

## 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, 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 88, “Managed Health Care Providers,” Iowa Administrative Code.

The proposed amendments are part of the implementation of the plan developed by the remedial services transition committee to transition remedial services from a fee-for-service program administered by the Iowa Medicaid Enterprise to administration by the Iowa Plan for Behavioral Health, a managed care program under contract to Iowa Medicaid. The work of the remedial services transition committee was directed by 2010 Iowa Acts, House File 2526, section 31. The transition committee filed a final report with the General Assembly on December 31, 2010.

The proposed amendments:

- Rename Medicaid remedial services as “behavioral health intervention.” Behavioral health intervention consists of skill-building services to assist a member who is diagnosed with an Axis I disorder to better manage the member’s behavior and symptoms. The “Diagnostic and Statistical Manual IV-TR” for mental disorders organizes each psychiatric diagnosis into one of two dimensions or axes (with three additional axes for other conditions). Axis I refers to clinical mental disorders, including major mental disorders and learning disorders, but excluding personality disorders and mental retardation.

- Require the Iowa Plan for Behavioral Health to cover behavioral health intervention for members who are enrolled in the Iowa Plan. Behavioral health intervention will be covered under the fee-for-service program only for members who are not enrolled in the Iowa Plan for Behavioral Health when the services are provided. This change will allow consistency of coverage and better integration of services for members who move in and out of Iowa Plan enrollment.

- Require that all behavioral health intervention providers be enrolled in the Iowa Plan for Behavioral Health in order to receive Medicaid fee-for-service payment. This change will provide a consistent basis for provider qualifications and access to Iowa Plan quality improvement and program integrity initiatives.

- Remove community psychiatric supportive treatment and rehabilitation program as covered services. Community psychiatric supportive treatment historically has not been provided. The definition of “rehabilitation program” is virtually identical to the definition of “skill training and development,” which remains a covered service.

- Add family training as a covered behavioral health intervention service for members under the age of 21. Family training teaches family members how to identify and use strategies to reduce problem behaviors and reinforce the appropriate skills to support the child’s functioning in the home and community.

- Require that the recommendation for behavioral health intervention be part of a comprehensive treatment plan which also includes other behavioral health services.

- Provide that all behavioral health intervention services will be subject to telephone authorization by the Iowa Plan for Behavioral Health. Services may be community-based or may be directed to children at risk of or currently in group care placement.

- Provide that all behavioral health intervention services will be reimbursed according to a fee schedule developed by the Iowa Plan for Behavioral Health.

These amendments do not provide for waivers in specified situations because federal regulations for rehabilitation services have specific requirements which must be addressed and because the General Assembly supported moving remedial services to the mental health managed care program. 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 March 16, 2011. 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).

The Department will also hold a public hearing for the purpose of receiving comments on the proposed amendments on Wednesday, March 16, 2011, from 10:30 a.m. to 12 noon in the First Floor Southeast Conference Room 1, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa.

Persons with disabilities who require assistive services or devices to observe or participate should contact the Bureau of Policy Coordination at (515)281-8440 before the scheduled date to request that appropriate arrangements be made.

These amendments are intended to implement Iowa Code section 249A.4 and 2010 Iowa Acts, chapter 1192, section 31.

The following amendments are proposed.

ITEM 1. Rescind rule 441—77.12(249A) and adopt the following **new** rule in lieu thereof:

**441—77.12(249A) Behavioral health intervention.** A provider of behavioral health intervention services is eligible to participate in the medical assistance program when the provider is enrolled in the Iowa Plan for Behavioral Health pursuant to 441—Chapter 88, Division IV.

This rule is intended to implement Iowa Code section 249A.4 and 2010 Iowa Acts, chapter 1192, section 31.

ITEM 2. Amend rule 441—78.12(249A) as follows:

**441—78.12(249A) Remedial services Behavioral health intervention.** Payment will be made for ~~remedial~~ behavioral health intervention services not otherwise covered under this chapter that are designed to minimize or, if possible, eliminate the symptoms or causes of a an Axis I psychological disorder, subject to the limitations in this rule.

**78.12(1) Definitions.**

“Axis I disorder” means a diagnosed mental disorder, except for personality disorders and mental retardation, as set forth in the “Diagnostic and Statistical Manual IV-TR,” Fourth Edition.

“Behavioral health intervention” means skill-building services that focus on:

1. Addressing the mental and functional disabilities that negatively affect a member’s integration and stability in the community and quality of life;

2. Improving a member’s health and well-being related to the member’s Axis I disorder by reducing or managing the symptoms or behaviors that prevent the member from functioning at the member’s best possible functional level; and

3. Promoting a member’s mental health recovery and resilience through increasing the member’s ability to manage symptoms.

“Licensed practitioner of the healing arts” or “LPHA,” as used in this rule, means a practitioner such as a physician (MD or DO), an advanced registered nurse practitioner (ARNP), a psychologist (PhD or PsyD), an independent social worker (LISW), a marital and family therapist (LMFT), or a mental health counselor (LMHC) who:

1. Is licensed by the applicable state authority for that profession.

2. Is enrolled in the Iowa Plan for Behavioral Health (Iowa Plan) pursuant to 441—Chapter 88, Division IV; and

3. Is qualified to provide clinical assessment services (Current Procedural Terminology code 90801) under the Iowa Plan pursuant to 441—Chapter 88, Division IV.

~~78.12(1)~~ 78.12(2) Covered services. Medicaid covers the following remedial services:

~~a. Community psychiatric supportive treatment, which offers intensive interventions to modify psychological, behavioral, emotional, cognitive, and social factors affecting a member's functioning when less intensive remedial services do not meet the member's needs.~~

~~(1) Interventions must focus on the member's remedial needs to minimize or eliminate psychological barriers to a member's ability to effectively manage symptoms associated with a psychological disorder in an age-appropriate manner.~~

~~(2) Interventions may assist the member in skills such as conflict resolution, problem solving, social skills, interpersonal relationship skills, and communication.~~

~~(3) Community psychiatric supportive treatment is covered only for Medicaid members who are aged 20 or under.~~

~~(4) Community psychiatric supportive treatment is not intended for members in congregate care.~~

~~(5) Community psychiatric supportive treatment is not intended to be provided in a group.~~

~~a. Service setting.~~

(1) Community-based behavioral health intervention is available to a member living in a community-based environment. Services have a primary goal of assisting the member and the member's family to learn age-appropriate skills to manage behavior and regain or retain self-control. Depending on the member's age and diagnosis, specific services offered may include:

1. Behavior intervention,
2. Crisis intervention,
3. Skill training and development, and
4. Family training.

(2) Residential behavioral health intervention is available to members under the age of 18 living in a residential group care setting licensed under 441—Chapter 112. Services have the primary goal of assisting members to prepare to transition to the community through learning age-appropriate skills to manage behavior and regain or retain self-control. Specific services offered include:

1. Behavior intervention, and
2. Crisis intervention.

(3) Behavioral health intervention is not covered for members who are in an acute care or psychiatric hospital, a long-term care facility, or a psychiatric medical institution for children.

~~b. Crisis intervention. Crisis intervention services shall provide a focused intervention and rapid stabilization of acute symptoms of mental illness or emotional distress. The intervention shall be designed to de-escalate situations in which a risk to self, others, or property exists.~~

~~(1) Services shall assist a member to regain self-control and reestablish effective management of behavioral symptoms associated with a psychological disorder in an age-appropriate manner.~~

~~(2) Crisis intervention is covered only for Medicaid members who are aged 20 or under and shall be provided as outlined in a written treatment plan.~~

~~(3) Crisis intervention services do not include control room or other restraint activities.~~

c. Behavior intervention. Health or behavior Behavior intervention, used includes services designed to modify the psychological, behavioral, emotional, cognitive, and social factors affecting a member's functioning.

(1) Interventions may address the following skills for effective functioning with family, peers, and community: conflict resolution skills, problem-solving skills, social skills, interpersonal relationship skills, and communication skills. in an age-appropriate manner:

1. Cognitive flexibility skills,
2. Communication skills,
3. Conflict resolution skills,
4. Emotional regulation skills,

5. Executive skills,
6. Interpersonal relationship skills,
7. Problem-solving skills, and
8. Social skills.

(2) ~~The purpose of intervention shall be to minimize or eliminate psychological barriers to the member's ability to effectively manage symptoms associated with a psychological disorder in an age-appropriate manner. Behavior intervention shall be provided in a location appropriate for skill identification, teaching and development. Intervention may be provided in an individual, family, or group format as appropriate to meet the member's needs.~~

(3) ~~Health or behavior~~ Behavior intervention is covered only for Medicaid members aged 20 or under.

(4) Covered services include only direct teaching or development of skills and not general recreation, non-skill-based activities, mentoring, or interruption of school.

~~d. Family training. Rehabilitation program, which consists of interventions to enhance a member's independent living, social, and communication skills; to minimize or eliminate psychological barriers to a member's ability to effectively manage symptoms associated with a psychological disorder; and to maximize the member's ability to live and participate in the community. Family training is covered only for Medicaid members aged 20 or under.~~

(1) ~~Interventions may address the following skills for effective functioning with family, peers, and community: communication skills, conflict resolution skills, problem-solving skills, social skills, interpersonal relationship skills, and employment-related skills. Family training services shall:~~

1. Enhance the family's ability to effectively interact with the child and support the child's functioning in the home and community, and

2. Teach parents to identify and implement strategies to reduce target behaviors and reinforce the appropriate skills.

(2) ~~Rehabilitation program services are covered only for Medicaid members who are aged 18 or over. Training provided must:~~

1. Be for the direct benefit of the member, and

2. Be based on a curriculum with a training manual.

~~e. Skill training and development. Skill training and development services are covered for Medicaid members aged 18 or over.~~

(1) ~~Skills~~ Skill training and development, ~~which consists shall consist~~ of interventions to:

1. enhance Enhance a member's independent living, social, and communication skills; ~~to~~

2. minimize Minimize or eliminate psychological barriers to a member's ability to effectively manage symptoms associated with a psychological disorder; and ~~to~~

3. maximize Maximize a member's ability to live and participate in the community.

(2) ~~Interventions may include training in the following skills for effective functioning with family, peers, and community: communication skills, conflict resolution skills, problem-solving skills, social skills, interpersonal relationship skills, and employment-related skills.~~

1. Communication skills,

2. Conflict resolution skills,

3. Daily living skills,

4. Employment-related skills,

5. Interpersonal relationship skills,

6. Problem-solving skills, and

7. Social skills.

(2) ~~Skills training and development services are covered only for Medicaid members aged 18 or over.~~

~~78.12(2)~~ **78.12(3)** *Excluded services.*

*a.* Services that are habilitative in nature are not covered as ~~remedial services~~ under behavioral health intervention. For purposes of this subrule, "habilitative services" means services that are designed to assist individuals in acquiring skills that they never had, as well as associated training to acquire

self-help, socialization, and adaptive skills necessary to reside successfully in a home or community setting.

b. Respite, day care, education, and recreation services are not covered under behavioral health intervention.

~~78.12(3)~~ **78.12(4)** *Coverage requirements.* Medicaid covers ~~remedial services~~ behavioral health intervention only when the following conditions are met:

a. A licensed practitioner of the healing arts acting within the practitioner's scope of practice under state law has diagnosed the member with a psychological disorder. ~~For example, licensed practitioners of the healing arts include physicians (M.D. or D.O.), advanced registered nurse practitioners (ARNP), psychologists (Ph.D. or Psy.D.), independent social workers (LISW), marital and family therapists (LMFT), and mental health counselors (LMHC). For purposes of this rule, the licensed practitioner of the healing arts must be:~~

~~(1) Enrolled in the Iowa Plan pursuant to 441—Chapter 88, Division IV; and~~

~~(2) Qualified to provide clinical assessment services under the Iowa Plan pursuant to 441—Chapter 88, Division IV (Current Procedural Terminology code 90801).~~

b. The licensed practitioner of the healing arts has recommended the remedial services behavioral health intervention as part of a plan of treatment designed to treat the member's psychological disorder. The plan of treatment shall be comprehensive in nature and shall detail all behavioral health services that the member may require, not only services included under behavioral health intervention.

(1) The member's need for services must meet specific individual goals that are focused to address:

1. Risk of harm to self or others,

2. Behavioral support in the community,

3. Specific skills impaired due to the member's mental illness, and

4. Needs of children at risk of out-of-home placement due to mental health needs or the transition back to the community or home following an out-of-home placement.

(2) Diagnosis and treatment plan development provided in connection with this rule for members enrolled in the Iowa Plan are covered services under the Iowa Plan pursuant to 441—Chapter 88, Division IV.

c. For a member under the age of 21, the licensed practitioner of the healing arts:

(1) Has, in cooperation with the managed care contractor, selected a standardized assessment instrument appropriate for baseline measurement of the member's current skill level in managing mental health needs;

(2) Has completed an initial formal assessment of the member using the instrument selected; and

(3) Completes a formal assessment using the same instrument every six months thereafter if continued services are ordered.

d. ~~The remedial services behavioral health intervention provider has prepared a written remedial services implementation plan that has been approved by:~~ meets the requirements of subrule 78.12(5).

~~(1) The member or the member's parent or guardian; and~~

~~(2) The medical services unit of the Iowa Medicaid enterprise.~~

~~78.12(4)~~ **78.12(5)** *Approval of plan.* ~~The remedial services behavioral health intervention provider shall submit the treatment plan, the results of the formal assessment, and the remedial services implementation plan to the Iowa Medicaid enterprise (IME) medical services unit for approval before providing contact the Iowa Plan provider for authorization of the services.~~

a. *Initial plan.* ~~The IME medical services unit shall approve the provider's initial remedial services implementation plan if~~ must meet all of the following criteria:

(1) The plan conforms to the medical necessity requirements in subrule 78.12(3) 78.12(6);

(2) The plan is consistent with the written diagnosis and treatment recommendations made by the licensed practitioner of the healing arts;

(3) The plan is sufficient in amount, duration, and scope to reasonably achieve its purpose;

(4) The provider ~~can demonstrate that the provider possesses the skills and resources necessary to implement the plan, as required in~~ meets the requirements of rule 441—77.12(249A); and

(5) The plan does not exceed six months' duration; and

~~(6) The plan requires that written progress notes be submitted no less often than every six weeks to the IME medical services unit.~~

~~b. Subsequent plans.~~ The ~~IME medical services unit~~ Iowa Plan contractor may approve a subsequent remedial services implementation plan according to the conditions in paragraph “a” if the services are recommended by a licensed practitioner of the healing arts who has:

- ~~(1) Reexamined the member;~~
- ~~(2) Reviewed the original diagnosis and treatment plan; and~~
- ~~(3) Evaluated the member’s progress, including a formal assessment as required by 78.12(3)“e”(3); and 78.12(3)“c”(4).~~
- ~~(4) Submitted the results of the formal assessment with the recommendation for continued services.~~

~~c. Quality review.~~ The ~~IME medical services unit~~ will establish a quality review process. Reviews will evaluate:

- ~~(1) The time elapsed from referral to remedial plan development;~~
- ~~(2) The continuity of treatment;~~
- ~~(3) The affiliation of the licensed practitioner of the healing arts with the remedial services provider;~~
- ~~(4) Gaps in service;~~
- ~~(5) The results achieved; and~~
- ~~(6) Member satisfaction.~~

~~78.12(5)~~ **78.12(6)** *Medical necessity.* Nothing in this rule shall be deemed to exempt coverage of remedial behavioral health intervention services from the requirement that services be medically necessary. “Medically necessary” means that the service is:

a. Consistent with the diagnosis and treatment of the member’s condition and specific to a daily impairment caused by an Axis I disorder;

b. Required to meet the medical needs of the member and is needed for reasons other than the convenience of the member or the member’s caregiver;

c. The least costly type of service that can reasonably meet the medical needs of the member; and

d. In accordance with the standards of ~~good~~ evidence-based medical practice. The standards of ~~good~~ practice for each field of medical and remedial care covered by the Iowa Medicaid program are those standards of ~~good~~ practice identified by:

- (1) Knowledgeable Iowa clinicians practicing or teaching in the field; and
- (2) The professional literature regarding ~~best~~ evidence-based practices in the field.

This rule is intended to implement Iowa Code section 249A.4 and 2010 Iowa Acts, chapter 1192, section 31.

ITEM 3. Rescind the provider category “Remedial services” in subrule **79.1(2)**.

ITEM 4. Adopt the following **new** provider category in subrule **79.1(2)**:

| <u>Provider category</u>       | <u>Basis of reimbursement</u>                                     | <u>Upper limit</u>             |
|--------------------------------|---|--------------------------------|
| Behavioral health intervention | Fee schedule as determined by the Iowa Plan for Behavioral Health | Fee schedule in effect 7/1/11. |

ITEM 5. Rescind and reserve subrule **79.1(23)**.

ITEM 6. Amend subparagraph **79.3(2)“d”(25)** as follows:

~~(25) Remedial Behavioral health intervention services and rehabilitation services for adults with a chronic mental illness:~~

1. Order for services.
2. Comprehensive treatment or service plan (initial and subsequent).
3. Service notes or narratives.

ITEM 7. Adopt the following **new** subparagraph **88.65(3)“a”(16)**:

(16) Behavioral health intervention as set forth in rule 441—78.12(249A).

ITEM 8. Amend subrule 88.65(6) as follows:

**88.65(6)** *Excluded services.* Unless the service is specifically included in the contract, the contractor shall not be required to provide long-term care (e.g., residential care facilities, nursing facilities, state resource centers, or intermediate care facilities for persons with mental retardation) ~~or remedial services.~~