ARC 4972C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to appeals and hearings

The Human Services Department hereby amends Chapter 7, "Appeals and Hearings," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 17A and section 217.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 17A and section 217.6.

Purpose and Summary

In light of the State's transition to Medicaid managed care, and in an ongoing effort to improve the Department's processes and accessibility to consumers, the Department has revised its appeals rules with the following goals in mind: simplification, uniformity, clarification of scope, clearly defining appeal rights, and protecting self-represented litigants. In this effort, the Department has sought to eliminate redundancies and ambiguities, streamline processes across programs where permissible under state and federal law, explicitly clarify the circumstances in which contested case hearings are granted, ensure conformity with substantive federal and state standards, and include procedural protections for self-represented litigants.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 25, 2019, as **ARC 4674C**. One respondent, representing Iowa Legal Aid, provided written comments. The comments and the Department's responses follow and are grouped into areas of concern.

1. Concerns regarding the Appeals Advisory Committee. In three comments, the respondent referenced the removal of all references to the Appeals Advisory Committee. The Appeals Advisory Committee acted as an initial screening device for the Director and had the authority to recommend that the Director review a proposed decision. Committee members voted to allow the review to proceed to the Director or deny the request for review.

Department response: Based on the volume of programs the Department administers, Committee members did not feel comfortable making recommendations about programs they did not manage. The Department established a process that better aligns with the process used by appellants and their representatives when submitting a review request and, therefore, omitted the references to the Committee. As this is an internal Department process, it is not required to be in the rules. No changes were made based on this comment.

2. Concerns about party-in-interest. The respondent commented twice about the change in paragraph 7.3(1)"b" indicating that a party-in-interest must have an ongoing, specific and personal interest in the outcome of the contested case hearing. The respondent questioned whether this change was intended to address third parties filing appeals on behalf of individuals.

Department response: The change reflected in paragraph 7.3(1)"b" was made to ensure that appeals are limited to live issues by an aggrieved party and that the person filing the appeal has an interest in the outcome of the appeal. No changes were made based on this comment.

3. Contractual rights. The respondent asked what problem the Department was trying to address in subrule 7.3(2) dealing with appeals regarding contractual rights that are not eligible for a contested case

hearing. The respondent commented twice that the language used in new subrule 7.3(2) is broader than current language regarding provider claims disputes with a managed care organization.

Department response: The purpose of the subrule is to clarify that contract issues are not subject to an appeal through the Department's appeals process because disputes regarding contract issues between the appellant and another party are handled within the court system. No changes were made based on this comment.

4. Removal of definitions and other language regarding appeal process. In 11 comments, the respondent expressed concerns about the removal of definitions of, and other language regarding, "aggrieved person," "appeal," "due process," "electronic case record," "ex parte communication," "informal conference," "local office," "prehearing conference," and "reconsideration."

Department response: The definition of "aggrieved person" was removed because some conditions provided in the current rule were overly inclusive and others were overly narrow. The amendments clarify that persons entitled to an administrative appeal hearing by a Constitution or statute will receive such a hearing.

The definition of "appeal" was removed because it was overly broad and allowed for an expanded meaning of a contested case as defined in Iowa Code chapter 17A. Due process is required for contested cases, but the entitlement to due process is created by a Constitution or statute, not by the regulations. The reference to due process cannot expand or contract the entitlement to due process, and therefore, the definition of "due process" was omitted.

An appellant has the right to view the Department's case file. The appellant's right to view the electronic case record is not affected by eliminating the definition of "electronic case record."

While the respondent did not provide any specifics as to why there was concern about the removal of "ex parte communication" as a definition, ex parte communication is covered extensively in Iowa Code section 17A.17 and in subrule 7.9(1).

The definition of "informal conference" was removed since the other references to an informal conference were eliminated from the amendments; however, based on the comment, a new subrule 7.6(7) is added to address informal conferences.

The removal of the definition of "local office" was not problematic to the respondent, but the respondent wanted to ensure that applicants and recipients could continue to file an appeal request at their local offices. Subrule 7.5(1) details the way a contested case hearing may be requested, including at the applicant's or recipient's local office.

The definition of "prehearing conference" was removed, but rule 441—7.2(17A) indicates that in the absence of an applicable rule, the Department of Inspections and Appeals rules found at 481—Chapter 10 govern Department of Human Services appeals. Prehearing conferences are addressed at rule 481—10.16(10A,17A).

The definition of "reconsideration" was removed because it was circular and did not accurately reflect when reconsideration was allowed. The exclusion of the definition does not negate the reconsideration process, when allowed. No changes were made based on the respondent's comments, other than the change noted regarding informal conferences.

5. Removal of the conditions of an aggrieved person and the lists of appealable issues. In four comments, the respondent expressed concern about the removal from Chapter 7 of the conditions of an aggrieved person and the lists of appealable issues because the removal could cause confusion for appellants.

Department response: Iowa Code chapter 17A provides for administrative appeal hearings only in contested cases and defines what constitutes a contested case. The conditions provided in the current rule were overly inclusive in some areas and overly narrow in others. The amendments to Chapter 7 clarify that persons entitled to an administrative appeal hearing by a Constitution or statute will receive such a hearing. No changes were made based on the respondent's comments.

6. Removal of language regarding the presiding officer. The respondent commented on the removal of language stating that a presiding officer cannot be connected in any way with the previous actions or decisions on which the appeal is made and requested that this information be retained.

Department response: Maintaining a separate and impartial adjudicative function is a bedrock principle of administrative law and is a fundamental component of due process. Rule 441—7.2(17A) indicates that in the absence of an applicable rule in this chapter, the Department of Inspections and Appeals rules govern Department of Human Services appeals. The rule that addresses when an administrative law judge shall withdraw from a contested case is rule 481—10.9(17A).

7. Exhaustion of other remedies. The respondent asked if there are remedies other than those mentioned in subrule 7.4(2) that must be exhausted prior to initiation of an appeal. The respondent requested further clarification on what is meant by exhausting all other appeal remedies available to the party-in-interest and requested that any other applicable regulations be cross-referenced.

Department response: Subrule 7.4(2) addresses exhaustion only with respect to Medicaid managed care organization claims, which are not covered in other program-specific provisions. Subrule 7.4(1) generally requires exhaustion in accordance with each program's specific procedures. However, subrule 7.4(1) has been revised for clarification, but rather than include numerous cross-references, the subrule directs the reader to the specific program.

8. Removal of notification of hearing procedures. In five comments, the respondent expressed concern about the removal of the notification of hearing procedures, especially the section relating to providing auxiliary aids to individuals with disabilities, and about the removal of language requiring local offices of the Department to advise individuals of the availability of legal services in the community.

Department response: All notices issued by the Department notify the appellant to contact a local office of the Department to obtain information about legal services, but based on the respondent's comments, a new subrule 7.4(4) has been added to address written and oral notification of hearing procedures, and a new subrule 7.9(6) has been added to provide the assistance that shall be offered to persons living with disabilities.

9. Request additional information. The respondent questioned what would happen if the Department had to request additional information to determine the scope of the appeal.

Department response: Based on the comment, subrule 7.5(2) has been revised.

10. Appeals filed in writing. The respondent suggested a change in the catchwords of subrule 7.5(4) and requested that a definition be added for the term "in writing."

Department response: The Department agrees about the catchwords and has updated the catchwords of subrule 7.5(4) for clarification; however, the term "in writing" is commonly understood and not all methods for requesting an appeal hearing are done in writing, so no changes were made based on that comment.

11. Forwarding appeal summaries and exhibit materials. The respondent requested a clarification that entities contracted by the Department are required to follow the same protocol as Department staff when forwarding appeal summary and exhibit materials to the judge.

Department response: Subrule 7.5(5) refers to the Department worker or agent responsible for representing the Department at hearing. This would include contracted entities, so no changes were made based on this comment.

12. Designating issues for hearing. The respondent asserted that subrule 7.6(3) regarding designating issues for hearing seems too technical for pro se litigants and possibly burdensome for representatives who may be joining an appeal close to the hearing date for various reasons.

Department response: This provision does not change the previous practice for designating issues for hearing; therefore, the provision does not increase the burden on a pro se litigant. If a pro se litigant obtains legal representation and it is determined additional issues need to be designated for hearing, the newly obtained legal representation can request a continuance to allow time to prepare for hearing and can file a motion to designate additional issues. No changes were made based on this comment.

13. Case file. The respondent pointed out that the term "case file" is not defined in subrule 7.6(6) regarding the appellant's right to examine the contents of the appellant's own case file.

Department response: Rule 441—7.2(17A) indicates that in the absence of an applicable rule in this chapter, the Department of Inspections and Appeals rules govern Department of Human Services appeals. Evidence is addressed at rule 481—10.21(17A). No changes were made based on this comment.

14. Closed hearings. Subrule 7.8(5) indicates that contested case hearings are closed to the public and provides a list of individuals who may participate in appeal hearings. The respondent expressed concern that there is no language regarding child abuse registry hearings and the right to intervene.

Department response: The list of individuals who may participate includes permissible intervenors; therefore, no changes were made based on this comment.

15. Default decisions. The respondent was concerned about the changes included in subrule 7.9(2) regarding deadlines with default decisions.

Department response: No changes were made based on this comment, as the process has not changed and the subrule adequately captures the default process.

16. Withdrawal requests. The respondent requested clarification on how to withdraw a fair hearing request for appeals that must be filed in writing.

Department response: Based on the comment, subrule 7.9(3) has been revised.

17. Request for a medical exam. The respondent commented twice that subrule 7.9(4) does not allow an enrollee or appellant to request a medical exam.

Department response: Federal regulations at 42 CFR 431.240(b) allow a hearing official to request a medical assessment other than that of the individual involved in making an original decision if a hearing involves issues such as those concerning a diagnosis, an examining physician's reports or a medical team's decision. The regulation does not allow an enrollee or appellant to request the medical exam. No changes are made based on this comment.

18. Submitting proposed findings of facts. The respondent commented that the rules fail to indicate whether parties are allowed to submit proposed findings of fact and requested that the Department define the term "record."

Department response: No one is precluded from offering findings of fact. The presiding officer will rule on the proposed findings of fact, if offered. Subrule 7.10(2) requires that appellants be given reasonable access to the record at a convenient place and time. There is no need to define what the term "record" means, as it is a common term. No changes were made based on this comment.

19. Right to seek judicial review. Subrule 7.12(3) provides that the Department will notify the appellant of the appellant's right to seek judicial review, where applicable. However, the respondent commented three times that the subrule fails to indicate that the appellant does not need to seek a rehearing to exhaust the appellant's administrative remedies before filing the judicial review or a stay request.

Department response: Rule 441—7.12(17A) makes clear that a proposed decision becomes a final decision if there is no appeal to the Director, language which mirrors that in Iowa Code section 17A.15(3). A final decision is subject to judicial review, and therefore, further action following the final decision is not required to exhaust administrative remedies. The Department's authority to grant a stay of the agency decision pending judicial review is adequately stated in Iowa Code section 17A.19. No changes were made based on this comment.

20. Authorized representatives. The respondent stated that the second sentence in subrule 7.16(1) regarding regulations for authorized representatives has nothing to do with regulations and requested that the statement be moved to its own section. The respondent also expressed concern about what is meant by the words "or similar" in the subrule and confusion about what is meant by subrule 7.16(2).

Department response: The language in subrule 7.16(2) regarding designation of authority of an authorized representative is intended to clarify that an authorized representative does not become a party-in-interest in the representative's own right as an outgrowth of that representation. However, based on the respondent's comments on the other two issues, subrules 7.16(1) and 7.16(2) have been revised.

21. Receipt of a notice. The respondent stated a concern that there is no definition of "receipt of a notice."

Department response: Based on the respondent's comments, subrule 7.17(1) has been revised to provide guidance on how the Department determines receipt of a notice.

22. Emergency adjudicative proceedings. The respondent mentioned that proposed rule 441—7.18(17A) regarding emergency adjudicative proceedings fails to state the means by which the

order is to be delivered to the persons who are required to comply with the order and does not include any reference to oral notification.

Department response: Based on the respondent's comments, subrule 7.18(2) has been revised.

23. Accessibility of hearing decisions. The respondent recommended keeping Chapter 7's current language regarding accessibility of hearing decisions.

Department response: Iowa Code section 17A.3 requires agencies to adopt rules setting forth the method by which the public may obtain information or make submissions or requests and the location of said information. The Department has adopted rules in 441—Chapter 9 describing the procedures for access to Department records. No changes were made based on this comment.

24. Contested cases with no factual dispute. While Iowa Code section 17A.10A provides for handling of contested cases with no factual dispute, the respondent requested that the corresponding rules continue to provide guidance on this situation.

Department response: Based on the respondent's comments, a new subrule 7.8(7) has been added to provide guidance.

All other comments made by the respondent were positive and supported the proposed amendments. Except for the changes described above and a change to replace the word "their" with "the appellant's" in subrule 7.9(5), no other changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on February 12, 2020.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

These amendments do not include a waiver provision because they confer benefits on those affected and are generally required by federal law that does not allow for waivers. Individuals may request a waiver under the Department's general rule on exceptions at rule 441—1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on April 15, 2020.

The following rule-making actions are adopted:

ITEM 1. Rescind rule 441—7.1(17A) and adopt the following **new** rule in lieu thereof:

441—7.1(17A) Definitions.

"Adverse benefit determination" means any adverse action taken as to any individual's benefits pursuant to an assistance program administered by the department or on the department's behalf, excluding determinations related to requests for exceptions to policy.

"Appeals section" means the director's designee who is charged with administering the department's appeals.

"Appellant" means a person, including an authorized representative acting on the person's behalf, seeking to appeal some action pursuant to this chapter.

"Assistance program" means a program administered by the department or on the department's behalf through which qualifying individuals receive benefits or services. Assistance programs include, but are not necessarily limited to, food assistance, Medicaid, the family investment program, refugee cash assistance, child care assistance, emergency assistance, the family planning program, the family self-sufficiency grant, PROMISE JOBS, state supplementary assistance, the healthy and well kids in Iowa (HAWK-I) program, foster care, adoption, and aftercare services.

"Authorized representative" means a person lawfully designated by an individual to act on the individual's behalf or who has legal authority to act on behalf of the individual.

"Contested case" refers to an evidentiary hearing mandated by state or federal constitutional or statutory authority whereupon a presiding officer makes a determination pertaining to the relative rights and obligations of parties to an appeal under this chapter.

"Department" means the Iowa department of human services.

"DIA" means the Iowa department of inspections and appeals and may include presiding officers where appropriate.

"Director" means the director of the department or the director's designee.

"Enrollee" means any applicant to or recipient of benefits or services pursuant to an assistance program.

"Good cause" means an intervening cause, not attributable to the negligence of a party, reasonably resulting in a delay or in attendance, for purposes of subrules 7.4(3) and 7.9(2).

"Intentional program violation" means deliberately making a false or misleading statement; or misrepresenting, concealing, or withholding facts; or committing any act that is a violation of the Food and Nutrition Act of 2008, food assistance program regulations, or any state law relating to the use, presentation, transfer, acquisition, receipt, possession, or trafficking of an electronic benefit transfer (EBT) card. An intentional program violation is determined through a food assistance administrative disqualification hearing. The hearing may result in a period of ineligibility for the program, a claim for overpayment of benefits, or both.

"Managed care organization" or *"MCO"* has the meaning assigned to it in rule 441—73.1(249A) and includes prepaid ambulatory health plans.

"Medicaid" means Iowa's medical assistance program administered under Iowa Code chapter 249A.

"Party-in-interest" refers to the party, including enrollees, whose rights or obligations are the subject of a contested case hearing under this chapter. Parties-in-interest may or may not be the appellant.

"Presiding officer" means an administrative law judge charged with the administration and adjudication of the contested case hearing process for a particular appeal.

"Self-represented" means representing oneself without an attorney.

ITEM 2. Rescind rule 441—7.2(17A) and adopt the following **new** rule in lieu thereof:

441—7.2(17A) Governing law and regulations. In the absence of an applicable rule in this chapter, the DIA rules found at 481—Chapter 10 govern department appeals. Notwithstanding the foregoing and the rules contained in this chapter, to the extent that federal or state law (including regulations and rules) related to a specific program is more specific than or contradicts these rules or the applicable DIA rules, the program-specific federal or state law shall control. For example, food assistance appeals shall be conducted in accordance with 7 CFR 273.15 and 7 CFR 273.16, and medical assistance appeals shall be conducted in accordance with 42 CFR Part 431, subpart E, and Part 438, subpart F.

ITEM 3. Adopt the following **new** 441—Chapter 7, Division I title:

DIVISION I
GENERAL APPEALS PROCESS

ITEM 4. Rescind rule 441—7.3(17A) and adopt the following **new** rule in lieu thereof:

441—7.3(17A) When a contested case hearing will be granted.

7.3(1) *Requirements.* A person shall be granted a contested case hearing if the party-in-interest fulfills all of the following requirements:

a. The party-in-interest is entitled to a contested case hearing;

b. The party-in-interest has an ongoing, specific and personal interest in the outcome of the contested case hearing; and

c. The party-in-interest meets all of the other requirements contained in these rules.

7.3(2) *Contractual rights not subject to contested case hearing.* Unless otherwise provided by law, when an appellant seeks a contested case hearing of an issue predicated upon or governed by the terms of a contract between appellant and another party, including the department, a contested case hearing shall not be provided.

7.3(3) *Change in law.* A contested case hearing shall not be granted when the sole issue raised is a federal or state law requiring an automatic change adversely affecting some or all beneficiaries to an assistance program.

7.3(4) *Competitive procurement bid appeals.* Competitive procurement bid appeals shall be adjudicated pursuant to Division II of this chapter.

ITEM 5. Rescind rule 441—7.4(17A) and adopt the following **new** rule in lieu thereof:

441—7.4(17A) Initiating an appeal.

7.4(1) *Exhaustion of remedies.* An appellant shall only be granted a contested case hearing if the appellant has exhausted all other appeal remedies available to the party-in-interest. An appellant should refer to program-specific provisions for the appropriate procedures applicable to specific programs.

7.4(2) *Medicaid managed care enrollees exhaustion of remedies.*

a. A Medicaid managed care enrollee shall be granted a contested case hearing only if the enrollee has either received a decision from a managed care organization in the time and manner required by rule 441—73.12(249A) or has been deemed to have exhausted the managed care organization appeals under paragraph 7.4(2)*"b."*

b. If a Medicaid enrollee's managed care organization fails to provide a decision in the time and manner required by rule 441—73.12(249A), the enrollee shall be deemed to have exhausted the managed care organization's appeals process and may initiate a contested case hearing.

7.4(3) *Time to appeal.* For a contested case hearing to be granted, the following timelines must be met:

a. Food assistance, Medicaid eligibility, healthy and well kids in Iowa (HAWK-I), fee-for-service Medicaid coverage, family planning program and autism support program. For appeals pertaining to food assistance, Medicaid eligibility, healthy and well kids in Iowa (HAWK-I), fee-for-service Medicaid coverage, the family planning program or the autism support program, the appellant must appeal on or before the ninetieth day following the date of notice of an adverse benefit determination.

b. Managed care organization medical coverage. For appeals pertaining to medical services coverage under Medicaid managed care, the appellant must appeal on or before the one hundred twentieth day following the date of exhaustion, actual or deemed, of the managed care organization appeal process outlined in rule 441—73.12(249A).

c. Tax offsets. Except for counties appealing an offset under 441—Chapter 14, for appeals of state or federal tax offsets, the appellant must appeal on or before the fifteenth day following the date of notice of the action. For counties appealing a debtor offset under 441—Chapter 14, the county must appeal on or before the thirtieth day following the date of notice of the offset.

d. Iowa individual disaster assistance program. For appeals pertaining to the Iowa individual disaster assistance program, the appellant must appeal on or before the fifteenth day following the date of the department's reconsideration decision, pursuant to 441—subrule 58.7(1).

e. Iowa disaster case management program. For appeals pertaining to the Iowa disaster case management program, the appellant must appeal on or before the fifteenth day following the date of the department's reconsideration decision, pursuant to 441—subrule 58.7(1).

f. Dependent adult abuse. For appeals regarding dependent adult abuse, the appellant must appeal within six months of the date of notice of the action as provided in Iowa Code section 235B.10.

g. Child abuse. For appeals regarding child abuse, the person alleged responsible for the abuse must appeal on or before the ninetieth day following the date of notice of the action as provided in Iowa Code section 235A.19. A subject of a child abuse report, other than the alleged person responsible for the abuse, may file a motion to intervene in the appeal on or before the tenth day following the date of notice of the right to intervene.

h. Sex offender risk assessment. For appeals regarding a sex offender risk assessment, the appellant must appeal in writing on or before the fourteenth day following the date of notice.

i. Assistance program overpayments. For appeals pertaining to the family investment program, refugee cash assistance, PROMISE JOBS, child care assistance, medical assistance, healthy and well kids in Iowa (HAWK-I), family planning program or food assistance overpayments, the party-in-interest's right to appeal the existence, computation and amount of the overissuance or overpayment begins when the department sends the first notice informing the party-in-interest of the overissuance or overpayment.

j. All other appeals. For all other appeals, and unless federal or state law provides otherwise elsewhere, the appellant must appeal on or before the thirtieth day following the date of notice of the action being appealed. If such an appeal is made more than 30 days, but less than 90 days, of the date of notice, the director or director's designee may, at the director's or designee's sole discretion, allow a contested case hearing if the delay was for good cause, substantiated by the appellant.

7.4(4) *Written and oral notification.* The department shall advise each applicant and recipient of the right to appeal any adverse decision affecting the person's status.

a. Written notification of the following shall be given at the time of application and at the time of any agency action affecting the claim for assistance.

(1) The right to request a hearing.

(2) The procedure for requesting a hearing.

(3) The right to be represented by others at the hearing unless otherwise specified by statute or federal regulation.

b. Written notification shall be given on the application form and all notices of decision.

ITEM 6. Rescind rule 441—7.5(17A) and adopt the following **new** rule in lieu thereof:

441—7.5(17A) How to request an appeal.

7.5(1) *Ways to request a hearing.* An appellant may request a contested case hearing:

a. Via the department's website,

b. By telephone, except as specified in subrule 7.5(4),

c. By mail,

d. In person, except as specified in subrule 7.5(4), or

e. Through other commonly available electronic means (such as email or facsimile).

7.5(2) *Hearing request.* The request for a contested case hearing must be sufficiently detailed so that the department can reasonably understand the action being appealed. The department may request additional information to determine the scope of the appeal. The department may deny if there is not sufficient information to determine the action being appealed.

7.5(3) *Filing date.* The date of filing for appeal requests sent by regular mail shall be the date postmarked on the envelope sent to the department or, when a postmarked envelope is not available, on the date the appeal is stamped received by the agency. The date of filing for appeal requests sent electronically shall be determined by the date on which the electronic submission was completed.

7.5(4) *Appeals that must be filed in writing.* Appeal requests pertaining to foster care, adoption, state supplementary assistance, the autism support program, the Iowa individual disaster assistance program, the Iowa disaster case management program, sex offender risk assessment, record check evaluation, child care registered or nonregistered homes, child abuse, dependent adult abuse or child support must be made in writing.

7.5(5) *Department's responsibilities.* Unless the appeal is voluntarily withdrawn, the department worker or agent responsible for representing the department at the hearing shall:

a. Within one working day of receipt of an appeal request, forward Form 470-0487 or 470-0487(S), Appeal and Request for Hearing; the written appeal; the postmarked envelope, if there is one; and a copy of the notification of the proposed adverse action to the appeals section.

b. Within ten days of the receipt of the appeal, forward a summary and supporting documentation of the worker's or agent's factual basis for the proposed action to the appeals section. When practicable, the summary may also include suggested relevant legal authorities.

c. Copies of all materials sent to the appeals section or the presiding officer to be considered in reaching a decision on the appeal are to be provided to the appellant at the same time as the materials are sent to the appeals section or the presiding officer.

ITEM 7. Rescind rule 441—7.6(17A) and adopt the following **new** rule in lieu thereof:

441—7.6(17A) Prehearing procedures.

7.6(1) *Acknowledgment of appeal.* When the appeals section receives a request for appeal, it shall send acknowledgment of the receipt of the appeal to the parties to the appeal. For appeals regarding child abuse, all subjects other than the person alleged responsible (party-in-interest) will be notified of the opportunity to file a motion to intervene as provided in Iowa Code section 235A.19.

7.6(2) *Acceptance or denial of appeal.* The appeals section will determine with reasonable promptness whether the party-in-interest is entitled to a contested case hearing under rule 441—7.3(17A). If a request is accepted, the appeals section will certify the appeal to DIA and designate the issues on appeal pursuant to subrule 7.6(3). If a request for a contested case hearing is denied, the appeals section will provide written notice of and the reasons for the denial. On or before the thirtieth day following the denial, the individual requesting the appeal may provide additional information related to the individual's asserted right to a contested case hearing and request reconsideration of the denial.

7.6(3) *Designation of issues for appeal.*

a. Initial designation. After determining that the party-in-interest is entitled to a contested case hearing, the appeals section will designate the issues to be decided at the contested case hearing. The issues identified may include all issues raised by the appellant and may also include additional issues identified by the appeals section. The issues designated shall be certified to DIA and be identified in the notice of hearing issued pursuant to subrule 7.6(5).

b. Additional designation of issues. If any party believes additional issues should be designated, on or before the tenth day following the date of the notice of hearing, the party shall identify those additional issues. The presiding officer shall determine whether all issues have properly been preserved. If the hearing is within ten days of the date of the notice of hearing, the party shall identify any additional issues at the hearing.

7.6(4) *Group hearings regarding medical assistance.* The appeals section may respond to a series of related, individual requests for hearings regarding medical assistance by consolidating individual hearings into a single group hearing where the sole issue is based on state or federal law or policy. An appellant scheduled for a group hearing may withdraw and request an individual hearing.

7.6(5) *Notice of hearing.*

a. Issuance of hearing notice. Except as provided in paragraph 7.6(5)*"b,"* DIA shall send notice to the parties of the appeal at least ten calendar days in advance of the hearing setting forth the date, time, method, and place of the hearing; that evidence may be presented orally or documented to establish pertinent facts; that the parties may bring and question witnesses and refute testimony; and that the parties may be represented by others, including an attorney, at the parties' own cost and as subject to

state and federal law. Notice shall be mailed by first-class mail, postage prepaid, and addressed to the appellant at the appellant's last-known address.

b. Intentional program violation hearing notices. DIA shall send notices of hearing regarding alleged intentional program violations at least 30 days in advance of the hearing date. The notices under this paragraph shall otherwise comply with the requirements of paragraph 7.6(5)*"a."*

7.6(6) *Appellant's right to department's case file.* Prior to and during the contested case hearing, the department must provide enrollees or their authorized representative with the opportunity to examine the content of the appellant's case file, if any, and all documents and records to be used by the department at the hearing.

7.6(7) *Informal conference.* The purpose of an informal conference is to provide information as to the reasons for the intended adverse action, to answer questions, to explain the basis for the adverse action or position, and to provide an opportunity for the appellant to examine the contents of the case record.

a. When requested by the appellant, an informal conference with a representative of the department or one of its contracted partners, including a managed care organization, shall be held as soon as possible after the appeal has been filed. An appellant's representative shall be allowed to attend and participate in the informal conference, unless precluded by federal rule or state statute.

b. An informal conference need not be requested for the appellant to examine the contents of the case record.

ITEM 8. Rescind rule 441—7.7(17A) and adopt the following **new** rule in lieu thereof:

441—7.7(17A) Timelines for contested case hearings.

7.7(1) *Medical assistance.* In cases involving the determination of medical assistance, the contested case hearing shall be held within a time frame such that the final administrative action is timely pursuant to 42 CFR 431.244(f).

7.7(2) *Community spouse resource allowance.* In cases involving the determination of the community spouse resource allowance, the hearing shall be held within 30 days of the date of the appeal request.

7.7(3) *Sex offender risk assessment.* In cases involving an appeal of a sex offender risk assessment, the hearing or administrative review shall be held within 30 days of the date of the appeal request.

ITEM 9. Rescind rule 441—7.8(17A) and adopt the following **new** rule in lieu thereof:

441—7.8(17A) Contested case hearing procedures.

7.8(1) *Method.* Contested case hearings may be conducted via telephone or videoconference. Upon request of a party to the appeal or order of the presiding officer, the contested case hearing shall be conducted in person.

7.8(2) *Evidence.*

a. The parties to a contested case hearing shall be permitted to:

(1) Bring witnesses,

(2) Submit competent evidence to establish all pertinent facts and circumstances,

(3) Present arguments without undue interference,

(4) Question or refute any testimony or evidence, including through cross-examination, and

(5) Respond to evidence and arguments on all issues.

b. Evidence shall be received or excluded as provided in Iowa Code section 17A.14.

7.8(3) *Right to counsel.* Parties to an appeal shall be permitted to be represented by counsel at the parties' own expense.

7.8(4) *Self-represented appellants.* The presiding officer shall, at the officer's discretion, provide reasonable assistance to self-represented appellants. The presiding officer must, however, ensure that such assistance does not impact the independence and fairness of the contested case hearing process.

7.8(5) *Closed to public.* Contested case hearings are closed to the public, and unless otherwise provided by state or federal law, only the parties, their representatives, permissible intervenors, and witnesses may be present for a contested case hearing in the absence of mutual agreement of the parties.

7.8(6) *Administration of appeals.* Except as otherwise provided in this chapter or other applicable federal or state law, discretion in the conduct and administration of appeals is vested in the contested case hearing presiding officer.

7.8(7) *Contested cases with no factual dispute.* If the parties in a contested case agree that there is no dispute of material fact, the parties may present all admissible evidence either by stipulation, or as otherwise agreed, in lieu of an evidentiary hearing. If an agreement is reached, the parties shall jointly submit a schedule for submission of the record, briefs and oral arguments to the presiding officer for approval.

ITEM 10. Rescind rule 441—7.9(17A) and adopt the following **new** rule in lieu thereof:

441—7.9(17A) Miscellaneous rules governing contested case hearings.

7.9(1) *Ex parte communication.* Ex parte communications between the presiding officer and person or party in connection with any issue of fact or law in the contested case proceeding is prohibited except as permitted by Iowa Code section 17A.17. All of the provisions of Iowa Code section 17A.17 apply.

7.9(2) *Default.* If a party fails to appear at a scheduled hearing or prehearing conference without good cause as determined by the presiding officer, the party's appeals may be denied and dismissed or may be heard and ruled upon, consistent with Iowa Code section 17A.12. Defaulting parties may file a timely motion to vacate, which shall be granted if the presiding officer determines good cause has been shown.

7.9(3) *Withdrawal.* An appellant may submit a withdrawal of a fair hearing request at any time prior to hearing through any of the methods identified in subrule 7.5(1), except for programs listed in subrule 7.5(4). For programs listed in subrule 7.5(4), a written request may be submitted via the department's website, by mail, in person, or through other commonly available electronic means (such as email or facsimile). Unless otherwise provided, a withdrawal shall be with prejudice.

7.9(4) *Medical assessment.* For Medicaid enrollees engaged in an appeal involving medical issues, the department may request, at the department's own expense, that the appellant submit to an appropriate medical assessment. The presiding officer shall order such assessment upon sufficient showing of necessity.

7.9(5) *Interpreters.* The department shall provide translation and interpretation services to appellants not fluent in English. Appellants are entitled to have an interpreter present during appeal hearings. In all cases when an appellant is illiterate or semiliterate, the presiding officer shall advise the appellant of the appellant's rights to the satisfaction of the appellant's understanding.

7.9(6) *Persons living with disabilities.* Persons living with disabilities shall be provided assistance through the use of auxiliary aids and services at no cost to the individual in accordance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

ITEM 11. Rescind rule 441—7.10(17A) and adopt the following **new** rule in lieu thereof:

441—7.10(17A) Proposed decision.

7.10(1) *Contents.* The presiding officer shall issue a written proposed decision to all parties clearly identifying the issues on appeal, holding, findings of fact, conclusions of law, and order. The findings of fact shall cite and be based exclusively on the record as defined by Iowa Code section 17A.12(6). The conclusions of law shall be limited to the contested issues of fact, policy or law and shall identify the specific provisions of law that support the ultimate conclusion.

7.10(2) *Access to record.* After receiving the proposed decision, appellants shall be given reasonable access to the record at a convenient place and time.

ITEM 12. Rescind rule 441—7.11(17A) and adopt the following **new** rule in lieu thereof:

441—7.11(17A) Director's review.

7.11(1) *Time.* Parties, including the department, may appeal the proposed decision to the director.

a. A request for director's review shall be in writing and postmarked or received within ten calendar days of the date on which the proposed decision was issued, except as provided for under paragraph 7.11(1)*"b."* A request for director's review may be accompanied by a brief written summary of the arguments in favor of director's review.

b. A managed care organization appealing a proposed decision reversing an adverse benefit determination shall request director's review within 72 hours from the date it received notice of the proposed decision.

7.11(2) *Grant or denial of review.* The department has full discretion to grant or deny a request for review. In addition, the director may initiate review of a proposed decision on the director's own motion at any time on or before the tenth day following the issuance of the proposed decision.

When the department grants a request for director's review, the appeals section shall notify the parties to the appeal of the review request and enclose a copy of the request. All other parties shall have ten calendar days from the date of notification to submit further written arguments or objections for consideration upon review.

7.11(3) *Cross-appeal.* When a party requests director's review in accordance with subrule 7.11(1), the remaining parties shall have ten calendar days from that date to submit cross-requests for director's review. The party originally seeking director's review shall have ten calendar days from the date of the cross-request for director's review to submit further written arguments or objections for consideration upon review.

7.11(4) *Limited record.* Director's review shall be limited to the issues and record before the contested case hearing presiding officer.

7.11(5) *Oral arguments.* Upon specific request, the director may, at the director's discretion, permit parties to present oral arguments with the parties' requests for director's review.

ITEM 13. Rescind rule 441—7.12(17A) and adopt the following **new** rule in lieu thereof:

441—7.12(17A) Final decisions.

7.12(1) *No appeal or denial of director review.* If there is no timely appeal from or review of the proposed decision, the presiding officer's proposed decision becomes the final decision of the agency.

7.12(2) *Timelines.*

a. The department or director will issue a final decision within the timelines prescribed by federal or state law. For all appeals for which there is no federal or state timeliness standard, the department or director will issue a final decision on or before the ninetieth day from the date the department receives an appeal request.

b. Except as otherwise provided by state or federal law, the time frames for a final decision provided under this rule may be tolled when:

(1) The appellant requests a delay;

(2) The appellant fails to take a required action; or

(3) There is an administrative or other emergency beyond the department's control.

c. DIA shall document in the record the reasons for any delay and the requesting party.

7.12(3) *Written notice of final decision.* The parties to the appeal shall be provided written notice of the department's final decision. The department shall also notify the appellant of the appellant's right to seek judicial review, where applicable.

ITEM 14. Rescind rule 441—7.13(17A) and adopt the following **new** rule in lieu thereof:

441—7.13(17A) Expedited review.

7.13(1) *Expedited review criteria.* Appellants to a medical assistance appeal may, at any time, file with the department a request for expedited review of the appeal. Expedited review shall be granted when the department determines, or a provider acting on behalf or in support of an appellant indicates, that taking the time for a standard resolution could seriously jeopardize the party-in-interest's life, physical or mental health, or ability to attain, maintain, or regain maximum function.

7.13(2) *Managed care expedited proceedings.*

a. If the appellant is granted an expedited review pursuant to subrule 73.12(2), all subsequent proceedings shall also be expedited without an additional request if the appeal request indicates that the managed care organization appeal was expedited and provides the basis for expedited relief.

b. When review is expedited pursuant to paragraph 7.13(2)*"a,"* the presiding officer shall issue a proposed decision as expeditiously as the enrollee's health condition requires, but no later than three working days after the department receives from the managed care organization the case file and information for any appeal of a denial of a service that, as indicated by the managed care organization:

(1) Meets the criteria for expedited resolution but was not resolved within the time frame for expedited resolution; or

(2) Was resolved within the time frame for expedited resolution but reached a decision wholly or partially adverse to the enrollee.

7.13(3) *Medicaid eligibility, nursing facility transfers or discharges, or preadmission and annual resident review expedited proceedings.* For expedited appeals related to Medicaid eligibility, nursing facility transfers or discharges, or preadmission and annual resident review requirements, the presiding officer shall issue a proposed decision as expeditiously as possible, but no later than seven working days after the department receives a request for expedited fair hearing.

7.13(4) *Medicaid-covered benefits or services expedited proceedings.* For expedited appeals related to Medicaid-covered benefits or services, the presiding officer shall issue a proposed decision as expeditiously as possible, but no later than provided in paragraph 7.13(2)*"b."*

7.13(5) *Final decision for expedited proceeding.* The department shall issue its final decision in accordance with this rule, except as provided by subrule 7.12(2).

7.13(6) *Notification if expedited relief is granted or denied.* The department shall notify the appellant as expeditiously as possible whether the request for expedited relief is granted or denied. Such notice must be provided orally or through electronic means to the extent consistent with federal and state law. If oral notice is provided, the department shall follow up with written notice, which may be through electronic means to the extent consistent with federal and state law.

ITEM 15. Rescind rule 441—7.14(17A) and adopt the following **new** rule in lieu thereof:

441—7.14(17A) Effect.

7.14(1) If the contested case hearing presiding officer's proposed decision is favorable to an enrollee in a Medicaid appeal, the department must promptly make corrective payments retroactive to the date an incorrect action was taken, and, if appropriate, provide for admission or readmission of an individual to a facility. If the presiding officer reverses a decision of a managed care organization to deny, limit, or delay services that were not furnished while the appeal was pending, the managed care organization must authorize or provide the disputed services promptly and as expeditiously as the enrollee's health condition requires, but no later than 72 hours from the date the managed care organization receives notice reversing the determination.

7.14(2) Unless there is contravening federal or state law, all final decisions shall be put into effect within seven days of the issuance of the final decision.

ITEM 16. Rescind rule 441—7.15(17A) and adopt the following **new** rule in lieu thereof:

441—7.15(17A) Calculating time. In computing any time period specified in this chapter, the period:

1. Excludes the day of the event that triggers the period;

2. Includes every day of the time period (including Saturdays, Sundays, and holidays on which the department is closed); and

3. Includes the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

ITEM 17. Rescind rule 441—7.16(17A) and adopt the following **new** rule in lieu thereof:

441—7.16(17A) Authorized representatives.

7.16(1) *Regulations.* The provisions of this rule only apply to the extent the standards expressed in this rule are not in conflict with other state or federal law.

7.16(2) *Designation of authority.* Legally recognized delegations of authority, such as guardianships, applicable designations of power of attorney, or similar designations, shall be sufficient for a delegate to serve as authorized representative under this chapter. A person who is not designated a legally recognized delegation of authority but who otherwise seeks to act as an authorized representative for an individual in an appeal under this chapter shall provide a written, signed designation of authority to the department with the request for appeal. The designation must provide the scope of the representation, applicable waivers for the release of confidential information, and any temporal or other limitations on the scope of representation. An authorized representative of a party-in-interest only represents the party-in-interest and has no independent right to appeal by virtue of the authorized representative's representation.

7.16(3) *Written designation.* For persons seeking to act as authorized representative of a party-in-interest in a Medicaid managed care appeal, the authorized representative's written designation of authority pursuant to subrule 7.16(2) shall be Form 470-5526, Authorized Representative for Managed Care Appeals.

7.16(4) *Appearance by attorney.* Legal counsel appearing on behalf of any person in a proceeding under this chapter shall enter an appropriate written appearance identifying the legal counsel.

ITEM 18. Rescind rule 441—7.17(17A) and adopt the following **new** rule in lieu thereof:

441—7.17(17A) Continuation and reinstatement of benefits.

7.17(1) *Programs for which no federal or state law applies.* For all assistance programs for which there is no contravening federal or state law, benefits or services shall not be suspended, reduced, restricted, or discontinued, nor shall a license, registration, certification, approval, or accreditation be revoked or other adverse action taken pending a final decision when:

a. An appeal is filed before the effective date of the intended action; or

b. The appellant requests a hearing within ten days of receipt of a notice to suspend, reduce, restrict, or discontinue benefits or services. The date on which the notice is received is considered to be five days after the date on the notice, unless the appellant shows the notice was not received within the five-day period.

7.17(2) *Sole issue is state or federal law or policy.* Benefits or services continued pursuant to subrule 7.17(1) may be suspended, reduced, restricted, or discontinued if the presiding officer determines at the contested case hearing that the sole issue is one of state or federal law or policy and the department has notified the enrollee in writing that services are to be suspended, reduced, restricted, or discontinued pending the proposed decision.

7.17(3) *Recoup cost of services or benefits.* The department or managed care organization may recoup the cost of benefits or services provided pursuant to this chapter if the adverse action appealed from is affirmed, consistent with state and federal law.

ITEM 19. Rescind rule 441—7.18(17A) and adopt the following **new** rule in lieu thereof:

441—7.18(17A) Emergency adjudicative proceedings.

7.18(1) *Necessary emergency action.* When and to the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with state and federal law, a contested case hearing presiding officer may issue a written order to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order. In determining the necessity of such an action, the presiding officer shall consider factors including, but not limited to, the following:

a. Whether there has been sufficient investigation and evidentiary support to ensure the order is proceeding based on reliable information;

b. Whether the specific circumstances giving rise to the potential order have been specifically identified and determined to be continuing;

c. Whether the person who is required to comply with the emergency adjudicative order may continue to engage in other activities without risk of immediate danger to the public health, safety, or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and

e. Whether the specific action contemplated is necessary to avoid the immediate danger.

7.18(2) *Issuance of order.* An emergency adjudicative order shall contain, or shall be expeditiously followed by, a written analysis, including findings of fact, conclusions of law, and policy reasons to justify the order. The agency shall provide written notice that best ensures prompt, reliable delivery. Such order shall be immediately delivered to the persons required to comply with the order.

7.18(3) *Completion of proceedings.* Upon issuance of an order under this rule, the department shall proceed as quickly as reasonably practicable to complete any proceedings that would be required if the matter did not involve an immediate danger. An order issued under this rule shall include notice of the date on which proceedings under this chapter are to be completed. After issuance of an order under this rule, continuance of further proceedings under this chapter shall only be granted in compelling circumstances upon application in writing. Before issuing an emergency adjudicative order, the presiding officer shall consider factors including, but not limited to, the following:

a. Whether there has been sufficient investigation and evidentiary support to ensure the order is proceeding based on reliable information;

b. Whether the specific circumstances giving rise to the potential order have been specifically identified and determined to be continuing;

c. Whether the person who is required to comply with the emergency adjudicative order may continue to engage in other activities without risk of immediate danger to the public health, safety, or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and

e. Whether the specific action contemplated is necessary to avoid the immediate danger.

ITEM 20. Rescind rules **441—7.19(17A)** to **441—7.21(17A)**.

ITEM 21. Rescind rules **441—7.23(17A)** and **441—7.24(17A)**.

ITEM 22. Amend rule 441—7.41(17A) as follows:

441—7.41(17A) Scope, bidder and applicability. The rules in Division II apply to appeals based on the department's competitive procurement bid process. A bidder is an entity that submits a proposal in response to a solicitation issued through the department of human services' competitive procurement process.

ITEM 23. Amend subrule 7.43(6) as follows:

7.43(6) *Method of hearing.* The department of inspections and appeals shall determine whether the appeal hearing is to be conducted in person, by videoconference or by teleconference call. The parties to the appeal may participate from multiple sites for videoconference or teleconference hearings. Any appellant is entitled to an in-person hearing if the appellant requests one. All parties shall be granted the same rights during a teleconference hearing as specified in rule ~~441—7.13(17A)~~ 441—7.8(17A).

ITEM 24. Amend rule 441—7.46(17A) as follows:

441—7.46(17A) Request for review of the proposed decision. A request for review of the proposed decision shall follow the provisions outlined in ~~subrules 7.16(5) to 7.16(8)~~ rule 441—7.11(17A).

ITEM 25. Amend subrule 7.47(2) as follows:

7.47(2) *Presiding officer.* Appeal hearings shall be conducted by an administrative law judge appointed by the department of inspections and appeals ~~pursuant to rule 441—7.3(17A)~~.

ITEM 26. Amend subrule 7.47(3) as follows:

7.47(3) *Rights of appellants during hearings.* All rights afforded appellants at rule ~~441—7.13(17A)~~ 441—7.8(17A) shall apply.

ITEM 27. Amend subrule 7.48(1) as follows:

7.48(1) The appeal record shall consist of all items specified in ~~subrule 7.16(1)~~ Iowa Code section 17A.16.

ITEM 28. Amend rule 441—7.50(17A) as follows:

441—7.50(17A) Ex parte communications. The rules regarding ex parte communications ~~listed at 441—7.18(17A)~~ specified in subrule 7.9(1) and Iowa Code section 17A.17 apply.

ITEM 29. Amend rule 441—7.51(17A) as follows:

441—7.51(17A) Right of judicial review. The rules regarding right of judicial review ~~listed at 441—7.20(17A)~~ specified in subrule 7.12(3) and Iowa Code section 17A.19 apply.

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