

## 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 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

The proposed amendments update rules for the Medicaid home- and community-based services (HCBS) intellectual disability waiver to implement legislative directives and corrective actions from the Centers for Medicare and Medicaid Services (CMS) as follows:

- As directed by 2010 Iowa Acts, chapter 1031 (Senate File 2088), section 405, the amendments allow providers of supported community living services to include transportation costs to and from work and day services as reimbursable costs. Currently, these costs must be billed through a separate transportation service. This change may decrease administrative costs and increase the ability of providers to meet members’ transportation needs.

- As directed by 2010 Iowa Acts, chapter 1031, section 404, the amendments change the frequency of psychological evaluations and re-evaluations of a member to determine eligibility for the waiver. For persons who have a diagnosis of moderate, severe or profound mental retardation, only one diagnosis made after the member reaches 18 years of age will be required as a condition of eligibility for waiver services after age 21. For persons with a diagnosis of mild or unspecified mental retardation, the frequency of redeterminations after age 21 will be extended to every six years (from the current five years).

- As directed by 2010 Iowa Acts, chapter 1192 (House File 2526), section 70, the amendments set the criteria and process for implementation of one statewide waiting list to ensure that all applicants have equal access to payment slots. Currently, separate waiting lists are maintained by each entity that funds the nonfederal share of waiver services (by counties for their adult residents and by the state for applicants without a county of legal settlement and for children). Each funding entity determines the need for a waiting list based on the entity’s financial situation. Applicants receive a payment slot on a first-come, first-served basis as financial resources for the applicant’s funding entity permit.

As part of the recertification of the intellectual disability waiver in 2009, CMS identified that persons applying for the waiver do not have equal access to a payment slot statewide. Applicants from one county may access services immediately, while applicants from another county may be on a waiting list for months or years. The Department agreed to correct this practice as a condition of renewal of the waiver. The proposed amendments provide for a statewide waiting list that is prioritized based on each applicant’s need for waiver services. Criteria are specified for emergency needs and urgent needs. An applicant with an emergency or urgent need would have priority for a payment slot, regardless of where the applicant lives or the financial resources allocated by the county or state.

The proposed amendments also make technical changes to:

- Replace the previous waiver name, “mental retardation waiver” or “MR waiver,” with the current name, “intellectual disability waiver.”

- Remove the term “mental disability equivalent to mental retardation” from the diagnostic eligibility requirements of the intellectual disability waiver.

- Specify that only children in residential-based supported community living placement may have a diagnosis of a “related condition” and define that term.

- Update form names and numbers.

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 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](mailto:policyanalysis@dhs.state.ia.us).

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

These amendments are intended to implement Iowa Code section 249A.4; 2010 Iowa Acts, chapter 1031, sections 404 and 405; and 2010 Iowa Acts, chapter 1192, section 70.

The following amendments are proposed.

ITEM 1. Amend subparagraph **78.41(1)“a”(5)** as follows:

(5) Transportation services are activities and expenditures designed to assist the member to travel from one place to another to obtain services or carry out life's activities. ~~The service excludes transportation to and from work.~~

ITEM 2. Amend paragraph **78.41(1)“e”** as follows:

~~e. Transportation to and from a day program is not a reimbursable service.~~ Maintenance and room and board costs are not reimbursable.

ITEM 3. Strike “MR waiver” wherever it appears in **441—Chapter 83, Division IV heading, rule 441—83.61(249A)**, paragraph **83.61(1)“h”** and rules **441—83.62(249A)**, **441—83.64(249A)**, **441—83.66(249A)**, **441—83.67(249A)** and **441—83.70(249A)** and insert “intellectual disability waiver” in lieu thereof.

ITEM 4. Amend rule **441—83.60(249A)**, definition of “Person with a related condition,” as follows:

~~“Person with a related~~ Related condition” means ~~an individual who has~~ a severe, chronic disability that meets all the following conditions:

1. It is attributable to cerebral palsy, epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of a mentally retarded person and requires treatment or services similar to those required for a mentally retarded person.

2. It is manifested before the age of 22.

3. It is likely to continue indefinitely.

4. It results in substantial functional limitations in three or more of the following areas of major life activity:

- Self-care.
- Understanding and use of language.
- Learning.
- Mobility.
- Self-direction.
- Capacity for independent living.

ITEM 5. Amend paragraph **83.61(1)“a”** as follows:

~~a. Have a diagnosis of mental retardation or, for residential-based supported community living services only, be a person with a related condition as defined in rule 441—83.60(249A). Those eligible based on a primary diagnosis of mental retardation must have the~~ The diagnosis shall be initially established and recertified as follows:

Age	Initial application to HCBS MR intellectual disability waiver program	Recertification for persons with an IQ range of 54 or below, moderate range of MR or below a diagnosis of moderate, severe or profound mental retardation	Recertification for persons with an IQ range of 55 or above, a diagnosis of mild or unspecified range of MR mental retardation
0 through 17 years	Psychological documentation within three years of the application date substantiating a diagnosis of mental retardation <del>or mental disability equivalent to mental retardation</del> or, for residential-based supported community living services, a diagnosis of a related condition as defined in rule 441—83.60(249A)	After the initial psychological evaluation which <del>listed the consumer in this range,</del> substantiate a diagnosis of mental retardation <del>or a diagnosis of mental disability equivalent to mental retardation</del> or, for residential-based supported community living services, a diagnosis of a related condition as defined in rule 441—83.60(249A) every six years and when a significant change occurs	After the initial psychological evaluation which <del>listed the consumer in this range,</del> substantiate a diagnosis of mental retardation <del>or mental disability equivalent to mental retardation</del> or, for residential-based supported community living services, a diagnosis of a related condition as defined in rule 441—83.60(249A) every three years and when a significant change occurs
18 through 21 years	<ul style="list-style-type: none"> <li>Psychological documentation substantiating diagnosis of mental retardation <del>or a diagnosis of mental disability equivalent to mental retardation</del> within three years <del>prior to age 18</del> before the application date, or</li> <li>Diagnosis of mental retardation <del>or mental disability equivalent to mental retardation</del> made before age 18 and current psychological documentation substantiating a diagnosis of mental retardation <del>or a diagnosis of mental disability equivalent to mental retardation</del></li> </ul>	Psychological documentation substantiating a diagnosis of mental retardation <del>or a diagnosis of mental disability equivalent to mental retardation</del> every ten years and whenever a significant change occurs	Psychological documentation substantiating a diagnosis of mental retardation <del>or a diagnosis of mental disability equivalent to mental retardation</del> every five years and whenever a significant change occurs
22 years and above	Diagnosis made before age 18 and current psychological documentation substantiating a diagnosis of mental retardation <del>or a diagnosis of mental disability equivalent to mental retardation</del> , if the last testing date was (1) more than five years ago for consumers with an IQ range of 55 or above or an applicant with a diagnosis of mild or unspecified mental retardation, or (2) more than ten years ago for consumers with an IQ range of 54 or below or an applicant with a diagnosis of moderate, severe or profound MR <del>or below mental retardation</del>	Psychological documentation substantiating a diagnosis of mental retardation <del>or a diagnosis of mental disability equivalent to mental retardation</del> every ten years and whenever a significant change occurs made since the member reached 18 years of age	Psychological documentation substantiating a diagnosis of mental retardation <del>or a diagnosis of mental disability equivalent to mental retardation</del> every five six years and whenever a significant change occurs

ITEM 6. Amend paragraph **83.61(1)“j”** as follows:

*j.* Be assigned an HCBS MR intellectual disability payment slot pursuant to subrule 83.61(4).

ITEM 7. Amend subrule 83.61(2) as follows:

**83.61(2) Need for services.**

*a.* ~~Consumers~~ Applicants currently receiving Medicaid case management or services of a department-qualified mental retardation professional (QMRP) shall have the applicable coordinating staff and other interdisciplinary team members complete the ~~Functional Assessment Tool, Form 470-3073~~ 470-4694, Case Management Comprehensive Assessment, and identify the ~~consumer’s~~ applicant’s needs and desires as well as the availability and appropriateness of the services.

b. ~~Consumers~~ Applicants not receiving services as set forth in paragraph 83.61(2) "a" ~~who are applying for the HCBS MR waiver service~~ shall have a department service worker or a case manager paid by the county without Medicaid funds;

(1) ~~complete the Functional Assessment Tool, Complete Form 470-3073 470-4694, Case Management Comprehensive Assessment,~~ for the initial level of care determination;

(2) ~~establish~~ Establish an initial interdisciplinary team for HCBS MR ~~intellectual disability waiver~~ services; and;

(3) ~~with~~ With the initial interdisciplinary team, identify the ~~consumer's~~ applicant's needs and desires as well as the availability and appropriateness of services.

c. ~~Persons~~ Applicants meeting other eligibility criteria who do not have a Medicaid case manager shall be referred to a Medicaid case manager.

d. and e. No change.

f. The service worker, department QMRP, or Medicaid case manager shall complete ~~the Functional Assessment Tool, Form 470-3073 470-4694, Case Management Comprehensive Assessment,~~ for the initial level of care determination within 30 days from the date of the HCBS application unless the worker can document difficulty in locating information necessary for completion of Form ~~470-3073 470-4694~~ or other circumstances beyond the worker's control.

g. At initial enrollment the service worker, department QMRP, case manager paid by the county without Medicaid funds, or Medicaid case manager shall establish an HCBS MR interdisciplinary team for each ~~consumer~~ applicant and, with the team, identify the ~~consumer's~~ applicant's need for service based on the ~~consumer's~~ applicant's needs and desires as well as the availability and appropriateness of services. The Medicaid case manager shall complete an annual review thereafter. The following criteria shall be used for the initial and ongoing assessments:

(1) The assessment shall be based, in part, on information on the completed ~~Functional Case Management Comprehensive Assessment Tool, Form 470-3073 470-4694.~~

(2) to (4) No change.

h. No change.

ITEM 8. Amend subrule 83.61(3) as follows:

**83.61(3)** *HCBS MR intellectual disability waiver program limit.* The number of persons receiving HCBS MR intellectual disability waiver services in the state shall be limited to the number of payment slots provided in the HCBS MR intellectual disability waiver approved by the Centers for Medicare and Medicaid Services (CMS). The department shall make a request to CMS to adjust the program limit annually to be effective each July 1 based upon the county management plans submitted by the state and counties as deemed necessary. ~~The department shall also submit a request to CMS for changes to the program limit to be effective January 1 if requested by a county during the month of September.~~

a. The payment slots are ~~on a county basis for adults with legal settlement in a county and are available~~ on a statewide basis for children and adults without a county of legal settlement. These slots shall be available ~~on a first-come, first-served basis~~ based on the prioritized need of an applicant pursuant to subrule 83.61(4).

b. No change.

ITEM 9. Amend subrule 83.61(4) as follows:

**83.61(4)** *Securing a payment slot.* The department shall determine if a payment slot is available for each applicant for the HCBS intellectual disability waiver.

a. ~~The county department office shall contact the bureau of long-term care for state cases and children or the central point of coordination administrator for the county of legal settlement for adults to determine if a payment slot is available for all new applications for the HCBS MR program. A payment slot shall be assigned to the applicant upon confirmation of an available slot.~~

(1) ~~For applicants not currently receiving Medicaid, the county department office shall contact the bureau or the county by the end of the fifth working day after receipt of a completed Form 470-2927 or 470-2927(S), Health Services Application, or within five working days after receipt of disability determination, whichever is later.~~

~~(2) For current Medicaid recipients, the county department office shall contact the bureau or the county by the end of the fifth working day after receipt of either Form 470-0659, Home and Community-Based Services Assessment or Reassessment, with the choice of HCBS waiver indicated by signature of the consumer or a written request signed and dated by the consumer.~~

~~(3) A payment slot is assigned to the applicant upon confirmation of an available slot.~~

~~(4) (1) Once a payment slot is assigned, the county department office shall give written notice to the applicant.~~

~~(2) The department shall hold the payment slot for the applicant as long as reasonable efforts are being made to arrange services and the applicant has not been determined to be ineligible for the program. If services have not been initiated and reasonable efforts are no longer being made to arrange services, the slot shall revert for use by the next person on the waiting list, if applicable. The applicant originally assigned the slot must reapply for a new slot.~~

~~b. If no payment slot is available, the bureau of long-term care shall enter persons on a waiting list according to the following: applicant shall be placed on a statewide priority waiting list. The department shall assess each applicant to determine the applicant's priority need. The assessment shall be made for all applicants who are on a waiting list maintained by the state or a county on September 30, 2011, and for all new applications received on or after October 1, 2011.~~

~~(1) Consumers not currently eligible for Medicaid shall be entered on the waiting list on the basis of the date a completed Form 470-2927 or 470-2927(S), Health Services Application, is date-stamped in the county department office or upon county department office receipt of disability determination, whichever is later. Emergency need criteria are as follows:~~

~~1. The usual caregiver has died or is incapable of providing care, and no other caregivers are available to provide needed supports.~~

~~2. The applicant has lost primary residence or will be losing housing within 30 days and has no other housing options available.~~

~~3. The applicant is permanently living in a homeless shelter.~~

~~4. There is founded abuse or neglect by a caregiver or others living within the home of the applicant, and the applicant must move from the home.~~

~~5. The applicant cannot meet basic health and safety needs without immediate supports.~~

~~(2) Consumers currently eligible for Medicaid shall be added to the waiting list on the basis of the date the request as specified in 83.61(4) "a" (2) is date-stamped in the county department office. Urgent need criteria are as follows:~~

~~1. The caregiver will need support within 60 days in order for the applicant to remain living in the current situation.~~

~~2. The caregiver will be unable to continue to provide care within the next 60 days.~~

~~3. The caregiver is 55 years of age or older and has a chronic or long-term physical or psychological condition that limits the ability to provide care.~~

~~4. The applicant is living in temporary housing and plans to move within 31 to 120 days.~~

~~5. The applicant is losing permanent housing and plans to move within 31 to 120 days.~~

~~6. The caregiver will be unable to be employed if services are not available.~~

~~7. There is a potential risk of abuse or neglect by a caregiver or others within the home of the applicant.~~

~~8. The applicant has behaviors that put the applicant at risk.~~

~~9. The applicant has behaviors that put others at risk.~~

~~10. The applicant is at risk of facility placement when needs could be met through community-based services.~~

~~(3) In the event that more than one application is received at one time, persons shall be entered on the waiting list on the basis of the month of birth, January being month one and the lowest number. Applicants who meet an emergency need criterion shall be placed on the priority waiting list based on the total number of criteria in subparagraph 83.61(4) "b" (1) that are met. If applicants meet an equal number of criteria, the position on the waiting list shall be based on the date of application and the age of~~

the applicant. The applicant who has been on the waiting list longer shall be placed higher on the waiting list. If the application date is the same, the older applicant shall be placed higher on the waiting list.

~~(4) Applicants who do not fall within the available slots shall have their application rejected, and their names shall be maintained on the waiting list. As slots become available, persons shall be selected from the waiting list to maintain the number of approved persons on the program based on their order on the waiting list. The county central point of coordination administrator (for adults) and the bureau of long term care (for children and for adults with state case status) shall contact the county department office when a slot becomes available. meet an urgent need criterion shall be placed on the priority waiting list after applicants who meet emergency need criteria. The position on the waiting list shall be based on the total number of criteria in subparagraph 83.61(4) "b" (2) that are met. If applicants meet an equal number of criteria, the position on the waiting list shall be based on the date of application and the age of the applicant. The applicant who has been on the waiting list longer shall be placed higher on the waiting list. If the application date is the same, the older applicant shall be placed higher on the waiting list.~~

(5) Applicants who do not meet emergency or urgent need criteria shall be placed lower on the waiting list than the applicants meeting urgent need criteria, based on the date of application. If the application date is the same, the older applicant shall be placed higher on the waiting list.

(6) Applicants shall remain on the waiting list until a payment slot has been assigned to them for use, they withdraw from the list, or they become ineligible for the waiver. If there is a change in an applicant's need, the applicant may contact the local department office and request that a new assessment be completed. The outcome of the assessment shall determine placement on the waiting list as directed in this subrule.

c. To maintain the approved number of members in the program, persons shall be selected from the waiting list as payment slots become available, based on their priority order on the waiting list.

~~(5) (1)~~ Once a payment slot is assigned, the county department office shall give written notice to the person within five working days.

(2) The department shall hold the payment slot for 30 days for the person to file a new application. If an application has not been filed within 30 days, the slot shall revert for use by the next person on the waiting list, if applicable. The person originally assigned the slot must reapply for a new slot.

~~e. The county department office shall notify the bureau of long term care for state cases and children or the central point of coordination administrator for the county of legal settlement for adults within five working days of the receipt of an application and of any action on or withdrawal of an application.~~

ITEM 10. Amend paragraph **83.62(3)"c"** as follows:

c. An applicant shall be given the choice between HCBS waiver services and ICF/MR care. The case manager or worker shall have the consumer or legal representative complete and sign Part A of Form 470-3073, Mental Retardation Functional Assessment Tool 470-4694, Case Management Comprehensive Assessment, indicating the consumer's choice of care.

ITEM 11. Amend paragraph **83.68(1)"e"** as follows:

e. The No HCBS MR intellectual disability waiver service is not identified in the applicant's service plan.

ITEM 12. Amend paragraph **83.68(3)"c"** as follows:

c. The No HCBS MR intellectual disability waiver service is not identified in the consumer's member's annual service plan.

ITEM 13. Amend subrule 83.70(2) as follows:

**83.70(2) Continuation of waiver services for HCBS MR consumers.** The county shall continue to provide HCBS MR intellectual disability waiver services to consumers members with mental retardation who ~~are~~ were enrolled in the HCBS MR program on August 1, 1996. The county shall ~~continue to~~ provide HCBS MR intellectual disability waiver services to children who are enrolled in the HCBS MR program intellectual disability waiver after the children turn 18. The state slot for a child in the HCBS

~~MR program~~ intellectual disability waiver will transfer to the county of legal settlement when the child turns 18.

ITEM 14. Amend rule 441—83.72(249A) as follows:

**441—83.72(249A) Rent subsidy program.** ~~Recipients of Members in~~ the HCBS MR intellectual disability waiver program may be eligible for a rent subsidy ~~program~~. See 441—~~Chapter 53~~ 265—Chapter 24.

ITEM 15. Amend paragraph **83.102(1)“c”** as follows:

c. Be ineligible for the HCBS ~~MR~~ intellectual disability waiver.