

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 218.4, the Department of Human Services amends Chapter 28, “Policies for All Institutions,” Chapter 29, “Mental Health Institutes,” and Chapter 30, “State Resource Centers,” Iowa Administrative Code.

These amendments implement the regional administrator system of service management for mental health and disability services. The amendments also shift a county’s financial liability for payment for services from a person’s county of legal settlement to the person’s county of residence in accordance with 2012 Iowa Acts, Senate File 2315. Finally, these amendments update language to reflect current terms and usage, as well as clarify that the Clarinda gero-psychiatric treatment program provides services statewide.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0921C** on August 7, 2013. The Department received no comments during the comment period. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on October 9, 2013.

These amendments do not provide for waivers in specified situations except for requests for exception to policy sent to the established catchment areas for the facilities and for visitation. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217). However, Iowa law places authority and responsibility with county government to accept, process, and approve applications, and the rights of individuals served to confidentiality and privacy are also defined by law. The Department has no authority to waive those requirements. Individuals are given the right to make their own decisions about maintaining confidentiality and privacy.

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

These amendments are intended to implement Iowa Code chapters 218 and 222.

These amendments will become effective January 1, 2014.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 28**, title, as follows:

POLICIES FOR ALL INSTITUTIONS MENTAL HEALTH
INSTITUTES AND RESOURCE CENTERS

ITEM 2. Amend rule 441—28.1(218) as follows:

441—28.1(218) Definitions. The definitions in this rule apply to 441—Chapters 28, 29, and 30.

“*Admission*” means the acceptance of an individual ~~for full residence~~ for receipt of services at a state mental health institute or resource center on either a voluntary or involuntary basis.

“*Adult*” means an individual who is 18 years of age or older.

“*Board of supervisors*” means the elected governing body of a county as defined in Iowa Code section 331.101.

“*Catchment area*” means the group of counties, designated by the ~~deputy director~~ division administrator, that each mental health institute or state resource center is assigned to serve.

“*Central point of coordination process*” means the process defined in Iowa Code section 331.440(1)“a.”

~~“*Child*” means an individual who is under the age of 18.~~

“*County of residence*” means the same as defined in ~~rule 441—25.11(331)~~ Iowa Code section 331.394.

~~“*Deputy director*” means the deputy director for field operations within the Iowa department of human services.~~

“Division administrator” means the administrator of the division of mental health and disability services.

“Facility” means a mental health institute or state resource center referenced in Iowa Code section 218.1.

“Family contact,” for an adult individual, means:

1. The family member the individual has designated in writing to receive information concerning the individual’s services; or
2. A person, often referred to as a substitute decision maker, who has been legally authorized to make care decisions for the individual if the individual loses decision-making capacity.

“Grievance” means a written or oral complaint by or on behalf of an individual involving:

1. A rights violation or unfairness to the individual, or
2. Any aspect of the individual’s life with which the individual does not agree.

“Guardian” means the person other than a parent of a ~~child~~ minor who has been appointed by the court to have custody of the person of the individual as provided under Iowa Code section 232.2(21) or 633.3(20).

“Individual” means any person seeking or receiving services from a state mental health institute or a state resource center.

“Informed consent” means an agreement by an individual or by the individual’s parent, guardian, or legal representative to participate in an activity based upon an understanding of all of the following:

1. A full explanation of the procedures to be followed, including an identification of those that are experimental.
2. A description of the attendant discomforts and risks.
3. A description of the benefits to be expected.
4. A disclosure of appropriate alternative procedures that would be advantageous for the individual.
5. Assurance that consent is given freely and voluntarily without fear of retribution or withdrawal of services.

“Legal representative” means a person, including an attorney, who is authorized by law to act on behalf of an individual.

~~“Legal settlement” means the determination made under Iowa Code sections 252.16 and 252.17 to identify whether one of the 99 Iowa counties has a legal obligation to provide financial support for an individual.~~

“Minor” means an individual under the age of 18.

“Non-Medicaid payment-eligible” means that an individual is not eligible for Medicaid funding for the services provided by a mental health institute or state resource center.

“Official designated agent” means a person or agency designated, by a record vote of the county board of supervisors, to act on behalf of the county board of supervisors.

“Parent” means a natural or adoptive mother or father of a child but does not include a mother or father whose parental rights have been terminated.

“Regional administrator” means the same as defined in Iowa Code section 331.388.

“Rights” means the human, civil, and constitutional liberties an individual possesses through federal and state constitutions and laws.

“State case” means the determination made under Iowa Code section ~~252.16~~ 331.394 that identifies an individual as does not having legal settlement have a county of residence in an Iowa county and places funding responsibility with the state.

“Superintendent” means the superintendent of any of the four mental health institutes and the two state resource centers.

This rule is intended to implement Iowa Code section 218.4.

ITEM 3. Amend rule 441—28.2(218,222) as follows:

441—28.2(218,222) Selection of facility.

28.2(1) Application for voluntary admission to a state mental health institute or resource center shall be made to the facility in the catchment area, as defined in rule 441—29.1(218) or 441—30.1(218,222), within which the individual for whom admission is sought is has a resident as defined in: county of residence.

~~a. Rule 441—29.1(218) for the state mental health institutes; or~~

~~b. Rule 441—30.1(218,222) for the state resource centers.~~

28.2(2) Court commitment of an individual shall be made:

~~a. To the facility in the catchment area, as defined in rule 441—29.1(218) or 441—30.1(218,222), within which the individual who is being committed is a resident as defined in rule 441—29.1(218) or 441—30.1(218,222) has a county of residence; or~~

~~b. As designated by the deputy director division administrator.~~

28.2(3) The ~~deputy director~~ division administrator shall consider granting exceptions to the established catchment areas when requested by the individual seeking a voluntary admission or by the committing court. The ~~deputy director's~~ division administrator's decision shall be made within 48 hours of receipt of the request. The decision shall be based on:

~~a. The clinical needs of the individual;~~

~~b. The availability of appropriate program services;~~

~~c. Available bed space within the program at the requested facility; and~~

~~d. The consent of the superintendents of both facilities involved.~~

This rule is intended to implement Iowa Code sections 218.19, 218.20, and 222.6.

ITEM 4. Rescind and reserve rule **441—28.3(222,230)**.

ITEM 5. Amend rule 441—28.5(217,218) as follows:

441—28.5(217,218) Photographing and recording of individuals and use of cameras.

28.5(1) Use of ~~still or video~~ cameras or voice recorders by anyone other than an authorized employee, individual, parent, guardian, or legal representative to photograph or record an individual shall be allowed only with the prior authorization of the superintendent or the superintendent's designee. Permission to photograph and record shall be granted for one specific use, and the authorization shall not extend to any other use.

28.5(2) Photographs, videos, and recordings of an adult individual shall be taken for publication only with a signed informed consent from the individual or the individual's guardian or legal representative.

28.5(3) Photographs, videos, and recordings of a minor individual shall be taken for publication only with a signed informed consent from the parent, guardian, or legal representative.

28.5(4) Every effort shall be made to preserve the inherent dignity of the individual and to preclude exploitation or embarrassment of the individual or the family of the individual.

28.5(5) ~~Pictures~~ Photographs, videos, and recordings of individuals are not to be altered to prevent identification in any manner that would tend to perpetuate the stigma attached to the public image of individuals with mental illness or ~~mental retardation~~ an intellectual disability.

This rule is intended to implement Iowa Code sections 217.30 and 218.4.

ITEM 6. Amend paragraph **28.6(2)“a”** as follows:

~~a. When a request without known prior consent is received, the superintendent or designee shall not acknowledge the presence or nonpresence of an individual at the institution facility.~~

ITEM 7. Amend rule 441—28.7(218) as follows:

441—28.7(218) Use of grounds, facilities, or equipment.

28.7(1) The superintendent or designee may grant permission for temporary use of assembly halls, auditoriums, meeting rooms, or ~~institutional~~ facility grounds to an organization or group of citizens when

the ~~facility is~~ space or grounds are available and is ~~are~~ not needed for regular scheduled departmental services.

28.7(2) Members of outside organizations permitted to use a facility ~~facility's~~ space or grounds shall observe the same rules as visitors to the institution ~~facility~~.

ITEM 8. Amend rule 441—28.8(218) as follows:

441—28.8(218) Tours of institution facility. Groups or persons shall be permitted to tour the institution facility only with approval of the superintendent or designee.

This rule is intended to implement Iowa Code section 218.4.

ITEM 9. Amend rule 441—28.9(218) as follows:

441—28.9(218) Donations. Donations of money, clothing, books, games, recreational equipment or other gifts shall be made directly to the superintendent or designee. The superintendent or designee shall evaluate the donation in terms of the nature of the contribution to the hospital facility's ~~hospital~~ program. The superintendent or designee shall be responsible for accepting the donation and reporting the gift to the ~~deputy director~~ division administrator. All monetary gifts shall be acknowledged in writing to the donor.

This rule is intended to implement Iowa Code chapter 218.

ITEM 10. Amend rule 441—28.12(217) as follows:

441—28.12(217) Release of confidential information.

28.12(1) Information defined by statute as confidential concerning ~~current or former patients or residents of individuals who currently receive or formerly received services from the mental health institutes or hospital schools~~ resource centers shall not be released to a person, agency or organization that is not authorized by law to have access to the information unless the ~~patient or resident individual,~~ parent, guardian, or legal representative authorizes the release. Authorization shall be given by using Form 470-3951, Authorization to Obtain or Release Health Care Information.

28.12(2) ~~Persons admitted or committed to a mental health institute or a hospital school and who are not able to pay their own way in full shall authorize the department to obtain information necessary to establish whether they have legal settlement in Iowa or in another state. Authorization shall be given using Form MH-2203-0, Authorization to Release Information for Settlement.~~

This rule is intended to implement Iowa Code section 217.30.

ITEM 11. Adopt the following new subrule 29.1(7):

29.1(7) Gero-psychiatric services. For the purposes of an adult individual seeking gero-psychiatric services, the Clarinda catchment area shall include the entire state.

ITEM 12. Amend rule 441—29.2(218,229) as follows:

441—29.2(218,229) Voluntary admissions.

29.2(1) No change.

29.2(2) Children Minors. A parent, guardian, or legal representative of a minor individual may make application for the individual's voluntary admission directly to the mental health institute using Form 470-0420, Application for Voluntary Admission to a Mental Health Institute. When a minor objects to the admission and the chief medical officer of the mental health institute determines that the admission is appropriate, the parent, guardian, or custodian must petition the juvenile court for approval of admission before the minor ~~is actually~~ shall be admitted.

29.2(3) County approval. When an adult individual applying or a person responsible for the individual wishes to apply for voluntary admission ~~or those responsible for the individual are~~ and is unable to pay costs ~~the cost~~ of care, application for admission shall be made to and authorized through the central point of coordination ~~of~~ or regional administrator for the individual's county of residence before application for admission ~~is~~ shall be made to the mental health institute. Authorization for admission shall be provided by the signature of one or more ~~official~~ officially designated agents

~~designated by~~ of the county board of supervisors using Form 470-0420, Application for Voluntary Admission to a Mental Health Institute, before the form is forwarded to the mental health institute.

ITEM 13. Amend rule 441—29.3(229,230) as follows:

441—29.3(229,230) Certification of settlement county of residence.

29.3(1) Certification data. By the end of the next working day following ~~an~~ a non-Medicaid payment-eligible adult individual's admission, the facility shall send a copy of Form 470-4161, DHS Institution MHI Admission Core Data, by facsimile to the central point of coordination ~~of or the~~ regional administrator for the county of admission. ~~If the facility is aware that the county of legal settlement may be other than the admitting county, the facility shall alert the admitting county.~~

29.3(2) County response. For voluntary adult cases where the admitting county has accepted legal settlement using Form 470-0420, Application for Voluntary Admission to a Mental Health Institute ~~does not dispute the individual's county of residence, no further response is needed. For all other cases, within four working days after receiving Form 470-4161, DHS Institution Admission Core Data, the admitting county shall return to the facility page 3 of the form, the response sheet for determining legal settlement. If the admitting county disputes the applicant's affirmation of county of residence, the county or its officially designated agent shall be responsible for resolving the dispute using the dispute resolution process in Iowa Code section 331.394. If the state disputes the individual's affirmation of county of residence, the state shall be responsible for initiating the dispute resolution process.~~

~~a. If the central point of coordination for the admitting county accepts legal settlement, the admitting county shall mark the response sheet accordingly. No supporting evidence is necessary.~~

~~b. If the central point of coordination for another county notified by the admitting county accepts legal settlement, that county shall provide written notice to the facility of that county's acceptance.~~

~~c. If the central point of coordination for the admitting county finds the individual's legal settlement to be in another Iowa county, the admitting county shall mark the response sheet accordingly and shall send certification as described in Iowa Code section 230.4 to the county auditor of the other county. A copy of the evidence supporting the determination as prescribed in rule 441—28.3(222,230) shall accompany the certification. If the other county disputes the certification, that county may file a notice of dispute under rule 441—15.2(225C).~~

~~d. If the central point of coordination for the admitting county of residence finds that the person has not acquired legal settlement in an Iowa county, the admitting county shall mark the response sheet accordingly. The admitting county shall send certification as described in Iowa Code section 230.5 to the Administrator, DHS Division of Fiscal Management, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. A copy of the evidence supporting the determination as prescribed in rule 441—28.3(222,230) shall accompany the certification.~~

ITEM 14. Amend rule 441—29.4(218,230) as follows:

441—29.4(218,230) Charges for care. The rates for cost of hospitalization are established by the ~~deputy director~~ division administrator and shall be available by contacting the business manager of the mental health institute that serves the catchment area in which the individual's county of residence is located.

29.4(1) Individuals requesting voluntary admission without going through the central point of coordination ~~or regional administrator~~ process shall be required to pay the cost of hospitalization in advance. This cost shall be computed at 30 times the last per diem rate and shall be collected weekly in advance upon admission. The weekly amount due shall be determined by dividing the monthly rate by 4.3.

29.4(2) The ~~department~~ facility shall bill each county for services provided to individuals chargeable to the county during the preceding calendar quarter as required in Iowa Code section 230.20. In determining the charges for services, direct medical services shall include:

~~a. to l. No change.~~

29.4(3) No change.

ITEM 15. Amend subrule 29.7(1) as follows:

29.7(1) Visiting hours on Monday through Friday are from 12 noon to 8 p.m. and are from 10 a.m. to 8 p.m. on Saturday, Sunday, and holidays. Visiting hours shall be posted in each ~~institution~~ facility.

The physician may designate exceptions for special hours on an individual or ward basis. Therapy for the individual shall take precedence over visiting. Visiting shall not interfere with the individual's treatment program or meals.

ITEM 16. Amend rule 441—30.2(218,222) as follows:

441—30.2(218,222) Admission. Express written consent of the individual or the individual's parent, guardian, or legal representative shall be secured before admission.

30.2(1) Application for an adult. Applications for the care, treatment, or evaluation of an adult individual by a resource center shall be made through the central point of coordination or the regional administrator for the board of supervisors of the individual's county of residence. Authorization for the submission of the application shall be provided by the signature of one or more officially designated agents for the county board of supervisors.

a. The application shall be made using Form 470-4402, Application for Admission to a State Resource Center, and shall be accompanied by:

- (1) Completed Form 470-4403, Resource Center Agreement and Consent for Services, and
- (2) Other information specifically requested in writing by the resource center.

b. The application shall be submitted through the ~~deputy director~~ division administrator or the ~~deputy director's~~ division administrator's designee.

30.2(2) Application for a minor. Application for a minor individual shall be made through the ~~deputy director~~ division administrator or the ~~deputy director's~~ division administrator's designee using Form 470-4402, Application for Admission to a State Resource Center. The application shall be accompanied by:

a. Completed Form 470-4403, Resource Center Agreement and Consent for Services, and

b. Other information specifically requested in writing by the ~~deputy director~~ division administrator or the ~~deputy director's~~ division administrator's designee.

30.2(3) and 30.2(4) No change.

30.2(5) Eligibility for admission. Eligibility for admission shall be determined by:

- a. A preadmission diagnostic evaluation,
- b. An established diagnosis of ~~mental retardation~~ intellectual disability,
- c. The availability of an appropriate program, and
- d. The availability of space at the facility.

This rule is intended to implement Iowa Code sections 222.13 and 222.13A.

ITEM 17. Rescind rule 441—30.3(222) and adopt the following **new** rule in lieu thereof:

441—30.3(222) Non-Medicaid payment-eligible individuals. The cost for the care, as determined in Iowa Code sections 222.73, 222.74, and 222.75, for an individual who is not Medicaid payment eligible shall be the responsibility of the individual's county of residence. All disputes regarding the county of residence of an individual shall be resolved using the dispute resolution process in Iowa Code section 331.394.

ITEM 18. Rescind rule 441—30.6(218) and adopt the following **new** rule in lieu thereof:

441—30.6(218) Visiting.

30.6(1) Individuals are encouraged and shall be able to receive visits from persons of the individual's choice and at times desired by the individual. At the individual's choice, the individual's parents, guardian, or legal representative or other members of the individual's family may visit without prior notice given to the facility.

30.6(2) Visits determined by the individual's treatment to be inappropriate or disruptive to the individual's treatment plan or the health and safety of other individuals may be denied or terminated.

30.6(3) An individual or other person denied visitation may file a grievance through the facility's grievance process.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/30/13.