

**HUMAN SERVICES DEPARTMENT[441]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 249A.4 and 2010 Iowa Acts, House File 2526, section 11(22), the Department of Human Services proposes to amend Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

The proposed amendments add coverage for assisted living services under the Medicaid home- and community-based services (HCBS) elderly waiver. Currently, members who live in an assisted living facility may receive consumer-directed attendant care services from the facility. However, consumer-directed attendant care services do not include supervision, and there is no process in place to identify the member’s service needs or the number of hours of personal care and support services the member may require each month that exceeds what is covered by the monthly payment for consumer-directed attendant care.

Under these amendments, when a member who receives elderly waiver services lives in a certified assisted living facility, the facility could receive Medicaid payment through the waiver for assisted living services. The services would have to be identified in the member’s plan of care and be within the \$1,117 monthly cap on the cost of waiver services. Payment would be made using a two-tier system based on the personal care and support service needs of the member, with an add-on payment if the member has a diagnosis of dementia or another cognitive impairment and a score of 4 or higher on the Global Deterioration Scale.

The member may also receive in-home health-related care under the State Supplementary Assistance program when those services are not provided as part of the assisted living service. The cost of in-home health-related care would not be counted toward the waiver cap.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before October 26, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code section 249A.4 and 2010 Iowa Acts, House File 2526, section 11(22).

The following amendments are proposed.

ITEM 1. Rescind and reserve paragraph **77.33(15)“g.”**

ITEM 2. Adopt the following **new** subrule 77.33(23):

**77.33(23) Assisted living service providers.** Providers of assisted living services shall be assisted living programs that are certified by the department of inspections and appeals pursuant to 481—Chapter 69.

ITEM 3. Amend paragraph **78.37(15)“c”** as follows:

c. A unit of service provided by an individual or an agency, ~~other than an assisted living program,~~ is 1 hour, or one 8- to 24-hour day. ~~When provided by an assisted living program, a unit of service~~

~~is one calendar month. If services are provided by an assisted living program for less than one full calendar month, the monthly reimbursement rate shall be prorated based on the number of days service is provided. Except for services provided by an assisted living program, each~~ Each service shall be billed in whole units.

ITEM 4. Adopt the following new subrule 78.37(18):

**78.37(18) Assisted living services.** Assisted living services are services available to residents of assisted living programs certified by the department of inspections and appeals pursuant to 481—Chapter 69.

*a. Scope.* Assisted living services shall include 24-hour response staff to meet a member's scheduled and unpredictable needs in a manner that promotes the member's maximum dignity and independence and to provide supervision, safety, and security. Assisted living services must also include personal care or supportive services or both. Supportive services may include:

- (1) Homemaker services,
- (2) Chore services,
- (3) Meal preparation,
- (4) Medication oversight,
- (5) Attendant care,
- (6) Companion services,
- (7) Therapeutic social and recreational programming, and
- (8) Provision of medically necessary transportation within the member's community.

*b. Need for service.* To qualify for assisted living services, a member must require one or more hours of personal care or supportive services per month.

(1) The assessment of a member's level of service need shall be based on the following three categories of need:

1. Activities of daily living, including physical care, medication management, and behavioral support;

2. Supportive service needs for housekeeping, laundry, meal preparation, or supervision; and

3. Dementia or other cognitive impairments.

(2) The member's level of service need shall be determined by a point system using the results of:

1. Form 470-4694, Targeted Case Management Comprehensive Assessment Tool, administered by the case manager; and

2. Form 470-4979, Assisted Living Service Tier Rate Calculation, completed by the case manager.

(3) The member's level of service need shall be ranked into one of two tiers:

1. Tier 1: The member has 1 to 8 total points in the activities of daily living category and 0 to 40 points in the supportive service category.

2. Tier 2: The member has 9 or more total points in the activities of daily living category and 10 to 40 points in the supportive service category.

(4) No tier change shall be made based on an acute episode that does not persist or is not expected to persist longer than 21 calendar days. When a significant change in the member's condition persists for more than 21 days, the case manager shall reassess the level of care required by the member and make a determination as to whether the member requires a tier change. The case manager shall notify the assisted living provider of the tier change by issuing a Notice of Decision.

*c. Unit.* A unit of service is one month.

(1) A member with Tier 1 service needs must receive 1 to 21 hours of personal care, supervision, or other supportive services per month.

(2) A member with Tier 2 service needs must receive 22 or more hours of personal care, supervision, or other supportive services per month.

*d. Relationship to other services.*

(1) A member may not receive consumer-directed attendant care while receiving assisted living services.

(2) A member may access other elderly waiver services that are not duplicative of the assisted living services or other services provided by the assisted living program as outlined in the tenant occupancy agreement completed pursuant to rule 481—69.21(231C).

(3) A member may also receive in-home health-related care under the state supplementary assistance program when the in-home health-related care provides services that are not provided as part of the assisted living service.

ITEM 5. Amend subrule **79.1(2)**, provider category “HCBS waiver service providers,” numbered paragraph “15” as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
15. Consumer-directed attendant care provided by:		
Agency ( <del>other than an elderly waiver assisted living program</del> )	Fee agreed upon by consumer and provider	\$19.70 per hour not to exceed the daily rate of \$113.80 per day.
Assisted living program (for elderly waiver only)	Fee agreed upon by consumer and provider	<del>For elderly waiver only: \$1,089.08 per calendar month. Rate must be prorated per day for a partial month, at a rate not to exceed \$35.79 per day.</del>
Individual	Fee agreed upon by consumer and provider	Effective July 1, 2010, \$13.47 per hour not to exceed the daily rate of \$78.56 per day.

ITEM 6. Adopt the following **new** numbered paragraph “35” in subrule **79.1(2)**, provider category “HCBS waiver service providers”:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
35. Assisted living services	Fee schedule	Tier 1: \$609.31 per month or \$799.48 per month with dementia add-on. See 79.1(26). Tier 2: \$910.14 per month or \$1,117 per month with dementia add-on. See 79.1(26).

ITEM 7. Adopt the following **new** subrule 79.1(26):

**79.1(26) Reimbursement for home- and community-based assisted living services.** Reimbursement for assisted living services under the HCBS elderly waiver program is based on a fee schedule, subject to the maximums provided below.

a. The level of payment shall be based on:

(1) The member’s level of service need determined pursuant to 441—subparagraph 78.37(18)“b”(3), and

(2) The member’s cognitive needs, as measured by the Global Deterioration Scale administered by the facility pursuant to 481—subrule 69.22(1). The Global Deterioration Scale is used to assess the magnitude of cognitive, functional and behavioral decline pursuant to the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM IV).

b. For a member with service needs in Tier 1, the maximum reimbursement is \$609.31 per calendar month or \$799.48 per calendar month if the member has:

- (1) Received a score of 4 or higher on the Global Deterioration Scale, and
- (2) Been diagnosed with dementia or another cognitive impairment.

c. For a member with service needs in Tier 2, the maximum reimbursement is \$910.14 per calendar month or \$1,117 per calendar month if the member has:

- (1) Received a score of 4 or higher on the Global Deterioration Scale, and
- (2) Been diagnosed with dementia or another cognitive impairment.

ITEM 8. Amend rule 441—83.26(249A) as follows:

**441—83.26(249A) Allowable services.** Services allowable under the elderly waiver are case management, adult day care, emergency response system, homemaker, home health aide, nursing, respite care, chore, home-delivered meals, home and vehicle modification, mental health outreach, transportation, nutritional counseling, assistive devices, senior companions, consumer-directed attendant care, assisted living, financial management, independent support brokerage, self-directed personal care, self-directed community supports and employment, and individual-directed goods and services as set forth in rule 441—78.37(249A).