

Regulatory Analysis

Notice of Intended Action to be published: 441—Chapters 28, 29, and 30
“Policies for Mental Health Institutes and Resource Centers; Mental Health Institutes; State Resource Center”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 217, 218 and 222; 2024 Iowa Acts, House File 2673; and Executive Order 10

State or federal law(s) implemented by the rulemaking: 2024 Iowa Acts, House File 2673, and Executive Order 10

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

February 25, 2025
9:30 a.m.

Microsoft Teams
Meeting ID: 235 677 637 435
Passcode: Nv7Ti9Jq

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by the Department of Health and Human Services no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Purpose and Summary

This rulemaking proposes to rescind Chapters 28, 29, and 30 and adopt revised versions to make conforming changes in response to 2024 Iowa Acts, House File 2673, which created the State’s new behavioral health services system. Concurrently, a Red Tape Review of the chapters was undertaken pursuant to Executive Order 10. A citations in the proposed rules to Iowa Code section 225A.1 refers to that section as enacted by 2024 Iowa Acts, House File 2673, effective July 1, 2025.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**
 - **Classes of persons that will bear the costs of the proposed rulemaking:**
There are no costs associated with this proposed rulemaking.
 - **Classes of persons that will benefit from the proposed rulemaking:**
Individuals seeking or receiving services from a mental health institute or the Woodward Resource Center and their families will benefit from this proposed rulemaking.
2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**
 - **Quantitative description of impact:**
No costs are incurred as a result of this proposed rulemaking.
 - **Qualitative description of impact:**

The proposed rulemaking brings Chapters 28, 29, and 30 into conformance with 2024 Iowa Acts, House File 2673.

3. Costs to the State:

• **Implementation and enforcement costs borne by the agency or any other agency:**

The Department incurs personnel costs and other administrative costs to administer this proposed rulemaking.

• **Anticipated effect on state revenues:**

This proposed rulemaking has no impact on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Rulemaking is appropriate since it is needed to conform to changes made by 2024 Iowa Acts, House File 2673.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Not applicable.

6. Alternative methods considered by the agency:

• **Description of any alternative methods that were seriously considered by the agency:**

Not applicable.

• **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

Not applicable.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

• Establish less stringent compliance or reporting requirements in the rulemaking for small business.

• Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

• Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

• Establish performance standards to replace design or operational standards in the rulemaking for small business.

• Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

This proposed rulemaking has no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 441—Chapter 28 and adopt the following **new** chapter in lieu thereof:

CHAPTER 28
POLICIES FOR MENTAL HEALTH
INSTITUTES AND RESOURCE CENTERS

441—28.1(218) Definitions. The definitions in this rule apply to 441—Chapters 28, 29, and 30.

“*Admission*” means the acceptance of an individual for receipt of services at a state mental health institute or the Woodward state resource center on either a voluntary or involuntary basis.

“*Adult*” means an individual who is 18 years of age or older.

“*Facility*” means a mental health institute or the Woodward state resource center referenced in Iowa Code section 218.1.

“*Grievance*” means a written or oral complaint by or on behalf of an individual involving:

1. A rights violation or unfairness to the individual, or
2. Any aspect of the individual’s life with which the individual does not agree.

“*Guardian*” means the person other than a parent of a minor who has been appointed by the court to have custody of the person of the individual as provided under Iowa Code section 232.2(24) or 633.3(20).

“*Individual*” means any person seeking or receiving services from a state mental health institute or the Woodward state resource center.

“*Informed consent*” means an agreement by an individual or by the individual’s parent, guardian, or legal representative to participate in an activity based upon an understanding of all of the following:

1. A full explanation of the procedures to be followed, including an identification of those that are experimental.
2. A description of the discomforts and risks.
3. A description of the benefits to be expected.
4. A disclosure of appropriate alternative procedures that would be advantageous for the individual.
5. Assurance that consent is given freely and voluntarily without fear of retribution or withdrawal of services.

“*Legal representative*” means a person, including an attorney, who is authorized by law to act on behalf of an individual.

“*Minor*” means an individual under the age of 18.

“*Non-Medicaid payment-eligible*” means that an individual is not eligible for Medicaid funding for the services provided by a mental health institute or the Woodward resource center.

“*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.

“*Superintendent*” means the superintendent of either of the two mental health institutes or the Woodward state resource center.

This rule is intended to implement Iowa Code section 218.4.

441—28.2(222,230) Payor of last resort. The department will review a non-Medicaid payment-eligible individual’s financial and third-party coverage information to ensure the state is the payor of last resort. Third-party coverage does not include payment by an administrative services organization as defined in Iowa Code section 225A.1.

This rule is intended to implement Iowa Code sections 222.35 and 230.23.

441—28.3(229) Grievances. Any individual who believes the individual’s rights have been violated by a mental health institute or resource center or who has any complaint concerning the individual’s treatment at a mental health institute or resource center may file a grievance. A grievance will be filed using the individual grievance form. The individual’s parent, family, guardian, or legal representative may file a grievance on behalf of the individual.

This rule is intended to implement Iowa Code section 229.23.

441—28.4(217,218) Photographing and recording of individuals and use of cameras.

28.4(1) Use of still or video cameras or voice recorders by anyone other than an authorized employee, individual, parent, guardian, or legal representative to photograph or record an individual will be allowed only with the prior authorization of the superintendent or the superintendent’s

designee. Permission to photograph and record will be granted for one specific use, and the authorization will not extend to any other use.

28.4(2) Photographs, videos, and recordings of an adult individual will be taken for publication only with a signed informed consent from the individual or the individual's guardian or legal representative.

28.4(3) Photographs, videos, and recordings of a minor individual will be taken for publication only with a signed informed consent from the parent, guardian, or legal representative.

28.4(4) Every effort will be made to preserve the inherent dignity of the individual and to preclude exploitation or embarrassment of the individual or the family of the individual.

28.4(5) Photographs, videos, and recordings of individuals are not to be altered to prevent identification in any manner that would tend to perpetuate the stigma attached to the public image of individuals with mental illness or an intellectual disability.

This rule is intended to implement Iowa Code sections 217.30 and 218.4.

441—28.5(217,218) Interviews and statements.

28.5(1) Releases to the news media will be the responsibility of the superintendent. Authority for dissemination and release of information may be designated to other employees at the discretion of the superintendent.

28.5(2) Interviews of individuals by the news media or other outside persons or groups will be permitted only with the consent of the individual or the individual's parent, guardian, or legal representative.

a. When a request without known prior consent is received, the superintendent or designee will not acknowledge the presence or nonpresence of an individual at the facility.

b. If the individual is in the facility, the superintendent or designee will make the individual or the individual's parent, guardian, or legal representative aware of the request. Notice to the individual or the individual's parent, guardian, or legal representative will be documented in the individual's record. The individual or the individual's parent, guardian, or legal representative will be free to decide whether an interview is granted.

This rule is intended to implement Iowa Code sections 217.30 and 218.4.

441—28.6(218) Use of grounds, facilities, or equipment.

28.6(1) The superintendent or designee may grant permission for temporary use of assembly halls, auditoriums, meeting rooms, or facility grounds to an organization or group of citizens when the space or grounds are available and are not needed for regularly scheduled departmental services.

28.6(2) Members of outside organizations permitted to use a facility's space or grounds will observe the same rules as visitors to the facility.

This rule is intended to implement Iowa Code chapter 218.

441—28.7(218) Tours of facility. Groups or persons will be permitted to tour the facility only with approval of the superintendent or designee.

This rule is intended to implement Iowa Code section 218.4.

441—28.8(218) Donations. Donations of money, clothing, books, games, recreational equipment or other gifts will be made directly to the superintendent or designee. The superintendent or designee will evaluate the donation in terms of the nature of the contribution to the facility's program. The superintendent or designee will be responsible for accepting the donation and reporting the gift to the department. All monetary gifts will be acknowledged in writing to the donor.

This rule is intended to implement Iowa Code chapter 218.

441—28.9(217) Release of confidential information. Information defined by statute as confidential concerning individuals who currently receive or formerly received services from the mental health institutes or resource centers 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, parent, guardian, or legal representative authorizes the release. Authorization will be given by using an Authorization to Obtain or Release Health Care Information form provided by the department.

This rule is intended to implement Iowa Code section 217.30.

ITEM 2. Rescind 441—Chapter 29 and adopt the following **new** chapter in lieu thereof:

CHAPTER 29
MENTAL HEALTH INSTITUTES

441—29.1(218,229) Voluntary admissions.

29.1(1) Application form. Any individual who has symptoms of mental illness may apply for voluntary inpatient treatment or voluntary outpatient or day treatment using an application for voluntary admission to a mental health institute from the department's website.

29.1(2) Minors. A parent, guardian, or legal representative of a minor individual may make application for the individual's voluntary admission directly to the mental health institute using an application for voluntary admission to a mental health institute form. When a minor objects to the admission and the chief medical officer of the mental health institute determines that the admission is appropriate, the parent, guardian, or custodian must petition the juvenile court for approval of admission before the minor will be admitted.

441—29.2(229) Authorization for treatment. No individual receiving services, either on a voluntary or involuntary basis, will be provided treatment other than what is necessary to preserve life or protect others from physical injury unless:

1. The individual has given consent by signing a mental health institute agreement and consent to treatment form;
2. A court has ordered treatment; or
3. The individual's parent, guardian, or legal representative has given consent by signing a mental health institute agreement and consent to treatment form.

441—29.3(217,228,229) Rights of individuals. An individual receiving care from a state mental health institute will have the following rights.

29.3(1) Information. An individual receiving care from a state mental health institute will have the right to:

- a. Receive an explanation and written copy of the rules of the facility.
- b. Be provided information on the provisions of law pertaining to admission to and discharge from the facility.
- c. Receive an explanation of the individual's medical condition and be informed of treatment plans and the attendant risks of treatment.
- d. Be provided with complete and current information concerning the individual's diagnosis, treatment, and progress in terms and language understandable to the individual.
- e. Have the information required in this subrule made available to the individual's parent, guardian, or legal representative when it is not feasible to give the information directly to the individual.

29.3(2) Care and treatment. An individual receiving care from a state mental health institute will have the right to:

- a. Be evaluated promptly following admission and receive emergency services appropriate to the individual's needs.
- b. Have a current individualized written plan of treatment.
- c. Receive appropriate treatment, services, and rehabilitation for the individual's mental illness, including appropriate and sufficient medical and dental care.

d. Have the opportunity for educational, vocational, rehabilitative, and recreational programs appropriate to the individual's treatment needs.

e. Have the confidentiality of the individual's personal mental health institute records maintained and have access to those records within a reasonable period.

f. Have an individualized posthospitalization plan.

29.3(3) *Living conditions.* An individual receiving care from a state mental health institute will have the right to:

a. Live in the least restrictive conditions necessary to achieve the purposes of treatment.

b. Receive care in a manner that respects and maintains the individual's dignity and individuality.

c. Have opportunities for personal privacy, including during the care of personal needs.

d. Keep and use appropriate personal possessions, including wearing the individual's own clothing.

e. Be free from unnecessary drugs, restraints, and seclusion except when necessary to protect the immediate health or safety of the individual or others.

f. Be free from physical, psychological, sexual, or verbal abuse; neglect; and exploitation.

29.3(4) *Communication.* An individual receiving care from a state mental health institute will have the right to:

a. Have a family contact or representative of the individual's choice or the individual's community physician notified promptly of the individual's admission.

b. Communicate with people and access services at the facility and in the community, including organizing and participating in resident groups while at the facility.

c. Receive visits of the individual's choice from parents, guardians, legal representatives, or family without prior notice given to the facility unless the visits have been determined inappropriate by the individual's treatment team.

d. Communicate and meet privately with persons of the individual's choice without prior notice given to the facility unless the communication is determined inappropriate by the individual's treatment team.

e. Send and receive unopened mail.

f. Make and receive private telephone calls unless the calls have been determined inappropriate by the individual's treatment team.

g. Access current informational and recreational media such as newspapers, television, or periodicals.

29.3(5) *Self-determination.* An individual receiving care from a state mental health institute will have the right to:

a. Have a dignified existence with self-determination, making choices about aspects of the individual's life that are significant to the individual.

b. Participate in the development and implementation of the individual's treatment plan.

c. Give informed consent, including the right to withdraw consent at any given time.

d. Refuse treatment (such as medication, surgery or electroconvulsive therapy) offered without the individual's expressed informed consent and be provided with an explanation of the consequences of those refusals unless treatment is necessary to protect the health or safety of the individual or is ordered by a court.

e. Immediate discharge (if admitted voluntarily) by submitting a written notice to the superintendent or chief medical officer unless a written request for involuntary hospitalization is submitted to a court.

f. Refuse to perform services for the facility and not be coerced to perform services.

g. Manage the individual's own financial affairs unless doing so is limited under law or determined not appropriate by the individual's treatment team.

h. Choose activities, schedules, and care consistent with the individual's interests, needs, and treatment plans.

- i.* Engage in social, religious, and community activities of the individual's choice.
- j.* Formulate advanced directives and be provided care in compliance with these directives.

29.3(6) *Advocacy.* An individual receiving care from a state mental health institute will have the right to:

- a.* Exercise the individual's rights as a citizen or resident of the United States.
- b.* File a grievance pursuant to rule 441—28.3(229) without any intimidation or reprisal resulting from the grievance.
- c.* Request a judicial review of the hospitalization, file for a writ of habeas corpus, have an attorney of the individual's choice, and communicate and meet privately with the individual's attorney without prior notice given to the facility.

441—29.4(218) Visiting.

29.4(1) Visiting hours will be posted in each facility. The physician may designate exceptions for special hours on an individual or ward basis. Therapy for the individual will take precedence over visiting. Visiting will not interfere with the individual's treatment program or meals.

29.4(2) A visit will be terminated when behavior on the part of the individual or visitor is disruptive to the individual's treatment plan.

29.4(3) Visiting on grounds will be permitted when the individual has a grounds pass.

29.4(4) Visitors wishing to take an individual off grounds will receive prior approval from the attending physician.

29.4(5) All visitors will obtain a visitor's pass at the switchboard or another area as designated by the superintendent and posted. The pass will be given to a ward employee before the visitor is allowed on the ward.

29.4(6) Persons under 12 years of age shall not visit on the ward.

These rules are intended to implement Iowa Code chapters 217, 218, 228, 229, and 230.

ITEM 3. Rescind 441—Chapter 30 and adopt the following **new** chapter in lieu thereof:

CHAPTER 30
STATE RESOURCE CENTER

441—30.1(218,222) Admission. Express written consent of the individual or the individual's parent, guardian, or legal representative shall be secured before admission.

30.1(1) *Application.*

a. Applications for the care, treatment, or evaluation of an individual by a resource center shall be made to the department.

b. The application shall be made using the form for application for admission to a state resource center and shall be accompanied by:

- (1) A completed resource center agreement and consent for services form, and
- (2) Other information specifically requested in writing by the resource center.

30.1(2) *Application for readmission.* When the application is for a readmission, the resource center may waive the resubmittal of any information already in the files other than the form for application for admission to a state resource center.

30.1(3) *Receipt of application.* Upon receipt of an application, the resource center may:

a. Provide an individual with outpatient evaluation treatment, training, or habilitation services;
or

b. Admit an individual on a temporary basis for either:

(1) A preadmission diagnostic evaluation to determine whether the individual would be appropriate to admit to the regular program, or

(2) A diagnostic evaluation to assist in planning for community-based services or respite care.

30.1(4) *Eligibility for admission.* Eligibility for admission will be determined by:

a. A preadmission diagnostic evaluation,

- b. An established diagnosis of intellectual disability,
- c. The availability of an appropriate program, and
- d. The availability of space at the facility.

This rule is intended to implement Iowa Code sections 222.13 and 222.13A.

441—30.2(222) Liability for support. The liability of any person, other than the individual, who is legally bound for the support of any individual under 18 years of age will be determined in the same manner as parent liability in rule 441—156.2(234), except that the maximum liability will not exceed the standards for personal allowances established by the department under the family investment program.

This rule is intended to implement Iowa Code section 222.78.

441—30.3(217,218) Rights of individuals.

30.3(1) Information. An individual receiving care from a state resource center has the right to:

- a. Receive an explanation and written copy of the rules of the facility.
- b. Receive an explanation of the individual's medical condition, developmental status, and behavioral status, and be informed of treatment plans and the attendant risks of treatment.

30.3(2) Care and treatment. An individual receiving care from a state resource center has the right to:

- a. Receive appropriate treatment, services, and habilitation for the individual's disabilities, including appropriate and sufficient medical and dental care.
- b. Have the confidentiality of the individual's personal resource center records maintained and have access to those records within a reasonable period.
- c. Work, when available and desired and as appropriate to the individual's plan of treatment, and be compensated for that work in accordance with federal and state laws.

30.3(3) Living conditions. An individual receiving care from a state resource center has the right to:

- a. Receive care in a manner that respects and maintains the individual's dignity and individuality.
- b. Have opportunities for personal privacy, including during the care of personal needs.
- c. Keep and use appropriate personal possessions, including wearing the individual's own clothing.
- d. Share a room with a spouse when both live in the same facility.
- e. Be free from unnecessary drugs and restraints.
- f. Be free from physical, psychological, sexual, or verbal abuse; neglect; and exploitation.

30.3(4) Communication. An individual receiving care from a state resource center has the right to:

- a. Communicate with people and access services at the facility and in the community, including organizing and participating in resident groups while at the facility.
- b. Receive visits of the individual's choice from parents, guardians, legal representatives, or family without prior notice given to the facility unless the visits have been determined inappropriate by the individual's treatment team.
- c. Communicate and meet privately with persons of the individual's choice without prior notice given to the facility unless the communication is determined inappropriate by the individual's treatment team.
- d. Send and receive unopened mail.
- e. Make and receive private telephone calls unless the calls have been determined inappropriate by the individual's treatment team.

30.3(5) Self-determination. An individual receiving care from a state resource center has the right to:

- a.* Have a dignified existence with self-determination, making choices about aspects of the individual's life that are significant to the individual.
- b.* Give informed consent, including the right to withdraw consent at any given time.
- c.* Refuse treatment (such as medication or behavioral interventions) offered without the individual's expressed informed consent and be provided with an explanation of the consequences of those refusals unless treatment is necessary to protect the health or safety of the individual or is ordered by a court.
- d.* Refuse to perform services for the facility and not be coerced to perform services.
- e.* Manage the individual's own financial affairs unless doing so is limited under law or determined not appropriate by the individual's treatment team.
- f.* Choose activities, schedules, and care consistent with the individual's interests, needs and care plans.
- g.* Engage in social, religious, and community activities of the individual's choice.

30.3(6) Advocacy. An individual receiving care from a state resource center has the right to:

- a.* Exercise the individual's rights as a citizen or resident of the United States.
- b.* File a grievance pursuant to rule 441—28.3(229) without any intimidation or reprisal resulting from the grievance.

This rule is intended to implement Iowa Code sections 217.30 and 218.4.

441—30.4(218) Visiting.

30.4(1) Individuals are encouraged to and will be able to receive visits from persons of the individual's choice and at times desired by the individual. At the individual's choice, the individual's parents, guardian, or legal representative or other members of the individual's family may visit without prior notice given to the facility.

30.4(2) Visits determined to be inappropriate or disruptive to the individual's treatment plan or the health and safety of other individuals may be denied or terminated.

30.4(3) An individual or other person denied visitation may file a grievance through the facility's grievance process.

This rule is intended to implement Iowa Code chapter 218.