

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Iowa Administrative Code.

This Notice of Intended Action is a companion to the Notice of Intended Action that proposes amendments to Chapter 79 and is published herein as **ARC 0588C**. Together, these Notices are the second set of changes to the unit time and rate definitions for home- and community-based services (HCBS) waiver and habilitation services. The first set was published in the Iowa Administrative Bulletin as **ARC 0567C** and **ARC 0568C** on January 23, 2013.

These amendments change billing codes used by Iowa Medicaid Enterprise (IME) from atypical, state-created codes to nationally recognized codes. These amendments also provide standardization of service definitions amongst the HCBS waivers. Finally, these amendments clarify the wording of some service definitions.

Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), no state Medicaid department can use atypical billing codes. (See 45 CFR 162.1000 and 162.1002.) Most of the codes used to bill waiver services to the IME are atypical and therefore need to be changed to standardized healthcare common procedure coding system (HCPCS) or current procedural terminology (CPT) codes. Those standardized codes have different unit descriptions from the unit descriptions currently contained in Chapter 78. For example, the atypical billing code unit definition is one hour; the new conversion code has a unit definition of 15 minutes.

The standardization and clarification of service definitions will provide continuity amongst the waiver programs and clearer definition of the service for the member, provider, and state. The description of each waiver service will now be the same for all waiver programs, unless a waiver has a very specific exception.

Any interested person may make written comments on the proposed amendments on or before February 26, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 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 the Centers for Medicare and Medicaid Services (CMS) has not indicated that any state can be exempt from the guidelines relating to atypical billing codes. The Department does not see any reason why any provider type would be exempt from adherence to CMS guidelines. 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 section 249A.4.

The following amendments are proposed.

ITEM 1. Amend subparagraph **78.27(10)“a”(1)** as follows:

(1) Activities to obtain a job. Covered services directed to obtaining a job must be provided to or on behalf of a member for whom competitive employment is reasonably expected within less than one year. Services must be focused on job placement, not on teaching generalized employment skills or rehabilitative goals. Three conditions must be met before services are provided. First, the member and

the interdisciplinary team described in subrule 78.27(4) must complete the form that Iowa vocational rehabilitation services uses to identify the supported employment services appropriate to meet a person's employment needs. Second, the member's interdisciplinary team must determine that the identified services are necessary. Third, the Iowa Medicaid enterprise medical services unit must approve the services. Available components of activities to obtain a job are as follows:

1. and 2. No change.

3. Enhanced job search activities. Enhanced job search activities are associated with obtaining initial employment after job development services have been provided to the member for a minimum of 30 days or with assisting the member in changing jobs due to layoff, termination, or personal choice. The interdisciplinary team must review and update the Iowa vocational rehabilitation services supported employment readiness analysis form to determine if this service remains appropriate for the member's employment goals. A unit of service is ~~an hour~~ 15 minutes. A maximum of ~~26~~ 104 units may be provided in a 12-month period. The services provided may include: job opening identification with the member; assistance with applying for a job, including completion of applications or interviews; and work site assessment and job accommodation evaluation.

ITEM 2. Amend subrule 78.34(5) as follows:

78.34(5) Respite care services. Respite care services are services provided to the member that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that period. The purpose of respite care is to enable the member to remain in the member's current living situation.

a. and b. No change.

c. A unit of service is ~~one hour~~ 15 minutes.

d. No change.

e. The interdisciplinary team shall determine if the member will receive basic individual respite, specialized respite, or group respite as defined in ~~rule 441—83.1(249A)~~ 441—Chapter 83.

f. and g. No change.

h. Respite services shall not be provided simultaneously with other residential, nursing, or home health aide services provided through the medical assistance program.

ITEM 3. Amend subrule 78.34(8) as follows:

78.34(8) Interim medical monitoring and treatment services. Interim medical monitoring and treatment (IMMT) services are monitoring and treatment of a medical nature for children or adults whose medical needs make alternative care unavailable, inadequate, or insufficient. IMMT services are not intended to provide day care but to supplement available resources. Services must be ordered by a physician.

a. to c. No change.

d. Limitations.

(1) A maximum of 12 ~~one-hour units~~ hours of service is available per day.

(2) to (6) No change.

e. A unit of service is ~~one hour~~ 15 minutes.

ITEM 4. Amend subrule 78.37(6) as follows:

78.37(6) Respite care services. Respite care services are services provided to the member that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that period. The purpose of respite care is to enable the member to remain in the member's current living situation.

a. and b. No change.

c. A unit of service is ~~one hour~~ 15 minutes.

d. The interdisciplinary team shall determine if the member will receive basic individual respite, specialized respite or group respite as defined in rule 441—83.21(249A). Respite care is not to be provided to members during the hours in which the usual caregiver is employed except when the member is attending a 24-hour residential camp. Respite cannot be provided to a member whose usual caregiver is a consumer-directed attendant care provider for the member.

~~e. When respite care is provided, the provision of, or payment for, other duplicative services under the waiver is precluded. The interdisciplinary team shall determine if the member will receive basic individual respite, specialized respite or group respite as defined in 441—Chapter 83.~~

~~f. and g. No change.~~

~~h. Respite care is not to be provided to members during the hours in which the usual caregiver is employed except when the member is attending a 24-hour residential camp. Respite cannot be provided to a member whose usual caregiver is a consumer-directed attendant care provider for the member. Respite services shall not be provided simultaneously with other residential, nursing, or home health aide services provided through the medical assistance program.~~

ITEM 5. Amend subrule 78.38(5) as follows:

78.38(5) Respite care services. Respite care services are services provided to the member that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that period. The purpose of respite care is to enable the member to remain in the member's current living situation.

a. and b. No change.

c. A unit of service is ~~one hour~~ 15 minutes.

~~d. The interdisciplinary team shall determine if the member will receive basic individual respite, specialized respite or group respite as defined in rule 441—83.41(249A). Respite care is not to be provided to members during the hours in which the usual caregiver is employed except when the member is attending a 24-hour residential camp. Respite cannot be provided to a member whose usual caregiver is a consumer-directed attendant care provider for the member.~~

~~e. When respite care is provided, the provision of, or payment for, other duplicative services under the waiver is precluded. The interdisciplinary team shall determine if the member will receive basic individual respite, specialized respite or group respite as defined in 441—Chapter 83.~~

~~f. and g. No change.~~

~~h. Respite care is not to be provided to members during the hours in which the usual caregiver is employed except when the member is attending a 24-hour residential camp. Respite care shall not be used as a substitute for a child's day care. Respite cannot be provided to a member whose usual caregiver is a consumer-directed attendant care provider for the member. Respite services shall not be provided simultaneously with other residential, nursing, or home health aide services provided through the medical assistance program.~~

ITEM 6. Amend subrule 78.41(1) as follows:

78.41(1) Supported community living services. Supported community living services are provided by the provider within the member's home and community, according to the individualized member need as identified in the service plan.

a. No change.

b. The supported community living services are intended to provide for the daily living needs of the member and shall be available as needed during any 24-hour period. Activities do not include those associated with vocational services, academics, day care, medical services, Medicaid case management or other case management. Services are individualized supportive services provided in a variety of community-based, integrated settings.

(1) No change.

(2) Supported community living services shall be available at ~~an hourly~~ a 15-minute rate to members for whom a daily rate is not established.

c. to e. No change.

f. Provider budgets shall reflect all staff-to-member ratios and shall reflect costs associated with members' specific support needs for travel and transportation, consulting, instruction, and environmental modifications and repairs, as determined necessary by the interdisciplinary team for each member. The specific support needs must be identified in the Medicaid case manager's service plan, the total costs shall not exceed \$1570 per member per year, and the provider must maintain records to support the expenditures. A unit of service is:

- (1) No change.
- (2) ~~One hour~~ Fifteen minutes when subparagraph 78.41(1) “f”(1) does not apply.
- g. The maximum number of units available per member is as follows:
 - (1) 365 daily units per state fiscal year except a leap year when 366 daily units are available.
 - (2) ~~5,110 hourly~~ 20,440 15-minute units are available per state fiscal year except a leap year when ~~5,124 hourly~~ 20,496 15-minute units are available.
- h. and i. No change.

ITEM 7. Amend subrule 78.41(2) as follows:

78.41(2) Respite care services. Respite care services are services provided to the member that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that period. The purpose of respite care is to enable the member to remain in the member’s current living situation.

a. and b. No change.

c. A unit of service is ~~one hour~~ 15 minutes.

d. ~~Payment for respite services shall not exceed \$7,050 per the member’s waiver year. Respite care is not to be provided to members during the hours in which the usual caregiver is employed except when the member is attending a 24-hour residential camp. Respite care shall not be used as a substitute for a child’s day care. Respite cannot be provided to a member whose usual caregiver is a consumer-directed attendant care provider for the member.~~

e. ~~The service shall be identified in the member’s individual comprehensive plan. The interdisciplinary team shall determine if the member will receive basic individual respite, specialized respite or group respite as defined in 441—Chapter 83.~~

f. ~~Respite services shall not be simultaneously reimbursed with other residential or respite services or with supported community living, nursing, or home health aide services provided through Medicaid or the HCBS intellectual disability waiver. A maximum of 14 consecutive days of 24-hour respite care may be reimbursed.~~

g. ~~Respite care is not to be provided to members during the hours in which the usual caregiver is employed except when the member is attending a 24-hour residential camp. Respite care shall not be used as a substitute for a child’s day care. Respite cannot be provided to a member whose usual caregiver is a consumer-directed attendant care provider for the member. Respite services provided for a period exceeding 24 consecutive hours to three or more individuals who require nursing care because of a mental or physical condition must be provided by a health care facility licensed as described in Iowa Code chapter 135C.~~

h. ~~The interdisciplinary team shall determine if the member will receive basic individual respite, specialized respite or group respite as defined in rule 441—83.60(249A). Respite services shall not be simultaneously reimbursed with other residential, supported community living, nursing, or home health aide services provided through the medical assistance program.~~

i. ~~A maximum of 14 consecutive days of 24-hour respite care may be reimbursed. Payment for respite services shall not exceed \$7,050 per the member’s waiver year.~~

j. ~~Respite services provided for a period exceeding 24 consecutive hours to three or more individuals who require nursing care because of a mental or physical condition must be provided by a health care facility licensed as described in Iowa Code chapter 135C.~~

ITEM 8. Strike “consumer,” “consumers,” and “consumer’s” where appropriate in subrules **78.41(7)**, **78.41(14)** and **78.43(4)** and insert “member,” “members,” or “member’s” in lieu thereof as the context requires.

ITEM 9. Amend subparagraph **78.41(7)“a”(3)** as follows:

(3) Enhanced job search activities. Enhanced job search activities are associated with obtaining initial employment after job development services have been provided for a minimum of 30 days or with assisting the ~~consumer~~ member in changing jobs due to layoff, termination, or personal choice. The interdisciplinary team must review and update the Iowa vocational rehabilitation services supported employment readiness analysis form to determine if this service remains appropriate for the ~~consumer’s~~

member's employment goals. A unit of service is ~~an hour~~ 15 minutes. A maximum of ~~26~~ 104 units may be provided in a 12-month period. The services provided may include:

1. to 3. No change.

ITEM 10. Amend paragraph **78.41(7)“b”** as follows:

b. Supports to maintain employment.

(1) and (2) No change.

(3) A unit of service is ~~one hour~~ 15 minutes.

(4) A maximum of ~~40~~ 160 units may be received per week.

ITEM 11. Amend subrule 78.41(9) as follows:

78.41(9) *Interim medical monitoring and treatment services.* Interim medical monitoring and treatment (IMMT) services are monitoring and treatment of a medical nature for children or adults whose medical needs make alternative care unavailable, inadequate, or insufficient. IMMT services are not intended to provide day care but to supplement available resources. Services must be ordered by a physician.

a. to *c.* No change.

d. Limitations.

(1) A maximum of ~~12 one-hour units~~ hours of service is available per day.

(2) to (6) No change.

e. A unit of service is ~~one hour~~ 15 minutes.

ITEM 12. Amend paragraph **78.41(13)“c”** as follows:

c. A unit of service is a full day (4 4.25 to 8 hours), ~~a half day (1 to 4 hours)~~, or an hour (for up to 4 hours per day).

ITEM 13. Amend subrule 78.41(14) as follows:

78.41(14) *Day habilitation services.*

a. No change.

b. *Family training option.* Day habilitation services may include training families in treatment and support methodologies or in the care and use of equipment. Family training may be provided in the ~~consumer's~~ member's home. The unit of service is ~~an hour~~ 15 minutes. The units of services payable are limited to a maximum of ~~10 hours~~ 40 units per month.

c. *Unit of service.* Except as provided in paragraph **78.41(14)“b,”** the unit of service ~~may be an hour, a half day (1 to 4 hours)~~, is 15 minutes (for up to 16 units per day) or a full day (4 4.25 to 8 hours per day).

d. No change.

ITEM 14. Amend subrule 78.43(2) as follows:

78.43(2) *Supported community living services.* Supported community living services are provided by the provider within the member's home and community, according to the individualized member need as identified in the service plan.

a. No change.

b. The supported community living services are intended to provide for the daily living needs of the member and shall be available as needed during any 24-hour period. Activities do not include those associated with vocational services, academics, day care, medical services, Medicaid case management or other case management. Services are individualized supportive services provided in a variety of community-based, integrated settings.

(1) No change.

(2) Supported community living services shall be available at ~~an hourly~~ a 15-minute rate to members for whom a daily rate is not established.

c. and *d.* No change.

e. Provider budgets shall reflect all staff-to-member ratios and shall reflect costs associated with members' specific support needs for travel and transportation, consulting, instruction, and environmental modifications and repairs, as determined necessary by the interdisciplinary team for each member. The

specific support needs must be identified in the Medicaid case manager's service plan, the total costs shall not exceed \$1570 per member per year, and the provider must maintain records to support the expenditures. A unit of service is:

- (1) No change.
- (2) ~~One hour~~ Fifteen minutes when subparagraph 78.43(2)“e”(1) does not apply.

f. The maximum number of units available per member is as follows:

- (1) 365 daily units per state fiscal year except a leap year, when 366 daily units are available.
- (2) ~~8,395 hourly~~ 33,580 15-minute units ~~are available~~ per state fiscal year except a leap year, when ~~8,418 hourly~~ 33,672 15-minute units are available.

g. and *h.* No change.

ITEM 15. Amend subrule 78.43(3) as follows:

78.43(3) Respite care services. Respite care services are services provided to the member that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that period. The purpose of respite care is to enable the member to remain in the member's current living situation.

a. and *b.* No change.

c. A unit of service is ~~one hour~~ 15 minutes.

d. No change.

e. ~~Respite services shall not be simultaneously reimbursed with other residential or respite services, HCBS brain injury waiver supported community living services, Medicaid nursing, or Medicaid home health aide services. The interdisciplinary team shall determine if the member will receive basic individual respite, specialized respite or group respite as defined in 441—Chapter 83.~~

f. The interdisciplinary team shall determine if the member will receive basic individual respite, specialized respite or group respite as defined in rule 441—83.81(249A). A maximum of 14 consecutive days of 24-hour respite care may be reimbursed.

g. A maximum of 14 consecutive days of 24-hour respite care may be reimbursed. Respite services provided for a period exceeding 24 consecutive hours to three or more individuals who require nursing care because of a mental or physical condition must be provided by a health care facility licensed as described in Iowa Code chapter 135C.

h. Respite services provided for a period exceeding 24 consecutive hours to three or more individuals who require nursing care because of a mental or physical condition must be provided by a health care facility licensed as described in Iowa Code chapter 135C. Respite services shall not be provided simultaneously with other residential, supported community living services, nursing, or home health aide services provided through the medical assistance program.

ITEM 16. Amend subparagraph **78.43(4)“a”(3)** as follows:

(3) Enhanced job search activities. Enhanced job search activities are associated with obtaining initial employment after job development services have been provided to the ~~consumer~~ member for a minimum of 30 days or with assisting the ~~consumer~~ member in changing jobs due to layoff, termination, or personal choice. The interdisciplinary team must review and update the Iowa vocational rehabilitation services supported employment readiness analysis form to determine if this service remains appropriate for the ~~consumer's~~ member's employment goals. A unit of service is ~~an hour~~ 15 minutes. A maximum of ~~26~~ 104 units may be provided in a 12-month period. The services provided may include:

1. to 3. No change.

ITEM 17. Amend paragraph **78.43(4)“b”** as follows:

b. Supports to maintain employment.

(1) and (2) No change.

(3) A unit of service is ~~one hour~~ 15 minutes.

(4) A maximum of ~~40~~ 160 units may be received per week.

ITEM 18. Amend paragraph **78.43(11)“c”** as follows:

c. A unit of service is a full day (4-4.25 to 8 hours per day), ~~a half day (1 to 4 hours)~~, or an hour (for up to 4 hours per day).

ITEM 19. Amend subrule 78.43(14) as follows:

78.43(14) *Interim medical monitoring and treatment services.* Interim medical monitoring and treatment (IMMT) services are monitoring and treatment of a medical nature for children or adults whose medical needs make alternative care unavailable, inadequate, or insufficient. IMMT services are not intended to provide day care but to supplement available resources. Services must be ordered by a physician.

a. to c. No change.

d. Limitations.

(1) A maximum of 12 ~~one-hour units~~ hours of service is available per day.

(2) to (6) No change.

e. A unit of service is ~~one-hour~~ 15 minutes.

ITEM 20. Amend subrule 78.52(3) as follows:

78.52(3) *Family and community support services.* Family and community support services shall support the ~~consumer member~~ consumer's member and the ~~consumer's member's~~ member's family by the development and implementation of strategies and interventions that will result in the reduction of stress and depression and will increase the ~~consumer's member's~~ member's and the family's social and emotional strength.

a. Dependent on the needs of the ~~consumer member~~ consumer's member and the ~~consumer's member's~~ member's family members individually or collectively, family and community support services may be provided to the ~~consumer member~~ consumer's member, to the ~~consumer's member's~~ member's family members, or to the ~~consumer member~~ consumer's member and the family members as a family unit.

b. Family and community support services shall be provided under the recommendation and direction of a mental health professional who is a member of the ~~consumer's member's~~ member's interdisciplinary team pursuant to 441—83.127(249A) 441—Chapter 83.

c. Family and community support services shall incorporate recommended support interventions and activities, which may include the following:

(1) Developing and maintaining a crisis support network for the ~~consumer member~~ consumer's member and for the ~~consumer's member's~~ member's family.

(2) Modeling and coaching effective coping strategies for the ~~consumer's member's~~ member's family members.

(3) Building resilience to the stigma of serious emotional disturbance for the ~~consumer member~~ consumer's member and the family.

(4) Reducing the stigma of serious emotional disturbance by the development of relationships with peers and community members.

(5) Modeling and coaching the strategies and interventions identified in the ~~consumer's member's~~ member's crisis intervention plan as defined in 441—24.1(225C) for life situations with the ~~consumer's member's~~ member's family and in the community.

(6) Developing medication management skills.

(7) Developing personal hygiene and grooming skills that contribute to the ~~consumer's member's~~ member's positive self-image.

(8) Developing positive socialization and citizenship skills.

d. Family and community support services may include an amount not to exceed \$1500 per ~~consumer member~~ consumer's member per year for transportation within the community and purchase of therapeutic resources. Therapeutic resources may include books, training materials, and visual or audio media.

(1) The interdisciplinary team must ~~identify~~ have identified the transportation or therapeutic resource as a support need and included that need in the case manager's plan.

(2) The annual amount available for transportation and therapeutic resources must be listed in the ~~consumer's member's~~ member's service plan.

(3) The ~~consumer's~~ member's parent or legal guardian shall submit a signed statement that the transportation or therapeutic resource cannot be provided by the ~~consumer member~~ or the ~~consumer's~~ member's family or legal guardian.

(4) The ~~consumer's~~ member's Medicaid ~~targeted~~ case manager shall maintain a signed statement that potential community resources are unavailable and shall list the community resources contacted to fund the transportation or therapeutic resource.

(5) The transportation or therapeutic resource must not be otherwise eligible for Medicaid reimbursement.

~~(6) Family and community support services providers shall maintain records to:~~

~~1. Ensure that the transportation and therapeutic resources provided to not exceed the maximum amount authorized; and~~

~~2. Support the annual reporting requirements in 441—subparagraph 79.1(15)“a”(1).~~

~~e.~~ The following components are specifically excluded from family and community support services:

~~(1) to (5) No change.~~

~~(6) General supervision and consumer care.~~

~~f.~~ A unit of family and community support services is ~~one hour~~ 15 minutes.

ITEM 21. Amend subrule 78.52(5) as follows:

78.52(5) Respite care services. Respite care services are services provided to the member that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that period. The “usual caregiver” means a person or persons who reside with the member and are available on a 24-hour-per-day basis to assume responsibility for the care of the member. The purpose of respite care is to enable the member to remain in the member's current living situation.

~~a.~~ Respite care shall not be provided to members during the hours in which the usual caregiver is employed, except when the member is attending a 24-hour residential camp. Respite care shall not be used as a substitute for a child's day care. Respite services provided outside the member's home shall not be reimbursable if the living unit where respite care is provided is reserved for another person on a temporary leave of absence.

~~b.~~ The usual caregiver cannot be absent from the home for more than 14 consecutive days during respite provision. Member-to-staff ratios shall be appropriate to the individual needs of the member as determined by the member's interdisciplinary team.

~~c.~~ Member-to-staff ratios shall be appropriate to the individual needs of the member as determined by the member's interdisciplinary team. The team shall determine the type of respite care to be provided according to these definitions: A unit of service is 15 minutes.

~~(1) Basic individual respite is provided on a ratio of one staff to one member. The member does not have specialized medical needs that require the direct services of a registered nurse or licensed practical nurse.~~

~~(2) Specialized respite is provided on a ratio of one or more nursing staff to one member. The member has specialized medical needs that require the direct services of a registered nurse or licensed practical nurse.~~

~~(3) Group respite is provided on a ratio of one staff to two or more members receiving respite. These members do not have specialized medical needs that require the direct services of a registered nurse or licensed practical nurse.~~

~~d.~~ Respite services provided for a period exceeding 24 consecutive hours to three or more members who require nursing care because of a mental or physical condition must be provided by a health care facility licensed under Iowa Code chapter 135C. Respite care is not to be provided to members during the hours in which the usual caregiver is employed except when the member is attending a 24-hour residential camp. Respite care shall not be used as a substitute for a child's day care.

~~e.~~ Respite services provided outside the member's home shall not be reimbursable if the living unit where respite care is provided is reserved for another person on a temporary leave of absence. The

interdisciplinary team shall determine if the member will receive basic individual respite, specialized respite or group respite as defined in 441—Chapter 83.

f. A unit of service is one hour. A maximum of 14 consecutive days of 24-hour respite care may be reimbursed.

g. Respite services provided for a period exceeding 24 consecutive hours to three or more members who require nursing care because of a mental or physical condition must be provided by a health care facility licensed under Iowa Code chapter 135C.

h. Respite services shall not be provided simultaneously with other residential, nursing, or home health aide services provided through the medical assistance program.