

**HUMAN SERVICES DEPARTMENT[441]**

**Notice of Intended Action**

**Proposing rule making related to HCBS elderly waiver budget cap  
and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in 2020 Iowa Acts, House File 2269.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2269.

*Purpose and Summary*

During the 2020 Legislative Session, House File 2269 directed the Department to eliminate the monthly budget maximum or cap for individuals eligible for the Medicaid home- and community-based services (HCBS) elderly waiver. The proposed amendments remove the total limit on the monthly cost of care for the elderly waiver.

*Fiscal Impact*

The fiscal impact of increasing or eliminating a waiver monthly cap must be calculated; however, because the majority of the HCBS elderly waiver members’ assessed needs are currently met within the established funding limits, the anticipated increase is cost-neutral or minimal. The Department estimated the fiscal impact of removing the monthly waiver funding cap by looking at approved exceptions to policy. Even though most elderly waiver service plans have a monthly maximum funding cap, the established exception-to-policy process allows for funding in excess of the waiver cap for medically necessary services to meet a member’s assessed needs. During calendar year 2019, the Iowa Medicaid Enterprise received 14 exception-to-policy requests to exceed the elderly waiver monthly cap; all of these requests were approved. A nominal fiscal impact of less than \$250,000 is expected.

*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 December 8, 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](mailto: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 subparagraph **83.22(2)“c”(2)** as follows:

(2) Services must be the least costly available to meet the service needs of the member. ~~The total monthly cost of the elderly waiver services exclusive of case management services shall not exceed the established monthly cost of the level of care. Aggregate monthly costs, excluding the cost of case management and home and vehicle modifications, are limited as follows:~~

<u>Skilled level of care</u>	<u>Nursing level of care</u>
\$2,792.65	\$1,365.78

ITEM 2. Amend paragraph **83.28(1)“c”** as follows:

c. Service needs ~~exceed the aggregate monthly costs established in 83.22(2)“b,”~~ or are not met by services provided.

ITEM 3. Rescind paragraph **83.28(2)“b.”**

ITEM 4. Reletter paragraphs **83.28(2)“c”** to “e” as **83.28(2)“b”** to “d.”