

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 42 U.S.C. § 1396n(d), the Department of Human Services amends Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Iowa Administrative Code.

This amendment changes the name of the “assisted living on-call” service to the “assisted living” service pursuant to direction from the Centers for Medicare and Medicaid Services (CMS).

This amendment also revises the description of the service to agree with the CMS-approved description, including references to consumer-directed attendant care (CDAC) agreements.

The amendment includes the CMS requirement for a documented daily assisted living encounter with the member.

This amendment complies with additional service requirements and the revised service name and definition as directed by CMS through CMS approval of the elderly waiver amendment IA 4155.R04.02. CMS approved the amendment on November 17, 2014, effective March 1, 2013.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2115C** on August 19, 2015.

The Department received comments from three respondents during the public comment period. A summary of the comments and the Department’s responses are as follows:

Comment 1: One respondent expressed concerns related to the changes proposed by the Department in **ARC 2115C** and stated that the changes will have a negative impact on access to Medicaid members needing services in an assisted living facility in Iowa.

Department response 1: In November 2014, the Centers for Medicare and Medicaid Services (CMS) approved a home- and community-based services (HCBS) elderly waiver amendment to authorize the assisted living on-call service. Approval of the amendment required that the Department make several revisions to the Iowa Administrative Code (IAC) for the assisted living on-call service. CMS required the following changes:

1. Revision of the name of the service from “assisted living on-call service” to “assisted living service.” All references to “on-call” have been removed.
2. Expansion of the definition of the service.
3. That providers must document at least one assisted living encounter per billed day. This documentation must adhere to rule 441—79.3(249A) regarding documentation of Medicaid services.

Comment 2: A respondent asked how the Department intends to define an assisted living service encounter and stated that, according to **ARC 2115C**, the language appears to be attempting to implement the 1915(c) elderly waiver amendment, noting the following rule language:

“The service includes the 24-hour on-site response capability to meet unpredictable member needs as well as member safety and security through incidental supervision.”

“The assisted living provider has documented at least one assisted living encounter that day.”

Department response 2: Subrule 78.37(18) is a direct result of the 1915(c) HCBS waiver amendment. An encounter is an interaction with a member. The daily assisted living encounter used to document the assisted living service cannot be a part of another service funded through the waiver or through Medicaid. For example, the encounter cannot be related to:

1. Meals if the meal is funded by Medicaid.
2. Medication management if medication management is included in the Consumer-Directed Attendant Care (CDAC) agreement.
3. Bathing assistance if bathing is included in the CDAC agreement.
4. Home health services if those services are included in a home health plan of care and funded through Medicaid.

Comment 3: A respondent asked, for purposes of the new documentation proposed in **ARC 2115C**, what the Department expects to be considered satisfactory.

The respondent commented that the rule amendments state that the provider has documented at least one assisted living services encounter for that day, in accordance with rule. The documentation must include the member's response to the service. The documented assisted living service cannot also be an authorized CDAC service. With that said, the respondent asked whether the following example of documentation would be acceptable documentation: July 5, 2015, 24-hour on-site supervision provided by staff throughout this period to tenant #1 to maintain her safety in her apartment and within the assisted living program tenant #1 was awake the morning at 7 a.m., excited for the day and starting getting dressed.

Department response 3: The above example of documentation would not be sufficient documentation of a billable assisted living encounter. New subrule 78.37(18) states that the encounter must be documented in accordance with rule 441—79.3(249A). Rule 441—79.3(249A) specifically outlines the information that must be contained in the documentation for all Medicaid services, such as the staff person's name, the exact time of the service, the specific nature of the service, etc. Medicaid documentation requirements that apply to all Medicaid providers may be found in the Department's administrative rules. New subrule 78.37(18) for assisted living service further states that the member's response to the encounter is to be documented.

Comment 4: A respondent expressed concern regarding the "unscheduled" nature of the documentation requirement. The respondent expressed the following: As is the risk with any new documentation mandate, the new proposed rules will lead to more staff time documenting for purposes of the waiver, which means less time for staff to provide personal cares and services. Moreover, the unscheduled encounter will be difficult to implement, especially for providers with electronic health systems. As a result, the responsibility to ensure completion of this documentation will often time fall squarely on a caregiver's notation ability. Confusing the situation further, if the service plan notes a service to be done on an "as needed basis," this would presumably not be considered an unscheduled need.

Department response 4: Federal and state requirements for every Medicaid-funded service do require documentation to comply with state and federal guidelines. For Iowa, those guidelines are contained in rule 441—79.3(249A). Every Medicaid provider is responsible for implementing a documentation system that supports the service funded through Medicaid; without appropriate documentation, the service is not payable and both the state and provider are at risk of recoupment through audit.

The assisted living provider must have sufficient documentation to support that the service paid by Medicaid is in no way duplicative of the specific CDAC services that are included in that member's signed CDAC agreement. Each member's CDAC agreement can include a different array of services, so what may be CDAC for one member is not CDAC for another member.

Comment 5: A respondent asked whether an "encounter" is still considered a "supervision visit" of the tenant, and not an IDAL/ADL.

Department response 5: The assisted living encounter can be any interaction with the member that is not part of that member's CDAC agreement or another funded Medicaid service. The assisted living provider must have sufficient documentation to support that the service paid by Medicaid is in no way duplicative of the specific CDAC services that are included in that member's signed CDAC agreement. Each member's CDAC agreement can include a different array of services, so what may be CDAC for one member is not CDAC for another member.

Comment 6: A respondent expressed the opinion that subrule 78.37(18) would not be meant to make the assisted living service the same as a CDAC service.

Department response 6: Subrule 78.37(18) for assisted living services has no impact on CDAC, nor does the subrule change the CDAC service. The subrule does require that documentation for assisted living service fully resemble the documentation needed for other Medicaid-funded services. While CDAC must be included in a formal CDAC agreement and must be anticipated and regularly occurring, assisted living service is flexible to meet the ever-changing or transitory needs of each member.

The Department did not modify the amendment as a result of the comments of the respondents. This amendment is identical to that published in the Iowa Administrative Bulletin under Notice of Intended Action as **ARC 2115C**.

The Council on Human Services adopted this amendment on October 14, 2015.

This amendment does not provide for waivers in specified situations because 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.

This amendment is intended to implement Iowa Code section 249A.4 and 42 U.S.C. § 1396n(d).

This amendment will become effective February 10, 2016.

The following amendment is adopted.

Rescind subrule 78.37(18) and adopt the following new subrule in lieu thereof:

78.37(18) Assisted living service. The assisted living service includes unanticipated and unscheduled personal care and supportive services that are furnished to waiver participants who reside in a homelike, noninstitutional setting. The service includes the 24-hour on-site response capability to meet unpredictable member needs as well as member safety and security through incidental supervision. Assisted living service is not reimbursable if performed at the same time as any service included in an approved consumer-directed attendant care (CDAC) agreement.

a. A unit of service is one day.

b. A day of assisted living service is billable only if both the following requirements are met:

(1) The member was present in the facility during that day's bed census.

(2) The assisted living provider has documented at least one assisted living service encounter for that day, in accordance with rule 441—79.3(249A). The documentation must include the member's response to the service. The documented assisted living service cannot also be an authorized CDAC service.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/6/16.