependent adults. Members of the team shall include, but are not limited to, persons representing the area agencies on aging, county attorneys, health care providers, and others involved in advocating or providing services for dependent adults.

~~“Preponderance of evidence” shall~~ means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it.

~~“Registry”~~ means the central registry for dependent adult abuse information established in Iowa Code Supplement section 235B.5.

ITEM 2. Amend rule **441—176.2(235B)** as follows:

441—176.2(235B) Denial of critical care. The failure on the part of the caretaker, by acts or omissions, or dependent adult to provide for minimum food, shelter, clothing, supervision, physical or mental care, and other care necessary for the dependent adult’s health and welfare when financially able to do so or when offered financial and other reasonable means to do so shall constitute denial of critical care to that dependent adult.

ITEM 3. Amend rule **441—176.3(235B)** as follows:

441—176.3(235B) Appropriate evaluation. ~~Immediately~~ Upon receipt of a dependent adult abuse report, ~~the worker~~ department shall conduct an intake sufficient to determine whether the

Proposed Rule Changes

allegation meets criteria and constitutes a report of dependent adult abuse as defined in Iowa Code 235B.2.

176.3(1) Dependent adult abuse reports shall be evaluated when all of the following criteria are alleged to be met:

- a. There is a reasonable belief the person is a dependent adult.
- b. Dependent adult abuse ~~exists~~ is suspected as defined in Iowa Code section 235B.2.
- c. The alleged person responsible is:
 1. A caretaker ~~exists~~ in reports of physical injury, ~~assault, to or~~ unreasonable confinement or cruel punishment of a dependent adult; commission of a sexual offense; exploitation; personal degradation; and deprivation ~~by another person~~ of food, shelter, clothing, supervision, physical ~~and~~ or mental health care and other care necessary to maintain life or health.
 2. The dependent adult in reports of deprivation of food, shelter, clothing, supervision, physical or mental health care and other care necessary to maintain life or health due to the adult's own acts or omissions per Iowa Code 235B.2(5)(a)(2).

176.3(2) Nondependent adult abuse situations. The following are not dependent adult abuse situations:

- a. A report of domestic abuse under Iowa Code chapter 236, Domestic Abuse, does not in and of itself constitute a report of dependent adult abuse.
- b. Circumstances in which the dependent adult declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.
- c. Circumstances in which the dependent adult's caretaker, acting in accordance with the dependent adult's stated or implied consent, declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.
- d. Withholding and withdrawing of health care from a dependent adult who is terminally ill in the opinion of a licensed physician when the withholding and withdrawing of health care is done at the request of the dependent adult or at the request of the dependent adult's next-of-kin or guardian pursuant to the applicable procedures under Iowa Code chapter 125, 144A, 222, 229, or 633.
- e. All persons legally incarcerated in a penal setting, either in a local jail or confined to the custody of the director of the department of corrections, when the allegation pertains to correctional staff as caretakers.

176.3(3) Reports of dependent adult abuse which are the result of the acts or omissions of the dependent adult shall be collected and maintained in the files of the dependent adult as assessments information only and shall not be included on the central registry. The central registry shall be notified as to the disposition of the assessment.

Proposed Rule Changes

176.3(4) Confirmed, not registered. Reports of physical abuse, denial of critical care by a caretaker, or personal degradation that would otherwise be founded reports shall be considered confirmed, not registered reports if the abuse is determined to be minor, isolated, and unlikely to reoccur. These reports shall be assessments and shall not be included on the central abuse registry. ~~The assessment shall be maintained in the local office as directed in subrule 176.13(4).~~ Access to confirmed, not registered reports will be authorized pursuant to Iowa Code 235B.6(3).

ITEM 4. Amend rule **441—176.4(235B)** as follows:

441—176.4(235B) Reporters. ~~As a function of the central registry, and county office centralized intake shall accept~~ take reports from mandatory reporters or any other person who believes dependent adult abuse has occurred.

176.4(1) Mandatory reporters shall:

- a. report suspected abuse of a dependent adult within 24 hours of becoming aware of an abusive incident.
- b. ~~Make a written report within 48 hours after an oral report.~~

176.4(2) The reporter may use a form 470-2441 ~~prescribed by the department~~ or may use a form developed by the reporter that meets the requirements of Iowa Code section 235B.3.

ITEM 5. Amend rule **441—176.5(235B)** as follows:

441—176.5(235B) Reporting procedure.

176.5(1) Each report made by someone other than a mandatory reporter may be oral or written.

176.5(2) The report shall be made by telephone or otherwise to the department ~~of human services~~. When the person making the report has reason to believe that immediate protection for the dependent adult is advisable, that person ~~shall~~ will be asked to also make an oral report to an appropriate law enforcement agency.

176.5(3) The department ~~of human services~~ shall:

- a. ~~Immediately, upon receipt of a report, make an oral report to the registry;~~
- b. ~~Forward a copy of the report to the registry; and~~
- c. ~~Promptly notify~~ provide electronic access to all reports alleging dependent adult abuse to the appropriate county attorney ~~of the receipt of any report.~~

176.5(4) The report ~~shall~~ may contain the following information, or as much thereof as the person making the report is able to furnish:

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- a. The names and home addresses of the dependent adult, appropriate relatives, caretakers, and other persons believed to be responsible for the care of the dependent adult.
- b. The dependent adult's present whereabouts if not the same as the address given.
- c. The reason the adult is believed to be dependent. Dependency is the first criterion to be considered before beginning an evaluation.
- d. The dependent adult's age.
- e. The nature and extent of the dependent adult abuse, including evidence of previous dependent adult abuse. The existence of alleged dependent adult abuse is the second criterion to be considered before beginning an evaluation.
- f. Information concerning ~~the~~ suspected dependent adult abuse of other dependent adults in the same residence.
- g. Other information which the person making the report believes might be helpful in establishing the cause of the abuse or the identity of the person or persons responsible for the abuse, or helpful in providing assistance to the dependent adult.
- h. The name and address of the person making the report.

176.5(5) A report ~~shall be accepted~~ will be received whether or not it contains all of the information requested in 176.5(4), and may be made to the department, county attorney, or law enforcement agency. When the report is made to any agency other than the department of ~~human services~~, that agency shall promptly refer the report to the department.

ITEM 6. Amend rule **441—176.5(235B)** as follows:

441—176.6(235B) Duties of the department upon receipt of report.

176.6(1) When a report is received and meets criteria pursuant to Iowa Code 235B.2(5)(a), the department shall promptly commence an appropriate evaluation or assessment, except that the department of inspections and appeals is responsible for the evaluation and disposition of a case of dependent adult abuse in a health care facility pursuant to Iowa Code 235E, including hospitals as defined in Iowa Code section 135B.1 and facilities as defined in Iowa Code section 135C.1. The department shall forward all reports and other information concerning dependent adult abuse in a health care facility to the department of inspections and appeals on the first working day following the submitting of the report. The department of inspections and appeals shall inform the registry of all actions taken or contemplated concerning the evaluation or disposition of a case of adult abuse in a health care facility. ~~The primary purpose of the evaluation or assessment by the department shall be the protection of the dependent adult named in the report.~~

176.6(2) The evaluation or assessment shall include all of the following:

- a. Identification of the nature, extent, and cause of the dependent adult abuse, if any, to the dependent adult named in the report.
- b. The identification of the person or persons responsible for the dependent adult abuse.

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- c. A determination of whether other dependent adults in the same residence have been subjected to dependent adult abuse.
- d. A critical examination of the residential environment of the dependent adult named in the report, and the dependent adult's relationship with caretakers and other adults in the same residence.
- e. A critical explanation of all other pertinent matters.

176.6(3) The evaluation or assessment, with the consent of the dependent adult or caretaker, when appropriate, may include a visit to the residence of the dependent adult named in the report and an examination of the dependent adult. If permission to enter the residence and to examine the dependent adult is refused, the district court, upon a showing of probable cause that a dependent adult has been abused, may authorize a person, authorized by the department, to make an evaluation or assessment, to enter the residence of, and to examine the dependent adult.

Upon a showing of probable cause that a dependent adult has been financially exploited, a court may authorize a person, also authorized by the department, to gain access to the financial records of the dependent adult.

~~**176.6(4)** Rescind and renumber. County attorneys, law enforcement agencies, multidisciplinary teams as defined in Iowa Code section 235B.1, subsection 1, and social services agencies in the state shall cooperate and assist in the evaluation or assessment upon the request of the department. County attorneys and appropriate law enforcement agencies shall also take any other lawful action necessary or advisable for the protection of the dependent adult.~~

~~**176.6(5)**~~ **6.(4)** Completion of evaluation or assessment report. Upon completion of its evaluation or assessment, the department shall complete a report that describes its findings and includes all actions taken or contemplated.

a. The department shall complete its report within 20 working business days of the receipt of the abuse allegations, unless the worker's supervisor grants an extension of time for good cause ~~shown~~. The worker's supervisor may grant an extension for a maximum of 30 working business days. No more than three extensions shall be granted.

b. Upon completion of an assessment or evaluation, the department shall enter its report into the Dependent Adult Reporting and Evaluation System (DARES).

~~c. Upon completion of an assessment when the alleged abuse is the result of the acts or omissions of the dependent adult, the department shall place the report in the case file of the dependent adult and enter the information into DARES.~~

~~**176.6(6)**~~ **6.(5)** Report to county attorney. The department shall ~~transmit a copy of the report of its~~ provide electronic access to the complete evaluation or assessment to the appropriate county attorney. ~~The county attorney shall notify the local office of the department of any actions or contemplated actions with respect to a suspected case of adult abuse.~~

176.6(7) **6.(6)** Based on the evaluation, the department shall complete an assessment of services needed by a dependent adult believed to be the victim of abuse, the dependent adult's family, or a

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caretaker. The department shall explain that the department does not have independent legal authority to compel the acceptance of protective services. Upon voluntary acceptance of the offer of services, the department shall make referrals or may provide necessary protective services to eligible dependent adults, their family members, and caretakers.

176.6(8) Rescind

176.6(9) Rescind

176.6(10) Rescind

176.6(11) Renumber as 176.6(7)

Notification of licensing authority. Based on information discovered during an evaluation of dependent adult abuse in a program providing care to a dependent adult as authorized pursuant to Iowa Code 235B.6(2)(c) and for the purpose of assuring safety and mitigating risk to dependent adults, the department shall notify the licensing or accrediting authority for the program, the governing body of the program, and the administrator in charge of the program of any of the following:

- a. A violation of program policy noted in the evaluation.
- b. An instance in which program policy or lack of program policy may have contributed to the dependent adult abuse.
- c. An instance in which general practice in the program appears to differ from the program's policy.

~~The licensing or accrediting authority, the governing body, and the administrator in charge of the program shall take any lawful action which may be necessary or advisable to protect dependent adults receiving care in the program.~~

176.6(12) Renumber as 176.6(8) ~~Assessments~~ Services by other agencies. The department may approve agencies considered capable and appropriate to ~~complete assessments of~~ provide services to dependent adults during the course of an assessment or evaluation, who are suspected of being abused or neglected.

a. The department may make a referral to an approved agency to ~~complete an assessment of~~ provide services to a dependent adult who is suspected of being abused or neglected, in conjunction with a department abuse evaluation or assessment on the dependent adult.

b. The department may use information obtained ~~from the assessment completed during~~ services provided by the approved agency in the abuse evaluation or assessment. The department has complete authority in determining the conclusions of the abuse evaluation or assessment.

176.6(13) Renumber as 176.6(9) ~~Referrals to other agencies. During an assessment or evaluation of suspected abuse of a dependent adult, the department shall:~~

a. ~~Make a referral to the division of labor services of the department of workforce development if an issue is discovered that concerns wages, workplace safety, or labor and employment matters under the jurisdiction of that agency.~~

b. ~~Make a referral to the civil rights commission if an issue is discovered that involves discrimination under the jurisdiction of that agency.~~

176.6(14) Renumber as 176.6(10) ~~Assessment of dependency and risk. After the first visit to a dependent adult who is alleged to be abused~~ During a dependent adult abuse assessment or

Proposed Rule Changes

evaluation, the department shall complete an assessment of the adult ~~using a form prescribed by the department~~ pursuant to Iowa Code 235B.16A(2).

The department shall assess:

- a. The adult's dependency,
- b. The risk to the adult's health or safety, and
- c. The areas in which the adult is either dependent or independent.

~~176.6(15)~~ **Renumber as 176.6(11)**. Follow-up for at-risk adults. When it has not been possible or necessary to obtain a court order for services to an at-risk adult, the department shall attempt to empower the at-risk adult to agree to accept services and to participate in preparing a safety plan. If the adult refuses to sign a safety plan for an at-risk adult and to accept recommended services, the department shall provide periodic visits at the conclusion of the assessment or evaluation. Periodic visits will be conducted with the at-risk adult. The department has no authority to share information or obtain information with any other individuals during the course of periodic visits. Periodic visits should not be used as a means to continue gathering assessment or evaluation information.

a. *Purpose*. The purpose of the visits shall be to:

- (1) Assess the adult for increased risk or impairment,
- (2) Monitor the adult's situation to determine the feasibility of intervening with protective services, and
- (3) Empower the adult to accept recommended services and to engage in safety planning.

b. *Exemption*. If it has been determined there is a physical threat to the safety of the department employee who is attempting to visit an at-risk adult, the department shall not attempt a periodic visit unless the physical threat to safety has been removed.

c. *Criteria to continue visits*. Periodic visits shall continue if:

- (1) The adult's health or safety has deteriorated somewhat but not to the point that a court order is necessary; or
- (2) The adult's health or safety has remained the same and there is a possibility the adult may in the future agree to services and to participating in preparing a safety plan.

d. *Criteria to end visits*. Periodic visits shall be terminated when:

- (1) The adult agrees to services and services are arranged; or
- (2) The adult's health or safety has deteriorated to the point that the department has requested court action pursuant to subrule 176.6(8); or
- (3) The adult's health or safety has not changed six months after the initial report of alleged abuse; there appears no possibility the adult will ever agree to services; and the adult ~~is competent~~ has capacity to make decisions.

ITEM 7. Amend rule ~~441—176.7(235B)~~ as follows:

441—176.7(235B) Appropriate evaluation or assessment.

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~~176.7(1) After receipt of the report alleging dependent adult abuse, the field worker shall make an evaluation or assessment to determine whether the information as reported, other known information, and any information gathered as a result of the worker's contact with collateral sources would tend to corroborate the alleged abuse.~~

~~176.7(2) When the information gathered in the evaluation or assessment tends to corroborate, or the worker is uncertain as to whether it repudiates the allegations of the report, the worker shall immediately continue the evaluation or assessment by making a reasonable effort to ensure the safety of the adult. The worker and the worker's supervisor shall determine whether an immediate threat to the physical safety of the adult is believed to exist.~~

~~a. — If an immediate threat to the physical safety of the adult is believed to exist, the field worker shall make every reasonable effort to examine the adult, as authorized by 176.6(3), within one hour after receipt of the report and shall take any lawful action necessary or advisable for the protection of the adult.~~

~~b. — When physical safety of the adult is not endangered, the worker shall make every reasonable effort to examine the adult within 24 hours after receipt of the report.~~

~~176.7(3) In the event the information gathered in the evaluation or assessment fails to corroborate the allegation of adult abuse, the worker, with approval of the supervisor, may terminate the evaluation or assessment and submit the report required by subrule 176.6(5).~~

176.7(1) After receipt of a report alleging dependent adult abuse which meets criteria as outlined in 176.3(1), a dependent adult abuse evaluation or assessment will be initiated and will be assigned to an adult protection worker. The adult protection worker will make effort to observe and examine the dependent adult as authorized by 176.6(3) and evaluate the dependent adult's safety.

- a. For cases which there is information that the alleged perpetrator has access to the adult subject, reasonable efforts shall be made to observe the adult subject and evaluate the adult subject's safety within 24 hours of commencing the assessment of the report alleging dependent adult abuse.
- b. For cases which there is information that the alleged perpetrator clearly has no access to the adult subject, or for which services are in place to mitigate any safety concerns, reasonable efforts shall be made to observe the adult subject and evaluate the adult subject's safety within 72 hours of commencing the assessment of the report alleging dependent adult abuse.
- c. When reasonable efforts have been made to observe the adult subject within the specified time frames and the worker has established that there is no need to observe **and** no risk to the adult subject, the observation of the adult subject may be delayed or waived with supervisory approval.

176.7(2) After receipt of the report alleging dependent adult abuse, the adult protection worker shall conduct an evaluation or assessment to determine whether the information as reported, other known information, and any information gathered as a result of the worker's contact with collateral sources or other collateral contacts would tend to corroborate the alleged abuse.

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176.7(3) In the event the information gathered in the evaluation or assessment fails to corroborate the allegation of dependent adult abuse as defined in Iowa Code 235B.2(5)(a), the worker, with approval of the supervisor, may terminate the evaluation or assessment and submit the report.

ITEM 8. Delete rule 441—176.8(235B) and renumber rule 441—176.9 as 441—176.8(235B) with amendments as follows:

~~441—176.8(235B) Immunity from liability for reporters.~~ A person participating in good faith in making a report or cooperating or assisting the department in evaluating or assessing a case of dependent adult abuse has immunity from liability, civil or criminal, which might otherwise be incurred or imposed based upon the act of making the report or giving the assistance. The person has the same immunity with respect to participation in good faith in a judicial proceeding resulting from the report or assistance or relating to the subject matter of the report or assistance.

441—176.98 (235B) Registry records. Central registry records shall be kept in the name of the dependent adult and cross-referenced in the name of the ~~caretaker~~ alleged person responsible (if applicable).

ITEM 9. Renumber rule 441—176.10(235B) as 441—176.9(235B) with amendments as follows:

441—176.109 (235B) Dependent Adult abuse information disseminated.

~~176.10(1)9(1)~~ **9(1) Requests for information.** Written requests for dependent adult abuse information by the subject of a report as defined in subrule 176.10(3), paragraph “a,” may be submitted to the county office of the department on the department-prescribed form 470-0643 or 470-2444 entitled Request for Child and Dependent Adult Abuse Information.

Oral requests for dependent adult abuse information may be made to the county office or the central registry when the person making the request believes that the information is needed immediately and the person is authorized to access the information, pursuant to the requirements of Iowa Code section 235B.7, subsection 2. If a request is made orally by telephone, a written request shall be filed within 72 hours of the oral request on the department-prescribed form 470-0643 entitled Request for Child and Dependent Adult Abuse Information. When an oral request to the county office to obtain dependent adult abuse information is granted by the central registry, the county shall document the approval to the central registry on the department-prescribed form 470-0643 entitled Request for Child and Dependent Adult Abuse Information.

All other requests for information shall be made to the central registry by mail or fax pursuant to the requirements of Iowa Code section 235B.7.

~~176.10(2) 9(2)~~ **9(2) Verification of identity.** The county office shall verify the identity of the person making the request on the department-prescribed form 470-0643 entitled Request for Child and Dependent Adult Abuse Information. Upon verification of the identity of the person making the request, the county office shall transmit the request to the central registry. The central registry shall verify the identity of persons making requests for information directly to the central registry by

Proposed Rule Changes

telephone, mail, fax, or in person, on the department-prescribed form 470-0643 ~~entitled Request for Child and Dependent Adult Abuse Information.~~

~~176.10(3) 9(3)~~ *Approval of requests.* The department shall grant access to dependent adult abuse information as authorized by Iowa Code section 235B.6. Upon approval of any request for dependent adult abuse information authorized by this rule, the department may withhold the name of the person who made the report of dependent adult abuse pursuant to Iowa Code 22.7(18). ~~when the department finds that the disclosure of the person's identity would be detrimental to the person's interest.~~

~~176.10(4) 9(4)~~ *Requests concerning applicants for employment and employees of health care programs.* A health care program making a request for dependent adult abuse information for the purpose of determining employability, as authorized by Iowa Code section 235B.6, subsection 2, paragraph "e," subparagraphs (6) and (7), and section 135C.33, subsection 6, shall request the information directly from the central registry or obtain the information from the ~~Internet electronic information system maintained by the health facilities division of the department of inspections and appeals~~ Single Contact Repository (SING).

Requests made directly to the central registry shall be made on the department-prescribed form 4700643 ~~entitled Request for Child and Dependent Adult Abuse Information.~~

Health care programs requesting dependent adult abuse background checks on employee applicants and employees by use of the ~~Internet electronic information system~~ Single Contact Repository (SING) shall complete the department-prescribed form 470-3767 ~~entitled Access to Confidential Abuse Information and Non-Redissemination Agreement.~~ The Form 470-3767 shall be signed by the administrator of the health care program and be sent to the central registry before receipt of the information from the department. The administrator shall agree not to disseminate dependent adult abuse information obtained through the ~~Internet electronic information system~~ Single Contact Repository (SING), except as authorized in Iowa Code sections 235B.6 and 235B.8.

~~176.10(5) 9(5)~~ *Dissemination of undetermined reports.* Rescinded IAB 8/6/03, effective 7/10/03.

~~176.10(6)~~ *Access to unfounded dependent adult abuse information.* Access to unfounded dependent adult abuse information is authorized only to:

- a. ~~Persons identified as subjects of a report, including the dependent adult named in a report as a victim, a guardian of a dependent adult named in a report as a victim, a person named in a report as having abused a dependent adult, or an attorney representing any of the above;~~
- b. ~~An employee or agency of the department of human services responsible for the evaluation or assessment of a dependent adult abuse report;~~
- c. ~~Registry or department personnel, when necessary to the performance of their official duties, or a person or agency under contract with the department to carry out official duties and functions of the registry;~~ ~~d. The mandatory reporter who reported dependent adult abuse in an individual case;~~
- e. ~~The long term care resident advocate, if the victim resides in a long term care facility or the alleged perpetrator is an employee of a long term care facility; and~~
- f. ~~A multidisciplinary team, if the department approves the composition of the team and determines that access to the team is necessary to assist in the evaluation, diagnosis, assessment, and disposition of a dependent adult abuse case.~~

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~~176.10(7)~~ **9(6)** *Requests concerning employees of department facilities.* When a request is made by the hiring authority of a department operated facility which provides direct client care and the request is made for the purpose of determining continued employability of a person employed, with or without compensation, by the facility, the information shall be requested directly from the central registry. The information requested shall be disseminated to the personnel office of the department. The personnel office shall redisseminate the information to the hiring authority for the person involved only upon a finding that the information has a direct bearing on employability of the person involved.

When the personnel office determines that the information has no direct bearing on employability, the hiring authority shall be notified that no job-related dependent adult abuse information is available. If the central registry and local office files contain no information, the hiring authority shall be so informed.

~~176.10(8)~~ **9(7)** *Dependent adult abuse information disseminated and redisseminated.* Notwithstanding ~~subrule 176.10(1)~~ requests pursuant to Iowa Code 235B.7, written requests and oral requests are not required for dependent adult abuse information that is disseminated to an employee of the department of ~~human services~~, a district court, or the attorney representing the department as authorized by Iowa Code section 235B.6, or the office of the attorney general.

~~176.10(9)~~ **9(8)** *Required notification.* The department ~~shall~~ will make a reasonable attempt to notify orally the dependent adult abuse subjects as defined in Iowa Code 235B.6(2)(a) of the outcome of the dependent adult abuse assessment or evaluation of a report of the results of the evaluation or assessment. The department shall subsequently ~~transmit~~ send a written notice to the report subjects which will include information regarding the results, the confidentiality provisions of Iowa Code sections 235B.6 and 235B.12, and the procedures for correction or expungement and appeal of dependent adult abuse information as provided in Iowa Code section 235B.10.

~~176.10(10)~~ **9(9)** *Mandatory reporter notification.* The department shall attempt to notify orally the mandatory reporter who made the report in a dependent adult abuse case of the results of the evaluation or assessment and of the confidentiality provisions of Iowa Code sections 235B.6 and 235B.12. The department shall subsequently transmit a written adult protective notification on a form prescribed by the department to each mandatory reporter who made the report. The form shall include information regarding the results of the evaluation or assessment and confidentiality provisions. A copy of the written notice shall be transmitted to the registry and shall be maintained by the registry as provided in Iowa Code section 235B.8.

~~176.10(11)~~ **9(10)** *Subjects informed of abuse history.* The department may inform a subject of a dependent adult abuse report of a person's abuse history if the department determines at any time that disclosure is necessary for the protection of the dependent adult. A subject may be informed that a person is listed on the child or dependent adult abuse registry as having a founded abuse report or is listed on the sex offender registry.

ITEM 10. Renumber rule 441—176.11(235B) as 441—176.10(235B) as follows:

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441—176.11 10 (235B) Person conducting research. The person in charge of the central registry shall be responsible for determining whether a person requesting dependent adult abuse information is conducting bona fide research. To make this determination, the central registry may require these persons to submit credentials and the research design. If the registry determines that identified information is essential to the research design, the registry shall also determine the method by which written permission is to be secured from the dependent adult or guardians of the dependent adult who could be identified by the information to be researched. Any costs incurred in the dissemination of the information shall be assumed by the researcher. The department will keep a public record of persons conducting research.

ITEM 11. Renumber rule **441—176.12(235B)** as **441—176.11(235B)** with amendments as follows:

441—176.12 11(235B) Examination of information. ~~Examination of information contained in the central registry can be made at the site of the central registry between the hours of 8 a.m. and 12 p.m. or 1 p.m. and 4 p.m., Monday through Friday, except state authorized holidays.~~
The Pursuant to Iowa Code 235B.10, any person, or that person's attorney, requesting to examine the information in the registry which refers to that person, shall be allowed to inspect the information after providing appropriate identification. Examination of information contained in the central registry can be made at the site of the central registry between the hours of 8 a.m. and 12 p.m. or 1 p.m. and 4 p.m., Monday through Friday, except state authorized holidays.

ITEM 12. Renumber rule **441—176.13(235B)** as **441—176.12(235B)** with amendments as follows:

441—176.13 12(235B) Dependent adult abuse information registry. The department shall create a central abuse registry for dependent adult abuse information. The registry shall collect, maintain, and disseminate dependent adult abuse information as follows:

176.1312(1) *Founded reports.* A report of dependent adult abuse determined to be founded shall be retained and sealed by the registry in accordance with Iowa Code section 235B.9.

176.1312(2) *Unfounded reports.* A report of dependent adult abuse determined to be unfounded shall be expunged five years from the date it is determined to be unfounded, in accordance with Iowa Code section 235B.9, subsection 2, ~~as amended by 2009 Iowa Acts, Senate File 484.~~

176.1312(3) *Rejected intakes.* Reports that are found not to meet the criteria to be accepted for evaluation or assessment of abuse shall be kept in the local office Dependent Adult Reporting and Evaluation System (DARES) for three years from the date the report of abuse was determined to be rejected.

176.1312(4) *Assessments.* Reports classified as assessments shall not be included in the central registry but shall be maintained in the Dependent Adult Reporting and Evaluation System

Proposed Rule Changes

~~(DARES) local office.~~ The central registry shall be notified of the disposition of the assessment report.

a. *Self-denial of critical care.* Reports involving abuse as a result of the acts or omissions of the dependent adult will be assessments. These reports shall be retained in the Dependent Adult Reporting and Evaluation System (DARES) dependent adult's case file in the local office for five years and then destroyed.

b. *Confirmed, not registered.* Reports of dependent adult abuse where physical abuse, assault, unreasonable confinement, unreasonable punishment, or denial of critical care, or personal degradation committed by a caretaker is confirmed but is determined to be minor, isolated, and unlikely to reoccur shall be assessments. These reports shall be maintained in the Dependent Adult Reporting and Evaluation System (DARES) local office for five years and then destroyed unless a subsequent report of dependent adult abuse on the same caretaker is founded. If a subsequent report on the same caretaker is founded within the five-year period, the confirmed, not registered report shall be maintained in the Dependent Adult Reporting and Evaluation System (DARES) local office for ten years from the date of the subsequent report and then sealed.

ITEM 13. Renumber rule ~~441—176.14(235B)~~ as **441—176.13(235B)** as follows:

~~441—176.14~~**13(235B) Central registry.** Rescinded IAB 10/30/91, effective 1/1/92.

ITEM 14. Renumber rule ~~441—176.15(235B)~~ as **441—176.14(235B)** as follows:

~~441—176.15~~**14 (235B) Multidisciplinary teams.**

~~176.15~~**14(1) Purpose of multidisciplinary teams.** The service area shall establish multidisciplinary teams for the purpose of assisting the department in assessment, diagnosis, and disposition of reported dependent adult abuse cases. The disposition of a case may include the provision for treatment recommendations and services.

~~176.15~~**14(2) Execution of team agreement.** When the team is established, the service area manager or designee and all team members shall execute an agreement on a form prescribed by the department. The multidisciplinary team agreement shall specify:

- a. That the team shall be consulted solely for the purpose of assisting the department in the assessment, diagnosis and treatment of dependent adult abuse cases.
- b. That any team member may cause a dependent adult abuse case to be reviewed if approved by the department through use of the process of requesting adult abuse information specified in rule 441— 176.10(235B).
- c. That no team members shall disseminate dependent adult abuse information obtained solely through the multidisciplinary team. This shall not preclude dissemination of information as authorized by Iowa Code section 235B.6 when an individual team member has received information as a result of another authorized access provision of the Code.

Proposed Rule Changes

- d. That the department may consider the recommendation of the team in a specific dependent adult abuse case but shall not, in any way, be bound by the recommendations.
- e. That any written report or document produced by the team pertaining to an individual case shall be made a part of the file for the case and shall be subject to all confidentiality provisions of Iowa Code sections 235B.6 and 235B.8 and of 441—Chapter 176.
- f. That any written records maintained by the team which identify an individual dependent adult abuse case shall be destroyed when the agreement lapses.
- g. That consultation team members shall serve without compensation.
- h. That any party to the contract may withdraw with or without cause upon the giving of 30 days' notice.
- i. The date on which the agreement will expire.

~~176.1514(3)~~ *Filing of agreement.* Whenever a team is created, a copy of the executed contract shall be filed with the central registry in addition to any other requirement placed upon execution of agreements by the department.

ITEM 15. Delete rule ~~441—176.16~~ and renumber rule ~~441—176.17(235B)~~ as ~~441—176.15(235)~~ with the following amendments as follows:

~~441—176.16(235B) Medical and mental health examinations.~~ In any year in which the legislature appropriates funds, the department shall administer a payment program for mental health or medical health examinations for subjects of dependent adult abuse reports.

~~176.16(1) Conditions for payment.~~ The following conditions must be met before payment can be made: *a.* Local resources to pay these costs must be exhausted.

b. The examination must be scheduled during the evaluation or assessment process.

c. Department staff must be involved in the decision to request the examination.

~~176.16(2) Payment limits.~~ Payment for mental health examinations shall not exceed \$250. Payment for a complete medical examination shall not exceed \$160.

~~176.16(3) Billing procedures.~~ Claims for payment shall be submitted to the division of behavioral, developmental, and protective services on Form GAX, General Accounting Expenditure, accompanied by a letter from department staff certifying that the necessary conditions for payment have been met.

~~441—176.1715(235B) Request for correction or expungement.~~ The department of human services is responsible for correction or expungement of reports prepared by department staff. The department of inspections and appeals is responsible for correction or expungement of reports prepared by that department's staff and that determination shall be binding on the registry.

~~176.1715(1)~~ Within six months of the date of the notice of evaluation results, a person may file with the registry a written statement to the effect that the dependent adult abuse information referring to the person is partially or entirely erroneous. The person may also request a correction of that information or of the findings of the report. The When a request for correction or expungement pursuant to Iowa Code 235B.10 is received, the central registry will record all requests and immediately promptly forward the requests to the division of health facilities,

Proposed Rule Changes

department of inspections and appeals, when the reports were prepared by the department of inspections and appeals. The registry will notify the person requesting a correction that the report has been sent to the department of inspections and appeals.

176.1715(2) Unless the designated department corrects the information or findings as requested, the designated department shall provide the person with an opportunity for a hearing as provided by 441— Chapter 7 to correct the information or the findings. The department may defer the hearing until the conclusion of a pending district court case relating to the information or findings. These rules are intended to implement Iowa Code chapter 235B.



Iowa Department of Human Services
Information on Proposed Rules

Name of Program Specialist Gloriana Fisher	Telephone Number 515-281-5392	Email Address gfisher@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:
As a part of the 5-year rule review, this change to administrative rules is designed to align consistent language and direction.
2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):
The dependent adult abuse administrative rules are authorized by Iowa Code Chapter 235B.
3. Describe who this rulemaking will positively or adversely impact.
The changes will incorporate common language decreasing unnecessary future changes and will positively impact all.
4. Does this rule contain a waiver provision? If not, why?
No. Not applicable.
5. What are the likely areas of public comment?
No public comments are anticipated.
6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)
No such impact is anticipated.



Administrative Rule Fiscal Impact Statement

Date: June 22, 2022

Agency: Human Services
IAC citation: 441 IAC 176
Agency contact: Gloriana Fisher, Social Worker 6

Summary of the rule:

The rule defines dependent adult abuse.

Fill in this box if the impact meets these criteria:

- No fiscal impact to the state.
- Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
- Fiscal impact cannot be determined.

Brief explanation:

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

This change to administrative rules is designed to align consistent language and direction. The changes will incorporate common language decreasing unnecessary future changes. No fiscal impact is expected.

Fill in the form below if the impact does not fit the criteria above:

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY 2023)</u>	<u>Year 2 (FY 2024)</u>
Revenue by each source:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL REVENUE	_____	_____
Expenditures:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL EXPENDITURES	_____	_____
NET IMPACT	0.00	0.00

This rule is required by state law or federal mandate.
Please identify the state or federal law:
Identify provided change fiscal persons:

Funding has been provided for the rule change.
Please identify the amount provided and the funding source:

Funding has not been provided for the rule.
Please explain how the agency will pay for the rule change:
No fiscal impact.

Fiscal impact to persons affected by the rule:
No fiscal impact.

Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):
No fiscal impact.

Agency representative preparing estimate: David O. Philmon, Jr. JH 09/21/2022, JB 09/21/2022
Telephone number: 404-345-1088