

AGING, DEPARTMENT ON[17]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 231E.4(6) and 17A.3, the Department on Aging hereby amends Chapter 22, "Office of Substitute Decision Maker," Iowa Administrative Code.

This amendment changes the staffing level for substitute decision makers by increasing the number of consumers per full-time equivalent position from 10 to 40. The change will create staffing levels consistent with those in neighboring states and allow for a more efficient substitute decision-maker program.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3324C** on September 27, 2017. The Department received public comments from two respondents regarding these amendments.

Comments: The first respondent suggested that the impact on jobs was incorrect, other states' ratios are irrelevant, and the ratio will not affect efficiency. The second respondent expressed concern about the ratio being too great and expressed the opinion that additional funding was needed instead of increasing the span of control of substitute decision makers.

Department response: Even if what other states are doing is irrelevant, the initial ratio of 10 wards per substitute decision maker set by administrative rule was an arbitrary number and should not be involved in any analysis related to the provision of substitute decision-making services. The National Guardianship Association (NGA) has set the standard at 20 wards per substitute decision maker. According to Ericka Wood, Assistant Director of the American Bar Association Commission on Law and Aging, the NGA-suggested ratio is a "gold standard." "Gold standard" guardianship services provide both guardianships and conservatorships and also usually include Medicaid targeted case management. In Iowa, substitute decision makers do not provide any Medicaid case management service. Currently, the Office of Substitute Decision Maker is only serving as both guardian and conservator for less than 33 percent of the Office's wards in Iowa and only one case is likely to have a long-term conservatorship.

It is also important to note that the ward-to-substitute decision maker staffing ratio is a cap and not a floor. In the recently released request for proposal (RFP) for a pilot project to create a local office of substitute decision maker, a local office of substitute decision maker stated that it would cap its ratio at 25 to 1. The Department found this to be an appropriate ratio for the structure of that organization. However, larger agencies with more support staff would likely be able to handle more than a 25-to-1 ratio. As the Office of Substitute Decision Maker moves to create more local offices in different regions, it would be unfair to limit organizations from competing based upon structure.

The Office of Substitute Decision Maker is still in the startup phase of development, and thus, changes to a ward-to-substitute decision maker staffing ratio will not impact jobs. It is merely setting the stage for the creation of local offices of substitute decision maker in accordance with Iowa Code chapter 231E. Having substitute decision makers stationed locally will provide a much more efficient model than a Des Moines-based model.

This amendment is identical to that published under Notice.

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

This amendment is intended to implement Iowa Code section 231E.4(6)"c."

This amendment will become effective on January 10, 2018.

The following amendment is adopted.

Amend rule 17—22.5(231E,633), introductory paragraph, as follows:

17—22.5(231E,633) Staffing ratio. SDMs shall be responsible for no more than ~~ten~~ 40 consumers per full-time equivalent position at any one time. The state office shall notify the state court administrator when the maximum number of appointments is reached.

[Filed 11/15/17, effective 1/10/18]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/6/17.