

Regulatory Analysis

Notice of Intended Action to be published: 493—Chapter 13
“Claims for Other Professional Services”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 13B.4(8)

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 815 and section 13B.4

Public Hearing

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

May 6, 2025
2 p.m.

Via videoconference:
meet.google.com/gbm-frju-oxh
Or dial: (US) +1 563.293.1803
PIN: 316 603 891#

Public Comment

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

Kurt Swaim, First Assistant State Public Defender
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.218.2445
Email: kswaim@spd.state.ia.us

Purpose and Summary

This proposed rulemaking includes revisions of administrative rules based on the requirements of Executive Order 10. Chapter 13 provides rules for submission, payment, and review of claims for other professional services.

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 expected additional costs to the State or individuals.

• **Classes of persons that will benefit from the proposed rulemaking:**

The Office of the State Public Defender, indigent persons represented by court-appointed attorneys, persons who provide professional services to indigent defendants, and contract attorneys will benefit.

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:**

There are no expected additional costs to the State or individuals. The agency already incurs personnel costs for employees to review claims for other professional services and assist claimants with any issues they may have with their claims. This process has been automated to the extent possible to reduce costs to the agency. Claims for fees are paid out of the Indigent Defense Fund.

• **Qualitative description of impact:**

The rules in this chapter are the vehicle by which professional services are provided to indigent defendants and claimants are paid. By law, these services must be provided, so these rules provide a clear means of doing that equitably.

3. Costs to the State:

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

There are no expected additional costs to the State. Changes have not been made to the substance of this chapter but rather to the language used. The agency already incurs personnel costs for employees to review claims for other professional services and assist claimants with any issues they may have with their claims. This process has been automated to the extent possible to reduce costs to the agency. Claims for fees are paid out of the Indigent Defense Fund.

● **Anticipated effect on state revenues:**

None are anticipated.

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

Not applicable.

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:**

No alternative methods were considered.

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

No viable alternative was identified. The information and process set forth in this chapter are largely driven by existing statute.

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?

There is no expected impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 493—Chapter 13 and adopt the following **new** chapter in lieu thereof:

CHAPTER 13
CLAIMS FOR OTHER PROFESSIONAL SERVICES

493—13.1(13B,815) Scope. This chapter sets forth the rules for submission, payment and court review of claims for other professional services. Definitions of terms used in this chapter are provided in 493—Chapter 7.

493—13.2(815) Claims for other professional services. The state public defender shall review and approve claims for necessary and reasonable expenses for investigators, expert witnesses, certified shorthand reporters, and medical/psychological evaluations if the claimant has a form W-9 on file with the department and the claim conforms to the requirements of this rule. Claims that do not comply with this rule will be returned.

13.2(1) Claims for investigative services. The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for investigators if the following conditions are met:

a. Court approval to hire the investigator was obtained before any expenses for the investigator were incurred.

b. One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to hire the investigator.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed and there is an order attached approving payment of the investigative services pursuant to rule 493—13.7(13B,815).

(3) An itemization of the investigator's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, the hourly rate, and the manner in which the amount of the claim for services was calculated. Except in exceptional circumstances and with the prior approval of the state public defender upon a showing of reasonable necessity, an investigator's rate shall not exceed \$75 per hour. Itemized receipts for expenses must be attached.

(4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order that authorizes hiring the investigator sets a limit for the claim, this court order is unnecessary.

c. Reasonable and necessary investigative services include but are not limited to locating witnesses, interviewing witnesses, process service, viewing the crime scene, reviewing documents or photographs, meeting with attorneys, meeting with clients, and creating investigative reports. Clerical work or running errands for the attorney or defendant is not considered investigative work.

d. Timely claims required. Claims for services are timely if submitted to the state public defender for payment within 45 days of the most recent date that investigative services were performed for the case. Claims that are not timely shall be denied.

13.2(2) Claims for expert witnesses. The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for expert witnesses if the following conditions are met:

a. Court approval to hire the expert witness was obtained before any expenses for the expert witness were incurred.

b. One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to hire the expert witness.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed and there is an order attached approving payment of the expert witness pursuant to rule 493—13.7(13B,815).

(3) An itemization of the expert witness's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order that authorizes hiring the expert sets a limit for the claim, this court order is unnecessary.

(5) If the expert charges a minimum amount for services based on a specific time, a certification by the expert that no other services have been performed or charges made by the expert for any portion of that specific time.

13.2(3) Claims for certified shorthand reporters. The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for depositions and transcripts provided by certified shorthand reporters only in accordance with the requirements of this subrule.

a. Claim form. When a written claim form for certified shorthand reporting is required under these rules, the certified shorthand reporter shall submit a signed original and one copy of a miscellaneous claim form containing the following information:

- (1) The case name, case number and county in which the action is pending.
- (2) The name of the attorney for whom the services were provided.
- (3) The date on which the transcript was ordered.
- (4) The date on which the transcript was delivered.
- (5) The total amount of the claim.
- (6) The claimant's name; address; social security number, federal tax identification number or vendor identification number; email address, if any; and telephone number.

b. Required documentation. One copy of each of the following documents must be attached to the claim:

- (1) The court order granting authority to hire the certified shorthand reporter at state expense.
- (2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed and there is an order attached approving payment of the certified shorthand reporter pursuant to rule 493—13.7(13B,815).
- (3) If expedited transcript rates are claimed under subparagraph 13.2(3)“d”(10), an email or other written statement from the attorney explaining that expedited delivery is required.
- (4) If a cancellation fee is claimed under subparagraph 13.2(3)“d”(6), documentation of the date and time that notice of cancellation was given.
- (5) If the certified shorthand reporter is a state employee, a certification by the certified shorthand reporter that none of the time for which the claim is being submitted is time for which the certified shorthand reporter was being paid by the state.

c. Rates for court transcripts. If the certified shorthand reporter is a judicial branch employee, claims for certified shorthand reporter services for preparation of court transcripts will be limited to the rate approved by the Iowa Supreme Court for preparation of transcripts and other certified shorthand reporter services.

d. Rates for other transcripts. Unless the certified shorthand reporter has a contract with the state providing for a different rate or manner of payment or the certified shorthand reporter submits a claim for a lesser amount, claims for certified shorthand reporter services for a non-judicial branch employee will be paid only at the rates set forth in this paragraph:

(1) Hourly rate when no transcript ordered. Fees for attending depositions when no transcript is ordered will be paid at the rate of \$60 per hour for the actual time the certified shorthand reporter is present at the depositions including setup and takedown of equipment. If multiple witnesses are deposed in a deposition session on a single day, this hourly rate shall only apply if no transcript is ordered for any of the witnesses. If the transcript is ordered for some of the witnesses, the hourly rate when a transcript is ordered shall apply for the entire deposition session.

(2) Hourly rate when transcript ordered. Fees for attending depositions when a transcript is ordered will be paid at the rate of \$50 per hour for the actual time the certified shorthand reporter is present at the depositions including setup and takedown of equipment. Fees for performing a transcription of an audio or video recording will be paid at the rate of \$50 per hour for the actual time required to complete the transcription but not more than two times the length of the recording transcribed.

(3) Travel time. Fees for travel time will be paid at the rate of \$25 per hour for travel outside of the county of the certified shorthand reporter's office location. Travel time within the county of the

certified shorthand reporter's office location will not be paid. No travel time is payable for the delivery of a transcript or related to the transcription of an audio or video recording.

(4) Transcripts. Unless expedited delivery is requested, fees will be paid at the rate of \$4.55 per page for an original, one copy, and an electronic version of the transcript. Copies of a transcript for which an original has already been ordered by any party will be paid at the rate of \$1 per page.

(5) Exhibits. A rate of \$0.10 per page for black and white and \$0.30 per page for color copies will be paid.

(6) Cancellation fees. No cancellation fees will be paid as long as the certified shorthand reporter is given notice of cancellation at least 24 hours before the time scheduled for a deposition. Weekends and state holidays shall not be included when calculating the 24-hour prior notice of cancellation contained in this subparagraph. If the deposition is canceled with less than 24 hours' notice, a fee for two hours or the actual time that the certified shorthand reporter is present at the site of the deposition including setup and takedown of equipment, whichever is greater, is payable at the rate set forth in subparagraph 13.2(3) "d"(1). If a full day of depositions was scheduled, a minimum fee for four hours is payable at the rate set forth in subparagraph 13.2(3) "d"(1). A certified shorthand reporter is deemed to have been given notice of cancellation when an attorney or representative of the attorney delivers notice of a cancellation to the email address provided by the certified shorthand reporter or leaves a message on voicemail or with a representative of the certified shorthand reporter at the telephone number provided by the certified shorthand reporter, not when the certified shorthand reporter actually hears or reads the message. No cancellation fee will be paid related to the transcription of an audio or video recording.

(7) Minimum time. One hour minimum, exclusive of travel time, will be paid for a deposition or transcription of an audio or video recording that takes less than one hour.

(8) Other time. Except for the initial one-hour minimum, all time billed at an hourly rate shall be billed in 15-minute increments.

(9) Postage. Actual postage costs that are reasonable and necessary will be paid.

(10) Expedited transcripts. Expedited transcripts are those that are required to be delivered within five business days of the date requested. Fees of \$8 per page for an original, one copy, and an electronic version of the transcript will be paid for expedited transcripts. Copies of an expedited transcript for which an original has already been ordered by any party will be paid at the rate of \$1 per page.

(11) Other expenses. Any additional expenses or fees for certified shorthand reporting services not set forth above will only be paid with the prior written consent of the state public defender obtained before the services are provided.

(12) Realtime reporting. Realtime reporting is any reporting provided by a certified realtime reporter (CRR), either in person or remotely, that produces an immediate transcript of proceedings by using a steno machine connected to a computer that instantly translates spoken word to text. Realtime reporting shall be paid at the hourly rate provided for in subparagraph 13.2(3) "d"(1).

(13) Technical transcriptions. Technical transcriptions include transcriptions for testimony provided by an "expert witness" as defined in 493—7.1(13B,815). This includes but is not limited to state medical examiners, doctors, nurses, forensic interviewers, accident investigators, lab technicians, and engineers. A witness who happens to fall into one of the preceding categories but who is providing lay testimony does not qualify as an expert witness for purposes of this subparagraph. Technical transcriptions shall be paid at the hourly rate otherwise applicable for such reporting plus an additional \$2 per page. If a witness does not qualify as an expert witness for any reason and is not otherwise included in the foregoing list, but a certified shorthand reporter believes a witness still qualifies under this subparagraph, the certified shorthand reporter may provide additional information with their claim to support their request for the technical transcription rate.

e. Timely claims required. Claims for services are timely if submitted to the state public defender for payment within 45 days of the date on which services are completed. For depositions, services are completed on the date the deposition transcript is delivered or on the date of disposition of

the case if no transcript is ordered, whichever date is earlier. For trial transcripts or transcripts of an audio or video recording, services are completed on the date the transcript is delivered. Claims that are not timely shall be denied.

f. Designation of preferred certified shorthand reporter. The state public defender may enter into a contract with one or more certified shorthand reporters to provide court reporting services for depositions in one or more counties and may designate such certified shorthand reporters to be the preferred certified shorthand reporters in the respective counties. Such designations shall be provided to the chief judge of the judicial district for the respective counties and shall be summarized on the website of the state public defender, spd.iowa.gov. Claims for services provided in a county in which the state public defender has designated a certified shorthand reporter as the preferred certified shorthand reporter shall be denied unless the claims are submitted by the certified shorthand reporter pursuant to the terms of the contract or are submitted by another certified shorthand reporter and include written documentation that the designated certified shorthand reporter was unavailable to handle the deposition.

13.2(4) Claims for court-ordered evaluations. The state public defender shall review, approve and forward for payment claims for necessary and reasonable evaluations requested by an appointed attorney only if the purpose of the evaluation is to establish a defense, to determine whether an indigent is competent to stand trial, or to evaluate a defendant at sentencing or resentencing who has been charged as an adult for a felony alleged to have been committed while a juvenile, if the offense has a potential mandatory minimum sentence of imprisonment, and not for any other purpose nor in any other circumstance for sentencing or placement. Additionally, a claim for a court-ordered evaluation will be approved only if the following conditions are met:

a. Court approval to conduct the evaluation was obtained before any expenses for the evaluation were incurred.

b. One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to conduct the evaluation. This order must specify that the purpose of the evaluation is for a permissible purpose under this subrule.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed and there is an order attached approving payment of the evaluation pursuant to rule 493—13.7(13B,815).

(3) An itemization of the evaluator's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order authorizing the evaluation sets a limit for the claim, this court order is unnecessary.

(5) If the evaluator charges a minimum amount for services based on a specific time, a certification by the evaluator that no other services have been performed or charges made by the evaluator for any portion of that specific time.

13.2(5) The state public defender may reimburse services and expenses not specifically listed in this chapter that are payable pursuant to rules 493—12.7(13B,815) and 493—12.8(13B,815).

13.2(6) Submission of claims.

a. All claims for professional services shall be submitted electronically via the online claims website: spdclaims.iowa.gov. Any reference in these rules to forms or to claims submissions shall refer to the respective claims submission page for miscellaneous claims on the online claims website. The state public defender, at the state public defender's sole discretion, may grant limited exceptions to the requirement that claims be submitted electronically via the online claims website.

b. Claimants granted an exception to online claim submission must be submitted, as appropriate, to the local public defender office for which the services were provided or on a form, promulgated by the state public defender, to the state public defender at the following address: State Public Defender, Claims, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321.

493—13.3(13B,815) Court review. A claimant whose claim for compensation is denied, reduced, or otherwise modified by the state public defender, for other than mathematical errors, may seek court review of the action of the state public defender.

13.3(1) *Motions for court review.* Court review of the action of the state public defender is initiated by filing a motion with the trial court requesting the review. The following conditions shall apply to all such motions:

a. The motion must be filed with the court within 20 days of the action of the state public defender.

b. The motion must set forth each and every ground on which the claimant intends to rely in challenging the action of the state public defender.

c. The motion must have attached to it a complete copy of the claim, together with the notice of action that the claimant seeks to have reviewed.

d. A copy of all documents filed must be provided to the state public defender.

e. It is unnecessary for the state public defender to file any response to the motion.

13.3(2) *Hearings.* The following shall apply to hearings on motions for court review:

a. The motion shall be set for hearing by the court. Notice of the hearing on the claimant's request for review shall be provided to the claimant and the state public defender at least ten days prior to the date and time set by the reviewing court.

b. Unless the state public defender specifically indicates an intention to appear in person at the hearing, the state public defender shall participate by telephone. If the state public defender participates by telephone, the state public defender shall be responsible for initiating and paying for the telephone call.

c. The burden shall be on the claimant requesting the review.

d. The court shall consider only the issues raised in the claimant's motion.

e. The court shall issue a written ruling on the issues properly presented in the request for review.

f. If a ruling is entered allowing additional fees, the claimant must file a new claim with the state public defender. A copy of the court's ruling must be attached to the claim form. The date of service on the claim form is the date of the court's order.

13.3(3) *Failure to seek review.* Failure to seek court review within 20 days of the action of the state public defender will preclude court review of the state public defender's action.

493—13.4(13B,815) Processing and payment. The state public defender will submit claims to the department for processing and payment. The department will submit claims that are not approved in the current fiscal year to the state appeal board for processing and payment.

493—13.5(13B,815) Payment errors. If an error resulting in an overpayment or double payment of a claim is discovered by the claimant, by the state public defender, by the department, or otherwise, the claimant shall reimburse the indigent defense fund for the amount of the overpayment. An overpayment or double payment shall be repaid by check. The check, made payable to "Treasurer, State of Iowa," together with a copy of the payment voucher containing the overpayment or double payment, shall be mailed to the Office of the State Public Defender, 6200 Park Avenue, Des Moines, Iowa 50321.

493—13.6(815) Claims submitted by a county. Reserved.

493—13.7(13B,815) Payment of costs incurred by privately retained attorney representing indigent person. No payment of state funds for the costs incurred in the legal representation of an indigent person shall be authorized or paid unless the requirements of this rule and Iowa Code section 815.1 are satisfied.

13.7(1) *Response of state public defender.* If the state public defender resists any motion filed pursuant to Iowa Code section 815.1, in whole or in part, the state public defender shall file a response

to the application or motion within ten days of the state public defender's receipt of the application or motion.

13.7(2) *Opportunity to request a hearing and hearing on the application.* The state public defender shall be afforded reasonable notice and opportunity to respond to the motion and participate in any hearing on the application or motion. Either the privately retained attorney for the indigent person or a representative from the office of the state public defender may participate in a hearing on the application or motion by telephone.

13.7(3) *Protection of defense strategy and work product.* In considering and ruling on the application or motion, the court shall order appropriate procedures to protect against disclosure of defense strategy and defense work product to the prosecution, including but not limited to allowance of information or filings, or portions thereof, to be submitted in camera, ex parte hearings, sealing of any transcript or order to avoid such disclosure, protective orders, or other safeguards to protect defense strategy and work product from disclosure to the prosecution.

These rules are intended to implement Iowa Code chapters 13B and 815.