

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

**Proposing rule making related to day habilitation
and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” and Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4.

Purpose and Summary

The purpose of the proposed amendments is to implement guidance provided from the Centers for Medicare and Medicaid Services (CMS), which clarifies that day habilitation services may provide a pathway to employment for the Home- and Community-Based Services (HCBS) day habilitation services provided through the HCBS Intellectual Disabilities (ID) waiver and state plan HCBS Habilitation Program for persons with chronic mental illness. These amendments clarify the activities provided through day habilitation to assist members in participating in the community, developing social roles and responsibilities, and increasing independence and the potential for employment. The Department convened a work group to address the requirements for providers and scope of services.

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 rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 29, 2020. Comments should be directed to:

Nancy Freudenberg
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

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).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 77.25(7) as follows:

77.25(7) Day habilitation.

a. The following providers may provide day habilitation:

~~a.~~ (1) An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities to provide services that qualify as day habilitation under 441—subrule 78.27(8).

~~b.~~ (2) An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities to provide other services and began providing services that qualify as day habilitation under 441—subrule 78.27(8) since the agency’s last accreditation survey. The agency may provide day habilitation services until the current accreditation expires. When the current accreditation expires, the agency must qualify under ~~paragraph “a,” “d,” “g,” or “h.”~~ subparagraph 77.25(7)“a”(1), 77.25(7)“a”(4), or 77.25(7)“a”(7).

~~c.~~ (3) An agency that is not accredited by the Commission on Accreditation of Rehabilitation Facilities but has applied to the Commission within the last 12 months for accreditation to provide services that qualify as day habilitation under 441—subrule 78.27(8). An agency that has not received accreditation within 12 months after application to the Commission is no longer a qualified provider.

~~d.~~ (4) An agency that is accredited by the Council on Quality and Leadership in Supports for People with Disabilities.

~~e.~~ (5) An agency that has applied to the Council on Quality and Leadership in Supports for People with Disabilities for accreditation within the last 12 months. An agency that has not received accreditation within 12 months after application to the Council is no longer a qualified provider.

~~f.~~ (6) An agency that is accredited under 441—Chapter 24 to provide day treatment or supported community living services.

~~g.~~ An agency that is certified by the department to provide day habilitation services under the home and community-based services intellectual disability waiver pursuant to rule 441—77.37(249A).

~~h.~~ (7) An agency that is accredited by the International Center for Clubhouse Development.

~~i.~~ (8) An agency that is accredited by the Joint Commission on Accreditation of Healthcare Organizations.

b. Direct support staff providing day habilitation services shall meet the following minimum qualifications in addition to other requirements outlined in administrative rule:

(1) A person providing direct support without line-of-sight supervision shall be at least 18 years of age and possess a high school diploma or equivalent degree. A person providing direct support with line-of-sight supervision shall be 16 years of age or older.

(2) A person providing direct support shall not be an immediate family member of the member.

(3) A person providing direct support shall, within six months of hire or within six months of [the effective date of this rule], complete at least 9.5 hours of training in supporting members in the activities listed in 701—paragraph 78.27(8)“a,” as offered through DirectCourse or Relias or other nationally recognized training curriculum.

(4) A person providing direct support shall annually complete 4 hours of continuing education in supporting members in the activities listed in 701—paragraph 78.27(8)“a,” as offered through DirectCourse or Relias or other nationally recognized training curriculum.

ITEM 2. Rescind subrule 77.37(27) and adopt the following **new** subrule in lieu thereof:

77.37(27) Day habilitation providers. Day habilitation services may be provided by agencies meeting the qualifications in subrule 77.25(7).

ITEM 3. Amend subrule 78.27(8) as follows:

78.27(8) Day habilitation. “Day habilitation” means services that provide opportunities and support for community inclusion and build interest in and develop skills for active participation in recreation, volunteerism and integrated community employment. Day habilitation provides assistance with acquisition, retention, or improvement of self-help, socialization, and adaptive skills community participation, and daily living skills.

a. Scope. Day habilitation activities and environments are designed to foster the acquisition of skills, appropriate positive social behavior, greater independence, and personal choice. Services focus on enabling supporting the member to participate in the community, develop social roles and relationships, and increase independence and the potential for employment. Services are designed to assist the member to attain or maintain the member’s maximum functional level and shall be coordinated with any physical, occupational, or speech therapies in the comprehensive service plan. Services may serve to reinforce skills or lessons taught in other settings. Services must enhance or support the member’s individual goals as identified in the member’s comprehensive service plan. Services may also provide wraparound support secondary to community employment. Day habilitation activities may include:

(1) Intellectual functioning; Identifying the member’s interests, preferences, skills, strengths and contributions,

(2) Physical and emotional health and development; Identifying the conditions and supports necessary for full community inclusion and the potential for competitive integrated employment,

(3) Language and communication development; Planning and coordination of the member’s individualized daily and weekly day habilitation schedule,

(4) Cognitive functioning; Developing skills and competencies necessary to pursue competitive integrated employment,

(5) Socialization and community integration; Participating in community activities related to hobbies, leisure, personal health, and wellness,

(6) Functional skill development; Participating in community activities related to cultural, civic, and religious interests,

(7) Behavior management; Participating in adult learning opportunities,

(8) Responsibility and self-direction; Participating in volunteer opportunities,

(9) Daily living activities; Training and education in self-advocacy and self-determination to support the member’s ability to make informed choices about where to live, work, and recreate,

(10) Self-advocacy skills; or Assistance with behavior management and self-regulation,

(11) Mobility. Use of transportation and other community resources,

(12) Assistance with developing and maintaining natural relationships in the community,

(13) Assistance with identifying and using natural supports,

(14) Assistance with accessing financial literacy and benefits education,

(15) Other activities deemed necessary to assist the member with full participation in the community, developing social roles and relationships, and increasing independence and the potential for employment.

b. Family training option. Day habilitation services may include training families in treatment and support methodologies or in the care and use of equipment. Family training may be provided in the member’s home. The unit of service is 15 minutes. The units of services payable are limited to a maximum of 40 units per month.

c. Expected outcome of service. The expected outcome of day habilitation services is active participation in the community in which the member lives, works, and recreates. Members are expected

to have opportunities to interact with individuals without disabilities in the community, other than those providing direct services, to the same extent as individuals without disabilities.

~~b.~~ d. *Setting.* Day habilitation shall take place in community-based, nonresidential settings separate from the member's residence. Family training may be provided in the member's home.

~~e.~~ e. *Duration.* Day habilitation services shall be furnished for four or more hours per day on a regularly scheduled basis for one or more days per week or as specified in the member's comprehensive service plan. Meals provided as part of day habilitation shall not constitute a full nutritional regimen (three meals per day).

f. *Unit of service.* A unit of day habilitation is 15 minutes (up to 16 units per day) or a full day (4.25 to 8 hours).

g. *Concurrent services.* A member's comprehensive service plan may include two or more types of nonresidential habilitation services (e.g., day habilitation, individual supported employment, long-term job coaching, small-group supported employment, and prevocational services). However, more than one service may not be billed during the same period of time (e.g., the same hour).

h. *Transportation.* When transportation is provided to the day habilitation service location from the member's home and from the day habilitation service location to the member's home, the day habilitation provider may bill for the time spent transporting the member.

~~i.~~ *Exclusions.* Day habilitation payment shall not be made for the following:

(1) ~~Vocational or prevocational services.~~ Services that are available to the individual under a program funded under Section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.). Documentation that funding is not available to the individual for the service under these programs shall be maintained in the service plan of each member receiving day habilitation services.

~~(2) Services that duplicate or replace education or related services defined in Public Law 94-142, the Education of the Handicapped Act.~~

~~(3) (2) Compensation to members for participating in day habilitation services.~~

~~(3) Support for members volunteering in for-profit organizations and businesses.~~

~~(4) Support for members volunteering to benefit the day habilitation service provider.~~

ITEM 4. Rescind subrule 78.41(14) and adopt the following **new** subrule in lieu thereof:

78.41(14) Day habilitation. Day habilitation services will be provided pursuant to subrule 78.27(8).