

## 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” and Chapter 81, “Nursing Facilities,” Iowa Administrative Code.

These amendments allow, with prior authorization, direct, separate payment for customized wheelchairs needed by members who are residents of nursing facilities.

The Department received a formal petition for adoption of a rule, pursuant to Iowa Code section 17A.19, from a Medicaid member who resides in a nursing facility and had been denied a prescribed wheelchair by his facility and whose request to the Department for an exception to policy had also been denied. The petition requested adoption of a rule allowing for direct, separate payment for customized wheelchairs needed by members who are residents of nursing facilities.

Under current policy, nursing facilities are required to provide any wheelchair, customized or not, needed by a Medicaid resident, regardless of cost, which can be \$12,000 to more than \$15,000 in the case of customized wheelchairs. The cost is to be included as an expense on the facility’s cost report, and the facility’s reported costs are considered in setting future Medicaid reimbursement rates for the facility. However, the cost of a wheelchair is not immediately reflected in the facility’s Medicaid reimbursement rate and may never be fully reflected in a facility’s rate due to the caps on the cost-based nursing facility rates. Therefore, providing a customized wheelchair can be a financial hardship for a facility.

Because the cost of some customized wheelchairs is a financial hardship for some facilities, the Department has granted exceptions to policy in order to provide for direct, separate payment for customized wheelchairs in such cases. The petition for rule making indicated that 57 percent of requests for such exceptions had been granted from June 2003 until April 2012, based on a sample. For calendar year 2012, the Department’s records show 15 such requests, 8 of which (or 53 percent) were granted. The exception to policy process is administratively inefficient for the Department, may not be known by or pursued by all nursing facility residents who need customized wheelchairs, and is inequitable both to the nursing facilities that do incur the cost of customized wheelchairs and to the nursing facility residents denied exceptions because the Department concludes that their nursing facilities can afford a customized wheelchair.

Any interested person may make written comments on the proposed amendments on or before August 27, 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](mailto:policyanalysis@dhs.state.ia.us).

These amendments do not contain waiver provisions because the amendments confer a benefit by allowing direct, separate payment for customized wheelchairs needed by Medicaid members who are residents of nursing homes. 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 subrule 78.10(2) as follows:

**78.10(2) Durable medical equipment.** DME is equipment that can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury, and is appropriate for use in the home.

a. Durable medical equipment provided in a hospital, nursing facility, or intermediate care facility for persons with an intellectual disability is not separately payable.

EXCEPTIONS:

(1) to (3) No change.

(4) Medicaid will provide separate payment for customized wheelchairs for members who are residents of nursing facilities, subject to the following:

1. The member's condition must necessitate regular use of a wheelchair on a long-term basis to enable independent mobility within the facility.

2. The member must require a customized wheelchair that is designed, assembled, modified, or constructed for the specific individual, in whole or in part, based on the individual's condition, measurements, and needs.

3. Prior authorization pursuant to rule 441—79.8(249A) is required.

b. and c. No change.

ITEM 2. Adopt the following **new** paragraph **78.10(5)“o”**:

o. Customized wheelchairs for members who are residents of nursing facilities, subject to the requirements of 78.10(2)“a”(4).

ITEM 3. Adopt the following **new** paragraph **78.28(1)“r”**:

r. Customized wheelchairs for members who are residents of nursing facilities, subject to the requirements of 78.10(2)“a”(4).

ITEM 4. Amend subrule 81.10(5) as follows:

**81.10(5) Supplementation.** Only the amount of client participation may be billed to the resident for the cost of care, and the facility must accept the combination of client participation and payment made through the Iowa Medicaid program as payment in full for the care of a resident. No additional charges shall be made to residents or family members for any supplies or services required in the facility-developed plan of care for the resident.

Residents may choose to spend their personal funds on items of personal care such as professional beauty or barber services, but the facility shall not require this expenditure and shall not routinely obligate residents to any use of their personal funds.

a. Supplies or services ~~which~~ that the facility shall provide:

(1) Nursing services, social work services, activity programs, individual and group therapy, rehabilitation or habilitation programs provided by facility staff in order to carry out the plan of care for the resident.

(2) Services related to the nutrition, comfort, cleanliness and grooming of a resident as required under state licensure and Medicaid survey regulations.

(3) Medical equipment and supplies including wheelchairs except for customized wheelchairs for which separate payment may be made pursuant to 441—subparagraph 78.10(2)“a”(4), medical supplies except for those listed in 441—paragraph 78.10(4)“b,” oxygen except under circumstances specified in 441—paragraph 78.10(2)“a,” and other items required in the facility-developed plan of care.

(4) Nonprescription drugs ordered by the physician except for those specified in 441—paragraph 78.1(2)“f.”

(5) Fees charged by medical professionals for services requested by the facility ~~which~~ that do not meet criteria for direct Medicaid payment.

b. No change.

c. The Medicaid program will provide direct payment to relieve the facility of payment responsibility for certain medical equipment and services ~~which~~ that meet the Medicare definition of medical necessity and are provided by vendors enrolled in the Medicaid programs including:

(1) Physician services.

- (2) Ambulance services.
  - (3) Hospital services.
  - (4) Hearing aids, braces and prosthetic devices.
  - (5) Therapy services.
  - (6) Customized wheelchairs for which separate payment may be made pursuant to 441—subparagraph 78.10(2)“a”(4).
- d.* Other supplies or services for which direct Medicaid payment may be available include:
- (1) Drugs covered pursuant to 441—subrule 78.1(2).
  - (2) Dental services.
  - (3) Optician and optometrist services.
  - (4) Repair of medical equipment and appliances ~~which~~ that belong to the resident.
  - (5) Transportation to receive medical services beyond 30 miles from the facility (one way), through the broker designated by the department pursuant to a contract between the department and the broker.
  - (6) Other medical services specified in 441—Chapter 78.
- e.* No change.
- f.* Any medical equipment, supplies, appliances, or devices, personal care items, drugs, or other items of personal property that are paid for directly by the Medicaid program or are paid for by the resident or the resident’s family, on a nonrental basis, are the personal property of the resident.