

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 249A.4 , the Department of Human Services proposes to amend Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

These changes are being made in direct response to requirements from the Centers for Medicare and Medicaid Services (CMS) for the Intellectual Disability (ID) and Brain Injury (BI) Waiver. These amendments address three issues:

- The amendments remove transportation to medical appointments from the Home- and Community-Based Services (HCBS) Waiver Transportation service description and clarifies the use of transportation when provided as part of the supported community living (SCL) service in the Intellectual Disability (ID) and Brain Injury (BI) waivers.
- The amendments remove a “related condition” as a basis of eligibility for Residential Based Supported Community Living (RBSCL) services under the ID Waiver. No children have accessed this service within the “related condition” diagnostic category.
- The amendments change the definition of “Intellectual disability” to the updated definition found in the Diagnostic and Statistical Manual of Mental Disorders, Fifth edition (DSM – 5).

These amendments also update the BI waiver SCL service to be the same as the ID waiver SCL service that allows transportation to and from work or day programs to be a SCL service component.

During the ID and BI Waiver application renewal review, CMS indicated that the state may no longer provide transportation to medical appointments for HCBS Waiver members

through the HCBS Waiver Transportation service. CMS also identified that medical transportation may not be provided to HCBS members as part of the supported community living service within the ID and BI waivers. Transportation provided through the HCBS waiver programs may only include non-medical transportation. All non-emergency medical transportation (NEMT) must be provided through state plan NEMT program.

As part of the renewal review, CMS also identified that the state may not include a related condition as a basis of eligibility only for RBSCL service under the ID waiver. Eligibility for the ID waiver must be the same for all services within the waiver. Eligibility cannot be based on a related condition only for the RBSCL service.

The definition of an intellectual disability has changed with the most recent DSM-5 edition. This rule change will update the current DSM-IV definition of “Intellectual disability” for use in the ID waiver. Changes to the rules reflect the DSM 5 criteria and the developmental time periods for making the diagnosis. The timeline for having current psychological documentation was changed for consistency with recertification requirements.

Any interested person may make written comments on the proposed amendments on or before May 19, 2015. 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 Iowa Code section 249A.4.

The following amendments are proposed.

ITEM 1. Amend subrule **78.37(11)** as follows:

78.37(11) Transportation. Transportation services may be provided for members to conduct business errands and essential shopping, ~~to receive medical services when not reimbursed through nonemergency medical transportation,~~ and to reduce social isolation. A unit of service is one mile of transportation or one one-way trip.

ITEM 2. Amend subparagraph **78.41(1)“a”(5)** as follows:

(5) Transportation services are activities and expenditures designed to assist the member to travel from one place to another to obtain services or carry out life’s activities. The service excludes transportation provided as non-emergency medical transportation pursuant to IAC 441-78.13(249A).

ITEM 3. Amend subrule **78.41(11)** as follows:

78.41(11) Transportation. Transportation services may be provided for members to conduct business errands and essential shopping, ~~to receive medical services when not reimbursed through nonemergency medical transportation,~~ to travel to and from work or day programs, and to reduce social isolation. A unit of service is one mile of transportation or one one-way trip. Transportation may not be reimbursed simultaneously with HCBS intellectual disability waiver supported community living service when the transportation costs are included within the supported community living reimbursement rate.

ITEM 4. Amend subparagraph **78.43(2)“a”(5)** as follows:

(5) Transportation services are activities and expenditures designed to assist the member to travel from one place to another to obtain services or carry out life's activities. The service excludes transportation ~~to and from work or day programs~~ provided as non-emergency medical transportation pursuant to IAC 441-78.13(249A).

ITEM 5. Amend subrule **78.43(7)** as follows:

78.43(7) Transportation. Transportation services may be provided for members to conduct business errands and essential shopping, ~~to receive medical services when not reimbursed through nonemergency medical transportation,~~ to travel to and from work or day programs, and to reduce social isolation. A unit of service is one mile of transportation or one one-way trip. Transportation may not be reimbursed simultaneously with HCBS brain injury waiver supported community living service when the transportation costs are included within the supported community living reimbursement rate.

ITEM 6. Amend subrule 78.46(5) as follows:

78.46(5) Transportation. Transportation services may be provided for members to conduct business errands and essential shopping, ~~to receive medical services when not reimbursed through nonemergency medical transportation,~~ to travel to and from work or day programs, and to reduce social isolation. A unit of service is one mile of transportation or one one-way trip.

ITEM 7. Amend rule **441—83.60(249A)**, definition of “Intellectual disability,” as follows:

“Intellectual disability” means a diagnosis of ~~mental retardation~~ Intellectual Disability (Intellectual Developmental Disorder), Global Developmental Delay, or Unspecified Intellectual

Disability (Intellectual Developmental Disorder), which shall be made only when the onset of the person’s condition was ~~before the age of 18 years~~ during the developmental period and shall be based on an assessment of the person’s intellectual functioning and level of adaptive skills. The diagnosis shall be made by a person who is a licensed psychologist or psychiatrist who is professionally trained to administer the tests required to assess intellectual functioning and to evaluate a person’s adaptive skills. ~~A~~ The diagnosis of ~~mental retardation~~ shall be made in accordance with the criteria provided in the Diagnostic and Statistical Manual of Mental Disorders, ~~Fourth~~ Fifth Edition (DSM-5), ~~Text Revision~~, published by the American Psychiatric Association.

ITEM 8. Amend paragraph **83.61(1)“a”** as follows:

a. Have a diagnosis of ~~mental retardation or, for residential-based supported community living services only, be a person with a related condition~~ intellectual disability as defined in rule 441—83.60(249A). The diagnosis shall be initially established and recertified as follows:

Age	Initial application to HCBS intellectual disability waiver program	Recertification for persons with a diagnosis of moderate, severe or profound mental retardation level of an <u>intellectual disability level of severity</u>	Recertification for persons with a diagnosis of mild or unspecified mental retardation <u>level of severity</u>
0 through 17 years	Psychological documentation within three years of the application date substantiating a diagnosis of mental retardation <u>intellectual disability</u> or, for residential-based supported	After the initial psychological evaluation, substantiate a diagnosis of mental retardation <u>intellectual disability</u> or, for residential-based supported community living	After the initial psychological evaluation, substantiate a diagnosis of mental retardation <u>intellectual disability</u> or, for residential-based supported community living

	community living services, a diagnosis of a related condition as defined in rule 441—83.60(249A)	services, a diagnosis of a related condition as defined in rule 441—83.60(249A) every six years and when a significant change occurs	services, a diagnosis of a related condition as defined in rule 441—83.60(249A) every three years and when a significant change occurs
18 through 21 years	<ul style="list-style-type: none"> • Psychological documentation substantiating diagnosis of mental retardation within three years before the application date, or • Diagnosis of mental retardation made before age 18 and current psychological documentation substantiating a diagnosis of mental retardation 	Psychological documentation substantiating a diagnosis of mental retardation an intellectual disability every ten years and whenever a significant change occurs	Psychological documentation substantiating a diagnosis of mental retardation every five years and whenever a significant change occurs
22 <u>18</u> years and above	<p>Diagnosis made before age 18 and e-Current psychological documentation substantiating a diagnosis of mental retardation <u>intellectual disability</u> if the last testing date was (1) more than five <u>six</u> years ago for an applicant with a diagnosis of mild or unspecified severity mental retardation, or (2) more than ten years ago</p>	Psychological documentation substantiating a diagnosis of mental retardation <u>intellectual disability</u> made since the member reached 18 <u>22</u> years of age	Psychological documentation substantiating a diagnosis of mental retardation <u>intellectual disability</u> every six years and whenever a significant change occurs

	for an applicant with a diagnosis of moderate, severe or profound <u>severity</u> mental retardation		
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Information on Proposed Rules

Name of Program Specialist LeAnn Moskowitz	Telephone Number 515-256-4653	E-mail Address lmoskow@dhs.state.ia.us
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1. Give a brief summary of the rule changes:

These changes are being made in direct response to requirements from the Centers for Medicare and Medicaid Services (CMS) for the Intellectual Disability (ID) and Brain Injury (BI) Waiver.. The rule changes address three issues:

- Removes transportation to medical appointments from the HCBS Waiver Transportation service description and clarifies the use of transportation when provided as part of the supported community living (SCL) service in the Intellectual Disability (ID) and Brain Injury (BI) waivers.
- Removes a “related condition” as a basis of eligibility for Residential Based Supported Community Living (RBSCL) services under the ID Waiver. No children have accessed this service within the “related condition” diagnostic category.
- Changes the definition of an Intellectual Disability to the updated Diagnostic and Statistical Manual of Mental Disorders, Fifth edition (DSM – 5).

These rule changes also update the BI waiver SCL service to be the same as the ID waiver SCL service that allows transportation to and from work or day programs to be a SCL service component.

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

Requirements imposed by the federal Medicaid agency as a condition of renewing Iowa’s Home and Community-Based Services (HCBS) waiver programs for persons with intellectual disabilities and brain injuries.

3. Why is the Department requesting these changes?

During the ID and BI Waiver application renewal review, CMS indicated that the state may no longer provider transportation to medical appointments for HCBS Waiver members through the HCBS Waiver Transportation service. CMS also identified that medical transportation may not be provided to HCBS members as part of the supported community living service within the ID and BI waivers.

Transportation provided through the HCBS waiver programs may only include non-medical transportation. All non-emergency medical transportation (NEMT) must be provided through state plan NEMT program.

As part of the renewal review, CMS also identified that the state may not include a related condition as a basis of eligibility only for RBSCL service under the ID waiver. Eligibility for the ID waiver must be the same for all services within the waiver. Eligibility cannot be based on a related condition only for the RBSCL service.

The definition of an intellectual disability has changed with the most recent DSM-5 edition. This rule change will update the current DSM-IV definition of an intellectual disability for use in the ID waiver. Changes to the rules reflect the DSM 5 criteria and the developmental time periods for making the diagnosis. The timeline for having current psychological documentation was changed for consistency with recertification requirements.

4. What will be the effect of this rule making (who, what, when, how)?

Medicaid members receiving HCBS services will be required to receive transportation to medical appointments through the NEMT service funded through the Medicaid NEMT broker. All non-medical transportation will continue to be funded through the transportation services and the SCL service as it is today.

Eligibility for the ID waiver will change in two ways: children that do not have a diagnosis of an intellectual disability but have a related condition will no longer be eligible for the ID waiver for purposes of RBSCCL services, and all members applying for and receiving ID waiver services must meet the new DSM-5 diagnosis criteria.

5. What are the potential costs and benefits of this rule making to the persons affected?

- Members will be subject to the NEMT utilization guidelines and may lose flexibility with scheduling transportation to medical appointments.
- Members who require support to attend medical appointments may need to utilize NEMT for transportation to the appointment and SCL service provider staff for support while attending the appointment.
- Providers currently providing transportation to medical appointments through the HCBS Waiver Transportation or through SCL services will be required to enroll with the transportation broker in order to continue to provide this service to their members.
- Provider administrative costs will increase to accommodate the coordination of transportation services with the NEMT broker.
- Children with a related condition will no longer be eligible for the ID waiver for purposes of RBSCCL services. To date, no child has become eligible for RBSCCL services under the ID waiver with a related condition.
- The DSM-5 broadens the definition of an intellectual disability and may allow children and adults currently not eligible for the ID waiver to now be eligible.

6. What are the potential costs and benefits of this rule to the state?

- The cost to the state is the pricing impact on the state's Request for Proposal for Non-Emergency Medical Transportation.
- The DSM-5 definition of an intellectual disability may allow more children and adults to be eligible for the ID waiver.

7. What are the likely areas of public comment or controversy?

- This is an unexpected change and removes the choice that members previously had between HCBS Waiver Transportation and NEMT for transportation to their medical appointments.
- Providers of HCBS Waiver Transportation and SCL services will have an increase in administrative costs and a potential decrease in revenues needed to support the provision of transportation to the members they serve.
- Some members may object to the removal of a basis of eligibility for RBSCCL services under the ID waiver, however, no children have been served who meet this diagnostic category.

<p>8. Are there any alternatives to making these changes in rules that you considered and rejected?</p> <ul style="list-style-type: none"> • Since CMS has instructed the state to make these changes, no alternatives were considered.
<p>9. What will be the effect on other governmental bodies (federal or state agencies, county governments)?</p> <ul style="list-style-type: none"> • There is no anticipated impact on the County Regions. • The state will be in compliance with the federal requirements for NEMT and HCBS Waiver Transportation. • The IME will need to invest personnel time in communicating the change, amending the provider manual and addressing any member issues that arise out of this change.
<p>10. If rules do not contain waiver provisions, explain why:</p> <ul style="list-style-type: none"> • The amendments do not contain waiver provisions because they are being required by the federal Medicaid agency and because the department has an established procedure for considering exceptions to policy. A waiver of any of the rules may be granted through that process
<p>11. 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)</p> <ul style="list-style-type: none"> • It is unclear whether this rule change will result in additional job creation. Job creation for drivers under NEMT will be contingent upon member demand.

ADMINISTRATIVE RULE FISCAL IMPACT STATEMENT

Date: April 2, 2015

Agency: Human Services

IAC citation: 441 IAC

Agency contact: LeAnn Moskowitz/Brian Wines

Summary of the rule:

The rule changes address three issues:

1. Removes transportation to medical appointments from the HCBS Waiver Transportation service description and clarifies the use of transportation when provided as part of the supported community living (SCL) service in the Intellectual Disability (ID) and Brain Injury (BI) waivers.
2. Removes a “related condition” as a basis of eligibility for Residential Based Supported Community Living (RBSCL) services under the ID Waiver.
3. Changes the definition of an Intellectual Disability to the updated Diagnostic and Statistical Manual of Mental Disorders, Fifth edition (DSM – 5).

These rule changes also update the BI waiver SCL service to be the same as the ID waiver SCL service that allows transportation to and from work or day programs to be a SCL service component.

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:

1. Removes transportation to medical appointments from the HCBS Waiver Transportation service description and clarifies the use of transportation when provided as part of the supported community living (SCL) service in the Intellectual Disability (ID) and Brain Injury (BI) waivers.

Annual HCBS waiver spending on transportation services is estimated at \$29 million, but based on a survey of providers, less than 2 percent of this was for medical appointments. This equates to annual medical appointment transportation spending of approximately \$578,000. Due to the February implementation date, this will only impact the final 5 months of SFY15, further reducing the impact to approximately \$240,000. The state share of this amount is approximately \$100,000. These costs will likely shift to the Medicaid transportation broker.

SFY15 brokerage rates are already set, so while this service shift is expected to reduce HCBS waiver spending, it will not increase Medicaid payments to the transportation brokerage. Therefore, this change is expected to result in state savings of approximately \$100,000 in SFY15.

The state's transportation brokerage contract is being re-bid, and new pricing will be in place for SFY16. The state will continue to experience savings in HCBS waiver spending as a result of this change, but it is expected the new brokerage contract pricing will take into account these additional services. Therefore, this change is expected to be budget neutral in fiscal years 2016 and beyond.

2. Removes a "related condition" as a basis of eligibility for Residential Based Supported Community Living (RBSCL) services under the ID Waiver.

No impact. To date, no child has become eligible for RBSCL services under the ID waiver with a related condition.

3. Changes the definition of an Intellectual Disability to the updated Diagnostic and Statistical Manual of Mental Disorders, Fifth edition (DSM – 5).

No impact. The DSM-5 broadens the definition of an intellectual disability which may allow children and adults currently not eligible for the ID waiver to now be eligible. However, enrollment will be limited to the number of slots approved by CMS so this is not expected to increase the number of recipients accessing waiver services.

4. These rule changes also update the BI waiver SCL service to be the same as the ID waiver SCL service that allows transportation to and from work or day programs to be a SCL service component.

No impact. Transportation is covered under the HCBS waivers through either the formal transportation service or through the supported employment service. Allowing coverage of transportation through the supported community living service may allow for easier access to these services, but it is assumed those in need of transportation are able to obtain it through the services currently available. Therefore, this change is not expected to result in an increase in costs, but rather a shift in costs from the existing services to the supported community living service.

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 (SFY15)</u>	<u>Year 2 (SFY6)</u>
Revenue by each source:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL REVENUE	_____	_____
Expenditures:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL EXPENDITURES	_____	_____
NET IMPACT	<u>(\$100,000)</u>	<u>\$0</u>

This rule is required by state law or federal mandate.

Please identify the state or federal law:

CMS has instructed the state to make this change, and failure to implement will jeopardize the renewal of the state's HCBS waiver programs.

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:

This change is expected to generate savings in SFY15, and then be budget neutral thereafter. No additional funding is necessary.

Fiscal impact to persons affected by the rule:

Members will be subject to the NEMT utilization guidelines and may lose flexibility with scheduling transportation to medical appointments.

Members who require support to attend medical appointments may need to utilize NEMT for transportation to the appointment and SCL service provider staff for support while attending the appointment.

Providers currently providing transportation to medical appointments through the HCBS Waiver Transportation or through SCL services will be required to enroll with the transportation broker in order to continue to provide this service to their members.

Provider administrative costs will increase to accommodate the coordination of transportations services with the NEMT broker.

Children with a related condition will no longer be eligible for the ID waiver for purposes of RBSCL services. To date, no child has become eligible for RBSCL services under the ID waiver with a related condition.

The DSM-5 broadens the definition of an intellectual disability and may allow children and adults currently not eligible for the ID waiver to now be eligible.

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

Counties and local governments could be impacted to the extent that they are also HCBS Waiver transportation providers.

Agency representative preparing estimate: Joe Havig

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