ARC 2147C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Pursuant to the authority of Iowa Code sections 217.6, 239B.4(6), and 249A.4, the Department of Human Services proposes to amend Chapter 41, "Granting Assistance," and Chapter 46, "Overpayment Recovery," Iowa Administrative Code.

These proposed amendments implement policies that allow a family that includes an adult who is a nonqualified alien to apply for and receive Family Investment Program (FIP) assistance for more than 60 months for the family's children who are U.S. citizens or qualified aliens if the family meets hardship criteria and all other FIP eligibility criteria.

Polk County District Court found that the Department violated the Iowa constitutional rights of U.S. citizens who are children whose parent(s) is a nonqualified alien by denying, because the parent(s) is a nonqualified alien, a hardship application for the household to receive FIP for more than 60 months for those U.S. citizen children.

Any interested person may make written comments on the proposed amendments on or before October 6, 2015. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 217.6,

239B.4(6), and 249A.4.

The following amendments are proposed.

ITEM 1. Amend paragraph **41.24(4)"b"** as follows:

b. Hardship applicants. While the eligibility decision is pending, unless the applicants are exempt from referral as defined in subrule 41.24(2), the department shall refer applicants who must qualify for a hardship exemption before approval of FIP to PROMISE JOBS to sign a family investment agreement as described in paragraph 41.24(4)"a" and shall treat applicants in accordance with subrule 41.30(3).

ITEM 2. Amend subrule 41.30(1) as follows:

41.30(1) Sixty-month limit. Assistance shall not be provided to a FIP applicant or recipient family that includes an adult who has received assistance for 60 calendar months under FIP ~~or any state program in Iowa~~ or under any program in another state that is funded by the federal Temporary Assistance for Needy Families (TANF) block grant unless the applicant or recipient family is eligible for a hardship as defined in subrule 41.30(3). The 60-month period need not be consecutive. In two-parent households or households that include a parent and a stepparent, the 60-month limit is determined when either a parent or stepparent has received assistance for 60 months.

a. An "adult" is any person who is a parent of the FIP child in the home, the parent's spouse, or included as an optional member under ~~subparagraphs~~ subparagraph 41.28(1)"b"(1)~~,~~ or (2) ~~and (3)~~. ~~In two-parent households or households that include a parent and a stepparent, the 60-month limit is determined when either a parent or stepparent has received assistance for 60 months.~~

b. "Assistance," for the purpose of this rule, shall include any month for which the

adult receives a FIP grant or a payment in another state using federal Temporary Assistance for Needy Families (TANF) funds that the other state deems countable toward the 60-month federal limit. Assistance received for a partial month shall count as a full month.

ITEM 3. Rescind and reserve paragraph **41.30(3)"a."**

ITEM 4. Amend paragraph **41.30(3)"d"** as follows:

d. Eligibility for a hardship exemption.

(1) No change.

(2) Families with FIA-responsible persons who are not exempt from referral as defined in subrule 41.24(2) determined eligible for more than 60 months of FIP shall make incremental steps toward overcoming the hardship and participate to their maximum potential in activities reasonably expected to result in self-sufficiency.

(3) Barriers to economic self-sufficiency that an FIA-responsible person who is not exempt as defined in subrule 41.24(2) has that were known and existing before the family reached the 60-month limit shall not be considered as meeting eligibility criteria for hardship unless the individual complied with PROMISE JOBS activities offered to overcome that specific barrier.

ITEM 5. Amend paragraph **41.30(3)"e"** as follows:

e. Requesting a hardship exemption.

(1) Families ~~with adults as defined in subrule 41.30(1) who~~ that have or are close to having received 60 months of ~~FIP~~ assistance as defined in subrule 41.30(1) may request a hardship exemption. Requests for the hardship exemption shall be made on Form 470-3826 or Form 470-3826(S), Request for FIP Beyond 60 Months. In addition, families that have

received ~~FIP~~ assistance for 60 months shall complete Form 470-0462 or Form 470-0462(S), Financial Support Application, as described at rule 441—40.22(239B) as a condition for regaining FIP eligibility. Failure to provide the required application within ten days from the date of the department's request shall result in denial of the hardship request.

(2) No change.

(3) Requests for a hardship exemption shall not be accepted prior to the first day of the family's fifty-ninth month of ~~FIP~~ assistance. The date of the request shall be the date an identifiable Form 470-3826 or Form 470-3826(S) is received in any department of human services or PROMISE JOBS office. An identifiable form is one that contains a legible name and address and that has been signed.

(4) No change.

(5) When an adult as defined in subrule 41.30(1) who has received ~~FIP~~ assistance for 60 months joins a recipient family that has not received 60 months of ~~FIP~~ assistance, eligibility shall continue only if the recipient family submits Form 470-3826 or Form 470-3826(S) and is approved for a hardship exemption as described in subrule 41.30(3) and meets all other FIP eligibility requirements.

(6) and (7) No change.

ITEM 6. Amend paragraph **41.30(3)"f"** as follows:

f. Determination of hardship exemption.

(1) A determination on the request shall be made as soon as possible, but no later than 30 days following the date an identifiable Form 470-3826 or Form 470-3826(S) is received in any department of human services or PROMISE JOBS office. A written notice

of decision shall be issued to the family the next working day following a determination of eligibility or ineligibility for a hardship exemption. The 30-day time standard shall apply except in unusual circumstances, such as when the department and the family have made every reasonable effort to secure necessary information which has not been supplied by the date the time limit expired; or because of emergency situations, such as fire, flood or other conditions beyond the administrative control of the department.

(2) to (8) No change.

(9) Recipients whose FIP assistance is canceled at the end of the sixtieth month shall be eligible for reinstatement as described at 441—subrule 40.22(5) when Form 470-3826 or Form 470-3826(S) is received before the effective date of cancellation even if eligibility for a hardship exemption is not determined until on or after the effective date of cancellation.

(10) When Form 470-3826 or Form 470-3826(S) is not received before the effective date of the FIP cancellation and a Financial Support Application is required for the family to regain FIP eligibility, the effective date of assistance shall be no earlier than seven days from the date of application as described at rule 441—40.26(239B).

(11) Eligibility for a hardship exemption shall last for six consecutive calendar months. EXCEPTION: The six-month hardship exemption ends when FIP for the family is canceled for any reason and a Financial Support Application is required for the family to regain FIP eligibility. In addition, when FIP eligibility depends on receiving a hardship exemption, the family shall submit a new Form 470-3826 or Form 470-3826(S). A new hardship exemption determination shall be required prior to FIP approval.

(12) and (13) No change.

ITEM 7. Amend subparagraph **41.30(3)"g"(6)** as follows:

(6) Any family that is not exempt from referral as defined in subrule 41.24(2), that has been granted a hardship exemption, and that does not follow the terms of the family's six-month FIA will have chosen a limited benefit plan in accordance with 441—Chapters 41 and 93.

ITEM 8. Amend rule **441—46.21(239B)**, definition of "Procedural error," as follows:

"Procedural error" means a technical error that does not in and of itself result in an overpayment. Procedural errors include:

1. No change.

2. Failure to secure a properly signed Form 470-3826 or Form 470-3826(S), Request for FIP Beyond 60 Months, as described at 441—subrule 41.30(3).

3. to 5. No change.

Iowa Department of Human Services

Information on Proposed Rules

Name of Program Specialist	Telephone Number	Email Address
Barb Caruso	281-4176	bcaruso@dhs.state.ia.us

1. Give a brief summary of the rule changes:

The proposed rule changes:

Implement policies that allow families with an adult who is a nonqualified alien to apply for and receive FIP for their citizen or qualified alien children for more than 60-months if the family meets hardship criteria and all other FIP eligibility criteria.

Add the Request for FIP Beyond 60 Months Spanish form number 470-3826(S) to rules.

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

Iowa Code 217.6, 249A.4, 239B.4(6)

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

Polk County District Court found that DHS violated the Iowa constitutional rights of US citizen children whose parents are nonqualified aliens by denying a hardship application for the household to receive FIP for more than 60-months for the US citizen children because the adult was a nonqualified alien.

Form 470-3826, Request for FIP Beyond 60 Months was translated into Spanish.

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

Household's where the adult is a nonqualified alien can apply for and receive FIP for more than 60-months for the citizen or qualified alien children if they meet hardship criteria and all other eligibility requirements.

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

This change is not mandated by either State or Federal Law.

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

Household's where the adult is a nonqualified alien can apply for and receive FIP for more than 60-months for the citizen or qualified alien children if they meet hardship criteria and all other eligibility requirements. This will be a benefit to the household.

7. What are the potential benefits of this rule?

Household's where the adult is a nonqualified alien can apply for and receive FIP for more than 60-months for the citizen or qualified alien children if they meet hardship criteria and all other eligibility requirements.

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

There are no costs to the community.

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

No other agencies regulate in this area.

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

There are no alternatives to direct regulation in this area available to the agency. If the rules are not updated we will be in violation of the District Court ruling.

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

No. These amendments do not provide for waivers in specific situations because requests for a waiver of any rule may be submitted under the department's general rule on exceptions at 441-1.8(17A, 217).

12. What are the likely areas of public comment?

The public might not like the department allowing household's where the adult is a nonqualified alien can apply for and receive FIP for more than 60-months for the citizen or qualified alien children if they meet hardship criteria and all other eligibility requirements.

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

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

Administrative Rule Fiscal Impact Statement

Date:

Agency: Human Services

IAC citation: 441 IAC

Agency contact: Barb Caruso

Summary of the rule:

The proposed rule changes:

Implement policies that allow families with an adult who is a nonqualified alien to apply for and receive FIP for their citizen or qualified alien children for more than 60-months if the family meets hardship criteria and all other FIP eligibility criteria.

Add the Request for FIP Beyond 60 Months Spanish form number 470-3826(S) to rules.

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:

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

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

Assumptions:

$295.93 is the average monthly cost per case based on data from May, 2015.
Assumes average cost per case will remain at the current level.
440 potential total cases of children per month with a non-qualified alien parent based on data from May, 2015 after adjustment for coding errors.
Assumes number of cases will remain relatively stable at the current level over time.
Assumes at most 20% of the potential cases will end up getting hardship.
440 x 20% = 88 maximum number of cases per month.
Assumes gradual ramp up of cases until full potential of 88 cases is reached in June, 2017.
Assumes implementation date of February 1, 2016.

Describe how estimates were derived:

SFY16: Estimated average cases per month from February 1, 2016 to June 30, 2016 is 26.4. At an average monthly cost of $295.93, the total cost is $39,063 (26.4 x $295.93 x 5 months).

SFY17: Estimated cases during SFY17 range from 39.6 in July, 2016, up to the 88.0 maximum for June, 2017 for an average of 63.8 cases per month. At an average monthly cost of $295.93, the total cost is $226,564 (63.8 x $295.93 x 12 months).

SFY18 and ongoing: Assume these cases will remain stable at 88 per month at a cost of $295.93, resulting in a total annual cost of $312,502 (88 x $295.93 x 12 months).

Funding breakdown is based on percentage of the total FIP projected expenditures from each funding source.

Estimated Impact to the State by Fiscal Year

	Year 1 (FY 2016)	Year 2 (FY 2017)
Revenue by each source:		
General fund		
Federal funds		
TOTAL REVENUE		
Expenditures:		
General fund	$27,270	$156,693
Federal funds	3,694	21,887
Other (specify): FIP Share of Child Support Collections and Recoupments	8,099	47,984
TOTAL EXPENDITURES	$39,063	$226,564
NET IMPACT	$39,063	$226,564

____ This rule is required by state law or federal mandate.

Please identify the state or federal law:

Identify provided change fiscal persons:

_X_ Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

The FIP appropriation for SFY16 enacted in SF 505 includes sufficient funding for the anticipated increase in these expenditures due to decreasing caseloads for other categories of FIP benefits. The need to fund these cases was known during the 2015 legislative session and was accounted for in the department's projections.

The FIP budget request for SFY17 includes the estimated cost for these additional cases. Due to other cases projected at a lower level than SFY16, the overall funding need for FIP is expected to decrease.

It is anticipated that the $85,938 increased cost for SFY18 and ongoing can be funded with federal TANF funds.

____ 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:

The families that qualify for a hardship exemption under this rule change can receive FIP benefits for more than the 60-month limit.

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

None anticipated.

Agency representative preparing estimate: Kathy Blume

Telephone number: 515-281-4196