

INSPECTIONS AND APPEALS DEPARTMENT[481]

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 sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 22, “Health Care Facility Audits,” Chapter 50, “Health Care Facilities Administration,” Chapter 54, “Governor’s Award for Quality Care,” Chapter 57, “Residential Care Facilities,” Chapter 58, “Nursing Facilities,” and Chapter 65, “Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI),” Iowa Administrative Code.

The proposed amendments strike the terms “mental retardation” and “mentally retarded” from the Department’s administrative rules and replace them with the term “intellectually disabled.” The proposed amendments make corresponding changes in the Department’s administrative rules to implement sections 11 through 18 of 2012 Iowa Acts, chapter 1019.

The Department does not believe that the proposed amendments impose any financial hardships on any regulated entity, body, or individual. Rather, the proposed amendments simply make corrective changes regarding individuals with intellectual disabilities.

The State Board of Health reviewed the proposed amendments at its January 9, 2013, meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before February 26, 2013. Such written material should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)242-6863; or e-mailed to david.werning@dia.iowa.gov.

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

These amendments are intended to implement 2012 Iowa Acts, chapter 1019, sections 11 to 18.

The following amendments are proposed.

ITEM 1. Amend rule 481—22.1(10A) as follows:

481—22.1(10A) Audit occurrence. The department audits financial records of intermediate care facilities, residential care facilities, and intermediate care facilities for the ~~mentally retarded~~ intellectually disabled on a rotating basis or upon request of the department of human services (DHS). Audits are intended to ensure compliance with the following Iowa Administrative Code chapters:

1. 441—Chapter 52, Payment, specifically subrule 52.1(3).
2. 441—Chapter 54, Facility Participation, specifically rule 441—54.5(249) and subrule 54.8(2).
3. 441—Chapter 81, ~~Intermediate Care~~ Nursing Facilities, specifically subrule 81.4(3), rule 441—81.10(249A) and subrule 81.14(2).
4. 441—Chapter 82, Intermediate Care Facilities for ~~the Mentally Retarded~~ Persons with an Intellectual Disability, specifically subrules 82.9(3) and 82.17(2).

If a rule not listed is used in an audit, the auditor will notify the facility.

The department acts as an agent for DHS when conducting the above audits.

~~This rule is intended to implement Iowa Code sections 10A.302(2) and 10A.302(3).~~

ITEM 2. Amend subrule 50.3(3) as follows:

50.3(3) Standards used to determine whether a license is granted or retained are found in the rules of the department of inspections and appeals in the Iowa Administrative Code as follows:

- a. Hospitals, 481—Chapter 51;
- b. Hospices, 481—Chapter 53;

- c. Residential care facilities, 481—Chapters 57 and 60;
- d. Nursing facilities, 481—Chapters 58 and 61;
- e. Residential care facilities for persons with mental illness, 481—Chapters 60 and 62;
- f. Residential care facilities for the ~~mentally retarded~~ intellectually disabled, 481—Chapters 60 and 63;
- g. Intermediate care facilities for the ~~mentally retarded~~ intellectually disabled, 481—Chapter 64; and
- h. Intermediate care facilities for persons with mental illness, 481—Chapter 65.

ITEM 3. Amend rule **481—54.2(135C)**, definition of “Health care facility,” as follows:
 “Health care facility” or “facility” means residential care facilities, nursing facilities, intermediate care facilities for persons with mental illness, and intermediate care facilities for persons with ~~mental retardation~~ an intellectual disability licensed pursuant to Iowa Code chapter 135C.

ITEM 4. Amend subrule 57.1(15) as follows:
57.1(15) “*Qualified mental retardation professional*” means a psychologist, physician, registered nurse, educator, social worker, physical or occupational therapist, speech therapist or audiologist who meets the educational requirements for the profession, as required in the state of Iowa, and having one year’s experience working with ~~the mentally retarded~~ persons with an intellectual disability.

ITEM 5. Amend rule 481—57.4(135C) as follows:

481—57.4(135C) Special categories. Special variations and considerations may be granted a residential care facility which is operated for people who have special problems such as ~~retardation~~ intellectual disabilities, physical disabilities, have a physical or mental disability or a condition in common which can best be treated in a specialized environment under an approved program of care commensurate with the needs of the residents of the facility. Criteria for these specialized programs shall be established by the department based on the résumé of programs and services furnished by the facility and the numbers and qualifications of the administrator and staff providing these services in the facility.

57.4(1) No change.

57.4(2) On approval of the department, the state fire marshal, the department of ~~social~~ human services, or other appropriate agencies, other variations from the established rules and regulations and standards for a licensed health care facility of that category may be made as is necessary to successfully implement the specialized program, providing that it does not endanger the health, safety, or welfare of any resident and that alternate means to effect the same degree of protection shall be used when such variances are permitted.

ITEM 6. Amend paragraph **57.35(6)“c”** as follows:

c. A statement shall be signed by the resident, or the resident’s responsible party, if applicable, indicating an understanding of these rights and responsibilities, and shall be maintained in the record. The statement shall be signed no later than five days after admission, and a copy of the signed statement shall be given to the resident or responsible party. In the case of a ~~mentally retarded~~ an intellectually disabled resident, the signature shall be witnessed by a person not associated with or employed by the facility. The witness may be a parent, guardian, Medicaid agency representative, etc. (II)

ITEM 7. Amend subrule 57.35(8) as follows:

57.35(8) Each resident or responsible party shall be fully informed by a physician of the resident’s health and medical condition unless medically contraindicated (as documented by a physician in the resident’s record). Each resident shall be afforded the opportunity to participate in the planning of the resident’s total care and medical treatment, which may include, but is not limited to, nursing care, nutritional care, rehabilitation, restorative therapies, activities, and social work services. Each resident only participates in experimental research conducted under the ~~department of health and human services~~ U.S. Department of Health and Human Services protection from research risks policy and then only upon the resident’s informed written consent. Each resident has the right to refuse treatment except as provided by Iowa Code chapter 229. In the case of a confused or ~~mentally retarded~~ intellectually disabled

individual, the responsible party shall be informed by the physician of the resident's medical condition and be afforded the opportunity to participate in the planning of the resident's total care and medical treatment, to be informed of the medical condition, and to refuse to participate in experimental research. (II)

a. The requirement that residents shall be informed of their conditions, involved in the planning of their care, and advised of any significant changes in either, shall be communicated to every physician responsible for the medical care of residents in the facility. (II)

b. The administrator or designee shall be responsible for working with attending physicians in the implementation of this requirement. (II)

c. If the physician determines or in the case of a confused or ~~mentally-retarded~~ intellectually disabled resident the responsible party determines that informing the resident of the resident's condition is contraindicated, this decision and reasons for it shall be documented in the resident's record by the physician. (II)

d. Any clinical investigation involving residents must be under the sponsorship of an institution with a human subjects review board functioning in accordance with the requirements of Public Law 93-348, as implemented by Part 46 of Title 45 of the Code of Federal Regulations, as amended to December 1, 1981 (45 CFR 46). A resident being considered for participation in experimental research must be fully informed of the nature of the experiment, e.g., medication, treatment, and understand the possible consequences of participating or not participating. The resident's (or responsible party's) written informed consent must be received prior to participation. (II)

ITEM 8. Amend subrule 57.38(3) as follows:

57.38(3) The facility shall keep on deposit personal funds over which the resident has control in accordance with Iowa Code subsection 135C.24(2). Should the resident request these funds, they shall be given to the resident on request with receipts maintained by the facility and a copy to the resident. In the case of a confused or ~~mentally-retarded~~ intellectually disabled resident, the resident's responsible party shall designate a method of disbursing the resident's funds. (II)

ITEM 9. Amend rule **481—58.1(135C)**, definition of "Qualified mental retardation professional," as follows:

"Qualified mental retardation professional" means a psychologist, physician, registered nurse, educator, social worker, physical or occupational therapist, speech therapist or audiologist who meets the educational requirements for the profession, as required in the state of Iowa, and having one year's experience working with ~~the mentally-retarded~~ persons with an intellectual disability.

ITEM 10. Amend paragraph **58.39(7)"c"** as follows:

c. A statement shall be signed by the resident, or the resident's responsible party, indicating an understanding of these rights and responsibilities, and shall be maintained in the record. The statement shall be signed no later than five days after admission, and a copy of the signed statement shall be given to the resident or responsible party, if applicable. In the case of a ~~mentally-retarded~~ an intellectually disabled resident, the signature shall be witnessed by a person not associated with or employed by the facility. The witness may be a parent, guardian, Medicaid agency representative, etc. (II)

ITEM 11. Amend subrule 58.39(9) as follows:

58.39(9) Each resident or responsible party shall be fully informed by a physician of the resident's health and medical condition unless medically contraindicated (as documented by a physician in the resident's record). Each resident shall be afforded the opportunity to participate in the planning of the resident's total care and medical treatment, which may include, but is not limited to, nursing care, nutritional care, rehabilitation, restorative therapies, activities, and social work services. Each resident only participates in experimental research conducted under the U.S. Department of Health and Human Services' protection from research risks policy and then only upon the resident's informed written consent. Each resident has the right to refuse treatment except as provided by Iowa Code chapter 229. In the case of a confused or ~~mentally-retarded~~ intellectually disabled individual, the responsible party shall be informed by the physician of the resident's medical condition and be afforded the opportunity

to participate in the planning of the resident's total care and medical treatment, to be informed of the medical condition, and to refuse to participate in experimental research. (II)

a. The requirement that residents shall be informed of their conditions, involved in the planning of their care, and advised of any significant changes in either, shall be communicated to every physician responsible for the medical care of residents in the facility. (II)

b. The administrator or designee shall be responsible for working with attending physicians in the implementation of this requirement. (II)

c. If the physician determines or in the case of a confused or ~~mentally-retarded~~ intellectually disabled resident the responsible party determines that informing the resident of the resident's condition is contraindicated, this decision and reasons for it shall be documented in the resident's record by the physician. (II)

d. The resident's plan of care shall be based on the physician's orders. It shall be developed upon admission by appropriate facility staff and shall include participation by the resident if capable. Residents shall be advised of alternative courses of care and treatment and their consequences when such alternatives are available. The resident's preference about alternatives shall be elicited and honored if feasible.

e. Any clinical investigation involving residents must be under the sponsorship of an institution with a human subjects review board functioning in accordance with the requirements of Public Law 93-348, as implemented by Part 46 of Title 45 of the Code of Federal Regulations, as amended to December 1, 1981 (45 CFR 46). A resident being considered for participation in experimental research must be fully informed of the nature of the experiment, e.g., medication, treatment, and understand the possible consequences of participating or not participating. The resident's (or responsible party's) written informed consent must be received prior to participation. (II)

ITEM 12. Amend subrule 58.42(3) as follows:

58.42(3) The facility shall keep on deposit personal funds over which the resident has control in accordance with Iowa Code section 135C.24(2). Should the resident request these funds, they shall be given to the resident on request with receipts maintained by the facility and a copy to the resident. In the case of a confused or ~~mentally-retarded~~ intellectually disabled resident, the resident's responsible party shall designate a method of disbursing the resident's funds. (II)

ITEM 13. Amend rule 481—58.43(135C), introductory paragraph, as follows:

481—58.43(135C) Resident abuse prohibited. Each resident shall receive kind and considerate care at all times and shall be free from mental and physical abuse. Each resident shall be free from chemical and physical restraints except as follows: when authorized in writing by a physician for a specified period of time; when necessary in an emergency to protect the resident from injury to the resident or to others, in which case restraints may be authorized by designated professional personnel who promptly report the action taken to the physician; and in the case of a ~~mentally-retarded~~ intellectually disabled individual when ordered in writing by a physician and authorized by a designated qualified mental retardation professional for use during behavior modification sessions. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

ITEM 14. Amend subrule 58.43(8), introductory paragraph, as follows:

58.43(8) In the case of a ~~mentally-retarded~~ intellectually disabled individual who participates in a behavior modification program involving use of restraints or aversive stimuli, the program shall be conducted only with the informed consent of the individual's parent or responsible party. Where restraints are employed, an individualized program shall be developed by the interdisciplinary team with specific methodologies for monitoring its progress. (II)

ITEM 15. Amend rule **481—65.1(135C)**, definition of "Commission," as follows:

"*Commission*" means the mental health and ~~mental-retardation~~ disability services commission.

ITEM 16. Amend paragraph **65.4(2)“e”** as follows:

e. Obtain approval of the Iowa mental health and ~~mental-retardation~~ disability services commission, when the request is for a variance from the requirement for qualification of a mental health professional.