

CHAPTER 88
VOLUNTEER HEALTH CARE PROVIDER PROGRAM

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

“*Charitable organization*” 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 chiropractic, dental, medical, pharmaceutical, nursing, optometric, psychological, social work, behavioral science, podiatric, physical therapy, occupational therapy, respiratory therapy, or emergency medical care services to children and to serve as a funding mechanism for provision of chiropractic, dental, medical, pharmaceutical, nursing, optometric, psychological, social work, behavioral science, podiatric, physical therapy, occupational therapy, respiratory therapy, or emergency medical care services, including but not limited to immunizations, to children in this state.

“*Defend*” means that the office of the attorney general shall provide the volunteer health care provider with legal representation at no cost to the volunteer health care provider.

“*Department*” means the Iowa department of public health.

“*Eligibility agreement*” means a signed contract, providing for defense and indemnification, between a volunteer health care provider or free clinic and the volunteer health care provider program (VHCPP).

“*Free clinic*” means a facility, other than a hospital or health care provider’s office, which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which has as its sole purpose the provision of health care services without charge to individuals who are otherwise unable to pay for the services.

“*Health care facility*” means a residential care facility, a nursing facility, an intermediate care facility for persons with mental illness, or an intermediate care facility for persons with mental retardation.

“*Health care services*” means services received from a volunteer health care provider at a qualified program as provided in Iowa Code Supplement section 135.24 and these rules, and approved in a VHCPP eligibility or sponsor agreement.

“*Indemnify*” means that the state of Iowa shall pay all sums that the volunteer health care provider or free clinic holding an eligibility agreement with the VHCPP is legally obligated to pay as damages because of any claim made against the volunteer health care provider or free clinic which arises out of the provision of free health care services rendered or which should have been rendered by the volunteer health care provider or free clinic.

“*Sponsor agreement*” means a signed contract, providing for VHCPP participation by individual health care providers of free health care services, between a hospital, clinic, free clinic, health care facility, health care referral program, or charitable organization and the VHCPP.

“*Volunteer health care provider*” means an emergency medical care provider certified pursuant to Iowa Code chapter 147A; a physician licensed pursuant to Iowa Code chapter 148, 150 or 150A; a physical therapist licensed pursuant to Iowa Code chapter 148A; an occupational therapist licensed pursuant to Iowa Code chapter 148B; a physician assistant licensed pursuant to Iowa Code chapter 148C and practicing under the supervision of a physician; a podiatrist licensed pursuant to Iowa Code chapter 149; a chiropractor licensed pursuant to Iowa Code chapter 151; a respiratory therapist licensed pursuant to Iowa Code chapter 152B; an advanced registered nurse practitioner, a licensed practical nurse or a registered nurse licensed pursuant to Iowa Code chapter 152 or 152E; a dentist, dental assistant, or dental hygienist licensed or registered pursuant to Iowa Code chapter 153; an optometrist licensed pursuant to Iowa Code chapter 154; a psychologist licensed pursuant to Iowa Code chapter 154B; a bachelor social worker, a master social worker, or an independent social worker licensed pursuant to Iowa Code chapter 154C; a marital and family therapist or mental health counselor licensed pursuant to Iowa Code chapter 154D; or a pharmacist licensed pursuant to Iowa Code chapter 155A, who has executed an eligibility agreement with the VHCPP.

“*Volunteer health care provider program*” or “*VHCPP*” means the volunteer health care provider program of the department.

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

641—88.3(135) Eligibility for defense and indemnification coverage.

88.3(1) *Volunteer 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 health care services, a volunteer health care provider shall satisfy each of the following conditions at the time of the act or omission allegedly resulting in injury:

a. The applicant shall hold an active unrestricted license, registration, or certification to practice in Iowa under Iowa Code chapter 147A, 148, 148A, 148B, 148C, 149, 150, 150A, 151, 152, 152B, 152E, 153, 154, 154B, 154C, 154D, or 155A. The applicant shall provide a sworn statement attesting that the license, registration, or certification to practice is free of restrictions. The statement shall describe any disciplinary action that has ever been taken against the health care provider by any professional licensing, registering, or certifying authority or health care facility, including any voluntary surrender of license, registration, or certification or other agreement involving the health care provider’s license, registration, or certification to practice or any restrictions on practice, suspension of privileges, or other sanctions. The statement shall also describe any malpractice suits that have been filed against the health care provider. The statement provided by a pharmacist volunteer health care provider shall also describe any disciplinary action that has ever been taken against any pharmacy in which the pharmacist has ever been owner, partner, or officer.

(1) Every physician and dentist shall authorize the release of information allowing certified statements to be sent to the board of medical examiners or board of dental examiners from the National Practitioner Data Bank, the Federation of State Medical Boards Disciplinary Data Bank, or State Dental Boards Disciplinary Data Bank, as appropriate, setting forth any malpractice judgment or award or disciplinary action involving the physician or dentist.

(2) Every physical therapist, occupational therapist, physician assistant, podiatrist, chiropractor, respiratory therapist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, optometrist, psychologist, bachelor social worker, master social worker, independent social worker, marriage and family therapist, and mental health counselor shall request certified statements directly from the National Practitioner Data Bank—Health Care Integrity and Protection Data Bank setting forth any malpractice judgment or award or disciplinary action involving the requester, shall pay the cost for such certified statements and shall submit such certified statements as part of the VHCPP application. Every chiropractor shall also authorize the release of information allowing certified statements to be sent to the board of chiropractic examiners from the Chiropractic Information Network/Board Action Databank (CINBAD) setting forth any malpractice judgment or award or disciplinary action involving the chiropractor.

(3) Every pharmacist shall authorize the release of information allowing certified statements to be sent to the board of pharmacy examiners from the National Association of Boards of Pharmacy setting forth any disciplinary action involving the pharmacist or any pharmacy in which the pharmacist has ever been owner, partner, or officer, and the pharmacist shall pay the cost for such certified statements. Every pharmacist shall also authorize the release of information from the pharmacist’s malpractice insurance carrier to be sent to the board of pharmacy examiners, and the pharmacist shall pay the cost for such release. Information released from the pharmacist’s malpractice insurance carrier shall include either the history and details of all claims that have been filed on behalf of the pharmacist or any pharmacy in which the pharmacist has ever been owner, partner, or officer, or confirmation that there have been no claims.

(4) Every emergency medical care provider shall authorize the release of information allowing information to be sent from the bureau of emergency medical services to the Iowa department of public health volunteer health care provider program setting forth any malpractice judgment or award or disciplinary action involving the requester, and shall authorize the release of information allowing such information to be shared with the bureau of emergency medical services by licensing entities within and outside Iowa.

b. Application. The applicant shall submit the following information on forms provided by the VHCPP:

- (1) The patients to be served;
- (2) The health care services to be provided;
- (3) The site where health care services are to be provided;
- (4) The days and maximum number of hours when the free health care services will be provided each month at each site;

(5) A public health purpose that shall be served by the provision of free health care services to the patients in question.

c. The applicant shall submit a certified statement, which shall be submitted on forms provided by the VHCPP, attesting that the volunteer health care provider agrees to:

(1) Cooperate fully with the state in the defense of any claim or suit relating to participation in the VHCPP, including attending hearings, depositions and trials and assisting in securing and giving evidence, responding to discovery and obtaining the attendance of witnesses.

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

(3) Receive no direct monetary compensation of any kind for services provided in the VHCPP program.

(4) Comply with the eligibility agreement with the VHCPP concerning approved health care services and programs.

d. The applicant shall have a signed and current eligibility agreement with the VHCPP which identifies the covered health care services within the respective scope of practice and conditions of defense and indemnification as provided in rules 88.5(135) and 88.6(135). The eligibility agreement shall:

(1) Provide that the volunteer health care provider shall perform only those health care services identified and approved by the VHCPP;

(2) Identify the sponsor program, approved by the VHCPP through an application process, through which the health care services will be provided;

(3) Identify by category the patient groups to be served and the need for provision of free health care services;

(4) Identify the sites at which the free health care services will be provided;

(5) Identify the maximum amount of time the free health care services will be provided at the identified sites by the volunteer health care provider each month;

(6) Provide that the volunteer health care provider shall maintain proper records of the health care services; and

(7) Provide that the volunteer health care provider shall make no representations concerning eligibility for the VHCPP or eligibility of services for indemnification by the state except as authorized by the department.

88.3(2) Free clinic eligibility. To be eligible for protection as a state agency under Iowa Code chapter 669 for a claim arising from the provision of covered health care services at the free clinic, a free clinic shall satisfy each of the following conditions at the time of the act or omission allegedly resulting in injury:

- a. The free clinic shall comply with subrules 88.4(1) through 88.4(6).
- b. The free clinic shall provide a list of all health care providers who provide health care services at the clinic.
- c. The free clinic shall submit proof that each health care professional providing health care services at the free clinic either:
 - (1) Holds a current eligibility agreement with the VHCPP, or
 - (2) Holds current professional liability insurance coverage and an active unrestricted license, registration, or certification to practice in Iowa under Iowa Code chapter 147A, 148, 148A, 148B, 148C, 149, 150, 150A, 151, 152, 152B, 152E, 153, 154, 154B, 154C, 154D, or 155A.
- d. The free clinic shall submit a list of the clinic board of directors and contact information for the board of directors.
- e. The free clinic shall submit proof of Section 501(c)(3) status.

641—88.4(135) Sponsor program eligibility. As a condition of sponsoring health care providers in the VHCPP, a hospital, clinic, free clinic, health care facility, health care referral program, or charitable organization shall satisfy each of the following conditions:

88.4(1) Licensure. The applicant program shall be licensed to the extent required by law for the facility in question.

88.4(2) If the program is a charitable organization within the meaning of Section 501(c)(3) of the Internal Revenue Code, the organization shall provide proof of Section 501(c)(3) status to the VHCPP.

88.4(3) Application. The applicant program shall submit the following information on forms provided by the VHCPP:

- a. The patients to be served;
- b. The health care services to be provided;
- c. The site where health care services are to be provided;
- d. The days and times when health care services are to be provided at each site;
- e. A public health purpose that shall be served by the provision of free health care services to the patients in question.

88.4(4) Certified statement. The applicant program shall submit a certified statement, which shall be submitted on forms provided by the VHCPP, attesting that the applicant program and its staff, employees and volunteers agree to:

- a. Cooperate fully with the state in the defense of any claim or suit relating to participation in the VHCPP, 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 the applicant program's expenses and costs incurred in the defense of any claim or suit related to participation in the VHCPP, including travel, meals, compensation for time and lost practice, and copying costs, and agree that the state will not compensate the applicant program for expenses or time needed for the defense of the claim or suit;
- c. Receive no direct monetary compensation of any kind for health care services provided in the applicant program;
- d. Comply with the agreement with the VHCPP concerning approved health care services and programs.

88.4(5) General liability insurance. The applicant program shall submit proof of general liability insurance for the clinic site.

88.4(6) Agreement. A signed and current agreement shall exist with the VHCPP which shall:

- a. Provide that the applicant program shall perform only those health care services identified and approved by the VHCPP;
- b. Identify by category the patient groups to be served and the need for provision of free health care services;
- c. Identify the sites at which the free health care services will be provided;
- d. Provide that the applicant shall maintain proper records of health care services for a period of seven years from the date of service or, in the case of a minor, for a period of one year after the minor has reached the age of majority; and
- e. Provide that the applicant agrees that only the volunteer health care provider is afforded protection under Iowa Code section 135.24, and that the state assumes no obligation to the program, its employees, officers, or agents, unless the program is registered as an eligible free clinic in accordance with subrule 88.3(2).

641—88.5(135) Covered health care services. A volunteer health care provider holding a current eligibility agreement with the VHCPP shall be afforded the protection of an employee of the state under Iowa Code chapter 669, and a free clinic holding a current eligibility agreement with the VHCPP shall be afforded protection as an agency of the state under Iowa Code chapter 669, only for claims for injury alleged to have been proximately caused by a health care provider's provision of covered health care services or solely on the basis of the health care provider's participation in the free clinic.

88.5(1) Covered health care services are only those that are:

- a. Identified in the eligibility agreement with the VHCPP;
- b. In compliance with these rules;
- c. Provided by or under the direct supervision of the volunteer health care provider;
- d. Health care services of:
 - (1) Physicians and physician assistants for: well-child examinations, annual adult examinations, diagnosis and treatment of acute and chronic conditions, health education, health maintenance, immunizations, and minor surgical procedures.
 - (2) Chiropractors for: examinations, diagnosis and treatment, health education and health maintenance.
 - (3) Licensed practical nurses and registered nurses for: well-child examinations, annual adult examinations, treatment of acute and chronic conditions, health education, health maintenance, and immunizations.
 - (4) Advanced registered nurse practitioners for: well-child examinations, annual adult examinations, diagnosis and treatment of acute and chronic conditions, health education, health maintenance, immunizations and minor surgical procedures.
 - (5) Dentists for: dental examinations, diagnosis and treatment of acute and chronic conditions, health education, health maintenance and minor surgical procedures.
 - (6) Dental assistants for: intraoral services, extraoral services, infection control, radiography and removal of plaque or stain by toothbrush, floss, or rubber cup coronal polish.
 - (7) Dental hygienists for: assessments and screenings, health education, health maintenance and preventive services (cleaning, X-rays, sealants, fluoride treatments, fluoride varnish).
 - (8) Psychologists for: counseling and the use of psychological remedial measures with persons with adjustment or emotional problems.
 - (9) Bachelor social workers for: services which are within the scope of practice as defined by Iowa Code chapter 154C and the administrative rules which implement that chapter.
 - (10) Master social workers for: services which are within the scope of practice as defined by Iowa Code chapter 154C and the administrative rules which implement that chapter.

(11) Independent social workers for: services which are within the scope of practice as defined by Iowa Code chapter 154C and the administrative rules which implement that chapter.

(12) Marital and family therapists for: marital and family therapy.

(13) Mental health counselors for: mental health counseling.

(14) Pharmacists for: drug dispensing, patient counseling, health screenings and education, and immunizations.

(15) Physical therapists for: interpretation of performances, tests, and measurements; evaluation and treatment of human capabilities and impairments; use of physical agents, therapeutic exercises, and rehabilitative procedures to prevent, correct, minimize, or alleviate a physical impairment; establishment and modification of physical therapy program, treatment planning, and patient instruction/education.

(16) Occupational therapists for: evaluation and treatment of problems interfering with functional performance in persons impaired by physical illness or injury, emotional disorder, congenital or developmental disability, or the aging process.

(17) Optometrists for: examinations, diagnosis and treatment of the human eye and adnexa, health education, and health maintenance.

(18) Podiatrists for: examinations, diagnosis and treatment, health education, health maintenance, minor surgical procedures.

(19) Respiratory therapists for: diagnostic and therapeutic use of administration of medical gases, aerosols, and humidification, not including general anesthesia; pharmacologic agents relating to respiratory care procedures; bronchopulmonary hygiene; specific diagnostic and testing techniques employed in the medical management of patients to assist in diagnosis, monitoring, treatment, and research of cardiopulmonary abnormalities; and pulmonary function testing.

(20) Emergency medical care providers for: provision of emergency medical care as authorized in 641 IAC 131.3(147A).

88.5(2) Experimental procedures or procedures and treatments which lack sufficient evidence of clinical effectiveness are excluded from the program.

641—88.6(135) Defense and indemnification. The state shall defend and indemnify a volunteer health care provider or a free clinic for a claim arising from the VHCPP only to the extent provided by Iowa Code chapter 669 and Iowa Code section 135.24. Persons or entities other than the participating volunteer health care provider or free clinic are not considered state employees or state agencies under Iowa Code chapter 669. Defense and indemnification of the volunteer health care provider or a free clinic under Iowa Code chapter 669 and Iowa Code section 135.24 shall occur only if all of the following requirements are met:

88.6(1) The claim involves injury alleged to have been proximately caused by covered health care services which were identified and approved in the eligibility agreement with the VHCPP and then only to the extent the health care services were provided by or under the direct supervision of the volunteer health care provider, including claims based on negligent delegation of health care or the volunteer health care provider is named as a defendant solely because of the volunteer health care provider's participation in the free clinic.

88.6(2) The claim arises from covered health care services that were performed at a site identified and approved in the eligibility agreement with the VHCPP.

88.6(3) The claim arises from covered health care services provided through a qualified program identified and approved in the volunteer health care provider's eligibility agreement with the VHCPP and which meets the requirements of rule 88.3(135).

88.6(4) The volunteer health care provider, free clinic, or sponsor program that provided the health care services receives no direct monetary compensation of any kind or promise to pay compensation for the health care services which resulted in injury.

88.6(5) The health care services are provided to a patient who is a member of a patient group identified in the eligibility agreement with the VHCPP.

88.6(6) The volunteer health care provider, free clinic, or sponsor program is eligible and registered as provided in rule 88.3(135) or the care is provided by a health care provider who holds current professional liability insurance coverage and an active unrestricted license to practice in Iowa under Iowa Code chapter 147A, 148, 148A, 148B, 148C, 149, 150, 150A, 151, 152, 152B, 152E, 153, 154, 154B, 154C, 154D, or 155A and has been approved by the VHCPP.

641—88.7(135) Term of agreement.

88.7(1) *Volunteer health care provider.* The eligibility agreement with the VHCPP shall expire two years from the date of execution. Volunteer health care providers may apply for renewal by filing an application at least 30 days prior to expiration of the eligibility agreement.

88.7(2) *Free clinic liability.* The eligibility agreement with the VHCPP shall expire two years from the date of execution. The free clinic may apply for renewal by filing an application at least 30 days prior to expiration of the eligibility agreement.

88.7(3) *Sponsor program.* The sponsor agreement with the VHCPP shall expire two years from the date of execution. Sponsor programs may apply for renewal by filing an application at least 30 days prior to expiration of the sponsor agreement.

641—88.8(135) Reporting requirements and duties.

88.8(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 health care services under this program, a participating volunteer health care provider, free clinic, or sponsor program shall provide written notice to the VHCPP, 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.

88.8(2) Upon obtaining knowledge or becoming aware of an injury as defined in subrule 88.8(1), the participating free clinic or sponsor program shall promptly take all reasonable steps to prevent further or other injury from arising out of the same or similar incidents, situations or conditions.

88.8(3) A participating volunteer health care provider, free clinic, or sponsor program shall immediately notify the Iowa Department of Justice, Special Litigation Division, Hoover State Office Building, Des Moines, Iowa 50319, of service or receipt of an original notice, petition, suit or claim seeking damages from the volunteer health care provider, free clinic or sponsor program related to participation in the VHCPP.

641—88.9(135) Revocation of eligibility and registration. The VHCPP may suspend, revoke, or condition the eligibility and registration of a volunteer health care provider, free clinic or sponsor program for cause, including but not limited to:

1. Failure to comply with the eligibility or sponsor agreement with the VHCPP.
2. Violation of state law governing the respective scope of practice or other law governing the health care services provided under the VHCPP.
3. Making false, misleading, or fraudulent statements in connection with the VHCPP, including determination of eligibility of the health care provider, free clinic or sponsor program or handling of a claim against the health care provider, free clinic, sponsor program or the state.
4. Evidence of substance abuse or intoxication affecting the provision of health care services under the VHCPP.
5. Reasonable grounds to believe that the volunteer health care provider may have provided incompetent or inadequate care to a patient under the VHCPP or is likely to do so.

6. Reasonable grounds to believe that the volunteer health care provider's, free clinic's, or sponsor program's participation in the VHCPP may expose the state to undue risk.

7. Failure to immediately notify the VHCPP of any disciplinary action brought against the volunteer health care provider by the licensing board.

641—88.10(135) Procedure for revocation of eligibility and registration. A proceeding for revocation of a volunteer health care provider's eligibility and registration or a free clinic's or sponsor program's eligibility and registration 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 of eligibility or registration where appropriate under Iowa Code section 17A.18. The VHCPP shall immediately notify the appropriate licensing board and the appropriate approved free clinic or sponsor program of revocation of a volunteer health care provider's registration.

641—88.11(135) Effect of suspension or revocation. If the VHCPP suspends or revokes a volunteer health care provider's or free clinic's eligibility, the action shall suspend or revoke future eligibility, but shall not negate defense and indemnification coverage for covered acts or omissions which occurred during the effective dates of the eligibility agreement.

641—88.12(135) Registration denied.

88.12(1) Registration denied—appeal procedure. An applicant who has been denied registration by the VHCPP 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, Iowa Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075, 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 of an original notice. The request for hearing shall specifically delineate the facts to be contested and determined at the hearing.

88.12(2) Registration denied—hearing. If an applicant who has been denied registration by the VHCPP appeals the registration denial and requests a hearing pursuant to subrule 88.12(1), the hearing and subsequent procedures shall be pursuant to Iowa Code chapter 17A and 641 IAC 173.

641—88.13(135) Board notice of disciplinary action. The applicable state licensing board shall notify the VHCPP of the initiation of a contested case against a registered volunteer health care provider or the imposition of disciplinary action, including providing copies of any contested case decision or settlement agreement with the volunteer health care provider upon request of the VHCPP.

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

641—88.15(135) Reporting by volunteer health care provider and program. Within 60 days following each calendar quarter, the free clinic or program shall provide a report to the VHCPP. A reporting form will be provided by the VHCPP to the participating free clinic or sponsor program at the time the eligibility or sponsor agreement is approved by the VHCPP. At a minimum, the report shall include the number of free clinic patients receiving free health care services and patient demographics by age, ethnicity, and insurance status.

These rules are intended to implement Iowa Code Supplement section 135.24.

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