

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 225C.6, the Department of Human Services proposes to amend Chapter 25, “Disability Services Management,” Iowa Administrative Code.

These amendments establish standards for mental health advocates who provide services under Iowa Code chapter 229, “Hospitalization of Persons with Mental Illness.” These rules include standards for definitions, appointment and qualifications, assignment, advocate and county responsibilities, data collection requirements, and quality assurance for mental health advocate services.

Prior to July 1, 2015, mental health advocates were appointed by the judicial branch and paid by the counties. 2015 Iowa Acts, HF 468 amended Iowa Code chapter 229 to make mental health advocates county employees, effective July 1, 2015. Prior to July 1, 2015 procedures varied from judicial region to judicial region and from county to county. These amendments will provide consistency in requirements for hiring the advocate and performance standards.

Any interested person may make written comments on the proposed amendments on or before January 26, 2016. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 5th Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by email to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A, 217).

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

These amendments are intended to implement Chapter 229 as amended by 2015 Iowa Acts, House File 468.

The following amendments are proposed.

ITEM 1. Reserve rules ~~441--25.97~~ to ~~441—25.100~~.

ITEM 2. Adopt the following **new** 441—Chapter 25, division and title, as follows:

DIVISION X

MENTAL HEALTH ADVOCATES

ITEM 3. Adopt the following **new** 441—Chapter 25, Division X, Preamble, as follows:

PREAMBLE

This division establishes definitions, appointment and qualifications, assignment, advocate and county responsibilities, data collection requirements, and quality assurance for mental health advocate services under Iowa Code chapter 229.

ITEM 4. Adopt the following **new** rules, ~~441--25.101(229)~~ to ~~441—25.107(229)~~ as follows:

441— 25.101(229) Definitions

“Advocate” means mental health advocate as defined in Iowa Code chapter 229.

“Conflict of interest” means any activity that interferes or gives the appearance of interference with the exercise of professional discretion and impartial judgment including dual relationships with the individual being served or with members of the individual’s immediate family or serving two or more individuals who have a personal relationship.

“County of residence” means the same as defined in Iowa Code chapter 331.394.

“County of venue” means the county in which the Iowa Code chapter 229 commitment was filed pursuant to 229.44.

“County where the individual is located” means the individual’s county of residence as defined in Iowa Code chapter 331.394 or, if the individual has been ordered to receive treatment services under a chapter 229 commitment and is placed in a residential or other treatment facility and has received treatment in such facility for more than six months, the “county where the individual is located” means the county where the individual is placed for treatment purposes.

“Individual” means respondent receiving mental health advocate services under Iowa Code chapter 229.

“Judicial district” means the same as defined in Iowa Code chapter 602.6107.

“Mental health and disability services region” means the same as defined in Iowa Code chapter 331.389.

441—25.102(229) Advocate Appointment and Qualifications. The board of supervisors of each county shall appoint a person to act as an advocate representing the interests of individuals involuntarily hospitalized by the court under chapter 229. The advocate is hired by the board of supervisors and employed by the county.

25.102(1) A person may be appointed and employed or contracted with as the advocate by one or multiple counties. Advocates may be appointed for counties in more than one judicial district or more than one mental health and disability services region.

25.102(2) The Advocate shall meet all of the following qualifications:

a. A bachelor’s degree with 30 semester hours or equivalent quarter hours in a human services field (including, but not limited to, psychology, social work, mental health counseling,

marriage and family therapy, nursing, education, occupational therapy, and recreational therapy) and at least one year of experience in the delivery of services to persons with mental illness; or

b. An Iowa license to practice as a registered nurse and at least three years of experience in delivery of services to persons with mental illness.

c. Persons employed as advocates on or before July 1, 2015, that do not meet the requirements of a. or b. shall be considered to meet these requirements so long as the person is continuously appointed as an advocate in the employing county.

d. Persons employed as advocates must pass criminal background, sex offender registry, and child and dependent adult abuse registry checks before hired.

441—25.103 (229) Advocate Assignment. The committing court shall assign the advocate from the county where the individual is located.

25.103(1) If the advocate assigned cannot serve the individual in an effective and efficient manner, the advocate may request another advocate to perform advocate duties on the behalf of the individual. In the event that another advocate can better represent the individual on a longer term basis, the advocate shall request the court transfer the individual to another advocate.

25.103(2) When a conflict of interest is identified between an advocate and an individual, the court and the advocate's county of employment shall be notified and an alternative advocate shall be assigned. The advocate's direct supervisor is responsible to monitor and ensure the advocate does not have a conflict of interest. In instances when dual or multiple relationships are unavoidable, advocates should take steps to protect individuals and are responsible for setting clear, appropriate, and culturally sensitive boundaries. Advocates who

anticipate a conflict of interest among the individuals receiving services should clarify their role with the parties involved and take appropriate action to minimize any conflict of interest.

25.103(3) When the advocate assigned is not the advocate from the individual's county of residence, the advocate's county of employment may seek reimbursement from the region in which the individual's county of residence is located as outlined in Iowa Code section 229.19.1.b.

25.103(4) An advocate shall only be assigned to a child 17 years of age or under when the child is not represented by an attorney due to an existing Child in Need of Assistance (CINA) or other juvenile court action pursuant to Iowa Code.

441—25.104(229) Advocate Responsibilities. The minimum duties of the advocate are outlined in Iowa Code Section 229.19. The role of the advocate is to ensure that the rights of the individual are upheld.

25.104(1) The advocate shall be readily accessible to communication from the individual and shall initiate contact within five days of the individual's commitment. The advocate shall inform the individual regarding the role of the advocate.

25.104(2) The advocate shall meet the individual in person within fifteen days of commitment. The advocate shall present the county grievance procedure process, in writing, to the individual. The procedure shall include the county grievance procedure and contact information and the contact information for the citizens' ombudsman. The advocate shall inform the individual what mental health crisis services are available.

25.104(3) The advocate shall review each report submitted to the court, and communicate with the individual's medical and treatment team. Advocates shall abide by all federal, state, and local confidentiality laws.

25.104(4) The advocate shall file Court Rule 12.36—Form 30 quarterly reports for each individual assigned to the advocate with the court. The report shall state the actions taken with the individual and amount of time spent on behalf of the individual.

25.104(5) The advocate shall maintain an organized confidential and secure file for each individual served. The file shall contain but not be limited to:

- a. Copies of quarterly reports submitted to court
- b. Correspondence received from individual, family members, providers and others
- c. Copies of correspondence sent to and received from individual, family members, providers and others
- d. Releases of information.
- e. Case notes describing the date, time and type of contact with the individuals or others and a brief narrative summary of the content or outcome of the contact
- f. Documents filed with the court electronically shall be considered as part of the individual's file.

25.104(6) The advocate shall register as provided in Court Rule 16.305(1) to participate in the court's electronic document management system and submit all documents to be filed with the court electronically, which will be stored as an electronic record that is retrievable and perceivable through the electronic document management system.

25.104(7) The advocate, as an employee of the county, shall comply with all county policies and procedures, including but not limited to hiring, supervision, grievance procedures, and training.

25.104(8) All advocate records are the property of the county which is responsible for the provision of confidential storage, transfer, and destruction of client files, including those

maintained on electronic and digital devices with access limited according to county's policy on confidentiality as described in section 25.105(8) of the Iowa Administrative Code.

25.104(9) The mental health advocate may attend the hospitalization hearing of an individual represented by an attorney, however payment is at the discretion of the county of employment.

441—25.105(229) County Responsibilities. As the employer of the advocate, the county shall provide qualified staff to support and facilitate the provision of quality advocate services. The county shall:

25.105(1) Assign a single supervisor, single contract manager, or county board of supervisors as the supervising entity responsible to carry out responsibilities in this chapter.

25.105(2) Have a job description in the personnel file of the advocate that clearly defines responsibilities and qualifications as defined in Iowa Code Section 229.19 and section 25.104 of Iowa Administrative Code.

25.105(3) Have a process to verify qualification of the advocate, including degrees and certifications obtained from a primary source, within 90 days of the staff person's hire.

25.105(4) Provide training and education to the advocate relevant to the position including but not limited to overview of mental health diagnosis and treatment, the mental health and disability services delivery system, confidentiality, individual rights, professional conduct, the role of advocacy and service coordination within an interdisciplinary team, Iowa code and administrative rules, and court procedures.

25.105(5) Provide approved training on child and dependent adult abuse reporter requirements.

25.105(6) Provide training on state and federal laws regarding non-disclosure and confidentiality of client protected health information during and after employment to any employee with access to individuals' files and maintain signed document indicating awareness of county's policy on confidentiality in the personnel files.

25.105(7) Complete criminal background, sex offender registry and child and dependent adult abuse registry checks before employment of the advocate. Individuals not passing these items are prohibited from being hired, or continuing to serve, as an advocate.

25.105(8) Provide adequate advocate staff to cover county's caseload, given but not limited to, each county's unique number of individuals assigned to the advocate, travel required, types of settings where the individuals reside, services available and extended staff absences.

441—25.106(229) Data Collection Requirements.

25.106(1) Each county shall submit to the Department of Human Services data regarding each individual who received advocate services during the previous state fiscal year by December 1 each year beginning 2016.

25.106(2) The data as defined in IAC 441—25.41(331) to be submitted are as follows:

- a. Basic individual information including a unique identifier and county of residence.
- b. Demographic information including date of birth, sex, ethnicity, education, and diagnosis made in accordance with the criteria provided in the current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association (APA).
- c. Commitment information including the date of the initial commitment, type of commitment order, delineate if a juvenile or adult case, date and name of treatment

facility individual is committed to, any subsequent changes in treatment facility, and date commitment is terminated.

441—25.107(229) Quality Assurance System. As the employer of the advocate, the county shall implement a quality assurance system which:

25.107(1) Annually measures and assesses the advocates activities and services.

25.107(2) Gathers feedback from stakeholders including individuals using the advocate services, family members, court staff, service provider staff, and regional staff regarding advocate services.

25.107(3) Implements an internal review of individual records.

25.107(4) Identifies areas in need of improvement.

25.107(5) Develops a plan to address the areas in need of improvement.

25.107(6) Implements the plan and documents the results.