

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 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Chapter 78, “Amount, Duration, and Scope of Medical and Remedial Services,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

The name of the home- and community-based services (HCBS) ill and handicapped waiver is being changed to the health and disability waiver. The health and disability waiver is being amended to allow targeted case managers as well as service workers to manage this waiver. The word “consumer” is being changed to “member.”

The ill and handicapped waiver that originated in 1984 needs to reflect the current population being served. The change in the name of this waiver to the health and disability waiver portrays a more positive view of the members under this waiver. Adding targeted case managers as an option to manage the cases under this waiver will allow members receiving habilitation services to have one case manager rather than have both a service worker and a targeted case manager. Without the addition of the targeted case managers in these rules, it would continue to require an exception to policy to allow for only one case management entity to manage the case. Changing the word “consumer” to “member” will make these rules consistent with other Medicaid-related administrative rules.

Any interested person may make written comments on the proposed amendments on or before March 12, 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 waivers are not needed. However, 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 rule 441—77.30(249A), introductory paragraph, as follows:

441—77.30(249A) HCBS ~~ill and handicapped~~ health and disability waiver service providers. HCBS ~~ill and handicapped~~ health and disability waiver services shall be rendered by a person who is at least 16 years old (except as otherwise provided in this rule) and is not the spouse of the ~~consumer~~ member served or the parent or stepparent of a ~~consumer~~ member aged 17 or under. People who are 16 or 17 years old must be employed and supervised by an enrolled HCBS provider unless they are employed to provide self-directed personal care services through the consumer choices option. A person hired for self-directed personal care services need not be supervised by an enrolled HCBS provider. A provider hired through the consumer choices option for independent support brokerage, self-directed personal care, individual-directed goods and services, or self-directed community support and employment is not required to enroll as a Medicaid provider. The following providers shall be eligible to participate in the Medicaid HCBS ~~ill and handicapped~~ health and disability waiver program

if they meet the standards in subrule 77.30(18) and also meet the standards set forth below for the service to be provided:

ITEM 2. Amend subrule 77.30(18), introductory paragraph, as follows:

77.30(18) Incident management and reporting. As a condition of participation in the medical assistance program, HCBS ~~ill and handicapped~~ health and disability waiver service providers must comply with the requirements of Iowa Code sections 232.69 and 235B.3 regarding the reporting of child abuse and dependent adult abuse and with the incident management and reporting requirements in this subrule. EXCEPTION: The conditions in this subrule do not apply to providers of goods and services purchased under the consumer choices option or providers of home and vehicle modification, home-delivered meals, or personal emergency response.

ITEM 3. Amend paragraph **77.33(9)“c”** as follows:

c. Providers eligible to participate as home and vehicle modification ~~provides~~ providers under the ~~ill and handicapped~~ health and disability waiver, enrolled as home and vehicle modification providers under the physical disability waiver, or certified as home and vehicle modification providers under the home- and community-based services intellectual disability or brain injury waiver.

ITEM 4. Amend paragraph **77.37(17)“b”** as follows:

b. Providers eligible to participate as home and vehicle modification providers under the elderly or ~~ill and handicapped~~ health and disability waiver, enrolled as home and vehicle modification providers under the physical disability waiver, or certified as home and vehicle modification providers under the brain injury waiver.

ITEM 5. Amend paragraph **77.39(16)“a”** as follows:

a. Providers eligible to participate as home and vehicle modification providers under the elderly or ~~ill and handicapped~~ health and disability waiver, enrolled as home and vehicle modification providers under the physical disability waiver, or certified as home and vehicle modification providers under the physical disability waiver.

ITEM 6. Amend paragraph **77.41(3)“a”** as follows:

a. Providers eligible to participate as home and vehicle modification providers under the elderly or ~~ill and handicapped~~ health and disability waiver or certified as home and vehicle modification providers under the home- and community-based services intellectual disability or brain injury waiver.

ITEM 7. Amend subparagraph **78.34(13)“b”(1)** as follows:

(1) Services that may be included in determining the individual budget amount for a member in the HCBS ~~ill and handicapped~~ health and disability waiver are:

1. to 5. No change.

ITEM 8. Amend subrule **79.1(2)**, provider category “HCBS waiver service providers,” paragraphs “3,” “5” and “9,” as follows:

Provider category	Basis of reimbursement	Upper limit
3. Home health aides	Retrospective cost-related	For AIDS/HIV, elderly, and ill and handicapped <u>health and disability</u> waivers effective 1/1/13: Lesser of maximum Medicare rate in effect 11/30/09 plus 2% or maximum Medicaid rate in effect 6/30/12 plus 2%.
5. Nursing care	For elderly and intellectual disability waivers: Fee schedule as determined by Medicare.	For intellectual disability waiver effective 1/1/13: Lesser of maximum Medicare rate in effect 11/30/09 plus 2% or maximum Medicaid rate in effect 6/30/12 plus 2%, converted to an hourly rate. For elderly waiver effective 1/1/13, provider’s rate in effect 6/30/12 plus 2%. If no 6/30/12 rate: \$84.58 per visit.
	For AIDS/HIV and ill and handicapped <u>health and disability</u> waivers: Agency’s financial and statistical cost report and Medicare percentage rate per visit.	For intellectual disability waiver effective 1/1/13: Lesser of maximum Medicare rate in effect 11/30/09 plus 2% or maximum Medicaid rate in effect 6/30/12 plus 2%, converted to an hourly rate. For AIDS/HIV and ill and handicapped <u>health and disability</u> waivers effective 1/1/13, provider’s rate in effect 6/30/12 plus 2%. If no 6/30/12 rate: \$84.58 per visit.
9. Home and vehicle modification	Fee schedule. See 79.1(17)	For elderly waiver effective 1/1/13: \$1,030.20 lifetime maximum. For intellectual disability waiver effective 1/1/13: \$5,151 lifetime maximum. For brain injury, ill and handicapped <u>health and disability</u> , and physical disability waivers effective 1/1/13: \$6,181.20 per year.

ITEM 9. Amend **441—Chapter 83**, Division I heading, as follows:

DIVISION I—~~HCBS ILL AND HANDICAPPED~~ HEALTH AND DISABILITY WAIVER SERVICES

ITEM 10. Amend rule **441—83.1(249A)**, definition of “Client participation,” as follows:

“*Client participation*” means the amount of the recipient income that the person must contribute to the cost of ~~ill and handicapped~~ health and disability waiver services exclusive of medical vendor payments before Medicaid will participate.

ITEM 11. Amend rule 441—83.2(249A), introductory paragraph, as follows:

441—83.2(249A) Eligibility. To be eligible for ~~ill and handicapped~~ health and disability waiver services, a person must meet certain eligibility criteria and be determined to need a service(s) allowable under the program.

ITEM 12. Amend paragraph **83.2(1)“b”** as follows:

b. The person must be ineligible for Supplemental Security Income (SSI) if the person is 21 years of age or older, except that persons who are receiving ~~ill and handicapped~~ health and disability waiver services upon reaching the age of 21 may continue to be eligible regardless of SSI eligibility until they reach the age of 25.

ITEM 13. Amend subparagraph **83.2(1)“d”(3)** as follows:

(3) ~~Ill and handicapped~~ Health and disability waiver services will not be provided when the person is an inpatient in a medical institution.

ITEM 14. Amend subrule 83.2(2) as follows:

83.2(2) Need for services.

a. The ~~consumer~~ member shall have a service plan approved by the department which is developed by the service worker or targeted case manager identified by the county of residence. This service plan must be completed prior to services provision and annually thereafter.

The service worker or targeted case manager shall establish the interdisciplinary team for the ~~consumer~~ member and, with the team, identify the ~~consumer's~~ member's need for service based on the ~~consumer's~~ member's needs and desires as well as the availability and appropriateness of services, using the following criteria:

(1) This service plan shall be based, in part, on information in the completed Service Worker Comprehensive Assessment, Form 470-5044. Form 470-5044 shall be completed annually. The service worker or targeted case manager shall have a face-to-face visit with the member at least annually.

(2) Service plans for persons aged 20 or under shall be developed to reflect use of all appropriate nonwaiver Medicaid services and so as not to replace or duplicate those services. The service worker or targeted case manager shall list all nonwaiver Medicaid services in the service plan.

(3) Service plans for persons aged 20 or under that include home health or nursing services shall not be approved until a home health agency has made a request to cover the ~~consumer's~~ member's service needs through nonwaiver Medicaid services.

b. Except as provided below, the total monthly cost of the ~~ill and handicapped~~ health and disability waiver services shall not exceed the established aggregate monthly cost for level of care as follows:

<u>Skilled level of care</u>	<u>Nursing level of care</u>	<u>ICF/ID</u>
\$2,684	\$922	\$3,267

(1) For members eligible for SSI who remain eligible for ~~ill and handicapped~~ health and disability waiver services until the age of 25 because they are receiving ~~ill and handicapped~~ health and disability waiver services upon reaching the age of 21, these amounts shall be increased by the cost of services for which the member would be eligible under 441—subrule 78.9(10) if still under 21 years of age.

(2) If more than \$505 is paid for home and vehicle modification services, the service worker or targeted case manager shall encumber up to \$505 per month within the monthly dollar cap allowed for the ~~consumer~~ member until the total amount of the modification is reached within a 12-month period.

c. Interim medical monitoring and treatment services must be needed because all usual caregivers are unavailable to provide care due to one of the following circumstances:

(1) No change.

(2) Academic or vocational training. Interim medical monitoring and treatment services provided while a usual caregiver participates in postsecondary education or vocational training shall be limited to 24 periods of no more than 30 days each per caregiver as documented by the service worker or targeted

case manager. Time spent in high school completion, adult basic education, GED, or English as a second language does not count toward the limit.

(3) and (4) No change.

ITEM 15. Amend subrule 83.3(1) as follows:

83.3(1) *Application for HCBS ~~ill and handicapped~~ health and disability waiver services.* The application process as specified in rules 441—76.1(249A) to 441—76.6(249A) shall be followed.

ITEM 16. Amend subrule 83.3(2), introductory paragraph, as follows:

83.3(2) *Application and services program limit.* The number of persons who may be approved for the HCBS ~~ill and handicapped~~ health and disability waiver shall be subject to the number of ~~consumers members~~ to be served as set forth in the federally approved HCBS ~~ill and handicapped~~ health and disability waiver. The number of ~~consumers members~~ to be served is set forth at the time of each five-year renewal of the waiver or in amendments to the waiver approved by the Centers for Medicare and Medicaid Services (CMS). When the number of applicants exceeds the number of ~~consumers members~~ specified in the approved waiver, the applicant's name shall be placed on a waiting list maintained by the bureau of long-term care.

ITEM 17. Amend subrule 83.3(3) as follows:

83.3(3) *Approval of application.*

a. Applications for the HCBS ~~ill and handicapped~~ health and disability waiver program shall be processed in 30 days unless one or more of the following conditions exist:

(1) to (5) No change.

b. No change.

c. An applicant must be given the choice between HCBS ~~ill and handicapped~~ health and disability waiver services and institutional care. The applicant, parent, guardian, or attorney in fact under a durable power of attorney for health care shall sign Form 470-5044, Service Worker Comprehensive Assessment, and indicate that the applicant has elected home- and community-based services.

d. No change.

e. A ~~consumer member~~ may be enrolled in only one waiver program at a time. Costs for waiver services are not reimbursable while the ~~consumer member~~ is in a medical institution (hospital or nursing facility) or residential facility. Services may not be simultaneously reimbursed for the same time period as Medicaid or other Medicaid waiver services.

ITEM 18. Amend subrule 83.3(4) as follows:

83.3(4) *Effective date of eligibility.*

a. No change.

b. The effective date of eligibility for the ~~ill and handicapped~~ health and disability waiver for persons who qualify for Medicaid due to eligibility for the waiver services and to whom paragraphs 83.3(4) "a" and "c" of this subrule do not apply is the date on which the income eligibility and level of care determinations and the case plan are completed.

c. No change.

d. Eligibility continues until the ~~consumer member~~ has been in a medical institution for 30 consecutive days for other than respite care. ~~Consumers Members~~ who are inpatients in a medical institution for 30 or more consecutive days for other than respite care shall be terminated from ~~ill and handicapped~~ health and disability waiver services and reviewed for eligibility for other Medicaid coverage groups. The ~~consumer member~~ will be notified of that decision through Form 470-0602, Notice of Decision. If the ~~consumer member~~ returns home before the effective date of the notice of decision and the ~~consumer's member's~~ condition has not substantially changed, the denial may be rescinded and eligibility may continue.

ITEM 19. Amend rule 441—83.4(249A) as follows:

441—83.4(249A) Financial participation. Persons must contribute their predetermined financial participation to the cost of ~~ill and handicapped~~ health and disability waiver services or other Medicaid services, as applicable.

83.4(1) No change.

83.4(2) Limitation on payment. If the sum of the third-party payment and client participation equals or exceeds the reimbursement established by the service worker or targeted case manager for ~~ill and handicapped~~ health and disability waiver services, Medicaid shall make no payments to ~~ill and handicapped~~ health and disability waiver service providers. However, Medicaid shall make payments to other medical vendors, as applicable.

83.4(3) No change.

ITEM 20. Amend rule 441—83.5(249A) as follows:

441—83.5(249A) Redetermination. A complete redetermination of eligibility for the ~~ill and handicapped~~ health and disability waiver shall be completed at least once every 12 months or when there is significant change in the person's situation or condition.

A redetermination of continuing eligibility factors shall be made in accordance with rules 441—76.7(249A) and 441—83.2(249A). A redetermination shall include verification of the existence of a current case service plan meeting the requirements listed in rule 441—83.7(249A).

ITEM 21. Amend rule 441—83.6(249A) as follows:

441—83.6(249A) Allowable services. Services allowable under the ~~ill and handicapped~~ health and disability waiver are homemaker, home health, adult day care, respite care, nursing, counseling, consumer-directed attendant care, interim medical monitoring and treatment, home and vehicle modification, personal emergency response system, home-delivered meals, nutritional counseling, financial management, independent support brokerage, self-directed personal care, self-directed community supports and employment, and individual-directed goods and services as set forth in rule 441—78.34(249A).

ITEM 22. Amend rule 441—83.7(249A) as follows:

441—83.7(249A) Service plan. A service plan shall be prepared for ~~ill and handicapped~~ health and disability waiver ~~consumers~~ members in accordance with rule 441—130.7(234) except that service plans for both children and adults shall be completed every 12 months or when there is significant change in the person's situation or condition.

83.7(1) The service plan shall include the frequency of the ~~ill and handicapped~~ health and disability waiver services and the types of providers who will deliver the services.

83.7(2) The service plan shall indicate whether the ~~consumer~~ member has elected the consumer choices option. If the ~~consumer~~ member has elected the consumer choices option, the service plan shall identify:

- a. The independent support broker selected by the ~~consumer~~ member; and
- b. The financial management service selected by the ~~consumer~~ member.

83.7(3) The service plan shall also list all nonwaiver Medicaid services.

83.7(4) The service plan shall identify a plan for emergencies and the supports available to the ~~consumer~~ member in an emergency.

ITEM 23. Amend subrule 83.8(2) as follows:

83.8(2) Termination. A particular service may be terminated when the department determines that:

- a. The provisions of 441—paragraph 130.5(2)“a,” “b,” “c,” “g,” or “h” apply.
- b. The costs of the ~~ill and handicapped~~ health and disability waiver service for the person exceed the aggregate monthly costs established in 83.2(2)“b.”

c. The client member receives care in a hospital, nursing facility, or intermediate care facility for persons with an intellectual ~~disability~~ disability for 30 days in any one stay for purposes other than respite care.

d. The client member receives ~~ill and handicapped~~ health and disability waiver services and the physical or mental condition of the client member requires more care than can be provided in the client's member's own home as determined by the service worker or targeted case manager.

e. Service providers are not available.