

February 7, 2020

DHS Council Members:

Enclosed, please find the materials for the February 12<sup>th</sup>, 2020 meeting.

This meeting will be held by **CONFERENCE CALL** - please see the agenda for the call-in information.

Please be sure to let me know if you will be unable to attend as a quorum is necessary.

Thank you,

*Annie Lukens*

Annie Lukens  
Executive Officer, DHS  
alukens@dhs.state.ia.us

**AGENDA**

**Wednesday, February 12, 2020**

**Time: 10:00 a.m. – 11:00 a.m.**

**Dial: 1-866-685-1580**

**Code: 515-281-7064#**

This meeting is accessible to persons with disabilities. (If you have special needs, please contact the Department of Human Services (515) 281-5455 two days prior to the meeting.) Note: Times listed on agenda for specific items are approximate and may vary depending on the length of discussion for preceding items. Please plan accordingly.

**TELECONFERENCE MEETING  
AGENDA**

**10:00 a.m.** Call to order

**10:05 a.m.** Approval of Minutes – January 8<sup>th</sup>, 2020

**10:10 a.m.** Rules - **Nancy Freudenberg**

The following amendments to the administrative rules are presented for adoption at the February 12, 2020, Council on Human Services meeting:

R-1. Amendments to Chapter 7, “Appeals and Hearings.” In an ongoing effort to streamline the Department’s processes and provide accessibility to consumers. The Department has revised its appeal rules with the following goals in mind:

- Simplification
- Uniformity
- Clarification of scope
- Clearly defining appeal rights
- Protecting self-represented litigants

The Department has sought to eliminate redundancies, streamline processes across programs where permissible under state and federal law, clarify circumstances in which appeal hearings are granted and ensure conformity among appeal processes.

R-2. Adopts a new Chapter 16, “Notices”. Amendments to Chapter 14, “Offset of County Debts Owed Department”; Chapter 40, “Application for Aid,” Chapter 41, “Granting Assistance,” Chapter 46, “Overpayment Recovery,” Chapter 74, “Iowa Health and Wellness Plan,” Chapter 75, “Conditions of Eligibility,” Chapter 76, “Enrollment and Reenrollment,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Chapter 82, “Intermediate Care Facilities for Persons with an Intellectual Disability,” Chapter 83, “Medicaid Waiver Services,” Chapter 86, “Healthy and Well Kids in Iowa (Hawk-I) Program,” Chapter 90, “Targeted Case Management,” Chapter 91, “Medicare Drug Subsidy,” Chapter 93, “PROMISE JOBS Program,” Chapter 95, “Collections,” Chapter 106, “Certification Standards for Children’s Residential Facilities,” Chapter 109, “Child Care Centers,” Chapter 153, “Funding for Local Services,” Chapter 170, “Child Care Services,” and Chapter 187, “Aftercare Services Program,” Iowa Administrative Code.

These amendments adopt a new Chapter 16, “Notices” to centralize administrative rules regarding timely and adequate notices. In addition, these amendments update cross-references in other chapters regarding timely and adequate notices based on changes in Chapter 7 cross references that are being updated. The Department is still required to provide timely and adequate notice. The rules are simply being moved from one chapter into a centrally located chapter and rules are updated accordingly.

R-3. Amendments to Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care." This rule updates Medical Assistance Advisory Council (MAAC) and Executive meeting rules regarding MAAC membership, voting and duties and removal of the executive committee and responsibilities based on legislative changes from the 2019 session.

R-3. Amendments to Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 83, "Medicaid Waiver Services." Legislation from the 2019 session directed the Department to eliminate the monthly budget maximum or cap for individuals eligible for the Medicaid home and community based services (HCBS) brain injury waiver. Legislation also appropriated additional funds to adjust the per diem rates for assertive rates for assertive community treatment (ACT) Services.

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

N-1. Amendments to Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program." Legislation from the 2019 session removes the references to the third party administrator for the Healthy and Well Kids in Iowa (Hawk-I) program. These rules also update incorrect references in the rules.

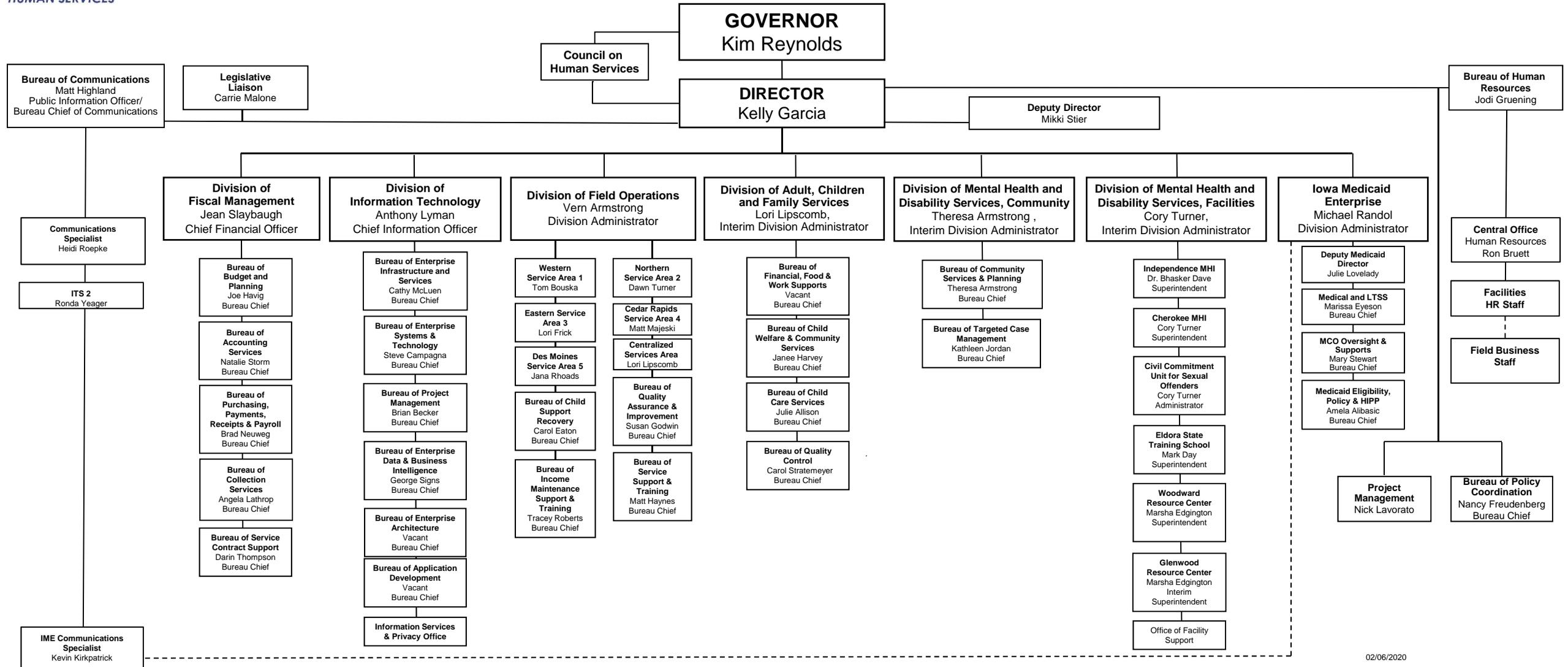
N-2. Amendments to Chapter 176, "Dependent Adult Abuse." Two pieces of legislation recently passed in the 2019 session which resulted in proposed rule changes. HF 569 added personal degradation as a category for dependent adult abuse. HF 323 changed the definition of personal degradation for dependent adult abuse. These proposed rules define dependent adult abuse and the criteria for outcome determinations for dependent adult abuse evaluations conducted by the Department for personal degradation.

N-3. Amendments to Chapter 176, "Dependent Adult Abuse," and Chapter 177, "In-Home Health Related Care." These proposed amendments add provisions for coordination of services to avoid duplication. The rules also add clarification when reviews need to be completed and when services may be terminated. The amendments remove form names and numbers.

N-4. Amendments to Chapter 187, "Aftercare Services and Support." Aftercare rules were recently changed by the Department. There was an oversight when changes were made and an incorrect dollar amount was cited in the amount of services some participants may receive for financial support for aftercare programs. This proposed amendment corrects the rule clarifying that youth may receive up to \$300 per quarter, which was the original intent of the rule.

- 10:30 a.m.** Managed Care Update – **Mike Randol and Mary Stewart**
- 10:40 a.m.** Council Update
- 10:50 a.m.** Director's Report – **Director Kelly Garcia**
- 11:00 a.m.** Adjourn

# Table of Organization



January 31, 2019

Dear Council Member:

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Sincerely,

***Nancy Freudenberg***

Nancy Freudenberg  
Bureau Chief  
Policy Coordination

Enclosures

# HUMAN SERVICES DEPARTMENT[441]

## Adopted and Filed

### Rule making related to appeals and hearings

The Human Services Department hereby amends Chapter 7, “Appeals and Hearings,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code chapter 17A and section 217.6.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 17A and section 217.6.

#### *Purpose and Summary*

In light of the State’s transition to Medicaid managed care, and in an ongoing effort to improve Department of Human Services’ processes and accessibility to consumers, the Department has revised its appeals rules with the following goals in mind: simplification, uniformity, clarification of scope, clearly defining appeal rights, and protecting self-represented litigants. In this effort, the Department has sought to eliminate redundancies and ambiguities, streamline processes across programs where permissible under state and federal law, explicitly clarify the circumstances in which contested case hearings are granted, ensure conformity with substantive federal and state standards, and include procedural protections for self-represented litigants.

#### *Public Comment*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 25, 2019 as **ARC 4674C**.

One respondent, representing Iowa Legal Aid, provided written comments.

1. **Concerns on the Appeals Advisory Committee.** Within three comments, the respondent referenced the removal of all references to the Appeals Advisory Committee. The Appeals Advisory Committee acted as an initial screening device for the Director and had the authority to recommend that the Director review a proposed decision. Committee members voted to allow the review to proceed to the Director or deny the request for review.

**Department Response.** Based on the volume of programs the Department administers, committee members did not feel comfortable making recommendations about programs they did not manage. The Department established a process that better aligns with the process used by appellants and their representatives when submitting a review request. As this is an internal Department process, it is not required to be in the rules. No changes were made based on this comment.

2. **Concerns on Party-in-Interest.** The respondent commented twice about the proposed amendment in subrule 7.3(1)(b) indicating a party-in-interest must have an ongoing, specific and personal interest in the outcome of the contested case hearing. Respondent questioned if this change was intended to address third parties filing appeals on behalf of individuals.

**Department Response.** The change was made to ensure that appeals are limited to live issues by an aggrieved party and the person filing the appeal has an interest in the outcome of the appeal. No changes were made based on this comment.

3. **Contractual rights.** Respondent questioned what problem the Department was trying to address with the proposed amendment to subrule 7.3(2) dealing with appeals regarding contractual rights are not eligible for a contested case hearing. Respondent commented twice that the language used is broader than current language regarding provider claims disputes with a managed care organization.

**Department Response.** The purpose is to clarify contract issues are not subject to an appeal through the Department's appeals process as disputes regarding contract issues between the appellant and another party are handled within the court system. No changes were made based on this comment.

4. **Removal of Definitions and Other Language Regarding Appeal Process.** Within eleven comments, the respondent expressed concerned with the removal of definitions and other language regarding "Aggrieved person", "Appeal," "Due process," "Electronic case record," "Ex parte communication," "Informal conference," "Local office," "Prehearing conference", and "Reconsideration."

**Department Response.** The definition of "Aggrieved person" was removed as the conditions provided in the published rule were both over-inclusive and under-inclusive. The proposed amendments clarify that persons entitled to an administrative appeal hearing by a Constitution or statute will receive such a hearing.

The definition of "Appeal" was removed as it was overly broad and allowed for an expanded meaning of a contested case as defined in Iowa Code Chapter 17A. Due process is required for contested cases, but the entitlement to due process is created by a Constitution or statute, not by the regulations. The reference to due process cannot expand or contract the entitlement to due process, and therefore, the definition of "Due process" was omitted.

Appellant's have the right to view the Department's case file. The appellant's right to view the electronic case record is not affected by eliminating the definition of "Electronic case record". While the respondent did not provide any specifics as to why there was concern for the removal of "Ex parte communication" as a definition, ex parte communication is covered extensively in Iowa Code § 17A.17 and in proposed subule 7.9(1).

The definition of an “Informal conference” was removed as the other references to an informal conference were eliminated from the proposed amendments; however, based on the comment a new subrule 7.6(7) is added to address informal conferences.

The removal of the definition of “Local office” was not problematic to the respondent, but respondent wanted to ensure applicants and recipients could continue to file an appeal request at his or her local office. Proposed subrule 7.5(1) details the way a contested case hearing may be requested, including at the applicant or recipient’s local office.

The definition of “Prehearing conference” was removed, but proposed rule 7.2(17A) indicates that in the absence of an applicable rule, the Department of Inspections and Appeals rules found at 481 Chapter 10 govern Department appeals. Prehearing conferences are addressed at 481 IAC 10.16.

The definition of “Reconsideration” was circular and did not accurately reflect when reconsideration was allowed. The exclusion of the definition does not negate the reconsideration process, when allowed. No changes were made based on the respondent’s comments other than the change noted regarding informal conferences.

**5. Removal of the Conditions of An Aggrieved Person and the List of Appealable Issues.** Within four comments, the respondent is concerned with the removal of the conditions of an aggrieved person and a list of appealable issues as it is believed this could cause confusion for appellants.

**Department Response.** Iowa Code 17A provides for administrative appeal hearings only in contested cases and defines what constitutes a contested case. The conditions provided in the current rule were both over-inclusive and under-inclusive. The proposed amendments clarify that persons entitled to an administrative appeal hearing by a Constitution or a statute will receive such a hearing. No changes were made based on the respondent’s comments.

**6. Removal on the language of Presiding Officer.** The respondent commented on the removal of language concerning a presiding officer not being connected in any way with the previous actions or decisions on which the appeal is made and requested this information be retained.

**Department Response.** Maintaining a separate and impartial adjudicative function is a bedrock principle of administrative law and is a fundamental component of due process. Proposed rule 7.2(17A) indicates that in the absence of an applicable rule in this chapter, the Department of Inspections and Appeals rules govern Department of Human Services (DHS) appeals. Rules regarding when an administrative law judge shall withdraw from a contested case is addressed at 481 IAC 10.9(17A).

**7. Exhausting Other Remedies.** The respondent questioned if there were other remedies that must be exhausted prior to initiation of an appeal other than those mentioned in proposed subrule 7.4(2). The respondent requested further clarification on

what is meant by exhausting all other appeal remedies available to the party-in-interest and cross-reference any other applicable regulations.

**Department Response.** Proposed subrule 7.4(2) addresses exhaustion only with respect to Medicaid managed care organization claims, which are not covered in other program specific provisions. Proposed subrule 7.4(1) generally requires exhaustion in accordance with each program’s specific procedures. Rather than include numerous cross-references, the reader is directed to the specific program, however, subrule 7.4(1) was amended for clarification.

**8. Removal of Notification of Hearing Procedures.** Within five comments, the respondent was concerned with the removal of the notification of hearing procedures, especially the section relating to providing auxiliary aids to individuals with disabilities, and the removal of language requiring local DHS offices to advise individuals of the availability of legal services in the community.

**Department Response.** All notices issued by the Department notify the appellant to contact a local DHS office to obtain information about legal services, but based on the respondent’s comments, a new subrule 7.4(4) is adopted to address written and oral notification of hearing procedures and a new subrule 7.9(6) is adopted to provide the assistance that shall be offered to persons living with disabilities.

**9. Request Additional Information.** Respondent questioned what would happen if the Department had to request additional information to determine the scope of the appeal.

**Department Response.** Based on the comment, proposed subrule 7.5(2) was amended.

**10. Appeals Filed in Writing.** Respondent suggested a change in the title for subrule 7.5(4) and requested a definition be added for the term “in writing.”

**Department Response.** The Department agrees to update the title in subrule 7.5(4) for clarification, however, the term “in writing” is commonly understood and not all methods for requesting an appeal hearing are done in writing.

**11. Forwarding Appeal Summaries and Exhibit Materials.** Respondent also requested a clarification that entities contracted by the Department be required to follow the same protocol as Department staff when forwarding appeal summary and exhibit materials to the judge.

**Department Response.** Proposed subrule 7.5(5) refers to the Department worker or agent responsible for representing the Department at hearing. This would include contracted entities so no changes were made based on this comment.

12. **Designating Issues for Hearing.** Respondent argues the proposed subrule 7.6(3) regarding designating issues for hearing seems too technical for pro se litigants and possibly burdensome for representatives who may be joining an appeal close to the hearing date for various reasons.

**Department Response.** This provision does not change the previous practice for designating issues for hearing; therefore, the provision does not increase the burden on a pro se appellant. If a pro se litigant obtains legal representation and it is determined additional issues need to be designated for hearing, the newly obtained legal representation can request a continuance to allow time to prepare for hearing and can file a motion to designate additional issues. No changes were made based on this comment.

13. **Case File.** Respondent indicates the term “case file” is not defined in proposed rule 7.6(6) regarding the appellant’s right to examine the contents of their own case file.

**Department Response.** Proposed rule 7.2(17A) indicates that in the absence of an applicable rule in this chapter, the Department of Inspections and Appeals rules govern Department of Human Services (DHS) appeals. Evidence is addressed at 481 IAC 10.21(17A). No changes were made based on this comment.

14. **Closed Hearings.** Proposed subrule 7.8(5) indicates contested case hearings are closed to the public and provides a list of individuals who may participate in appeal hearings. Respondent is concerned as there was no language regarding child abuse registry hearings and the right to intervene.

**Department Response.** The list of individuals who may participate includes permissible intervenors; therefore, no changes were made based on this comment.

15. **Default Decisions.** Respondent was concerned with the changes made to proposed subrule 7.9(2) deadline with default decisions.

**Department Response.** No changes are made as the process has not changed and the proposed subrule adequately captures the default process.

16. **Withdrawal Requests.** Respondent requested clarification on how to withdraw a fair hearing request for appeals that must be filed in writing.

**Department Response.** Based on this comment, proposed subrule 7.9(3) is amended to provide clarification.

17. **Request a Medical Exam.** Respondent commented twice indicating the proposed subrule 7.9(4) does not allow an enrollee or appellant to request a medical exam.

**Department Response.** Federal regulations at 42 CFR 431.240(b) allow a hearing official to request a medical assessment other than that of the individual involved in making an original decision if a hearing involves issues, such as those concerning a diagnosis, an examining physician’s reports or a medical team’s decision. The

regulation does not allow an enrollee or appellant to request the medical exam. No changes are made based on this comment.

18. **Submitting Proposed Findings of Facts.** Respondent commented the proposed rules failed to indicate whether parties are allowed to submit proposed findings of fact and requested the Department define the term “record”.

**Department Response.** No one is precluded from offering findings of fact. If offered, the presiding officer will rule on the proposed findings of fact. Proposed subrule 7.10(2) requires appellants be given reasonable access to the record at a convenient place and time. There is no need to define what the term “record” means, as it is common term. No changes are made based on this comment.

19. **Right to Seek Judicial Review.** Proposed subrule 7.12(3) provides the department will notify the appellant of their right to seek judicial review, where applicable. However, the respondent commented three times as the proposed subrule fails to indicate the appellant does not need to seek a rehearing to exhaust their administrative remedies before filing the judicial review or a stay request.

**Department Response.** Proposed rule 7.12(17A) makes clear that a proposed decision becomes a final decision if there is no appeal to the director, which mirrors the Iowa Code § 17A.15.2 language. A final decision is subject to judicial review and, therefore, further action following the final decision is not required to exhaust administrative remedies. The Department’s authority to grant a stay of the agency decision pending judicial review is adequately stated in Iowa Code § 17A.19. No changes are made based on this comment.

20. **Authorized Representatives.** Respondent indicates the second sentence in the proposed subrule 7.16(1) regarding regulations for authorized representatives has nothing to do with regulations and requests the statement be moved to its own section. Respondent also is concerned about what is meant by the term “or similar” in the subrule and is confused about what is meant by proposed subrule 7.16(2).

**Department Response.** The language in subrule 7.16(2) regarding designation of authority of an authorized representative is intended to clarify that an authorized representative does not become a party-in-interest in their own right as an outgrowth of their representation. However, based on the respondent’s comments on the other two issues, subrule 7.16(1) and 7.16(2) are amended.

21. **Receipt of a Notice.** Respondent was concerned that there was no definition of “receipt of a notice”.

**Department Response.** Based on the respondent’s comments, subrule 7.17(1) is amended to provide guidance on how the Department determines receipt of a notice.

22. **Emergency Adjudicative Proceedings.** Respondent mentioned proposed subrule 7.18(17A) regarding emergency adjudicative proceedings failed to state the means by which the order is to be delivered to the persons who are required to comply with the order and does not include any reference to oral notification.

**Department Response.** Based on the respondent's comments, subrule 7.18(2) is amended.

23. **Accessibility of Hearing Decisions.** Respondent recommends keeping current language regarding accessibility of hearing decisions.

**Department Response.** Iowa Code 17A.3 requires agencies to adopt rules setting forth the method by which the public may obtain information or make submissions or requests and the location of said information. DHS has adopted rules in 441 IAC Chapter 9 describing the procedures for access to department records. No changes are made based on this comment.

24. **Contested Cases With No Factual Dispute.** While Iowa Code § 17A.10A provides for handling of contested cases with no factual dispute, respondent requests the corresponding regulations should continue to provide guidance on this situation.

**Department Response.** Based on the respondent's comments, a new subrule 7.8(7) is adopted to provide guidance.

25. All other comments made by the respondent were positive and supported the proposed amendments.

#### *Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on February 12, 2020.

#### *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*

These amendments do not include a waiver provision because they confer benefits on those affected and are generally required by federal law that does not allow for waivers. Individuals may request a waiver under the Department's general rule on exceptions at rule 441—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 April 15, 2020.

The following rule-making actions are adopted:

ITEM 1. Rescind rule 441—7.1(17A) and adopt the following **new** rule in lieu thereof:

**441—7.1(17A) Definitions.**

“*Adverse benefit determination*” means any adverse action taken as to any individual’s benefits pursuant to an assistance program administered by the department or on the department’s behalf, excluding determinations related to requests for exceptions to policy.

“*Appeals section*” means the director’s designee who is charged with administering the department’s appeals.

“*Appellant*” means a person, including an authorized representative acting on the person’s behalf, seeking to appeal some action pursuant to this chapter.

“*Assistance program*” means a program administered by the department or on the department’s behalf through which qualifying individuals receive benefits or services. Assistance programs include, but are not necessarily limited to, food assistance, Medicaid, the family investment program, refugee cash assistance, child care assistance, emergency assistance, the family planning program, the family self-sufficiency grant, PROMISE JOBS, state supplementary assistance, the healthy and well kids in Iowa (HAWK-I) program, foster care, adoption, and aftercare services.

“*Authorized representative*” means a person lawfully designated by an individual to act on the individual’s behalf or who has legal authority to act on behalf of the individual.

“*Contested case*” refers to an evidentiary hearing mandated by state or federal constitutional or statutory authority whereupon a presiding officer makes a determination pertaining to the relative rights and obligations of parties to an appeal under this chapter.

“*Department*” means the Iowa department of human services.

“*DIA*” means the Iowa department of inspections and appeals and may include presiding officers where appropriate.

“*Director*” means the director of the department or the director’s designee.

“*Enrollee*” means any applicant to or recipient of benefits or services pursuant to an assistance program.

“*Good cause*” means an intervening cause, not attributable to the negligence of a party, reasonably resulting in a delay or in attendance, for purposes of subrules 7.4(3) and 7.9(2).

“*Intentional program violation*” means deliberately making a false or misleading statement; or misrepresenting, concealing, or withholding facts; or committing any act that is a violation of the Food and Nutrition Act of 2008, food assistance program regulations, or any state law relating to the use, presentation, transfer, acquisition, receipt, possession, or trafficking of an electronic benefit transfer (EBT) card. An intentional program violation is determined through a food assistance administrative disqualification hearing. The hearing may result in a period of ineligibility for the program, a claim for overpayment of benefits, or both.

“*Managed care organization*” or “*MCO*” has the meaning assigned to it in rule 441—73.1(249A) and includes prepaid ambulatory health plans.

“*Medicaid*” means Iowa’s medical assistance program administered under Iowa Code chapter 249A.

“*Party-in-interest*” refers to the party, including enrollees, whose rights or obligations are the subject of a contested case hearing under this chapter. Parties-in-interest may or may not be the appellant.

“*Presiding officer*” means an administrative law judge charged with the administration and adjudication of the contested case hearing process for a particular appeal.

“*Self-represented*” means representing oneself without an attorney.

ITEM 2. Rescind rule 441—7.2(17A) and adopt the following **new** rule in lieu thereof:

**441—7.2(17A) Governing law and regulations.** In the absence of an applicable rule in this chapter, the DIA rules found at 481—Chapter 10 govern department appeals. Notwithstanding the foregoing and the rules contained in this chapter, to the extent that federal or state law (including regulations and rules) related to a specific program is more specific than or contradicts these rules or the applicable DIA rules, the program-specific federal or state law shall control. For example, food assistance appeals shall be conducted in accordance with 7 CFR 273.15 and 7 CFR 273.16, and medical assistance appeals shall be conducted in accordance with 42 CFR Part 431, subpart E, and Part 438, subpart F.

ITEM 3. Adopt the following **new** 441—Chapter 7, Division I title:

## DIVISION I

### GENERAL APPEALS PROCESS

ITEM 4. Rescind rule 441—7.3(17A) and adopt the following **new** rule in lieu thereof:

**441—7.3(17A) When a contested case hearing will be granted.**

**7.3(1) Requirements.** A person shall be granted a contested case hearing if the party-in-interest fulfills all of the following requirements:

- a. The party-in-interest is entitled to a contested case hearing;
- b. The party-in-interest has an ongoing, specific and personal interest in the outcome of the contested case hearing; and
- c. The party-in-interest meets all of the other requirements contained in these rules.

**7.3(2)** *Contractual rights not subject to contested case hearing.* Unless otherwise provided by law, when an appellant seeks a contested case hearing of an issue predicated upon or governed by the terms of a contract between appellant and another party, including the department, a contested case hearing shall not be provided.

**7.3(3)** *Change in law.* A contested case hearing shall not be granted when the sole issue raised is a federal or state law requiring an automatic change adversely affecting some or all beneficiaries to an assistance program.

**7.3(4)** *Competitive procurement bid appeals.* Competitive procurement bid appeals shall be adjudicated pursuant to Division II of this chapter.

ITEM 5. Rescind rule 441—7.4(17A) and adopt the following **new** rule in lieu thereof:

**441—7.4(17A) Initiating an appeal.**

**7.4(1)** *Exhaustion of remedies.* An appellant shall only be granted a contested case hearing if the appellant has exhausted all other appeal remedies available to the party-in-interest. An appellant should refer to program specific provisions for the appropriate procedures applicable to specific programs.

**7.4(2)** *Medicaid managed care enrollees exhaustion of remedies.*

a. A Medicaid managed care enrollee shall be granted a contested case hearing only if the enrollee has either received a decision from a managed care organization in the time and manner required by rule 441—73.12(249A) or has been deemed to have exhausted the

managed care organization appeals under paragraph 7.4(2) “b.”

*b.* If a Medicaid enrollee’s managed care organization fails to provide a decision in the time and manner required by rule 441—73.12(249A), the enrollee shall be deemed to have exhausted the managed care organization’s appeals process and may initiate a contested case hearing.

**7.4(3) Time to appeal.** For a contested case hearing to be granted, the following timelines must be met:

*a. Food assistance, Medicaid eligibility, healthy and well kids in Iowa (HAWK-I), fee-for-service Medicaid coverage, family planning program and autism support program.* For appeals pertaining to food assistance, Medicaid eligibility, healthy and well kids in Iowa (HAWK-I), fee-for-service Medicaid coverage, the family planning program or the autism support program, the appellant must appeal on or before the ninetieth day following the date of notice of an adverse benefit determination.

*b. Managed care organization medical coverage.* For appeals pertaining to medical services coverage under Medicaid managed care, the appellant must appeal on or before the one hundred twentieth day following the date of exhaustion, actual or deemed, of the managed care organization appeal process outlined in rule 441—73.12(249A).

*c. Tax offsets.* Except for counties appealing an offset under 441—Chapter 14, for appeals of state or federal tax offsets, the appellant must appeal on or before the fifteenth day following the date of notice of the action. For counties appealing a debtor offset under 441—Chapter 14, the county must appeal on or before the thirtieth day following the date of notice of the offset.

*d. Iowa individual disaster assistance program.* For appeals pertaining to the Iowa

individual disaster assistance program, the appellant must appeal on or before the fifteenth day following the date of the department's reconsideration decision, pursuant to 441—subrule 58.7(1).

*e. Iowa disaster case management program.* For appeals pertaining to the Iowa disaster case management program, the appellant must appeal on or before the fifteenth day following the date of the department's reconsideration decision, pursuant to 441—subrule 58.7(1).

*f. Dependent adult abuse.* For appeals regarding dependent adult abuse, the appellant must appeal within six months of the date of notice of the action as provided in Iowa Code section 235B.10.

*g. Child abuse.* For appeals regarding child abuse, the person alleged responsible for the abuse must appeal on or before the ninetieth day following the date of notice of the action as provided in Iowa Code section 235A.19. A subject of a child abuse report, other than the alleged person responsible for the abuse, may file a motion to intervene in the appeal on or before the tenth day following the date of notice of the right to intervene.

*h. Sex offender risk assessment.* For appeals regarding a sex offender risk assessment, the appellant must appeal in writing on or before the fourteenth day following the date of notice.

*i. Assistance program overpayments.* For appeals pertaining to the family investment program, refugee cash assistance, PROMISE JOBS, child care assistance, medical assistance, healthy and well kids in Iowa (HAWK-I), family planning program or food assistance overpayments, the party-in-interest's right to appeal the existence, computation and amount of the overissuance or overpayment begins when the department sends the first

notice informing the party-in-interest of the overissuance or overpayment.

*j. All other appeals.* For all other appeals, and unless federal or state law provides otherwise elsewhere, the appellant must appeal on or before the thirtieth day following the date of notice of the action being appealed. If such an appeal is made more than 30 days, but less than 90 days, of the date of notice, the director or director's designee may, at the director's or designee's sole discretion, allow a contested case hearing if the delay was for good cause, substantiated by the appellant.

**7.4(4) Written and oral notification.** The department shall advise each applicant and recipient of the right to appeal any adverse decision affecting the person's status.

*a.* Written notification of the following shall be given at the time of application and at the time of any agency action affecting the claim for assistance.

(1) The right to request a hearing.

(2) The procedure for requesting a hearing.

(3) The right to be represented by others at the hearing unless otherwise specified by statute or federal regulation.

*b.* Written notification shall be given on the application form and all notices of decision.

ITEM 6. Rescind rule 441—7.5(17A) and adopt the following **new** rule in lieu thereof:

**441—7.5(17A) How to request an appeal.**

**7.5(1) Ways to request a hearing.** An appellant may request a contested case hearing:

*a.* Via the department's website,

*b.* By telephone, except as specified in subrule 7.5(4),

*c.* By mail,

*d.* In person, except as specified in subrule 7.5(4), or

*e.* Through other commonly available electronic means (such as email or facsimile).

**7.5(2) *Hearing request.*** The request for a contested case hearing must be sufficiently detailed so that the department can reasonably understand the action being appealed. The department may request additional information to determine the scope of the appeal. The department may deny if there is not sufficient information to determine the action being appealed.

**7.5(3) *Filing date.*** The date of filing for appeal requests sent by regular mail shall be the date postmarked on the envelope sent to the department or, when a postmarked envelope is not available, on the date the appeal is stamped received by the agency. The date of filing for appeal requests sent electronically shall be determined by the date on which the electronic submission was completed.

**7.5(4) *Appeals that must be filed in writing.*** Appeal requests pertaining to foster care, adoption, state supplementary assistance, the autism support program, the Iowa individual disaster assistance program, the Iowa disaster case management program, sex offender risk assessment, record check evaluation, child care registered or nonregistered homes, child abuse, dependent adult abuse or child support must be made in writing.

**7.5(5) *Department's responsibilities.*** Unless the appeal is voluntarily withdrawn, the department worker or agent responsible for representing the department at the hearing shall:

*a.* Within one working day of receipt of an appeal request, forward Form 470-0487 or 470-0487(S), Appeal and Request for Hearing; the written appeal; the postmarked envelope, if there is one; and a copy of the notification of the proposed adverse action to the appeals section.

b. Within ten days of the receipt of the appeal, forward a summary and supporting documentation of the worker's or agent's factual basis for the proposed action to the appeals section. When practicable, the summary may also include suggested relevant legal authorities.

c. Copies of all materials sent to the appeals section or the presiding officer to be considered in reaching a decision on the appeal are to be provided to the appellant at the same time as the materials are sent to the appeals section or the presiding officer.

ITEM 7. Rescind rule 441—7.6(17A) and adopt the following **new** rule in lieu thereof:

**441—7.6(17A) Prehearing procedures.**

**7.6(1) Acknowledgment of appeal.** When the appeals section receives a request for appeal, it shall send acknowledgment of the receipt of the appeal to the parties to the appeal. For appeals regarding child abuse, all subjects other than the person alleged responsible (party-in-interest) will be notified of the opportunity to file a motion to intervene as provided in Iowa Code section 235A.19.

**7.6(2) Acceptance or denial of appeal.** The appeals section will determine with reasonable promptness whether the party-in-interest is entitled to a contested case hearing under rule 441—7.3(17A). If a request is accepted, the appeals section will certify the appeal to DIA and designate the issues on appeal pursuant to subrule 7.6(3). If a request for a contested case hearing is denied, the appeals section will provide written notice of and the reasons for the denial. On or before the thirtieth day following the denial, the individual requesting the appeal may provide additional information related to the individual's asserted right to a contested case hearing and request reconsideration of the denial.

**7.6(3) Designation of issues for appeal.**

*a. Initial designation.* After determining that the party-in-interest is entitled to a contested case hearing, the appeals section will designate the issues to be decided at the contested case hearing. The issues identified may include all issues raised by the appellant and may also include additional issues identified by the appeals section. The issues designated shall be certified to DIA and be identified in the notice of hearing issued pursuant to subrule 7.6(5).

*b. Additional designation of issues.* If any party believes additional issues should be designated, on or before the tenth day following the date of the notice of hearing, the party shall identify those additional issues. The presiding officer shall determine whether all issues have properly been preserved. If the hearing is within ten days of the date of the notice of hearing, the party shall identify any additional issues at the hearing.

**7.6(4) Group hearings regarding medical assistance.** The appeals section may respond to a series of related, individual requests for hearings regarding medical assistance by consolidating individual hearings into a single group hearing where the sole issue is based on state or federal law or policy. An appellant scheduled for a group hearing may withdraw and request an individual hearing.

**7.6(5) Notice of hearing.**

*a. Issuance of hearing notice.* Except as provided in paragraph 7.6(5)“b,” DIA shall send notice to the parties of the appeal at least ten calendar days in advance of the hearing setting forth the date, time, method, and place of the hearing; that evidence may be presented orally or documented to establish pertinent facts; that the parties may bring and question witnesses and refute testimony; and that the parties may be represented by others,

including an attorney, at the parties' own cost and as subject to state and federal law. Notice shall be mailed by first-class mail, postage prepaid, and addressed to the appellant at the appellant's last-known address.

*b. Intentional program violation hearing notices.* DIA shall send notices of hearing regarding alleged intentional program violations at least 30 days in advance of the hearing date. The notices under this paragraph shall otherwise comply with the requirements of paragraph 7.6(5) "a."

**7.6(6) Appellant's right to department's case file.** Prior to and during the contested case hearing, the department must provide enrollees or their authorized representative with the opportunity to examine the content of the appellant's case file, if any, and all documents and records to be used by the department at the hearing.

**7.6(7) Informal conference.** The purpose of the informal conference is to provide information as to the reasons for the intended adverse action, to answer questions, to explain the basis for the adverse action or position, and to provide an opportunity for the appellant to examine the contents of the case record.

When requested by the appellant, an informal conference with a representative of the department or one of its contracted partners, including a managed care organization, shall be held as soon as possible after the appeal has been filed. An appellant's representative shall be allowed to attend and participate in the informal conference, unless precluded by federal rule or state statute.

An informal conference need not be requested for the appellant to examine the contents of the case record.

ITEM 8. Rescind rule 441—7.7(17A) and adopt the following **new** rule in lieu thereof:

**441—7.7(17A) Timelines for contested case hearings.**

**7.7(1) Medical assistance.** In cases involving the determination of medical assistance, the contested case hearing shall be held within a time frame such that the final administrative action is timely pursuant to 42 CFR 431.244(f).

**7.7(2) Community spouse resource allowance.** In cases involving the determination of the community spouse resource allowance, the hearing shall be held within 30 days of the date of the appeal request.

**7.7(3) Sex offender risk assessment.** In cases involving an appeal of a sex offender risk assessment, the hearing or administrative review shall be held within 30 days of the date of the appeal request.

ITEM 9. Rescind rule 441—7.8(17A) and adopt the following **new** rule in lieu thereof:

**441—7.8(17A) Contested case hearing procedures.**

**7.8(1) Method.** Contested case hearings may be conducted via telephone or videoconference. Upon request of a party to the appeal or order of the presiding officer, the contested case hearing shall be conducted in person.

**7.8(2) Evidence.**

*a.* The parties to a contested case hearing shall be permitted to:

- (1) Bring witnesses,
- (2) Submit competent evidence to establish all pertinent facts and circumstances,
- (3) Present arguments without undue interference,
- (4) Question or refute any testimony or evidence, including through cross-examination,

and

(5) Respond to evidence and arguments on all issues.

*b.* Evidence shall be received or excluded as provided in Iowa Code section 17A.14.

**7.8(3)** *Right to counsel.* Parties to an appeal shall be permitted to be represented by counsel at the parties' own expense.

**7.8(4)** *Self-represented appellants.* The presiding officer shall, at the officer's discretion, provide reasonable assistance to self-represented appellants. The presiding officer must, however, ensure that such assistance does not impact the independence and fairness of the contested case hearing process.

**7.8(5)** *Closed to public.* Contested case hearings are closed to the public, and unless otherwise provided by state or federal law, only the parties, their representatives, permissible intervenors, and witnesses may be present for a contested case hearing in the absence of mutual agreement of the parties.

**7.8(6)** *Administration of appeals.* Except as otherwise provided in this chapter or other applicable federal or state law, discretion in the conduct and administration of appeals is vested in the contested case hearing presiding officer.

**7.8(7)** *Contested cases with no factual dispute.* If the parties in a contested case agree that there is no dispute of material fact, the parties may present all admissible evidence either by stipulation, or as otherwise agreed, in lieu of an evidentiary hearing. If an agreement is reached, the parties shall jointly submit a schedule for submission of the record, briefs and oral arguments to the presiding officer for approval.

ITEM 10. Rescind rule 441—7.9(17A) and adopt the following **new** rule in lieu thereof:

**441—7.9(17A) Miscellaneous rules governing contested case hearings.**

**7.9(1) *Ex parte communication.*** Ex parte communications between the presiding officer and person or party in connection with any issue of fact or law in the contested case proceeding is prohibited except as permitted by Iowa Code § 17A.17. All of the provisions of Iowa Code § 17A.17 apply.

**7.9(2) *Default.*** If a party fails to appear at a scheduled hearing or prehearing conference without good cause as determined by the presiding officer, the party's appeals may be denied and dismissed or may be heard and ruled upon, consistent with Iowa Code section 17A.12. Defaulting parties may file a timely motion to vacate, which shall be granted if the presiding officer determines good cause has been shown.

**7.9(3) *Withdrawal.*** An appellant may submit a withdrawal of a fair hearing request at any time prior to hearing through any of the methods identified in subrule 7.5(1), except for programs listed in subrule 7.5(4). For programs listed in subrule 7.5(4), a written request may be submitted via the department's website, by mail, in person, or through other commonly available electronic means (such as email or facsimile). Unless otherwise provided, a withdrawal shall be with prejudice.

**7.9(4) *Medical assessment.*** For Medicaid enrollees engaged in an appeal involving medical issues, the department may request, at the department's own expense, that the appellant submit to an appropriate medical assessment. The presiding officer shall order such assessment upon sufficient showing of necessity.

**7.9(5) *Interpreters.*** The department shall provide translation and interpretation services to appellants not fluent in English. Appellants are entitled to have an interpreter present during appeal hearings. In all cases when an appellant is illiterate or semiliterate, the presiding officer shall advise the appellant of their rights to the satisfaction of the

appellant's understanding.

**7.9(6) *Persons living with disabilities.*** Persons living with disabilities shall be provided assistance through the use of auxiliary aids and services at no cost to the individual in accordance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

ITEM 11. Rescind rule 441—7.10(17A) and adopt the following **new** rule in lieu thereof:

**441—7.10(17A) Proposed decision.**

**7.10(1) *Contents.*** The presiding officer shall issue a written proposed decision to all parties clearly identifying the issues on appeal, holding, findings of fact, conclusions of law, and order. The findings of fact shall cite and be based exclusively on the record as defined by Iowa Code section 17A.12(6). The conclusions of law shall be limited to the contested issues of fact, policy or law and shall identify the specific provisions of law that support the ultimate conclusion.

**7.10(2) *Access to record.*** After receiving the proposed decision, appellants shall be given reasonable access to the record at a convenient place and time.

ITEM 12. Rescind rule 441—7.11(17A) and adopt the following **new** rule in lieu thereof:

**441—7.11(17A) Director's review.**

**7.11(1) *Time.*** Parties, including the department, may appeal the proposed decision to the director.

*a.* A request for director's review shall be in writing and postmarked or received within

ten calendar days of the date on which the proposed decision was issued, except as provided for under paragraph 7.11(1)“*b.*” A request for director’s review may be accompanied by a brief written summary of the arguments in favor of director’s review.

*b.* A managed care organization appealing a proposed decision reversing an adverse benefit determination shall request director’s review within 72 hours from the date it received notice of the proposed decision.

**7.11(2)** *Grant or denial of review.* The department has full discretion to grant or deny a request for review. In addition, the director may initiate review of a proposed decision on the director’s own motion at any time on or before the tenth day following the issuance of the proposed decision.

When the department grants a request for director’s review, the appeals section shall notify the parties to the appeal of the review request and enclose a copy of the request. All other parties shall have ten calendar days from the date of notification to submit further written arguments or objections for consideration upon review.

**7.11(3)** *Cross-appeal.* When a party requests director’s review in accordance with subrule 7.11(1), the remaining parties shall have ten calendar days from that date to submit cross-requests for director’s review. The party originally seeking director’s review shall have ten calendar days from the date of the cross-request for director’s review to submit further written arguments or objections for consideration upon review.

**7.11(4)** *Limited record.* Director’s review shall be limited to the issues and record before the contested case hearing presiding officer.

**7.11(5)** *Oral arguments.* Upon specific request, the director may, at the director’s discretion, permit parties to present oral arguments with the parties’ requests for director’s

review.

ITEM 13. Rescind rule 441—7.12(17A) and adopt the following **new** rule in lieu thereof:

**441—7.12(17A) Final decisions.**

**7.12(1) *No appeal or denial of director review.*** If there is no timely appeal from or review of the proposed decision, the presiding officer’s proposed decision becomes the final decision of the agency.

**7.12(2) *Timelines.***

*a.* The department or director will issue a final decision within the timelines prescribed by federal or state law. For all appeals for which there is no federal or state timeliness standard, the department or director will issue a final decision on or before the ninetieth day from the date the department receives an appeal request.

*b.* Except as otherwise provided by state or federal law, the time frames for a final decision provided under this rule may be tolled when:

- (1) The appellant requests a delay;
- (2) The appellant fails to take a required action; or
- (3) There is an administrative or other emergency beyond the department’s control.

*c.* DIA shall document in the record the reasons for any delay and the requesting party.

**7.12(3) *Written notice of final decision.*** The parties to the appeal shall be provided written notice of the department’s final decision. The department shall also notify the appellant of the appellant’s right to seek judicial review, where applicable.

ITEM 14. Rescind rule 441—7.13(17A) and adopt the following **new** rule in lieu thereof:

**441—7.13(17A) Expedited review.**

**7.13(1) Expedited review criteria.** Appellants to a medical assistance appeal may, at any time, file with the department a request for expedited review of the appeal. Expedited review shall be granted when the department determines, or a provider acting on behalf or in support of an appellant indicates, that taking the time for a standard resolution could seriously jeopardize the party-in-interest's life, physical or mental health, or ability to attain, maintain, or regain maximum function.

**7.13(2) Managed care expedited proceedings.**

*a.* If the appellant is granted an expedited review pursuant to subrule 73.12(2), all subsequent proceedings shall also be expedited without an additional request if the appeal request indicates that the managed care organization appeal was expedited and provides the basis for expedited relief.

*b.* When review is expedited pursuant to paragraph 7.13(2) "a," the presiding officer shall issue a proposed decision as expeditiously as the enrollee's health condition requires, but no later than three working days after the department receives from the managed care organization the case file and information for any appeal of a denial of a service that, as indicated by the managed care organization:

(1) Meets the criteria for expedited resolution but was not resolved within the time frame for expedited resolution; or

(2) Was resolved within the time frame for expedited resolution but reached a decision wholly or partially adverse to the enrollee.

**7.13(3) Medicaid eligibility, nursing facility transfers or discharges, or preadmission and annual resident review expedited proceedings.** For expedited appeals related to

Medicaid eligibility, nursing facility transfers or discharges, or preadmission and annual resident review requirements, the presiding officer shall issue a proposed decision as expeditiously as possible, but no later than seven working days after the department receives a request for expedited fair hearing.

**7.13(4)** *Medicaid-covered benefits or services expedited proceedings.* For expedited appeals related to Medicaid-covered benefits or services, the presiding officer shall issue a proposed decision as expeditiously as possible, but no later than provided in paragraph 7.13(2)“b.”

**7.13(5)** *Final decision for expedited proceeding.* The department shall issue its final decision in accordance with this rule, except as provided by subrule 7.12(2).

**7.13(6)** *Notification if expedited relief is granted or denied.* The department shall notify the appellant as expeditiously as possible whether the request for expedited relief is granted or denied. Such notice must be provided orally or through electronic means to the extent consistent with federal and state law. If oral notice is provided, the department shall follow up with written notice, which may be through electronic means to the extent consistent with federal and state law.

ITEM 15. Rescind rule 441—7.14(17A) and adopt the following **new** rule in lieu thereof:

**441—7.14(17A) Effect.**

**7.14(1)** If the contested case hearing presiding officer’s proposed decision is favorable to an enrollee in a Medicaid appeal, the department must promptly make corrective payments retroactive to the date an incorrect action was taken, and, if appropriate, provide for admission or readmission of an individual to a facility. If the presiding officer reverses

a decision of a managed care organization to deny, limit, or delay services that were not furnished while the appeal was pending, the managed care organization must authorize or provide the disputed services promptly and as expeditiously as the enrollee's health condition requires, but no later than 72 hours from the date the managed care organization receives notice reversing the determination.

**7.14(2)** Unless there is contravening federal or state law, all final decisions shall be put into effect within seven days of the issuance of the final decision.

ITEM 16. Rescind rule 441—7.15(17A) and adopt the following **new** rule in lieu thereof:

**441—7.15(17A) Calculating time.** In computing any time period specified in this chapter, the period:

1. Excludes the day of the event that triggers the period;
2. Includes every day of the time period (including Saturdays, Sundays, and holidays on which the department is closed); and
3. Includes the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

ITEM 17. Rescind rule 441—7.16(17A) and adopt the following **new** rule in lieu thereof:

**441—7.16(17A) Authorized representatives.**

**7.16(1) Regulations.** The provisions of this rule only apply to the extent the standards expressed in this rule are not in conflict with other state or federal law.

**7.16(2) Designation of authority.** Legally recognized delegations of authority, such as guardianships, applicable designations of power of attorney, or similar designations, shall be sufficient for a delegate to serve as authorized representative under this chapter. A person who is not designated a legally recognized delegation of authority but who otherwise seeks to act as an authorized representative for an individual in an appeal under this chapter shall provide a written, signed designation of authority to the department with the request for appeal. The designation must provide the scope of the representation, applicable waivers for the release of confidential information, and any temporal or other limitations on the scope of representation. An authorized representative of a party-in-interest only represents the party-in-interest and has no independent right to appeal by virtue of the authorized representative's representation.

**7.16(3) Written designation.** For persons seeking to act as authorized representative of a party-in-interest in a Medicaid managed care appeal, the authorized representative's written designation of authority pursuant to subrule 7.16(2) shall be Form 470-5526, Authorized Representative for Managed Care Appeals.

**7.16(4) Appearance by attorney.** Legal counsel appearing on behalf of any person in a proceeding under this chapter shall enter an appropriate written appearance identifying the legal counsel.

ITEM 18. Rescind rule 441—7.17(17A) and adopt the following **new** rule in lieu thereof:

**441—7.17(17A) Continuation and reinstatement of benefits.**

**7.17(1) Programs for which no federal or state law applies.** For all assistance programs for which there is no contravening federal or state law, benefits or services shall not be

suspended, reduced, restricted, or discontinued, nor shall a license, registration, certification, approval, or accreditation be revoked or other adverse action taken pending a final decision when:

- a.* An appeal is filed before the effective date of the intended action; or
- b.* The appellant requests a hearing within ten days of receipt of a notice to suspend, reduce, restrict, or discontinue benefits or services. The date on which the notice is received is considered to be five days after the date on the notice, unless the appellant shows the notice was not received within the five-day period.

**7.17(2)** *Sole issue is state or federal law or policy.* Benefits or services continued pursuant to subrule 7.17(1) may be suspended, reduced, restricted, or discontinued if the presiding officer determines at the contested case hearing that the sole issue is one of state or federal law or policy and the department has notified the enrollee in writing that services are to be suspended, reduced, restricted, or discontinued pending the proposed decision.

**7.17(3)** *Recoup cost of services or benefits.* The department or managed care organization may recoup the cost of benefits or services provided pursuant to this chapter if the adverse action appealed from is affirmed, consistent with state and federal law.

ITEM 19. Rescind rule 441—7.18(17A) and adopt the following **new** rule in lieu thereof:

**441—7.18(17A) Emergency adjudicative proceedings.**

**7.18(1)** *Necessary emergency action.* When and to the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with state and federal law, a contested case hearing presiding officer may issue a written order to suspend a license in whole or in part, order the cessation of any continuing activity, order

affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order. In determining the necessity of such an action, the presiding officer shall consider factors including, but not limited to, the following:

*a.* Whether there has been sufficient investigation and evidentiary support to ensure the order is proceeding based on reliable information;

*b.* Whether the specific circumstances giving rise to the potential order have been specifically identified and determined to be continuing;

*c.* Whether the person who is required to comply with the emergency adjudicative order may continue to engage in other activities without risk of immediate danger to the public health, safety, or welfare;

*d.* Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and

*e.* Whether the specific action contemplated is necessary to avoid the immediate danger.

**7.18(2) *Issuance of order.*** An emergency adjudicative order shall contain, or shall be expeditiously followed by, a written analysis, including findings of fact, conclusions of law, and policy reasons to justify the order. The agency shall provide written notice that best ensures prompt reliable delivery. Such order shall be immediately delivered to the persons required to comply with the order.

**7.18(3) *Completion of proceedings.*** Upon issuance of an order under this rule, the department shall proceed as quickly as reasonably practicable to complete any proceedings that would be required if the matter did not involve an immediate danger. An order issued under this rule shall include notice of the date on which proceedings under this chapter are

to be completed. After issuance of an order under this rule, continuance of further proceedings under this chapter shall only be granted in compelling circumstances upon application in writing. Before issuing an emergency adjudicative order, the presiding officer shall consider factors including, but not limited to, the following:

*a.* Whether there has been sufficient investigation and evidentiary support to ensure the order is proceeding based on reliable information;

*b.* Whether the specific circumstances giving rise to the potential order have been specifically identified and determined to be continuing;

*c.* Whether the person who is required to comply with the emergency adjudicative order may continue to engage in other activities without risk of immediate danger to the public health, safety, or welfare;

*d.* Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and

*e.* Whether the specific action contemplated is necessary to avoid the immediate danger.

ITEM 20. Rescind rules **441—7.19(17A)** to **441—7.21(17A)**.

ITEM 21. Rescind rules **441—7.23(17A)** and **441—7.24(17A)**.

ITEM 22. Amend rule 441—7.41(17A) as follows:

**441—7.41(17A) Scope, bidder and applicability.** The rules in Division II apply to appeals based on the department’s competitive procurement bid process. A bidder is an entity that submits a proposal in response to a solicitation issued through the department of human services’ competitive procurement process.

ITEM 23. Amend subrule 7.43(6) as follows:

**7.43(6) Method of hearing.** The department of inspections and appeals shall determine whether the appeal hearing is to be conducted in person, by videoconference or by teleconference call. The parties to the appeal may participate from multiple sites for videoconference or teleconference hearings. Any appellant is entitled to an in-person hearing if the appellant requests one. All parties shall be granted the same rights during a teleconference hearing as specified in rule ~~441—7.13(17A)~~ 441—7.8(17A).

ITEM 24. Amend rule 441—7.46(17A) as follows:

**441—7.46(17A) Request for review of the proposed decision.** A request for review of the proposed decision shall follow the provisions outlined in ~~subrules 7.16(5) to 7.16(8)~~ rule 441—7.11(17A).

ITEM 25. Amend subrule 7.47(2) as follows:

**7.47(2) Presiding officer.** Appeal hearings shall be conducted by an administrative law judge appointed by the department of inspections and appeals ~~pursuant to rule 441—7.3(17A)~~.

ITEM 26. Amend subrule 7.47(3) as follows:

**7.47(3) Rights of appellants during hearings.** All rights afforded appellants at rule ~~441—7.13(17A)~~ 441—7.8(17A) shall apply.

ITEM 27. Amend subrule 7.48(1) as follows:

**7.48(1)** The appeal record shall consist of all items specified in ~~subrule 7.16(1)~~ Iowa Code section 17A.16.

ITEM 28. Amend rule 441—7.50(17A) as follows:

**441—7.50(17A) Ex parte communications.** The rules regarding ex parte communications listed at ~~441—7.18(17A)~~ specified in subrule 7.9(1) and Iowa Code section 17A.17 apply.

ITEM 29. Amend rule 441—7.51(17A) as follows:

**441—7.51(17A) Right of judicial review.** The rules regarding right of judicial review listed at ~~441—7.20(17A)~~ specified in subrule 7.12(3) and Iowa Code section 17A.19 apply.



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

Name of Program Specialist Denise Dutton	Telephone Number 515-242-6302	Email Address ddutton@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:

In light of the State's transition to Medicaid managed care, and in an ongoing effort to improve Department of Human Services' (DHS) processes and accessibility to consumers, the department has revised its appeals rules with the following goals in mind: simplification, uniformity, clarification of scope, clearly defining appeal rights, and protecting pro se litigants. In this effort, the Department has sought to eliminate unnecessary redundancies and ambiguities, streamline processes across programs where permissible under state and federal law, explicitly clarify the circumstances in which contested case hearings are granted, ensure conformity with substantive federal and state standards, and inclusion of procedural protections for pro se litigants.

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

Iowa Code 17A, Iowa Code 217.6, 7 CFR 273.15, 7 CFR 273.16, and 42 CFR Part 431, subpart E and Part 438, subpart F.

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

No one should be adversely impacted by these rule changes. The general public, particularly participants in DHS programs, will benefit as a result of the increase clarity of the rules, the streamlining of processes, and the vesting in DHS of the right to identify the issues to be adjudicated in a contested case hearing, among other changes.

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

These amendments do not include waiver provisions because they confer benefits on those affected and are generally required by federal law that does not allow for waivers. Individuals may request a waiver under the Department's general rule on exceptions at Iowa Admin. Code 441—1.8.

5. What are the likely areas of public comment?

Comments are anticipated to be largely positive. The current rules are antiquated and convoluted in light of the evolving purpose and function of the Department. The changes are defined to benefit DHS program participants in their administrative appeals the most. Advocates for expanded readings of appeal rights may object to the Department's clarification that the scope of administrative appeals is in conformity with the requirements of Iowa Code Chapter 17A.

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.)

These rule changes have no impact on private-sector jobs and employment opportunities in Iowa.



## Administrative Rule Fiscal Impact Statement

Date: October 22, 2018

**Agency:** Human Services

**IAC citation:** 441 IAC 7

**Agency contact:** Denise Dutton

### Summary of the rule:

In light of the State's transition to Medicaid managed care, and in an ongoing effort to improve Department of Human Services' (DHS) processes and accessibility to consumers, the department has revised its appeals rules with the following goals in mind: simplification, uniformity, clarification of scope, clearly defining appeal rights, and protecting pro se litigants. In this effort, the Department has sought to eliminate unnecessary redundancies and ambiguities, streamline processes across programs where permissible under state and federal law, explicitly clarify the circumstances in which contested case hearings are granted, ensure conformity with substantive federal and state standards, and inclusion of procedural protections for pro se litigants.

*Fill in this box if the impact meets these criteria:*

- No fiscal impact to the state.
- Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
- Fiscal impact cannot be determined.

### Brief explanation:

Budget Analysts must complete this section for ALL fiscal impact statements.

There is no fiscal impact to the state. These rules should not result in any requirement changes for DHS or its clients.

*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:



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

None anticipated.

Agency representative preparing estimate: Rob Beran

Telephone number: 281-6188

SB  
6-23  
HDA

Comments and Responses on ARC 4674C  
Chapter 7, Appeals and Hearings  
Received October 15, 2019

The following person/organization provided written comments, which are included in the summary below:

1. Elizabeth Norris, Senior Staff Attorney, Iowa Legal Aid

**COMMENT 1:**

Respondent questioned why the proposed regulations removed all mention of the Appeals Advisory Committee from the rules chapter and wondered if the committee was dissolved or had been merged with a different group.

**RESPONSE 1:**

The Appeals Advisory Committee acted as an initial screening device for the Director and had the authority to recommend that the Director review a proposed decision. The committee consisted of central office staff from each program area that would meet typically once a week to discuss each appeal. When a Department employee disagreed with a Proposed Decision and wanted to request a Director review, the employee would need to contact the committee member responsible for their program area and discuss the request. The committee member would then present the scenario to the committee who recommended the review either proceed or deny the request for review.

Managed care organizations must submit their review requests within 72 hours of the issuance of the Proposed Decision. This strict timeframe made it extremely difficult for the managed care organization and committee members to connect within this short timeframe. Committee members were asked to drop everything they were doing to attend emergency meetings to discuss each review based on the short timeframe. This practice quickly became unreasonable for committee members to handle. Based on the nature of the issues that managed care organizations deal with, committee members from other areas of the Department (Food Assistance, Cash Assistance, Child Welfare, etc.) also did not feel comfortable making recommendations about issues of a medical nature.

To streamline the process, the Appeals Section established a new protocol for Department staff and managed care organizations to request Director reviews. Review requests are submitted directly to the DHS Appeals Section once approved by a supervisor. This better aligns with the process used by appellants or their representatives when submitting a review request. The new process was piloted for six months and determined to be a success. This process is now fully implemented by the

Department. The Appeals Advisory Committee has been dissolved, so the references to the Appeals Advisory Committee have been removed. Also, the process for Department staff to request a review is an internal process, therefore, it does not need to be in the rules. No changes are made based on this comment.

**COMMENT 2:**

Respondent questioned if the proposed changes in 441 IAC 7.3(1)(b) regarding a party-in-interest having an “ongoing, specific and personal interest in the outcome of the contested case hearing” meant to deal with third parties filing appeals on behalf of individuals, or something else entirely. Respondent requested clarification for the language change.

**RESPONSE 2:**

The proposed changes are not intended to deal with third parties filing appeals on behalf of individuals. The purpose is to ensure that appeals are limited to live issues by an aggrieved party. No changes are made based on this comment.

**COMMENT 3:**

Respondent questioned what problem the Department was trying to address with the proposed language in subrule 7.3(2) dealing with contractual rights not being subject to a contested case hearing. Respondent questioned if this was a replacement for current language at subrule 7.5(2)(a)(22) regarding hearings not being granted when notice has been issued by a managed care organization to a provider regarding a claims dispute issue. If it was intended as a replacement, the respondent questioned why the proposed language is broader than the current language.

**RESPONSE 3:**

The proposed changes are not intended to deal with the denial of a hearing regarding a provider claims dispute issue. The purpose of the proposed language is to clarify contract issues are not subject to an appeal through the Department’s appeals process. Disputes regarding contract issues between the appellant and another party are handled within the court system. No changes are made based on this comment.

**COMMENT 4:**

The respondent is concerned about the removal of the definition of an “Aggrieved person” and rule 7.2(17A), Conditions of an aggrieved person, from the proposed regulations. Respondent indicates this is concerning because the proposed regulations do not spell out when a person can file an appeal and requests the Department retain an open-ended list of appealable issues.

**RESPONSE 4:**

The proposed regulations are consistent with Iowa Code 17A, which provides for administrative appeal hearings only in contested cases and defines a contested case as “a proceeding including but not restricted to ratemaking, price fixing, and licensing in which the legal rights, duties or privileges of a party are required by Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing.” The conditions provided in the published rule were both over-inclusive and under-inclusive. The proposed regulations make clear that persons entitled to an administrative appeal hearing by a Constitution or a statute will receive such a hearing. No changes are made based on this comment.

**COMMENT 5:**

The respondent questioned why the definition of an “Appeal” was removed. The current definition refers to Iowa Code Chapter 17A, but the proposed language only references Chapter 17A with regarding to evidence and findings of fact in a Proposed Decision. The respondent recommended the reference to Iowa Code Chapter 17A be retained.

**RESPONSE 5:**

The definition of an “Appeal” was overly broad and allowed for an expanded meaning of a contested case as defined in Iowa Code Chapter 17A. No changes are made based on this comment.

**COMMENT 6:**

Respondent questioned why all references to the “Appeals advisory committee” were removed from the proposed regulations.

**RESPONSE 6:**

The Appeals Advisory Committee acted as an initial screening device for the Director and had the authority to recommend that the Director review a proposed decision. The committee consisted of central office staff from each program area that would meet typically once a week to discuss each appeal. When a Department employee disagreed with a Proposed Decision and wanted to request a Director review, the employee would need to contact the committee member responsible for their program area and discuss the request. The committee member would then present the scenario to the committee who recommended the review either proceed or deny the request for review.

Managed care organizations must submit their review requests within 72 hours of the issuance of the Proposed Decision. This strict timeframe made it extremely difficult for the managed care organization and committee members to connect within this short

timeframe. Committee members were asked to drop everything they were doing to attend emergency meetings to discuss each review based on the short timeframe. This practice quickly became unreasonable for committee members to handle. Based on the nature of the issues that managed care organizations deal with, committee members from other areas of the Department (Food Assistance, Cash Assistance, Child Welfare, etc.) also did not feel comfortable making recommendations about issues of a medical nature.

To streamline the process, the Appeals Section established a new protocol for Department staff and managed care organizations to request Director reviews. Review requests are submitted directly to the DHS Appeals Section once approved by a supervisor. This better aligns with the process used by appellants or their representatives when submitting a review request. The new process was piloted for six months and determined to be a success. This process is now fully implemented by the Department. The Appeals Advisory Committee has been dissolved, so the references to the Appeals Advisory Committee have been removed. Also, the process for Department staff to request a review is an internal process, therefore, it does not need to be in the rules. No changes are made based on this comment.

**COMMENT 7:**

Respondent is troubled by the removal of the definition of “Due process.” Due process still applies to the programs that the Department administers, whether or not it is mentioned in this chapter. However, the respondent recommends retaining mention of due process in the proposed Chapter 7 as an acknowledgment of its applicability to appeals and a guide to those who reference this chapter.

**RESPONSE 7:**

The Department agrees that due process is required for contested cases, but the entitlement to due process is created by a Constitution or statute, not by the regulations. The reference to due process in the existing 7.8(7) cannot expand or contract the entitlement to due process and, therefore, is omitted. No changes are made based on this comment.

**COMMENT 8:**

The proposed regulations removed the definition of an “Electronic case record”. While the respondent does not find the elimination of the definition as a problem, the respondent wants to ensure the Department will continue to allow the appellant to examine any electronic case record that exists in order to prepare for the hearing.

## **RESPONSE 8:**

Proposed rule 7.6(6) provides the appellant's right to view the Department's case file. The appellant's right to view the electronic case record is not affected by eliminating the definition from the Chapter.

## **COMMENT 9:**

The proposed regulations removed the definition of an "Ex parte communication". While the respondent did not provide any specific reasons as to why they disagreed with the removal of the definition, the respondent did indicate there were concerns with the proposed subrule 7.9(1) regarding ex parte communications.

## **RESPONSE 9:**

As there were no issues with the removal of the definition of "Ex parte communication," no changes are made based on this comment. The respondent's concerns regarding subrule 7.9(1) are addressed in Comment and Response 28.

## **COMMENT 10:**

As the informal conference is an important tool in efficiently resolving appealable issues and narrowing the issues to be heard during the appeal hearing itself, the respondent was concerned about the removal of references to an informal conference. Respondent argues this is both a cost-saving measure for the State and a time-saver for appellants when issues are resolved at an informal conference. Respondent recommends the decision to remove the references be reconsidered.

## **RESPONSE 10:**

Based on the comments received Item 7 will be amended as follows:

Adopt a new subrule 7.6(7) as follows:

**7.6(7) Informal conference.** The purpose of the informal conference is to provide information as to the reasons for the intended adverse action, to answer questions, to explain the basis for the adverse action or position, and to provide an opportunity for the appellant to examine the contents of the case record.

When requested by the appellant, an informal conference with a representative of the department or one of its contracted partners, including a managed care organization, shall be held as soon as possible after the appeal has been filed. An appellant's representative shall be allowed to attend and participate in the informal conference, unless precluded by federal rule or state statute.

An informal conference need not be requested for the appellant to examine the contents of the case record.

**COMMENT 11:**

The proposed regulations removed the definition of a “Local office”. The respondent indicates the removal of the definition does not present a problem, however, the respondent requests the Department clarify that applicants and recipients of various programs and services can still go to their local office to file an appeal.

**RESPONSE 11:**

Proposed subrule 7.5(1) details the way a contested care hearing may be requested. An appellant may request an appeal via the Department’s website, by telephone, mail, in person or through other commonly available electronic means. An appeal may be made to the Appeals Section, to the local office or to the Department office that took the adverse action. No changes are made based on this comment.

**COMMENT 12:**

Respondent is concerned about the removal of references to a prehearing conference as the conference is valuable in preparing for hearings and pursuing the potential for settlement, which saves time and expense for both the state and appellants.

**RESPONSE 12:**

Proposed rule 7.2(17A) indicates that in the absence of an applicable rule in this chapter, the Department of Inspections and Appeals rules found at 481-Chapter 10 govern Department of Human Services (DHS) appeals. Prehearing conferences are addressed at 481 IAC 10.16. No changes are made based on this comment.

**COMMENT 13:**

The definition of “Reconsideration” was removed from the proposed rules, but the term is still utilized with regard to the Iowa individual disaster assistance program and Iowa disaster case management program, as well as in the new subrule 7.6(2) dealing with acceptance or denial of appeal. As the concept of a reconsideration process still applies with respect to certain other types of appealable issues, the respondent recommends the definition be retained.

**RESPONSE 13:**

The original definition was circular and did not accurately reflect when reconsideration was allowed. The exclusion of the definition does not negate the reconsideration process, when allowed. No changes are made based on this comment.

**COMMENT 14:**

Respondent indicates the term “timely notice” does not appear in anywhere in the proposed regulations, but acknowledges the Department has proposed a new Chapter 16 which addresses timely and adequate notices.

**RESPONSE 14:**

There are no issues with the removal of the term “timely notice.” Therefore, no changes are made based on this comment.

**COMMENT 15:**

Respondent approves of the addition of the definition of “Adverse benefit determination” as it comports with federal Medicaid regulations.

**RESPONSE 15:**

There are no issues with the addition of the term “Adverse benefit determination.” Therefore, no changes are made based on this comment.

**COMMENT 16:**

Respondent believes the removal of the current rule 7.2, Conditions of an aggrieved person, could cause confusion as it provided the circumstances in which someone can file an appeal. Respondent also expressed concern regarding the removal of the list of appealable actions for HIPAA requests.

**RESPONSE 16:**

Iowa Code 17A provides for administrative appeal hearings only in contested cases and defines a contested case as “a proceeding including but not restricted to ratemaking, price fixing, and licensing in which the legal rights, duties or privileges of a party are required by Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing.” The conditions provided in the current rule are both over-inclusive and under-inclusive. The proposed regulations make clear that persons entitled to an administrative appeal hearing by a Constitution or a statute will receive such a hearing. No changes are made based on this comment regarding who is an aggrieved person.

**COMMENT 17:**

Respondent is concerned that the proposed regulations eliminated a list of issues that can be appealed and replaced it with a general reference to being entitled to a contested case hearing. While this may be an appropriate catch-all, the respondent

believes it may lead some individuals to forego an appeal they would have otherwise initiated.

The proposed rules indicate a “party-in-interest has an ongoing, specific and personal interest in the outcome of the contested case hearing.” Respondent indicates this addition appears to be an attempt to determine standing in an appeal, which is a complicated issue and one that is often resolved on appeal to a higher court. If an appeal is denied, the respondent recommends that the Department allow individuals to appeal the denial and present the issue to an Administrative Law Judge.

Proposed subrule 7.3(2) regarding contractual rights not being subject to a contested case hearing seems to target Medicaid providers. The respondent argues the proposed language is broader than the language in the current subrule 7.5(2)(a)(22) regarding provider claims disputes with a managed care organization.

Also, current subrule 7.5 contains a long list of circumstances under which a hearing will not be granted. This list is missing from the proposed rules and was replaced by a more generic reference.

#### **RESPONSE 17:**

The new regulations are consistent with Iowa Code 17A, which provides for administrative appeal hearings only in contested cases and defines a contested case as “a proceeding including but not restricted to ratemaking, price fixing, and licensing in which the legal rights, duties or privileges of a party are required by Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing.” The “Conditions of an aggrieved person” is both over-inclusive and under-inclusive. The proposed regulations make clear that persons entitled to administrative appeal hearing by a Constitution or a statute will receive such a hearing.

The purpose of the “party-in-interest has an ongoing, specific and personal interest in the outcome of the contested case hearing” requirement is to ensure that the person filing the appeal has an interest in the outcome of the appeal. This is already a requirement and the rule clarifies that requirement.

The proposed changes are not intended to deal with the denial of a hearing regarding a provider claims dispute with a managed care organization. The purpose of the proposed language is to clarify contract issues are not subject to an appeal through the Department’s appeals process. Disputes regarding contract issues between the appellant and another party are handled within the court system.

The long list of circumstances under which a hearing will not be granted was removed from the proposed regulations. This was done to be consistent with Iowa Code 17A. The list of circumstances when a hearing will not be granted in the existing rule 7.5(2)

either include circumstances that are not contested cases or that fall within other well-accepted doctrines for denial of a hearing, such as issue preclusion or mootness. The list of circumstances in the existing rule runs the risk of being both over-inclusive and under-inclusive. No changes are made based on this comment.

**COMMENT 18:**

Respondent is concerned with the removal of the language concerning a presiding officer not being connected in any way with the previous actions or decisions on which the appeal is made and requested this information be retained.

**RESPONSE 18:**

Maintaining a separate and impartial adjudicative function is a bedrock principle of administrative law and is a fundamental component of due process. Proposed rule 7.2(17A) indicates that in the absence of an applicable rule in this chapter, the Department of Inspections and Appeals rules found at 481-Chapter 10 govern Department of Human Services (DHS) appeals. Rules regarding when an administrative law judge shall withdraw from a contested case is addressed at 481 IAC 10.9(17A). No changes are made based on this comment.

**COMMENT 19:**

Respondent questioned if there were other remedies available to exhaust aside from those mentioned at proposed subrule 7.4(2) and current rules at 441 IAC 93.15 and 93.17 and requested the Department of Human Services specify what it means by exhausting all other appeal remedies available to the party-in-interest and cross-reference any other applicable regulations. The respondent also mentions the proposed subrule 7.4 excludes mention of appeals of PROMISE JOBS displacement and discrimination which is dealt with at current subrule 7.5(4)(f).

**RESPONSE 19:**

Proposed subrule 7.4(2) addresses exhaustion only with respect to Medicaid managed care organization claims, which are not covered in other program specific provisions. Proposed subrule 7.4(1) generally requires exhaustion in accordance with each program's specific procedures. Rather than include numerous cross-references, the reader is directed to the specific program. The provision has been amended to indicate that the appellant should refer to program specific procedures. Based on the respondent's comments, Item 5 is amended as follows:

Amend subrule 7.4(1) as follows:

**7.4(1) Exhaustion of remedies.** An appellant shall only be granted a contested case hearing if the appellant has exhausted all other appeal remedies available to the

party-in-interest. An appellant should refer to program specific provisions for the appropriate procedures applicable to specific programs.

**COMMENT 20:**

Respondent requests the current rules at 441 IAC 7.4(17A) regarding notification of hearing procedures be retained. This section requires the Department to make hearing procedures available in a variety of formats to all applicants, recipients, appellants and other interested groups and individuals. The Department is also required, at no cost, to provide interpretation, translation and taglines to individual who are limited English proficient and to provide auxiliary aids in accordance with the American with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act to individuals living with disabilities. The respondent believes the absence of similar language or requirements creates serious due process concerns.

**RESPONSE 20:**

The department agrees notification of hearing procedures should be retained.

Proposed subrule 7.9(5) indicates the department shall provide translation and interpretation services to appellants not fluent in English. This service is provided to appellants at no cost to them.

The department agrees that the language dealing with providing assistance to individuals with disabilities shall be retained.

Based on the comments received, Item 5 is amended as follows:

Adopt a new subrule 7.4(4) as follows:

**7.4(4) Written and oral notification.** The department shall advise each applicant and recipient of the right to appeal any adverse decision affecting the person's status.

a. Written notification of the following shall be given at the time of application and at the time of any agency action affecting the claim for assistance:

(1) The right to request a hearing.

(2) The procedure for requesting a hearing.

(3) The right to be represented by others at the hearing unless otherwise specified by statute or federal regulation.

b. Written notification shall be given on the application form and on all notices of decision.

Based on the comments received, Item 10 will be amended as follows:

Adopt a new subrule 7.9(6) as follows:

**7.9(6) Persons living with disabilities.** Persons living with disabilities shall be provided assistance through the use of auxiliary aids and services at no cost to the individual in accordance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

**COMMENT 21:**

Subrule 7.5(2) indicates the Department can request additional information to determine the scope of an appeal, if necessary. Respondent questions what will happen if the additional information is not provided.

Respondent requests the title of subrule 7.5(4) be changed from “Appeals must be filed in writing” to “Certain appeals must be filed in writing.” The respondent also requests a definition of “in writing” or requests a reference to subrule 7.5(1), which gives specific examples of “in writing.”

Respondent indicates the proposed subrule 7.5(5) requires the Department worker or agent responsible for representing the Department at the hearing to forward copies of all materials to the Appeals Section and to the presiding officer. Respondent requests the requirement apply to entities contracted with the Department, such as PROMISE JOBS and managed care organizations.

**RESPONSE 21:**

It is current practice that if the department is unable to determine the scope of an appeal, staff with the Appeals Section attempt to connect with the appellant either via telephone call or by written request. If a written request is sent, the appellant is given a standard 10 calendar days to provide a response to the inquiry. The letter clearly tells the appellant that if he or she fails to provide the requested information, the appeal request will be denied.

The department agrees with the respondent’s comment regarding changing the title of subrule 7.5(4), however a definition of “in writing” will not be added to the proposed rules. The term “in writing” is commonly understood and not all ways to request a hearing listed in subrule 7.5(1) are done in writing. An in person appeal request could be done orally or in writing.

The department agrees that subrule 7.5(5) applies to entities who contract with the department, such as PROMISE JOBS and managed care organizations. However, no changes are needed as the proposed subrule applies to the department worker or agent

responsible for representing the department at the hearing, which would include contracted entities.

Based on the respondent's comments, Item 6 is amended as follows:

Amend subrule 7.5(2) as follows:

**7.5(2) Hearing request.** The request for a contested case hearing must be sufficiently detailed so that the department can reasonably understand the action being appealed. The department may request additional information to determine the scope of the appeal. The department may deny if there is not sufficient information to determine the action being appealed.

Amend subrule 7.5(4) as follows:

**7.5(4) Appeals *that must be filed in writing.*** Appeal requests pertaining to foster care, adoption, state supplementary assistance, the autism support program, the Iowa individual disaster assistance program, the Iowa disaster case management program, sex offender risk assessment, record check evaluation, child care registered or nonregistered homes, child abuse, dependent adult abuse or child support must be made in writing.

**COMMENT 22:**

Respondent indicates current rule 7.5(17A) contains a short list of requirements for when a hearing will be granted and a long list of circumstances in which a hearing will not be granted.

**RESPONSE 22:**

Rule 7.3(17A) follows the requirement with respect to a contested case hearing and ensures that the appellant has a genuine interest in the outcome of the appeal.

The new regulations are consistent with Iowa Code 17A, which provides for administrative appeal hearings only in contested cases and defines a contested case as “a proceeding including but not restricted to ratemaking, price fixing, and licensing in which the legal rights, duties or privileges of a party are required by Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing.” The “Conditions of an aggrieved person” is both over-inclusive and under-inclusive. The proposed regulations make clear that persons entitled to administrative appeal hearing by a Constitution or a statute will receive such a hearing.

**COMMENT 23:**

Respondent argues the proposed subrule 7.6(3) regarding designating issues for hearing seems too technical for pro se litigants and possibly burdensome for representatives who may be joining an appeal close to the hearing date for various reasons. When an appeal summary and exhibits are not submitted far enough in advance of a hearing, it is difficult to decide whether to take a case for representation. Respondent recommends information be added to the proposed rule to clarify what issues may or may not be designated as an issue for hearing when the reason for the appeal is not specified in the notice of decision, notice of action or notice of adverse benefit determination.

Proposed rule 7.6(6) provides that appellant's have the right to examine the content of the appellant's case file and all documents and records to be used by the department at the hearing. Respondent indicates the term "case file" is not defined in the proposed rules and requests language from the current subrule 7.13(1) regarding examination of the evidence be retained.

**RESPONSE 23:**

This provision does not change the previous practice of the Appeals Section designating issues for hearing. Thus, the provision does not increase the burden on a pro se appellant. If a pro se litigant obtains legal representation and it is determined additional issues need to be designated for hearing, the newly obtained legal representation can request a continuance to allow time to prepare for hearing and can file a motion to designate additional issues.

Proposed rule 7.2(17A) indicates that in the absence of an applicable rule in this chapter, the Department of Inspections and Appeals rules found at 481 Chapter 10 govern Department of Human Services (DHS) appeals. Evidence is addressed at 481 IAC 10.21(17A). No changes are made based on this comment.

**COMMENT 24:**

Respondent is concerned with the removal of the language from current subrule 7.6 about informing applicants and recipients of department programs and services of their rights to appeal adverse decisions affecting the person's status. Respondent also points out the proposed rules deleted various options for applicants and recipients to receive legal representation. Current regulations require the department's local offices to advise people appealing any agency decision of legal services in the community that are willing to assist them; however, the department proposes to eliminate this section from the rules.

Respondent appreciates the current subrule 7.6(1)(c) dealing with interpreters is present in proposed subrule 7.9(5); however, the respondent requests the current subrule 7.6(1)(d) dealing with assistance to be provided to individuals with disabilities be added to the proposed rules.

## RESPONSE 24:

A new Chapter 16 titled “Notices” to centralize administrative rules regarding timely and adequate notices. Every notice of decision, notice of action or notice of adverse benefit determination that is issued by the department or a contracted entity provides appeal rights to applicants and recipients. The appeal rights provide information on how to file an appeal and the timeframe to do so. Notices issued by the department also tell appellants to contact a county department office to obtain information about legal services. While this information is provided on every notice, the department agrees the proposed rules should be amended to incorporate some information that is missing.

The department agrees that the language dealing with assistance to be provided to individuals with disabilities shall be retained. Based on the comments received Item 5 will be amended as follows:

Adopt a new subrule 7.4(4) as follows:

7.4(4) Written and oral notification. The department shall advise each applicant and recipient of the right to appeal any adverse decision affecting the person’s status.

a. Written notification of the following shall be given at the time of application and at the time of any agency action affecting the claim for assistance:

(1) The right to request a hearing.

(2) The procedure for requesting a hearing.

(3) The right to be represented by others at the hearing unless otherwise specified by statute or federal regulation.

b. Written notification shall be given on the application form and on all notices of decision.

Based on the comments received Item 10 will be amended as follows:

Adopt a new subrule 7.9(6) as follows:

7.9(6) Persons living with disabilities. Persons living with disabilities shall be provided assistance through the use of auxiliary aids and services at no cost to the individual in accordance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

## COMMENT 25:

Respondent is concerned that the language in the current subrule 7.7(17A) regarding notice of intent to approve, deny, terminate, reduce or suspend assistance or deny

reinstatement of assistance has been removed from the proposed rule. The respondent acknowledges this subrule is largely reflected in proposed Chapter 16; however, Chapter 16 contains no mention of providing adequate notice of the approval or denial of a license, certification, approval, registration or accreditation.

#### **RESPONSE 25:**

Based on the respondent's comments, the proposed Chapter 16 has been amended to include adequate notice must be provided for the approval or denial of a license, certification, approval, registration or accreditation, as it was omitted unintentionally.

#### **COMMENT 26:**

Respondent proposes a new section be added in rule 7.8(17A) regarding contested case hearing procedures between subrule 7.8(1) regarding the ways a contested case hearing may be conducted and subrule 7.8(2) regarding evidence. Respondent requests the new section address informal and prehearing conferences.

Respondent proposes changes to proposed subrule 7.8(3) regarding an appellant's right to counsel to add in language about local offices referring people to legal services that may be available.

Respondent indicates there is no language about child abuse registry hearings and the right to intervene in the proposed subrule 7.8(5).

#### **RESPONSE 26:**

The department agrees with the respondent's comments regarding the addition of a new section regarding informal conferences. Based on the respondent's comments, Item 7 will be amended as follows:

Adopt a new subrule 7.6(7) as follows:

7.6(7) Informal conference. The purpose of the informal conference is to provide information as to the reasons for the intended adverse action, to answer questions, to explain the basis for the adverse action or position, and to provide an opportunity for the appellant to examine the contents of the case record.

When requested by the appellant, an informal conference with a representative of the department or one of its contracted partners, including a managed care organization, shall be held as soon as possible after the appeal has been filed. An appellant's representative shall be allowed to attend and participation in the informal conference, unless precluded by federal rule or state statute.

An informal conference need not be requested for the appellant to examine the contents of the case record.

With respect to prehearing conferences, Proposed rule 7.2(17A) indicates that in the absence of an applicable rule in this chapter, the Department of Inspections and Appeals rules found at 481 Chapter 10 govern Department of Human Services (DHS) appeals. Prehearing conferences are addressed at 481 IAC 10.16(17A). No changes are made based on this comment.

No changes are necessary regarding the issue of local offices referring people to legal services that may be available. Each notice of decision issued by the Department contains a statement that the county department office can provide information about legal services available to appellants. Also, based on comment 24, the department is revising the proposed language in subrule 7.4(4) which requires the department advise each applicant and recipient of their right to be represented by others at the hearing unless otherwise specified by statute or federal regulation.

Proposed subrule 7.8(5) indicates that contested case hearings are closed to the public and provides a list of individuals who may participate in appeal hearings, including permissible intervenors. As the proposed subrule already addresses child abuse hearings and the right to intervene, no changes are made based on this comment.

**COMMENT 27:**

Respondent points out most of the current rule 7.8(17A) is dealt with in the proposed rule 7.5(17A). However, the current subrule at 7.8(7) deals with denial of due process, which the respondent indicates, is missing from the proposed rules and suggests incorporation of the current language.

**RESPONSE 27:**

The department agrees that due process is required for contested cases, but the entitlement to due process is created by a Constitution or statute, not by the regulations. The reference to due process in the existing subrule 7.8(7) cannot expand or contract the entitlement to due process and, therefore, is omitted. No changes are made based on this comment.

**COMMENT 28:**

Respondent is concerned with the elimination of the language in the current rule 7.18(17A). The only reference that remains to ex parte communication for these hearings is at 481 Iowa Administrative Code (IAC) 10.23. The current Department of Human Services regulations are better than what exists in 481 IAC 10.23 or the proposed language in subrule 7.9(1). The respondent recommends the current language be retained.

**RESPONSE 28:**

Iowa Code § 17A.17 covers ex parte communications extensively. In light of the comments and the less extensive coverage in proposed rule 7.9(1), the Department has amended the proposed rule to reference back to the more extensive Iowa Code provision. Based on the respondent's comment, Item 10 is amended as follows:

Amend subrule 7.9(1) as follows:

**7.9(1) Ex parte communication.** Ex parte communications between the presiding officer and ~~parties, witnesses, or representatives involved in an appeal before the presiding officer~~ shall be person or party in connection with any issue of fact or law in the contested case proceeding is prohibited, except for ~~uncontested scheduling or procedural matters. In the event such prohibited communication occurs, a presiding officer may disqualify themselves, disclose the communication to all parties and representatives, permit other parties the opportunity to respond, issue sanctions or take such other remedial action as permitted by Iowa Code § 17A.17. All of the provisions of Iowa Code § 17A.17 apply.~~

**COMMENT 29:**

Respondent indicates the proposed subrule at 7.9(2) dealing with default decisions when someone fails to attend an appeal hearing was changed a few years ago and is questioning why this section is changing again.

**RESPONSE 29:**

No changes are necessary regarding default decisions when someone fails to attend an appeal hearing. The process has not changed. The proposed rules adequately and accurately captures the default process.

**COMMENT 30:**

Respondent requests proposed subrule at 7.9(3) dealing with withdrawal of a fair hearing request specify how to withdraw appeals for program at subrule 7.5(4).

**RESPONSE 30:**

Based on the respondent's comments, Item 10 is amended as follows:

Amend subrule 7.9(3) as follows:

**7.9(3) Withdrawal.** An appellant may submit a withdrawal of a fair hearing request at any time prior to hearing through any of the methods identified in subrule

7.5(1), except for programs listed in subrule 7.5(4). For programs listed in subrule 7.5(4), a written request may be submitted via the department's website, by mail, in person, or through other commonly available electronic means (such as email or facsimile). Unless otherwise provided, a withdrawal shall be with prejudice.

**COMMENT 31:**

Respondent indicates the proposed subrule 7.9(4) does away with language from current rule 7.15(17A) allowing an enrollee or appellant to request a medical exam.

**RESPONSE 31:**

Federal regulations at 42 CFR 431.240(b) allow a hearing official to request a medical assessment other than that of the individual involved in making an original decision if a hearing involves issues, such as those concerning a diagnosis, an examining physician's reports or a medical team's decision. The regulation does not allow an enrollee or appellant to request the medical exam. No changes are made based on this comment.

**COMMENT 32:**

The respondent had no comments regarding the deletion of current 7.9(17A) regarding continuation of benefits pending a final decision on an appeal.

**RESPONSE 32:**

The content of the current rule 7.9(17A) regarding continuation of benefits pending a final decision on an appeal is incorporated into proposed rule 7.17(17A). No changes are made based on this comment.

**COMMENT 33:**

Respondent indicates proposed subrule 7.10(1) regarding the contents of the written proposed decision fails to indicate whether parties are able to submit proposed findings of fact as currently stated in subrule 7.16(2).

Respondent requests the department define what "record" is as used in proposed subrule 7.10(2).

**RESPONSE 33:**

Even though the proposed rule fails to indicate whether parties are allowed to submit proposed findings of fact, no one is precluded from offering findings of fact. The presiding officer will rule on the proposed findings of fact. No changes are made based on this comment.

Proposed subrule 7.10(2) requires appellants be given reasonable access to the record at a convenient place and time. There is no need to define what the term “record” means. The common meaning of the term shall be used. No changes are made based on this comment.

**COMMENT 34:**

The respondent had no comments regarding the elimination of current 7.10(17A) regarding procedural considerations.

**RESPONSE 34:**

No changes are made based on this comment.

**COMMENT 35:**

Respondent is concerned that proposed rule 7.11(17A) contains no mention of the appeals advisory committee.

Respondent approved of the addition of proposed subrule 7.11(3) as it sets out the process for how to handle a cross-appeal.

**RESPONSE 35:**

The Appeals Advisory Committee has been dissolved, so the references to the Appeals Advisory Committee have been removed. The Appeals Section established a new protocol for Department staff and managed care organizations to request Director reviews to streamline the process. Review requests are submitted directly to the DHS Appeals Section once approved by a supervisor. This better aligns with the process used by appellants or their representatives when submitting a review request. Also, the process for Department staff to request a review is an internal process, therefore, it does not need to be in the rules. No changes are made based on this comment.

**COMMENT 36:**

Respondent believes the language in current rule 7.11(17A) regarding information and referral for legal services should be reflected in the proposed rules.

**RESPONSE 36:**

Based on comment 24, the department is revising the proposed language in subrule 7.4(4) requiring each each applicant and recipient be advised of their right to be represented by others at the hearing unless otherwise specified by statute or federal regulation. This information is also provided on every notice of decision issued by the Department. No changes are made based on this comment.

**COMMENT 37:**

Proposed subrule 7.12(3) provides the department will notify the appellant of their right to seek judicial review, where applicable. However, the respondent is concerned the proposed subrule does not mention that the appellant does not need to seek a rehearing to exhaust their administrative remedies before filing the judicial review or a stay request.

**RESPONSE 37:**

Proposed rule 7.12(17A) makes clear that a proposed decision becomes a final decision if there is no appeal to the director. That language mirrors the language of the Iowa Code § 17A.15.2. A final decision is subject to judicial review and, therefore, further action following the final decision is not required to exhaust administrative remedies.

The agency's authority to grant a stay of the agency decision pending judicial review is adequately stated in Iowa Code § 17A.19. No changes are made based on this comment.

**COMMENT 38:**

The respondent had no comments regarding the elimination of current 7.12(17A) regarding subpoenas.

**RESPONSE 38:**

No changes are made based on this comment.

**COMMENT 39:**

The respondent approves of the language in proposed rule 7.14(17A) regarding the department making corrective payments retroactive to the date an incorrect action was taken when the proposed decision is favorable to an enrollee in a Medicaid appeal. Managed care organizations must authorize or provide the services no later than 72 hours from the date the managed care organization received notice reversing the determination.

**RESPONSE 39:**

No changes are made based on this comment as it is compatible with language at 441 IAC 73.14(3).

**COMMENT 40:**

The respondent approves of the removal of current rule 7.14(17A) regarding limiting persons attending contested case hearings.

**RESPONSE 40:**

No changes are made based on this comment. This issue is addressed in proposed subrule 7.8(5).

**COMMENT 41:**

Respondent indicates medical examinations in current rule 7.15(17A) are dealt with in proposed subrule 7.9(4), however, it does not allow an enrollee or appellant to request a medical exam.

**RESPONSE 41:**

Federal regulations at 42 CFR 431.240(b) allow a hearing official to request a medical assessment other than that of the individual involved in making an original decision if a hearing involves issues, such as those concerning a diagnosis, an examining physician's reports or a medical team's decision. The regulation does not allow an enrollee or appellant to request the medical exam. No changes are made based on this comment.

**COMMENT 42:**

Respondent argues the second sentence in the proposed subrule 7.16(1) regarding regulations for authorized representatives has nothing to do with regulations and requests the statement be moved to its own section. Respondent also is concerned about what is meant by the term "or similar" in the subrule.

Respondent is confused about what is meant by "[a]n authorized representative of a party-in-interest only represents the party-in-interest and has no independent right to appeal by virtue of their representation" in proposed subrule 7.16(2).

**RESPONSE 42:**

Based on the respondent's comments regarding regulations for authorized representatives, Item 17 is amended as follows:

Amend subrule 7.16(1) as follows:

**7.16(1) Regulations.** The provisions of this rule only apply to the extent the standards expressed in this rule are not in conflict with other state or federal law. ~~Legally recognized delegations of authority, such as guardianships, applicable designations of power of attorney, or similar, shall be sufficient for a delegate to serve as authorized representative under this chapter.~~

**7.16(2) Designation of authority.** Legally recognized delegations of authority, such as guardianships, applicable designations of power of attorney, or similar designations, shall be sufficient for a delegate to serve as authorized representative under this chapter. A person who is not designated under ~~subrule 7.16(4)~~ a legally recognized delegation of authority but who otherwise seeks to act as an authorized representative for an individual in an appeal under this chapter shall provide a written, signed designation of authority to the department with the request for appeal. The designation must provide the scope of the representation, applicable waivers for the release of confidential information, and any temporal or other limitations on the scope of representation. An authorized representative of a party-in-interest only represents the party-in-interest and has no independent right to appeal by virtue of the authorized representative's representation.

The language in subrule 7.16(2) regarding designation of authority of an authorized representative is intended to clarify that an authorized representative does not become a party-in-interest in their own right as an outgrowth of their representation. No changes are made to subrule 7.16(2) based on this comment.

**COMMENT 43:**

The respondent approves of the removal of current rule 7.16(17A) regarding the appeal decision.

**RESPONSE 43:**

No changes are made based on this comment. The content of the current rule is addressed in proposed rules 7.10(17A), 7.11(17A) and 7.12(17A).

**COMMENT 44:**

Respondent indicates there is no definition of "receipt of a notice" in proposed paragraph 7.17(1)(b). Current rule 7.9(17A) states a person is presumed to have received the notice five days after the date on the notice. Respondent requests clarification of what is meant by "receipt of a notice."

**RESPONSE 44:**

Based on the respondent's comments, Item 18 is amended as follows:

Amend subrule 7.17(1) as follows:

**7.17(1) Programs for which no federal or state law applies.** For all assistance programs for which there is no contravening federal or state law, benefits or services shall not be suspended, reduced, restricted, or discontinued, nor shall a license,

registration, certification, approval, or accreditation be revoked or other adverse action taken pending a final decision when:

- a. An appeal is filed before the effective date of the intended action; or
- b. The appellant requests a hearing within ten days of receipt of a notice to suspend, reduce, restrict, or discontinue benefits or services. The date on which the notice is received is considered to be five days after the date on the notice, unless the appellant shows the notice was not received within the five-day period.

**COMMENT 45:**

Respondent is concerned about the removal of current rule 7.17(17A) regarding exhausting administrative remedies as the proposed subrule 7.12(3) does not mention that the appellant does not need to seek a rehearing to exhaust their administrative remedies before filing the judicial review or stay requests.

**RESPONSE 45:**

Proposed rule 7.12(17A) makes clear that a proposed decision becomes a final decision if there is no appeal to the director. That language mirrors the language of the Iowa Code § 17A.15.2. A final decision is subject to judicial review and, therefore, further action following the final decision is not required to exhaust administrative remedies. No changes are made based on this comment.

**COMMENT 46:**

Respondent is concerned the proposed rule 7.18(17A) regarding emergency adjudicative proceedings does not state the means by which the order is to be delivered to the persons who are required to comply with the order and does not include any reference to oral notification.

**RESPONSE 46:**

Based on the respondent's comments, Item 19 is amended as follows:

Amend subrule 7.18(2) as follows:

**7.18(2) Issuance of order.** An emergency adjudicative order shall contain, or shall be expeditiously followed by, a written analysis, including findings of fact, conclusions of law, and policy reasons to justify the order. The agency shall provide written notice that best ensures prompt reliable delivery. Such order shall be immediately delivered to the persons required to comply with this order.

**COMMENT 47:**

Respondent is concerned with the elimination of the language in the current rule 7.18(17A). The only reference that remains to ex parte communication for these hearings is at 481 Iowa Administrative Code (IAC) 10.23. The current Department of Human Services regulations are better than what exists in 481 IAC 10.23 or the proposed language in subrule 7.9(1). The respondent recommends the current language be retained.

**RESPONSE 47:**

Iowa Code § 17A.17 covers ex parte communications extensively. In light of the comments and the less extensive coverage in proposed rule 7.9(1), the Department has amended the proposed rule to reference back to the more extensive Iowa Code provision. Item 10 is amended as follows:

Amend subrule 7.9(1) as follows:

**7.9(1) Ex parte communication.** Ex parte communications between the presiding officer and ~~parties, witnesses, or representatives involved in an appeal before the presiding officer~~ shall be person or party in connection with any issue of fact or law in the contested case proceeding is prohibited, except for uncontested scheduling or procedural matters. In the event such prohibited communication occurs, a presiding officer may disqualify themselves, disclose the communication to all parties and representatives, permit other parties the opportunity to respond, issue sanctions or take such other remedial action as permitted by Iowa Code § 17A.17. All of the provisions of Iowa Code § 17A.17 apply.

**COMMENT 48:**

Respondent recommends keeping current rule 7.19(17A) regarding accessibility of hearing decisions. Respondent argues it is important to be able to see what the government is doing at the administrative level.

**RESPONSE 48:**

Iowa Code 17A.3 requires agencies to adopt rules setting forth the method by which the public may obtain information or make submissions or requests and the location of said information. DHS has adopted rules in 441 IAC Chapter 9 describing the procedures for access to department records. No changes are made based on this comment.

**COMMENT 49:**

Proposed subrule 7.12(3) provides the department will notify the appellant of their right to seek judicial review, where applicable. However, the respondent is concerned with the deletion of current rule 7.20(17A) regarding the right to seek judicial review and stays of agency action. The proposed subrule does not mention that the appellant does

not need to seek a rehearing to exhaust their administrative remedies before filing the judicial review or a stay request.

**RESPONSE 49:**

Proposed rule 7.12(17A) makes clear that a proposed decision becomes a final decision if there is no appeal to the director. That language mirrors the language of the Iowa Code § 17A.15.2. A final decision is subject to judicial review and, therefore, further action following the final decision is not required to exhaust administrative remedies.

The agency's authority to grant a stay of the agency decision pending judicial review is adequately stated in Iowa Code § 17A.19. No changes are made based on this comment.

**COMMENT 50:**

Respondent is concerned with the removal of current rule 7.23 regarding contested cases with no factual dispute. Iowa Code § 17A.10A provides for handling of these types of contested cases. The respondent argues the corresponding regulations should continue to provide guidance on this situation.

**RESPONSE 50:**

The department agrees with the respondent's comments regarding contested cases with no factual dispute. Based on the respondent's comments, Item 9 will be amended as follows:

Adopt a new subrule 7.8(7) as follows:

7.8(7) Contested cases with no factual dispute. If the parties in a contested case agree that there is no dispute of material fact, the parties may present all admissible evidence either by stipulation, or as otherwise agreed, in lieu of an evidentiary hearing. If an agreement is reached, the parties shall jointly submit a schedule for submission of the record, briefs and oral arguments to the presiding officer for approval.

## **HUMAN SERVICES DEPARTMENT[441]**

### **Adopted and Filed**

#### **Rule making related to timely and adequate notice**

The Human Services Department hereby proposes to amend Chapter 14, “Offset of County Debts Owed Department”; to adopt new Chapter 16, “Notices”; and to amend Chapter 40, “Application for Aid,” Chapter 41, “Granting Assistance,” Chapter 46, “Overpayment Recovery,” Chapter 74, “Iowa Health and Wellness Plan,” Chapter 75, “Conditions of Eligibility,” Chapter 76, “Enrollment and Reenrollment,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Chapter 82, “Intermediate Care Facilities for Persons with an Intellectual Disability,” Chapter 83, “Medicaid Waiver Services,” Chapter 86, “Healthy and Well Kids in Iowa (HAWK-I) Program,” Chapter 90, “Targeted Case Management,” Chapter 91, “Medicare Drug Subsidy,” Chapter 93, “PROMISE JOBS Program,” Chapter 106, “Certification Standards for Children’s Residential Facilities,” Chapter 109, “Child Care Centers,” Chapter 153, “Funding for Local Services,” Chapter 170, “Child Care Services,” and Chapter 187, “Aftercare Services Program,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 217.6.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 217.6.

#### *Purpose and Summary*

These amendments implement a new Chapter 16, “Notices,” to centralize administrative rules regarding timely and adequate notices. In addition, these amendments correct cross references found in administrative rules regarding timely and adequate notices. Based on changes in Chapter 7 (see **ARC 4674C**, IAB 9/25/19), cross references to that chapter are also being corrected.

Whenever the Department proposes to approve or deny an application for assistance or services, the Department must provide adequate notice. Whenever the Department proposes to terminate or reduce assistance or services, the Department must provide timely and adequate notice. Rules regarding timely and adequate notices are currently in Chapter 7, “Appeals and Hearings.” As notices relate to all parts of the Department and are not specific to appeals, the rules regarding timely and adequate notices are being moved from Chapter 7 into Chapter 16, which solely relates to notices.

An individual’s right to due process is not impacted by these changes. The Department is still required to provide timely and adequate notice to applicants and recipients. The rules are simply being moved from one chapter into another.

*Public Comment*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 25, 2019 as **ARC 4675C**.

One respondent, representing Iowa Legal Aid, provided written comments.

1. **Concerns on Adequate Notice.** Current regulations at 441 IAC 7.7(1)(c) indicate the Department will give “adequate notice of...the approval or denial of a license, certification, approval, registration, or accreditation...”, but the language is missing from the proposed subrule 16.3(1). It appears the Department intends to send adequate notices when a license, certification, approval, registration or accreditation is approved or denied, but respondent requested clarification regarding this issue.

**Department Response.** Based on the respondent’s comment, proposed subrule 16.3(2) in Item 2 is amended.

2. **90-Day Time Limit for Late Filed Appeals.** Respondent indicated the proposed change to 441 IAC 95.13(3) proposes to impose a 30-day appeal period for individual obligees to file an appeal of a CSRU decision when the obligee disputes having received all or part of a support payment to which they are entitled. The proposed change does not include a 90-day time limit for late appeals for good cause and seems to do away with the procedure. Respondent inquired if the change was intentional, and if it was, questioned why the late appeal time limit for good cause was eliminated.

**Department Response.** The opportunity to file a late appeal when there is good cause for filing late is standard in Department appeals and provides recognition that there are situations in which delay in action is effectively unavoidable. Based on the respondent’s comments, Item 30 is removed from the noticed rulemaking and subsequent Items 31 through 36 are renumbered.

*Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on February 12, 2020.

*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*

These amendments do not include waiver provisions because they confer benefits on those affected and are generally required by federal law that does not allow for waivers. Individuals may request a waiver under the Department’s general rule on exceptions at 441—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 April 15, 2020.

The following rule-making actions are proposed:

ITEM 1. Amend rule 441—14.5(217,234), introductory paragraph, as follows:

**441—14.5(217,234) Implementing the final decision.** When the final decision issued pursuant to rule ~~441—7.16(17A)~~ 441—7.12(17A) upholds the department’s action or modifies the amount of offset, the division of fiscal management shall certify to the department of administrative services that the requirements for offset under Iowa Code section 8A.504 have been met. When the final decision reverses the department’s action, the division of fiscal management shall notify the department of administrative services to release the offset.

ITEM 2. Adopt the following **new** 441—Chapter 16:

CHAPTER 16

NOTICES

PREAMBLE

This chapter applies to any notice of decision or notice of action issued by or on behalf of the department.

**441—16.1(17A) Definitions.**

“*Adequate notice*” means any notice of decision or notice of action issued in compliance with subrule 16.3(2).

“*Adverse benefit determination*” means any adverse action taken in regard to any individual’s benefits pursuant to an assistance program administered by the department or on the department’s behalf, excluding determinations related to requests for exceptions to policy.

“*Assistance program*” means a program administered by the department or on the department’s behalf through which qualifying individuals receive benefits or services. Assistance programs include, but are not necessarily limited to, food assistance, Medicaid, the family investment program, refugee cash assistance, child care assistance, emergency assistance, the family planning program, the family self-sufficiency grant, PROMISE JOBS, state supplementary assistance, the healthy and well kids in Iowa (HAWK-I) program, foster care, adoption, and aftercare services.

“*Department*” means the Iowa department of human services.

“*Enrollee*” means any applicant for, or recipient of, benefits or services pursuant to an assistance program.

“*Timely*” means that the notice is sent at least ten calendar days before the date the adverse benefit determination would become effective. The timely notice period shall begin on the day after the notice is sent.

**441—16.2(17A) Governing laws and regulations.** Notwithstanding the rules contained

in this chapter, to the extent that state or federal law (including regulations and rules) related to a specific program is more specific than or contradicts these rules, the program-specific state or federal law shall control.

**441—16.3(17A) Notices.**

**16.3(1) *Timely notice.*** For individuals applying for, or receiving, benefits pursuant to an assistance program, the department will provide timely, written notice of the right to appeal any adverse benefit determinations affecting the individual's benefits or eligibility, when required to do so under state or federal law.

The department will also provide timely, written notice of pending actions for a state or federal tax or debtor offset.

Timely notice must also be adequate as provided in subrule 16.3(2).

**16.3(2) *Adequate notice.*** The department shall give adequate notice of the approval or denial of assistance or services; the approval or denial of a license, certification, approval, registration, or accreditation; pending action for a state or federal tax or debtor offset or to the extent standards provided elsewhere in state or federal law are inapplicable, adequate notice shall include:

- a.* A description of the action taken;
- b.* The effective date of the action;
- c.* The specific reasons supporting the action, stated in clear language likely to be understood by the average program applicant or enrollee;
- d.* References to applicable provisions of law supporting the action;
- e.* An explanation of the right to appeal; and
- f.* The circumstances under which assistance is continued when an appeal is filed.

**16.3(3) *Dispensing with timely notice.*** Timely notice may be dispensed with, but adequate notice shall be sent no later than the date benefits would have been issued, when:

*a.* There is factual information confirming the death of the enrollee or of the family investment program payee and there is no relative available to serve as a new payee.

*b.* The enrollee provides a clear written, signed statement that the enrollee no longer wishes to receive assistance, or gives information which requires termination or reduction of assistance, and the enrollee has indicated, in writing, that the enrollee understands that the consequence of supplying the information is termination or reduction of assistance.

*c.* The enrollee has been admitted or committed to an institution that does not qualify for payment under an assistance program.

*d.* The enrollee has been placed in skilled nursing care, intermediate care, or long-term hospitalization.

*e.* The whereabouts of the enrollee are unknown and mail directed to the enrollee has been returned by the post office indicating no known forwarding address. When the whereabouts of the enrollee become known during the payment period covered by the returned warrant, the warrant shall be made available to the enrollee.

*f.* The department establishes that the enrollee has been accepted for assistance in another state.

*g.* Cash assistance or food assistance is changed because a child is removed from the home as a result of a judicial determination or is voluntarily placed in foster care.

*h.* A change in the level of medical care is prescribed by the enrollee's physician.

*i.* A special allowance or service granted for a specific period is terminated and the enrollee has been informed in writing at the time of initiation that the allowance or service

shall terminate at the end of the specified period.

*j.* The notice involves an adverse determination made with regard to the preadmission screening requirements.

*k.* The department terminates or reduces benefits or makes changes based on a completed Form 470-2881, 470-2881(S), 470-2881(M), or 470-2881(MS), Review/Recertification Eligibility Document, as described at 441—subrule 40.27(3) or rule 441—75.52(249A).

*l.* The department terminates benefits for failure to return a completed report form, as described in paragraph 16.3(3)“*k.*”

*m.* The department approves or denies an application for assistance.

*n.* The department implements a mass change based on law or rule changes that affect a group of enrollees.

These rules are intended to implement Iowa Code chapter 17A.

ITEM 3. Amend paragraph **40.27(5)“b”** as follows:

*b.* When cancellation of assistance occurs later because issuance of a timely notice, as required by ~~441—7.7(17A)~~ rule 441—16.3(17A), requires that the action be delayed until the first day of the second calendar month, any overpayment received in the first calendar month shall be recouped.

ITEM 4. Amend subparagraph **40.27(5)“c”(2)** as follows:

(2) Recoupment shall be made for any overpayment, with one exception. When a change in income is timely reported by a recipient and timely acted upon by the department, but the timely notice, as required by ~~441—7.7(17A)~~ rule 441—16.3(17A), requires the action be delayed until the second calendar month following the month of change, and

eligibility continues, recoupment shall not be made.

ITEM 5. Amend subrule 41.24(8) as follows:

**41.24(8)** ~~The limited~~ Limited benefit plan (LBP). When a participant responsible for signing and meeting the terms of a family investment agreement as described at rule 441—93.4(239B) chooses not to sign or fulfill the terms of the agreement, the FIP assistance unit or the individual participant shall enter into a limited benefit plan. A limited benefit plan is considered imposed as of the date that a timely and adequate notice is issued to the participant as defined at ~~441—subrule 7.7(1)~~ rule 441—16.3(17A). Once the limited benefit plan is imposed, FIP eligibility no longer exists as of the first of the month after the month in which timely and adequate notice is given to the participant. Upon the issuance of the notice to impose a limited benefit plan, the person who chose the limited benefit plan can reconsider and end the limited benefit plan, but only as described at paragraphs 41.24(8)“d” and “e.”

a. to g. No change.

ITEM 6. Amend subparagraph **41.27(9)“c”(2)** as follows:

(2) Nonrecurring lump-sum income. Moneys received as a nonrecurring lump sum, except as specified in subrules 41.26(4), and 41.26(7), and paragraphs 41.27(8)“b,” and 41.27(8)“c,” shall be treated in accordance with this rule. Nonrecurring lump-sum income shall be considered as income in the month received and counted in computing eligibility and the amount of the grant, unless the income is exempt. Nonrecurring lump-sum unearned income is defined as a payment in the nature of a windfall, for example, an inheritance, an insurance settlement for pain and suffering, an insurance death benefit, a gift, lottery winnings, or a retroactive payment of benefits, such as social security, job

insurance or workers' compensation. When countable income, exclusive of the family investment program grant but including countable lump-sum income, exceeds the needs of the eligible group, the case shall be canceled or the application rejected. In addition, the eligible group shall be ineligible for the number of full months derived by dividing the income by the standard of need for the eligible group. Any income remaining after this calculation shall be applied as income to the first month following the period of ineligibility and disregarded as income thereafter. The period of ineligibility shall begin with the month the lump sum is received.

When a nonrecurring lump sum is timely reported as required by 441—paragraph 40.27(4)“f,” recoupment shall not be made for the month of receipt. When a nonrecurring lump sum is timely reported, but the timely notice as required by ~~rule 441—7.7(17A)~~ 441—subrule 16.3(1) requires that the action be delayed until the second calendar month following the month of change, recoupment shall not be made for the first calendar month following the month of change. When a nonrecurring lump sum is not timely reported, recoupment shall be made beginning with the month of receipt.

The period of ineligibility shall be shortened when the schedule of living costs as defined in 41.28(2) increases.

The period of ineligibility shall be shortened by the amount that is no longer available to the eligible group due to a loss or a theft or because the person controlling the lump sum no longer resides with the eligible group.

The period of ineligibility shall also be shortened when there is an expenditure of the lump sum made for the following circumstances unless there was insurance available to meet the expense: Payments made on medical services for the former eligible group or their

dependents for services listed in 441—Chapters 78, 81, 82 and 85 at the time the expense is reported to the department; the cost of necessary repairs to maintain habitability of the homestead requiring the spending of over \$25 per incident; cost of replacement of exempt resources as defined in subrule 41.26(1) due to fire, tornado, or other natural disaster; or funeral and burial expenses. The expenditure of these funds shall be verified. A dependent is an individual who is claimed or could be claimed by another individual as a dependent for federal income tax purposes.

When countable income, including the lump-sum income, is less than the needs of the eligible group, the lump sum shall be counted as income for the month received. For purposes of applying the lump-sum provision, the eligible group is defined as all eligible persons and any other individual whose lump-sum income is counted in determining the period of ineligibility. During the period of ineligibility, individuals not in the eligible group when the lump-sum income was received may be eligible for the family investment program as a separate eligible group. Income of this eligible group plus income, excluding the lump-sum income already considered, of the parent or other legally responsible person in the home shall be considered as available in determining eligibility and the amount of the grant.

ITEM 7. Amend rule 441—46.23(239B) as follows:

**441—46.23(239B) Notification and appeals.** All clients shall be notified by the department of inspections and appeals, as described at ~~441—subrule 7.5(6)~~, 441—paragraph 7.4(3) “i,” when it is determined that an overpayment exists. Notification shall include the amount, date and reason for the overpayment. The department shall provide additional information regarding the computation of the overpayment upon the client’s

request. The client may appeal the computation of the overpayment and any action to recover the overpayment through benefit reduction in accordance with ~~441—subrule 7.5(6)~~, 441—paragraph 7.4(3)“i.”

ITEM 8. Amend paragraph **74.6(3)“a”** as follows:

a. Timely notice of adverse action is required as specified in ~~441—subrule 7.7(1)~~ 441—subrule 16.3(1); or

ITEM 9. Amend paragraph **75.21(12)“b”** as follows:

b. The department shall provide timely and adequate notice as defined in ~~441—subrule 7.7(1)~~ rule 441—16.3(17A) to inform the household of a decision to discontinue payment of the health insurance premium because:

(1) and (2) No change.

ITEM 10. Amend subrule 75.22(9) as follows:

**75.22(9) Notices.**

a. An adequate notice as defined in ~~441—subrule 7.7(1)~~ 441—subrule 16.3(2) shall be provided under the following circumstances:

(1) to (5) No change.

b. A timely and adequate notice as defined in ~~441—subrule 7.7(1)~~ rule 441—16.3(17A) shall be provided to the recipient informing the recipient of a decision to discontinue payment of the health insurance premium when the recipient no longer meets the eligibility requirements of the program or fails to cooperate in providing information to establish eligibility.

ITEM 11. Amend subrule 75.52(5) as follows:

**75.52(5) Effective date.** After assistance has been approved, eligibility for continuing

assistance shall be effective as of the first of each month. Any change affecting eligibility reported during a month shall be effective the first day of the next calendar month, subject to timely notice requirements at rule ~~441—7.6(217)~~ 441—16.3(17A) for any adverse actions.

*a.* When the change creates ineligibility, eligibility under the current coverage group shall be canceled and an automatic redetermination of eligibility shall be completed in accordance with rule 441—76.11(249A).

*b.* Rescinded IAB 10/4/00, effective 10/1/00.

*c.* When an individual included in the eligible group becomes ineligible, that individual's Medicaid shall be canceled effective the first of the next month unless the action must be delayed due to timely notice requirements at rule ~~441—7.6(217)~~ 441—16.3(17A).

ITEM 12. Amend subrule 76.16(1) as follows:

**76.16(1)** After assistance has been approved, except as provided in subrule 76.13(1), action based on a change reported during a month shall be effective the first day of the next calendar month unless timely notice of adverse action is required as specified in ~~441—subrule 7.7(1)~~ 441—subrule 16.3(1).

ITEM 13. Amend paragraph **79.2(7)“a”** as follows:

*a.* Any order of sanction shall be in writing and include the name of the person subject to sanction, identify the ground for the sanction and its effective date, and be sent to the person's last-known address. If the department sanctions a provider, the order of sanction shall also include the national provider identification number of the provider and be sent to the provider's last address on file within the medical assistance program. Proof of

mailing to such address shall be conclusive evidence of proper service of the sanction upon the provider. ~~The department of inspections and appeals is not required to comply with the additional notification provisions of 441—paragraph 7.10(7)“c” for appeals certified for hearing under this chapter.~~

ITEM 14. Amend subrule 79.8(9) as follows:

**79.8(9)** The Iowa Medicaid enterprise shall issue a notice of decision to the recipient upon a denial of request for prior approval pursuant to ~~441—Chapter 7~~ 441—Chapter 16. The Iowa Medicaid enterprise shall mail the notice of decision to the recipient within five working days of the date the prior approval form is returned to the provider.

ITEM 15. Amend subrule 82.7(4) as follows:

**82.7(4)** *Appeal rights.* Notice of adverse action and right to appeal shall be given in accordance with ~~441—Chapter 7~~ and rule 441—16.3(17A).

ITEM 16. Amend rule 441—83.9(249A) as follows:

**441—83.9(249A) Appeal rights.** Notice of adverse action and right to appeal shall be given in accordance with ~~441—Chapter 7, rule 441—16.3(17A)~~ and rule 441—130.5(234). The applicant or recipient is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, the applicant or recipient may file an appeal with the department.

ITEM 17. Amend rule 441—83.29(249A) as follows:

**441—83.29(249A) Appeal rights.** Notice of adverse action and right to appeal shall be given in accordance with ~~441—Chapter 7, rule 441—16.3(17A)~~ and rule 441—130.5(234).

ITEM 18. Amend rule 441—83.49(249A) as follows:

**441—83.49(249A) Appeal rights.** Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7, rule 441—16.3(17A) and rule 441—130.5(234).

ITEM 19. Amend rule 441—83.69(249A) as follows:

**441—83.69(249A) Appeal rights.** Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7, rule 441—16.3(17A) and rule 441—130.5(234).

ITEM 20. Amend rule 441—83.89(249A) as follows:

**441—83.89(249A) Appeal rights.** Notice of adverse ~~actions~~ action and right to appeal shall be given in accordance with 441—Chapter 7, rule 441—16.3(17A) and rule 441—130.5(234).

ITEM 21. Amend rule 441—83.109(249A), introductory paragraph, as follows:

**441—83.109(249A) Appeal rights.** Notice of adverse ~~actions~~ action and right to appeal shall be given in accordance with 441—Chapter 7, rule 441—16.3(17A) and rule 441—130.5(234).

ITEM 22. Amend rule 441—83.129(249A) as follows:

**441—83.129(249A) Appeal rights.** Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7, rule 441—16.3(17A) and rule 441—130.5(234).

ITEM 23. Amend rule 441—86.11(514I) as follows:

**441—86.11(514I) Notice requirements.** The applicant shall be provided an adequate written notice of the decision regarding the applicant's eligibility for the HAWK-I

program. The enrollee shall be notified in writing of any decision that adversely affects the enrollee's eligibility or the amount of benefits. The notice shall be timely and adequate as provided in ~~441—subrule 7.7(1)~~ rule 441—16.3(17A).

ITEM 24. Amend subrule 90.4(2) as follows:

**90.4(2)** *Application decision.* The provider shall inform the applicant or the applicant's legally authorized representative of any decision to approve, deny, or delay the service in accordance with notification requirements at ~~441—subrule 7.7(1)~~ rule 441—16.3(17A).

ITEM 25. Amend subrule 90.6(2) as follows:

**90.6(2)** The provider shall notify the member or the member's legally authorized representative in writing of the termination of targeted case management, in accordance with ~~441—subrule 7.7(1)~~ 441—subrule 16.3(1).

ITEM 26. Amend subrule 91.4(2) as follows:

**91.4(2)** The department shall give a recipient timely and adequate written notice as provided in ~~441—subrule 7.7(1)~~ rule 441—16.3(17A) when any decision or action is taken that adversely affects subsidy eligibility or the level of subsidy.

ITEM 27. Amend subrule 91.4(3) as follows:

**91.4(3)** In the circumstances described in ~~441—subrule 7.7(2)~~ 441—subrule 16.3(3), the department may dispense with timely notice but shall send adequate notice no later than the effective date of action.

ITEM 28. Amend paragraph **93.10(1)“b”** as follows:

*b. Notice of decision.* PROMISE JOBS shall send written notice to each participant in accordance with ~~441—Chapter 7~~ 441—Chapter 16 when services are approved, rejected, renewed, changed, canceled, or terminated for failure to cooperate or participate.

PROMISE JOBS services are approved when the participant is assigned to begin participation in an activity as written in the FIA.

ITEM 29. Amend subrule 93.12(2) as follows:

**93.12(2)** The department of inspections and appeals shall notify the participant or the provider when it is determined that an overpayment exists, as described at ~~441—subrule 7.5(6).~~ 441—paragraph 7.4(3)“i.”

*a.* Notification shall include the amount, date, and reason for the overpayment. Upon the participant’s request, the local office shall provide additional information regarding the computation of the overpayment.

*b.* The participant may appeal the computation of the overpayment and any action to recover the overpayment through benefit reduction in accordance with ~~441—subrule 7.5(6).~~ 441—paragraph 7.4(3)“i.” If a participant or provider files an appeal request, the PROMISE JOBS unit shall notify the DIA within three working days of receipt of the appeal request.

ITEM 30. Amend subrule 106.5(7) as follows:

**106.5(7)** Right to appeal suspension or revocation. The holder of the certificate of approval has the right to appeal a suspension or revocation of the certificate of approval, but initiation of an appeal does not alter the suspension or revocation. Notices of adverse actions and the right to appeal shall be given to applicants and certificate of approval holders in accordance with ~~441—Chapter 7~~ and rule 441—16.3(17A).

ITEM 31. Amend paragraph **109.2(6)“a”** as follows:

*a.* Notice of adverse actions for a denial, revocation, or suspension and the right to appeal the licensing decision shall be given to applicants and licensees in accordance with

441—Chapter 7 and rule 441—16.3(17A).

ITEM 32. Amend paragraph **153.57(2)“b”** as follows:

*b.* The department shall notify the member and the CPC when a member is to be disenrolled. The department shall give the member at least ten days' notice of disenrollment pursuant to rule ~~441—7.7(17A)~~ 441—subrule 16.3(1). The department shall give a member receiving any residential service 30 days' notice of disenrollment from the program consistent with department of inspections and appeals' rule ~~481—57.36(135C)~~ 481—57.14(135C).

ITEM 33. Amend subrule 153.58(1) as follows:

**153.58(1)** Decisions regarding denial or termination of state payment program eligibility, including disenrollment, may be appealed to the department pursuant to 441—Chapter 7. Continuation of assistance will be granted pursuant to rule ~~441—7.9(17A)~~ 441—7.17(17A).

ITEM 34. Amend subrule 170.9(1) as follows:

**170.9(1)** *Notification and appeals.* All clients or providers shall be notified as described at subrule 170.9(6), when it is determined that an overpayment exists. Notification shall include the amount, date and reason for the overpayment. The department shall provide additional information regarding the computation of the overpayment upon the client's or provider's request. The client or provider may appeal the computation of the overpayment and any action to recover the overpayment in accordance with ~~441—subrule 7.5(9)~~. 441—paragraph 7.4(3)“i.”

ITEM 35. Amend subparagraph **187.3(6)“c”(9)** as follows:

(9) Recoupment shall not be made when a youth timely reports a change in income and

the change is timely acted upon, but the timely notice policy in rule ~~441—7.7(17A)~~ 441—16.3(17A) requires that the action be delayed until the second calendar month following the month of change.



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

Name of Program Specialist Denise Dutton	Telephone Number 515-242-6302	Email Address ddutton@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:

Whenever the Department proposes to approve or deny an application for assistance or services, the Department must provide adequate notice. Whenever the Department proposes to terminate or reduce assistance or services, the Department must provide timely and adequate notice. Rules regarding timely and adequate notices are currently in Chapter 7, Appeals and Hearings. As notices relate to all parts of the Department and are not specific to appeals, the rules regarding timely and adequate notices are removed from Chapter 7 and moved into Chapter 16, which solely relates to notices. Cross-references based on the change in chapters is also being made in other rule chapters. An individual's right to due process is not impacted by this change. The Department is still required to provide timely and adequate notices to applicants and recipients. Rules are simply being moved from one rules chapter into another.

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

Iowa Code 17A, Iowa Code 217.6

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

Rules regarding the issuance of notices relate to all parts of the Department. The Department is required to provide timely and/or adequate notice to applicants and recipients. As rules are simply being moved from one rules chapter into another, no one will not adversely impacted by this change.

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

These amendments do not include waiver provisions because they confer benefits on those affected and are generally required by federal law that does not allow for waivers. Individuals may request a waiver under the Department's general rule on exceptions at Iowa Admin. Code 441—1.8.

5. What are the likely areas of public comment?

Rules regarding the issuance of notices relate to all parts of the Department. The Department is required to provide timely and/or adequate notice to applicants and recipients. As rules are simply being moved from one rules chapter into another, public comments are not anticipated.

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.)

These rule changes have no impact on private-sector jobs and employment opportunities in Iowa.



## Administrative Rule Fiscal Impact Statement

Date: October 22, 2018

**Agency:** Human Services  
**IAC citation:** 441 IAC Chapter 16, 40, 41, 74, 75, 76, 86, 90, 91, 153, 187  
**Agency contact:** Denise Dutton

### Summary of the rule:

Whenever the Department proposes to approve or deny an application for assistance or services, the Department must provide adequate notice. Whenever the Department proposes to terminate or reduce assistance or services, the Department must provide timely and adequate notice. Rules regarding timely and adequate notices are currently in Chapter 7, Appeals and Hearings. As notices relate to all parts of the Department and are not specific to appeals, the rules regarding timely and adequate notices are removed from Chapter 7 and moved into Chapter 16, which solely relates to notices. Cross-references based on the change in chapters is also being made in other rule chapters. An individual's right to due process is not impacted by this change. The Department is still required to provide timely and adequate notices to applicants and recipients. Rules are simply being moved from one rules chapter into another.

*Fill in this box if the impact meets these criteria:*

- No fiscal impact to the state.  
 Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.  
 Fiscal impact cannot be determined.

### Brief explanation:

Budget Analysts must complete this section for ALL fiscal impact statements.  
There is no fiscal impact to the state. Rules are simply being moved from one rules chapter into another.

*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:



Agency representative preparing estimate: Rob Beran

Telephone number: 281-6188

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10-23

~~10-23~~

Comments and Responses on ARC 4675C  
Chapter 16, Notices  
Received October 15, 2019

The following person/organization provided written comments, which are included in the summary below:

1. Elizabeth Norris, Senior Staff Attorney, Iowa Legal Aid

**COMMENT 1:**

Current regulations at 441 IAC 7.7(1)(c) indicate the Department will give “adequate notice of...the approval or denial of a license, certification, approval, registration, or accreditation...” but the language is missing from the proposed subrule 16.3(1). It appears the Department intends to send adequate notices when a license, certification, approval, registration or accreditation is approved or denied, but respondent requested clarification regarding this issue.

**RESPONSE 1:**

Based on the comments received, Item 2 is amended as followed:

Amend subrule 16.3(2) as follows:

**16.3(2) Adequate notice.** The department shall give adequate notice of the approval or denial of assistance or services; the approval or denial of a license, certification, approval, registration, or accreditation; pending action for a state or federal tax or debtor offset or ~~To~~ to the extent standards provided elsewhere in state or federal law are inapplicable, adequate notice shall include:

- a. A description of the action taken;
- b. The effective date of the action;
- c. The specific reasons supporting the action, stated in clear language likely to be understood by the average program applicant or enrollee;
- d. References to applicable provisions of law supporting the action;
- e. An explanation of the right to appeal; and
- f. The circumstances under which assistance is continued when an appeal is filed.

**COMMENT 2:**

Respondent indicated the proposed change to 441 IAC 95.13(3) proposes to impose a 30-day appeal period for individual obligees to file an appeal of a CSRU decision when the obligee disputes having received all or part of a support payment to which they are entitled. The proposed change does not include a 90-day time limit for late appeals for

good cause and seems to do away with the procedure. Respondent inquired if the change was intentional, and if it was, questioned why the late appeal time limit for good cause was eliminated.

**RESPONSE 2:**

The opportunity to file a late appeal when there is good cause for filing late is standard in Department appeals and provides recognition that there are situations in which delay in action is effectively unavoidable. Based on the respondent's comments, Item 30 is removed from the rulemaking.

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

**Rulemaking related to medical assistance advisory council.**

The Human Services Department hereby amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 249A.4.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 249A.4.

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*Purpose and Summary*

These amendments update Medical Assistance Advisory Council (MAAC) and Executive meeting rules regarding MAAC membership, voting and duties and removal of the executive committee and responsibilities.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 18, 2019, as **ARC 4818C**.

One respondent, provided written comments.

**1. Comment Regarding the Roles of Voting and Non-Voting Members.**

Comment was provided regarding the roles of the voting and non-voting members. The respondent requested there should be an explicit change to allow the professional or business entity

members, who are not elected as voting members, to be identified as non-voting members of the Medical Assistance Advisory Council (MAAC).

### **Department Response**

House File (HF) 766 revised membership, voting provisions and duties of the Medical Assistance Advisory Council (MAAC).

HF 766 specifies the number of voting members as five professional or business entities and five public members. The legislation also designates the 41 entities that are eligible for election as voting members of the MAAC. All 41 entities are eligible to participate and cast a ballot in the election of the five voting members. The legislation also specifically identifies the non-voting members.

The legislation does not describe the role of the remaining 36 entities, who are not elected as voting members of the MAAC. The Department will distribute meeting information and materials to all 41 entities. It is expected that the representatives of the remaining 36 entities will attend MAAC meetings and be engaged with all MAAC committee members regarding policy development, program administration and recommendations. Those 36 entity representatives have voted the five members to the committee and should work collaboratively with the voting members outside of meetings to share their thoughts on advising the Medicaid agency. The representatives of the 36 entities will be responsible to elect new members annually, or when any vacancy occurs.

The legislation specifically describes the non-voting members, which does not include the remaining 36 professional or business entities. The proposed rules are consistent with the legislation and no changes to the rules are being made.

## **2. Public Hearing Information Requested**

The respondent requested information regarding how to request a public hearing and the required timeframes to request a public hearing.

**Department Response.**

A request for a public hearing must be made during the timeframe provided in the noticed rules. For this proposed rule, a request for public hearing would need to have been made by the close of business on January 7, 2020. This information was provided to the respondent by email. This request does not necessitate changes to the proposed rules.

*Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on February 12, 2020.

*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 441-1.8(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 April 15, 2020

The following rule-making action is adopted:

ITEM 1. Amend subrule 79.7(1) as follows:

**79.7(1) Officers.**

~~a.~~ Definitions.

~~“Co chairpersons” means the public health director co chairperson and the public co chairperson.~~

~~“Public co chairperson” means the individual selected by the other publicly appointed members of the council to serve as a co chairperson of the council.~~

~~“Public health director co chairperson” means the director of the department of public health, who serves as a co chairperson of the council.~~

~~b- a.~~ The public co-chairperson's term of office shall be two years. A public co-chairperson shall serve no more than two consecutive terms.

~~e- b.~~ The public co-chairperson shall have the right to vote on any issue before the council. The public health director co-chairperson serves as a nonvoting member of the council.

~~d- c.~~ The position of public co-chairperson shall be held by one of the ~~ten publicly appointed~~ five public council members. Ballots will be distributed to the public council members at the quarterly meeting closest to the beginning of the next state fiscal year and will be collected in paper and electronic format and administered by department of human services staff. The initial ballot following July 1, 2019, will be distributed by email prior to the first meeting in that fiscal year in order to identify the public co-chairperson prior to the council's first meeting.

~~e- d.~~ The co-chairpersons shall appoint members to other committees approved by the council.

~~f.~~ ~~The co chairpersons shall also serve on the executive committee and will serve as the co chairpersons of that committee.~~

~~g- e.~~ Responsibilities.

(1) The co-chairpersons shall be responsible for development of the agendas for meetings of the ~~full~~ council. Agendas will be developed and distributed in compliance with the advance notice requirements of Iowa Code section 21.4. Agendas will be developed in consultation with the staff and director of human services, taking into consideration the following:

1. Workplans. Items will be added to the council's agenda as various tasks for the council are due to be discussed based on calendar requirements. Council deliberations are to be conducted within a time frame to allow the ~~executive committee~~ council to receive ~~the council's feedback~~ and make recommendations to the director and for the director to consider those recommendations as budgets and policy for the medical assistance program are developed for the review of the council on human services and the governor, as well as for the upcoming legislative session.

2. Requests from the director of human services.

3. Discussion and action items from council members. The co-chairpersons will review any additional suggestions from council members at any time, including after the draft agenda has been distributed. The agenda will be distributed in draft form five business days prior to the council meeting, and the final agenda will be distributed no later than 24 hours prior to the council meeting.

(2) The co-chairpersons shall preside over all council ~~and executive committee~~ meetings, calling roll, determining a quorum, counting votes, and following the agenda for the meeting.

(3) The co-chairpersons shall consult with the department of human services on other administrative tasks to oversee the council and shall participate in workgroups and subcommittees as appropriate.

ITEM 2. Rescind subrule 79.7(2) and adopt the following **new** subrule in lieu thereof:

**79.7(2) Membership.** The membership of the council shall be as prescribed in Iowa Code section 249A.4B.

a. Council membership of professional and business entities shall number five and be identified from a vote among those entities outlined in Iowa Code section 249A.4B(3). Professional and business entities shall vote every year to identify the entities and their subsequent representatives that will represent the body of professional and business stakeholders on the council. Professional and business entities will also report their contact information to the department of human services.

(1) An initial election in SFY 2020 of five professional and business members shall be held. From this initial election of five members, three members with the most votes shall serve a three-year term and the other two members shall serve a two-year term. Once these members have served their initial term, the length of term for all following elected members shall be two years.

(2) Elections shall be organized along the following guidelines.

1. Ballots will be distributed at the quarterly meeting closest to the beginning of the next state fiscal year and will be collected in paper and electronic format and counted by department of human services staff.

2. The entities that receive the most votes shall serve on the council.

(3) Should any vacancy occur on the council, the entity that received the next highest number of votes in the most recent election shall serve on the council.

(4) If a voting entity's representative does not attend more than three consecutive meetings, the department of human services will notify the entity and representative and verify whether an alternative contact is needed. If a fourth consecutive meeting is missed after the notification, the voting entity's seat will be considered vacant and will be filled as outlined in subparagraph 79.7(2) "a"(3).

b. Council membership of public representatives shall consist of five representatives, of which one must be a recipient of medical assistance. All five public representatives will be appointed by the governor for staggered terms of two years each. All five public representatives will be voting members of the council.

c. A member of the hawki board, created in Iowa Code section 514I.5, selected by the members of the hawki board, shall be a member of the council. The hawki board member representative will be a nonvoting member of the council.

d. Council membership shall also consist of state agency and medical school partners, including representatives from the department of public health, the department on aging, the office of the long-term care ombudsman, Des Moines University and the University of Iowa College of Medicine.

(1) Partner agency and medical school representatives will be nonvoting members of the council.

(2) If an agency's or school's representative does not attend more than three consecutive meetings, the department of human services will notify the agency or school.

(3) Partner agencies and medical schools shall determine the length of appointment of their representatives. The department of human services will confirm each representative's participation every two years.

e. The following members of the general assembly shall be members of the council, each for a term of two years as provided in Iowa Code section 69.16B. Members appointed from the general assembly will serve as nonvoting members of the council.

(1) Two members of the house of representatives, one appointed by the speaker of the house of representatives and one appointed by the minority leader of the house of representatives from their respective parties.

(2) Two members of the senate, one appointed by the president of the senate after consultation with the majority leader of the senate and one appointed by the minority leader of the senate from their respective parties.

ITEM 3. Amend subrules 79.7(3) to 79.7(5) as follows:

**79.7(3) Responsibilities, duties and meetings.** The responsibility of the medical assistance advisory council is to provide recommendations on the medical assistance program to the department of human services ~~through the executive committee of the council.~~

*a. Recommendations.* Recommendations made by ~~the executive committee from~~ the council shall be advisory and not binding upon the department of human services or the professional and business entities represented. The director of the department of human services shall consider the recommendations in the director's preparation of medical assistance budget recommendations to the council on human services, pursuant to Iowa Code section 217.3 and implementation of medical assistance program policies.

*b. Council.* The council shall be provided with information to deliberate and provide input on the medical assistance program. ~~The executive committee will use that input in making final recommendations to the department of human services. The council will use that input in making final recommendations to the department of human services.~~

(1) to (5) No change.

~~(6) The council shall review the recommendations submitted by the executive committee regarding feedback received at the IA Health Link statewide public comment meetings outlined in 2016 Iowa Acts, chapter 1139, section 102.~~

*c. Executive committee.*

~~(1) Executive committee meetings.~~

~~1. The executive committee shall meet on a monthly basis.~~

~~2. Meetings may be called by the co-chairpersons; upon written request of at least 50 percent of executive committee members; or by the director of the department of human services.~~

~~3. Meetings shall be held in the Des Moines, Iowa, area unless other notification is given. Meetings will also be made available via teleconference, when available.~~

~~4. In a month when a council meeting is held, the executive committee shall meet after the council meeting, allowing committee members to discuss and make recommendations based on the topics discussed by council members.~~

~~(2) Based on the deliberations of the full council, the executive committee shall make recommendations to the director of human services regarding the budget, policy, and administration of the medical assistance program. Such recommendations may include:~~

~~1. Recommendations on the reimbursement for medical services rendered by providers of services.~~

~~2. Identification of unmet medical needs and maintenance needs which affect health.~~

~~3. Recommendations for objectives of the program and for methods of program analysis and evaluation, including utilization review.~~

~~4. Recommendations for ways in which needed medical supplies and services can be made available most effectively and economically to program recipients.~~

~~5. Advice on such administrative and fiscal matters as the director of human services may request.~~

~~(3) Pursuant to 2016 Iowa Acts, chapter 1139, section 102, the executive committee shall review the compilation of the input and recommendations from the public meetings convened statewide and shall submit recommendations based upon the compilation to the director of human services on a quarterly basis through December 31, 2017.~~

**79.7(4) Procedures.**

~~a. Procedures shall apply to both the council and the executive committee.~~

~~b. a. A quorum shall consist of 50 percent (five persons) of the current voting members.~~

~~c. b. Where a quorum is present, a position is carried by two-thirds of the present council members present.~~

~~d. c. Minutes of council meetings and other written materials developed by the council shall be distributed by the department to each member of the ~~full~~ council.~~

~~e. d. In cases not covered by these rules, Robert's Rules of Order shall govern.~~

**79.7(5) Expenses, staff support, and technical assistance.** Expenses of the council ~~and executive committee~~, such as those for clerical services, mailing, telephone, and meeting place, shall be the responsibility of the department of human services. The department shall arrange for a meeting place, related services, and accommodations. The department shall provide staff support and independent technical assistance to the council ~~and the executive committee.~~

- a. to c.* No change.
- d.* The department shall maintain a current list of members on the council ~~and executive committee.~~
- e.* The department shall be responsible for the organization of all council ~~and executive committee~~ meetings and notice of meetings.
- f.* As required in Iowa Code section 21.3, minutes of the meetings of the council ~~and of the executive committee~~ will be kept by the department. The ~~co-chairpersons~~ council will review minutes before distribution to the public.
- g.* ~~The department shall compile input and recommendations received at the public meetings established in 2016 Iowa Acts, chapter 1139, section 102, and submit the information to the executive committee for review.~~



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

Name of Program Specialist Jennifer Steenblock	Telephone Number (515) 256-4636	Email Address jsteenb@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:

The purpose of these amendments are to update MAAC Council and Executive Meeting rules regarding council membership, voting and duties, and removal of the executive committee and responsibilities.

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

House File (HF) 766, Division XVIII.

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

Impact is considered to be neutral

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

No, not necessary.

5. What are the likely areas of public comment?

The likely areas of public comment include eliminating the Executive Committee, which meets monthly, as well as the reduction of the number of voting MAAC members. Currently, there are 10 public members who all are eligible to vote, along with close to 50 professional entities, all of which are currently eligible to vote. Under the new rule, only 5 public members will be voting members, and only 5 professional entities will be voting members. The change may generate public comment regarding the reduction, and the process for selecting the voting members.

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

No.



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

	Year 1 (FY )	Year 2 (FY )
<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:

House File (HF) 766, Division XVIII.

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:**

No fiscal impact.

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

No fiscal impact.

Agency representative preparing estimate: Jason Buls

Telephone number: 515-281-5764

  
 7-16-19  


Comments and Responses on ARC 4818C  
Medical Assistance Advisory Council (MAAC)  
Received January 4, 2020

The following person/organization provided written comments, which are included in the summary below:

1. David Beeman, Ph.D., Psychologist, Innovative Learning Professionals

The Department received two comments from one respondent on the proposed rules. The comments and corresponding responses from the Department are as follows:

**COMMENT:**

Comment was provided regarding the roles of the voting and non-voting members. The respondent requested that there should be an explicit change to allow the professional or business entity members, who are not elected as voting members, to be identified as non-voting members of the Medical Assistance Advisory Council (MAAC).

**RESPONSE:**

House File (HF) 766 revised membership, voting provisions and duties of the Medical Assistance Advisory Council (MAAC).

HF 766 specifies the number of voting members as five (5) professional or business entities and five (5) public members. The legislation also designates the 41 entities that are eligible for election as voting members of the MAAC. All 41 entities are eligible to participate and cast a ballot in the election of the five voting members. The legislation also specifically identifies the non-voting members.

The legislation does not describe the role of the remaining 36 entities, who are not elected as voting members of the MAAC. The Department will distribute meeting information and materials to all 41 entities. It is expected that the representatives of the remaining 36 entities will attend MAAC meetings and be engaged with all MAAC committee members regarding policy development, program administration and recommendations. Those 36 entity representatives have voted the five members to the committee and should work collaboratively with the voting members outside of meetings to share their thoughts on advising the Medicaid agency. The representatives of the 36 entities will be responsible to elect new members annually, or when any vacancy occurs.

The legislation specifically describes the non-voting members, which does not include the remaining 36 professional or business entities. The proposed rules are consistent with the legislation and no changes to the rules are needed.

**COMMENT:**

Information was requested regarding how to request a public hearing and the required timeframes to request a public hearing.

**RESPONSE:**

A request for a public hearing must be made during the timeframe provided in the notice. For this proposed rule, a request for public hearing would need to have been made by close of business on January 7, 2020. This information was provided to the respondent by email. This request does not necessitate changes to the proposed rules.

## **HUMAN SERVICES DEPARTMENT[441]**

### **Adopted and Filed**

The Human Services Department hereby amends 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 249A.4.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, 249A.4.

#### *Purpose and Summary*

Legislation from the 2019 session directed the Department to eliminate the monthly budget maximum or cap for individuals eligible for the Medicaid home and community based services (HCBS) brain injury waiver. Legislation also appropriated additional funds to adjust the per diem rates for assertive community treatment (ACT) services.

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

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 18, 2019, as **ARC 4819C**.

The Department received no comments on this rule.

These amendments are identical to those published in the Iowa Administrative Bulletin under Notice of Intended Action.

*Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on February 12, 2020.

*Fiscal Impact*

Based on June 2018 data, annualized ACT costs were estimated at \$5,794,035. The cost per unit was increased by approximately 9.32 percent to achieve the \$211,332 state share target. Based on a previously completed fiscal note, no fiscal impact is expected from eliminating the monthly budget maximum or cap for individuals eligible for the brain injury waiver. During calendar year 2018, the Iowa Medicaid Enterprise received 126 exception-to-policy (ETP) requests for brain injury waiver members to exceed the monthly cap for services, and of these, only two requests were denied. Since the ETP process is an existing practice, costs related to exceptions would already be incorporated into the base data used to set managed care organization rates.

*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 rule 441—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 April 15, 2020.

The following rule-making action is adopted:

ITEM 1. Amend subrule **79.1(2)**, provider category of “Assertive community treatment,” as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Assertive community treatment	Fee schedule	<del>51.08 per day for each day on which a team meeting is held.</del> <u>Fee schedule in effect 7/1/2019.</u> Maximum of 5 days per week.

ITEM 2. Rescind paragraph **83.82(2)“d.”**



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

Name of Program Specialist LeAnn Moskowitz	Telephone Number 515-256-4653	Email Address lmoskow@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:

The proposed rule amends Iowa Admin Code 441 -79.1(2) by changing the rate to the fee schedule in effect 07/01/2019.

The proposed rule amends Iowa Admin Code 441-83.82 (2) d. by removing the monthly cap for services allowed under the HCBS BI Waiver.

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

1. HF766 appropriated an additional \$211,332 to adjust the per diem rates for assertive community treatment (ACT) services.
2. HF 570 directs the department to eliminate the monthly budget maximum or cap for individuals eligible for the Medicaid home and community-based services brain injury waiver. The department shall track the average amount expended per waiver recipient each fiscal year beginning July 1 , 2019 , shall report the information annually to the Governor and General Assembly.

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

1. This amendment will benefit Medicaid members needing to access ACT services by encouraging service provision by increasing reimbursement to providers.
2. This amendment will benefit HCBS BI Waiver service recipients by enabling those members to receive all of the medically necessary BI Waiver services identified in their annual HCBS comprehensive service plan.  
 There are no adverse impacts of this amendment. The department currently allows members to exceed the cap through the exception to policy process.

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

A waiver provision is not necessary. 441 -1.8(17A, 217) provides for waiver of administrative rules in exceptional circumstances.

5. What are the likely areas of public comment?

BI Stakeholders including the Governor’s Advisory Council on Brain Injury, the Brian Injury Alliance of Iowa (BIA-IA) and BI Waiver members are supportive regarding the removal of the monthly cap on services.

Mental Health advocates including the Mental Health Planning Council are supportive of an increase in reimbursement for ACT.

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.)

The jobs impact is unknowable but anticipated to be minimal to neutral.



## Administrative Rule Fiscal Impact Statement

Date: 7/1/19

**Agency:** Human Services  
**IAC citation:** 441 IAC 83.82 (2) D.  
**Agency contact:** LeAnn Moskowitz

**Summary of the rule:**

HF766 appropriated an additional \$211,332 to adjust the per diem rates for assertive community treatment (ACT) services.

HF570 directs the department to eliminate the monthly budget maximum or cap for individuals eligible for the Medicaid home and community-based services brain injury waiver. The department shall track the average amount expended per waiver recipient each fiscal year beginning July 1, 2019, shall report the information annually to the Governor and General Assembly.

*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.

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

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

**Assumptions:**

The calculation of the ACT reimbursement increase was based on June 2018 units and cost per unit data. The June 2018 data was annualized and the cost per unit was adjusted in order to achieve a \$211,332 state share increase.

The FMAP rate is 60.88% in SFY20 and estimated at 61.99% in SFY21.

Based on a previously completed fiscal note, no fiscal impact is expected from eliminating the monthly budget maximum or cap for individuals eligible for the Medicaid home and community-based services brain injury waiver. During calendar year 2018, the Iowa Medicaid Enterprise (IME) received 126 exception to policy requests for BI Waiver members to exceed the monthly cap for services, and of these, only 2 were denied. Since the ETP process is an existing practice, costs related to ETPs would already be incorporated into the base data used to set MCO rates.

**Describe how estimates were derived:**

Based on the June 2018 data, annualized ACT costs were estimated at \$5,794,035. The cost per unit was increased by approximately 9.32% to achieve the \$211,332 state share target.

$$\$5,794,035 \times .0932364 = \$540,215$$

$$\$540,215 \times .3912 = \$211,332 \text{ state share}$$

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

	<u>Year 1 (FY 2020)</u>	<u>Year 2 (FY 2021)</u>
<b>Revenue by each source:</b>		
General fund	<u>211,332.00</u>	<u>211,332.00</u>
Federal funds	<u>328,883.00</u>	<u>334,879.00</u>
Other (specify):	<u>                    </u>	<u>                    </u>
<b>TOTAL REVENUE</b>	<u>540,215.00</u>	<u>546,211.00</u>
<b>Expenditures:</b>		
General fund	<u>211,332.00</u>	<u>205,336.00</u>
Federal funds	<u>328,883.00</u>	<u>334,879.00</u>
Other (specify):	<u>                    </u>	<u>                    </u>
<b>TOTAL EXPENDITURES</b>	<u>540,215.00</u>	<u>540,215.00</u>
<b>NET IMPACT</b>	<u>0.00</u>	<u>5,996.00</u>

This rule is required by state law or federal mandate.

*Please identify the state or federal law:*

Identify provided change fiscal persons:

2019 HF570 and HF766

Funding has been provided for the rule change.

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

The SFY20 Medical Assistance budget includes \$211,332 for the state share of the ACT provider reimbursement increase.

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:**

This amendment will benefit Medicaid members needing to access ACT services by encouraging service provision by increasing reimbursement to providers.

This amendment will benefit HCBS BI Waiver service recipients by enabling those members to receive all of the medically necessary BI Waiver services identified in their annual HCBS comprehensive service plan.

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

None anticipated.

Agency representative preparing estimate: Jason Buls

Telephone number: 515-281-5764

**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

The Human Services Department hereby proposes to amend Chapter 86, "Healthy and Well Kids in Iowa (Hawk-I) Program," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code chapter 514I.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 514I.

*Purpose and Summary*

These proposed amendments implement HF 625 which removed the third party administrator for Hawk-I from Iowa Code 514I. References to the third party administrator are deleted in these rules. These rules also amend references that had not been referenced correctly in the rules.

*Fiscal Impact*

This rule making is expected to be budget neutral. There will be savings associated with the Hawk-I third party administrator contract that will shift to the department to cover the cost of determining Hawk-I eligibility, payment of claims and administration of the program.

*Jobs Impact*

This may result in some loss of some jobs for the individuals working for the third party administrator.

*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 rule 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 3, 2020. 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 action is proposed:

ITEM 1. Revise the preamble Chapter 86 as follows:

These rules define and structure the department of human services healthy and well kids in Iowa (HAWK-I) program and establish requirements ~~for the third-party administrator responsible~~ for the program administration and for the participating health and dental plans that will be delivering services to the enrollees. The purpose of this program is to provide transitional health and dental care coverage to children who are ineligible for Title XIX (Medicaid) assistance as set forth in this chapter. This chapter shall be construed to comply with all requirements for federal funding under Title XXI of the Social Security Act or under the terms of any applicable waiver of Title XXI requirements granted by the Secretary of the U.S. Department of Health and Human Services. To the extent this chapter is inconsistent with any applicable federal funding requirement under Title XXI or the terms of any applicable waiver, the requirements of Title XXI or the terms of the waiver shall prevail.

ITEM 2. Revise ~~441—86.1(514I)~~ Definitions as follows:

“*Contract*” shall mean the contract between the department ~~and the person or entity selected as the third-party administrator or the contract between the department~~ and the participating health or dental plan for the provision of medical or dental services to HAWK-I enrollees for whom the participating health or dental plans assume risk.

“*Health Insurance coverage*” shall mean the entity authorized under 45 CFR Section 144.103, ~~as amended to October 1, 2008.~~

“*Health Insurance Marketplace*” or “*Exchange*” shall mean the entity authorized under 42 U.S.C. Section 18031(d)(4)(F) as amended to April 1, 2013, to evaluate and determine eligibility of applicants for Medicaid, the Children’s Health Insurance Program (CHIP), and other health programs.

“*Institution for mental diseases*” shall mean a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care and related services as define at 42 CFR Section 435.1010 ~~1009~~ as amended November 10, 1994.

“*Modified adjusted gross income*” shall mean the methodology prescribed in 42 U.S.C. Section 1396a(e)(14) and 42 CFR 435.603 as amended to April 1, 2013.

“~~Nonmedical~~ Public institution” shall mean an institution that is the responsibility of a governmental unit of over which a governmental unit exercises administrative control as defined in 42 CFR Section 435.1010 ~~1009~~ as amended November 10, 1994.

~~“Third-party administrator” shall mean the person or entity with which the department contracts to provide administrative services for the HAWK-I program.~~

ITEM 3. Revise **441—86.2(9)** as follows:

**86.2(9) *Inmates of ~~nonmedical~~ public institutions.*** The child shall not be an inmate of a ~~nonmedical~~ public institution as defined at 42 CFR Section 435.1010 ~~1009~~ as amended November 10, 1994.

ITEM 4. Revise **441—86.2 (10)** as follows:

**86.2(10) *Inmates of institutions for mental disease.*** At the time of application or annual review of eligibility, the child shall not be an inmate of an institution for mental disease as defined in 42 CFR Section 435.1010~~099~~ as amended November 14, 1994.

ITEM 5. Revise **441—86.3 (3)(514I)** as follows:

**86.3(3) *Place of filing.*** An application for the HAWK-I program may be filed with the department ~~third-party administrator responsible for making the eligibility determination~~ through an Internet Web site,

by telephone, through other electronic means, ~~or in any local or area office of the department of human services~~, an exchange, disproportionate share hospital, federally qualified health center, or other facility in which outstationing activities are provided.

ITEM 6. Revise **441—86.3(7)“b” (514I)** as follows:

b. Failure to supply the information or verification or refusal to authorize the department to secure the information shall serve as a basis for rejection of the application or cancellation of coverage. If the requested information or authorization is received within 14 calendar days of the notice of decision on an application or within 14 calendar days of the effective date of cancellation for enrollees, the information or authorization shall be acted upon as though it had been provided timely. If the fourteenth calendar day falls on a weekend or state holiday, the applicant shall have until the next business day to provide the information.

ITEM 7. Revise **441—86.3(9) (514I)** as follows:

**86.3(9) Applicant cooperation.** An applicant must cooperate with the department ~~third-party administrator~~ in the application process, which may include providing verification or signing documents. Failure to cooperate with the application process shall serve as basis for a denial of the application.

ITEM 8. Revise **441—86.3(10) a” (514I)** as follows:

a. The department ~~or the third-party administrator~~ shall mail a notice of decision to the applicant that states:

(1) The applicant meets the eligibility requirements but that no funds are available and that the applicant will be placed on a waiting list, or

(2) The applicant does not meet eligibility requirements, in which case the applicant shall not be put on a waiting list.

ITEM 9. Revise **441—86.7(6) (514I)** as follows:

**86.7(6)** *Enrolled in other health insurance coverage.* The child shall be canceled from the program as of the first day of the month following the month in which the department ~~or the third-party administrator~~ is notified that the child has other health insurance coverage. If there are months during which the child is covered by both another insurance plan and the HAWK-I program, the other insurance plan shall be the primary payor and HAWK-I shall be the payor of last resort.

ITEM 10. Revise **441—86.7(7) (514I)** as follows:

~~*Admission to a nonmedical public institution.* The child shall be canceled from the program as of the first day of the month following the month in which the child enters a nonmedical public institution unless the temporary absence provision of paragraph 86.2(3)“d” apply.~~ The child shall be canceled from the program if the child is in a public institution at the time of the annual review.

ITEM 11. Revise **441—86.10 (514I)** as follows:

**441—86.10(514I) Reporting changes.** Changes that may affect eligibility shall be reported timely to the department ~~or the third-party administrator~~. “Timely” shall mean no later than ten working days after the change occurred. The ten working-day period begins the first working day following the date of the change. The parent, guardian, or other adult responsible for the child shall report the change unless the child is emancipated, married, or otherwise in an independent living situation, in which case the child shall be responsible for reporting the change.

ITEM 12. Revise **441—86.10(5)** as follows:

**86.10(5) Decrease in income.** If the family reports a decrease in income, the ~~third party administrator~~ department shall ascertain whether the change affects the premium obligation of the family. If the change is such that the family is no longer required to pay a premium in accordance with the provisions of rule 441-86.8 (514I), premiums will no longer be charged beginning with the month following the month of the report of change.

ITEM 13. Delete Section **441—86.13 (514I)** as follows:

~~441—86.13(514I) Third-party administrator.~~ The third-party administrator shall have the following responsibilities:

~~—86.13(1) Determination of eligibility.~~ Eligibility for the HAWK-I program shall be determined utilizing the department's eligibility system and in accordance with the provisions of rule 441—86.2(514I).

~~86.13(2) Dissemination of application forms and information.~~ The third-party administrator shall disseminate the following:

~~—a. Rescinded IAB 10/17/01, effective 12/1/01.~~

~~—b. Outreach materials, application forms, or other materials developed and produced by the department to any organization or individual making a request for the materials. If the request is for quantities exceeding ten, the third-party administrator shall forward the request to Iowa prison industries for dissemination.~~

~~—c. Participating health and dental plan information.~~

~~—d. Other materials as specified by the department.~~

~~—86.13(3) Toll-free dedicated customer services line.~~ The third-party administrator shall maintain a toll-free multilingual dedicated customer service line in accordance with the requirements of the department.

~~—86.13(4) HAWK-I program web site.~~ The third-party administrator shall work in cooperation with the department to maintain a web site providing information about the HAWK-I program.

~~—86.13(5) Application process.~~ Applications shall be processed in accordance with the provisions of rule 441—86.3(514I).

~~—a. Processing applications and mailing of approvals and denials shall be completed within ten working days of receipt of the application and all necessary information and verification unless the application cannot be processed within this period for a reason beyond the control of the third-party~~

administrator.

~~— b. Original verification information shall be returned to the applicant or enrollee upon completion of review.~~

~~— c. Applications shall be screened for completeness. Additional information or verification necessary to establish eligibility may be requested in writing. All information or verification of information attained shall be logged.~~

~~— d. Health and dental plans shall be notified when the number of enrollees who speak the same~~

~~non-English language equals or exceeds 10 percent of the number of enrollees in the health or dental plan.~~

~~— **86.13(6)** *Effective date of coverage.* The effective date of coverage shall be established in accordance with the provisions of rule 441—86.5(514I).~~

~~— **86.13(7)** *Selection of health or dental plan.* The third-party administrator shall provide participating health and dental plan information to families of eligible children by telephone or mail and, if necessary, offer unbiased assistance in the selection of a health or dental plan in accordance with the provisions of rule 441—86.6(514I).~~

~~— **86.13(8)** *Enrollment.* The third-party administrator shall notify participating health and dental plans of enrollments.~~

~~— **86.13(9)** *Disenrollments.* The third-party administrator shall disenroll an enrollee when the enrollee's eligibility for the HAWK-I program is canceled in accordance with the provisions of rule 441—86.7(514I). The third-party administrator shall notify the participating health and dental plans when an enrollee is disenrolled.~~

~~— **86.13(10)** *Annual reviews of eligibility.* Eligibility shall be reviewed annually in accordance with the provisions of rules 441—86.2(514I) and 441—86.9(514I).~~

~~— **86.13(11)** *Acting on reported changes.* The third-party administrator shall ensure that all changes~~

~~reported by the HAWK-I enrollee in accordance with rule 441—86.10(514I) are acted upon no later than ten working days from the date the change is reported.~~

~~— **86.13(12) Premiums.** The third-party administrator shall:~~

~~— a. Calculate premiums in accordance with the provisions of rule 441—86.8(514I).~~

~~— b. Collect HAWK-I premium payments. The funds shall be deposited into an interest-bearing account maintained by the department for periodic transmission of the funds and any accrued interest to the HAWK-I trust fund in accordance with state accounting procedures.~~

~~— c. Track the status of the enrollee premium payments and provide the data to the department.~~

~~— d. Mail a reminder notice to the family if the premium is not received by the due date.~~

~~**86.13(13) Notices to families.** Timely and adequate approval, denial, and cancellation notices that clearly explain the action being taken in regard to an application or an existing enrollment shall be issued to the family. Denial and cancellation notices shall clearly explain the appeal rights of the applicant or enrollee. All notices shall be available in English and Spanish.~~

~~**86.13(14) Records.** The third-party administrator shall at a minimum maintain the following records:~~

~~a. All records required by the department and the department of inspections and appeals.~~

~~b. Record which identify transactions with or on behalf of each enrollee by social security number or other unique identifier.~~

~~c. Application, case and financial records.~~

~~d. All other record as required by the department in determining compliance with any federal or state law or rule or regulation promulgated by the United States Department of Health and Human Services or by the department.~~

~~**86.13(15) Confidentiality.** The third-party administrator shall protect and maintain the confidentiality of HAWKI applicants and enrollees in accordance with 441-Chapter 9.~~

~~86.13(16) Reports to the department.~~ The third-party administrator shall submit reports as required by the department.

~~86.13(17) Systems.~~ The third-party administrator maintain data files that are compatible with the department's and the health plans' data files and shall make the system accessible to the department staff.

ITEM 14. Revise **441—86.14(1)“o” (514I)** as follows:

o. Translation and interpreter services as specified pursuant to ~~the federal Children's Health Insurance Program Reauthorization Act of 2009. Pub. L. No. 111-342 U.S.C. 1397ee(a)(1).~~

ITEM 15. Revise **441—86.15(3) (514I)** as follows:

**86.15(3) Premium tax.** Premiums paid to participating health and dental plans by the ~~third-party administrator~~ department are exempt from premium tax.

ITEM 16. Revise **441—86.15(6)“a”(2) (514I)** as follows:

**86.10(15)(6) Marketing.**

a. and b. No change

c. At a minimum, participating health and dental plans must provide the following material in writing or electronically:

(1) A current member handbook that fully explains the services available, how and when to obtain them, and special factors applicable to the HAWK-I enrollees. At a minimum the handbook shall include covered services, network providers, exclusions, emergency services procedures, 24-hour toll free number for certification of services, daytime number to call for assistance, appeal procedures, enrollee rights and responsibilities, and definitions of terms.

(2) All health and dental plan literature and brochures shall be available in English and any other language when enrollment in the health or dental plan by enrollees who speak the same non-English language equals or exceeds 10 percent of all enrollees in the health or dental plan. ~~and shall be made~~

~~available to the third-party administrator for distribution.~~

d., e., and f. No change.

ITEM 17. Revise ~~441—86.15(9)~~ as follows:

**86.15(9) *Records and reports.*** The participating health and dental plan shall maintain records and reports as follows:

a. The health or dental plan shall comply with the provisions of rule 441-79.3(249A) regarding maintenance and retention of clinical and fiscal records and shall file a letter with the commissioner of insurance as described in Iowa Code section 228.7. In addition, the health or dental plan or subcontractor of the health or dental plan, as appropriate, must maintain a medical or dental records system that:

(1) Identifies each medical or dental record by the enrollee identification number.

(2) Maintains a complete medical or dental record for each enrollee.

(3) Provides a specific medical or dental record on demand.

(4) Meets state and federal reporting requirements applicable to the HAWKI program.

(5) Maintains the confidentiality of medical or dental records information and releases the information only in accordance with established policy below:

1. All medical and dental records of the enrollee shall be confidential and shall not be released without the written consent of the enrollee or responsible party.

2. Written consent is not required for the transmission of medical or dental records information to physicians, dentists, other practitioners, or facilities that are providing services to enrollees under a subcontract with the health or dental plan. This provision also applies to specialty providers who are retained by the health or dental plan to provide services which are infrequently used, which provide a support system service to the operation of the health or dental plan, or which are of an unusual nature. This provision is also intended to waive the need for written consent for department staff ~~and the third-party administrator~~ assisting in the administration of the program, reviewers from

the peer review organization (PRO), monitoring authorities from the Centers for Medicare and Medicaid Services (CMS), the health or dental plan itself, and other subcontractors which require information as described under numbered paragraph “5” below.

3., 4., 5., and 6. No change.

b. Each health or dental plan shall provide at a minimum reports and plan information to the ~~third-party administrator~~ department as follows:

(1) A list of providers of services under the plan.

(2) Encounter data on a monthly basis as required by the department.

(3) Other information as directed by the department.

c. No change

ITEM 18. Revise **441—86.15(10) (514I)** as follows:

**86.15(10) Systems.** The participating health or dental plan shall maintain data files that are compatible with the department’s and ~~third-party administrator’s~~ systems.

ITEM 19. Revise **441—86.19(1) (514I)** as follows:

**86.19(1) Definitions.**

“*Administrative error*” means an action of the department ~~or the HAWK-I third-party administrator~~ that results in incorrect payment of benefits, including premiums paid to a health or dental plan, due to one or more of the following circumstances:

1. Misfiled or lost form or document.

2. Error in typing or copying.

3. Computer input error.

4. Mathematical error.

5. Failure to determine eligibility correctly when all essential information was available to the department ~~or the HAWK-I third-party administrator~~.

6. Failure to request essential verification necessary to make an accurate eligibility determination.

7. Failure to make timely revision in eligibility following a change in policy requiring application of the policy change as of a specific date.

8. Failure to issue timely notice to cancel benefits that results in benefits continuing in error.

ITEM 20. Revise **441—86.20(2) (514I)** as follows:

**86.20(2) Eligibility.** Unless otherwise specified, eligibility for supplemental dental-only coverage shall be determined in accordance with provisions of rule 441-86.42 (514I) through 441-86.12(514I), ~~441-86.18(514I)~~, and 441-86.19(514I).

ITEM 21. Revise **441—86.20(3) (514I)** as follows:

**86.20(3) Premiums.** Premiums for participation in the supplemental dental-only plan are assessed as follows:

- a. No premium is charged to families ~~who meet the provisions of subparagraph 86.8(2)“a”(1) or~~ whose countable income is less than 167 percent of the federal poverty level for a family of the same size using the modified adjusted gross income methodology or if the eligible child is an American Indian or Alaska Native.



Iowa Department of Human Services

Administrative Rule Transmittal

Subject of Rule Making Healthy and Well Kids in Iowa (Hawki) Third Party Administrator		
Administrative Code Chapters Affected 441-86	Iowa Code Section or Bill Giving Rule Making Authority HF625 and Iowa Code 514I	
Program Specialist Anna Ruggle	Date Initiated 6-19-19	Desired Effective Date 12-1-19

Are you requesting emergency rule making?  No  Yes

Are there grounds for emergency rule making?  No

Yes, because:

The period for notice and public comment may be waived because obtaining public comment is:

Unnecessary. Reason:

Impracticable. Reason:

Contrary to the public interest. Reason:

The implementation period can be waived since:

Legislation permits emergency rule making. Citation:

The rule confers a benefit on the public or removes a restriction on the public. Reason:

The effective date is necessary because of imminent peril to public health, safety, or welfare.  
Reason:

Are public hearings needed?  No  Yes

Are changes to a data system needed?  No  Yes

Will this affect appeal volume?  No  Yes:  Increase  Decrease

Is training required?  No  Yes, scheduled for:

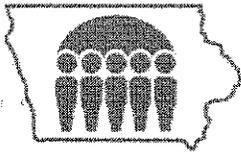
Are form changes required?  No  Yes, to:

Are manual changes required?  No  Yes, to:

Division Sign-Off:

Bureau Chief Signature (Process Initiation)	Date
Division Administrator Signature (Form Content Approval)	Date
Attorney General Signature (Review) <i>S. Bradley Ann</i>	Date 7/13/2019
Fiscal Administrative Rules Coordinator <i>Julia A. Shaw</i>	Date 7/26/19
Deputy Director Signature <i>M. Ta</i>	Date 8/12/19

Please plan for one week turnaround and final approval before submitting.



## Administrative Rule Fiscal Impact Statement

Date: July 25, 2019

**Agency:** Human Services

**IAC citation:** 441 IAC 86

**Agency contact:** Anna Ruggle

**Summary of the rule:**

The rule removes reference to the third party administrator for the Healthy and Well Kids in Iowa (Hawki) program.

*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 rule removes reference to a third party administrator for Hawk-i which is expected to be budget neutral. There will be savings associated with the hawk-i TPA contract that will shift to the department to cover the cost of hawk-i eligibility, payment and administration.

*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**

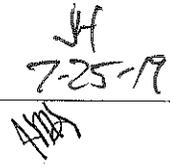
	<u>Year 1 (FY 2020)</u>	<u>Year 2 (FY 2021)</u>
<b>Revenue by each source:</b>		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
<b>TOTAL REVENUE</b>	_____	_____
<b>Expenditures:</b>		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
<b>TOTAL 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:  
 2019 HF 625
  
- 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:**  
 This will adversely impact the Hawki third party administrator.

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

Agency representative preparing estimate: Phil Davis  
 Telephone number: 515-281-6017

  
 JD  
 7-25-19  
 ADA

**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

The Human Services Department hereby proposes to amend Chapter 176, “Dependent Adult Abuse,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code chapter 235B.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 235B.

*Purpose and Summary*

Two pieces of legislation recently passed which resulted in proposed rule changes. HF 569 added personal degradation as a category for dependent adult abuse. HF 323 changed the definition of personal degradation for dependent adult abuse. The proposed rules define dependent adult abuse and criteria for outcome determinations for dependent adult abuse evaluations conducted by the Department for personal degradation.

*Fiscal Impact*

Both legislative changes will result in DHS computer system updates and the new category of abuse will increase case counts and result in the need for additional DHS staff.

*Jobs Impact*

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

*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 rule 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. March 3, 2020. 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 action is proposed:

ITEM 1. Adopt changes to rule **441—176.1** as follows:

#### **441—176.1(235B) Definitions.**

“*Adult abuse*” means either:

1. Any of the following as a result of the willful or negligent acts or omissions of a caretaker:

- Physical injury to, or injury which is at variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult.
- The commission of a sexual offense under Iowa Code chapter 709 or Iowa Code section 726.2 with or against a dependent adult.
- Exploitation of a dependent adult, which means the act or process of taking unfair advantage of a dependent adult or the adult’s physical or financial resources ~~for one’s own personal or pecuniary profit~~, without the informed consent of the dependent adult, including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.
- The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult’s life or health.
- Sexual exploitation of a dependent adult by a caretaker. “Sexual exploitation” means any consensual or nonconsensual sexual contact with a dependent adult which includes but is not limited to kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act, as defined in Iowa Code section 702.17. “Sexual exploitation” includes the transmission, display, taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for a purpose not related to treatment or diagnosis or as part of an ongoing assessment, evaluation or investigation. “Sexual exploitation” does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses.
- Personal degradation of a dependent adult, which means a willful act or statement by a caretaker intended to shame, degrade, humiliate, or otherwise harm the personal dignity of a dependent adult, or where the caretaker knew or reasonably should have known the act or statement would cause shame, degradation, humiliation, or harm to the personal dignity of a reasonable person.

ITEM 2. Adopt changes to rule **441—176.3(1)(c)** as follows:

**176.3(1)** Dependent adult abuse reports shall be evaluated when all of the following criteria are alleged to be met:

- a. The person is a dependent adult.
- b. Dependent adult abuse exists as defined in Iowa Code section 235B.2.
- c. A caretaker exists in reports of physical injury to or unreasonable confinement or cruel punishment of a dependent adult; commission of a sexual offense; exploitation; personal degradation; and deprivation by another person of food, shelter, clothing, supervision, physical and mental health care and other care necessary to maintain life or health.

ITEM 3. Adopt changes to rule **441—176.3(4)** as follows:

**176.3(4)** Confirmed, not registered. Reports of physical abuse, ~~or~~ denial of critical care by a caretaker, or personal degradation that would otherwise be founded reports shall be considered confirmed, not registered reports if the abuse is determined to be minor, isolated, and unlikely to reoccur. These reports shall be assessments and shall not be included on the central abuse registry. The assessment shall be maintained in the local office as directed in subrule 176.13(4).



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

Name of Program Specialist Gloriana Fisher	Telephone Number 515-281-5392	Email Address gfisher@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:  
This change to administrative rules is designed to align recently legislative changes to 235B.
2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):  
The dependent adult abuse administrative rules are authorized by Iowa Code Chapter 235B.
3. Describe who this rulemaking will positively or adversely impact.  
IDHS practice will be aligned with recently passed legislation HF 323 and HF 569 which changed Iowa Code 235B.
4. Does this rule contain a waiver provision? If not, why?  
No. Not applicable.
5. What are the likely areas of public comment?  
Commentary on legislative changes which resulted in the necessity to change the administrative rule.
6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)  
No such impact is anticipated.



## Administrative Rule Fiscal Impact Statement

Date: August 7, 2019

**Agency:** Human Services  
**IAC citation:** 441 IAC 176  
**Agency contact:** Gloriana Fisher, Social Worker 6

**Summary of the rule:**

The rule defines dependent adult abuse and criteria for outcome determinations for dependent adult abuse evaluations conducted by the Iowa Department of Human Services.

*Fill in this box if the impact meets these criteria:*

- No fiscal impact to the state.
- Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
- Fiscal impact cannot be determined.

**Brief explanation:**

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

There were two pieces of recently passed legislation which resulted in proposed rule changes, HF 323 and HF 569. HF 323 changed the definition of exploitation for dependent adult abuse and HF 569 added personal degradation as a category of dependent adult abuse for DHS. Both legislative changes will result in DHS computer system updates and the new category of abuse will increase case counts and result in the need for additional DHS staff.

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

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

**Assumptions:**

The following assumptions are based upon information provided in the Fiscal Note completed by the Fiscal Services Division filed with HF 569 legislation.

**DHS Computer System Updates:**

- Changing factor 5 for determining exploitation for dependent adult abuse will require an update to the Child Welfare Information System.
- Adding a new category for dependent adult abuse will require one-time updates to the Child Welfare Information System. The DHS will need to add a new allegation category to the allegation screen and adult subject screen, adding additional factors and updating assessment reports, statistical reports, and federal reports with the new abuse category.
- The updates to the Child Welfare Information System will take 200 contract staff hours to complete at an average hourly rate of \$105 per hour.
- The match rate is 50.0% federal and 50.0% State, with all costs occurring in FY 2020.

**Additional DHS Staff:**

- The current annual number of intakes by the DHS is 8,476 and the number of accepted dependent adult abuse cases is 3,856. It is estimated that this Bill would increase intakes by 10.0% in FY 2020 and an additional 10.0% in FY 2021.
- There will be 847 new intakes and 386 new accepted cases in FY 2020 and 932 additional new intakes with 419 of those accepted in FY 2021.
- To maintain current staffing levels, the DHS would require 2.0 full-time equivalent (FTE) Social Worker 3 positions in FY 2020 and 4.0 FTE Social Worker 3 positions in FY 2021.

- The salary for a Social Worker 3 position is \$62,952. That cost is based on the minimum pay for the classification, adjusted to include benefits, FICA, and IPERS. This estimate does not reflect any changes or impact for potential salary adjustments.
- The match rate is 10.62% federal and 89.38% State.

**Describe how estimates were derived:**

Child Welfare System: Contract staff of 1 resource spending equivalent of 200 hours' time to develop a solution at \$105 per hour yielding \$21,000 (Total); 10,500 (General Fund). Would entail the DARES modules in JARVIS needing to have this new category of abuse added to the intake form, assessment form, and notices. All costs will occur in FY2020. This work would be a one-time cost for implementation.

Field Operations – Current count of intakes is 8,476 and accepted dependant abuse cases are 3,856. Between FY17 and FY18 there was a 10.7% increase in intakes, so for this estimate DHS is assuming a 10% increase in intakes the first year (FY20) and an additional 10% increase the 2nd year (FY21)

For first year of implementation we would have: 847 new intakes, 386 accepted/ 15.5 cases per worker (186 cases per year) =2.1 FTE (rounded to 2 new FTE's SW3's) \$62,952 times 2 FTEs = \$125,904 total dollars, \$112,533 state share.

For the second year of implementation we would have: 932 additional new intakes, 419 accepted intakes/ 15.5 (186 cases per year= 2.25 FTE's (rounded to 2 new FTE's SW3's) an additional \$125,904 total dollars \$112,533 state share, for a total of 4 FTEs at \$251,808 total dollars, \$225,066 state share

FTE cost estimates presented in this document are based on the schedule 10 salaries for vacant positions in the job class. The schedule 10 salary estimates for vacant positions are based on the minimum pay for each classification, adjusted to include benefits, FICA and IPERS. This estimate does not reflect any changes or impact for potential salary adjustments.

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

	<u>Year 1 (FY 2020)</u>	<u>Year 2 (FY 2021)</u>
<b>Revenue by each source:</b>		
General fund		
Federal funds	23,871.00	26,742.00
Other (specify):		
<b>TOTAL REVENUE</b>	23,871.00	26,742.00
<b>Expenditures:</b>		
General fund	123,033.00	225,066.00
Federal funds	23,871.00	26,742.00
Other (specify):		
<b>TOTAL EXPENDITURES</b>	146,904.00	251,808.00
<b>NET IMPACT</b>	-123,033.00	-225,066.00

This rule is required by state law or federal mandate.

*Please identify the state or federal law:*

Identify provided change fiscal persons:

2019 HF 323 and HF 569 which changed Iowa Code 235B.

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:*

Costs will be absorbed by existing appropriations.

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

None anticipated.

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

None anticipated.

Agency representative preparing estimate: Rob Beran

Telephone number: 515-281-6188

**HUMAN SERVICES DEPARTMENT[441]**

**Notice of Intended Action**

**Proposing rule making related to coordination of services and reviews  
and providing an opportunity for public comment**

The Department of Human Services hereby proposes to amend Chapter 177, “In-Home Health Related Care,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 234.6.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 234.6.

*Purpose and Summary*

The proposed amendments add provisions for coordination of services to avoid duplication. The amendments also add clarification on when reviews need to be completed and when services may be terminated. These amendments remove form names and numbers.

*Fiscal Impact*

These proposed amendments may reduce state supplementary assistance payments through coordination of services provided to the client. However, in-home health-related care (IHHRC) expenditures have been declining since FY 2017, and the Department does not expect this rule provision to fundamentally change the overall cost trend.

*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 rule 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 February 18, 2020. 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. Amend subrule 177.4(1) as follows:

**177.4(1) Eligible individual.**

a. No change.

b. The physician’s certification shall include a statement of the specific health care services and that the services can be provided in the individual’s own home. The certification shall be given on ~~Form 470-0673, Physician’s Report~~, a form prescribed by the department or on a similar plan of care form presently used by public health agencies.

c. and d. No change.

ITEM 2. Amend subrule 177.4(2) as follows:

**177.4(2) Relationship to other programs.** In-home ~~health-related~~ health-related care shall be provided only when other ~~existing~~ programs cannot meet the client’s need. There shall be no duplication of services.

ITEM 3. Amend subrule 177.4(4) as follows:

**177.4(4) Service plan.** A complete service plan shall be prepared which includes the services needed, the plan for providing these services, and the health care plan defined in rule ~~441—177.6(249)~~. The service plan shall be developed following consultation between the client’s service worker and case manager to avoid all duplication of services. Consultation shall include current services provided to the client, payer sources, level of service needs, and service history.

ITEM 4. Amend subrule 177.4(10) as follows:

**177.4(10) Application.** Application for in-home ~~health-related~~ health-related care shall be made on ~~Form 470-2927 or 470-2927(S), Health Services Application~~ a form prescribed by the department. An eligibility determination shall be completed within 30 days from the date of the application, unless one or more of the following conditions exist:

a. An application has been filed and is pending for federal supplemental security income benefits.

b. The application is pending because the department has not received information, which is beyond the control of the client or the department.

c. The application is pending due to the disability determination process performed through the department.

d. The application is pending because ~~Form 470-0636, Provider Agreement~~, the provider agreement has not been completed and completion is beyond control of the client. When ~~Form 470-0636~~ the provider agreement cannot be completed due to the client’s failure to locate a provider, applications shall not be held pending beyond 60 days from the date of application.

ITEM 5. Amend subrule 177.5(2) as follows:

**177.5(2) Health assessment.** The provider shall obtain certification that the provider is physically

and emotionally capable of providing assistance to another person who may have physical and emotional limitations.

a. The certification shall be based on an examination performed by a physician or advanced registered nurse practitioner or by a physician assistant who is working under the direction of a physician. If the provider works for an agency, the practitioner performing the examination may not be employed by the same agency.

b. The practitioner conducting the examination shall indicate the certification by signing ~~Form 470-0672, Provider Health Assessment~~ the provider health assessment.

c. The certification shall be submitted to the department service worker:

- (1) Before the provider agreement is signed, and
- (2) Annually thereafter.

ITEM 6. Amend subrule 177.6(3) as follows:

**177.6(3) Review.** The continuing need for in-home health care services shall be reviewed:

a. At a minimum of every 60 days by the physician, including a written recertification of continuing appropriateness of the plan;

b. At a minimum of every six months by the service worker, including a review of the total care plan and consultation with the client's case manager to consider any change in the client's payer sources, level of service needs, current services provided, and service history;

c. At a minimum of every 60 days by the nurse who shall review the nursing plan; ~~or~~

d. More frequently if required by the physician, the service worker, or the nurse; or

e. Upon notification of initiation of waiver services.

ITEM 7. Amend subrule 177.9(3) as follows:

**177.9(3) Provider agreement.** The client and the provider shall enter into an agreement, using ~~Form 470-0636, Provider Agreement~~ the provider agreement form, prior to the provision of service. Any reduction to the state supplemental assistance program shall be applied to the maximum amount paid by the department of human services as stated in the ~~Provider Agreement~~ provider agreement by using ~~Form 470-1999, Amendment~~ the separate amendment to Provider Agreement provider agreement form.

ITEM 8. Amend rule 441—177.11(249) as follows:

**441—177.11(249) Termination.** Termination of in-home ~~health-related~~ health-related care shall occur under the following conditions-;

**177.11(1) Request.** Upon the request of the client or legal representative.

**177.11(2) Care unnecessary.** When the client becomes sufficiently self-sustaining to remain in the client's own home with services that can be provided by existing community agencies as determined by the service worker.

**177.11(3) Additional care necessary.** When the physical or mental condition of the client requires more care than can be provided in the client's own home as determined by the service worker.

**177.11(4) Excessive costs.** When the cost of care exceeds the maximum established in 177.4(3).

**177.11(5) Other services utilized.** When the service worker determines that other services can be utilized to better meet the client's needs.

**177.11(6) Terms of provider agreement not met.** When it has been determined by the service worker that the terms of the provider agreement have not been met by the client or the provider, the state supplementary assistance payment may be terminated.

**177.11(7) Qualified health care services absent.** Qualified health care services are health care services supervised by a registered nurse and approved by a physician. When a registered nurse is not available to supervise the in-home service and health care plan, or when a physician or nurse practitioner is not available to review or approve the health care plan, the state supplementary assistance payment shall be terminated.



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

Name of Program Specialist Gloriana Fisher	Telephone Number 515-281-5392	Email Address gfisher@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:

This change to administrative rules is designed to:

- a. Outline coordination of services providers to avoid cost associated with duplication of direct services.
- b. Remove form numbers from administrative rule.
- c. Amend termination provisions to include termination grounds if qualified health care services are absent, which is a requirement of the program.

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

Administrative rules are derived from Iowa Code Chapter 249 on State Supplementary Assistance.

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

- a. There will be a reduction of state supplementary assistance payments through coordination of services provided to the client. Future impact would be positive for IDHS and stakeholders with improved coordination of services.
- b. IDHS will not have to alter administrative rules if form numbers or name change. Future impact would be positive for IDHS and stakeholders via reduced rule changes and reduced confusion if form numbers or form names change.
- c. Reduced liability and clearer provisions for termination to reduce appeals and overturning of appeals with benefit IDHS. The concern is that statewide, finding nurses to oversee IHRC is challenging so many clients cannot have the service or will lose the service as agencies increasingly decide not to be providers if they see the program as a liability.

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

No. Not applicable.

5. What are the likely areas of public comment?

- a. Services could be impacted if service level needs don't align.
- b. N/A
- c. Nursing oversight is difficult to find and keep in place.

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

No such impact is anticipated.



## Administrative Rule Fiscal Impact Statement

Date: September 5, 2019

**Agency:** Human Services  
**IAC citation:** 441 IAC 177  
**Agency contact:** Gloriana Fisher, Social Worker 6

**Summary of the rule:**

The rule adds provisions for coordination of services to avoid duplication, removes form numbers, and adds a services termination provision.

*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.](#)

These changes may reduce state supplementary assistance payments through coordination of services provided to the client. However, In-Home Health Related Care (IHHRC) expenditures have been declining since SFY17 and the department does not expect this rule provision to fundamentally change the overall trend in program cost.

The revised termination provisions could impact the number enrolled in the program, but this is already a program requirement so any impact is expected to be minimal.

The removal of form numbers will have 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:**



Agency representative preparing estimate: Joe Havig

Telephone number: 515-281-6022

**HUMAN SERVICES DEPARTMENT[441]**

**Notice of Intended Action**

**Proposing rule making related to aftercare amounts  
and providing an opportunity for public comment**

The Department of Human Services hereby proposes to amend Chapter 187, “Aftercare Services Program,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 234.46.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 234.46.

*Purpose and Summary*

When Chapter 187 was recently amended, the new language was unclear. The Department believes there was an oversight when changes were made, and the result was that some participants may receive less financial support than was intended. This proposed amendment corrects that error by clarifying that youth who previously received aftercare services may receive up to \$300 per quarter in postservices funds, which was the intent of the original amendment. This is the amount available to each youth per the aftercare contract.

*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 rule 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 February 18, 2020. 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 action is proposed:

Amend subrule 187.3(7) as follows:

**187.3(7) Postservices allowance.** Youth 21 or 22 years of age who previously received aftercare services may receive postservices funds if they meet all of the following criteria:

- a. The youth is participating in postservices as described in subrule 187.3(3).
- b. A budget discussion has been completed timely by the youth with a self-sufficiency advocate.
- c. The need has been identified in the individual self-sufficiency plan.
- d. The postservices funds approved for the youth have not exceeded ~~\$600 for the previous 12-month period~~ \$300 for a three-month period calculated from the date of initiation of postservices.



Iowa Department of Human Services  
Information on Proposed Rules

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Name of Program Specialist	Telephone Number	Email Address
Doug Wolfe	242-5452	dwolfe@dhs.state.ia.us

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

Aftercare rules were changed recently (ARC4369C). We believe there was an oversight when changes were made after the public comment period, and the result is that some participants may receive less financial support than was intended. The change here fixes that by clarifying the youth may receive up to \$300 per quarter, which was the intent of the original rule change is the amount available to youth, per the aftercare contract.

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

OHS is responsible to write rules for the Preparation for Adult Living Program, per Iowa Code 234.46.2.

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

This will help young people enter adulthood with the support needed to be successful.

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

No

5. What are the likely areas of public comment?

We expect support from juvenile court partners and youth advocates. No resistance is expected.

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

Successful transitions from foster care to aftercare means youth are better prepared to enter the workforce. This can be seen as a positive benefit to private sector jobs and employment opportunities.



# Administrative Rule Fiscal Impact Statement

Date: November 5, 2019

Agency: Human Services  
 iAC citation: 441 IAC 187  
 Agency contact: Doug Wolfe

**Summary of the rule:**

Aftercare rules were changed recently (ARC4369C). We believe there was an oversight when changes were made after the public comment period, and the result is that some participants may receive less financial support than was intended. The change here fixes that by aligning the errant paragraph with an earlier reference to the same funds.

*Fill in this box if the impact meets these criteria:*

No fiscal impact to the state.

- Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
- Fiscal impact cannot be determined.

**Brief explanation:**

Budget Analysts must complete this section for ALL fiscal impact statements.

There is no fiscal impact expected since this is correcting an oversight that would have caused some participants to receive less financial support than was originally intended.

*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:**

NA

**Describe how estimates were derived:**

NA

Estimated Impact to the State by Fiscal Year

Year 1 (FY 2021)

Year 2 (FY 2022)

Revenue by each source:

General fund

Federal funds

Other (specify):

TOTAL REVENUE

Expenditures:

General fund

Federal funds

Other (specify):

TOTAL EXPENDITURES

NET IMPACT

D This rule is required by state law or federal mandate.

Please identify the state or federal law:

Identify provided change fiscal persons:

D Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

[g] 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:

N/A

Fiscal impact to counties or other local governments (required by Iowa Code 258.6):

N/A

Agency representative preparing estimate: David O. Philmon, Jr

Telephone number: 515-281-6856