

September 1, 2020

Dear Council Member:

The following amendments to the administrative rules are presented for adoption at the September 9, 2020, Council on Human Services meeting.

There are no rules for adoption.

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

N-1. Amendments to Chapter 36, “Facility Assessments,” Iowa Administrative Code. (Quality Assurance Fees) These amendments are being promulgated to match dates between nursing facilities assessments and cost reports due dates. The quality assurance assessment and the cost report dates will now be June 1 of each year.

N-2 Amendments to Chapter 9, “Public Records and Fair Information Practices”, Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services, and Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code. (Technical Changes for Home and Community Based Waivers) These proposed amendments make technical changes in administrative rules by removing outdated program language. The units of service for intermittent supported community living are clarified. The references to the Iowa Plan are replaced with the member’s managed care organization (MCO). The number of days a member may be in a medical institution without having to reapply are increased from 30 to 120 days to align with other HCBS waiver programs. The rules also clarify what is considered a member’s home for the purposes of receiving occupational, physical and speech therapy.

N-3 Amendments to Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” and Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services.” Iowa Administrative Code. (Day Habilitation) These proposed amendments implement guidance from the Centers for Medicare and Medicaid Services (CMS) clarifying day habilitation services provided through the HCBS Intellectual Disabilities (ID) waiver and state plan HCBS Habilitation program for

persons with chronic mental illness. These amendments clarify the activities provided through day habilitation to assist members to participate in the community, develop social roles and responsibilities and increase independence and the potential for employment.

Sincerely,

Nancy Freudenberg

Nancy Freudenberg
Bureau Chief
Policy Coordination

Enclosures

HUMAN SERVICES DEPARTMENT [441]

Notice of Intended Action

**Proposing rule making related to nursing facilities and providing an opportunity for
public comment**

The Human Services Department hereby proposes to amend Chapter 36, "Facility Assessments," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapter 249L.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 249L.D (1)

Purpose and Summary

Nursing facilities are required to pay a quality assurance assessment of 12.75 unless the nursing facility has 46 or few beds, is designated as continuing care retirement centers by the Insurance Division of the Iowa Department of Commerce, or have 21,000 or more Medicaid days, then the facilities are required to pay a quality assurance assessment of \$2.45 per non-Medicare patient day. With these proposed rules, the annual nursing facility determination will match up with the submission of cost reports.

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 September 29, 2020. Comments should be directed to:

Nancy Freudenberg
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

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 paragraph **36.6(2)“a”** as follows:

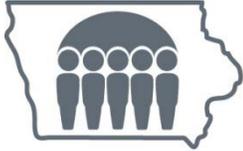
a. Effective July 1, 2019, nursing facilities with 46 or fewer licensed beds are required to pay a quality assurance assessment of \$2.45 per non-Medicare patient day. Effective with assessment for the state fiscal year beginning July 1, ~~2012~~ 2021, the number of licensed beds on file with the department of inspections and appeals as of ~~May~~ June 1 of each year shall be used to determine the assessment level for the following state fiscal year.

ITEM 2. Amend paragraph **36.6(2)“b”** as follows:

b. Effective July 1, 2019, nursing facilities designated as continuing care retirement centers (CCRCs) by the insurance division of the Iowa department of commerce are required to pay a quality assurance assessment of \$2.45 per non-Medicare patient day. Effective with assessment for the state fiscal year beginning July 1, ~~2012~~ 2021, continuing care retirement center designations as of ~~May~~ June 1 of each year shall be used to determine the assessment level for the following state fiscal year.

ITEM 3. Amend paragraph **36.6(2)“c”** as follows:

c. Effective July 1, 2019, nursing facilities with annual Iowa Medicaid patient days of 21,000 or more are required to pay a quality assurance assessment of \$2.45 per non-Medicare patient day. Effective with assessment for the state fiscal year beginning July 1, ~~2012~~ 2021, the annual number of Iowa Medicaid patient days reported in the most current cost report submitted to the Iowa Medicaid enterprise as of ~~May~~ June 1 of each year shall be used to determine the assessment level for the following state fiscal year.



Iowa Department of Human Services
Information on Proposed Rules

Name of Program Specialist Jessica McBride	Telephone Number 515-256-4639	Email Address jmcbrid@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:
The department has promulgated these rules in order to better match dates to determine assessment level to due dates of cost reports.
2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):
Iowa Code 249L.
3. Describe who this rulemaking will positively or adversely impact.
The changes to the date of determination of assessment will positively affect providers as it will match up to cost report submission.
4. Does this rule contain a waiver provision? If not, why?
Specific waivers are not provided because the department has an established procedure for considering exceptions to policy.
5. What are the likely areas of public comment?
Providers will likely not comment on these changes.
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 rules should not have an impact on private-sector jobs and employment opportunities in Iowa.



Administrative Rule Fiscal Impact Statement

Date: January 8, 2020

Agency: Human Services

IAC citation: 441 IAC 36.6(2)

Agency contact: Jessica McBride

Summary of the rule:

The changes to the date of determination of assessment will match up to cost report submission dates.

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.](#)

This rule is intended to match up dates between NF assessments and determinations and issuance of cost reports and is not expected to have a fiscal impact.

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

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

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

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

- This rule is required by state law or federal mandate.
Please identify the state or federal law:
 Identify provided change fiscal persons:
- Funding has been provided for the rule change.
Please identify the amount provided and the funding source:
- Funding has not been provided for the rule.
Please explain how the agency will pay for the rule change:
 There is no anticipated fiscal impact.

Fiscal impact to persons affected by the rule:

No impact is expected.

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

No impact.

Agency representative preparing estimate: Jason Buls

Telephone number: 515-281-5764

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to [short title (input by ACO during editing process)] and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 9, “Public Records and Fair Information Practices,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Chapter 81, “Nursing Facilities,” and Chapter 153, “Funding for Local Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed 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.

Purpose and Summary

These proposed amendments make technical corrections in administrative rules by removing references to outdated programs. In addition, corrections are made to the units of service for intermittent supported community living to bring the language into alignment with current terminology and practice. These amendments also change the number of days, from 30 to 120, a member may be in a medical institution and resume

services under the state plan Home and Community Based Services (HCBS) Habilitation Program without having to reapply. This change aligns policy implemented in 2018 for all other waiver programs. These amendments clarify what is considered a member's home for purposes of receiving occupational, physical and speech therapy.

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 September 29, 2020. Comments should be directed to:

Nancy Freudenberg
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

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 subparagraph **9.12(1)“a”(3)** as follows:

(3) Data processing systems. Client identifying information, eligibility data, and payment data are kept in the following systems. Some of these records are also kept on microfiche.

<u>System</u>	<u>Function</u>
Automated Benefit Calculation System	Determines eligibility for FIP, food assistance, Medicaid
Automated Child Abuse and Neglect System	Inactive child abuse/neglect system
Appeals Logging and Tracking System	Tracks client appeals
BCCT Program	Establishes Medicaid eligibility for breast and cervical cancer clients
Change Reporting System	Tracks client-reported changes and produces forms needed for client-reported changes
Diversion System	Tracks clients using diversion benefits
Electronic Payment Processing and Inventory Control System	Electronically issues food assistance

<u>System</u>	<u>Function</u>
Eligibility Tracking System	Tracks clients' FIP eligibility and hardship status
Family and Children's Services System	Tracks foster care, adoption, family-centered and family preservation services
Food Stamps Case Reading Application	Food assistance accuracy tool used to record case reading information
Health Insurance Premium Payment System	Health insurance premium payment
Iowa Collection and Reporting System	Tracks child support recovery processes
Iowa Central Employee Registry	Child support new hire reporting system
Iowa Eligibility Verification System	Federal social security number verification and benefits
Iowa Plan Program	Assigns group codes for Iowa Plan clients
Individualized Services Information System	Used to establish facility eligibility, process data to and from ABC and Medicaid fiscal agent, establish waiver services, providers, and eligibility
Issuance History	Displays benefit issuances for FIP and food assistance
KACT System	Authorizes foster care service units
MEPD Premium Payment Program	Accounting system for billing and payment for Medicaid for employed people with disabilities program
Managed Health Care Program	Assigns managed health care providers to clients
Medicaid Management Information Systems	Process clients' Medicaid claims and assign Medicaid coverage to clients
Overpayment Recoupment System	Used to recover money from FIP, Food Assistance, Medicaid, Child Care Assistance, PROMISE JOBS, and HAWK-I clients
Public Information Exchange	Data exchange between states
PJCASE	Iowa Workforce Development interface with PROMISE JOBS
Purchase of Social Services System	Purchased services (mostly child care and in-home health clients)
Presumptive Eligibility Program	Establishes Medicaid eligibility for presumptive eligibility clients
Quality Control System	Selects sample for quality control review of eligibility determination
RTS Claims Processing System	Processes rehabilitative treatment claims for federal match
State Data Exchange Display	State data exchange information for supplemental security income recipients
Social Security Buy-In System	Medicare premium buy-in

<u>System</u>	<u>Function</u>
Social Services Reporting System	Services reporting system for direct and purchased services
Statewide Tracking of Assessment Reports	Tracks child abuse reports

ITEM 2. Amend subrule 78.12(5), introductory paragraph, as follows:

78.12(5) Approval of plan. The behavioral health intervention provider shall contact the ~~Iowa Plan provider~~ member's managed care plan for authorization of the services.

ITEM 3. Amend paragraph **78.12(5)“b,”** introductory paragraph, as follows:

b. Subsequent plans. The ~~Iowa Plan contractor~~ member's managed care plan may approve a subsequent services implementation plan according to the conditions in paragraph 78.12(5)“a” if the services are recommended by a licensed practitioner of the healing arts who has:

ITEM 4. Amend subparagraph **78.19(1)“a”(1)** as follows:

(1) Services are provided in the member's home or in a care facility (other than a hospital) by a speech therapist, physical therapist, or occupational therapist employed by or contracted by the agency. A nursing facility, intermediate care facility for persons with an intellectual disability, or a hospital where services are provided is not considered a member's home.

1. Services provided to a member residing in a residential care facility licensed under Iowa Code section 135C.4 by the department of inspections and appeals are payable when the residential care facility submits a signed statement that the residential care facility does not have these services available. The statement need only be submitted at the start of care unless the situation changes. Payment

2. Under no circumstances will not be made the IME or managed care organizations (MCOs) make payments to a rehabilitation agency for therapy provided to a member residing in a nursing facility or an intermediate care facility for persons with an

intellectual disability ~~since these facilities are responsible for providing or paying for services required by members.~~ Physical, occupational, and speech therapy services for residents of the nursing facility or intermediate care facility for persons with an intellectual disability, or hospital are the responsibility of the nursing facility, intermediate care facility for persons with an intellectual disability or hospital.

ITEM 5. Amend subparagraph **78.27(10)“e”(3)** as follows:

(3) Individual supported employment is limited to ~~240~~ 60 hourly units per calendar year.

ITEM 6. Amend subparagraph **78.27(11)“c”(5)** as follows:

(5) The member has received care in a medical institution for ~~30~~ 120 consecutive days in any one stay. When a member has been an inpatient in a medical institution for ~~30~~ 120 consecutive days, the department will issue a notice of decision to inform the member of the service termination. If the member returns home before the effective date of the notice of decision and the member’s condition has not substantially changed, the decision shall be rescinded, and eligibility for home- and community-based habilitation services shall continue.

ITEM 7. Amend rule 441—78.34(249A), introductory paragraph, as follows:

441—78.34(249A) HCBS ~~ill and handicapped~~ health and disability waiver services. Payment will be approved for the following services to members eligible for HCBS ~~ill and handicapped~~ health and disability waiver services as established in 441—Chapter 83 and as identified in the member’s service plan. Effective March 17, 2022, payment shall only be made for services provided in integrated, community-based settings that support full access of members receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in

community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

ITEM 8. Amend subrule 78.34(8), introductory paragraph, as follows:

78.34(8) *Interim medical monitoring and treatment services.* Interim medical monitoring and treatment (IMMT) services are monitoring and treatment of a medical nature for children or adults ages 18 to 20 whose medical needs make alternative care unavailable, inadequate, or insufficient. IMMT services are not intended to provide day care but to supplement available resources. Services must be ordered by a physician.

ITEM 9. Amend subrule 78.34(14), introductory paragraph, as follows:

78.34(14) *General service standards.* All ~~ill and handicapped~~ health and disability waiver services must be provided in accordance with the following standards:

ITEM 10. Amend subrule 78.41(9), introductory paragraph, as follows:

78.41(9) *Interim medical monitoring and treatment services.* Interim medical monitoring and treatment (IMMT) services are monitoring and treatment of a medical nature for children or adults ages 18 to 20 whose medical needs make alternative care unavailable, inadequate, or insufficient. IMMT services are not intended to provide day care but to supplement available resources. Services must be ordered by a physician.

ITEM 11. Amend subrule 78.43(14), introductory paragraph, as follows:

78.43(14) *Interim medical monitoring and treatment services.* Interim medical monitoring and treatment (IMMT) services are monitoring and treatment of a medical nature for children or adults ages 18 to 20 whose medical needs make alternative care unavailable, inadequate, or insufficient. IMMT services are not intended to provide day care but to supplement available resources. Services must be ordered by a physician.

ITEM 12. Amend paragraph **78.52(4)“b”** as follows:

b. In-home family therapy is exclusive of and cannot serve as a substitute for

individual therapy, family therapy, or other mental health therapy that may be obtained through ~~the Iowa Plan or~~ Medicaid or other funding sources.

ITEM 13. Amend subrule 79.1(2), provider category “HCBS waiver service providers,” as follows:

1. Adult day care

For AIDS/HIV, brain injury, elderly, and ~~ill and~~ handicapped health and disability waivers:
Fee schedule

Effective 7/1/16, for AIDS/HIV, brain injury, elderly, and ~~ill and~~ handicapped health and disability waivers: Provider’s rate in effect 6/30/16 plus 1%, converted to a 15-minute, half-day, full-day, or extended-day rate. If no 6/30/16 rate: Veterans Administration contract rate or \$1.47 per 15-minute unit, \$23.47 per half day, \$46.72 per full day, or \$70.06 per extended day if no Veterans Administration contract.

For intellectual disability waiver:
Fee schedule for the member’s acuity tier, determined pursuant to 79.1(30)

Effective 7/1/17, for intellectual disability waiver: The provider’s rate in effect 6/30/16 plus 1%, converted to a 15-minute or half-day rate. If no 6/30/16 rate, \$1.96 per 15-minute unit or \$31.27 per half day.

For daily services, the fee schedule rate published on the department’s website, pursuant to 79.1(1)“c,” for the member’s acuity tier, determined pursuant to 79.1(30).

ITEM 14. Amend paragraph **79.1(16)“q”** as follows:

q. Determination of payment amounts for mental health noninpatient (NIP) services.

Mental health NIP services are limited as set forth at 441—subparagraph 78.31(4)“d”(7) and are reimbursed on a fee schedule basis. ~~Mental health NIP services are the responsibility of the managed mental health care and substance abuse (Iowa Plan) contractor for persons eligible for managed mental health care.~~

ITEM 15. Amend subparagraph **79.1(24)“b”(6)** as follows:

(6) If a provider fails to submit a cost report for services provided through June 30, 2013, that meets the requirements of this paragraph, the Iowa Medicaid enterprise ~~or the Iowa Plan for Behavioral Health contractor~~ shall reduce the provider’s rate to 76 percent of the current rate. The reduced rate shall be paid until the provider’s cost report has been received by the Iowa Medicaid enterprise’s provider cost audit and rate setting unit pursuant to subparagraph 79.1(24)“b”(4) but for not longer than three months, after which time no further payments will be made.

ITEM 16. Amend subparagraph **81.13(14)“b”(6)** as follows:

(6) May include:

1. Acute inpatient psychiatric treatment. When inpatient psychiatric treatment may be prevented through specialized services provided in the nursing facility, services provided in the nursing facility are preferred.

2. Initial psychiatric evaluation to determine a resident’s diagnosis and to develop a plan of care.

3. Follow-up psychiatric services by a psychiatrist to evaluate resident response to psychotropic medications, to modify medication orders and to evaluate the need for ancillary therapy services.

4. Psychological testing required for a specific differential diagnosis that will result in the adoption of appropriate treatment services.

5. Individual or group psychotherapy as part of a plan of care addressing specific symptoms.

6. Any clinically appropriate service which is available ~~through the Iowa plan for behavioral health~~ and for which the member meets eligibility criteria.

ITEM 17. Amend paragraph **153.55(2)“d”** as follows:

d. Service management (county chart of accounts numbers beginning with 22-000) for members eligible for Medicaid targeted case management, ~~unless the Iowa plan contractor decertifies the member for case management services.~~



Iowa Department of Human Services
Information on Proposed Rules

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

These amendments make technical corrections in administrative rule by removing outdated programs, correcting units of service for intermittent supported community living to bring the language into alignment with current terminology and practices. Changes include

- Replacing references to the Iowa Plan with the member's managed care organization (MCO)
- Clarifying adults age 18 to 20 may receive Interim Medical Monitoring and Treatment to align with IMMT guideline in 441 IAC Chapter 83.
- Clarifies the number of units of individual supported employment available are 60 hourly units rather than 240 15 minute units.
- Changes the number of days a member may be in a medical institution and resume services under the State Plan HCBS Habilitation Program without having to reapply from 30 days to 120 days in alignment with the policy change implemented in 2018 for State Plan HCBS and all HCBS Waiver programs.
- Clarifies what is considered a member's home for the purposes of receiving Occupational Therapy, Physical Therapy and Speech Therapy.
- Replaces outdated references to the ill and handicapped waiver with the health and disability waiver.

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

Section 249A.15A, Code 2018, 249A.4

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

Providers and members will benefit from having the correct language and policy reflected in rule.

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

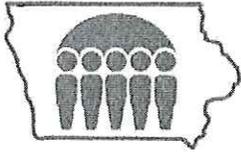
A waiver provision is not necessary. 441 -1.8(17A, 217) provides for waiver of administrative rules in exceptional circumstances.

5. What are the likely areas of public comment?

Public comment is not anticipated as these amendments reflect current policy and practice.

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.



Administrative Rule Fiscal Impact Statement

Date: January 8, 2020

Agency: Human Services
IAC citation: 441 IAC 78 and 79
Agency contact: LeAnn Moskowitz

Summary of the rule:

These amendments make technical corrections in administrative rule by removing outdated programs, correcting units of service for intermittent supported community living to bring the language into alignment with current terminology and practices

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.

As these amendments are specific to administrative rules and reflect current policy and practices, there is no anticipated fiscal impact.

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

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

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY 2020)</u>	<u>Year 2 (FY 2021)</u>
Revenue by each source:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL REVENUE	_____	_____
Expenditures:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL EXPENDITURES	_____	_____
NET IMPACT	_____	_____

This rule is required by state law or federal mandate.
Please identify the state or federal law:
Identify provided change fiscal persons:

Funding has been provided for the rule change.
Please identify the amount provided and the funding source:

Funding has not been provided for the rule.
Please explain how the agency will pay for the rule change:
There is no anticipated fiscal impact.

Fiscal impact to persons affected by the rule:

No impact is expected.

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

No impact.

Agency representative preparing estimate: Jason Buls

Telephone number: 515-281-5764

JH
1-9-20
AQA

HUMAN SERVICES DEPARTMENT [441]

Notice of Intended Action

**Proposing rule making related to day habilitation and providing an opportunity
for public comment**

The Human Services Department hereby proposes to amend Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” and Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed 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.

Purpose and Summary

The purpose of the proposed amendments is to implement guidance provided from the Centers for Medicare and Medicaid Services (CMS), clarifying day habilitation services may provide a pathway to employment for the Home and Community Based Services (HCBS) day habilitations service provided through the HCBS Intellectual Disabilities (ID) waiver and state plan HCBS Habilitation program for persons with chronic mental illness. These amendments clarify the activities provided through day habilitation to assist members to participate in the community, develop social roles and responsibilities,

and increase independence and the potential for employment. The Department convened a work group to address the requirements for providers and scope of services.

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 September 29, 2020. Comments should be directed to:

Nancy Freudenberg
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

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 77.25(7) as follows:

77.25(7) Day habilitation.

a. The following providers may provide day habilitation:

~~a-~~ (1) An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities to provide services that qualify as day habilitation under 441—subrule 78.27(8).

~~b-~~ (2) An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities to provide other services and began providing services that qualify as day habilitation under 441—subrule 78.27(8) since the agency’s last accreditation survey. The agency may provide day habilitation services until the current accreditation expires. When the current accreditation expires, the agency must qualify under ~~paragraph “a,” “d,” “g,” or “h.”~~ subparagraph 77.25(7) “a”(1), (4), or (7).

~~c-~~ (3) An agency that is not accredited by the Commission on Accreditation of Rehabilitation Facilities but has applied to the Commission within the last 12 months for

accreditation to provide services that qualify as day habilitation under 441—subrule 78.27(8). An agency that has not received accreditation within 12 months after application to the Commission is no longer a qualified provider.

~~d-~~ (4) An agency that is accredited by the Council on Quality and Leadership in Supports for People with Disabilities.

~~e-~~ (5) An agency that has applied to the Council on Quality and Leadership in Supports for People with Disabilities for accreditation within the last 12 months. An agency that has not received accreditation within 12 months after application to the Council is no longer a qualified provider.

~~f-~~ (6) An agency that is accredited under 441—Chapter 24 to provide day treatment or supported community living services.

~~g-~~ An agency that is certified by the department to provide day habilitation services under the home and community-based services intellectual disability waiver pursuant to rule 441—77.37(249A).

~~h-~~ (7) An agency that is accredited by the International Center for Clubhouse Development.

~~i-~~ (8) An agency that is accredited by the Joint Commission on Accreditation of Healthcare Organizations.

b. Direct support staff providing day habilitation services shall meet the following minimum qualifications in addition to other requirements outlined in administrative rule:

(1) A person providing direct support without line-of-sight supervision shall be at least 18 years of age and possess a high school diploma or equivalent degree. A person providing direct support with line-of-sight supervision shall be 16 years of age or older.

(2) A person providing direct support shall not be an immediate family member of the member.

(3) A person providing direct support shall, within 6 months of hire or within 6 months of adoption of this rule, complete at least 9.5 hours of training in supporting members in the activities listed in paragraph 78.27(8)“a,” as offered through DirectCourse or Relias or other nationally recognized training curriculum.

(4) A person providing direct support shall annually complete 4 hours of continuing education in supporting members in the activities listed in paragraph 78.27(8)“a,” as offered through DirectCourse or Relias or other nationally recognized training curriculum.

ITEM 2. Rescind subrule 77.37(27) and adopt the following **new** subrule in lieu thereof:

77.37(27) *Day Habilitation providers.* Day habilitation services may be provided by agencies meeting the qualifications in subrule 77.25(7).

ITEM 3. Amend subrule 78.27(8) as follows:

78.27(8) *Day habilitation.* “Day habilitation” means services that provide opportunities and support for community inclusion and build interest in and develop skills for active participation in recreation, volunteerism and integrated community employment. Day habilitation provides assistance with acquisition, retention, or improvement of ~~self-help, socialization, and adaptive skills~~ community participation, and daily living skills.

a. Scope. Day habilitation activities and environments are designed to foster the acquisition of skills, ~~appropriate~~ positive social behavior, greater independence, and personal choice. Services focus on ~~enabling~~ supporting the member to participate in the community, develop social roles and relationships, and increase independence and the potential for employment. Services are designed to assist the member to attain or maintain ~~maximum functional level and shall be coordinated with any physical,~~

~~occupational, or speech therapies in the comprehensive service plan. Services may serve to reinforce skills or lessons taught in other settings. Services must enhance or support the member's~~ the member's individual goals as identified in the member's comprehensive service plan. Services may also provide wraparound support secondary to community employment. Day habilitation activities may include:

(1) ~~Intellectual functioning;~~ Identifying the member's interests, preferences, skills, strengths and contributions,

(2) ~~Physical and emotional health and development;~~ Identifying the conditions and supports necessary for full community inclusion and the potential for competitive integrated employment,

(3) ~~Language and communication development;~~ Planning and coordination of the member's individualized daily and weekly day habilitation schedule,

(4) ~~Cognitive functioning;~~ Developing skills and competencies necessary to pursue competitive integrated employment,

(5) ~~Socialization and community integration;~~ Participating in community activities related to hobbies, leisure, personal health, and wellness,

(6) ~~Functional skill development;~~ Participating in community activities related to cultural, civic, and religious interests,

(7) ~~Behavior management;~~ Participating in adult learning opportunities,

(8) ~~Responsibility and self-direction;~~ Participating in volunteer opportunities,

(9) ~~Daily living activities;~~ Training and education in self-advocacy and self-determination to support the member's ability to make informed choices about where to live, work, and recreate,

(10) ~~Self-advocacy skills; or~~ Assistance with behavior management and self-regulation,

- (11) ~~Mobility.~~ Use of transportation and other community resources,
- (12) Assistance with developing and maintaining natural relationships in the community,
- (13) Assistance with identifying and using natural supports,
- (14) Assistance with accessing financial literacy and benefits education,
- (15) Other activities deemed necessary to assist the member with full participation in the community, developing social roles and relationships, and increasing independence and the potential for employment.

b. Family training option. Day habilitation services may include training families in treatment and support methodologies or in the care and use of equipment. Family training may be provided in the member's home. The unit of service is 15 minutes. The units of services payable are limited to a maximum of 40 units per month.

c. Expected outcome of service. The expected outcome of day habilitation services is active participation in the community in which the member lives, works, and recreates. Members are expected to have opportunities to interact with individuals without disabilities in the community, other than those providing direct services, to the same extent as individuals without disabilities.

~~b-~~ *d. Setting.* Day habilitation shall take place in community-based, nonresidential settings separate from the member's residence. Family training may be provided in the member's home.

~~e-~~ *e. Duration.* Day habilitation services shall be furnished ~~for four or more hours per day on a regularly scheduled basis for one or more days per week or as specified in the member's comprehensive service plan.~~ Meals provided as part of day habilitation shall not constitute a full nutritional regimen (three meals per day).

f. Unit of service. A unit of day habilitation is 15 minutes (up to 16 units per day) or

a full day (4.25 to 8 hours).

g. Concurrent services. A member's comprehensive service plan may include two or more types of nonresidential habilitation services (e.g., day habilitation, individual supported employment, long-term job coaching, small-group supported employment, and prevocational services). However, more than one service may not be billed during the same period of time (e.g., the same hour).

h. Transportation. When transportation is provided to the day habilitation service location from the member's home and from the day habilitation service location to the member's home, the day habilitation provider may bill for the time spent transporting the member.

~~d- i.~~ *Exclusions.* Day habilitation payment shall not be made for the following:

(1) ~~Vocational or prevocational services.~~ Services that are available to the individual under a program funded under Section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.). Documentation that funding is not available to the individual for the service under these programs shall be maintained in the service plan of each member receiving day habilitation services.

~~(2) Services that duplicate or replace education or related services defined in Public Law 94-142, the Education of the Handicapped Act.~~

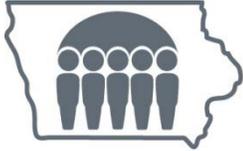
~~(3) (2) Compensation to members for participating in day habilitation services.~~

~~(3) Support for members volunteering in for-profit organizations and businesses.~~

~~(4) Support for members volunteering to benefit the day habilitation service provider.~~

ITEM 4. Rescind subrule 78.41(14) and adopt the following **new** subrule in lieu thereof:

78.41(14) Day habilitation. Day habilitation services will be provided pursuant to subrule 78.27(8).



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 purpose of these amendments is to implement guidance provided by the Centers for Medicare and Medicaid Services (CMS) clarifying that day habilitation services may provide a pathway to employment, as such DHS convened a workgroup to address the requirements for providers and scope of services for the HCBS day habilitation service provided through the HCBS ID Waiver and state plan HCBS Habilitation program for individuals with chronic mental illness. These amendments clarify the activities provided through day habilitation to assist members to participate in the community, develop social roles and relationships, and increase independence and the potential for employment.

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

Iowa Code section 249A.4

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

These amendments broaden and clarify the scope of activities allowed for day habilitation services enabling providers to expand and enhance services provided to day habilitation participants.

These amendments also add minimum staff training requirements for direct care staff providing day habilitation services to ensure that members' services are delivered by confident and competent direct support staff.

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

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

5. What are the likely areas of public comment?

HCBS day habilitation providers will support the changes in the scope of services and may oppose the addition of direct support staff training requirements where the new training requirements exceed the provider's current standards for their employees. Training is available to staff at no cost through Amerigroup's contract for the Elsevier training catalog.

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 known jobs impact.



Administrative Rule Fiscal Impact Statement

Date: February 17, 2020

Agency: Human Services

IAC citation: 441 IAC 77, 78

Agency contact: LeAnn Moskowitz

Summary of the rule:

These rules amend the Day habilitation service provider qualifications by adding minimum direct support training requirements and broadens and clarifies the allowable activities for Day Habilitation.

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 purpose of these amendments is to implement guidance provided by the Centers for Medicare and Medicaid Services (CMS) clarifying that day habilitation services may provide a pathway to employment, as such DHS convened a workgroup to address the requirements for providers and scope of services for the HCBS day habilitation service provided through the HCBS ID Waiver and state plan HCBS Habilitation program for individuals with chronic mental illness. These amendments clarify the activities provided through day habilitation to assist members to participate in the community, develop social roles and relationships, and increase independence and the potential for employment.

This change is budget neutral. It does not impact the number of people served, the number of units available, or reimbursement for the service.

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

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

Assumptions:

Agency representative preparing estimate: Jason Buls

Telephone number: 515-281-5764



**Teleconference Meeting Minutes
August 18, 2020**

EXECUTIVE COMMITTEE MEMBERS	DEPARTMENT OF HUMAN SERVICES
Mark Anderson, Chair – present via phone	Gretchen Kramer – present via phone
Kimberly Kudej – present via phone	Faith Sandberg – present via phone
Sam Wallace – present via phone	Matt Highland – present via phone
Carol Forristall – absent	Carrie Malone – present
Rebecca Peterson – present via phone	Julie McCauley – present
Skylar Mayberry-Mayes – absent	Janee Harvey – present via phone
Jack Willey – present via phone	Jean Slaybaugh – present via phone
	Vern Armstrong – present via phone
	Marissa Eyanson – present via phone
	Anthony Lyman – present via phone
	Paula Motsinger – present via phone
	Amy McCoy – present via phone
	Nancy Freudenberg – present via phone

EX-OFFICIO LEGISLATIVE MEMBERS
Representative Joel Fry – absent
Senator Mariannette Miller-Meeks – absent
Senator Amanda Ragan – absent
Representative Timi Brown-Powers – absent

Call to Order

Chair Mark Anderson called the Council meeting to order at 10:00 a.m. via conference call on Tuesday, August 18, 2020.

Roll Call

Five Council members were present, two were absent and all Ex-officio legislative members were absent.

Rules

The following amendments to the administrative rules were presented for adoption at the August 18, 2020, Council on Human Services meeting.

R-1. Amendments to Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code (MEPD rules) The proposed rule is amended to adjust the federal poverty levels increments used to assess premiums for applicants and recipients with income over 150% of the federal poverty level under the Medicaid for Employed People with Disabilities (MEPD) program.

A motion was made by Wallace to approve and seconded by Kudej.

MOTION UNANIMOUSLY CARRIED

R-2. Amendments to Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care”, Iowa Administrative Code. (Pharmacy Scope of Practice Rules). The Iowa Board of Pharmacy, in collaboration with the Iowa Department of Public Health, developed statewide protocols for pharmacists ordering and dispensing of naloxone and nicotine replacement therapy (NRT) tobacco cessation products, as well as pharmacists ordering and administering vaccines. In order to allow these expanded pharmacist practice protocols under Medicaid the following changes are proposed:

- Adds “Pharmacist” as a provider type eligible to enroll in the Medicaid program.
- Clarifies qualified prescriber and prescription requirements based on the pharmacist expanded practice standards.
 - Amends the section related to pharmacies administering influenza vaccine to children to include all Medicaid covered vaccines for children and adds the administration of adult vaccines, pursuant to 657 IAC 39 and the statewide protocols. Also adds Medicaid verification and reporting requirements. The changes enable pharmacists to take advantage of the expanded practice standards while clarifying the Medicaid verification and reporting requirements for vaccines.
- Amends the section related to basis of reimbursement for vaccines related to pharmacies. All billing and reimbursement of vaccines, regardless of provider type, will be through the healthcare common procedure coding system (HCPCS) to ensure consistency among providers as well as a coordinated Medicaid immunization record for the member.

A motion was made by Wallace to approve and seconded by Peterson.

MOTION UNANIMOUSLY CARRIED

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

N-1. Amendments to Chapters 80, “Procedure and Method of Payment,” Chapter 133, “IV-A Emergency Assistance Program,” Chapter 172, “Family-Centered Child Welfare Services,” Chapter 175, “Abuse Of Children,” and Chapter 186, “Community Care,” Iowa Administrative Code. (Contracting Rules) The Family First Act reforms the federal child welfare financing streams. Title IV-E and Tile IV-B of the Social Security Act provide services to families who are at risk of entering the child welfare system. A core expectation under the Family First Act is states must employ evidence-based interventions demonstrated to effectively strengthen and preserve connections between children and their family. The primary focus of these services is to prevent removal of a child and placement into foster care. These changes will positively affect the child welfare contractors who successfully bid on contracts as the evidence-based interventions provide clear expectations to fidelity of models used in service provisions.

N-2 Amendments to Chapter 202, “Foster Care Placement and Services, “Iowa Administrative Code. (Foster Care Placement Services). The Family First Act and 2019 House File 644 requires protocols to ensure children being placed in out of home settings are not inappropriately misdiagnosed with mental illness, other emotional or behavioral disorders, medically fragile conditions or developmentally delayed conditions. The proposed rule requires information in case permanency plans for children entering or already in foster care to include efforts to retain existing medical and mental health care providers as well as activities to evaluate service needs.

A motion was made by Kudej to approve and seconded by Wallace.

MOTION UNANIMOUSLY CARRIED

Approval of Minutes

A motion was made by Kudej and seconded by Peterson to approve the minutes of the July 8, 2020 meeting.

MOTION UNANIMOUSLY CARRIED

Council Update

Council member Kudej asked for a response to a question that was asked last month about total abortion numbers in the State of Iowa, and a break down by county of how many Medicaid recipients are receiving birth control. CIO Matt Highland stated we do have updated numbers on the family planning program and that Director Garcia intended to walk the council through those numbers, however she was unable to join the meeting due to dealing with the effects of the Derecho that hit Iowa on August 10th. DHS is heavily involved in offering assistance to Iowans that were affected. Highland would be happy to send that data out to you, then have a discussion next month.

Director Garcia Update

Matt Highland apologized for Director Garcia’s absence due to the emergent situations many Iowans are facing due to the storm damage. He explained that many of the Director’s team members have been at the State’s Emergency Response Center over the last several days and that DHS is working on providing emergency shelter and food assistance to those Iowans in need. He gave an overview of all of the information available to Iowans on our website as well as working with local community organizations to make sure we reach everyone who needs assistance. He gave a brief update on the COVID-19 outbreak at our boy’s state training school in Eldora, stating that all 26 youth that tested positive have recovered and returned to their cottages.

Council Member Kudej asked about the news that the State has been incorrectly reporting the COVID -19 numbers. Matt stated that we are looking into that now and will be happy to update the Council when we know more details.

Public Hearing Presentations for the SFY 2022 DHS Budget

- 1) NAMI Iowa – Peggy Huppert, Executive Director
- 2) Iowa Health Care Association – Brandon Hagen, VP

Adjournment

Chair Mark Anderson adjourned the meeting at 10:50 a.m.

Respectfully Submitted by:
Julie McCauley
Council Secretary
jkm