
LEGAL UPDATE

Legal Services Division



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ADMINISTRATIVE RULES REVIEW COMMITTEE MEETING — OCTOBER 5, 2021

Purpose. *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

DEPARTMENT OF HUMAN SERVICES, Home- and Community-Based Services Habilitation Program— Eligibility Criteria, Staff Training, Scope of Services, 9/8/21 IAB, ARC 5889C, NOTICE.

Background. This rulemaking amends rules for the Home- and Community-Based Services (HCBS) Habilitation programs to adopt the Level of Care Utilization System (LOCUS) tool for assessment of adults ages 19 and older and Child and Adolescent Level of Care Utilization System (CALOCUS) tool for assessment of youth ages 16 to 18 for the purposes of the needs-based eligibility determination, person-centered service planning, and HCBS tier authorization. The rulemaking includes additional amendments relating to habilitation services as well.

Commentary. Ms. Shelly Chandler, speaking on behalf of the Iowa Association of Community Providers, expressed appreciation for the work done on the rulemaking with the department's stakeholder workgroup, but stated that some providers are concerned about assessments being conducted by desk review rather than in person. She expressed disappointment that the department had not made all of the revisions to the rulemaking requested in public comments. She stated she did not want to delay the rulemaking, but hoped the department would continue its efforts with the workgroup going forward.

Ms. Flora Schmidt, speaking on behalf of the Iowa Behavioral Health Association, agreed with Ms. Chandler's comments regarding the use of desk reviews rather than in-person reviews. She also expressed concern that the "cross-walk" between the current comprehensive assessment and social history (CASH) tool and the LOCUS/CALOCUS tools had not been completed with the November 1, 2021, implementation date approaching. She stated that providers have not been trained in the new tools and urged that the implementation date be moved back. She expressed support for use of the new tools, but not for desk reviews.

Committee members asked for clarification about the impact of the November 1 implementation date. Ms. Nancy Freudenberg, speaking on behalf of the department, explained that the rulemaking would probably not be implemented on November 1 and that training materials on the new tools were being assembled. Ms. Paula Motsinger, also speaking on behalf of the department, explained that assessments of individuals used to complete the tools will be face-to-face, and that the department is continuing to work on additional clarification for the crosswalk. She explained that the department is still working on responses to questions raised by the federal Centers for Medicare and Medicaid Services (CMS), as a result of which the rulemaking would probably not be implemented by November 1. She said training would be available before November 1, and she would get back to the committee with an exact date for the training.

Committee members asked what would happen if CMS denies approval of the rules and for more information about the crosswalk. Ms. Freudenberg explained that discussion with CMS is a regular part of the rulemaking process for Medicaid, that such rules would not be implemented until approval from CMS is received, and that the rules would be withdrawn if CMS does not approve. She explained that the rulemaking describes an initial in-person review followed

by ongoing desk reviews, and the concerns being raised are regarding the desk reviews later in the process. She further stated that the department is open to further rulemaking in this area if needed.

Committee members asked if the committee delaying the rulemaking would be helpful to the department. Ms. Freudenberg explained that the department generally tries to get CMS approval before rules are effective. She said it is the committee's right to delay the rules, and the department will pull them back if CMS does not approve. She noted she had discussed this process with Mr. Jack Ewing. She expected approval to be obtained by mid-November. Ms. Chandler responded that she understood the initial assessments would be in person, but that the later desk reviews would be insufficient to fully capture changes in an individual's level of functioning. Members stated that in-person interviews are important in this process.

Committee members asked for more information about the initial reviews and the crosswalk. Ms. Motsinger explained that assessments are held annually, and that desk reviews are currently part of the process. She explained that the only significant change in the process would be that the CASH tool would be completed in person with initial determinations made by the Iowa Medicaid Enterprise (IME), and then sent to a managed care organization for annual reevaluations. She said the crosswalk would be a critical component, but it is not yet complete. She recommended that the department be given more time for implementation of the rulemaking.

Committee members asked if Ms. Chandler or Ms. Schmidt wanted the committee to delay the rulemaking. Ms. Chandler stated that the rulemaking should go forward given the scope of the change to HCBS programs and the funding involved, but she would like to see what the crosswalk looks like in the meantime. Ms. Freudenberg suggested that the committee hold a special review of the rulemaking in December, once more information is known. She said the department would send the crosswalk to Ms. Chandler and Ms. Schmidt once it is ready. It could then be determined in December whether any further action is needed. Ms. Schmidt indicated support for this approach. She expressed concern that providers would be out of compliance as of November 1 without further training, given that IME had advised providers not to do their own crosswalks. She stated the rulemaking should not be delayed. She acknowledged that the initial assessments would still be in person, but expressed concern that under the rulemaking, the subsequent LOCUS/CALOCUS tools would only be used in a desk review.

Action. A special review will be scheduled for the December committee meeting.

Revenue Department, Marketable Food Products for Human Consumption, 09/08/21 IAB, ARC 5906C, ADOPTED.

Background. Iowa Code section 423.3(49) provides a limited tax exemption for manufacturers producing "marketable food products for human consumption," which is a term that has not been defined in either the Iowa Code or via rulemaking by the Department of Revenue. This rulemaking adopts the department's long-standing interpretation of the term.

Commentary. Mr. Tom Sands, speaking on behalf of the Iowa Taxpayers Association (ITA), stated that the ITA, along with the Iowa Association of Business and Industry (ABI), has expressed concerns with the rulemaking at public hearings and in front of the committee. He stated that the ITA remains opposed to the rulemaking; however, the ITA and the ABI continue to work with the department on rules that will provide more clarity. He expressed that the ITA feels the issue should be addressed legislatively rather than through rulemaking, and asked the committee to consider a session delay.

Mr. JD Davis, speaking on behalf of the ABI, agreed with the statements made by Mr. Sands. He stated that the ABI sent the proposed rulemaking to its tax practitioners and the concern is that the rulemaking will lead to greater tax collections. He acknowledged that the current process to determine a taxpayer's tax liability is not effective as it may involve a cycle of audits and challenges. He stated that the rulemaking does not provide the necessary clarity and requested the committee consider a session delay.

Committee members asked if the department objected to a session delay. Ms. Clara Wulfsen, speaking on behalf of the department, responded that the department had no objection.

Action. A motion for a session delay passed on a 10 to 0 roll call vote.

Next Meeting. The next committee meeting will be held in Room 103, Statehouse, on Tuesday, November 9, 2021, beginning at 9:00 a.m. Instructions for participation by videoconference can be found at the committee's Internet site below.

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