

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

**Proposing rule making related to five-year rules review
and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 85, “Services in Psychiatric Institutions,” 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

Chapter 85 was reviewed as part of the Department’s five-year rules review. As part of this review, federal code references and cross-references to other Department chapters are proposed to be updated. Obsolete form names are proposed to be removed from the rules. The locations of the state mental health institutes are proposed to be updated.

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 October 11, 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

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 **85.1(1)“a”(5)** as follows:

(5) Is under the jurisdiction of the ~~division of behavioral, developmental, and protective services for families, adults, and children~~ of the department.

ITEM 2. Amend rule 441—85.2(249A) as follows:

441—85.2(249A) Out-of-state placement. Placement in an out-of-state psychiatric hospital for acute care requires prior approval by the bureau of managed care and clinical services and shall be approved only if special services are not available in Iowa ~~facilities as determined by the division of behavioral, developmental, and protective services for families, adults, and children.~~

ITEM 3. Amend subrule 85.3(3) as follows:

85.3(3) Certification of need for care. For persons eligible for Medicaid prior to admission, an independent team shall certify that ambulatory care resources available in the community do not meet the treatment needs of the recipient, that proper treatment of the recipient's psychiatric condition requires services on an inpatient basis under the direction of a physician, and that the services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services will no longer be needed. Team members are independent when they are not employees of or consultants to the facility. Form 470-2780, ~~Certification of Need for Inpatient Psychiatric Services~~, may be used to document these criteria.

a. to c. No change.

ITEM 4. Amend subrule 85.3(4) as follows:

85.3(4) Financial eligibility for persons under the age of 21. To be eligible for payments for the cost of care provided by a psychiatric facility, persons under the age of 21 must be eligible under one of the coverage groups listed in ~~rule 441—75.1(249A)~~ 441—Chapter 75.

ITEM 5. Amend rule 441—85.4(249A) as follows:

441—85.4(249A) Eligibility of persons aged 65 and over. To be eligible for payment for the cost of care provided by an institution for mental disease, persons must be aged 65 or over and be eligible under one of the coverage groups listed in ~~rule 441—75.1(249A)~~ 441—Chapter 75.

ITEM 6. Amend subrule 85.5(1) as follows:

85.5(1) Before July 2005. For months before July 2005, the resident shall be liable to pay client participation toward the cost of care on a monthly basis. The state will pay the balance of the cost of care for the month. The facility shall make arrangements directly with the resident for payment of client participation. Client participation is determined according to ~~rule 441—75.16(249A)~~ 441—Chapter 75.

ITEM 7. Amend paragraph **85.6(2)“a”** as follows:

a. ~~A Case Activity Report~~, Form 470-0042, shall be submitted to the department whenever a Medicaid applicant or recipient enters the facility, changes level of care, is hospitalized in a general hospital, leaves for visitation, or is discharged from the facility.

ITEM 8. Amend paragraph **85.7(1)“b”** as follows:

b. Allowable costs are those defined as allowable in 42 CFR, Subpart A, Sections 413.5 and 413.9, as amended to ~~December 2, 1996~~ June 15, 2022, and 42 CFR 447.250 as amended to ~~September 23, 1992~~ June 15, 2022. Only those costs are considered in calculating the Medicaid inpatient reimbursement.

ITEM 9. Amend subrule 85.8(1) as follows:

85.8(1) Facility. Acute care in a psychiatric hospital is covered for persons aged 21 through 64 only at the state mental health institutes at Cherokee, ~~Clarinda,~~ and Independence, ~~and Mount Pleasant.~~

ITEM 10. Amend subrule 85.8(2) as follows:

85.8(2) Basis of eligibility. To be eligible for payment for the cost of care provided by one of the covered facilities, a person aged 21 through 64 must be ~~either:~~ eligible for one of the coverage groups listed in 441—Chapter 75.

a. ~~Eligible for one of the coverage groups listed in 441—75.1(249A); or~~

b. ~~Eligible under the IowaCare program pursuant to 441—Chapter 92.~~

ITEM 11. Amend subrule 85.8(4) as follows:

85.8(4) Extent of eligibility.

a. While on inpatient status, a person eligible under a coverage group listed in 441—75.1(249A) is entitled to the full scope of Medicaid benefits.

b. ~~While on inpatient status, a person eligible under the IowaCare program is entitled to the services listed at 441—92.8(249A,81GA,ch167).~~

ITEM 12. Amend subrule 85.22(3) as follows:

85.22(3) Certification for need for care. For persons eligible for Medicaid prior to admission, an independent team shall certify that ambulatory care resources available in the community do not meet the treatment needs of the recipient, that proper treatment of the recipient’s psychiatric condition requires services on an inpatient basis under the direction of a physician, and that the services can reasonably be expected to improve the recipient’s condition or prevent further regression so that the services will no longer be needed. Team members are independent when they are not employees of or consultants to the facility. Form 470-2780, ~~Certification of Need for Inpatient Psychiatric Services~~, may be used to document these criteria.

a. to c. No change.

ITEM 13. Amend subrule 85.22(4) as follows:

85.22(4) Financial eligibility for persons under the age of 21. To be eligible for payments for the cost of care provided by psychiatric medical institutions, persons under the age of 21 shall be eligible under one of the coverage groups listed in ~~rule 441—75.1(249A)~~ 441—Chapter 75, except medically needy.

ITEM 14. Amend rule 441—85.23(249A) as follows:

441—85.23(249A) Client participation. The resident’s client participation and medical payments from a third party shall be paid toward the total cost of care on a monthly basis. The state will pay the balance of the cost of care for the month. The facility shall make arrangements directly with the resident for payment of client participation. Client participation is determined according to ~~rule 441—75.16(249A)~~ 441—Chapter 75.

ITEM 15. Amend paragraph **85.24(2)“a”** as follows:

a. ~~A Case Activity Report~~, Form 470-0042, shall be submitted to the department whenever a Medicaid applicant or recipient enters the facility, changes level of care, is hospitalized, leaves for visitation, or is discharged from the facility.

ITEM 16. Amend paragraph **85.25(1)“a”** as follows:

a. Rates for new facilities are based on historical costs submitted on Form 470-0664, ~~Financial and Statistical Report for Purchase of Service Contracts~~, if the institution is established and has the historical data. If the institution is newly established, the rate shall be based on a proposed budget submitted on

Form 470-0664. A Form 470-0664 with actual cost data shall be submitted after at least six months of participation in the program for a new rate adjustment.

ITEM 17. Amend rule 441—85.43(249A) as follows:

441—85.43(249A) Eligibility of persons aged 65 and over. To be eligible for payment for the cost of care provided by nursing facilities for persons with mental illness, persons must be aged 65 or over and be eligible under one of the coverage groups listed in ~~rule 441—75.1(249A)~~ 441—Chapter 75, except for medically needy.

ITEM 18. Amend rule **441—85.47(249A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code Supplement section 249A.30A.