

CHAPTER 88  
VOLUNTEER HEALTH CARE PROVIDER PROGRAM

**641—88.1(135) Definitions.** For the purpose of these rules, the following definitions shall apply:

“*Charitable organizations*” means a charitable organization within the meaning of Section 501(c)(3) of the Internal Revenue Code which has as its primary purpose the sponsorship or support of programs designed to improve the quality, awareness, and availability of medical and dental services to children and to serve as a funding mechanism for provision of medical services, including but not limited to immunizations, to children.

“*Health care provider*” means a physician licensed under Iowa Code chapter 148, 150, or 150A, a physician assistant licensed and practicing under a supervising physician pursuant to Iowa Code chapter 148C, a licensed practical nurse, or a registered nurse pursuant to Iowa Code chapter 152, or a dentist pursuant to Iowa Code chapter 153.

**641—88.2(135) Purpose.** The volunteer health care provider program is established to defend and indemnify eligible health care providers providing free medical and dental services through qualified programs as provided in Iowa Code section 135.24 and these rules.

**641—88.3(135) Health care provider eligibility.** To be eligible for protection as an employee of the state under Iowa Code chapter 669 for a claim arising from covered medical or dental services, a health care provider must meet all of the following conditions at the time of the act or omission allegedly resulting in injury:

**88.3(1)** Be licensed to practice under Iowa Code chapter 148, 148C, 150, 150A, 152, or 153.

**88.3(2)** Have submitted a certified statement on forms provided by the department attesting that the health care provider agrees to:

*a.* Cooperate fully with the state in the defense of any claim or suit relating to participation in the volunteer health care provider program, including attending hearings, depositions and trials and assisting in securing and giving evidence, responding to discovery and obtaining the attendance of witnesses.

*b.* Accept financial responsibility for personal expenses and costs incurred in the defense of any claim or suit related to participation in the volunteer health care provider program, including travel, meals, compensation for time and lost practice, and copying costs and agree that the state will not compensate the health care provider for the health care provider’s expenses or time needed for the defense of the claim or suit.

*c.* Receive no direct monetary compensation of any kind for services provided in the program.

*d.* Comply with the agreement with the department concerning approved medical or dental services and programs.

**88.3(3)** Have a current certificate of qualification from the applicable state licensing board based on review of the following records submitted by the health care provider:

*a.* Verification that the health care provider holds an active unrestricted license to practice in Iowa under Iowa Code chapter 148, 148C, 150, 150A, 152, or 153.

*b.* Verification that the health care provider has continuously held an active license in good standing since first licensed to practice the profession.

*c.* Verification of good standing of any hospital and clinic affiliation or staff privileges held by the health care provider in the last ten years.

*d.* Certified statements from the National Practitioner Data Bank and the Federation of State Medical Boards Disciplinary Data Bank, or State Dental Boards Disciplinary Data Bank, as appropriate, setting forth any malpractice judgments or awards, or disciplinary action involving the physician or dentist. The physician or dentist shall request that the statements be sent directly to the board by the data banks and shall pay the cost.

*e.* A sworn statement from the health care provider attesting that the license to practice is free of restrictions. The statement shall describe any disciplinary action which has ever been initiated against the health care provider by a professional licensing authority or health care facility, including any voluntary surrender of license or other agreement involving the health care provider's license to practice or any restrictions on practice, suspension of privileges, or other sanctions. The statement shall also describe any malpractice suits which have been filed against the health care provider and state whether any complaints involving professional competence have been filed against the health care provider with any licensing authority or health care facility.

*f.* Any additional materials requested by the board.

**88.3(4)** Have a signed, current agreement with the department which identifies the covered services within the respective scope of practice and conditions of defense and indemnification as provided in rules 88.9(135) and 88.10(135). The agreement shall:

*a.* Provide that the health care provider shall perform only those health services identified and approved by the department;

*b.* Identify the eligible program through which the health services will be provided;

*c.* Identify by category the patient groups to be served and the need for provision of free health services;

*d.* Identify the sites at which the free health services will be provided;

*e.* Provide that the health care provider shall maintain proper medical or dental records; and

*f.* Provide that the health care provider shall make no representations concerning eligibility for the volunteer health care provider program nor eligibility of services for indemnification by the state except as authorized by the department.

**641—88.4(135) Registration.** The certification of eligibility and agreement with the department shall expire two years from the date of certification by the applicable state licensing board. Health care providers may apply for renewal by filing an application at least 60 days prior to expiration of the agreement.

**641—88.5(135) Reporting requirements and duties.**

**88.5(1)** Upon obtaining knowledge or becoming aware of any injury allegedly arising out of the negligent rendering of, or the negligent failure to render, covered services under this program, a participating health care provider, program or facility shall provide written notice to the department, as soon as practicable, containing, to the extent obtainable, the circumstance of the alleged injury, the names and addresses of the injured, and any other relevant information.

**88.5(2)** Further, upon obtaining knowledge or becoming aware of such an injury, the participating health care provider shall promptly take all reasonable steps to prevent further or other injury from arising out of the same or similar incidents, situations or conditions.

**88.5(3)** A participating health care provider shall immediately notify the Iowa Department of Justice, Hoover State Office Building, Des Moines, Iowa 50319, of service or receipt of an original notice, petition, suit or claim seeking damages from the health care provider related to participation in this program.

**641—88.6(135) Revocation of eligibility and registration.** The department may suspend, revoke, or condition the eligibility of a health care provider for cause, including but not limited to:

**88.6(1)** Failure to comply with the agreement with the department.

**88.6(2)** Violation of state law governing the respective scope of practice or other law governing the services provided under the program.

**88.6(3)** Making false, misleading, or fraudulent statements in connection with the volunteer health care provider program, including determination of eligibility of the health care provider or handling of a claim against the health care provider or the state.

**88.6(4)** Evidence of substance abuse or intoxication affecting the provision of services under the program.

**88.6(5)** Reasonable grounds to believe the health care provider may have provided incompetent or inadequate care to a patient under the program or is likely to do so.

**88.6(6)** Reasonable grounds to believe the health care provider's participation in the program may expose the state to undue risk.

**641—88.7(135) Procedure for revocation of registration.** A proceeding for revocation of a health care provider's registration or a program's eligibility for participation shall be conducted as a contested case proceeding pursuant to Iowa Code chapter 17A and 641 IAC 173. This does not preclude emergency summary suspension where appropriate under Iowa Code section 17A.18.

**641—88.8(135) Registration denied—appeal procedure.** An applicant who has been denied registration by the department may appeal the denial and request a hearing on the issues related to the denial by serving a notice of the appeal and request for hearing to the director in writing not more than 30 days following the date of the mailing of the notification of registration denial to the applicant or not more than 30 days following the date upon which the applicant was served notice if notification was made in the manner of service or an original notice. The request for hearing shall specifically delineate the facts to be contested and determined at the hearing.

**641—88.9(135) Registration denied—hearing.** If an applicant who has been denied registration by the department appeals the registration and denial and requests a hearing pursuant to rule 88.9(135), the hearing and subsequent procedures shall be pursuant to Iowa Code chapter 17A and 641 IAC 173.

**641—88.10(135) Board notice of disciplinary action.** The applicable state licensing board shall immediately notify the department of the initiation of a contested case against a registered health care provider or the imposition of disciplinary action, including copies of any contested case decision or settlement agreement with the health care provider.

**641—88.11(135) Covered medical or dental services.** An eligible health care provider shall be afforded the protection of an employee of the state under Iowa Code chapter 669 only for claims for medical injury proximately caused by the health care provider's provision of covered health services. Covered health services are only those which are:

1. Identified in the agreement with the department;
2. In compliance with these rules;
3. Provided by or under the direct supervision of the health care provider;
4. Health services of health prevention, health maintenance, health education, diagnosis, or treatment other than the administration of anesthesia, and surgical procedures except minor surgical procedures and administration of local anesthesia for the stitching of wounds or the removal of lesions or foreign particles may be provided; and

5. Primary dental services which are preventive, diagnostic, restorative or emergency treatment including extraction.

Experimental procedures or procedures and treatments which lack sufficient evidence of clinical effectiveness are excluded from the program.

**641—88.12(135) Defense and indemnification.** The state shall defend and indemnify a health care provider for a claim arising from the volunteer health care provider program only to the extent provided by Iowa Code chapter 669 and Iowa Code section 135.24. Persons or entities other than the participating health care provider are not considered state employees or state agencies under chapter 669. Defense and indemnification of the health care provider under chapter 669 and section 135.24 shall occur only if all of the following requirements are met:

**88.12(1)** The claim involves medical injury proximately caused by covered health services which were identified and approved in the agreement with the department and then only to the extent the services were provided by or under the direct supervision of the health care provider, including claims based on negligent delegation of medical care.

**88.12(2)** The claim arises from covered health services which were performed at a site identified and approved in the agreement with the department.

**88.12(3)** The claim arises from covered health services provided through a qualified program identified and approved in the health care provider's agreement with the department and which meets the requirements of rule 88.13(135).

**88.12(4)** The health care provider who provided the service receives no direct monetary compensation of any kind or promise to pay compensation for the health services which resulted in injury.

**88.12(5)** Provided to a patient identified in the agreement with the department approving the program.

**88.12(6)** The health care provider is eligible and registered as provided in rule 88.3(135).

**641—88.13(135) Eligible programs.** To qualify as an eligible program, a hospital, clinic, health care facility, a health care referral program, or charitable organization must:

**88.13(1)** Be licensed to the extent required by law for the facility in question.

**88.13(2)** Register with the department on forms provided by the department.

**88.13(3)** Be approved as an eligible program. In order to be approved, the program shall indicate:

*a.* The patients to be served and the services to be provided.

*b.* A public health purpose that shall be served by the provision of free health services to the patients in question.

*c.* The program maintains adequate general liability and professional liability insurance for program staff other than the volunteer health care provider(s) or is properly and adequately self-insured.

*d.* The program maintains medical records in accordance with accepted standards for a period of ten years.

*e.* The program agrees it shall cooperate with the state in defense of the eligible health care provider providing services through it and shall not charge the state for its expenses, costs, and efforts in the defense of a claim or suit.

*f.* The program agrees that only the health care provider is afforded protection under Iowa Code section 135.24, and the state assumes no obligation to the program, its employees, officers, or agents.

**641—88.14(135) Effect of eligibility certification.** The certification of a health care provider as eligible for participation in the volunteer health care provider program by the applicable state licensing board and the department of public health is solely a determination that the state will defend and indemnify the health care provider to the extent provided by Iowa Code section 135.24 and these rules. It is not an approval or indication of ability or competence and may not be represented as such. The program and facility through which the health care provider provides free health services shall retain responsibility for determining that physicians and other health care personnel are competent and capable of adequately performing the services to be provided.

**641—88.15(135) Reporting by health care provider and program.** Within 60 days following each calendar quarter, the program shall provide a listing of patients and services provided by the volunteer health care provider program. A reporting form will be provided by the department to the local participating program at the time the agreement is approved by the department. At a minimum, the report shall include a listing of patients by name, the site, volunteer health care provider name and the services provided by the volunteer health care provider. Such reports shall be considered confidential pursuant to Iowa Code section 22.7(2).

These rules are intended to implement Iowa Code section 135.24.

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