

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

The Human Services Department hereby amends Chapter 83, "Medicaid Waiver 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

The rule making adds the reserve capacity slot criteria from the home- and community-based services (HCBS) waiver applications to the intellectual disability (ID) waiver and the children's mental health (CMH) waiver and reduces the minimum amount of time that a member must be in an institutional stay to qualify for a reserved capacity slot under the brain injury (BI) waiver from six months to four months.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 7, 2021, as ARC 5550C.

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 June 10, 2021.

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 IAC 1.7 (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 September 1, 2021.

The following rule-making action is adopted:

See Attached.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** paragraph **83.61(4)“d”**:

d. The state reserves payment slots each waiver year (July 1 to June 30) for use by children who must reside outside the family home in a residential-based supported community living licensed residential care facility. The state also reserves payment slots each waiver year (July 1 to June 30) for use by members living in an ICF/ID, nursing facility, or out-of-state placement, or transitioning from the Money Follows the Person Grant, who choose to access services in the intellectual disability waiver program and leave the ICF/ID, nursing facility, or out-of-state placement to live in the community.

(1) Applicants who currently reside in an ICF/ID or nursing facility and have resided in that setting for four or more months may request a reserved capacity slot through the intellectual disability waiver.

(2) Applicants shall be allocated a reserved capacity slot on the basis of the date the request is received by the income maintenance worker or the waiver slot manager.

(3) In the event that more than one request for a reserved capacity slot is received at one time, applicants shall be allocated the next available reserved capacity slot on the basis of the month of birth, January being month one and the lowest number.

(4) Persons who do not fall within the available reserved capacity slots shall have the person’s name maintained on the reserved capacity slot waiting list. As reserved capacity slots become available at the beginning of the next waiver year, persons shall be selected from the reserved capacity slot waiting list to utilize the number of approved reserved capacity slots based on the person’s order on the waiting list.

ITEM 2. Amend paragraph **83.82(4)“d”** as follows:

d. Applicants who currently reside in a community-based neurobehavioral rehabilitation residential setting, an intermediate care facility for persons with an intellectual disability (ICF/ID), a skilled nursing facility, or an ICF and have resided in that setting for ~~six~~ four or more months may request a reserved capacity slot through the brain injury waiver.

(1) to (3) No change.

ITEM 3. Adopt the following **new** paragraph **83.123(1)“e”**:

e. The state reserves payment slots each waiver year (July 1 to June 30) for use by members living in a state of Iowa mental health institute (MHI), a psychiatric residential treatment facility (PRTF), or an out-of-state facility placement who choose to access services in the children’s mental health waiver program and leave the MHI, PRTF, or out-of-state placement to live within their family home. For the purpose of reserved capacity within the children’s mental health waiver program, an MHI is defined in Iowa Code section 226.1 and a PRTF is defined in 42 CFR 483.352.

(1) Applicants who currently reside in an MHI, PRTF, or out-of-state placement and have resided in that setting for four or more months may request a reserved capacity slot through the children’s mental health waiver program.

(2) Applicants shall be allocated a reserved capacity slot on the basis of the date the request is received by the income maintenance worker or the waiver slot manager.

(3) In the event that more than one request for a reserved capacity slot is received at one time, applicants shall be allocated the next available reserved capacity slot on the basis of the month of birth, January being month one and the lowest number.

(4) Persons who do not fall within the available reserved capacity slots shall have their names maintained on the reserved capacity slot waiting list. As reserved capacity slots become available at the beginning of the next waiver year, persons shall be selected from the reserved capacity slot waiting list to utilize the number of approved reserved capacity slots based on their order on the waiting list.



Iowa Department of Human Services
Information on Proposed Rules

Table with 3 columns: Name of Program Specialist (LeAnn Moskowitz), Telephone Number (515-321-8922), Email Address (lmoskow@dhs.state.ia.us)

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

The proposed rule adds the reserve capacity slot criteria from the HCBS Waiver applications for the Intellectual Disability Waiver and the Children’s Mental Health Waiver and amends the amount of time that a member must be in an institutional stay to qualify for a reserved capacity slot under the Brain Injury Waiver from six months to four months.

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

Section 249A.15A, Code 2018, 249A.4

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

HCBS BI, ID and CMHW waiver applicants will be positively impacted. Members that are in institutions and wish to move to the community will be able to access a reserved capacity slot after a four month institutional stay rather than a six month institutional stay. This closes the two month gap between when a member loses their waiver funding slot after 120 days in an institution and when they are able to request a reserved capacity slot.

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?

This confers a benefit to the member, the public will be pleased with this change.

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.)

There is no impact to jobs.



Administrative Rule Fiscal Impact Statement

Date: 1/21/2021

Agency: Human Services
IAC citation: 441 IAC 83
Agency contact: LeAnn Moskowitz

Summary of the rule:

The proposed rule adds the reserve capacity slot criteria from the HCBS Waiver applications for the Intellectual Disability Waiver and the Children’s Mental Health Waiver and amends the amount of time that a member must be in an institutional stay to qualify for a reserved capacity slot under the Brain Injury Waiver from six months to four months

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 rule aims to reduce the amount of time a member must be in an institutional stay to qualify for a reserved capacity slot from six months to four months. There is currently a limit on the number of funding slots available under the waivers, this rule does not change the funding slots available. There is no fiscal impact 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:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY 2021)</u>	<u>Year 2 (FY 2022)</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:

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 anticipated.

Fiscal impact to persons affected by the rule:

None anticipated.

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

None anticipated.

Agency representative preparing estimate: Soraya Miller

JH 01/28/2021, JS 2/1/21

Telephone number: 515-281-6017

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

The Human Services Department hereby amends Chapter 151, “Juvenile Court Services Directed Programs,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 270.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 270.4.

Purpose and Summary

2020 Iowa Acts, Senate File 2284, was enacted by the 88th Session of the Iowa General Assembly and signed by Governor Reynolds on June 17, 2020. This Act relates to matters involving the State Board of Regents and the institutions it governs. Iowa Code section 270.4 was amended to eliminate obligations to counties and institutions for transportation costs of students enrolled in the School for the Deaf and the Braille and Sight Saving School. Chapter 151 is amended to remove an exclusion for transportation, effectively allowing payment for transportation. Clothing and medical expenses remain the responsibility of counties and institutions, so those will remain in the rule as an exclusion. For reference, the excluded costs in subparagraph 151.22(2)“b”(6) are as follows:

- Payment by counties: Iowa Code section 263.12,
- Braille and Sight Saving School expenses: Iowa Code section 269.2, and Clothing
- and prescriptions for the School for the Deaf: Iowa Code section 270.4.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 21, 2021, as ARC 5585C.

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 June 10, 2021.

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 IAC 1.7 (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 September 1, 2021.

The following rule-making action is adopted:

See attached.

The following rule-making action is adopted:

Amend paragraph **151.22(2)“b”** as follows:

b. All charges for which the county is obligated by statute to pay including:

(1) to (5) No change.

(6) Clothing, ~~transportation~~, and medical or other service provided to persons attending the Iowa Braille and ~~Sight-Saving~~ Sight Saving School, the Iowa School for the Deaf, or the ~~state hospital school for severely handicapped children at Iowa City~~ University of Iowa Stead Family Children’s Hospital for which the county becomes obligated to pay pursuant to Iowa Code sections 263.12, 269.2, and 270.4 ~~to 270.7~~.

(7) and (8) No change.



Iowa Department of Human Services
Information on Proposed Rules

Name of Program Specialist Doug Wolfe	Telephone Number 515-360-0388	Email Address dwolfe@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:

SF 2284 was signed into law by the 88th Session of the Iowa General Assembly and signed by Governor Reynolds on June 17, 2020. This Act relates to matters involving the State Board of Regents and the institutions it governs. Iowa Code Section 270.4 is amended to eliminate obligations to counties/institutions for transportation costs of students enrolled in the School for the Deaf and the Braille and Sight Saving School. The Juvenile Court Services Directed Programs Rule Chapter 151 is being amended to remove an exclusion for transportation, effectively allowing payment for transportation. Clothing and medical remain the responsibility of counties/institutions, so those will remain in the rule as an exclusion. For reference, the excluded costs in 441-151.22.b.(6) are as follows:

- Payment by counties: 263.12,
- Braille and Sight Saving School expenses: 269.2, and
- Clothing and Prescription school for the deaf: 270.4

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

SF2284

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

Children involved in the juvenile justice system may be able to receive court ordered transportation to the schools for the blind or deaf.

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 public comment. If there is comment, it would be seen as favorable that the program will cover costs that would likely otherwise be attributed to the family of a disabled child.

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:

Agency: Human Services
IAC citation: 441 IAC 187
Agency contact: Doug Wolfe, ACFS, dwolfe@dhs.state.ia.us

Summary of the rule:

SF 2284 was signed into law by the 88th Session of the Iowa General Assembly and signed by Governor Reynolds on June 17, 2020. This Act relates to matters involving the State Board of Regents and the institutions it governs. Iowa Code Section 270.4 is amended to eliminate obligations to counties/institutions for transportation costs of students enrolled in the School for the Deaf and the Braille and Sight Saving School. The Juvenile Court Services Directed Programs Rule Chapter 151 is being amended to remove an exclusion for transportation, effectively allowing payment for transportation.

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.](#)

While there could be a court order to transport a child for a child involved with JCS, it would be so rare and unlikely the cost is negligible.

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)</u>	<u>Year 2 (FY)</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:

Fiscal impact to persons affected by the rule:
 In the rare instances this is ordered, it would help with transportation.

Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):
 None.

Agency representative preparing estimate:
 Telephone number:

HUMAN SERVICES DEPARTMENT[441]

DRAFT ONLY: Dates herein may not comply with Schedule for Rule Making.

Adopted and Filed Emergency

Rule making related to child care assistance provider rate increases

The Human Services Department hereby amends Chapter 170, "Child Care Services," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted 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

The department is revising the child care assistance provider reimbursement rate ceiling tables. This is being done to comply with federal requirements (45 CFR Part 98) that states must use the most recent market rate survey in establishing child care reimbursement rates. Iowa's most recent market rate survey was conducted in December 2020.

Effective July 1, 2021, reimbursement rates for providers of child care assistance are being increased to at least the 50th percentile of the 2020 market rate for child care providers.

The base rates for the Quality Rating System (QRS) bonuses were also updated to reflect increased child care provider reimbursement rates. The base rates were updated to the 50th percentile and the QRS highest rates to the 75th percentile of the 2020 survey. Previously the highest rates had been at the 75th percentile based on the 2017 market rate survey.

Reason for Adoption of Rule Making Without Prior Notice and Opportunity for Public Participation

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary or impractical because the emergency adoption was reviewed by the Administrative Rules Review Committee. 2021 Iowa Acts, House File 891 allows for emergency adoption due to a July 1, 2021, effective date provided in the bill. This is also a benefit with increased provider rates.

In compliance with section 32 of House File 891, the Administrative Rules Review Committee at its June 8, 2021, meeting reviewed the Department's determination and this rule making.

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)"b"(1)(b) the Department also finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on July 1, 2021, because section 32 of House File 891 so provides and because increased child care provider rates provide a benefit.

Adoption of Rule Making

This rule making will be adopted by the Council on Human Services on June 10, 2021, contingent on signature of House File 891 by the Governor.

Fiscal Impact

Increasing the maximum provider rates as shown in the rate tables is estimated to cost \$13,355,730 per year. This cost is expected to be funded by federal Child Care and Development Funds (CCDF) carried forward until SFY25, when it is anticipated that the balance of CCDF funds will be fully expended.

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 IAC 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, 2021.

The following rule-making action is adopted:

See Attached

PROPOSED RULE CHANGES

Item 1. Revise Table 1, Table 3 and Table 4 in subparagraph 170.4(7)'a' as follows:

Table 1								
Half-Day Rate Ceilings for (Licensed Center)								
	No QRS		QRS 1 or 2		QRS 3 or 4		QRS 5	
Age Group	Basic	Special Needs	Basic	Special Needs	Basic	Special Needs	Basic	Special Needs
Infant and Toddler	\$17.00	\$51.94	\$19.75	\$51.94	\$20.50	\$51.94	\$21.90	\$51.94
	\$19.30		\$20.50		\$21.50		\$23.21	
Preschool	\$14.75	\$30.43	\$15.50	\$30.43	\$16.40	\$30.43	\$18.69	\$30.43
	\$17.00		\$18.00		\$18.98		\$20.00	
School Age	\$12.18	\$30.34	\$12.50	\$30.34	\$13.50	\$30.34	\$15.00	\$30.34
	\$13.50		\$14.75		\$15.00		\$16.00	

Table 3								
Half-Day Rate Ceilings for (Child Development Home C)								
	No QRS		QRS 1 or 2		QRS 3 or 4		QRS 5	
Age Group	Basic	Special Needs	Basic	Special Needs	Basic	Special Needs	Basic	Special Needs
Infant and Toddler	\$13.00	\$19.50	\$14.00	\$21.00	\$14.50	\$21.75	\$15.00	\$22.50
	\$14.00	\$21.00	\$14.50	\$21.75	\$15.00	\$22.50	\$15.25	\$22.88
Preschool	\$12.50	\$18.75	\$13.00	\$19.50	\$13.50	\$20.25	\$15.00	\$22.50
	\$13.75	\$20.63	\$14.50	\$21.75	\$14.75	\$22.13		
School Age	\$11.25	\$16.88	\$12.00	\$18.00	\$12.50	\$18.75	\$14.00	\$21.00
			\$12.50	\$18.75	\$13.00	\$19.50	\$14.50	\$21.75

Table 4
Half-Day Rate Ceilings for
child care home (not
registered)

Age Group	Basic	Special Needs
Infant and Toddler	\$8.19	\$12.29
	\$12.98	\$19.47
Preschool	\$7.19	\$10.79
	\$12.50	\$18.75
School Age	\$7.36	\$11.04
	\$10.82	\$16.23

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to guidelines for setting child support awards and providing an opportunity for public comment.

The Human Services Department hereby proposes to amend Chapter 99, "Support Establishment and Adjustment Services," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 252B.7A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 252B.7A.

Purpose and Summary

This rulemaking is necessitated by recent changes to 45 CFR section 302.56, guidelines for setting child support awards and to 45 CFR section 303.4, establishment of support obligations. To conform to these federal regulations, this rulemaking updates the Child Support Recovery Unit's (CSRUs) current rules for determining income to consider the parent's specific circumstances when evidence of income is limited. The Federal Family Support Acts of 1988 requires each state to maintain uniform child support guidelines and criteria, and to review those guidelines and criteria at least once every four years, The Iowa General Assembly entrusted the Iowa Supreme Court with this responsibility in Iowa Code chapter 598.21B. The proposed changes update chapter 99 to conform to upcoming changes to the Iowa Supreme Court guidelines. This rulemaking adds the term "parenting time" in reference to the rights awarded a parent to time with the parent's child. The term "parenting time" is becoming the more preferred terminology, as compared to the term "visitation" and there has been recent proposed legislation to replace the term throughout the Iowa Code.

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 IAC 1.7 (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 July 6, 2021. 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:

See attached.

AMEND THE FOLLOWING RULES:

ITEM 1. Amend rule **441—99.1** as follows:

441—99.1(234,252B,252H) Income considered. The child support recovery unit shall consider all regularly recurring income of both legal parents to determine the amount of the support award in accordance with the child support guidelines prescribed by the Iowa Supreme Court. Spousal support shall be considered as specified in the Iowa Supreme Court guidelines, and prior obligation spousal support actually paid or received shall be calculated in the same manner as the deductions for support in subrule 99.2(4). These rules on child support guidelines shall not apply if the child support recovery unit is determining the support amount by a cost-of-living alteration as provided in Iowa Code chapter 252H, subchapter IV.

...

99.1(4) Use of occupational wage rate information or median income for parents on the CSRU caseload. CSRU shall use occupational wage rate information or median income for parents on the CSRU caseload shall be used to determine a parent's income when the parent has failed to return a completed financial statement when requested, and when complete and accurate income information from other readily available sources cannot be secured. If a parent's most recent residential address is in Iowa, CSRU shall use Iowa Workforce Development regional data to determine income. If a parent's most recent residential address is in another state, the District of Columbia, or Puerto Rico, CSRU shall use wage data from the place of the parent's most recent residence to determine income. For all other cases, CSRU shall use Iowa statewide

occupational wage rate or median income for parents on the CSRU caseload to determine income.

a. Occupation known. When CSRU can reasonably ascertain the current or last-known occupation of a parent ~~can be determined through a documented source including, but not limited to, Iowa workforce development or the National Directory of New Hires,~~ CSRU shall use occupational wage rate information ~~shall be used~~ to determine income. ~~When the last-known~~ occupation of a parent cannot be determined through a documented source, information may be gathered from the other parent and occupational wage rate information applied. Wage rate information shall be converted to a monthly amount in accordance with subrule 99.3(1).

b. Occupation unknown. When CSRU cannot reasonably ascertain the current or last-known occupation of a parent ~~is unknown,~~ CSRU shall determine estimate the income of a parent using the median income amount for parents on the CSRU caseload, based upon the parent's most recent residential address.

ITEM 2. Amend rule **441—99.2** as follows:

441—99.2(234,252B) Allowable deductions. The deductions specified in the supreme court child support guidelines shall be allowed when determining the amount of income subject to application of the guidelines. The parent claiming the deduction shall provide the documentation necessary for computing allowable deductions. Allowable deductions are:

99.2(1) Federal and state income tax.

a. The child support recovery unit shall calculate the amount of the deduction for federal and state income tax as specified in the Iowa Supreme Court guidelines.

b. The unit shall calculate the amount of the deduction for self-employed persons with fluctuating incomes, as defined in subrule 99.1(6), by computing the person's averaged income

and applying the method of calculating a tax deduction as required by Iowa Supreme Court guidelines.

99.2(2) Social security and Medicare tax deductions, mandatory pensions, and union dues as specified in the Iowa Supreme Court guidelines.

99.2(3) Mandatory occupational license fees as specified in the Iowa Supreme Court guidelines.

99.2(4) Actual payments of child ~~and spousal~~ support pursuant to a prior court or administrative order. The date of the original court or administrative order, rather than the date of any modifications, shall establish a prior order under this subrule. Support paid under an order established subsequent to the order being modified shall not be deducted. All support payments shall be verified before being allowed as a deduction. The child support recovery unit shall calculate deductions for support as follows:

a. In establishing prior support payments, the child support recovery unit shall verify payments made for the 12 months preceding the month in which the amount of support for the new order is determined. If the support obligation is less than one year old, the child support recovery unit shall verify each monthly payment since the beginning of the obligation.

b. If the obligation is one year old or older, the child support recovery unit shall add together all verified amounts paid during the past 12 months up to the total of the current support obligation that accrued during this 12-month period, and divide by 12. All amounts collected shall be included, regardless of the source.

c. If the support obligation is less than one year old, the child support recovery unit shall add together the verified amounts paid since the obligation began up to the total of the current support obligation that accrued during this period, and divide by the number of months that the obligation has existed.

d. When a parent has more than one prior support order, the child support recovery unit shall calculate the allowable deduction for each obligation separately, and then add the amounts together to determine the parent's total allowable deduction.

99.2(5) Health insurance premium costs ~~Actual medical support paid pursuant to a court order or administrative order in another order~~ for other children, not in the pending matter, as specified in the Iowa Supreme Court guidelines. Health insurance premium costs ~~All medical support payments~~ shall be verified before being allowed as a deduction ~~and shall be calculated in the same manner as the deductions for support in subrule 99.2(4).~~

99.2(6) Actual child care expenses as specified in the Iowa Supreme Court guidelines. ~~during the custodial parent's employment, less the applicable federal income tax credit.~~ The child support recovery unit shall determine the amount of the child care deduction as follows:

a. Actual child care expenses ~~related to the custodial parent's employment~~ shall be verified by a copy of the custodial parent's federal or state income tax return or by a signed statement from the person or agency providing the child care.

b. Only the amount of reported child care expenses in excess of the amount allowed as "credit for child and dependent care expenses" for federal income tax purposes shall be allowed as a deduction in determining the custodial parent's net income.

c. In determining the deduction allowed to the custodial parent for child care expenses ~~due to employment~~, the following procedures shall be used:

(1) If the custodial parent provides a copy of a federal income tax return for the current tax processing year and the amount is consistent with the current financial circumstances of the parent, the child support recovery unit shall use the amount reported as "credit for child and dependent care expenses."

(2) If income tax information is not available, or if the parent indicates or there is reason to believe that the amount stated in the return is no longer representative of the parent's financial conditions or child care expenses, the child support recovery unit shall determine the allowable deduction for child care expenses for federal income tax purposes using the custodial parent's income only.

d. The child support recovery unit shall compute the child care deduction as follows:

(1) Divide the amount of child care expense the parent may claim as a deduction for federal income tax purposes by 12 to arrive at a monthly amount.

(2) If the child care expense reported on the financial statement is not a monthly amount, convert the reported amount to an equivalent monthly figure and round the figure to two decimal places.

(3) Subtract the amount the parent may claim as "credit for child and dependent care expenses" for federal income tax from the amount of child care expenses reported on the financial statement. The difference is the amount allowed for a deduction in determining income for child support.

99.2(7) Qualified additional dependent deduction (QADD). The qualified additional dependent deduction is the amount specified in the supreme court guidelines as a deduction for any child for whom parental responsibility has been legally established as defined by the child support guidelines. However, this deduction may not be used for a child for whom the parent may be eligible to take a deduction under subrule 99.2(4).

a. The deduction for qualified additional dependents may be used:

(1) For dependents of the custodial or noncustodial father or mother, whether in or out of the parent's home. The father may establish the deduction by providing written verification of a

legal obligation to the children through one of the actions enumerated in the guidelines. The mother may establish the deduction by providing written verification of a legal obligation to the children, including the mother's statement.

(2) In the establishment of original orders.

(3) In the modification of existing orders. The deduction may be used in an upward modification. The deduction cannot be used to affect the threshold determination of eligibility for a downward modification, but may be used after the threshold determination is met.

b. Reserved.

99.2(8) Cash medical support, either ordered in the pending matter or for other children, not in the pending matter, as specified in the Iowa Supreme Court guidelines. All cash medical support payments for other children, not in the pending matter, shall be verified before being allowed as a deduction and shall be calculated in the same manner as the deductions for support in subrule 99.2(4).

ITEM 3. Amend rule ~~441—99.4(5)~~ as follows:

99.4(5) ~~*Extraordinary visitation adjustment*~~ *Adjustment for extraordinary visitation or parenting time.* CSRU shall calculate an ~~The extraordinary visitation or parenting time adjustment is a credit~~ as specified in the ~~Iowa supreme~~ Supreme court ~~Court~~ guidelines. The credit shall not reduce the child support below the amount required by the ~~Iowa supreme~~ Supreme court ~~Court~~ guidelines.

The extraordinary visitation adjustment or parenting time credit shall be given if all of the following apply:

a. There is an existing order for the noncustodial parent that meets the criteria for extraordinary visitation or parenting time in excess of 127 overnights per year on an

annual basis for the child for whom support is sought. The order granting visitation or parenting time can be a different order than the child support order. If a controlling order is determined pursuant to Iowa Code chapter 252K and that controlling support order does not meet the criteria for extraordinary visitation or parenting time, there is another order that meets the criteria.

b. The noncustodial parent has provided CSRU with a file-stamped or certified copy of the order.

c. The court has not ordered equally shared physical care.

ITEM 4. Amend rule **441—99.69(4)** as follows:

99.69(4) The request is based entirely on issues such as custody, ~~or~~ visitation, or parenting time rights, which are not directly related to child support.

ITEM 5. Amend rule **441—99.85(1)(d)** as follows:

99.85(1) *Financial statements.* Parents subject to the order shall provide a financial statement and verification of income within ten days of a written request by the unit.

...

d. The unit may also use occupational ~~the most recent~~ wage rate information ~~published by the department of workforce development~~ or the median income for parents on the unit caseload to determine ~~estimate~~ the gross ~~net earned~~ income of a parent when a parent has failed to return a completed financial statement when requested and complete and accurate information is not readily available from other sources.

ITEM 5. Amend rule **441—99.91(1)** as follows:

441—99.91(252H) Denying requests. A request for modification by a parent subject to the order may be denied if the criteria in rule 441—99.82(252H) are not met or the following conditions exist:

99.91(1) *Nonsupport issues.* The request is based entirely on issues such as custody, ~~or~~ visitation, or parenting time rights.

ITEM 5. Amend rule **441—99.109(2)** as follows:

441—99.109(252B) Basis for suspension of support.

99.109(1) *Child residing with obligor or caretaker.* The unit shall assist an obligor in suspending support for a child residing with the obligor or with a caretaker who has not requested unit services, if the child has been residing with the obligor or caretaker for more than 60 consecutive days.

99.109(2) *Orders eligible for suspension.*

a. The unit shall assist an obligor in suspending support for a child under this part only when there is no order in effect regarding legal custody, physical care, visitation, ~~or other~~ parenting time for the child.

b. If an order exists that contains language regarding legal custody, physical care, visitation, or ~~other~~ parenting time for the child, the unit shall deny the suspension request.



Iowa Department of Human Services
Information on Proposed Rules

Table with 3 columns: Name of Program Specialist (Dena Sloan), Telephone Number (515-344-1365), Email Address (dsloan@dhs.state.ia.us)

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

This rulemaking proposes changes to 441 IAC Chapter 99 to conform to the Department of Health and Human Services, Administration for Children and Families federal regulations published on December 20, 2016. See Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, 87 Fed. Reg. 93,492 (Dec. 20, 2016) ("Final Rule"). Specifically, this rulemaking proposes changes to 441 IAC Chapter 99 in accordance with 45 CFR §303.4, Establishment of support obligations, and §302.56, Guidelines for setting child support awards, as amended by the Final Rule. The Child Support Recovery Unit (CSRU) has already integrated much of the Final Rule in administrative rules; however, the proposed changes in this rulemaking hinged on the quadrennial Supreme Court Child Support Guidelines Review which is currently in process.

The Federal Family Support Act of 1988 requires each state to maintain uniform child support guidelines and criteria, and to review the guidelines and criteria at least once every four years. The Iowa General Assembly has entrusted the Iowa Supreme Court with this responsibility. See Iowa Code section 598.21B. These proposed amendments update 441 – 99 Divisions I and V to conform to previous Iowa Supreme Court guidelines changes as well as anticipated changes from the Court's current review of the guidelines.

Finally, this rulemaking adds the term "parenting time" in reference to the rights awarded a parent to time with the parent's child. The term "parenting time" is becoming the more preferred terminology, as compared to the more archaic term "visitation," and there has been recent proposed legislation to replace the term throughout the Iowa Code. See HF 199.

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

Iowa Code 252B.7A, 45 CFR §302.56 and §303.4, 598.21B, and Chapter 9 of the Iowa Court Rules.

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

These proposed changes conform Chapter 99 to the requirements found in federal regulations and the Iowa Court Rules. This rulemaking will positively impact CSRU customers by continuing to set accurate support orders based on the payor's ability to pay through considering the parents' specific circumstances when evidence of income is limited.

Adding the term "parenting time" will also positively impact parents by more appropriately describing a parent's time spent with the child(ren).

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

No. 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 to the Department for a waiver of the discretionary provision, if any, pursuant to rule 441 –1.8(17A, 217). The proposed amendments related to the Supreme Court Guidelines are required to conform to Chapter 9 of the Iowa Court Rules. In addition, rules and Iowa Code Chapter 252A, 252C, 252F, and 252H already provide for a party's right to challenge an action to establish or modify a support order through a district court hearing.

5. What are the likely areas of public comment?

CSRU does not anticipate public comment on the proposed guidelines amendments caused by changes to Chapter 9 of the Iowa Court Rules as the Iowa Supreme Court will have already posted the recommended changes for public comment in the summer of 2021. Further, parties retain the ability to request a district court hearing in order for the court to determine the appropriate child support amount.

CSRU does not anticipate public comment on the proposed addition of the term "parenting time" because it is a technical change that better describes a parent's time with the child(ren) as a time for parenting the child(ren) as opposed to a time for visiting the child(ren).

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: April 30, 2021

Agency: Human Services

IAC citation: 441 IAC 99

Agency contact: Dena Sloan

Summary of the rule:

This rulemaking is necessitated by recent changes to 45 CFR §302.56 for guidelines for setting child support awards and to 45 CFR §303.4 for establishment of support obligations. To conform to these regulations, this rule making updates CSRU's current rules for determining income to consider the parent's specific circumstances when evidence of income is limited.

The Federal Family Support Acts of 1988 requires each state to maintain uniform child support guidelines and criteria, and to review the guidelines and criteria at least once every four years. The Iowa General Assembly entrusted the Iowa Supreme Court with this responsibility (See Iowa Code Chapter 598.21B). These proposed changes update Chapter 99 to conform to upcoming changes to the Iowa Supreme Court guidelines.

This rulemaking adds the term "parenting time" in reference to the rights awarded a parent to time with the parent's child. The term "parenting time" is becoming the more preferred terminology, as compared to the more archaic term "visitation," and there has been recent proposed legislation to replace the term throughout the Iowa Code. See HF 199.

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 are systems changes needed due to regulation and Supreme court changes, but not due to this administrative rule, so no fiscal impact is associated with the administrative rule change. Forms/manual changes and training will all be done within current staffing levels and costs.

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

	Year 1 (FY _____)	Year 2 (FY _____)
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:
45 CFR §302.56, 45 CFR §303.4, Iowa Code 252B.7A, Iowa Code 598.21B and Chapter 9 of the Iowa Court Rules.
- 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:

Fiscal impact to persons affected by the rule:

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

Agency representative preparing estimate: Diane Barrett JH -- 05/07/2021
Telephone number: 515-281-6024

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to prescription drug monitoring program and providing an opportunity for public comment.

The Human Services Department hereby proposes to amend Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapter 249A.

State or Federal Law Implemented

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

Purpose and Summary

Section 5042 of the SUPPORT for Patients and Communities Act, codified in 42 U.S.C. 1396w-3a, requires covered providers who are permitted to prescribe controlled substances and who participate in Medicaid to query qualified Prescription Drug Monitoring Programs (PDMPs) before prescribing controlled substances to most Medicaid beneficiaries, beginning October 1, 2021. This rulemaking adds requirements consistent with the federal and state requirements for Medicaid participating providers. Iowa Medicaid providers must also comply with requirements under Iowa Code 124.551A and their respective licensing board in regard to the utilizing the PDMP.

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 IAC 1.7 (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 July 6, 2021. 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:

See attached.

PROPOSED NEW RULE CHANGES

ITEM 1. Adopt the following **new** rule 441—79.18(249A):

441—79.18(249A) Requirements for prescribing controlled substances.

79.18(1) *Review of Iowa Prescription Monitoring Program database.* A prescribing practitioner, as defined in Iowa Code section 124.550, shall review patient information in the Iowa Prescription Monitoring Program (PMP) database prior to issuing a prescription for a controlled substance as defined in 42 U.S.C. 1396w–3a, inclusive of Schedules II, III and IV, unless the patient is receiving inpatient hospice care or long-term residential facility care. Review shall be conducted in accordance with all requirements under the prescribing practitioner’s specific professional licensing authority.

79.18(2) *Documentation.* The prescribing practitioner shall include documentation in the patient file to demonstrate compliance with subrule 79.18(1). Subject to the requirements under Iowa Code chapter 124, subchapter VI, if the prescribing practitioner is not able to conduct a review of the PMP database despite a good faith effort, the prescribing practitioner must document in the patient file such good faith effort, including the reasons why the prescribing practitioner was not able to conduct the review. The prescribing practitioner shall submit such documentation to the Iowa Medicaid program upon request.



Iowa Department of Human Services
Information on Proposed Rules

Name of Program Specialist Anna Ruggle	Telephone Number 515-201-4713	Email Address aruggle@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:

Section 5042 of the SUPPORT for Patients and Communities Act, codified in 42 U.S.C. 1396w-3a, requires covered providers who are permitted to prescribe controlled substances and who participate in Medicaid to query qualified Prescription Drug Monitoring Programs (PDMPs) before prescribing controlled substances to most Medicaid beneficiaries, beginning October 1, 2021. This rulemaking adds requirements consistent with the federal and state requirements for Medicaid participating providers. Iowa Medicaid providers must also comply with requirements under Iowa Code 124.551A and their respective licensing board in regard to the utilizing the PDMP.

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

42 U.S.C. 1396w-3a

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

The rulemaking will positively affect Medicaid members. PDMPs, in Iowa known as the Prescription Monitoring Program (PMP), are database tools utilized by healthcare providers to monitor controlled substance use. Requiring providers to review the PMP prior to prescribing controlled substances for Medicaid members plays a vital role in addressing prescription drug misuse and diversion and in improving patient care.

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

This amendment does not provide for waiver in specified situations because the policies addressed should apply in all cases and because a waiver can be requested under the Department's general rule on exceptions at Iowa Admin. Code r. 441--1.8.

5. What are the likely areas of public comment?

Providers should be supportive as it will lead to decreased patient risk. However if not currently utilizing the PMP to the extent this rulemaking requires, the provider could incur additional workload burden.

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: April 29, 2021

Agency: Human Services

IAC citation: 441 IAC – 79

Agency contact: Susan Parker

Summary of the rule:

The proposed rule requires Medicaid participating providers to review the Prescription Monitoring Program (PMP) before prescribing controlled substances to a Medicaid member beginning October 1, 2021, consistent with federal requirements.

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 rule requires covered providers who are permitted to prescribe controlled substances and who participate in Medicaid to query qualified Prescription Drug Monitoring Programs (PDMPs) before prescribing controlled substances to most Medicaid beneficiaries, beginning October 1, 2021.

PDMPs, in Iowa known as the Prescription Monitoring Program (PMP), are database tools utilized by healthcare providers to monitor controlled substance use. Requiring providers to review the PMP prior to prescribing controlled substances for Medicaid members plays a vital role in addressing prescription drug misuse and diversion and in improving patient care.

There is no expected fiscal impact to the department.

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 2021)</u>	<u>Year 2 (FY 2022)</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:
Section 5042 of the SUPPORT for Patients and Communities Act, codified in 42 U.S.C. 1396w-3a.

- 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 anticipated.

Fiscal impact to persons affected by the rule:
No fiscal impact anticipated.

Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):
No fiscal impact anticipated.

Agency representative preparing estimate: Soraya Miller

JH 05-19-21

Telephone number:

515-281-6017

HUMAN SERVICES DEPARTMENT [441]

Notice of Intended Action

Proposing rule making related to HCBS Habilitation Program level of care utilization system and providing an opportunity for public comment.

The Human Services Department hereby proposes to amend Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapter 249A.

State or Federal Law Implemented

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

Purpose and Summary

The purpose of this amendment to the Home and Community Based Services (HCBS) Habilitation program is to adopt the Level of Care Utilization System (LOCUS) for adults age 19 and older and Child and Adolescent Level of Care Utilization System (CALOCUS) for youth age 16 to 18 for the purposes of the needs-based eligibility determination, person-centered service planning and HCBS tier authorization. These amendments also add the Intensive Residential Habilitation Services as defined in rule 441—25.1, adopt training criteria for direct service staff providing HCBS services, and clarify the scope of services included in Home Based Habilitation.

Fiscal Impact

Assumptions are based on the change in the Home-Based Habilitation (HBH) service eligibility criteria of individuals accessing services under each of the Tiers for HBH. The SFY22 state share estimate assumes the COVID-19 increased FMAP will remain in effect through December 2021. It does not include the potential 10 percent FMAP increase for HCBS waiver services authorized through the American Rescue Plan Act since decisions on this FMAP increase are still pending. This rule will change the assessment tool for this population from the current interRAI to the LOCUS/CALOCUS assessment tool. The contractor costs associated with completing the assessments are comparable between these tools so no additional administrative impact is anticipated. Use of the new assessment tool is expected shift utilization across the Habilitation reimbursement tiers. Estimates were derived from Optumas using historical data from Iowa Total Care and Amerigroup on utilization and costs in different tiers of service. Funding will need to come from the existing Medical Assistance appropriation. Providers will likely see increased Medicaid payments due to the redistribution of members by reimbursement tier.

Jobs Impact

The impact on jobs is unknown at this time but is anticipated to be minimal.

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 IAC 1.7 (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 July 6, 2021. 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.

ITEM 1. Amend subrule 77.25(1) as follows:

“Intensive residential service homes” or “intensive residential services” means intensive, community-based services provided 24 hours a day, 7 days a week, 365 days a year to individuals with a severe and persistent mental illness who have functional impairments and may also have multi-occurring conditions. Providers of intensive residential service homes are enrolled with Medicaid as providers of HCBS habilitation or HCBS intellectual disability waiver supported community living and meet additional criteria specified in 441—subrule 25.6(8).

ITEM 2. Amend subrule 77.25(8) as follows:

~~77.25(8) Home-based habilitation. The following agencies may provide home-based habilitation services:~~

a. The following agencies may provide home-based habilitation services:

(1) An agency that is certified by the department to provide supported community living services under:

~~(1)~~ 1. The home- and community-based services intellectual disability waiver pursuant to rule 441—77.37(249A); or

~~(2)~~ 2. The home- and community-based services brain injury waiver pursuant to rule 441—77.39(249A).

~~b.~~ (3) An agency that is accredited under 441—Chapter 24 to provide supported community living services.

~~c.~~ (4) An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities as a community housing or supported living service provider.

~~d.~~(5) An agency that is accredited by the Council on Quality and Leadership in Supports for People with Disabilities.

~~e.~~(6) An agency that is accredited by the Council on Accreditation of Services for Families and Children.

~~f.~~(7) An agency that is accredited by the Joint Commission on Accreditation of Healthcare Organizations.

b. Direct support staff providing home-based habilitation services shall meet the following minimum qualifications in addition to requirements outlined in rule 441-77.25(249A):

(1) A person providing direct support shall be at least 18 years and have a high school diploma or its equivalent.

(2) A person providing direct support shall not be an immediate family member of the member receiving services.

(3) A person providing direct support to members receiving intensive residential habilitation services shall complete 48 hours of training within the first year of employment in mental health and multi-occurring conditions pursuant to 441—subrule 25.6(8).

(4) A person providing direct support to members receiving home-based habilitation services shall complete a minimum of 24 hours of training within the first year of employment in mental health and multi-occurring conditions, including but not limited to the following topics:

1. Mental health diagnoses, symptomology, and treatment;

2. Intervention strategies that may include applied behavioral analysis, motivational interviewing, or other evidence-based practices;
3. Crisis management, intervention, and de-escalation;
4. Psychiatric medications, common medications, and potential side effects;
5. Member-specific medication protocols, supervision of self-administration of medication, and documentation;
6. Substance use disorders and treatment;
7. Other diagnoses or conditions present in the population served; and
8. Individual person centered service plan, crisis plan, and behavioral support plan implementation.

(5) A person providing direct support to members receiving home-based habilitation services shall complete a minimum of 12 hours of training annually on the topics listed in subparagraph 77.25(8)"b" 4, or other topics related to serving individuals with severe and persistent mental illness.

c. The department shall approve living units designed to serve up to four persons except as necessary to prevent an overconcentration of supported community living units in a geographic area.

d. The department shall approve a living unit designed to serve five persons if both of the following conditions are met:

1. Approval will not result in an overconcentration of supported community living units in a geographic area; and

2. The county in which the living unit is located provides to the bureau of long-term care verification in writing that the approval is needed to address one or more of the following issues:
 - a. The quantity of services currently available in the county is insufficient to meet the need;
 - b. The quantity of affordable rental housing in the county is insufficient to meet the need; or
 - c. Approval will result in a reduction in the size or quantity of larger congregate settings.

Item 3. Amend subrule 78.27 (1) as follows:

“Intensive residential service homes” or “intensive residential services” means intensive, community-based services provided 24 hours a day, 7 days a week, 365 days a year to individuals with a severe and persistent mental illness who have functional impairments and may also have multi-occurring conditions. Providers of intensive residential service homes are enrolled with Medicaid as providers of HCBS habilitation or HCBS intellectual disability waiver supported community living and meet additional criteria specified in 441—subrule 25.6(8).

“Child and Adolescent Level of Care Utilization System” or “CALOCUS” means the comprehensive functional assessment tool utilized to determine eligibility for the habilitation program and service authorization for the home-based habilitation service for individual ages 16 to 18.

“Level of Care Utilization System” or “LOCUS” means the comprehensive functional assessment tool utilized to determine eligibility for the habilitation program and service authorization for the home-based habilitation service for individuals age 19 and older.

“Severe and persistent mental illness” means the same as defined in rule 441—25.1(331).

Item 4. Amend subrule 78.27(2) as follows:

78.27(2) Member eligibility. To be eligible to receive home- and community-based habilitation services, a member shall meet the following criteria:

a. Be 16 years of age or older.

b. LOCUS/ CALOCUS Actual Disposition. The member has a LOCUS/ CALOCUS actual disposition of 1 recovery maintenance & health management or higher on the most current LOCUS/ CALOCUS assessment completed within the past 30 days.

ac. Risk factors. The member has at least one of the following risk factors:

(1) The member has undergone or is currently undergoing psychiatric treatment more intensive than outpatient care (e.g., crisis response services, subacute mental health services, emergency services, alternative home care, partial hospitalization, or inpatient hospitalization) more than once in the member’s life; or

(2) The member is currently receiving habilitation or integrated health home services; or

~~(2)~~ (3) The member has a history of ~~psychiatric illness~~ severe and persistent mental illness resulting in at least one episode of continuous, professional supportive care other

than hospitalization (e.g. counseling, therapy, assertive community treatment, medication management); or

(4) The member has a history of severe and persistent mental illness resulting in involvement in the criminal justice system (e.g. prior incarceration, parole, probation, criminal charges, jail diversion program or mental health court); or

(5) Traditional mental health services available in the member's community have not been able to meet the member's needs.

bd. Need for assistance. The member has a need for assistance or is likely to need assistance related to functional impairment arising out of a mental health diagnosis typically demonstrated by meeting at least two of the following criteria on a continuing or intermittent basis for at least ~~two years~~ twelve months:

(1) The member is unemployed, is employed in a sheltered setting, or has markedly limited skills and a poor work history, and the member is currently receiving employment services or the member has a need for employment services to obtain and/or maintain employment.

(2) The member requires financial assistance ~~for out-of-hospital maintenance and is to~~ reside independently in the community or may be homeless or at risk of homelessness if unable to procure this assistance without help.

(3) The member shows ~~severe~~ significant inability to establish or maintain a personal social support system.

(4) The member requires help in basic living skills such as self-care, money management, housekeeping, cooking, and medication management.

(5) ~~The member exhibits inappropriate social behavior that results in a demand for intervention.~~ The member exhibits social behavior that puts the member's safety or others safety at risk which results in the need for service intervention which may include crisis management or protective oversight.

e e. Income. The countable income used in determining the member's Medicaid eligibility does not exceed 150 percent of the federal poverty level.

d f. Needs assessment. ~~The interRAI – Child and Youth Mental Health (ChYMH) for youth aged 16 to 18 or the interRAI – Community Mental Health (CMH) for those aged 19 and older.~~ The Level of Care Utilization System (LOCUS) or Child and Adolescent Level of Care Utilization System (CALOCUS) tool has been completed, and based on information submitted on the information submission tool and other supporting documentation as relevant, the IME medical services unit has determined that the member is in need of home- and community-based habilitation services. ~~The interRAI – Child and Youth Mental Health (ChYMH) and the interRAI – Community Mental Health (CMH)~~ LOCUS/ CALOCUS information submission tools are available on request from the IME medical services unit. Copies of the information submission tool for an individual are available to that individual from the individual's case manager, integrated health home care coordinator, or managed care organization. The designated case manager or integrated health home care coordinator shall:

(1) Arrange for the completion of the ~~interRAI~~ LOCUS or CALOCUS, before services begin and annually thereafter and more frequently if significant observable changes occur in the member's situation, condition or circumstances.

(2) Use the information submission tool and other supporting documentation as relevant to develop a comprehensive service plan as specified in subrule 78.27(4) and 441—paragraph 90.4(1)"b", before services begin and annually thereafter, and when there is a significant observable change in the member's situation, condition, or circumstances.

e.g. Plan for service. The department or the member's managed care organization has approved the member's comprehensive service plan for home- and community-based habilitation services. Home- and community-based habilitation services included in a comprehensive service plan or treatment plan that has been validated by the IME through ISIS or the member's managed care organization shall be considered approved by the department. Home- and community-based habilitation services provided before approval of a member's eligibility for the program cannot be reimbursed.

(1) The member's comprehensive service plan shall be completed annually according to the requirements of subrule 78.27(4) and 441—paragraph 90.4(1)"b". A service plan may change when requested by the member or the member's interdisciplinary team when there is a significant observable change in the member's situation, condition, or circumstances. ~~at any time due to a significant change in the member's needs.~~

(2) For members receiving home-based habilitation, the service plan shall include the member's LOCUS/ CALOCUS actual disposition, the LOCUS/ CALOCUS composite

score, and each individual domain score for each of the six LOCUS/ CALOCUS domains.

~~(2)~~(3) The member's habilitation services shall not exceed the maximum number of units established for each service in 441—subrule 79.1(2).

~~(3)~~(4) The cost of the habilitation services shall not exceed unit expense maximums established in 441—subrule 79.1(2).

Item 5. Amend subrule 78.27(7) as follows:

78.27(7) Home-based habilitation. "Home-based habilitation" means individually tailored supports that assist with the acquisition, retention, or improvement of skills related to living, working, and recreating in the community.

a. Scope. Home-based habilitation services are individualized supportive services provided in the member's home and community that assist the member to reside in the most integrated setting appropriate to the member's needs. Services are intended to provide for the daily living needs of the member and shall be available as needed during any 24-hour period. The specific support needs for each member shall be determined necessary by the interdisciplinary team and shall be identified in the member's comprehensive service plan. Covered supports include:

(1) Adaptive skill development;

(2) Assistance with activities of ~~daily living~~ to address daily living needs,

(3) Assistance with symptom management and participation in mental health treatment;

(4) Assistance with accessing physical and mental health care treatment, communication, and implementation of health care recommendations and treatment;

(5) Assistance with accessing and participating in substance use disorder treatment and services;

(6) Assistance with medication administration and medication management;

(7) Assistance with understanding communication whether verbal or written;

~~(3)~~ (8) Community inclusion and active participation in the community;

~~(4)~~ (9) Transportation;

~~(5)~~ (10) Adult educational supports which may include assistance and support with enrolling in educational opportunities and participation in education and training;

~~(6)~~ (11) Social and leisure skill development;

~~(7)~~ (12) Personal care; and

~~(8)~~ (13) Protective oversight and supervision.

b. Setting Requirements. Home Based Habilitation services shall occur in the member's home and community.

(1) A member may live in their own home, within the home of the member's family or legal representative or in another community living arrangement that meets the criteria in 441—subrule 77.25(5).

(2) A member living with the member's family or legal representative is not subject to the criteria in 441—subrules 77.25(8)"c" and 77.25(8)"d."

(3) A member may not reside in a licensed medical or health care facility or in a setting that is required to be licensed as a medical or health care facility.

c. Home-based habilitation level of service criteria. Home-based habilitation services shall be available to members based on the member's most current LOCUS/ CALOCUS actual disposition score, according to the following criteria:

(1) Intensive IV intensive residential habilitation services. Intensive IV services are provided 24 hours per day. To be eligible for intensive IV services, a member must meet the following criteria:

1. The member has a LOCUS/ CALOCUS actual disposition of level six medically managed residential services, and

2. The member meets the criteria in 441—subparagraph 25.6(8)"c"(3).

(2) Intensive III services are provided 17 to 24 hours per day. To be eligible for intensive III services, the member must have a LOCUS/ CALOCUS actual disposition of level five medically monitored residential services.

(3) Intensive II services are provided 13 to 16.75 hours per day. To be eligible for intensive II, the member must have a LOCUS/ CALOCUS actual disposition of level four medically monitored non-residential services.

(4) Intensive I services are provided 9 to 12.75 hours per day. To be eligible for intensive I, the member must have a LOCUS/ CALOCUS actual disposition of level three high intensity community-based services.

(5) Medium need services are provided 4.25 to 8.75 hours per day as needed. To be eligible for medium need services, the member must have a LOCUS/ CALOCUS actual disposition of level two low intensity community-based services.

(6) Recovery transitional services are provided 2.25 to 4 hours per day as needed. To be eligible for recovery transitional services, the member must have a LOCUS/ CALOCUS actual disposition of level one recovery maintenance & health management.

(7) High recovery services are provided .25 to 2 hours per day as needed. To be eligible for high recovery services, the member must have a LOCUS/ CALOCUS actual disposition of level zero.

d. Additional criteria for receiving home-based habilitation services for transition-age youth 16 to 17.5 years of age.

(1) Members residing in the family home may receive home-based habilitation services as needed, subject to the criteria set forth in this rule.

(2) Members residing outside the family home may only receive home-based habilitation services in residential settings with 16 or fewer beds licensed by the department of inspections and appeals.

(3) The proposed living environment must meet HCBS setting requirements in accordance with 441—subrule 77.25(5).

e. Additional criteria for receiving home-based habilitation services for transition-age youth 17.5 to 18 years of age.

(1) Members residing in the family home may receive home-based habilitation services as needed, subject to the criteria set forth in this rule.

(2) Members residing outside of the family home may receive daily home-based habilitation in a provider-owned or controlled setting when the following criteria are met:

1. The proposed living environment must meet HCBS setting requirements in accordance with 441—subrule 77.25(5).

2. All providers of the service setting being requested must meet the following additional safety and service requirements for serving youth under the age of 18:

(a) Individuals 17.5-18 years of age shall receive 24-hour site supervision and support.

(b) Individuals under age 18 may not reside in settings with individuals over the age of 21.

(c) The comprehensive service plan shall specifically identify educational services and supports for individuals who have not obtained a high school diploma or equivalent.

(d.) For individuals who have obtained a high school diploma or equivalent, the comprehensive service plan shall include supported employment, additional training, or educational supports.

3. The member's parent or guardian has consented to home-based habilitation services.

4. The member is able to pay room and board costs (funding sources may include, but are not limited to, supplemental security income, child support, adoptions subsidy, or private funds).

5. A licensed setting, such as those approved to provide residential based supported community living, is not available.

b.f. Exclusions. Home-based habilitation payment shall not be made for the following:

(1)– (6) No Change.



Administrative Rule Fiscal Impact Statement

Date: April 15, 2021

Agency: Human Services
IAC citation: 441 IAC 77.25(8), 78.27
Agency contact: LeAnn Moskowitz

Summary of the rule:

The purpose of this amendment to the HCBS Habilitation program is to adopt the Level of Care Utilization System (LOCUS) for adults age 19 and older and Child and Adolescent Level of Care Utilization System (CALOCUS) for youth age 16 to 18 for the purposes of the needs-based eligibility determination, person-centered service planning and Home Based Habilitation service tier authorization. These amendments also adds the Intensive Residential Habilitation Services as defined in rule 441—25.1, adopts training criteria for direct service staff providing Home-Based Habilitation services, and clarifies the scope of services included in Home Based Habilitation

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:

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:

Assumptions are based on the change in the Home-Based Habilitation (HBH) service eligibility criteria of individuals accessing services under each of the Tiers for HBH.

The SFY22 state share estimate assumes the COVID-19 increased FMAP will remain in effect through December 2021. It does not include the potential 10 percent FMAP increase for HCBS waiver services authorized through the American Rescue Plan Act since decisions on this FMAP increase are still pending.

This rule will change the assessment tool for this population from the current interRAI to the LOCUS/CALOCUS assessment tool. The contractor costs associated with completing the assessments are comparable between these tools so no additional administrative impact is anticipated.

The rate for the new Intensive Residential Habilitation Service (Intensive IV) will not be loaded into the MMIS until additional funding is secured to pay for the service. Therefore, the below fiscal impact estimate does not assume any additional costs for this new service.

Describe how estimates were derived:

Use of the new assessment tool is expected shift utilization across the Habilitation reimbursement tiers. Estimates were derived from Optumas using historical data from Iowa Total Care and Amerigroup on utilization and costs in different tiers of service. A summary of the anticipated impact is provided below.

Home-Based Habilitation Utilization Change							
Tier	Proc Code	SFY19 Units	SFY22 Units	Current Rates	SFY19 Cost	SFY22 Cost	Cost Difference
1 - High Recovery	H2016-UA	193,021	153,935	51.00	9,844,071	7,850,667	(1,993,404)
2 - Recovery Transitional	H2016-UB	164,441	184,654	110.90	18,236,507	20,478,138	2,241,632
3 - Medium Need	H2016-UC	72,880	112,936	123.40	8,993,392	13,936,265	4,942,873
4 - Intensive I	H2016-UD	234,265	167,734	157.50	36,896,738	26,418,050	(10,478,688)
5 - Intensive II	H2016-U8	140,419	173,599	210.00	29,487,990	36,455,738	6,967,748
6 - Intensive III	H2016-U9	68,104	80,273	315.00	21,452,760	25,286,050	3,833,290
7 - Intensive IV	H2016-U7	-	-	-	-	-	-
Total (Annual)		873,130	873,130		124,911,457	130,424,908	5,513,451

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY 22)</u>	<u>Year 2 (FY 23)</u>
Revenue by each source:		
General fund		
Federal funds	3,646,288	3,487,500
Other (specify):		
TOTAL REVENUE	3,646,288	3,487,500
Expenditures:		
General fund	5,513,451	5,513,451
Federal funds		
Other (specify):		
TOTAL EXPENDITURES	5,513,451	5,513,451
NET IMPACT	(1,867,163)	(2,025,951)

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.

Funding has not been provided for the rule.

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

Funding will need to come from the existing Medical Assistance appropriation.

Fiscal impact to persons affected by the rule:

Providers will likely see increased Medicaid payments due to the redistribution of members by reimbursement tier.

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

No impact is anticipated.

Agency representative preparing estimate: Soraya Miller

JH 4/15/21

Telephone number:

515-281-6017

HUMAN SERVICES DEPARTMENT [441]

Notice of Intended Action

Proposing rule making related to foster home insurance fund and providing an opportunity for public comment.

The Human Services Department hereby proposes to amend Chapter 158, "Foster Home Insurance Fund," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 237.13.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 237.13.

Purpose and Summary

The foster home insurance fund was established to provide liability coverage to licensed foster parents who have a child placed in their home. Per Iowa Code 237.13, the foster home insurance fund is created within the Office of the Treasurer of the state to be administered by the department of human services. The fund consists of all moneys appropriated by the general assembly for deposit into the fund. Iowa Code 27.13 was updated in the 2020 legislative session stating the department shall use moneys in the fund to reimburse foster parents for the cost of purchasing foster care liability insurance and to perform the administrative functions necessary to carry out this section.

The initial plan was for the department to offer financial assistance for licensed foster parents to purchase or offset insurance liability insurance. Following extensive research, it was determined that this was not an existing coverage offered by insurance companies. Therefore, the department worked with the legislature to update the Iowa Code Section 237.13 during the 2021 session to add language to the Iowa Code to reflect money in the fund shall be used to provide home and property coverage for foster parents to cover damages resulting from the actions of a child residing in a foster child home. In addition, language was added to the Iowa Code to allow the department to establish limitations of liability for individual claims as deemed reasonable by the department.

The department has contracted with a private organization to perform the administrative functions required of the foster home insurance fund and sign up all licensed foster parents to ensure that there is coverage in the event foster parents need to submit a claim.

Fiscal Impact

The annual amount budgeted for the foster home insurance fund is \$675,000. Changes to the annual limit and an increased deductible could reduce costs so it is possible the full amount will not be utilized.

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, IAC 1.7 (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 July 6, 2021. 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 and renumber the rule 158.1 to 158.3 as follows:

441—158.13(237) Payments from the foster home insurance fund.

ITEM 2. Amend the rule 158.1 Applicability as follows:

441-158.1(237) Applicability. This chapter specifically relates to the foster home insurance fund established by Iowa Code section 237.13. A foster home insurance fund shall be developed by the department. The fund shall provide reimbursement for any property damages caused by the acts of a foster child residing in their home. The department may contract with another state agency, or private organization, to perform the administrative functions necessary to carry out this section.

ITEM 3. Amend and renumber the rule 158.2 to 158.4 as follows:

441—158.24(237) Payment limits.

ITEM 4. Amend the rule 158.2 as follows:

441-158.2 (237) Definitions.

“Department” means the Iowa department of human services.

“Foster family home” means an individual, as defined in section 237.1, subsection 7, who is licensed to provide child foster care and shall also be known as a “licensed foster home”.

“Personal property” means any movable thing of value which is owned, rented or leased by a person and not recognized as real property.

“Real property” means anything owned, leased or rented which is permanently affixed to, or built upon a piece of land. Real property is best characterized as property that doesn't move, or that is attached to the land.

“Third party property” means any person or entity other than the foster family or foster child.

ITEM 5. Amend the rule 158.1, subrule (1) as follows:

441—158.13(237) Payments from the foster home insurance fund.

158.13(1) Eligible foster family claims. The foster home insurance fund shall pay the following within the limits defined in Iowa Code section 237.13, subsection 2, ~~s 3 and 4~~:

ITEM 6. Amend the paragraphs a, b, and c as follows:

a. Valid and approved claims of a licensed foster family home. ~~family foster care children, their parents, guardians or guardians ad litem.~~

b. Compensation to licensed foster families for personal or real property damage at replacement cost, or for bodily injury, as a result of the activities of the family foster care child. Coverage also extends to third party property damages caused by actions of the foster child.

c. Non-property-based liability, bodily injury, sexual abuse or molestation, auto liability or professional liability are not covered. ~~Reasonable and necessary legal fees incurred by licensed foster families in defense of civil claims filed pursuant to Iowa Code section 237.13, subsection 7, paragraph “d,” and any judgments awarded as a result of these claims. The reasonableness and necessity of legal fees shall be determined by the~~

Proposed Rule Changes

~~department or its contract agent.~~

ITEM 7. Renumber the subrule 158.1(2) as follows:

~~158.13~~**(2) Eligible guardian and conservator claims.** Rescinded IAB 10/5/11, effective 11/9/11. [ARC 9779B, IAB 10/5/11, effective 11/9/11]

ITEM 8. Amend and renumber the rule 158.2 to 158.4 as follows:

~~441—158.24~~**(237) Payment limits.** The fund is not liable for the first ~~\$100~~ \$150 per claim deductible per family. Each claim shall be limited to one incident/occurrence. ~~for all claims arising out of one or more occurrences during a fiscal year related to a single foster home.~~ The fund is not liable for damages in excess of ~~\$300,000~~ \$5,000 for all claims arising out of one or more occurrences during a fiscal year related to a single home. Claims for losses related to bed bugs or other insect infestations will have an annual sublimit set by the department. [ARC 9779B, IAB 10/5/11, effective 11/9/11]

ITEM 9. Amend and renumber the rule 158.3 to 158.5 as follows:

~~441—158.35~~**(237) Claim procedures.** Claims against the fund shall be filed with the department's contractor. ~~If the department does not have a contractor, claims shall be filed on Form 470-2470, Foster Home Insurance Fund Claim.~~ Claims shall be filed on Form 470-5659, Foster Home Property Fund Notice of Loss Form. The decision to approve or deny the claim shall be made ~~by the department or its contractor~~ and the notice mailed or given to the claimant within 180 days of the date the claim is received.

ITEM 10: Amend and renumber the rule 158.4 to 158.6 as follows:

~~441—158.46~~**(237) Time frames for filing claims.**

ITEM 11: Amend and renumber the subrule 158.4(1) to 158.6(1) as follows

~~158.46~~**(1)** Claims by children who were under the age of 18 at the time of the occurrence shall be submitted within six months ~~two years~~ of the date of the occurrence. ~~or after the child's eighteenth birthday, but before the child's nineteenth birthday.~~

ITEM 12: Delete current subrules 158.4(2) and 158.4(3):

~~158.4(2)~~ Claims by persons who were aged 18 or older at the time of the occurrence shall be submitted within two years of the occurrence.

~~158.4(3)~~ Claims by foster parents pursuant to paragraph 158.1(1) "e" for legal fees or court-ordered judgments shall be submitted within two years of the date of the judgment.

[ARC 9779B, IAB 10/5/11, effective 11/9/11]

ITEM 13: Renumber the rule 158.5 to 158.7 as follows:

Proposed Rule Changes

441—158.57(237) Appeals. Claimants dissatisfied with the decision may request a fair hearing under the provisions of 441—Chapter 7.



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 foster home insurance fund was established to provide liability coverage to licensed foster parents who have a child placed in their home. Per Iowa Code 237.13, the foster home insurance fund is created within the office of the Treasurer of state to be administered by the department of human services. The fund consists of all moneys appropriated by the general assembly for deposit into the fund. HF 2643 was signed by Governor Reynolds at the completion of the last legislative session stating that the department shall use moneys in the fund to reimburse foster parents for the cost of purchasing foster care liability insurance and to perform the administrative functions necessary to carry out this section.

The initial plan was for the department to offer financial assistance for licensed foster parents to purchase/offset insurance liability insurance. Following extensive research, it was determined that this was not an existing coverage offered by insurance companies. In order to meet the essence of the code provision and be in compliance with HF2643, the department will contract with a private organization to perform the administrative functions required of the foster home insurance fund signing up all licensed foster parents. This is not reimbursement, as such, but does ensure that there is coverage.

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

Governor Reynolds signed House File 2643 on 6/30/20.

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

The foster home insurance fund provides property damage coverage for foster parents related to incidents in providing foster care services. The fund ensures that the foster family will be reimbursed for any property damages caused by the acts of a foster child residing in their home.

The new coverage has a much lower annual loss limit than the previous coverage and an increased deductible per claim/occurrence. Foster parents may have to utilize their personal homeowner's policy depending on the situation.

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

No

5. What are the likely areas of public comment?

Foster parents will continue to have property damage protections, but deductible per claim/occurrence will be increased with a much lower limit per year per foster family. Not all claims will be paid in entirety and personal homeowner policies of foster parents may need to be utilized.

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: January 26, 2021

Agency: Human Services

IAC citation: 441 IAC 158

Agency contact: Nancy Swanson

Summary of the rule:

The foster home insurance fund provides property damage coverage for foster parents related to incidents in providing foster care services. The fund ensures that the foster family will be reimbursed for any property damages caused by the acts of a foster child residing in their home. The new coverage has a much lower annual loss limit than the previous coverage and an increased deductible per claim/occurrence.

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 annual amount budgeted for the foster home insurance fund is \$675,000. Changes to the annual loss limit and an increased deductible could reduce costs so it's possible the full amount will not be utilized.

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 2022)</u>	<u>Year 2 (FY 2023)</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 additional funding is necessary.

Fiscal impact to persons affected by the rule:

The new coverage has a much lower annual loss limit than the previous coverage and an increased deductible per claim/occurrence. Foster parents may have to utilize their personal homeowner's policy depending on the situation.

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

None anticipated.

Agency representative preparing estimate: David O. Philmon, Jr. JH 1/28/21, JS 2/1/21
 Telephone number: 404-345-1088

HUMAN SERVICES DEPARTMENT[441]

DRAFT ONLY: Dates herein may not comply with Schedule for Rule Making.

Notice of Intended Action

Proposing rule making related to child care assistance provider rate increases and providing an opportunity for public comment.

The Human Services Department hereby proposes to amend Chapter 170, "Child Care Services," Iowa Administrative Code. These rules were adopted and filed emergency as ARC XXXC on XXXX. This rule making provides an opportunity for public comment.

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

The department is revising the child care assistance provider reimbursement rate ceiling tables. This is being done to comply with federal requirements (45 CFR Part 98) that states must use the most recent market rate survey in establishing child care reimbursement rates. Iowa's most recent market rate survey was conducted in December 2020.

Effective July 1, 2021, reimbursement rates for providers of child care assistance are being increased to at least the 50th percentile of the 2020 market rate for child care providers. The base rates for the Quality Rating System (QRS) bonuses were also updated to reflect increased child care provider reimbursement rates.

The base rates were updated to the 50th percentile and the QRS highest rates to the 75th percentile of the 2020 survey. Previously the highest rates had been at the 75th percentile based on the 2017 market rate survey.

Fiscal Impact

Increasing the maximum provider rates as shown in the rate tables is estimated to cost \$13,355,730 per year. This cost is expected to be funded by federal CCDF funds carried forward until SFY25, when it is anticipated that the balance of CCDF funds will be fully expended.

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 IAC 1.7 (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 XXXX. 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).

Emergency Rule Making Adopted by Reference

This proposed rule making is also published herein as an Adopted and Filed Emergency rule making (see ARC XXXC, IAB XXXX). The purpose of this Notice of Intended Action is to solicit public comment on that emergency rule making, whose subject matter is hereby adopted by reference.

The following rule-making action is proposed:

Please see attached.

PROPOSED RULE CHANGES

Item 1. Revise Table 1, Table 3 and Table 4 in subparagraph 170.4(7)'a' as follows:

Table 1								
Half-Day Rate Ceilings for (Licensed Center)								
	No QRS		QRS 1 or 2		QRS 3 or 4		QRS 5	
Age Group	Basic	Special Needs	Basic	Special Needs	Basic	Special Needs	Basic	Special Needs
Infant and Toddler	\$17.00	\$51.94	\$19.75	\$51.94	\$20.50	\$51.94	\$21.90	\$51.94
	\$19.30		\$20.50		\$21.50		\$23.21	
Preschool	\$14.75	\$30.43	\$15.50	\$30.43	\$16.40	\$30.43	\$18.69	\$30.43
	\$17.00		\$18.00		\$18.98		\$20.00	
School Age	\$12.18	\$30.34	\$12.50	\$30.34	\$13.50	\$30.34	\$15.00	\$30.34
	\$13.50		\$14.75		\$15.00		\$16.00	

Table 3								
Half-Day Rate Ceilings for (Child Development Home C)								
	No QRS		QRS 1 or 2		QRS 3 or 4		QRS 5	
Age Group	Basic	Special Needs	Basic	Special Needs	Basic	Special Needs	Basic	Special Needs
Infant and Toddler	\$13.00	\$19.50	\$14.00	\$21.00	\$14.50	\$21.75	\$15.00	\$22.50
	\$14.00	\$21.00	\$14.50	\$21.75	\$15.00	\$22.50	\$15.25	\$22.88
Preschool	\$12.50	\$18.75	\$13.00	\$19.50	\$13.50	\$20.25	\$15.00	\$22.50
	\$13.75	\$20.63	\$14.50	\$21.75	\$14.75	\$22.13		
School Age	\$11.25	\$16.88	\$12.00	\$18.00	\$12.50	\$18.75	\$14.00	\$21.00
			\$12.50	\$18.75	\$13.00	\$19.50	\$14.50	\$21.75

Table 4		
Half-Day Rate Ceilings for child care home (not registered)		
Age Group	Basic	Special Needs
Infant and Toddler	\$8.19	\$12.29
	\$12.98	\$19.47
Preschool	\$7.19	\$10.79
	\$12.50	\$18.75
School Age	\$7.36	\$11.04
	\$10.82	\$16.23



Iowa Department of Human Services
Information on Proposed Rules

Name of Program Specialist Mark Adams	Telephone Number 281-5688	Email Address Madams4@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:
Revise 441 IAC 170.4(7)'a' to update the provider reimbursement rate ceilings tables. Rates are being increased to at least the 50th percentile of the 2020 market rate for licensed and registered provider types.
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.
Providers will potentially be able to receive greater reimbursement for the CCA children in their care.
4. Does this rule contain a waiver provision? If not, why?
This amendment does not provide a specific waiver authority because families may request a waiver of these provisions in a specified situation under the Department's general rule on exceptions at 441 – 1.8(17A, 217).
5. What are the likely areas of public comment?
None expected.
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: April 21, 2021

Agency: Human Services

IAC citation: 441 IAC 170

Agency contact: Mark Adams

Summary of the rule:

Revising the child care provider reimbursement tables to increase rates to at least the 50th percentile of 2020 market rates.

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.](#)

Increasing the maximum provider rates as shown in the rate tables is estimated to cost \$13,355,730 per year. This cost is expected to be funded by federal CCDF funds carried forward until SFY25, when it is anticipated that the balance of CCDF funds will be fully expended

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:

The maximum basic rate ceilings for CCA providers not participating in QRS will increase to the 50th percentile of the 2020 Market Rate Survey for those that are below that level. The basic rate ceilings for providers already at or above the 50th percentile will not change.

The maximum rate ceilings for CCA providers participating in QRS will also increase to reflect increased rates as appropriate to maintain the tiered rate system.

Assumptions used for calculating the cost:

16 units per child per billing period

26 billing periods per year

The number of children have been broken down by age group and provider category.

The new unit cost is compared to the previous unit cost to determine the increase in unit cost.

A detailed spreadsheet showing the calculations is attached.

Effective date is July 1, 2021.

Increasing the maximum provider rates as described is estimated to cost \$13,355,730 per year. This cost is expected to be funded by federal CCDF funds carried forward until SFY25, when it is anticipated that the balance of CCDF funds will be fully expended

Describe how estimates were derived:

See attached spreadsheet

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY 2022)</u>	<u>Year 2 (FY 2023)</u>
Revenue by each source:		
General fund		
Federal funds	<u>13,355,730.00</u>	<u>13,355,730.00</u>
Other (specify):	<u></u>	<u></u>
TOTAL REVENUE	<u>13,355,730.00</u>	<u>13,355,730.00</u>
Expenditures:		
General fund		
Federal funds	<u>13,355,730.00</u>	<u>13,355,730.00</u>
Other (specify):	<u></u>	<u></u>
TOTAL EXPENDITURES	<u>13,355,730.00</u>	<u>13,355,730.00</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:

HF 891, Sec 31, subsection 11 directs DHS on how the child care provider rates shall be set for the year beginning 7/1/21. This is done to comply with federal requirements that states use the most recent market rate survey in establishing child care reimbursement rates. Iowa's most recent market rate survey was conducted in December, 2020.

- Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

The current projected ending balance in federal CCDF funds for SFY21 is \$53.2 million. This is expected to fund the CCA rate increase through SFY24 based on current policies and potential policy changes for SFY22 through SFY25. This will change depending on additional federal CCDF revenue increases after FFY21 and additional policy changes that may be enacted during the next several years.

- Funding has not been provided for the rule.

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

It is currently anticipated that the Child Care Appropriation may have a need for additional state general funds for SFY25.

Fiscal impact to persons affected by the rule:

Some child care providers will be eligible to receive a rate increase for the services they provide.

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

None anticipated.

Agency representative preparing estimate: Kathy Blume JH -- 05/12/2021

Telephone number: Cell 515-480-9640 / Office 515-281-4196