

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 229A.15B, the Department of Human Services proposes to adopt new Chapter 31, “Civil Commitment Unit,” Iowa Administrative Code.

Pursuant to Iowa Code chapter 229A, the Sexually Violent Predator Act, the Department has established a civil commitment unit for sexual offenders which is housed on the campus of the Cherokee Mental Health Institute. The proposed new chapter sets policies for this facility in relation to visits, grievances, photographing and recording of individuals committed to the facility, release of information, communications with individuals committed to the facility, use of the buildings and grounds, gifts and bequests to the facility, and recovery of the cost of an individual’s care from the individual or a responsible party.

These rules allow the facility administrator to waive requirements for approval of visitors when an individual is hospitalized. 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 rules on or before May 24, 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.

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

These rules are intended to implement Iowa Code chapter 229A.

The following amendment is proposed.

Adopt the following **new** 441—Chapter 31:

CHAPTER 31
CIVIL COMMITMENT UNIT

441—31.1(229A) Definitions.

“*Business day*” means a working day in the usual Monday-through-Friday workweek. A holiday falling within this workweek shall not be counted as a business day.

“*Contraband*” means weapons, ammunition, tobacco, alcohol, drugs, money, altered authorized property, mood-altering plant material or chemical, obscene material as defined in Iowa Code section 728.1(5), explosives, material that can be used in the manufacture of explosives, or material advocating disruption of or injury to residents, employees, programs, or physical facilities. “Contraband” includes anything which is illegal to possess under federal or state law and materials that are used in the production of drugs or alcohol or used in conjunction with the taking of illicit drugs. “Contraband” also includes anything determined to be banned from individual possession by published facility rules.

“*Facility*” means the civil commitment unit for sexual offenders.

“*Facility administrator*” means the person appointed as the administrator of the civil commitment unit for sexual offenders.

“*Gift or bequest*” means anything of value the facility receives that is intended for use directly by the employees of the facility. Items intended for public distribution, such as clothes or furniture, do not constitute a gift to the facility.

“*Grievance*” means a written complaint by or on behalf of an individual that involves a rights or rule violation or unfairness to the individual.

“*Guardian*” means the person other than a parent of a child who has been appointed by the court to have custody of the person of the individual as provided under Iowa Code section 232.2(21) or 633.3(20).

“*Individual*” means a person who has been committed to the civil commitment unit for sexual offenders (CCUSO) under Iowa Code chapter 229A.

“*Minor*” means a person under the age of 18.

“*Money*” means all forms of currency, checks, money orders, stocks, bonds, and any other item that can be used as a medium of exchange for payment for goods or services.

“*Parent*” means a natural or adoptive mother or father of a child but does not include a mother or father whose parental rights have been terminated.

“*Rights*” means the human, civil, and constitutional liberties an individual possesses through federal and state constitutions and laws.

“*Support team member*” means a person who has agreed to participate in the development and implementation of an individual’s relapse prevention plan.

“*Visitor*” means any person who wishes to visit an individual committed to the facility. “*Visitor*” does not include the individual’s attorney of record, other court-appointed attorneys, retained experts, the ombudsman or government officials, or facility-approved clergy.

“*Weapon*” means any gun, knife, tool, object, or chemical that can be used to inflict harm on one’s self or another.

This rule is intended to implement Iowa Code chapter 229A.

441—31.2(229A) Visitation. Visitation is considered part of the individual’s therapeutic program. Visits are expected to benefit the individual’s treatment goals while meeting the security needs of the facility and ensuring the safety of the individual and the visitor.

31.2(1) Approval of visitor. All persons wishing to visit a committed individual who is residing at the facility or is in a transition phase shall have prior approval of the facility administrator before a visit shall be permitted.

a. *Questionnaire and background check.* Before being approved to visit, all visitors shall complete a visitor questionnaire and undergo a background check to determine if:

- (1) The visitor has been a victim of the individual;
- (2) The visitor has a significant criminal background;
- (3) The visitor will not hinder the individual’s treatment; or
- (4) The visitor will be a part of the individual’s support team.

b. *Interview.* Upon return of the questionnaire and completion of the background check, an interview shall be conducted with the visitor to determine whether the visitor will be approved.

c. *Minors.* A minor shall not be permitted to visit unless special circumstances exist and the visit is approved by:

- (1) The individual’s treatment team,
- (2) The facility administrator, and
- (3) The minor’s parent or guardian.

d. *Support team member.* A visitor identified as a support team member shall complete a four-hour training course on being part of a support team before being approved as part of the individual’s support team.

e. *Revocation of approval.* Approval of visitors is at the sole discretion of the facility. Approval may be revoked at any time if the facility determines that:

- (1) The visitor rules have been violated; or
- (2) The visitor presents a threat to security or is a detriment to the individual’s treatment.

f. *Approval after revocation.* Once approval is revoked, the person shall be required to reapply for and be approved for reinstatement before being allowed to visit.

31.2(2) Prior notification. Visitors shall call the facility at least 24 hours in advance of a planned visit to schedule the visit.

31.2(3) Visiting hours.

a. Visits shall be allowed on:

- (1) Monday through Friday from 5:30 p.m. to 8:30 p.m.
 - (2) Saturdays, Sundays, and holidays from 10:30 a.m. to 2 p.m. and from 2:30 p.m. to 8:30 p.m.
- b.* Visitors shall not be admitted after 7:30 p.m. on weekdays or after 4:30 p.m. on Saturdays, Sundays, and holidays.

31.2(4) Visitation limits. Individuals shall be allowed a maximum of three hours' visitation on weekdays and a total of four hours on Saturdays, Sundays, and holidays. The number of days per week the individual may have visits shall be determined by the individual's treatment team based on the individual's treatment level. At the discretion of the facility, the visit may be split between two different periods of the day.

31.2(5) Search. All visitors shall be subject to a search before a visit.

a. A visitor shall be required to remove all items from the visitor's pockets and place the items in a locker provided by the facility or take the items to the visitor's vehicle.

b. Visitors shall not be allowed to bring the following items into the secure area of the facility: purses, packages, folders, binders, briefcases, still or video cameras, cell phones, computers, electronic media storage devices, digital or analog recording devices, or any device that can be used to connect to the Internet.

c. Food items may not be brought into the visiting area.

31.2(6) Visitor rules. Each approved visitor shall be given a copy of the facility's visitor rules at the beginning of each visit and shall be required to sign an acknowledgement that the visitor has received the rules and understands them. The visitor rules are as follows:

a. The visitor's name shall be on the approved visitors list.

b. The visitor shall provide 24-hour prior notice of the intent to visit.

c. Upon arrival, the visitor shall check in at the facility master control center.

d. A visitor who is 16 years of age or older shall provide a government-issued photo identification document.

e. A minor who is approved as a visitor shall be accompanied at all times by an approved adult visitor.

f. All visitors shall be subject to the rules of the facility.

g. Visitors shall wear clothing appropriate to the security and therapeutic needs of the facility. Prohibited clothing includes: mini-skirts, shorts, muscle shirts, see-through clothing, or halter tops; clothing or accessories with obscene words, symbols, or pictures; and clothing with gang colors or symbols.

h. For the duration of the visit, visitors shall be required to remove outerwear such as, but not limited to, coats, hats, gloves, and sunglasses. A medical need for sunglasses for protection from normal interior light shall be verified by a physician's prescription.

i. Smoking shall not be permitted in the facility or on the grounds of the facility except in an enclosed private vehicle.

j. A visitor shall not schedule a visit when the visitor has a communicable disease.

k. Visitors shall not be under the influence of drugs or alcoholic beverages.

l. Food gifts or other items shall not be brought into the facility unless prior approval has been received from the treatment program supervisor. Food items may be purchased from vending machines at the facility.

m. All visits shall be monitored by an employee.

n. The door to the visiting room shall remain open at all times.

31.2(7) Denial of visit. All visitors are subject to denial of a visit each time the visitor enters the facility. Visits can be denied by any employee with reason. Reasons for denial include but are not limited to:

a. The visitor's name is not on the approved visitors list.

b. The visitor did not provide notice of the visit at least 24 hours in advance.

c. The visitor's clothing does not conform to the facility visitor rules.

d. The visitor does not agree to be searched.

e. The visitor is trying to bring contraband into the facility.

- f. The visitor is or appears to be under the influence of drugs or alcoholic beverages.
- g. The visitor exhibits disruptive behavior that threatens the safety or security of the facility, individuals, employees, or other visitors.
- h. The visitor appears to have a health condition that could threaten the health of individuals, employees, or other visitors.
- i. The individual has been placed on restrictions for a rule infraction.
- j. The number of staff available is inadequate to supervise the visit.

31.2(8) Termination of visit.

- a. The facility may terminate a visit at any time when:
 - (1) The visitor or the individual violates any visitor rule during the visit.
 - (2) Because of the actions of an individual or a visitor, a facility employee becomes concerned about the safety and security of the facility, the individual, the visitor, or other visitors.
 - (3) The individual's treatment team determines that the visit is counter-therapeutic or is disruptive to the safety and security of the facility.
 - (4) A crisis in the facility results in an inadequate number of staff available to supervise the visit.
- b. The facility may either terminate the current visit or, at the discretion of the individual's treatment team, remove the visitor's name from the approved visitors list.

31.2(9) Visits outside the facility. Individuals may visit family and friends outside of the facility when the visit meets all of the following criteria:

- a. The visit occurs in connection with a death or life-threatening illness in the family.
- b. The visit receives the approval of the facility administrator. Such approval shall be granted only when:
 - (1) The facility has determined the individual to be a "low escape risk,"
 - (2) The visit will provide a treatment benefit to the individual with no harmful effects on the individual's family or community, and
 - (3) The individual pays all expenses associated with supervision of the visit, including facility expenses such as employee wages and transportation costs.

c. The visit is ordered by the court.

31.2(10) Hospital visits. Individuals hospitalized in a community facility may have visitors during the hospitalization provided that:

- a. The visit does not interfere with the treatment of the individual.
- b. The visitor is approved as provided in subrule 31.2(1) unless an exemption is granted by the facility administrator.
- c. The visitor is subject to a search as provided in subrule 31.2(5).
- d. The visitor is subject to the visitor rules as provided in subrule 31.2(6).
- e. The visit may be terminated at the will of the facility as provided in subrule 31.2(8).

This rule is intended to implement Iowa Code chapter 229A.

441—31.3(229A) Group visitation. Groups of persons from the general public who wish to visit the facility shall submit a written request and shall be subject to the same security review process as all other visitors.

31.3(1) Request to visit. A group wishing to visit the facility shall submit a written request to the facility administrator at least one month in advance of the requested visit. The request shall state the purpose of the visit and the expected therapeutic benefit for the individuals.

31.3(2) Visitor questionnaire. Each person in the group shall complete a visitor questionnaire and shall undergo a background check to determine if:

- a. The person has been a victim of the individual;
- b. The person has a significant criminal background;
- c. The person will not hinder the individual's treatment; or
- d. The person will be a part of the individual's support team.

31.3(3) Visitor interview. Upon return of the questionnaire and completion of the background check, an interview shall be conducted with each person in the group to determine:

- a. Whether or not the visit will be authorized; and
- b. The location, date, time, and duration of an authorized visit.

31.3(4) Orientation. Before entering the facility, a visitor group shall be provided with an introduction and orientation to facility security procedures and to visitor rules that the group will be expected to follow. Each member of the group shall sign a form acknowledging receipt of the visitor rules.

31.3(5) Denial or termination of visit. At the discretion of the facility, the entire group or a member of the group may be denied visitation as provided in subrule 31.2(7) or may have the visit terminated as provided in subrule 31.2(8).

This rule is intended to implement Iowa Code chapter 229A.

441—31.4(229A) Grievances. Any individual who believes the individual's rights have been violated or who has a complaint concerning the individual's treatment may file a grievance using a form approved by the facility administrator. The individual's family or guardian may file a grievance on behalf of the individual by submitting the grievance in writing to the facility administrator.

This rule is intended to implement Iowa Code chapter 229A.

441—31.5(229A) Photographing and recording individuals.

31.5(1) Visitors. Visitors shall not be allowed to bring any camera or video or audio recording devices into the facility. An individual who wants to have a photograph taken with a visitor shall request prior permission from the individual's treatment team and make arrangements for paying the cost of the photograph.

a. With approval of the treatment team, a facility employee will take the photograph using facility equipment. The facility shall provide the photograph to the individual requesting it. The individual shall be responsible for distribution of the photograph.

b. The facility shall not be liable for any further use or distribution of the photograph made by the individual or by anyone else who comes into possession of the photograph.

31.5(2) Public media. Photographs and video and audio recordings by public media inside of the facility and of individuals shall be permitted only with the prior authorization of the facility administrator and of the individual or the individual's guardian.

a. For security or confidentiality of other individuals, the facility administrator may limit the scope of what is photographed or recorded.

b. Public media representatives authorized to take photographs or recordings shall make every effort to preserve the inherent dignity of the individual and to preclude the exploitation or embarrassment of the individual.

This rule is intended to implement Iowa Code chapter 229A.

441—31.6(229A) Release of information.

31.6(1) Release to news media. The facility administrator shall be responsible for the release to the news media of information pertaining to the facility. Authority for dissemination and release of information may be designated to other employees at the discretion of the facility administrator.

31.6(2) Release of confidential information. Information concerning individuals currently or formerly at the facility which is defined by statute as confidential shall not be released to a person, agency or organization that is not authorized by law to have access to the information unless the individual authorizes the release. Authorization may be given by using Form 470-3951, Authorization to Obtain or Release Health Care Information.

This rule is intended to implement Iowa Code chapter 229A.

441—31.7(229A) Communication with individuals.

31.7(1) Incoming telephone calls.

a. The individual's treatment team shall determine an approved caller list for each individual based on the individual's request for approval. Incoming calls shall not be approved from a person who:

- (1) Has been a victim of the individual,
- (2) Is a registered sex offender, or
- (3) Has been determined by the individual's treatment team as a person whose communication is counter-therapeutic to the individual's treatment plan.

b. All incoming calls for an individual shall require the approval of the facility administrator or designee before the caller will be connected with the individual to determine if the caller is:

- (1) On an individual's approved caller list, or
- (2) An attorney representing the individual. An attorney representing the individual shall have the right to call the individual at any reasonable time.

c. Approved incoming calls shall not be monitored.

d. The individual has the right to grieve any adverse decision.

31.7(2) *Attorney contacts.* An individual's attorney shall have the right to visit or have telephone contact with the individual at any reasonable time. The individual shall have the right to call the individual's attorney during normal business hours and at other times with the consent of the attorney. The individual or the attorney shall be responsible for any costs associated with the call.

31.7(3) *Interviews.* Interviews of an individual by the news media or other outside persons or groups shall be permitted only with the prior consent of the individual or the individual's guardian.

a. All requests for an interview shall be made to the facility administrator. When a request is received, the facility administrator or designee shall:

- (1) Notify the individual or the individual's guardian of the request; and
- (2) Document notification to the individual or guardian in the individual's record.

b. The individual or the individual's guardian shall be free to decide whether an interview is granted.

c. The facility administrator shall determine how, when, and where the interview is to be done, as necessary to maintain the security of the facility.

31.7(4) *Mail and packages.*

a. Correspondence shall not be permitted between an individual and a victim of the individual, a registered sex offender, or another individual residing at the facility.

b. Correspondence an individual receives from the state ombudsman shall be delivered to the individual unopened. Other outgoing and incoming letters and packages shall not be censored or tampered with in any manner except that an employee may:

(1) Open, but not read, incoming and outgoing letters and packages in the presence of the individual to whom the letters and packages belong; or

(2) Require the individual to open the letters or packages in an employee's presence and disclose the contents.

c. In situations where the employee has reasonable suspicion that a letter or package contains information or materials that threaten the security or the therapeutic needs of the facility, such as but not limited to contraband, threats, escape plans, or sexually explicit content, the correspondence may be read in the presence of the individual.

d. Letters or packages found to contain contraband shall be confiscated. Both the sender and the intended receiver of the confiscated letters and packages shall be notified and given the reasons for the action in writing within two business days of the action.

e. The facility administrator or designee may terminate correspondence between an individual and another person when the individual's treatment team has determined that the correspondence is not in the individual's best interest, is detrimental to the individual's treatment plan, is a threat to public or individual safety, or is a threat to the security of the facility. Termination shall be based on the circumstances of each case.

(1) The facility administrator or designee shall provide justification to terminate the correspondence in a written notice to the correspondents.

(2) Correspondents may file a grievance concerning the termination.

This rule is intended to implement Iowa Code chapter 229A.

441—31.8(229A) Building and grounds. The facility’s building and grounds shall not be available for general public use.

This rule is intended to implement Iowa Code chapter 229A.

441—31.9(8,218) Gifts and bequests. Gifts or bequests of money, clothing, books, games, recreational equipment or other gifts shall be made directly to the facility administrator.

31.9(1) Evaluation. The facility administrator or designee shall evaluate the gift or bequest in terms of the nature of the contribution to the facility program.

31.9(2) Acceptance. The facility administrator shall be responsible for accepting the gift or bequest and reporting it to the division administrator.

a. All monetary gifts or bequests shall be acknowledged in writing to the donor.

b. All gifts or bequests, regardless of value, shall be reported to the Iowa ethics and campaign disclosure board within 20 days of receipt of the gift or bequest using the board’s Form-GB.

This rule is intended to implement Iowa Code section 8.7.

441—31.10(229A) Cost of care. The facility shall seek to recover the full cost or a portion of the cost of care from the individual or another responsible person. The cost of the individual’s care shall be determined for each fiscal year included in the length of stay using the average per diem cost multiplied by the total number of days of care.

31.10(1) Social security benefits. The facility shall seek recovery from the individual when the individual receives a benefit pursuant to the Social Security Act. In such case, the individual shall be allowed to retain for personal use an amount equal to the personal allowance amount established by the Social Security Administration.

31.10(2) Other income. The facility shall seek recovery from the individual when the individual has other income; a trust fund; individually owned real estate, stocks, bonds, savings account, checking account, or certificate of deposit; an individual retirement account; or proceeds from the disposal of real estate or other property.

31.10(3) Other person legally liable. The facility shall seek recovery from a person who is legally liable for the support of the individual up to the amount of the person’s legal liability. The facility shall seek recovery from a person who is bound by contract to support the individual up to the amount of the contract. A person legally liable to support the individual shall not include a political subdivision.

This rule is intended to implement Iowa Code section 229A.12.