

**PUBLIC HEALTH DEPARTMENT[641]**

**Adopted and Filed**

**Rule making related to volunteer health care provider program**

The Public Health Department hereby amends Chapter 88, “Volunteer Health Care Provider Program,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 135.24.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 135.24.

*Purpose and Summary*

A quality improvement (QI) group was formed to evaluate the Volunteer Health Care Provider Program (VHCPP). The group consists of representatives from the Department, the Boards of Medicine and Nursing, and the Dental Board and representatives from Free Clinics of Iowa. These amendments are an outcome of this QI process.

These amendments streamline the program administration without adding additional risk to the State for its role in providing legal representation for VHCPP participants in the event of a claim. These amendments:

1. Update the definition of “health care facility” to reflect current terminology.
2. Include new definitions for “license,” “permanent site” and “temporary site.”
3. Change the individual volunteer health care provider eligibility application and agreement. The changes focus on licensing the provider applicant for those practices for which the provider is licensed and which are covered in subrule 88.5(1) as allowable activities. The requirement to identify a particular clinic in the provider agreement is removed since that requirement is not included in the Iowa Code. An individual clinic that will use the individual volunteer health care provider services will have to check the provider VHCPP agreement to ensure that the services align with the clinic’s VHCPP-covered services.
4. Change the protected clinic eligibility requirements as follows:
  - The clinic shall provide a list of providers only when the Department asks for one. It is anticipated that this request will be made when a claim is filed for a service provided at the clinic.
  - The clinic will only be covered for services provided by providers under the categories noted in rule. The Department does not need to have the list, because it changes. It is the responsibility of the clinic to track this for the clinic’s own protection.
5. Change the rule for the sponsor entities and protected clinics as follows:
  - The requirement that the application include the exact days and times of service provision is removed. The liability coverage will be for one hour prior to the provision of covered services through one hour after the provision of covered services and will be noted in the VHCPP agreement.
  - A requirement to identify a site as a permanent site or temporary site is added. This change informs a subsequent rule on the length of agreements and how an acknowledgment and approval process for identified changes in the locations of temporary sites would be handled differently from a change in the location of a permanent site, which would necessitate an agreement amendment.
6. Revise the terms of agreement as follows:
  - The length of the agreement is changed from two years to five years to lessen the administrative burden.
  - How the Department will handle changes to temporary sites versus how it will handle changes to permanent sites for approvals and amendments to VHCPP agreements is specified.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 15, 2020, as **ARC 4853C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the State Board of Health on March 11, 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*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department's waiver and variance procedures contained in 641—Chapter 178.

*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 May 13, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend rule **641—88.2(135)**, definition of "Health care facility," as follows:

"*Health care facility*" means a residential care facility, a nursing facility, an intermediate care facility for persons with mental illness, or an intermediate care facility for persons with ~~mental retardation~~ an intellectual disability.

ITEM 2. Adopt the following **new** definitions of "License," "Permanent site" and "Temporary site" in rule **641—88.2(135)**:

"*License*" means a license, certification or registration issued to a person by a licensing authority which evidences the granting of authority to engage in a profession or occupation.

"*Permanent site*" means a site at which free health care services will be provided on a continuous basis.

"*Temporary site*" means a site at which free health care services will be provided for a short period of time not to exceed three days. "Temporary site" includes but is not limited to temporary health fairs, flu shot clinics, and temporary sites that provide back-to-school physicals.

ITEM 3. Rescind subparagraphs **88.3(1)"a"(1) to (4)**.

ITEM 4. Amend paragraphs **88.3(1)"b"** and **"c"** as follows:

*b.* Application. The applicant shall submit the following information on forms provided by the VHCPP:

~~(1) The patients to be served individual volunteer health care provider current licensure identification number and expiration date;~~

~~(2) The health care services to be provided;~~

~~(3) The site where health care services are to be provided;~~

~~(4) The days and maximum number of hours when the free health care services will be provided each week at each site;~~

~~(5) (2) The health care services to be voluntarily provided that will be provided meet all of the following requirements:~~

~~1. The services fall under the individual volunteer health care provider's licensed scope of practice;~~

~~2. The services are covered health care services listed in paragraph 88.5(1) "d"; and~~

~~3. The individual volunteer health care provider applicant is willing to voluntarily provide the health care services to those persons who are uninsured and underinsured for the public health purpose of improved health, prevention of illness/injury, and disease management.~~

c. Agreement. The individual volunteer health care provider shall have a signed and current protection agreement with the VHCPP which identifies the covered health care services within the respective scope of practice and conditions of defense and indemnification as provided in rules 641—88.5(135) and 641—88.6(135). The protection agreement shall:

~~(1) Provide that the individual volunteer health care provider shall perform only those health care services identified and approved by the VHCPP;~~

~~(2) Identify the health care services to be provided by the sponsor entity or protected clinic which has been approved by the VHCPP through an application process;~~

~~(3) Identify by category the patient groups to be served;~~

~~(4) Identify the sites at which the free health care services will be provided;~~

~~(5) Identify the maximum amount of time the free health care services will be provided by the individual volunteer health care provider at the identified sites each week;~~

~~(6) Provide that the individual volunteer health care provider shall maintain proper records of the health care services;~~

~~(7) Provide that the individual volunteer health care provider shall make no representations concerning eligibility for the VHCPP or eligibility of services for indemnification by the state except as authorized by the department;~~

~~(8) Provide that the individual volunteer health care provider shall cooperate fully with the state in the defense of any claim or suit relating to participation in the VHCPP, including attending hearings, depositions and trials and assisting in securing and giving evidence, responding to discovery and obtaining the attendance of witnesses;~~

~~(9) Provide that the individual volunteer health care provider shall accept financial responsibility for personal expenses and costs incurred in the defense of any claim or suit related to participation in the VHCPP, including travel, meals, compensation for time and lost practice, and copying costs, and agree that the state will not compensate the individual volunteer health care provider for the individual volunteer health care provider's expenses or time needed for the defense of the claim or suit;~~

~~(10) Provide that the individual volunteer health care provider shall receive no direct monetary compensation of any kind for services provided in the VHCPP;~~

~~(11) Provide that the individual volunteer health care provider shall comply with the protection agreement with the VHCPP concerning approved health care services.~~

(1) The protection agreement is only valid during the time that the individual volunteer health care provider maintains a current unrestricted license and only for voluntary services provided in conjunction with a sponsor entity or protected clinic which has its own valid VHCPP protection agreement in effect at the time of service provision.

(2) The protection agreement with the VHCPP shall provide that the individual volunteer health care provider shall:

1. Perform only those health care services identified and approved by the VHCPP;

2. Promptly notify the VHCPP of any changes in licensure status;

3. Maintain proper records of the health care services;
4. Make no representations concerning eligibility for the VHCPP or eligibility of services for indemnification by the state except as authorized by the department;
5. Cooperate fully with the state in the defense of any claim or suit relating to participation in the VHCPP, including attending hearings, depositions and trials and assisting in securing and giving evidence, responding to discovery and obtaining the attendance of witnesses;
6. Accept financial responsibility for personal expenses and costs incurred in the defense of any claim or suit related to participation in the VHCPP, including travel, meals, compensation for time and lost practice, and copying costs, and agree that the state will not compensate the individual volunteer health care provider for the individual volunteer health care provider's expenses or time needed for the defense of the claim or suit;
7. Receive no direct monetary compensation of any kind for services provided in the VHCPP;
8. Comply with the protection agreement with the VHCPP concerning approved health care services.

ITEM 5. Amend subrule 88.3(2) as follows:

**88.3(2) Protected clinic eligibility.** To be eligible for protection as a state agency under Iowa Code chapter 669 for a claim arising from the provision of covered health care services at a protected clinic, the protected clinic shall satisfy each of the following conditions at the time of the act or omission allegedly resulting in injury:

- a. The protected clinic shall comply with subrules 88.4(1) through 88.4(5).
- b. The protected clinic shall ~~have provided~~, upon request from the department, provide to the department a list of all health care providers who ~~provide~~ provided health care services at the protected clinic at the time of a claim made against the individual health care provider or protected clinic which arises out of the provision of free health care service rendered or which should have been rendered by the individual volunteer health care provider or protected clinic.
- c. The protected clinic shall ~~have submitted proof to the department that each~~ only be covered under the VHCPP for the provision of covered health care services by a health care provider providing health care services at the protected clinic who either:
  - (1) Holds a current individual volunteer health care provider protection agreement with the VHCPP, or
  - (2) Holds current professional liability insurance coverage and an active unrestricted license, registration, or certification to practice in Iowa under Iowa Code chapter 147A, 148, 148A, 148B, 148C, 149, 151, 152, 152B, 152E, 153, 154, 154B, 154C, 154D, 154F, or 155A.
- d. The protected clinic shall submit a list of the clinic board of directors and contact information for the board of directors, if applicable.
- e. If the protected clinic is a charitable organization within the meaning of Section 501(c)(3) of the Internal Revenue Code, the protected clinic shall provide proof of Section 501(c)(3) status to the VHCPP.
- f. A protected clinic may allow health care profession students to volunteer at the protected clinic provided that the following conditions are satisfied:
  - (1) The college, university, or other health care profession educational institution provides professional liability insurance which covers the students; and
  - (2) The protected clinic or the health care profession institution provides general liability and professional liability insurance which covers the students; and
  - (3) The students provide only those services or activities as are authorized by the education agreement, and such services and activities are provided under the on-site supervision of a health care provider.

ITEM 6. Amend paragraph **88.4(3)“d”** as follows:

d. ~~The days and times when health care services are to be provided at each site~~ Classification of each site as a permanent site or temporary site;

ITEM 7. Amend subrule 88.4(4) as follows:

**88.4(4)** Agreement. A signed and current sponsor entity agreement or protected clinic agreement shall exist with the VHCPP which shall:

a. Provide that the individual volunteer health care provider or health care provider within a protected clinic and the individual volunteer health care provider within a sponsor entity shall perform only those health care services identified and approved by the VHCPP;

b. Identify by category the patient groups to be served;

c. Identify the sites at which the free health care services will be provided;

d. Identify the days and times when health care services are to be provided at each site as a permanent site or temporary site for the provision of free health care services through the VHCPP;

e. Provide that the sponsor entity or protected clinic shall maintain proper records of health care services for a period of seven years from the date of service or, in the case of a minor, for a period of one year after the minor has reached the age of majority; and

f. Provide that the sponsor entity agrees that only the individual volunteer health care provider or protected clinic covered under a current VHCPP protection agreement at the time of the service provision in a claim is afforded protection under Iowa Code section 135.24 and that the state assumes no obligation to the sponsor entity, its employees, officers, or agents. The sponsor entity or protected clinic shall submit a statement, which shall be submitted on forms provided by the VHCPP, attesting that the sponsor entity or protected clinic and its staff, employees and volunteers agree to:

(1) Cooperate fully with the state in the defense of any claim or suit relating to participation in the VHCPP, including attending hearings, depositions and trials and assisting in securing and giving evidence, responding to discovery and obtaining the attendance of witnesses;

(2) Accept financial responsibility for the sponsor entity's or protected clinic's expenses and costs incurred in the defense of any claim or suit related to participation in the VHCPP, including travel, meals, compensation for time and lost practice, and copying costs, and agree that the state will not compensate the sponsor entity or protected clinic for expenses or time needed for the defense of the claim or suit;

(3) Receive no direct monetary compensation of any kind for health care services provided in the sponsor entity or protected clinic;

(4) Comply with the sponsor entity agreement or protected clinic agreement with the VHCPP concerning approved health care services.

ITEM 8. Amend subrule 88.6(5) as follows:

**88.6(5)** The health care services are provided to a patient who is a member of a patient group identified in the sponsor entity or protected clinic protection agreement with the VHCPP.

ITEM 9. Amend rule 641—88.7(135) as follows:

**641—88.7(135) Term of agreement.**

**88.7(1)** *Individual volunteer health care provider.* The protection agreement with the VHCPP shall expire ~~two~~ five years from the date of execution. Individual volunteer health care providers may apply for renewal by filing an application at least 30 days prior to expiration of the protection agreement.

**88.7(2)** *Protected clinic.* The protection agreement with the VHCPP shall expire ~~two~~ five years from the date of execution. The protected clinic may apply for renewal by filing an application at least 30 days prior to expiration of the protection agreement. It is anticipated that temporary sites may change over the five-year period. An updated list of temporary site location or service provision changes shall be provided to the department for review and acceptance at least one week prior to service provision at the temporary site. Location or service provision changes to permanent sites shall require a protection agreement amendment.

**88.7(3)** *Sponsor entity.* The sponsor entity agreement with the VHCPP shall expire ~~two~~ five years from the date of execution. Sponsor entities may apply for renewal by filing an application at least 30 days prior to expiration of the sponsor entity agreement. It is anticipated that temporary sites may change over the five-year period. An updated list of temporary site location or service provision changes shall be provided to the department for review and acceptance at least one week prior to service provision at

the temporary site. Location or service provision changes to permanent sites shall require a protection agreement amendment.

ITEM 10. Amend rule 641—88.11(135) as follows:

**641—88.11(135) Effect of suspension or revocation.** If the VHCPP suspends or revokes an individual volunteer health care provider's protection agreement, sponsor entity protection agreement, or protected clinic's protection agreement, the action shall suspend or revoke future protection but shall not negate defense and indemnification coverage for covered acts or omissions which occurred during the effective dates of the protection agreement.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/8/20.