

February 3, 2021

Dear Council Member:

The following amendments to the administrative rules are presented for adoption at the February 11, 2021, Council on Human Services meeting.

**R-1 Amendments to Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Amendments to Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code. (Allows Physician Assistants, Nurse Practitioners and Clinical Nurse Specialists to order and sign treatment plans)**

The amendment implements federal regulations which allow physician assistants, nurse practitioners and clinical nurse specialists to order and sign a treatment plan for home health agency services to Iowa Medicaid members.

**R-2 Amendments to Chapters 110, “Child Development Homes,” and Chapter 120, “Child Care Homes,” Iowa Administrative Code. (Total Capacity Limits during Emergency School Closings Cap)**

House File 2485 from 2020 directs the Department to allow child development homes to care for their total capacity of children during an emergency school closing without an assistant.

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

**N-1. Amendments to Chapter 58, “Emergency Assistance-Division 1-Iowa Disaster and Individual Assistance Grant Program,” Iowa Administrative Code. (Updates Changes in the Disaster Assistance Program)**

The proposed amendment implements 2019 Senate File 435 updating disaster assistance rules to increase the timeframe to stay in a fifth-wheel travel trailer or travel trailer from 90 days to 180 days before these trailers are considered a permanent place of habitation.

**N-2. Amendments to Chapter 73, “Managed Care,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code. (Implements the federal requirement for electronic visit verification)**

These proposed amendments implement the federal Electronic Visit Verification (EVV) requirements for providers for personal care services beginning January 1, 2020, under Section 12006 of the 21<sup>st</sup> Century Cures Act. Iowa was granted a one year good faith exemption so the requirement for Iowa is January 1, 2021. The Department is implementing EVV for members covered under managed care. The EVV implementation for the fee for service population will be deployed in a second phase for compliance.

A contract vendor has been selected to assist with tracking and billing. EVV uses technology to electronically record when attendants begin and end providing services to Medicaid members. EVV will be used to ensure members are receiving the care they need that is outlined in their service plan. EVV will be used to monitor the delivery and utilization of personal care and home health agency services in non-traditional settings and will provide verification of the visit with location information and a time stamp. EVV will be used to ensure quality and program integrity. It also streamlines billing for providers as once a visit is complete the claim is sent to the managed care organization for payment.

Sincerely,

*Nancy Freudenberg*  
Nancy Freudenberg  
Bureau Chief  
Policy Coordination

## HUMAN SERVICES DEPARTMENT [441]

### Adopted and Filed

#### Rule making related to treatment plans

The Human Services Department hereby amends Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and 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 chapter 249A.

#### *State or Federal Law Implemented*

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

#### *Purpose and Summary*

This amendment allows physician assistants, nurse practitioners and clinical nurse specialists to order and sign a treatment plan for home health agency services provided to Iowa Medicaid members.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 16, 2020, as **ARC 5336C**.

The Department received responses from four respondents/organizations. All four respondents support the rule amendments which allow physician assistants, nurse practitioners, and clinical nurse specialists to order and sign a treatment plan for home health agency services provided to Iowa Medicaid members.

Two respondents recommended technical suggestions to the proposed administrative rules to ensure the rules align with the federal home health agency regulations and the authority granted under the CARES Act.

#### **1. COMMENT:**

Respondents recommended changes to 441 IAC 79.3(249A) Maintenance of records by provider of service.

(d)(27) Home health agency services:

1. Plan of care or plan of treatment.
2. Certifications and recertifications.
3. Service notes or narratives.
4. Physician, (**nurse practitioner, physician assistant or clinical nurse specialist**) orders or medical orders.

#### **Response:**

The department will make the recommended change to the administrative rule.

Amend subparagraph 441-79.3 (1) d. (27) as follows:

(27) Home health agency services:

1. Plan of care or plan of treatment.
2. Certifications and recertifications.
3. Service notes or narratives.

4. Physician, nurse practitioner, physician assistant or clinical nurse specialist orders or medical orders.

## 2. COMMENT:

Respondents also recommended that the department amend the following regulations for other home-based services. These changes would be comparable to the new authority included in Section 3708 of the CARES Act. This proposed amended language will ensure better access care to care for their patients, and better recognize the role of nurse practitioners.

**IA ADC 441-83.2(249A); IA ADC 441-83.61(249A); IA ADC 441-83.82(249A)**

Add (nurse practitioner, physician assistant or clinical nurse specialist) after “physician” in the sections related to eligibility for interim medical management services.

**IA ADC 441-177.3(249) Service Criteria.**

Insert (nurse practitioner, physician assistant or clinical nurse specialist) after “physician” every place that it appears

## RESPONSE:

The department is unable to make the requested changes to 441 IAC 177. To make these changes will require a change to the In Home Health Related Care (IHHRC) program statute. The department does not have the authority to amend statute. The department will make the following changes to the administrative rules.

Amend subparagraph 441-83.2(1) e. (4) as follows:

(4) In need of interim medical monitoring and treatment as ordered by a physician, nurse practitioner, clinical nurse specialist or a physician assistant.

Amend subparagraph 441.83.61(1) k. (4) as follows:

(4) In need of interim medical monitoring and treatment as ordered by a physician, nurse practitioner, clinical nurse specialist or a physician assistant.

Amend subparagraph 441-83.82(1) j. (4) as follows:

(4) In need of interim medical monitoring and treatment as ordered by a physician, nurse practitioner, clinical nurse specialist or a physician assistant. Changes are identified above.

### *Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on February 11, 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 1.8(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 May 1, 2021.

The following rule-making action is adopted:

See attached.

Adopt the following rules:

**441—78.9(249A) Home health agencies.** Payment shall be approved for medically necessary home health agency services prescribed by a physician, nurse practitioner, clinical nurse specialist, or physician assistant in a plan of home health care provided by a Medicare-certified home health agency.

The number of hours of home health agency services shall be reasonable and appropriate to meet an established medical need of the member that cannot be met by a family member, significant other, friend, or neighbor. Services must be medically necessary in the individual case and be related to a diagnosed medical impairment or disability.

The member need not be homebound to be eligible for home health agency services; however, the services provided by a home health agency shall only be covered when provided in the member's residence with the following exception. Private duty nursing and personal care services for persons aged 20 and under as described at 78.9(10) "a" may be provided in settings other than the member's residence when medically necessary.

Medicaid members of home health agency services need not first require skilled nursing care to be entitled to home health aide services.

Further limitations related to specific components of home health agency services are noted in subrules 78.9(3) to 78.9(10).

Payment shall be made on an encounter basis. An encounter is defined as separately identifiable hours in which home health agency staff provide continuous service to a member.

Payment for supplies shall be approved when the supplies are incidental to the patient's care, e.g., syringes for injections, and do not exceed \$15 per month. Dressings, durable medical equipment, and other supplies shall be obtained from a durable medical equipment dealer or pharmacy. Payment of supplies may be made to home health agencies when a durable medical equipment dealer or pharmacy is not available in the member's community.

Payment may be made for restorative and maintenance home health agency services.

Payment may be made for teaching, training, and counseling in the provision of health care services.

Treatment plans for these services shall additionally reflect: to whom the services are to be provided (patient, family member, etc.); prior teaching training, or counseling provided; medical necessity for the rendered service; identification of specific services and goals; date of onset of the teaching, training, or counseling; frequency of services; progress of member in response to treatment; and estimated length of time these services will be needed.

The following are not covered: services provided in the home health agency office, homemaker services, well child care and supervision, and medical equipment rental or purchase.

Services shall be authorized by a physician, nurse practitioner, clinical nurse specialist, or physician assistant, evidenced by the physician's, nurse practitioner's, clinical nurse specialist's, or physician assistant's signature and date on a plan of treatment.

**78.9(1) Treatment plan.** A plan of treatment shall be completed prior to the start of care and at a minimum reviewed every 60 days thereafter. There must be a face-to-face encounter between a physician, a nurse practitioner, a clinical nurse specialist, a certified nurse-midwife, or a physician assistant and the Medicaid member no more than 90 days before or 30 days after the start of service. The plan of care shall support the medical necessity and intensity of services to be provided by reflecting the following information:

a. to g. No change.

h. Member's medical condition as reflected by the following information, if applicable:

(1) and (2) No change.

(3) Date last seen by a physician, nurse practitioner, clinical nurse specialist, or physician assistant.

(4) to (10) No change.

i. to k. No change.

l. Physician's, nurse practitioner's, clinical nurse specialist's, or physician assistant's signature and date. The plan of care must be signed and dated by the physician, nurse practitioner, clinical nurse

specialist, or physician assistant before the claim for service is submitted for reimbursement.

**78.9(2)** No change.

**78.9(3) Skilled nursing services.** Skilled nursing services are services that when performed by a home health agency require a licensed registered nurse or licensed practical nurse to perform. Situations when a service can be safely performed by the member or other nonskilled person who has received the proper training or instruction or when there is no one else to perform the service are not considered a “skilled nursing service.” Skilled nursing services shall be available only on an intermittent basis. Intermittent services for skilled nursing services shall be defined as a medically predictable recurring need requiring a skilled nursing service at least once every 60 days, not to exceed five days per week (except as provided below), with an attempt to have a predictable end. Daily visits (six or seven days per week) that are reasonable and necessary and show an attempt to have a predictable end shall be covered for up to three weeks. Coverage of additional daily visits beyond the initial anticipated time frame may be appropriate for a short period of time, based on the medical necessity of service. Medical documentation shall be submitted justifying the need for continued visits, including the physician’s, nurse practitioner’s, clinical nurse specialist’s, or physician assistant’s estimate of the length of time that additional visits will be necessary. Daily skilled nursing visits or multiple daily visits for wound care or insulin injections shall be covered when ordered by a physician, nurse practitioner, clinical nurse specialist, or a physician assistant and included in the plan of care. Other daily skilled nursing visits which are ordered for an indefinite period of time and designated as daily skilled nursing care do not meet the intermittent definition and shall be denied.

Skilled nursing services shall be evaluated based on the complexity of the service and the condition of the patient.

Private duty nursing for persons aged 21 and over is not a covered service. See subrule 78.9(10) for guidelines for private duty nursing for persons aged 20 or under.

**78.9(4) Physical therapy services.** Payment shall be made for physical therapy services when the services relate directly to an active written treatment plan, follow a treatment plan established by the physician, nurse practitioner, clinical nurse specialist, or physician assistant after any needed consultation with the qualified physical therapist, are reasonable and necessary to the treatment of the patient’s illness or injury, and meet the guidelines defined for restorative, maintenance, or trial therapy as set forth in subrule 78.19(1), paragraphs “a” and “b.”

For physical therapy services, the treatment plan shall additionally reflect goals, modalities of treatment, date of onset of conditions being treated, restorative potential, and progress notes.

**78.9(5) Occupational therapy services.** Payment shall be made for occupational therapy services when the services relate directly to an active written treatment plan, follow a treatment plan established by the physician, nurse practitioner, clinical nurse specialist, or physician assistant, are reasonable and necessary to the treatment of the patient’s illness or injury, and meet the guidelines defined for restorative, maintenance, or trial therapy as set forth in subrule 78.19(1), paragraphs “a” and “c.”

For occupational therapy services, the treatment plan shall additionally reflect goals, modalities of treatment, date of onset of conditions being treated, restorative potential, and progress notes.

**78.9(6) Speech therapy services.** Payment shall be made for speech therapy services when the services relate directly to an active written treatment plan, follow a treatment plan established by the physician, nurse practitioner, clinical nurse specialist, or physician assistant, are reasonable and necessary to the treatment of the patient’s illness or injury, and meet the guidelines defined for restorative, maintenance, or trial therapy as set forth in subrule 78.19(1), paragraphs “a” and “d.”

For speech therapy services, the treatment plan shall additionally reflect goals, modalities of treatment, date of onset of conditions being treated, restorative potential, and progress notes.

**78.9(7) Home health aide services.** Payment shall be made for unskilled services provided by a home health aide if the following conditions are met:

a. The service as well as the frequency and duration are stated in a written plan of treatment established by a physician, nurse practitioner, clinical nurse specialist, or physician assistant. The home health agency is encouraged to collaborate with the member, or in the case of a child with the child’s

caregiver, in the development and implementation of the plan of treatment.

b. No change.

c. Services shall be provided on an intermittent basis. "Intermittent basis" for home health agency services is defined as services that are usually two to three times a week for two to three hours at a time. Services provided for four to seven days per week, not to exceed 28 hours per week, when ordered by a physician, nurse practitioner, clinical nurse specialist, or physician assistant and included in a plan of care shall be allowed as intermittent services. Increased services provided when medically necessary due to unusual circumstances on a short-term basis of two to three weeks may also be allowed as intermittent services when the home health agency documents the need for the excessive time required for home health aide services.

Home health aide daily care may be provided for persons employed or attending school whose disabling conditions require the persons to be assisted with morning and evening activities of daily living in order to support their independent living.

Personal care services include the activities of daily living, e.g., helping the member to bathe, get in and out of bed, care for hair and teeth, exercise, and take medications specifically ordered by the physician, but ordinarily self-administered, and retraining the member in necessary self-help skills.

Certain household services may be performed by the aide in order to prevent or postpone the member's institutionalization when the primary need of the member for home health aide services furnished is for personal care. If household services are incidental and do not substantially increase the time spent by the aide in the home, the entire visit is considered a covered service. Domestic or housekeeping services which are not related to patient care are not a covered service if personal care is not rendered during the visit.

For home health aide services, the treatment plan shall additionally reflect the number of hours per visit and the living arrangement of the member, e.g., lives alone or with family.

**78.9(8) to 78.9(11)** No change.

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

**441-79.3(249A)** Maintenance of records by provider of service.

*(1) d. Basis for service requirements for specific services.*

(27) Home health agency services:

1. Plan of care or plan of treatment.
2. Certifications and recertifications.
3. Service notes or narratives.
4. Physician, nurse practitioner, physician assistant or clinical nurse specialist orders or medical orders.

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

**441-83.2(1)** *Eligibility criteria.*

e. To be eligible for interim medical monitoring and treatment services the consumer must be:

- (4) In need of interim medical monitoring and treatment as ordered by a physician, **nurse practitioner, clinical nurse specialist** or a physician assistant.

**441-83.61(1)** *Eligibility criteria.*

k. To be eligible for interim medical monitoring and treatment services the consumer must be:

- (4) In need of interim medical monitoring and treatment as ordered by a physician, **nurse practitioner, clinical nurse specialist or a physician assistant.**

**441-83.82(1)** *Eligibility criteria.*

j. To be eligible for interim medical monitoring and treatment services the consumer must be:



(4) In need of interim medical monitoring and treatment as ordered by a physician, **nurse practitioner, clinical nurse specialist or a physician assistant.**

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



Iowa Department of Human Services  
**Information on Proposed Rules**

Name of Program Specialist Anna Ruggle	Telephone Number 515-974-3286	Email Address aruggle@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:

This rule changes allows physician assistants, nurse practitioners and clinical nurse specialists to order and sign a treatment plan for home health services to Iowa Medicaid members.

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

42 CFR 440.70

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

This will positively affect physician assistants, nurse practitioners, and clinical nurse specialists as well as Iowa Medicaid members. It is unknown who may be adversely impacted.

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

Yes

5. What are the likely areas of public comment?

Areas of comments are likely to be about the new duties the practitioners now have.

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 on private-sector jobs and employment opportunities in Iowa. .



## Administrative Rule Fiscal Impact Statement

Date: 09/17/2020

**Agency:** Human Services

**IAC citation:** 441 IAC 78.9

**Agency contact:** Anna Ruggle

**Summary of the rule:**

This rule expands who can order and sign the treatment plan for home health services to include a nurse practitioner, clinical nurse specialist and a physician assistant.

*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 expansion of providers could have some impact on access to services but could also reduce claim costs if the treatment plan is now billed by these providers rather than by a physician. These impacts are offsetting and are expected to be minimal.

*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>
<b>Revenue by each source:</b>		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
<b>TOTAL REVENUE</b>	_____	_____
<b>Expenditures:</b>		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
<b>TOTAL EXPENDITURES</b>	_____	_____
<b>NET IMPACT</b>	_____	_____
 <input type="checkbox"/> This rule is required by state law or federal mandate. <i>Please identify the state or federal law:</i> Identify provided change fiscal persons:		
 <input type="checkbox"/> Funding has been provided for the rule change. <i>Please identify the amount provided and the funding source:</i>		
 <input checked="" type="checkbox"/> Funding has not been provided for the rule. <i>Please explain how the agency will pay for the rule change:</i> The impact is expected to be minimal and will be absorbed within existing appropriations.		
<b><i>Fiscal impact to persons affected by the rule:</i></b> Miminal impact.		
<b><i>Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):</i></b> None anticipated.		
Agency representative preparing estimate:	Jason Buls	JH 9-17-20
Telephone number:	515-281-5764	JS 9/18/20

## HUMAN SERVICES DEPARTMENT [441]

### Adopted and Filed

#### Rule making related to child development homes.

The Human Services Department hereby amends Chapter 110, “Child Development Homes,” and Chapter 120, “Child Care Homes,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code chapter 237.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 237.

#### *Purpose and Summary*

The Department is implementing HF 2485 from Iowa Acts 2020. This rule making modifies rules to allow child development homes to care for their total capacity of children without an assistant during an emergency school closing. Rules are also updated to ensure child development homes and child care provider agreements are in compliance with federal regulations requiring procedures to be in place regarding the inspection and handling of hazardous materials and biocontaminants by the Department.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 16, 2020, as **ARC 5337C**.

No public comments were received.

A statement that we are implementing this change due to HF 2485 from Iowa Acts 2020 has been added as clarification of rulemaking.

#### *Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on February 11, 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 1.8 (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 May 1, 2021.

The following rule-making action is adopted:

See attached

The following rules are adopted:

ITEM 1. Amend subrule 110.6(3) as follows:

**110.6(3) Exception for emergency school closing.** On days when schools start late, are dismissed early, or are canceled or closed due to emergencies such as inclement weather, ~~or physical plant failure, structural damage, or public health emergency~~, a child development home may have additional children present in accordance with the authorization for the registration category of the home and subject to all of the following conditions:

*a.* The child development home has prior written approval from the parent or guardian of each child present in the home concerning the presence of additional children in the home.

~~*b.* The child development home has a department approved assistant, aged 14 or older, on duty to assist the care provider, as required for the registration category of the home.~~

~~*e- b*~~ One or more of the following conditions are applicable to each of the additional children present in the child development home:

(1) The home provides care to the child on a regular basis for periods of less than two hours.

(2) If the child were not present in the child development home, the child would be unattended.

(3) The home regularly provides care to a sibling of the child.

~~*c.*~~ The provider shall maintain a written record including the date of the emergency school closing, the reason for the closing, and the number of children in care on that date.

ITEM 2. Adopt the following **new** paragraph **110.8(3)“e”**:

*e.* The provider shall establish procedures related to infectious disease control and handling of any bodily excrement or discharge, including blood and breast milk. Soiled diapers shall be stored in containers separate from other waste.

ITEM 3. Amend paragraph **110.14(1)“f”** as follows:

*f.* If more than eight children are present at any one time for a period of more than two hours, the provider shall be assisted by a department-approved assistant who is at least 14 years old, unless extra children are present as a result of an emergency school closing.

ITEM 4. Amend paragraph **110.15(1)“e”** as follows:

*e.* No more than 16 children shall be present at any one time when an emergency school closing is in effect. ~~If more than eight children are present at any one time due to an emergency school closing exception, the provider shall be assisted by a department approved assistant who is at least 18 years of age.~~

ITEM 5. Adopt the following **new** paragraph **120.8(3)“e”**:

*e.* The provider shall establish procedures related to infectious disease control and handling of any bodily excrement or discharge, including blood and breast milk. Soiled diapers shall be stored in containers separate from other waste.





Iowa Department of Human Services  
**Information on Proposed Rules**

Name of Program Specialist Ryan Page	Telephone Number 5152817714	Email Address rpage@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:

HF 2485 requires DHS to modify rules to allow child development homes to care for their total capacity of children during an emergency school closing without an assistant.

Additional update to Child development home rules and CCA provider agreement child care homes to ensure compliance with federal regulations that DHS requires and inspects for the handling of hazardous materials and biocontaminants.

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

HF 2485  
45CFR98.41 and 98.42

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

Child Care providers and parents will have easier access to child care in the event that there is emergency school closures, however this does allow one single individual to care for up to 16 children without assistance.

Child care providers are largely required to already appropriately handle hazardous materials. Child care providers also already receive training around appropriate handling and disposal of hazardous material and biocontaminants. This rule will solidify that DHS is inspecting and that child care providers indeed have procedures in place, which will also positively impact the health and safety of children in 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

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

Yes. This rule will allow employees who are parents to be able to work on school closing days while having supervision for their school-aged children.

The requirement for additional procedures for hazardous materials and biocontaminants are not believed to have an impact.



## Administrative Rule Fiscal Impact Statement

Date: September 9, 2020

**Agency:** Human Services  
**IAC citation:** 441 IAC 110, 120  
**Agency contact:** Ryan Page

**Summary of the rule:**

Allows child development homes to care for their total capacity of children during an emergency school closing without an assistant.

Additional update to Child development home rules and CCA provider agreement for child care homes to ensure compliance with federal regulations that DHS requires and inspects for the handling of hazardous materials and biocontaminants.

*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 change in the event of an emergency school closing impacts the provider by allowing more children without requiring an assistant. There is no fiscal impact to DHS as this is only in the event in an emergency situation that may not occur or would occur infrequently and it is expected that the number of children in the provider's care would be the same as previously cared for during a school emergency. The only difference is that an assistant is no longer required.

The rule regarding the handling of hazardous materials provides clarification to ensure that providers are in compliance with federal regulations and that it is part of DHS inspections. There is no impact to the work currently being done by DHS and therefore no fiscal impact.

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

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

**Assumptions:**

**Describe how estimates were derived:**

**Estimated Impact to the State by Fiscal Year**

	<u>Year 1 (FY 2021)</u>	<u>Year 2 (FY 2022)</u>
<b>Revenue by each source:</b>		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
<b>TOTAL REVENUE</b>	_____	_____
<b>Expenditures:</b>		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
<b>TOTAL EXPENDITURES</b>	_____	_____
<b>NET IMPACT</b>	_____	_____

This rule is required by state law or federal mandate.

*Please identify the state or federal law:*

Identify provided change fiscal persons:

HF 2485

45CFR98.41 and 98.42

Funding has been provided for the rule change.

*Please identify the amount provided and the funding source:*

Funding has not been provided for the rule.

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

There is no fiscal impact.

**Fiscal impact to persons affected by the rule:**

It saves child development home providers the expense of hiring an assistant during an emergency school closing and will allow parents to be able to work on school closing days while having supervision for their school-aged children.

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

None anticipated.

Agency representative preparing estimate: Kathy Blume JH 9-9-20

Telephone number: 515-281-4196 JS 9/10/20

## HUMAN SERVICES DEPARTMENT [441]

### Notice of Intended Action

#### Proposing rule making related to disaster assistance and providing an opportunity for public comment.

The Human Services Department hereby proposes to amend Chapter 58, "Emergency Assistance," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code chapter 29C.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 29C.

#### *Purpose and Summary*

We are updating Emergency Assistance (disaster assistance) rules to increase the time frame a person or household may stay in a fifth-wheel travel trailer or travel-trailer from 90 to 180 days before they are considered a permanent place of habitation. This change was mandated in Senate File 435 from 2019.

#### *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 IAC 441 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 March 16, 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](mailto: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  
01/27/2021 8:34 AM

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:

**Item 1 Amend Chapter 58.1 as follows:**

**441—58.1(29C) Definitions.**

“*Fifth-wheel travel trailer,*” as set forth in Iowa Code section 321.1(36C)(c), means a type of travel trailer which is towed by a pickup by a connecting device known as a fifth wheel. However, this type of travel trailer may have an overall length which shall not exceed 45 feet. If the vehicle is used in this state as a place of human habitation for more than ~~90~~ 180 consecutive days in one location, the vehicle shall be classed as a manufactured or mobile home regardless of the size limitations provided in this definition.

“*Travel trailer,*” as set forth in Iowa Code section 321.1(36C)(b), means a vehicle without motive power used, manufactured, or constructed to permit its use as a conveyance upon the public streets and highways and designed to permit its use as a place of human habitation by one or more persons. The vehicle may be up to 8 feet, 6 inches in width and its overall length shall not exceed 45 feet. The vehicle shall be customarily or ordinarily used for vacation or recreational purposes and not used as a place of permanent habitation. If the vehicle is used in this state as a place of human habitation for more than ~~90~~ 180 consecutive days in one location, the vehicle shall be classed as a manufactured or mobile home regardless of the size limitations provided in this definition.



Iowa Department of Human Services  
**Information on Proposed Rules**

Name of Program Specialist Christie Templeton	Telephone Number 515-281-8746	Email Address ctemple@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:  
Updating disaster assistance rules to increase the timeframe to stay in a fifth-wheel travel trailer or travel-trailer from 90 days to 180 days before they are considered a permanent place of habitation under Chapter 58. This change is mandated in SF435 from 2109.
2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):  
SF 435 mandated this change.
3. Describe who this rulemaking will positively or adversely impact.  
This is a positive change for individuals who have been affected by disasters and may need additional time to repair their homes and property.
4. Does this rule contain a waiver provision? If not, why?  
No, the Department has a separate waiver rule.
5. What are the likely areas of public comment?  
Any comments would expect to be positive.
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 expected impact on private sector jobs or employment in Iowa.



# Administrative Rule Fiscal Impact Statement

Date: 12/29/2020

<b>Agency:</b> Human Services
<b>IAC citation:</b> 441 IAC 58.1
<b>Agency contact:</b> Christie Templeton
<b>Summary of the rule:</b> Updates to definitions in disaster assistance based on SF 435
<i>Fill in this box if the impact meets these criteria:</i> <input checked="" type="checkbox"/> No fiscal impact to the state. <input type="checkbox"/> Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years. <input type="checkbox"/> Fiscal impact cannot be determined.
<b>Brief explanation:</b> <a href="#">Budget Analysts must complete this section for ALL fiscal impact statements.</a>
<i>Fill in the form below if the impact does not fit the criteria above:</i> <input type="checkbox"/> Fiscal impact of \$100,000 annually or \$500,000 over 5 years.
<b>Assumptions:</b>
<b>Describe how estimates were derived:</b>



**Estimated Impact to the State by Fiscal Year**

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

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:***

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

Agency representative preparing estimate:  
 Telephone number:

**HUMAN SERVICES DEPARTMENT [441]**

**Notice of Intended Action**

**Proposing rule making related to electronic visit verification  
and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 73, “Managed Care,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 83, “Medicaid Waiver Services,” 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*

Electronic Visit Verification (EVV) is a federal requirement for states to implement. In December 2016, the 21st Century Cures Act was signed into law. Section 12006 of the Act requires EVV for personal care services beginning January 1, 2020, and for home health services beginning January 1, 2023. Iowa was granted a one-year good-faith exemption, so the requirement for Iowa is January 1, 2021, for personal care services and January 1, 2023, for home health services. The Department is using a managed care implementation model for EVV.

EVV uses technology to electronically record when attendants begin and end providing services to Medicaid members. EVV will be used to ensure members are receiving the care they need that is outlined in the members’ service plan. EVV will be used to monitor the delivery and utilization of personal care and home health services in nontraditional settings and will provide verification of the visit with location information and a time stamp. EVV will be used to ensure quality and program integrity. It also streamlines billing for providers. Once a visit is complete, the claim is sent to the managed care organization (MCO) for payment.

EVV was implemented January 1, 2021, in accordance with federal regulations. Payments were made outside of the system in January to allow providers to start using the system and become familiar with its applications. Providers will need to be using the system by February 1, 2021. These rules provide additional guidance for providers.

Beginning January 1, 2021, personal care service providers including Consumer Directed Attendant Care (CDAC) providers, homemaker providers, and consumer choice option employees that provide personal care services are required to use EVV. The Department has extended the deadline for assisted living and residential care facilities to July 1, 2021. The EVV implementation for the fee-for-service (FFS) population will be deployed in a second phase for compliance. *Fiscal Impact*

EVV implementation for personal care services will be completed via the MCO, and the approved contracted vendor will be in compliance with the mandate for the MCO population. Allowing payments outside of the EVV system during January 2021 will incur a noncompliance penalty to be applied to the MCO and FFS personal care services. This cost is estimated at \$57,648 for the first calendar quarter of 2021. Additional FFS noncompliance penalty fees are estimated at \$5,000 in SFY21 and \$15,000 in SFY22. There could potentially be an additional penalty fee of approximately \$10,000 for the first six

months of SFY23. The expectation is that FFS personal care will be implemented in the second phase when home health is implemented in January 2023. The Department expects to incur costs in SFY22 as it prepares for the January 2023 implementation. These development costs are currently estimated at \$2,040,000 and are expected to be reimbursed at a 90 percent federal match rate. There may also be development costs in SFY23, but the amount is not yet known. Estimates were based on market research. Estimates for the noncompliance costs for personal care services associated with the Federal Medical Assistance Percentages (FMAP) reduction in CY21 through CY23 were based on the FFS population currently receiving personal care services.

#### *Jobs Impact*

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

#### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441—1.8(17A,217).

#### *Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 2, 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](mailto:appeals@dhs.state.ia.us)

#### *Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

#### *Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** definition of “Electronic visit verification system” in rule **441—73.1(249A)**:

“*Electronic visit verification system*” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service

performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 2. Amend subrule 73.18(2) as follows:

**73.18(2)** *Content of individual treatment record.* The managed care organization shall ensure that participating providers maintain an adequate record-keeping system that includes a complete medical or service record for each enrolled member including documentation of all services provided to each enrollee in compliance with the contract and provisions of rule 441—79.3(249A) and pursuant to federal funding requirements, including 42 CFR 456 as amended to October 16, 2015. Beginning January 1, 2021, the managed care organization shall require use of an electronic visit verification system for personal care services.

ITEM 3. Amend paragraph **78.34(7)“c”** as follows:

*c. Service documentation.* The consumer-directed attendant care provider ~~must complete Form 470-4389, Consumer Directed Attendant Care (CDAC) Service Record, for each day of service shall document evidence of compliance with the requirements of this chapter and rule 441—79.3(249A). The documentation or copies of the documentation must be maintained or be electronically accessible by the consumer-directed attendant care provider. Providers must use an electronic visit verification system that captures all documentation requirements of the Consumer-Directed Attendant Care (CDAC) Service Record (Form 470-4389) or use Form 470-4389.~~ Any service component that is not documented in accordance with rule 441—79.3(249A) shall not be payable.

ITEM 4. Amend subparagraph **78.34(13)“m”(4)** as follows:

(4) For personal care services, employees shall use an electronic visit verification system that captures all documentation requirements of the Consumer Choices Option Semi-Monthly Time Sheet (Form 470-4429) or use Form 470-4429. Employees-All other employees shall complete, sign and date Form 470-4429, Consumer Choices Option Semi-Monthly Time Sheet, for each date of service provided to a member. Documentation shall comport-All employees shall maintain documentation that complies with 441—subparagraph 79.3(2)“e”(3), “Service documentation.” rule 441—79.3(249A).

ITEM 5. Amend paragraph **78.37(15)“c”** as follows:

*c. Service documentation.* The consumer-directed attendant care individual and agency providers ~~must complete Form 470-4389, Consumer Directed Attendant Care (CDAC) Service Record, for each day of service shall document evidence of compliance with the requirements of this chapter and rule 441—79.3(249A). The documentation or copies of the documentation must be maintained or be electronically accessible by the consumer-directed attendant care provider. Providers must use an electronic visit verification system that captures all documentation requirements of the Consumer-Directed Attendant Care (CDAC) Service Record (Form 470-4389) or use Form 470-4389. Assisted living facilities may choose to use Form 470-4389 or may devise another system that adheres to the requirements of rule 441—79.3(249A).~~ Any service component that is not documented in accordance with rule 441—79.3(249A) shall not be payable.

ITEM 6. Amend paragraph **78.38(8)“c”** as follows:

*c. Service documentation.* The consumer-directed attendant care provider ~~must complete Form 470-4389, Consumer Directed Attendant Care (CDAC) Service Record, for each day of service shall document evidence of compliance with the requirements of this chapter and rule 441—79.3(249A). The documentation or copies of the documentation must be maintained or be electronically accessible by the consumer-directed attendant care provider. Providers must use an electronic visit verification system that captures all documentation requirements of the Consumer-Directed Attendant Care (CDAC) Service Record (Form 470-4389) or use Form 470-4389.~~ Any service component that is not documented in accordance with rule 441—79.3(249A) shall not be payable.

ITEM 7. Amend paragraph **78.41(8)“c”** as follows:

*c. Service documentation.* The consumer-directed attendant care provider ~~must complete Form 470-4389, Consumer Directed Attendant Care (CDAC) Service Record, for each day of service shall document evidence of compliance with the requirements of this chapter and rule 441—79.3(249A). The documentation or copies of the documentation must be maintained or be electronically accessible by the consumer-directed attendant care provider. Providers must use an electronic visit verification system that captures all documentation requirements of the Consumer-Directed Attendant Care (CDAC) Service Record (Form 470-4389) or use Form 470-4389.~~ Any service component that is not documented in accordance with rule 441—79.3(249A) shall not be payable.

ITEM 8. Amend paragraph **78.43(13)“c”** as follows:

*c. Service documentation.* The consumer-directed attendant care provider ~~must complete Form 470-4389, Consumer Directed Attendant Care (CDAC) Service Record, for each day of service shall document evidence of compliance with the requirements of this chapter and rule 441—79.3(249A). The documentation or copies of the documentation must be maintained or be electronically accessible by the consumer-directed attendant care provider. Providers must use an electronic visit verification system that captures all documentation requirements of the Consumer-Directed Attendant Care (CDAC) Service Record (Form 470-4389) or use Form 470-4389.~~ Any service component that is not documented in accordance with rule 441—79.3(249A) shall not be payable.

ITEM 9. Amend paragraph **78.46(1)“c”** as follows:

*c. Service documentation.* The consumer-directed attendant care provider ~~must complete Form 470-4389, Consumer Directed Attendant Care (CDAC) Service Record, for each day of service shall document evidence of compliance with the requirements of this chapter and rule 441—79.3(249A). The documentation or copies of the documentation must be maintained or be electronically accessible by the consumer-directed attendant care provider. Providers must use an electronic visit verification system that captures all documentation requirements of the Consumer-Directed Attendant Care (CDAC) Service Record (Form 470-4389) or use Form 470-4389.~~ Any service component that is not documented in accordance with rule 441—79.3(249A) shall not be payable.

ITEM 10. Adopt the following **new** definition of “Electronic visit verification system” in rule **441—83.1(249A)**:

“*Electronic visit verification system*” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 11. Adopt the following **new** definition of “Electronic visit verification system” in rule **441—83.21(249A)**:

“*Electronic visit verification system*” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 12. Adopt the following **new** definition of “Electronic visit verification system” in rule **441—83.41(249A)**:

“*Electronic visit verification system*” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 13. Adopt the following new definition of “Electronic visit verification system” in rule **441—83.60(249A)**:

“*Electronic visit verification system*” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 14. Adopt the following new definition of “Electronic visit verification system” in rule **441—83.81(249A)**:

“*Electronic visit verification system*” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 15. Adopt the following new definition of “Electronic visit verification system” in rule **441—83.101(249A)**:

“*Electronic visit verification system*” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 16. Adopt the following new definition of “Electronic visit verification system” in rule **441—83.121(249A)**:

“*Electronic visit verification system*” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.



Iowa Department of Human Services

## Information on Proposed Rules

Name of Program Specialist	Telephone Number	Email Address
Brian Wines, HCBS Policy Specialist	1.515.256.4661	bwines@dhs.state.ia.us

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

To implement an Electronic Visit Verification (EVV) process for providers of personal care and home care services to ensure compliance with state and federal regulations, including Section 12006 of the Cures Act (42 U.S.C. § 1396b(l)).

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

Section 12006 of the Cures Act (42 U.S.C. § 1396b(l)).

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

These rules will impact Consumer Directed Attendant Care providers (individual and agency), and employees of personal care and home care services in the Consumer Choices Option program who will be required to use the EVV system. This rule will also impact Managed Care organizations operating in Iowa responsible to payment of personal care and home care services to member accessing Home and Community Based Services (HCBS).

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

No. The amendment does not contain waiver provisions because the department has an established procedure for considering exceptions to policy. Members and providers can request waivers pursuant to the Department's general rule on waivers or exceptions to policy, at Iowa Administrative Code r. 441- 1.8.

5. What are the likely areas of public comment?

Provider agencies, employees and HCBS members using the Consumer Choices Option program may be in opposition to the federal and state requirements for verification of service delivery through an electronic visit verification system.

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.)

This rule will not have an impact on private sector jobs and employment opportunities in Iowa



## Administrative Rule Fiscal Impact Statement

Date: December 9, 2020

**Agency:** Human Services  
**IAC citation:** 441 IAC 73.1(249A), 78.37(249A), 83.1(249A)  
**Agency contact:** Brian Wines

**Summary of the rule:**

An Electronic Visit Verification process for providers of personal care and home health care services will be implemented to ensure compliance with state and federal regulations including Section 12006 of the Cures Act (42 U.S.C. § 1396b(l)).

*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.](#)

An EVV process for providers of personal care and home care services will be implemented to ensure compliance with state and federal regulations including Section 12006 of the Cures Act (42 U.S.C. § 1396b(l)). Consumer Directed Attendant Care providers (individual and agency) and employees will be required to use the EVV system. This will be implemented by MCO's who shall ensure that participating providers maintain the use of an electronic visit verification system for each enrollee pursuant to the code. Training will be offered to providers via the state selected EVV vendor. The EVV implementation for the FFS population will be deployed in a 2<sup>nd</sup> phase for compliance.

*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:**

EVV implementation for personal care services will be completed via the MCO's and the approved contracted vendor to be in compliance with the mandate for the MCO population. There is no direct cost to the state.

The FFS population compliance costs are larger than the non-compliance fee given the smaller FFS personal care services population and will be deployed to be in compliance in a 2<sup>nd</sup> phase. The non-compliance fee is estimated at \$5,000 in SFY21 and \$15,000 in SFY22. There could potentially be an additional fee of approximately \$10,000 for the first six months of SFY23. The expectation is that FFS personal care will be implemented in the 2<sup>nd</sup> phase when home health is implemented in January 2023.

The department expects to incur costs in SFY22 as we prepare for the January 2023 implementation. These development costs are currently estimated at \$2,040,000 and are expected to be reimbursed at a 90 percent federal match rate. There may also be development costs in SFY23, but the amount is not yet known.



**Describe how estimates were derived:**

Estimates were based on the contract terms and pricing set forth by the selected EVV system implementation vendor. Estimates for the non-compliance costs for personal care services associated with the FMAP reduction in CY21-23 were based on the FFS population currently receiving personal care services.

**Estimated Impact to the State by Fiscal Year**

	<u>Year 1 (FY 2021)</u>	<u>Year 2 (FY 2022)</u>
<b>Revenue by each source:</b>		
General fund		
Federal funds	<u>0.00</u>	<u>1,836,000.00</u>
Other (specify):		
<b>TOTAL REVENUE</b>		
<b>Expenditures:</b>		
General fund	<u>5,000.00</u>	<u>2,055,000.00</u>
Federal funds		
Other (specify):		
<b>TOTAL EXPENDITURES</b>	<u>5,000.00</u>	<u>2,055,000.00</u>
<b>NET IMPACT</b>	<u>-5,000.00</u>	<u>-219,000.00</u>

This rule is required by state law or federal mandate.

*Please identify the state or federal law:*

Identify provided change fiscal persons:

Section 12006 of the Cures Act (42 U.S.C. § 1396b(l)).

Funding has been provided for the rule change.

*Please identify the amount provided and the funding source:*

The non-compliance fee will be assessed through an FMAP reduction to personal care services and will be absorbed within the Medical Assistance appropriation. The \$204,000 state share implementation cost is already budgeted in the base Health Program Operations appropriation.

Funding has not been provided for the rule.

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

**Fiscal impact to persons affected by the rule:**

No impact

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

No impact

Agency representative preparing estimate: Soraya Miller JH 12-10-20, JS 12-10-20

Telephone number: 515-281-6017