

COMMENTS AND RESPONSES ON ARC 2115C
Human Service Department Rule 441—78.37(18)
Comments received September 8, 2015

There was no public hearing on 16-018 Elderly Waiver Assisted Living Service rules. The following persons and organizations provided written comments which are included in the summary below; each submission was similar in content to the others.

1. Cindy Baddelo, Iowa Health Care Association
2. Christine Vasquez, Walden Point Affordable Assisted Living
3. Jesse Burns, Walden Point Affordable Assisted Living

Comment 1:

Department changes the assisted living “label” of the service to remove the words “on-call” and adds in an “encounter”, with more documentation/paperwork.

On behalf of our 225 assisted living facility members, we have concerns related to the changes being proposed by the Department in ARC2115C, and the negative impact this will have on access to Medicaid members needing services in an assisted living facility in Iowa.

Department Response 1:

In November 2014 the Centers for Medicare and Medicaid Services (CMS) approved an Home and Community Based Services (HCBS) Elderly Waiver amendment to authorize the Assisted Living On-Call Service. Approval of the amendment required that the department make several revisions to the Iowa Administrative Code (IAC) for the Assisted Living On-Call Service. CMS required the following changes:

1. The name of the service has been revised from Assisted Living On-Call Service to Assisted Living Service. All references to “on-call” have been removed.
2. The definition of the service has been expanded.
3. Providers must document at least one assisted living encounter per billed day. This documentation must adhere to IAC 441-79.3 regarding documentation of Medicaid services.

Comment 2: How does the Department intend on defining an assisted living service encounter? Per ARC 2115C, the below language appears to be attempting to implement the 1915C elderly waiver amendment:

a. "The service includes the 24 hour-hour-on-site response capability to meet unpredictable member needs as well as member safety and security through incidental supervision. The assisted living provider has documented at least one assisted living encounter that day."

Department Response 2: This rule is a direct result of the 1915(c) HCBS waiver amendment. An encounter is an interaction with a member. The daily Assisted Living encounter used to document the Assisted Living service cannot be a part of another service funded through the waiver or through Medicaid. For example, the encounter cannot be related to:

1. Meals if the meal is funded by Medicaid,
2. Medication management if medication management is included in the Consumer-Directed Attendant Care (CDAC) agreement,
3. Bathing assistance if bathing is included in the CDAC agreement,
4. Home health services if those services are included in a home health plan of care and funded through Medicaid.

Comment 3: For purposes of this new documentation that is proposed in ARC 2115C, what does the Department expect to be satisfactory?

a. Quoting ARC 2115C ".provider has documented at least one assisted living services encounter for that day, in accordance with rule. The documentation must include the member's response to the service. The documented assisted living service cannot also be an authorized CDAC service." With that said, would the following documentation be acceptable as an example? *July 5, 2015, 24-hours on-site supervision provided by staff throughout this period to tenant #1 to maintain her safety in her apartment and within the assisted living program tenant #1 was awake the morning at 7 a.m., excited for the day and starting getting dressed.*

Department Response 3: The above example of documentation would not be sufficient documentation of a billable Assisted Living encounter. The new rule states that the encounter must be documented in accordance with Iowa Administrative Code (IAC) 441-79.3. Rule 79.3 specifically outlines the information that must be contained in the documentation for all Medicaid services, such as the staff person's name, the exact time of the service, the specific nature of the service, etc. Please refer to the IAC for Medicaid documentation requirements that apply to all Medicaid providers. New rules for Assisted Living further states that the member's response to the encounter is to be documented.

Comment 4: We have concerns regarding the "unscheduled" nature of the documentation requirement. As is the risk with any new documentation mandate, the new proposed rules will lead to more staff time documenting for purposes of the waiver which means less time for staff to provide personal cares and services. Moreover, the unscheduled encounter will be difficult to implement, especially for providers with electronic health systems. As a result, the responsibility to ensure completion of this documentation will often time fall squarely on a caregiver's notation ability. Confusing the situation further, if the service plan notes a service to be done on an "as needed basis", this would presumably not be considered an unscheduled need.

Department Response 4: Federal and state requirements for every Medicaid funded service does require documentation to comply with state and federal guidelines. For

Iowa those guidelines are contained in IAC 79.3. Every Medicaid provider is responsible for implementing a documentation system that supports the service funded through Medicaid; without appropriate documentation the service is not payable and both the state and provider are at risk of recoupment through audit.

The Assisted Living provider must have sufficient documentation to support that the service paid by Medicaid is in no way duplicative of the specific CDAC services that are included in that member's signed CDAC agreement. Each member's CDAC agreement can include a different array of services, so what may be CDAC for one member is not CDAC for another person.

Comment 5: Is an "encounter" still considered a "supervision visit" of the tenant, and not an IDAL/ADL?

Department Response 5: The Assisted Living encounter can be any interaction with the member that is not part of that member's CDAC agreement or another funded Medicaid service. The Assisted Living must have sufficient documentation to support that the service paid by Medicaid is in no way duplicative of the specific CDAC services that are included in that member's signed CDAC agreement. Each member's CDAC agreement can include a different array of services, so what may be CDAC for one member is not CDAC for another person.

Comment 6: We don't think this rule change would be meant to make the assisted living service the same as a CDAC service.

Department Response 6: This rule for Assisted Living services has no impact on CDAC nor does this rule change the CDAC service. The rule does require that documentation for Assisted Living service fully resemble the documentation needed for other Medicaid funded services. While CDAC must be included in a formal CDAC Agreement and must be anticipated and regularly occurring, Assisted Living is flexible to meet the ever changing or transitory needs of each member.

The Department will not modify the administrative rule amendments published as **ARC 2115C** in the Iowa Administrative Bulletin based on the comments of the respondents.