

**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 225C.6, the Department of Human Services proposes to amend Chapter 25, “Disability Services Management,” Iowa Administrative Code.

These proposed amendments establish standards for mental health advocates who provide services under Iowa Code chapter 229, “Hospitalization of Persons with Mental Illness.” New Division X in Chapter 25 includes standards for definitions, appointment and qualifications, assignment, advocate and county responsibilities, data collection requirements, and quality assurance for mental health advocate services.

Prior to July 1, 2015, mental health advocates were appointed by the judicial branch and paid by the counties. 2015 Iowa Acts, House File 468, amended Iowa Code chapter 229 to make mental health advocates county employees, effective July 1, 2015. Prior to July 1, 2015, procedures varied from judicial region to judicial region and from county to county. These amendments will provide consistency in requirements for hiring the advocate and for performance standards.

Any interested person may make written comments on the proposed amendments on or before January 26, 2016. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 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 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.

These amendments are intended to implement Iowa Code chapter 229 as amended by 2015 Iowa Acts, House File 468.

The following amendments are proposed.

ITEM 1. Reserve rules **441—25.97** to **441—25.100**.

ITEM 2. Adopt the following **new** 441—Chapter 25, division and title, as follows:

DIVISION X

MENTAL HEALTH ADVOCATES

ITEM 3. Adopt the following **new 441—Chapter 25, Division X**, Preamble, as follows:

PREAMBLE

This division establishes definitions, appointment and qualifications, assignment, responsibilities of the advocate and the county, data collection requirements, and quality assurance for mental health advocate services under Iowa Code chapter 229 as amended by 2015 Iowa Acts, House File 468.

ITEM 4. Adopt the following **new** rules 441—25.101(229) to 441—25.107(229):

**441—25.101(229) Definitions.**

“*Advocate*” means mental health advocate as defined in Iowa Code section 229.1 as amended by 2015 Iowa Acts, House File 468.

“*Conflict of interest*” means any activity that interferes or gives the appearance of interference with the exercise of professional discretion and impartial judgment, including dual relationships with the

individual being served or with members of the individual's immediate family or serving two or more individuals who have a personal relationship.

*"County of residence"* means the same as defined in Iowa Code section 331.394.

*"County of venue"* means the county in which the Iowa Code chapter 229 commitment was filed pursuant to Iowa Code section 229.44.

*"County where the individual is located"* means the individual's county of residence as defined in Iowa Code section 331.394, or if the individual has been ordered to receive treatment services under an Iowa Code chapter 229 commitment, is placed in a residential or other treatment facility, and has received treatment in such facility for more than six months, the "county where the individual is located" means the county where the individual is placed for treatment purposes.

*"Individual"* means the respondent who is receiving mental health advocate services under Iowa Code chapter 229 as amended by 2015 Iowa Acts, House File 468.

*"Judicial district"* means the same as defined in Iowa Code section 602.6107.

*"Mental health and disability services region"* means the same as defined in Iowa Code section 331.389.

**441—25.102(229) Advocate appointment and qualifications.** The board of supervisors of each county shall appoint a person to act as an advocate representing the interests of individuals involuntarily hospitalized by the court under Iowa Code chapter 229. The advocate is hired by the board of supervisors and employed by the county.

**25.102(1)** A person may be appointed and employed or contracted with as the advocate by one county or by multiple counties. Advocates may be appointed for counties in more than one judicial district or more than one mental health and disability services region.

**25.102(2) Qualifications.**

*a.* The advocate shall meet the following qualifications:

(1) Possess a bachelor's degree with 30 semester hours or equivalent quarter hours in a human services field (including, but not limited to, psychology, social work, mental health counseling, marriage and family therapy, nursing, education, occupational therapy, and recreational therapy) and at least one year of experience in the delivery of services to persons with mental illness; or

(2) Hold an Iowa license to practice as a registered nurse and have at least three years of experience in delivery of services to persons with mental illness.

*b.* A person employed as an advocate on or before July 1, 2015, who does not meet the requirements of subparagraph 25.102(2) "a"(1) or (2) shall be considered to meet those requirements so long as the person is continuously appointed as an advocate in the employing county.

*c.* A person employed as an advocate must pass criminal background, sex offender registry, and child and dependent adult abuse registry checks before hire.

**441—25.103(229) Advocate assignment.** The committing court shall assign the advocate from the county where the individual is located.

**25.103(1)** If the advocate assigned cannot serve the individual in an effective and efficient manner, the advocate may request another advocate to perform advocate duties on the individual's behalf. In the event that another advocate can better represent the individual on a longer term basis, the advocate shall request that the court transfer the individual to another advocate.

**25.103(2)** When a conflict of interest is identified between an advocate and an individual, the court and the advocate's county of employment shall be notified and an alternative advocate shall be assigned. The advocate's direct supervisor is responsible to monitor and ensure that the advocate does not have a conflict of interest. In instances when dual or multiple relationships are unavoidable, advocates should take steps to protect individuals and are responsible for setting clear, appropriate, and culturally sensitive boundaries. Advocates who anticipate a conflict of interest among the individuals receiving services should clarify the advocate's role with the parties involved and take appropriate action to minimize any conflict of interest.

**25.103(3)** When the advocate assigned is not the advocate from the individual's county of residence, the advocate's county of employment may seek reimbursement from the region in which the individual's county of residence is located as outlined in Iowa Code section 229.19(1) "b" as amended by 2015 Iowa Acts, House File 468.

**25.103(4)** An advocate shall only be assigned to a child 17 years of age or under when the child is not represented by an attorney due to an existing child in need of assistance (CINA) or other juvenile court action pursuant to the Iowa Code.

**441—25.104(229) Advocate responsibilities.** The minimum duties of the advocate are outlined in Iowa Code section 229.19 as amended by 2015 Iowa Acts, House File 468. The role of the advocate is to ensure that the rights of the individual are upheld.

**25.104(1)** The advocate shall be readily accessible to communication from the individual and shall initiate contact within 5 days of the individual's commitment. The advocate shall inform the individual regarding the role of the advocate.

**25.104(2)** The advocate shall meet the individual in person within 15 days of the individual's commitment. The advocate shall present the county grievance procedure process, in writing, to the individual. The presentation shall include the county grievance procedure and contact information and the contact information for the citizens' aide/ombudsman. The advocate shall inform the individual about the mental health crisis services that are available.

**25.104(3)** The advocate shall review each report submitted to the court and communicate with the individual's medical and treatment team. Advocates shall abide by all federal, state, and local confidentiality laws.

**25.104(4)** The advocate shall file with the court Iowa Ct. R. 12.36—Form 30, quarterly reports for each individual assigned to the advocate. The report shall state the actions taken with the individual and amount of time spent on behalf of the individual.

**25.104(5)** The advocate shall maintain an organized confidential and secure file for each individual served. The file shall contain but not be limited to:

- a. Copies of quarterly reports submitted to the court.
- b. Correspondence received from the individual, family members, providers and others.
- c. Copies of correspondence sent to and received from the individual, family members, providers and others.
- d. Releases of information.
- e. Case notes describing the date, time and type of contact with the individuals or others and a brief narrative summary of the content or outcome of the contact.
- f. Documents filed with the court electronically shall be considered as part of the individual's file.

**25.104(6)** The advocate shall register as provided in Iowa Ct. R. 16.305(1) to participate in the court's electronic document management system and shall submit all documents to be filed with the court electronically. The documents will be stored as electronic records that are retrievable and readable through the electronic document management system.

**25.104(7)** The advocate, as an employee of the county, shall comply with all county policies and procedures, including but not limited to hiring, supervision, grievance procedures, and training.

**25.104(8)** All advocate records are the property of the county, which is responsible for the provision of confidential storage, transfer, and destruction of client files, including those maintained on electronic and digital devices, with access limited according to the county's policy on confidentiality as described in subrule 25.105(6).

**25.104(9)** The advocate may attend the hospitalization hearing of an individual represented by an attorney; however, payment for the advocate's attendance is at the discretion of the county of employment.

**441—25.105(229) County responsibilities.** As the employer of the advocate, the county shall provide qualified staff to support and facilitate the provision of quality advocate services. The county shall:

**25.105(1)** Assign a single supervisor, a single contract manager, or the county board of supervisors as the supervising entity to carry out responsibilities in this chapter.

**25.105(2)** Have a job description in the personnel file of the advocate that clearly defines the advocate's responsibilities and qualifications as defined in Iowa Code section 229.19 as amended by 2015 Iowa Acts, House File 468, and in rule 441—25.104(229).

**25.105(3)** Have a process to verify, within 90 days of the advocate's hire, qualification of the advocate, including degrees and certifications obtained from a primary source.

**25.105(4)** Provide to the advocate training and education relevant to the position, including but not limited to overview of mental health diagnosis and treatment, the mental health and disability services delivery system, confidentiality, individual rights, professional conduct, the role of advocacy and service coordination within an interdisciplinary team, Iowa Code and administrative rules, and court procedures.

**25.105(5)** Provide approved training on child and dependent adult abuse reporter requirements.

**25.105(6)** Provide to any employee with access to individuals' files training on state and federal laws regarding nondisclosure and confidentiality of client protected health information during and after employment and maintain in the personnel files a signed document indicating the employee's awareness of the county's policy on confidentiality.

**25.105(7)** Complete criminal background, sex offender registry and child and dependent adult abuse registry checks before employment of the advocate. Any person who does not pass these checks is prohibited from being hired, or continuing to serve, as an advocate.

**25.105(8)** Provide adequate advocate staff to cover the county's caseload, according to, but not limited to, each county's unique number of individuals assigned to the advocate, travel required, types of settings where the individuals reside, services available and extended staff absences.

**441—25.106(229) Data collection requirements.**

**25.106(1)** Beginning in 2016 and by December 1 each year, each county shall submit to the department of human services data regarding each individual who received advocate services during the previous state fiscal year

**25.106(2)** As defined in rule 441—25.41(331), the data to be submitted are as follows:

- a. Basic information about the individual, including a unique identifier and county of residence.
- b. Demographic information, including the individual's date of birth, sex, ethnicity, education, and diagnosis made in accordance with the criteria provided in the current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association (APA).
- c. Commitment information, including the date of the individual's initial commitment, type of commitment order, whether a juvenile or adult case, date of commitment and name of treatment facility individual is committed to, any subsequent changes in treatment facility, and date commitment is terminated.

**441—25.107(229) Quality assurance system.** As the employer of the advocate, the county shall implement a quality assurance system which:

1. Annually measures and assesses advocates' activities and services.
2. Gathers feedback from stakeholders including individuals using advocate services, family members, court staff, service provider staff, and regional staff regarding advocate services.
3. Implements an internal review of individual records.
4. Identifies areas in need of improvement.
5. Develops a plan to address the areas in need of improvement.
6. Implements the plan and documents the results.

ITEM 5. Adopt the following new implementation sentence for **441—Chapter 25, Division X**:

These rules are intended to implement Iowa Code chapter 229 as amended by 2015 Iowa Acts, House File 468.