

**HUMAN SERVICES DEPARTMENT[441]**

**Notice of Intended Action**

**Proposing rule making related to mental health and disability services regional service fund and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 25, “Disability Services Management,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 225C.6 and 225C.7A.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 225C.7A.

*Purpose and Summary*

2021 Iowa Acts, Senate File 619, division XXV, section 106, creates a General Fund standing appropriation to the Department for distribution to the mental health and disability services (MHDS) regions through performance-based contracts and creates a regional incentive fund. The Department will make quarterly regional service system payments to an MHDS region combined account.

This proposed rule making amends MHDS regional finance rules to describe the requirements and process for regions to certify with the Department the amount of the ending fund balance from the previous year. Ending balance limitations and supplemental payment withholdings are defined. The proposed amendments also implement the criteria and reporting instructions for eligible financial encumbrances. Revisions are made to the regional incentive fund rules to include linkages to performance-based contract criteria. The amendments also outline the requirements and goals for performance-based contracts between the Department and the MHDS regions.

*Fiscal Impact*

Payments from the mental health and disability services regional service fund will be based on the per capita funding levels authorized in 2021 Iowa Acts, Senate File 619. Senate File 619 appropriates \$3 million to the regional incentive fund for state fiscal year 2022. Future incentive fund revenues cannot be estimated at this time due to the uncertainty of future county fund balances and the amounts that counties will be required to send back to the fund.

*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 January 18, 2022. 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. Adopt the following **new** definitions of “Cash flow,” “Encumbered,” “Ending balance limitation,” “Ending balance threshold,” “Ending fund balance” and “Regional service growth factor” in rule **441—25.11(311)**:

“Cash flow” means the same as “ending fund balance.”

“Encumbered” or “encumbrances” means regional commitments related to obligations or contracts as defined in subrule 25.13(6).

“Ending balance limitation” means the percentage limit allowable by state law that a region’s ending fund balance can exceed actual expenditures for the previous fiscal year.

“Ending balance threshold” means the same as defined in Iowa Code section 225C.7A.

“Ending fund balance” means the amount of residual funds remaining in a region’s combined account at the conclusion of a fiscal year after the region has met the financial obligations for implementation of its regional service system management plan.

“Regional service growth factor” means the same as defined in Iowa Code section 225C.7A.

ITEM 2. Amend rule 441—25.13(331) as follows:

**441—25.13(331) Regional finances.**

**25.13(1) Regional service payments.** The department will distribute funds from the mental health and disability services regional service fund to regions in accordance with Iowa Code section 225C.7A. Funds will be distributed in July, October, January, and April.

~~25.13(1)~~ **25.13(2) Funding.** Funding for non-Medicaid mental health and disability services and children’s behavioral health services is under the control of the governing board and shall:

a. Be maintained to limit administrative burden and provide public transparency regarding financial processes.

b. Be maintained in ~~one of three ways~~:

(1) ~~In a combined account.~~

(2) ~~In separate county accounts that are under the control of the governing board.~~

(3) ~~In other arrangements authorized by law.~~

c. Be used to fund services in accordance with the regional service system management plan and the performance-based contract.

d. Be maintained in a county mental health and disability services fund for the deposit of regional service payments for those counties exempted under Iowa Code section 331.389. Expenditures to be made from the county mental health and disability services fund will not be made from any other fund of the county. The exempted county mental health and disability services fund is considered to be the same as a region combined account and is subject to the same requirements as a region combined account.

**25.13(2) 25.13(3) Accounting system and financial reporting.** The accounting system and financial reporting to the department shall conform to Iowa Code section 331.391 and include all non-Medicaid mental health and disability expenditures. Information shall be separated and identified in a uniform chart of accounts, including but not limited to the following: expenses for administration; purchase of services; and enterprise costs for which the region is a service provider or is directly billing and collecting payments.

**25.13(4) Ending fund balance.** Each region shall certify to the department of human services on or before December 1 the region's cash flow amount in the combined account at the conclusion of the most recently completed fiscal year.

a. A region must submit the ending fund balance on forms specified by the department.

b. The certified ending fund balance shall exclude encumbered amounts for which resources already have been committed and been approved by the department in accordance with subrule 25.13(7).

c. A certified submission must:

(1) Be approved by the region's governing board prior to submittal to the department.

(2) Be signed by the chairperson of the regional governing board and the regional chief executive officer.

**25.13(5) Ending balance limitations.**

a. A region's certified ending fund balance as determined in subrule 25.13(4) will not exceed a percentage of the region's actual expenditures for the preceding fiscal year. The ending balance limitations are as follows:

(1) For the fiscal year beginning July 1, 2021, the ending balance shall be no more than 40 percent of the actual expenditures of that year.

(2) For the fiscal year beginning July 1, 2022, the ending balance shall be no more than 20 percent of the actual expenditures of that year.

(3) For the fiscal year beginning July 1, 2023, and each succeeding fiscal year thereafter, the ending balance shall be no more than 5 percent of the actual expenditures of that year.

b. If a region has an ending fund balance more than the limitation, the department will reduce the current fiscal year's remaining quarterly regional service payments equal to the excess ending fund balance amount.

c. If withholding a region's remaining quarterly payments does not sufficiently effectuate the required reduction, the region shall pay to the department any additional excess ending fund balance amount.

d. The amount of reductions to regional service payments and amounts paid to the department under paragraph 25.13(5) "c" shall be transferred and credited to the region incentive fund.

**25.13(6) Acceptable encumbrances.** A region shall report to the department moneys for which a commitment is imposed and binding.

a. Financial obligations entered into by the region may be considered an acceptable encumbrance under the following circumstances:

(1) Existence of evidence as demonstrated by a contract or purchase order that details the services to be delivered and cost to the region.

(2) Entry of the region into executed contracts or binding commitments shall occur through formal action of the region's governing board.

b. Acceptable encumbrances shall be entered into and fulfilled according to the time frames outlined below:

(1) For the fiscal year beginning July 1, 2021, funds shall be obligated by the end of the fiscal year. Services shall be fully executed and moneys expended by June 30, 2023.

(2) For the fiscal year beginning July 1, 2022, funds shall be obligated by the end of the fiscal year. Services shall be fully executed and moneys expended by December 31, 2023.

(3) For the fiscal year beginning July 1, 2023, and each succeeding fiscal year thereafter, funds shall be obligated by the end of the current fiscal year. Services shall be fully executed and moneys expended by August 31 of the subsequent fiscal year.

c. Up to 10 percent of the direct and purchased administration expenditure total identified in the region's current approved annual service and budget plan may be claimed as an encumbrance.

d. Requests to encumber funds toward multiyear projects with the purpose to provide access to required core services shall be limited to actual needs for the current fiscal year.

**25.13(7) Encumbrance reporting and approval.**

a. The region shall submit a detailed accounting of encumbered funds to the department on or before July 31 on forms specified by the department.

(1) The department may request additional information to determine whether the region's reported contracts and binding commitments qualify as acceptable encumbrances.

(2) A plan for expenditure, including a description of activities related to required core services, shall accompany documentation for multiyear projects.

b. By August 31, the department shall notify the region, in writing, of the decision and the accepted amount to be considered encumbered. The decision of the department is final.

c. Regional commitments that are denied as acceptable encumbrances shall be included in the calculation of the ending fund balance for the previous fiscal year.

d. Encumbrances that are not fulfilled within the time frames specified in subrule 25.13(6) shall be included in the ending fund balance amount.

ITEM 3. Amend paragraph **25.14(3)“a”** as follows:

~~a. Methods for pooling, managing and expending funds under control of the regional administrative entity. If the agreement does not provide for pooling of the participating county moneys in a single fund, the agreement shall specify how the participating county moneys will be subject to the control of the regional administrative entity.~~

ITEM 4. Amend rule 441—25.22(225C) as follows:

**441—25.22(225C) Incentive fund application, approval, and reporting.**

**25.22(1) Application for regional incentive funds.** A mental health and disability services region must submit an application on forms specified by the department with required supporting documentation. An application to receive regional incentive funds must meet the following requirements:

~~a.—The mental health and disability services region shall submit the application with supporting documentation electronically to the department by 4:30 p.m. on November 15, 2021, for state fiscal year 2022 funding.~~

~~b.—The mental health and disability services region shall submit the application with supporting documentation electronically to the department by 4:30 p.m. on November 15, 2022, for state fiscal year 2023 funding.~~

a. The region shall submit the application with supporting documentation electronically to the department by 4:30 p.m. on November 15 of the state fiscal year in which funding is requested.

~~e. b.~~ The application shall be complete and signed by the chairperson of the mental health and disability services region regional governing board and regional chief executive officer.

~~d. c.~~ Application supporting documentation shall include evidence to demonstrate compliance with subrule 25.22(2).

**25.22(2) Applicant conditions.** To receive funding in state fiscal years 2022 and 2023, the mental health and disability services region, a region must submit to the department sufficient data to demonstrate that the region has met the standards in the region's performance-based contract outlined in rule 441—25.23(331). Additionally, the region must meet the following conditions:

~~a. The mental health and disability services region must be in compliance with the regional service system management plan as defined in Iowa Code section 331.393.~~

~~b. Applicants for state fiscal year 2022 funding must have an ending balance in the region's combined services fund equal to or less than 40 percent of the actual expenditures in state fiscal year 2020.~~

~~c. Applicants for state fiscal year 2023 funding must have an ending balance in the region's combined services fund equal to or less than 20 percent of the actual expenditures in state fiscal year 2021.~~

~~b. The region's ending fund balance in the fiscal year that commenced two years prior to the year of application shall meet the ending balance threshold in accordance with Iowa Code section 225C.7A.~~

~~d. c. The mental health and disability services region must need incentive funds for one or more of the following circumstances:~~

~~(1) Operating in a If the region has an operating deficit, and to reimburse the region for a reduction in available funding for core services as the result of the reduction and elimination of the levy.~~

~~(2) To incentivize quality core services that meet or exceed the defined outcomes in the performance-based contract.~~

~~(3) To support regional efforts to fund non-core services that support the defined outcomes of core services in the performance-based contract.~~

~~(2) (4) Support For support of non-core services to maintain individuals in a community setting or reduce the risk that individuals needing services and supports would be placed in more restrictive, higher-cost settings.~~

~~25.22(3) to 25.22(5) No change.~~

~~This rule is intended to implement Iowa Code section 225C.7A as amended by 2021 Iowa Acts, Senate File 619.~~

ITEM 5. Adopt the following **new** rule 441—25.23(331):

**441—25.23(331) Performance-based contract.** The mental health and disability services region shall enter into a performance-based contract with the department to administer the service system in accordance with Iowa Code section 225C.7A. The performance-based contract shall include but not be limited to the following requirements:

**25.23(1)** The department will approve, deny, or revise each region's annual service and budget plan in accordance with rule 441—25.19(331).

**25.23(2)** The region will provide access to all core services under Iowa Code sections 331.397 and 331.397A and in accordance with this chapter.

**25.23(3)** The region will utilize all federal government funding, including Medicaid funding, third-party payment sources, and other nongovernmental funding prior to using regional service payments.

**25.23(4)** The department will perform an annual review of the region's administrative costs.

**25.23(5)** The department will establish outcome improvement goals for populations served by the region, including but not limited to:

a. Decreases in emergency department visits.

b. Improved use of mobile crisis response and jail diversion programs.

c. Improved employment-based outcomes.

**25.23(6)** The department will take steps to address a region's noncompliance with the contract in accordance with Iowa Code section 331.389.

This rule is intended to implement Iowa Code section 225C.7A.