# ARC 6531C

# HUMAN SERVICES DEPARTMENT[441]

**Notice of Intended Action**

**Proposing rule making related to the in-home health-related care program and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 177, "In-Home Health-Related Care," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 249.2.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 249.

*Purpose and Summary*

This chapter was reviewed as part of the Department's five-year rules review. Currently the In-Home Health-Related Care (IHHRC) program requires a registered nurse to provide supervision of a client's care plan in order for the client to receive services. Over the past several years, the Department has experienced more nursing agencies opting out of providing supervision services for this program. Several counties have no nursing agencies willing to provide the supervision necessary for the program services. This results in individuals being enrolled in the program with physicians having to provide supervision, which is an unreasonable expectation, or individuals being enrolled in the program without a supervising practitioner, which requires an exception to the administrative rule. Medicaid programs providing similar services under the home- and community-based programs do not require a supervising practitioner when the service being provided is considered unskilled or is for personal care services.

These proposed amendments remove the requirement of nursing supervision for unskilled personal care services and maintain the requirement of nursing supervision for skilled services. Proposed amendments also identify how the program is implemented from the application process through termination, if termination is necessary.

*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 rule 441—177.1(249) as follows:

**441—177.1(249) In-home health-related care.** In-home health-related care is a program ~~of~~ designed to provide nursing care in an individual's own home, as defined in rule 441—177.2(249), to ~~provide personal services to~~ an individual ~~because such individual's state of~~ whose physical, developmental, or mental health prevents independent self-care.

ITEM 2. Amend rule 441—177.2(249) as follows:

**441—177.2(249) ~~Own home~~ Definitions.** ~~Own home means an individual's house, apartment, or other living arrangement intended for single or family residential use.~~

*"Client participation"* has the meaning assigned to it in rule 441—177.10(249).

*"Nursing care"* includes skilled services and personal care services.

*"Own home"* means an individual's house, apartment, or other living arrangement intended for single or family residential use.

*"Personal care services"* includes:

1. Services that assist a client with the activities of daily living, such as, but not limited to, helping the client with bathing, toileting, getting in and out of bed, ambulation, hair care, oral hygiene and administering medications that are physician-ordered but ordinarily self-administered.

2. Services that help or retrain the client in necessary skills for daily living.

3. Incidental household services that are essential to the client's health care at home and are necessary to prevent or postpone institutionalization.

*"Skilled nursing services"* are services for which an individualized assessment of a patient's clinical condition demonstrates that the specialized judgment, knowledge, and skills of a registered nurse or, when provided by regulation, a licensed practical (vocational) nurse ("skilled care") are necessary.

*"Skilled services"* include skilled nursing services or other services that, based on a physician's certification, are required to be performed under the supervision of a physician, nurse practitioner, clinical nurse specialist, or physician assistant.

*"Supervising practitioner"* means a physician, nurse practitioner, clinical nurse specialist, or a physician assistant qualified to supervise skilled services.

ITEM 3. Rescind rule 441—177.3(249) and adopt the following **new** rule in lieu thereof:

**441—177.3(249) Service criteria.**

**177.3(1)** *Skilled services.* Skilled services must be certified by a physician as provided in rule 441—177.6(249) and must be supervised by a supervising practitioner.

**177.3(2)** *Personal care services.* Personal care services must be certified by a physician as provided in rule 441—177.6(249). Personal care services do not require supervision by a supervising practitioner.

ITEM 4. Amend rule 441—177.4(249) as follows:

**441—177.4(249) Eligibility and application.**

**177.4(1)** *Eligible individual* *Eligibility.* To be eligible for in-home health-related care:

*a.* The individual shall must be eligible for supplemental security income in every respect except for income.

*b.* The physician's certification shall include a statement of the specific health care services and that the A physician must certify in accordance with rule 441—177.6(249) that the individual requires either skilled services or personal care services and that those services can be provided in the individual's own home. The certification shall be given on a form prescribed by the department or on a similar plan of care form presently used by public health agencies provided using Form 470-0673.

*c.* The individual shall live in the individual's own home. Notwithstanding the foregoing, an individual will remain eligible for a period not to exceed 15 days in any calendar month when the client is temporarily absent from the client's home.

*d.* The client shall require and be receiving qualified health care services. Qualified health care services are health care services supervised by a registered nurse and approved by individual shall obtain a physical examination report annually and shall be under the supervision of a physician.

*e.* The required skilled services or personal care services must not be available under any other state or federal program.

**177.4(7)** *f.* *Income for adults.* The countable income of the individual and spouse living in the home shall be limited to $480.55 per month if one needs care or $961.10 if both need care, after the following disregards from gross income:

*a.* (1) The amount of the basic supplemental security income standard for an individual or a couple, as applicable.

*b.* (2) When income is earned, $65.00 plus one-half of any remaining income.

*c.* (3) The amount of the supplemental security income standard for a dependent plus any established unmet medical needs, for each dependent living in the home. Any income of the dependent shall be applied to the dependent's needs before making this disregard.

*d.* (4) The amount of the established medical needs of the ineligible spouse which are not otherwise met.

*e.* (5) The amount of the established medical needs of the applicant or recipient which are not otherwise met and would not be met if the individual were eligible for the medical assistance program.

*f.* Rescinded, effective 7/1/84.

**177.4(8)** *g.* *Income for children.* Income for children.

*a.* (1) All income received by the parents in the home shall be deemed to the child with the following disregards:

(1) 1. The amount of the basic supplemental security income standard for an individual when there is one parent in the home or for a couple when there are two parents in the home.

(2) 2. The amount of the basic supplemental security income standard for a dependent for each ineligible child in the home.

(3) 3. The amount of the unmet medical needs of the parents and ineligible dependents.

(4) 4. When all income is earned, an additional basic supplemental security income standard for an individual in a one-parent home or for a couple in a two-parent home.

(5) 5. When the income is both earned and unearned, $65.00 plus one-half of the remainder of the earned income.

~~*b.*~~ (2) The countable income of the child shall be limited to $480.55 per month after the following disregards from gross income:

~~(1)~~ 1. The amount of the basic supplemental security income standard for an individual.

~~(2)~~ 2. The amount of the established medical needs of the child which are not otherwise met and would not be met if the child were eligible for the medical assistance program.

~~(3)~~ 3. One-third of the child support payments received from an absent parent.

~~*c.* Rescinded, effective 7/1/84.~~

~~**177.4(2)** *Relationship to other programs.* In-home health-related care shall be provided only when other programs cannot meet the client's need. There shall be no duplication of services.~~

~~**177.4(3)** *Maximum costs.* The maximum cost of service shall be $480.55. The provider shall accept the payment made and shall make no additional charges to the recipient or others.~~

~~**177.4(4)** *Service plan.* A complete service plan shall be prepared which includes the services needed, the plan for providing these services, and the health care plan defined in rule 441—177.6(249). The service plan shall be developed following consultation between the client's service worker and case manager to avoid all duplication of services. Consultation shall include current services provided to the client, payer sources, level of service needs, and service history.~~

~~**177.4(5)** *Certification procedure.* The approval of the case plan by the service area manager or designee shall constitute certification and approval for payment.~~

~~**177.4(6)** *Temporary absence from home.* The client will remain eligible and payment will be made for services for a period not to exceed 15 days in any calendar month when the client is absent from the home for a temporary period. Payment will not be authorized for over 15 days for any continuous absence whether or not the absence extends into a succeeding month or months.~~

~~**177.4(9)** *Payment.* The client or the person legally designated to handle the client's finances shall be the sole payee for payments made under the program and shall be responsible for making payment to the provider except when the client payee becomes incapacitated or dies while receiving service.~~

~~*a.* The department shall have the authority to issue one payment to a provider on behalf of a client payee who becomes incapacitated or dies while receiving service.~~

~~*b.* When continuation of an incapacitated client payee in the program is appropriate, the department shall assist the client and the client's family to legally designate a person to handle the client's finances. Guardians, conservators, protective or representative payees, or persons holding power of attorney are considered to be legally designated.~~

~~*c.* Payment for the program shall be approved effective as of the date of application or the date all eligibility requirements are met and qualified health care services are provided, whichever is later, notwithstanding 42 U.S.C. 1382(c)(7).~~

~~**177.4(10)**~~ **177.4(2)** *Application.* Application for in-home health-related care shall be made on ~~a form prescribed by~~ Form 470-5170 or 470-5170(S) and submitted to the department. An eligibility determination shall be completed within 30 days from the date of the application, unless one or more of the following conditions exist:

*a.* to *d.* No change.

ITEM 5. Amend rule 441—177.5(249) as follows:

**441—177.5(249) ~~Providers~~ Qualifications of providers of health care services.**

**177.5(1)** *Age.* The provider shall be at least 18 years of age.

**177.5(2)** *Health assessment.* The provider shall obtain certification on Form 470-0672 that the provider is physically and emotionally capable of providing assistance to another person ~~who may have physical and emotional limitations~~ whose physical, developmental or mental health prevents independent self-care.

*a.* The certification shall be based on an examination performed by:

(1) ~~a~~ A physician; or

(2) An advanced registered nurse practitioner or ~~by a~~ physician assistant ~~who~~ if the nurse practitioner or physician assistant is working under the direction of a physician.

*b.* If the provider works for an agency, the practitioner performing the examination may not be employed by the same agency.

~~*b.*~~ *c.* The practitioner conducting the examination shall ~~indicate~~ sign the certification ~~by signing the provider health assessment~~.

~~*c.*~~ *d.* The certification shall be submitted to the department service worker:

(1) Before the provider agreement is signed, and

(2) Annually thereafter.

**177.5(3)** *Qualifications.* The provider shall be qualified by training and experience to carry out the health care plan as specified in ~~rule 177.4(4)~~ subrule 177.7(1).

**177.5(4)** No change.

ITEM 6. Rescind rule 441—177.6(249) and adopt the following **new** rule in lieu thereof:

**441—177.6(249) Physician's certification.**

**177.6(1)** *Certification requirements.* A physician must certify on Form 470-0673:

*a.* That the skilled services or personal care services are required by the person's physical, developmental or mental health;

*b.* The specific skilled services or personal care services required, the method of providing those services, and the expected duration of services; and

*c.* That the required skilled services and personal care services can be delivered in the individual's own home.

**177.6(2)** *Certification review.* After certification and any subsequent recertification, a physician must review the certification and withdraw, renew, or amend the existing certification:

*a.* No later than the 180th day after the existing certification;

*b.* More frequently than the 180th day after the existing certification if required by the physician, the service worker, or a supervising practitioner; or

*c.* Upon notification of initiation of Medicaid waiver services.

ITEM 7. Rescind rule 441—177.7(249) and adopt the following **new** rule in lieu thereof:

**441—177.7(249A) Service worker duties.**

**177.7(1)** *Service plan.*

*a.* In consultation with the client's case manager and any supervising health practitioner, the service worker shall create a complete service plan for the client. The plan must avoid duplication of services and include all of the following:

(1) All of the services certified by a physician under rule 441—177.6(249).

(2) Payer sources. In-home health-related care shall be provided only when other programs cannot meet the client's need.

(3) Level of service needs.

(4) Service history. If the client is being transferred from a medical hospital or long-term care facility, the service worker shall also obtain a transfer document describing the client's current care plan.

*b.* In consultation with the client's case manager and any supervising health practitioner, the service worker shall review and update the service plan on or before the ninetieth day following the creation of or previous review of the service plan. The updated service plan must comply with paragraph 177.7(1)*"a."*

**177.7(2)** *Change in condition.* If the service worker becomes aware of any changes in the individual's condition, including discharge from a facility, that could require a change in the services provided, the service worker shall ensure that a physician reviews the existing certification and that the existing certification is either withdrawn, renewed, or amended.

ITEM 8. Rescind rule 441—177.8(249) and adopt the following **new** rule in lieu thereof:

**441—177.8(249) Supervising practitioner duties.**

**177.8(1)** *Instruction.* The supervising practitioner shall provide instruction specific to each patient and the services each patient is receiving, including but not limited to instruction on documentation the worker should be creating and instruction on warning signs of which the worker should be aware.

**177.8(2)** *Schedule for reviewing documentation.* The supervising practitioner shall set up a schedule for reviewing documentation that is specific to the services being provided to that particular patient and shall review the documentation according to the schedule.

**177.8(3)** *Medical records.*

*a.* The supervising practitioner shall keep appropriate medical records, a copy of the service plan, and the physician's certification in the supervising practitioner's case file. In addition, the medical records shall include, whenever appropriate, transfer forms, physician's orders, progress notes, drug administration records, treatment records, and incident reports.

*b.* The supervising practitioner shall make all medical records available to the service worker, the client, and the client's legal representative.

*c.* The supervising practitioner shall ensure that, upon termination of the in-home care plan, the medical records are transferred to the county office of the department of human services or the office of the public health nurse.

*d.* The department of human services or the office of the public health nurse shall retain medical records transferred to it under paragraph 177.8(3)*"c"* for five years or, if an audit is commenced within the five years, until completion of that audit. During the period of retention, the department of human services or the office of the public health nurse shall make the medical records available to the service worker.

ITEM 9. Amend rule 441—177.9(249) as follows:

**441—177.9(249) Written agreements.**

**177.9(1)** *Independent contractor.* The provider shall be an independent contractor and shall ~~in no sense~~ <u>not</u> be an agent, employee or servant of the state of Iowa, the Iowa department of human services, <u>or</u> any of its employees~~,~~ or ~~of its~~ clients.

**177.9(2)** *Liability coverage.* All professional health care providers shall have adequate liability coverage consistent with their responsibilities, ~~as~~ <u>since</u> the department of human services assumes no responsibility for, or liability for, individuals providing care.

**177.9(3)** *Provider agreement.*

<u>*a.*</u> The client and the provider shall enter into an agreement~~, using the provider agreement form,~~ <u>using Form 470-0636</u> prior to the provision of service. Any reduction to the state supplemental assistance program shall be applied to the maximum amount paid by the department of human services as stated in the provider agreement by using the separate amendment to provider agreement form.

<u>*b.* Written instructions for dealing with emergency situations shall be completed by the service worker and included in the provider agreement, which shall be maintained in the client's home and in the county department of human services office. The instructions shall include:</u>

<u>(1) The name and telephone number of the client's physician, the nurse, responsible family members or other significant persons, and the service worker;</u>

<u>(2) Information as to which hospital to utilize; and</u>

<u>(3) Information as to which ambulance service or other emergency transportation to utilize.</u>

ITEM 10. Rescind rule 441—177.10(249) and adopt the following <u>**new**</u> rule in lieu thereof:

**441—177.10(249) Payment.**

**177.10(1)** *Payment approved.* Notwithstanding 42 U.S.C. 1382(c)(7), after the service manager or designee approves the service plan, payment is effective as of the later of (1) the date of the application, or (2) the date all eligibility requirements are met and qualified health care services are provided.

**177.10(2)** *Client participation.*

*a.* Except as provided in paragraph 177.10(2)*"b,"* all income remaining after excluding the amounts identified in paragraphs 177.4(1)*"f"* and *"g"* will be considered income available for services

(“client participation”) and the in-home health-related care (IHHRC) program shall pay only the cost of eligible services that exceeds client participation up to the maximum benefit payable.

*b.* When the first month of service is less than a full month, there is no client participation for that month. Payment will be made for the actual days of service provided according to the agreed-upon rate up to the maximum benefit payable.

**177.10(3)** *Maximum benefit payable.* The maximum benefit payable for in-home health-related care services inclusive of all services for all providers is the reasonable charges for such services up to and including $480.55. The provider shall accept the maximum benefit payable and shall not charge the client or others in excess of that benefit.

**177.10(4)** *Payment.* The client or the person legally designated to handle the client’s finances shall be the sole payee for payments made under the program and shall be responsible for making payment to the provider except when the client payee becomes incapacitated or dies while receiving service.

*a.* The department shall have the authority to issue one payment to a provider on behalf of a client payee who becomes incapacitated or dies while receiving service.

*b.* When continuation of an incapacitated client payee in the program is appropriate, the department shall assist the client and the client’s family to legally designate a person to handle the client’s finances. Guardians, conservators, protective or representative payees, or persons holding power of attorney are considered to be legally designated.

*c.* Temporary absence from home. Payment will not be authorized for over 15 days for any continuous absence whether or not the absence extends into a succeeding month or months.

**177.10(5)** *Reasonable charges.* Payment will be made only for reasonable charges for in-home health care services as determined by the service worker, who will determine reasonableness by:

*a.* The prevailing community standards for cost of care for similar services.

*b.* The availability of services at no cost to the IHHRC program.

ITEM 11. Amend rule 441—177.11(249) as follows:

**441—177.11(249) Termination.** Termination of in-home health-related care shall occur under the following conditions:

**177.11(1)** *Request.* Upon the request of the client or legal representative.

**177.11(2)** *Care unnecessary.* When the client becomes sufficiently ~~self-sustaining~~ able to remain in the client’s own home with services that can be provided by ~~existing community agencies~~ other sources as determined by the service worker.

**177.11(3)** *Additional care necessary.* When the physical or mental condition of the client requires more care than can be provided in the client’s own home as determined by the service worker in consultation with the certifying physician.

**177.11(4)** *Excessive costs.* When the cost of care exceeds the maximum established in ~~177.4(3)~~ subrule 177.10(3).

**177.11(5)** and **177.11(6)** No change.

**177.11(7)** ~~*Qualified health care services absent.*~~ *Failing to comply with program requirements.* ~~Qualified health care services are health care services supervised by a registered nurse and approved by a physician. When a registered nurse is not available to supervise the in-home service and health care plan, or when a physician or nurse practitioner is not available to review or approve the health care plan, the state supplementary assistance payment shall be terminated.~~ When the recipient is not following the program requirements or cooperating with the program objectives including, but not limited to, a failure to provide information to program representatives.