

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends 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.

These amendments implement part of the plan developed by the remedial services transition committee to change remedial services from a fee-for-service program administered by the Iowa Medicaid Enterprise to a service administered by the Iowa Plan for Behavioral Health. (The Iowa Plan for Behavioral Health is a managed care program under contract to Iowa Medicaid.) The work of the remedial services transition committee was directed by 2010 Iowa Acts, chapter 1192, section 31. The transition committee filed a final report with the General Assembly on December 31, 2010.

These 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. (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 when the services are provided. This change promotes consistency of coverage and better integration of services for members who move in and out of Iowa Plan enrollment.

- Require that providers be enrolled in the Iowa Plan for Behavioral Health in order to receive Medicaid fee-for-service payment for behavioral health intervention. This change provides 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 has historically not been provided. The definition of “rehabilitation program” is virtually identical to the definition of “skill training and development,” which remains a covered service for adults.

- 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.

- Make all behavioral health intervention services 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.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on February 23, 2011, as **ARC 9399B**. The Department received ten written comments on the Notice of Intended Action, and nine persons attended the public hearing held to receive comments. In response to these comments, the Department has made the following changes to the amendments as published under Notice of Intended Action:

- Added the following sentence to the introductory paragraph of rule 441—77.12(249A): “Providers must complete child abuse, dependent adult abuse, and criminal background screenings pursuant to Iowa Code section 135C.33(5)“a”(1) before employment of a staff member who will provide direct care.” Comments indicated confusion on whether this requirement applied to behavioral health intervention.

- Revised subrule 78.12(1), definition of “Licensed practitioner of the healing arts,” to remove the academic degree designations for a psychologist and to change the social worker reference to “a social worker (LMSW or LISW).”

- Changed the first sentence of new subparagraph 78.12(2)“a”(2) to read: “Residential behavioral health intervention is available to members eligible for foster group care payment pursuant to 441—subrule 156.20(1).” This wording removes the reference to the member’s age. The Department intends that any member who is eligible to be in foster group care may be eligible for behavioral health intervention.

- Added family training to the list of services in subparagraph 78.12(2)“a”(2) that are available under residential behavioral health intervention.

- Removed the words “using the same instrument” from subparagraph 78.12(4)“c”(3). Results of any approved instrument will be accepted.

The Department chose not to accept the requests to allow staff members without a college degree to provide in-home behavioral health intervention. On-site professional supervision is available for staff providing services in a facility, but not for staff providing in-home services.

The payment rate after July 1, 2011, will remain the same amount as in effect on February 28, 2011. In order to maintain a legal basis for retroactive reconciliation of reimbursement rates for remedial services provided in state fiscal year 2011, the Department has made the following changes to the amendments published under Notice:

- New Item 2 has been added to make a technical change in subparagraph 77.46(3)“a”(1) to update the name of the service. Subsequent item numbers have been renumbered accordingly.

- The rescission of the provider category of “remedial services” in subrule 79.1(2) in proposed Item 3 and the rescission of subrule 79.1(23) in proposed Item 5 have not been adopted because of the continuing need for retrospective adjustment of rates for services provided in state fiscal year 2011. Instead, the words “provided before July 1, 2011,” have been added to the introductory paragraph of subrule 79.1(23) in Item 5 to limit the application of the subrule, and subparagraphs 79.1(23)“b”(5) and 79.1(23)“b”(6) on rates for new providers and penalties for failure to file cost reports have been rescinded in new Item 6.

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).

The Council on Human Services adopted these amendments on April 13, 2011.

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

These amendments shall become effective on July 1, 2011.

The following amendments are adopted.

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 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. Providers must complete child abuse, dependent adult abuse, and criminal background screenings pursuant to Iowa Code section 135C.33(5)“a”(1) before employment of a staff member who will provide direct care.

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

ITEM 2. Amend subparagraph **77.46(3)“a”(1)** as follows:

(1) ~~Remedial services~~ Behavioral health intervention providers qualified under 441—77.12(249A).

ITEM 3. 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 (M.D. or D.O.), an advanced registered nurse practitioner (ARNP), a psychologist, a social worker (LMSW or 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 eligible for foster group care payment pursuant to 441—subrule 156.20(1). Services have the primary goal of assisting the member 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,
2. Crisis intervention, and
3. Family training.

(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.

(1) (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~~ 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 78.12(5) “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(4) “c”(3).~~

(4) ~~Submitted the results of the formal assessment with the recommendation for continued services.~~

e. ~~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 services behavioral health intervention~~ from the requirement that services be medically necessary. “Medically For purposes of behavioral health intervention, “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 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. Amend subrule 79.1(23), introductory paragraph, as follows:

**79.1(23) Reimbursement for remedial services.** Reimbursement for remedial services provided before July 1, 2011, shall be made on the basis of a unit rate that is calculated retrospectively for each provider, considering reasonable and proper costs of operation. The unit rate shall not exceed the established unit-of-service limit on reasonable costs pursuant to subparagraph 79.1(23)“c”(1). The unit of service may be a quarter-hour, a half-hour, an hour, a half-day, or a day, depending on the service provided.

ITEM 6. Rescind subparagraphs **79.1(23)“b”(5)** and **(6)**.

ITEM 7. Amend subparagraph **79.3(2)“d”(25)** as follows:

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

1. Order for services.

2. Comprehensive treatment or service plan (initial and subsequent).

3. Service notes or narratives.

ITEM 8. Adopt the following new subparagraph **88.65(3)“a”(16)**:

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

ITEM 9. 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.~~

[Filed 4/13/11, effective 7/1/11]

[Published 5/4/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/4/11.