

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 75, “Conditions of Eligibility,” Iowa Administrative Code.

These amendments increase the statewide average cost of nursing facility services to a private-pay person. The statewide average cost of nursing facility services is being revised to reflect the increase in the cost of private-pay rates for nursing facility care in Iowa. The change is not related to rates paid by Medicaid for nursing facility care.

The statewide average cost of nursing facility services is used to determine a period of ineligibility when an applicant or recipient transfers assets for less than fair market value. When assets are transferred to attain or maintain Medicaid eligibility, the individual is ineligible for Medicaid payment of long-term care services. The period of ineligibility is determined by dividing the amount transferred by the statewide average cost of nursing facility services to a private-pay person.

The Department conducted a survey of the freestanding nursing facilities, the hospital-based skilled facilities, and special population facilities in Iowa to update the statewide average cost for nursing facilities. The average private-pay cost per month of nursing facility services increased from \$5,103.24 to \$5,407.24.

These amendments also update the average charges for nursing facilities, psychiatric medical institutions for children (PMICs) and mental health institutions (MHIs) and the maximum Medicaid rate for intermediate care facilities for individuals with

intellectual disabilities (ICF/IDs), which are used to determine the disposition of the income of a medical assistance income trust (MAIT).

Nursing facility amounts are not related to the rates paid by Medicaid for nursing facility care. For this purpose, the Department's survey for statewide average private-pay charges at nursing facility level of care included only the freestanding nursing facilities in Iowa. Hospital-based skilled facilities and special populations units were not included in the survey, since recipients are allowed to use the average cost of the specialized care.

- The average charge to a private-pay resident of nursing facility care increased from \$4,666 per month to \$4,952 per month.

The average charges for PMICs and MHIs are based on Medicaid rates because Medicaid is the primary payer of these services.

- The average charge for care in a PMIC increased from \$6,297 per month to \$6,556 per month.
- The average charge for care in an MHI increased from \$20,498 per month to \$24,083 per month.

The Iowa Department of Human Services provided the maximum Medicaid rate for care in an ICF/ID.

- The maximum Medicaid rate for care in an ICF/ID increased from \$25,040 per month to \$27,388 per month.

The increases in these amounts will allow a few additional individuals to qualify for medical assistance with MAITs because the amendments increase the income limit at which all income assigned to a MAIT is considered to be available for Medicaid eligibility purposes.

Any interested person may make written comments on the proposed amendments on or before April 21, 2015. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail 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 75.23(3) as follows:

75.23(3) Period of ineligibility. The number of months of ineligibility shall be equal to the total cumulative uncompensated value of all assets transferred by the individual (or the individual's spouse) on or after the look-back date specified in subrule 75.23(2), divided by the statewide average private-pay rate for nursing facility services at the time of application. The department shall determine the average statewide cost to a private-pay resident for nursing facilities and update the cost annually. For the period from July 1, ~~2014~~ 2015, through June 30, ~~2015~~ 2016, this average statewide cost shall be ~~\$5,103.24~~ \$5,407.24 per month or ~~\$167.87~~ \$177.87 per day.

ITEM 2. Amend paragraph **75.24(3)“b”** as follows:

b. A trust established for the benefit of an individual if the trust is composed only of pension, social security, and other income to the individual (and accumulated income of

the trust), and the state will receive all amounts remaining in the trust upon the death of the individual up to the amount equal to the total medical assistance paid on behalf of the individual. For disposition of trust amounts pursuant to Iowa Code sections 633C.1 to 633C.5, the average statewide charges and Medicaid rates for the period from July 1, ~~2014~~ 2015, to June 30, ~~2015~~ 2016, shall be as follows:

(1) The average statewide charge to a private-pay resident of a nursing facility is ~~\$4,666~~ \$4,952 per month.

(2) The maximum statewide Medicaid rate for a resident of an intermediate care facility for persons with an intellectual disability is ~~\$25,040~~ \$27,388 per month.

(3) The average statewide charge to a resident of a mental health institute is ~~\$20,498~~ \$24,083 per month.

(4) The average statewide charge to a private-pay resident of a psychiatric medical institution for children is ~~\$6,297~~ \$6,556 per month.

(5) No change.

Iowa Department of Human Services

Information on Proposed Rules

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1. Give a brief summary of the rule changes:

There are two changes that are being requested. The rules are being amended to:

1. Update IAC 75.23(3) to increase the statewide average cost of nursing facility services to a private-pay person. The figure is being revised to reflect the increase in the cost of private pay rates for nursing facility care in Iowa. The change is not related to rates paid by Medicaid for nursing facility care.

The figure is used to determine a period of ineligibility when an applicant or recipient transfers assets for less than fair market value. When assets are transferred to attain or maintain Medicaid eligibility, the individual is ineligible for Medicaid payment of long-term care services. The period of ineligibility is determined by dividing the amount transferred by the statewide average cost of nursing facility services to a private-pay person.

The Department conducted a survey of the freestanding nursing facilities, the hospital-based skilled facilities, and special population facilities in Iowa to update the statewide average cost for nursing facilities. The average private-pay cost of nursing facility services increased from \$5,103.24 to \$5,407.24.

2. Update 75.24(3) the average charges for nursing facilities, PMICs, and MHIs, and the maximum Medicaid rate for ICF/IDs, which are used to determine the disposition of the income of a medical assistance income trust (MAIT).

Nursing facility amounts are not related to the rates paid by Medicaid for nursing facility care. For this purpose, the Department’s survey for statewide average private-pay charges at nursing facility level of care included only the free standing nursing facilities in Iowa. Hospital-based skilled facilities and special populations units were not included in the survey, since recipients are allowed to use the average cost of the specialized care.

- The average charge to a private pay resident of nursing facility care increased from \$4,666 per month to \$4,952 per month.

The average charges for PMICs and MHIs are based on Medicaid rates because Medicaid is the primary payer of these services.

- The average charge for care in a PMIC increased from \$6,297 per month to \$6,556 per month.

- The average charge for care in an MHI increased from \$20,498 per month to \$24,083 per month.

The Iowa Department of Human Services provided the maximum Medicaid rate for care in an ICF/ID.

- The maximum Medicaid rate for ICF/ID increased from \$25,040 per month to \$27,388 per month.

The increases in these amounts will allow a few additional individuals to qualify for medical assistance with MAITs because it increases the income limit at which all income assigned to a MAIT is considered to be available for Medicaid eligibility purposes.

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

Public Law 100-360, Iowa Code Chapter 249A, 42 USC sections 1396p(c)(1)(E)(i)(II) and 42 USC section 1396p(d)(4)(B), and Iowa Code sections 633C.1 to 633C.3

3. What is the reason for the Department requesting these changes?

1. The change to 75.23(3) updates the figure used to determine the number of months of nonpayment of nursing home care, home and community based waiver services, home health care services, home and community care for the functionally disabled elderly individuals, personal care services, and other long-term care services, due to a transfer of assets for less than fair market value. The uncompensated value of the transferred asset is divided by the statewide average cost to a private-pay individual for nursing facility services.

2. The changes to 75.24(3)“b” relate to the treatment of trusts under Medicaid. The Omnibus Reconciliation Act (OBRA) of 1993 made a number of changes regarding the treatment of trusts established after August 10, 1993.

The Act allows a person whose income exceeds the Medicaid income limit for nursing facility care (300% of the SSI benefit for one person, currently \$2,199) to establish a medical assistance income trust (MAIT). The beneficiary’s income is deposited into the trust and only income paid to the beneficiary by the trust is counted when determining Medicaid eligibility. OBRA 93 was intended to aid persons whose income exceeds the 300% limit but is less than the cost of care in a medical facility.

State legislation requires the trustees of MAITs to make trust income available to beneficiaries whose income is sufficient to pay for their cost of care. These standards depend on whether the total income of the trust beneficiary exceeds the statewide average charge or the Medicaid reimbursement rate for various types of medical facilities. This change updates the statewide average charge for care in a nursing facility, PMIC, MHI, and the maximum Medicaid rate for ICF/IDs.

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

1. Increasing the statewide average cost used to determine a period of ineligibility for long-term care services due to a transfer of assets will decrease the period of ineligibility.
2. Persons whose income exceeds the 300% limit may become Medicaid-eligible if they set up a medical assistance income trust. The changes to the statewide average charges (and the maximum Medicaid reimbursement rate, for ICF/ID care) are an annual adjustment used in determining the disposition of income from a medical assistance income trust. Increasing the statewide average charges and maximum Medicaid rate will mean that additional individuals will be able to create trusts to establish Medicaid eligibility.

5. Is the change mandated by State or Federal Law?

1. Federal law requires that the period of ineligibility for a transfer for less than fair market value must be based on “the average monthly cost to a private patient of nursing facility services in the State” or, at the option of the State, on the average “in the community in which the individual is institutionalized.” 42 USC § 1396p(c)(1)(E)(i)-(ii). Pursuant to long-standing state administrative rules, Iowa uses the state-wide average.
2. Iowa Code 633C.1 directs the Department to publish the average charges and maximum Medicaid rate used for determining disposition of MAITs. Iowa Code 633C.1(4), (9)-(11).

6. Will anyone be affected by this rule change? If yes, who will be affected and will it be to the person’s (organization’s) benefit or detriment?

These rule changes will be a benefit to the public since the average costs, charges, and maximum Medicaid rates are increased allowing additional individuals to qualify for medical assistance by decreasing the period of ineligibility due to transfer of assets and by allowing more individuals to be eligible with a medical assistance income trust (MAIT).

7. What are the potential benefits of this rule?

1. An increase in the statewide average cost used to determine the period of ineligibility for long-term care services due to a transfer of assets will decrease the period of ineligibility for a transfer of assets for less than fair market value.
2. The change in the average statewide charges and maximum Medicaid rate, used for disposition of medical assistance income trusts may allow additional individuals to become eligible by establishing a MAIT.

8. What are the potential costs, to the regulated community or the state of Iowa as a whole, of this rule?

1. An increase in the statewide average cost used to determine the period of ineligibility for long-term care services due to a transfer of assets may increase Medicaid expenditures because the period of ineligibility for transfers will be shorter. However, the change will have a minimal fiscal impact, as the increase is small.
2. The change in the average statewide charges and maximum Medicaid rate, used for disposition of medical assistance income trusts may increase Medicaid expenditures by allowing additional individuals to become eligible by establishing a MAIT. However, the change will have a minimal fiscal impact, as the increases are small.

We believe the fiscal impact of both changes is included under the nursing facility budget for Medical Assistance.

9. Do any other agencies regulate in this area? If so, what agencies and what Administrative Code sections apply?

No.

10. What alternatives to direct regulation in this area are available to the agency? Why were other alternatives not used?

1. Federal law requires that the period of ineligibility for a transfer for less than fair market value must be based on “the average monthly cost to a private patient of nursing facility services in the State” or, at the option of the State, on the average “in the community in which the individual is institutionalized.” 42 USC § 1396p(c)(1)(E)(i)-(ii). Pursuant to long-standing state administrative rules, Iowa uses the state-wide average. No alternatives were considered in establishing the new statewide average cost of nursing facility care to a private pay person.

2. Iowa Code 633C.1 directs the Department to publish the average charges and maximum Medicaid rate used for determining disposition of MAITs. Iowa Code 633C.1(4), (9)-(11). No alternatives were considered.

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

These amendments do not contain waiver provisions because they confer a benefit. Everyone should be subject to the same amounts set by this rule. Individuals may request an exception pursuant to the Department's general rule on exceptions to policy at 441 IAC 1.8.

12. What are the likely areas of public comment?

Public comment on the changes to the statewide average cost of nursing facility care, used for transfers of assets, and to the statewide average charges or maximum Medicaid rate, used for disposition of MAITs, is unlikely because these amendments only update amounts pursuant to current policy.

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

No.

Administrative Rule Fiscal Impact Statement

Date: February 20, 2015

Agency: Human Services

IAC citation: 441 IAC

Agency contact: Karen Jones

Summary of the rule:

The rule updates the statewide cost and charges for medical facilities.

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:

The nursing facility budget for SFY16 was based on the number of projected bed days that will occur at a projected rate per bed day. The number of bed days was trended forward based on trend experiences of actual bed days for state fiscal year 2014 and prior. The budgeted rate per bed day was established by the provider and rate setting audits performed annually. The July 1, 2014 average bed day rate was used, with inflationary factors applied.

The average private pay cost increase for persons who transfer assets and apply for Medicaid and the change in the average charge rate for a person with a Miller Trust are occurrences that take place each year. Any past increase in these charges would have been included in the rate per bed day for July 1, 2014. Also, any increase in bed days resulting from past rate changes would also be included in the past trend of bed days.

Since the budget is developed from a base rate and bed day trend that would be reflective of past changes in private pay cost and the average charge rate, changes that go into effect July 1, 2015 would be included in the SFY16 budget.

Other long-term care budgets (HCBS waiver, MHIs, PMICs, and ICFs/ID) are developed using similar methodologies.

Additionally, given the marginal nature of these changes, coupled with the level of income required in order to be impacted, any fiscal impact is expected to be less than \$100,000 annually.

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 (SFY16)</u>	<u>Year 2 (SFY17)</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><\$100,000</u>

- This rule is required by state law or federal mandate.
Please identify the state or federal law:
 Public Law 100-360, Iowa Code Chapter 249A, , 42 USC sections 1396p(c)(1)(E)(i)(II) and 42 USC section 1396p(d)(4)(B), and Iowa Code sections 633C.1 to 633C.3.
- Funding has been provided for the rule change.
Please identify the amount provided and the funding source:
 Costs associated with this rule change have already been included in the SFY16 budget.
- Funding has not been provided for the rule.
Please explain how the agency will pay for the rule change:

Fiscal impact to persons affected by the rule:

An increase in the statewide average cost used to determine a period of ineligibility for long-term care services due to a transfer of assets will decrease the period of ineligibility for a transfer of assets for less than fair market value.

The change in the average statewide charges for a person with a medical assistance income trust is normally expected to increase expenditures by allowing clients to become eligible because they have established this type of trust.

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

None anticipated.

Agency representative preparing estimate: Joe Havig
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