

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

**Proposing rulemaking related to overpayment recovery
and providing an opportunity for public comment**

The Department of Health and Human Services hereby proposes to rescind Chapter 46, “Overpayment Recovery,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 239B.4(6).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 239B.2, 239B.3, 239B.7 and 239B.14.

Purpose and Summary

This rulemaking is in response to Executive Order 10. The proposed chapter outlines what an overpayment is under the Family Investment Program (FIP), how repayment of an overpayment can be made, and the procedure for recoupments.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on October 16, 2024. A public hearing was held on the following date(s):

- November 6, 2024

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Victoria L. Daniels
Department of Health and Human Services
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.829.6021
Email: compliancerules@hhs.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 28, 2025 1 to 2 p.m.	Microsoft Teams Meeting ID: 222 847 169 42 Passcode: d7aG7cR9
January 29, 2025 10 to 11 a.m.	Microsoft Teams Meeting ID: 243 840 908 594 Passcode: a7Jg78UJ

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 441—Chapter 46 and adopt the following **new** chapter in lieu thereof:

CHAPTER 46 OVERPAYMENT RECOVERY

441—46.1(239B) Definitions.

“Agency error” in overpayments means:

1. The same circumstances as described in 441—subrule 45.4(1) pertaining to underpayments, or
2. Any error that is not a client or procedural error.

“Client” means a current or former applicant or recipient of the family investment program.

“Client error” means and may result from:

1. False or misleading statements, oral or written, regarding the client's income, resources, or other circumstances that may affect eligibility or the amount of assistance received;
2. Failure to timely report changes in income, resources, or other circumstances as required by rule 441—40.7(239B);
3. Failure to refund to child support services any nonexempt payment from the absent parent received after the date the decision on eligibility was made; or
4. Access of benefits issued via the electronic access card at a prohibited location pursuant to 441—subrule 41.6(7).

“Overpayment” means any assistance payment received in an amount greater than the amount the eligible group is entitled to receive or the amount of any payment accessed and any associated fees for accessing the benefits at a prohibited location pursuant to 441—subrule 41.6(7).

“Procedural error” means a technical error that does not in and of itself result in an overpayment.

Procedural errors include:

1. Failure to secure a properly signed application at the time of initial application or reapplication.
2. Failure to secure a properly signed form prescribed by the department to request FIP beyond 60 months as described in 441—subrule 41.11(3).
3. Failure of the department to conduct the interviews described in 441—subrules 40.4(2) and 40.7(1).

4. Failure to request a review form prescribed by the department at the time of a semiannual or annual review.

5. Failure of department staff to cancel the family investment program benefits when the client submits a review form prescribed by the department that is not complete as defined in 441—paragraph 40.7(4)“b.” However, overpayments of grants as defined above based on incomplete reports are subject to recoupment.

“*Recoup*” means reimburse, return, or repay an overpayment.

“*Recoupment*” means the repayment of an overpayment, either by a payment from the client or an amount withheld from the assistance grant or both.

441—46.2(239B) Monetary standards.

46.2(1) *Amount subject to recoupment.* All family investment program overpayments will be subject to recoupment.

46.2(2) *Grant issued.* When recoupment is made by withholding from the family investment program grant, the grant issued will be for no less than \$10.

441—46.3(239B) Notification and appeals. All clients will be notified by the department of inspections, appeals, and licensing, as described in 441—paragraph 7.4(3)“i,” when it is determined that an overpayment exists. Notification will include the amount, date and reason for the overpayment. The department will provide additional information regarding the computation of the overpayment upon the client’s request. The client may appeal the computation of the overpayment and any action to recover the overpayment through benefit reduction in accordance with 441—paragraph 7.4(3)“i.”

441—46.4(239B) Determination of overpayments. All overpayments due to agency or client error or due to assistance paid pending an appeal decision will be recouped. A procedural error alone does not result in an overpayment.

46.4(1) *Agency error.* When an overpayment is due to an agency error, recoupment will be made, including those instances when errors by the department prevent the requirements in 441—subrule 41.3(4) or 41.3(5) from being met or when the client receives a duplicate grant.

a. An overpayment of any amount is subject to recoupment with one exception: when the client receives a grant that exceeds the amount on the most recent notice from the department, recoupment will be made only when the amount received exceeds the amount on the notice by \$10 or more.

b. An overpayment due to agency error will be computed as if the information had been acted upon timely.

46.4(2) *Assistance paid pending appeal decision.* Recoupment of overpayments resulting from assistance paid pending a decision on an appeal hearing will begin no later than the month after the month in which the final decision is issued.

46.4(3) *Client error.*

a. An overpayment due to client error will be computed as if the information had been reported and acted upon timely.

b. Overpayments due to failure to refund payments received from the absent parent will be the total nonexempt support payment made for members of the eligible group at the time the support payment was received. In addition, assistance payments made to meet the needs of the eligible group may also be subject to recoupment under provisions in 441—subrule 41.3(4).

c. An overpayment due to a recipient’s accessing benefits via the electronic access card at a prohibited location will be the total of the transactions and any associated fees for accessing the benefits at the prohibited location pursuant to 441—subrule 41.6(7).

46.4(4) *Failure to cooperate.* Failure to cooperate in the investigation of alleged overpayments will result in ineligibility for the months in question and the overpayment will be the total amount of assistance received during those months.

441—46.5(239B) Source of recoupment.

46.5(1) *Payment.* Recoupment will be made from basic needs. The minimum recoupment amount will be the amount prescribed in subrule 46.5(1). Regardless of the source, the client may choose to make a lump sum payment, make periodic installment payments when an agreement to do this is made with the department of inspections, appeals, and licensing, or have repayment withheld from the grant. The client shall sign a form prescribed by the department when requested to do so by the department of inspections, appeals, and licensing. When the client fails to make the agreed upon payment, the agency will reduce the grant.

46.5(2) *Basic needs.*

a. Recoupment by withholding from basic needs for overpayments due to client error or a combination of client and agency errors will be 10 percent of the basic needs standard in accordance with the schedule in 441—subrule 41.9(2).

b. Recoupment by withholding from basic needs for overpayments due to the continuation of benefits pending a decision on an appeal as provided under 441—Chapter 7 or a combination of continued benefits and agency or client errors will be 10 percent of the basic needs standard in accordance with the schedule in 441—subrule 41.9(2).

c. Recoupment by withholding from basic needs for overpayments due to agency error will be 1 percent of the basic needs standard in accordance with the schedule in 441—subrule 41.9(2).

441—46.6(239B) Procedures for recoupment.

46.6(1) *Referral.* When the department determines that an overpayment exists, the case will be referred to the department of inspections, appeals, and licensing for investigation, recoupment, or referral for possible prosecution.

46.6(2) *Change of circumstances.* When financial circumstances change, any agreement to pay a debt is subject to revision.

46.6(3) *Collection.* Recoupment for overpayments will be made from the parent or nonparental relative who was the caretaker relative, as defined in 441—subrule 41.3(1), at the time the overpayment occurred. When both parents were in the home at the time the overpayment occurred, both parents are equally responsible for repayment of the overpayment.

46.6(4) *Suspension and waiver.* Recoupment will be suspended on nonfraud overpayments when the case is canceled and the amount of the overpayment is less than \$35. If the case is reopened within three years, recoupment is initiated again. Recoupment will be waived on nonfraud overpayments of less than \$35 that have been held in suspense for three years.

441—46.7(239B) Fraudulent misrepresentation of residence. A person convicted in a state or federal court, or in an administrative hearing, of having made a fraudulent statement or representation of the person's place of residence in order to receive assistance simultaneously from two or more states will be ineligible for assistance for ten years. For the purpose of this rule, the term "assistance" means assistance under Titles IV-A or XIX of the Social Security Act, or the Food Stamp Act of 1977, or benefits in two or more states under the Supplemental Security Income program under Title XVI. The ten-year period begins on the date the person is convicted. The prohibition does not apply to a convicted person who is pardoned by the President of the United States, beginning with the month after the pardon is given.

These rules are intended to implement Iowa Code sections 239B.2, 239B.3, 239B.7, and 239B.14.