## Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 441—Chapters 7, 9, and 16
"Appeals and Hearings; Public Records and Fair Information Practices; Notices"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 217.6
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 17A

*Public Hearing*

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

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| October 8, 2024<br>12 noon to 12:30 p.m. | Microsoft Teams<br>Meeting ID: 224 642 900 746<br>Passcode: AXsYRM |

*Public Comment*

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis 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:

Joe Campos
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.304.0963
Email: compliancerules@hhs.iowa.gov

*Purpose and Summary*

The proposed chapters are intended to provide further clarity and strengthen the application of these rules in order to comply with the Iowa Code.

*Analysis of Impact*

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

This rulemaking will have no cost to the public.

- Classes of persons that will benefit from the proposed rulemaking:

All persons seeking to understand or review the Department's administrative rules will benefit from the additional clarity these changes provide.

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:

Not applicable.

- Qualitative description of impact:

Increased clarity for those seeking to understand the Department's administrative rules.

3. Costs to the State:

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

None identified.

- Anticipated effect on state revenues:

None identified.

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

No difference in cost is found.

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

No alternative methods have been identified.

6. Alternative methods considered by the agency:

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

None.

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

No alternatives were rejected since this rulemaking seeks to only increase clarity of the Department's administrative rules. This does not create any new or additional rules.

*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 rulemaking will not have an impact on small business in the state.

*Text of Proposed Rulemaking*

ITEM 1. Rescind 441—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7
APPEALS AND HEARINGS

**441—7.1(17A) Definitions.**

*"Adverse benefit determination"* means any adverse action taken pursuant to a program administered by the department or on the department's behalf, excluding determinations related to requests for waivers of administrative rules.

*"Appellant"* means a person, including an authorized representative acting on the person's behalf, seeking to appeal some action pursuant to this chapter.

*"Assistance program"* means a program administered by the department or on the department's behalf through which qualifying individuals receive benefits or services.

*"Authorized representative"* means a person lawfully designated by an individual to act on the individual's behalf or who has legal authority to act on behalf of the individual.

*"Contested case"* refers to an evidentiary hearing mandated by state or federal constitutional or statutory authority whereupon a presiding officer makes a determination pertaining to the relative rights and obligations of parties to an appeal under this chapter.

*"DIAL"* means the department of inspections, appeals, and licensing.

*"Enrollee"* means any applicant to or recipient of benefits or services provided by a program administered by the department or on the department's behalf.

*"Good cause,"* for purposes of this rule, has the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

*"In-person hearing"* means an appeal hearing where the administrative law judge and appellant are physically present in the same location but witnesses are not required to be physically present.

*"Intentional program violation"* means the same as established in 7 CFR §273.16 as amended to August 1, 2024.

*"Issuance"* means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

*"Managed care organization"* or *"MCO"* has the meaning assigned to it in rule 441—73.1(249A) and includes prepaid ambulatory health plans.

*"Medicaid"* means Iowa's medical assistance program administered under Iowa Code chapter 249A.

*"Party-in-interest"* refers to the party, including enrollees, whose rights or obligations are the subject of a contested case hearing under this chapter. Parties-in-interest may or may not be the appellant.

*"Presiding officer"* means an administrative law judge from DIAL or the director of the department or the members of a multimember board or commission.

*"Self-represented"* means representing oneself without an attorney.

**441—7.2(17A) Governing law and regulations.** In the absence of an applicable rule in this chapter, the DIAL rules found at 481—Chapter 10 govern department appeals. Notwithstanding the foregoing and the rules contained in this chapter, to the extent that federal or state law (including regulations and rules) related to a specific program is more specific than or contradicts these rules or the applicable DIAL rules, the program-specific federal or state law shall control.

DIVISION I
GENERAL APPEALS PROCESS

**441—7.3(17A) When a contested case hearing will be granted.**

**7.3(1)** *Requirements.* A person will be granted a contested case hearing if the party-in-interest fulfills all the following requirements:

*a.* The party-in-interest is entitled to a contested case hearing;

*b.* The party-in-interest has an ongoing, specific and personal interest in the outcome of the contested case hearing; and

*c.* The party-in-interest meets all of the other requirements contained in these rules.

**7.3(2)** *Refusal to process an application.* Unless otherwise provided by law, when an appellant seeks a contested case hearing after the department refuses to process an application for benefits or services, a hearing will be granted.

**7.3(3)** *When a hearing is not granted.* A hearing will not be granted when one of the following issues is appealed:

*a.* Patient treatment interventions outlined in the patient handbook of the civil commitment unit for sexual offenders.

*b.* Children have been removed from or placed in a specific foster care setting or preadoptive placement.

*c.* A final decision from a previous hearing with a presiding officer has been implemented.

**7.3(4)** *Contractual rights not subject to contested case hearing.* Unless otherwise provided by law, when an appellant seeks a contested case hearing of an issue predicated upon or governed by the terms of a contract between appellant and another party, including the department, a contested case hearing will not be provided.

**7.3(5)** *Change in law.* A contested case hearing will not be granted when the sole issue raised is a federal or state law requiring an automatic change adversely affecting some or all beneficiaries.

**7.3(6)** *Competitive procurement bid appeals.* Competitive procurement bid appeals shall be adjudicated pursuant to Division II of this chapter.

**441—7.4(17A) Initiating an appeal.**

**7.4(1)** *Exhaustion of remedies.* An appellant will only be granted a contested case hearing if the appellant has exhausted all other appeal remedies available to the party-in-interest. An appellant should refer to program-specific provisions for the appropriate procedures applicable to specific programs.

**7.4(2)** *Medicaid managed care enrollees exhaustion of remedies.*

*a.* A Medicaid managed care enrollee will be granted a contested case hearing pursuant to 42 CFR 438.402(c)(1) as amended to November 13, 2020.

*b.* If a Medicaid enrollee's managed care organization fails to provide a decision in the time and manner pursuant to 42 CFR 438.408 as amended to November 13, 2020, the enrollee will be deemed to have exhausted the managed care organization's appeals process and may initiate a contested case hearing.

**7.4(3)** *Time to appeal.* For a contested case hearing to be granted, the following appeal timelines must be met:

*a. Supplemental Nutrition Assistance Program (SNAP), Medicaid eligibility, healthy and well kids in Iowa (hawki), fee-for-service Medicaid coverage, family planning program, and autism support program.* On or before the ninetieth day following the date of notice of an adverse benefit determination.

*b. Managed care organization medical services coverage.* On or before the 120th day following the date of exhaustion, actual or deemed, of the managed care organization appeal process.

*c. Federal tax or debtor offsets.* On or before the 15th day following the date of notice of the action.

*d. Women, Infants and Children (WIC) program.* On or before the ninetieth day following the date of notice of an adverse benefit determination for a participant. On or before the 10th day following the date of notice of adverse action for a vendor pursuant to 7 CFR 246.18(a)(1) as amended to August 1, 2024. On or before the 10th business day following the receipt of notification to a local agency of an adverse decision pursuant to 7 CFR 246.18(a)(3) as amended to August 1, 2024.

*e.* Reserved.

*f. Dependent adult abuse.* Within six months of the date of notice of the action as provided in Iowa Code section 235B.10.

*g. Child abuse.* For an appeal regarding child abuse, the person alleged responsible for the abuse must appeal on or before the ninetieth day following the date of notice of the action as provided in Iowa Code section 235A.19. A subject of a child abuse report, other than the alleged person responsible for the abuse, may file a motion to intervene in the appeal on or before the tenth day following the date of notice of the right to intervene.

*h. Assistance program overpayments.* For an appeal pertaining to overpayments, the party-in-interest's right to appeal the existence, computation and amount of the overissuance or overpayment begins when the department sends the first notice informing the party-in-interest of the overissuance or overpayment. The appeal timelines for overpayments follow the same timelines as other actions within the same program.

*i. All other appeals.* For all other appeals, and unless federal or state law provides otherwise elsewhere, the appellant must appeal on or before the thirtieth day following the date of notice of the

action being appealed. If such an appeal is made more than 30 days, but less than 90 days, of the date of notice, the director or director's designee may, at the director's or designee's sole discretion, allow a contested case hearing if the delay was for good cause, substantiated by the appellant.

**7.4(4)** *Written and oral notification.* The department shall advise each applicant and recipient of the right to appeal any adverse decision affecting the person's status pursuant to 441—Chapter 16.

*a.* Written notification of the following shall be given at the time of application and at the time of any agency action affecting the claim for assistance.

(1) The right to request a hearing.

(2) The procedure for requesting a hearing.

(3) The right to be represented by others at the hearing unless otherwise specified by statute or federal regulation.

*b.* Written notification will be given on the application form and all notices of decision.

**441—7.5(17A) How to request an appeal.**

**7.5(1)** *Ways to request a hearing.* An appellant may request a contested case hearing:

*a.* Via the department's website,

*b.* By telephone, except as specified in subrule 7.5(4),

*c.* By mail,

*d.* In person, except as specified in subrule 7.5(4), or

*e.* Through other commonly available electronic means (such as email or facsimile).

**7.5(2)** *Hearing request.* The request for a contested case hearing must be sufficiently detailed so that the department can reasonably understand the action being appealed. The department may request additional information to determine the scope of the appeal. The department may deny if there is not sufficient information to determine the action being appealed.

**7.5(3)** *Filing date.* The date of filing for appeal requests sent by regular mail shall be the date postmarked on the envelope sent to the department or, when a postmarked envelope is not available, on the date the appeal is stamped received by the agency. The date of filing for appeal requests sent electronically will be determined by the date on which the electronic submission was completed.

**7.5(4)** *Appeals that must be filed in writing.* Appeal requests pertaining to foster care, adoption, state supplementary assistance, the autism support program, record check evaluation, child care, registered or nonregistered homes, child abuse, dependent adult abuse or child support must be made in writing.

**7.5(5)** *Department's responsibilities.* Unless the appeal is voluntarily withdrawn, the department will:

*a.* Within one working day of receipt of an appeal request, forward the request for appeal and envelope (if any) and a copy of the notice to the appeals section.

*b.* Within ten days of the receipt of the appeal, forward a summary and supporting documentation of the worker's or agent's factual basis for the proposed action to the appeals section.

*c.* Copies of all materials sent to the appeals section or the presiding officer to be considered in reaching a decision on the appeal are to be provided to the appellant at the same time as the materials are sent to the appeals section or the presiding officer.

**441—7.6(17A) Prehearing procedures.**

**7.6(1)** *Acknowledgment of appeal.* When the appeals section receives a request for appeal, it will send acknowledgment of the receipt of the appeal to the parties to the appeal. For an appeal regarding child abuse, all subjects other than the person alleged responsible (party-in-interest) will be notified of the opportunity to file a motion to intervene as provided in Iowa Code section 235A.19.

**7.6(2)** *Acceptance or denial of appeal.* The appeals section will determine with reasonable promptness whether the party-in-interest is entitled to a contested case hearing. If a request is accepted, the appeals section will certify the appeal to DIAL and designate the issues on appeal. If a request for a contested case hearing is denied, the appeals section will provide written notice of and

the reasons for the denial. On or before the thirtieth day following the denial, the individual requesting the appeal may provide additional information related to the individual's asserted right to a contested case hearing and request reconsideration of the denial.

**7.6(3)** *Designation of issues for appeal.*

*a. Initial designation.* After determining that the party-in-interest is entitled to a contested case hearing, the appeals section will designate the issues to be decided at the contested case hearing. The issues designated will be certified to DIAL and be identified in the notice of hearing issued pursuant to subrule 7.6(5).

*b. Additional designation of issues.* If any party believes additional issues should be designated, the party shall identify the additional issues within the following timelines. The presiding officer shall determine whether all issues have properly been preserved.

(1) Child abuse and dependent adult abuse registry appeals. For a child abuse and dependent adult abuse registry appeal, the party shall identify additional issues at least 30 days before the date of hearing.

(2) Appeals set on or before the tenth day following the notice of hearing. If the hearing is on or before the tenth day following the date of the notice of hearing, the party shall identify any additional issues at the hearing.

(3) All other appeals. For all other appeals not identified in this paragraph, the party shall identify the additional issues on or before the tenth day following the date of the notice of hearing.

**7.6(4)** *Group hearings regarding medical assistance.* The appeals section may respond to a series of related, individual requests for hearings regarding medical assistance by consolidating individual hearings into a single group hearing where the sole issue is based on state or federal law or policy. An appellant scheduled for a group hearing may withdraw and request an individual hearing.

**7.6(5)** *Notice of hearing.*

*a. Issuance of hearing notice.* Except as provided in paragraph 7.6(5)*"b,"* DIAL shall send notice to the parties of the appeal at least 15 calendar days in advance of the hearing setting forth the date, time, method, and place of the hearing; that evidence may be presented orally or documented to establish pertinent facts; that the parties may bring and question witnesses and refute testimony; and that the parties may be represented by others, including an attorney, at the parties' own cost and as subject to state and federal law. Notice shall be mailed by first-class mail, postage prepaid, and addressed to the appellant at the appellant's last-known address or accessible via client portal, if appellant has opted in to portal communications.

*b. Intentional program violation hearing notices.* DIAL shall send notices of hearing regarding alleged intentional program violations at least 30 days in advance of the hearing date. The notices under this paragraph shall otherwise comply with the requirements of paragraph 7.6(5)*"a."*

**7.6(6)** *Appellant's right to department's case file.* Prior to and during the contested case hearing, the department will provide the appellant or the appellant's authorized representative the opportunity to examine the content of the appellant's case file, if any, and all documents and records to be used by the department at the hearing.

**7.6(7)** *Informal conference.* The purpose of an informal conference is to provide information as to the reasons for the intended adverse action, to answer questions, to explain the basis for the adverse action or position, and to provide an opportunity for the appellant to examine the contents of the case record.

*a.* When requested by the appellant, an informal conference with a representative of the department or one of its contracted partners, including a managed care organization, shall be held as soon as possible after the appeal has been filed. An appellant's representative shall be allowed to attend and participate in the informal conference unless precluded by federal rule or state statute.

*b.* An informal conference need not be requested for the appellant to examine the contents of the case record.

**441—7.7(17A) Timelines for contested case hearings.**

**7.7(1)** *Medical assistance.* In cases involving the determination of medical assistance, the contested case hearing shall be held within a time frame such that the final administrative action is timely pursuant to 42 CFR 431.244(f) as amended to December 8, 2021.

**7.7(2)** *Community spouse resource allowance.* In cases involving the determination of the community spouse resource allowance, the hearing shall be held within 30 days of the date of the appeal request.

**441—7.8(17A) Contested case hearing procedures.**

**7.8(1)** *Method.* Contested case hearings may be conducted via telephone or videoconference. Upon request of a party to the appeal or order of the presiding officer, the contested case hearing shall be conducted in person.

**7.8(2)** *Evidence.*

*a.* The parties to a contested case hearing may:

(1) Bring witnesses,

(2) Submit competent evidence to establish all pertinent facts and circumstances,

(3) Present arguments without undue interference,

(4) Question or refute any testimony or evidence, including through cross-examination, and

(5) Respond to evidence and arguments on all issues.

*b.* Evidence shall be received or excluded as provided in Iowa Code section 17A.14.

**7.8(3)** *Right to counsel.* Parties to an appeal shall be permitted to be represented by counsel at the parties' own expense.

**7.8(4)** *Self-represented appellant.* The presiding officer shall, at the officer's discretion, provide reasonable assistance to a self-represented appellant. The presiding officer must, however, ensure that such assistance does not impact the independence and fairness of the contested case hearing process.

**7.8(5)** *Closed to public.* Contested case hearings are closed to the public, and unless otherwise provided by state or federal law, only the parties, their representatives, permissible intervenors, and witnesses may be present for a contested case hearing in the absence of mutual agreement of the parties.

**7.8(6)** *Administration of appeals.* Except as otherwise provided in this chapter or other applicable federal or state law, discretion in the conduct and administration of appeals is vested in the contested case hearing presiding officer.

**7.8(7)** *Contested cases with no factual dispute.* If the parties in a contested case agree that there is no dispute of material fact, the parties may present all admissible evidence either by stipulation, or as otherwise agreed, in lieu of an evidentiary hearing. If an agreement is reached, the parties shall jointly submit a schedule for submission of the record, briefs and oral arguments to the presiding officer for approval. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

**441—7.9(17A) Miscellaneous rules governing contested case hearings.**

**7.9(1)** *Ex parte communication.* Ex parte communications between the presiding officer and person or party in connection with any issue of fact or law in the contested case proceeding is prohibited except as permitted by Iowa Code section 17A.17. All of the provisions of Iowa Code section 17A.17 apply.

**7.9(2)** *Default.* If a party fails to appear at a scheduled hearing or prehearing conference without good cause as determined by the presiding officer, the party's appeal may be denied and dismissed or may be heard and ruled upon, consistent with Iowa Code section 17A.12(3). Defaulting parties may file a timely motion to vacate, which shall be granted if the presiding officer determines good cause has been shown.

**7.9(3)** *Withdrawal.* An appellant may submit a withdrawal of a fair hearing request at any time prior to hearing through any of the methods identified in subrule 7.5(1), except for programs listed in

subrule 7.5(4). For programs listed in subrule 7.5(4), a written request may be submitted via the department's website, by mail, in person, or through other commonly available electronic means (such as email or facsimile). Unless otherwise provided, a withdrawal shall be with prejudice.

**7.9(4)** *Medical assessment.* For Medicaid enrollees engaged in an appeal involving medical issues, the department may request, at the department's own expense, that the appellant submit to an appropriate medical assessment. The presiding officer shall order such assessment upon sufficient showing of necessity.

**7.9(5)** *Standard of review.* In a child abuse appeal, the criteria and level of deference by which the presiding officer shall render a decision is based on a preponderance of evidence.

**7.9(6)** *Interpreters.* The department will provide translation and interpretation services to an appellant, if requested. In all cases when an appellant is illiterate or semiliterate, the presiding officer shall advise the appellant of the appellant's rights to the satisfaction of the appellant's understanding.

**7.9(7)** *Persons living with disabilities.* Persons living with disabilities shall be provided assistance through the use of auxiliary aids and services at no cost to the individual in accordance with the Americans with Disabilities Act (as amended to December 31, 2023) and Section 504 of the Rehabilitation Act (as amended, effective October 1, 2016).

**441—7.10(17A) Proposed decision.**

**7.10(1)** *Contents.* The presiding officer shall issue a written proposed decision to all parties clearly identifying the issues on appeal, holding, findings of fact, conclusions of law, and order. The findings of fact shall cite and be based exclusively on the record as defined by Iowa Code section 17A.12(6). The conclusions of law shall be limited to the contested issues of fact, policy or law and shall identify the specific provisions of law that support the ultimate conclusion.

**7.10(2)** *Access to record.* After receiving the proposed decision, an appellant shall be given reasonable access to the record at a convenient place and time.

**441—7.11(17A) Director's review.**

**7.11(1)** *Time.* Parties, including the department, may appeal the proposed decision to the director.

*a.* A request for director's review shall be in writing and postmarked or received within 14 calendar days of the date on which the proposed decision was issued, except as provided for under paragraph 7.11(1)*"b."* A request for director's review may be accompanied by a brief written summary of the arguments in favor of director's review.

*b.* A managed care organization appealing a proposed decision reversing an adverse benefit determination shall request director's review within 72 hours from the date it received notice of the proposed decision.

**7.11(2)** *Grant or denial of review.* The department has full discretion to grant or deny a request for review. In addition, the director may initiate review of a proposed decision on the director's own motion at any time on or before the thirtieth day following the issuance of the proposed decision.

When the department grants a request for director's review, the department will notify the parties and enclose a copy of the request. All other parties shall have 14 calendar days from the date of notification to submit further written arguments or objections for consideration upon review.

**7.11(3)** *Cross-appeal.* When a party requests director's review in accordance with subrule 7.11(1), the remaining parties shall have 14 calendar days from that date to submit cross-requests for director's review. The party originally seeking director's review shall have 14 calendar days from the date of the cross-request for director's review to submit further written arguments or objections for consideration upon review.

**7.11(4)** *Limited record.* Director's review shall be limited to the issues and record before the contested case hearing presiding officer.

**7.11(5)** *Oral arguments.* Upon specific request, the director may, at the director's discretion, permit parties to present oral arguments with the parties' requests for director's review.

**441—7.12(17A) Final decisions.**

**7.12(1)** *No appeal or denial of director review.* If there is no timely appeal from or review of the proposed decision, the presiding officer's proposed decision becomes the final decision of the agency.

**7.12(2)** *Timelines.*

*a.* The department or director will issue a final decision within the timelines prescribed by federal or state law. For all appeals for which there is no federal or state timeliness standard, the department or director will issue a final decision on or before the ninetieth day from the date the department receives an appeal request.

*b.* Except as otherwise provided by state or federal law, the time frames for a final decision provided under this rule may be tolled when:

(1) The appellant requests a delay;

(2) The appellant fails to take a required action; or

(3) There is an administrative or other emergency beyond the department's control.

*c.* DIAL shall document in the record the reasons for any delay and the requesting party.

**7.12(3)** *Written notice of final decision.* The parties to the appeal shall be provided written notice of the department's final decision. The department will also notify the appellant of the appellant's right to seek judicial review, where applicable.

**441—7.13(17A) Expedited review.**

**7.13(1)** *Expedited review criteria.* An appellant to a medical assistance appeal may, at any time, file with the department a request for expedited review of the appeal. Expedited review shall be granted pursuant to 42 CFR 438.410 (as amended to August 1, 2024) for a managed care organization appeal or 42 CFR 431.224 (as amended to August 1, 2024) for a non-managed care organization appeal.

**7.13(2)** *Managed care expedited proceedings.*

*a.* If the appellant is granted an expedited review, all subsequent proceedings shall also be expedited without an additional request if the appeal request indicates that the managed care organization appeal was expedited and provides the basis for expedited relief.

*b.* When review is expedited pursuant to paragraph 7.13(2)*"a,"* the presiding officer shall issue a proposed decision as expeditiously as the enrollee's health condition requires, but no later than three working days after the department receives from the managed care organization the case file and information for any appeal of a denial of a service that, as indicated by the managed care organization:

(1) Meets the criteria for expedited resolution but was not resolved within the time frame for expedited resolution; or

(2) Was resolved within the time frame for expedited resolution but reached a decision wholly or partially adverse to the enrollee.

**7.13(3)** *Medicaid eligibility or preadmission and annual resident review expedited proceedings.* For expedited appeals related to Medicaid eligibility or preadmission and annual resident review requirements, the presiding officer shall issue a proposed decision as expeditiously as possible, but no later than seven working days after the department receives a request for an expedited fair hearing.

**7.13(4)** *Medicaid-covered benefits or services expedited proceedings.* For expedited appeals related to Medicaid-covered benefits or services, the presiding officer shall issue a proposed decision as expeditiously as possible, but no later than provided in paragraph 7.13(2)*"b."*

**7.13(5)** *Final decision for expedited proceeding.* The department will issue its final decision in accordance with this rule, except as provided by subrule 7.12(2).

**7.13(6)** *Notification if expedited relief is granted or denied.* The department will notify the appellant as expeditiously as possible whether the request for expedited relief is granted or denied. Such notice will be provided orally or through electronic means to the extent consistent with federal and state law. If oral notice is provided, the department will follow up with written notice, which may be through electronic means to the extent consistent with federal and state law.

**441—7.14(17A) Effect.**

**7.14(1)** If the contested case hearing presiding officer's proposed decision is favorable to an enrollee in a Medicaid appeal, the department will promptly make corrective payments retroactive to the date an incorrect action was taken. If the presiding officer reverses a decision of a managed care organization to deny, limit, or delay services that were not furnished while the appeal was pending, the managed care organization must authorize or provide the disputed services promptly and as expeditiously as the enrollee's health condition requires, but no later than 72 hours from the date the managed care organization receives notice reversing the determination.

**7.14(2)** Unless there is contravening federal or state law, all final decisions shall be put into effect within seven days of the issuance of the final decision.

**441—7.15(17A) Calculating time.** In computing any time period specified in this chapter, the period:

1. Excludes the day of the event that triggers the period;
2. Includes every day of the time period (including Saturdays, Sundays, and holidays on which the department is closed); and
3. Includes the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

**441—7.16(17A) Authorized representatives.**

**7.16(1)** *Regulations.* The provisions of this rule only apply to the extent the standards expressed in this rule are not in conflict with other state or federal law.

**7.16(2)** *Designation of authority.* Legally recognized delegations of authority, such as guardianships, applicable designations of power of attorney, or similar designations, shall be sufficient for a delegate to serve as authorized representative under this chapter. A person who is not designated a legally recognized delegation of authority but who otherwise seeks to act as an authorized representative for an individual in an appeal under this chapter shall provide a written, signed designation of authority to the department with the request for appeal. The designation must provide the scope of the representation, applicable waivers for the release of confidential information, and any temporal or other limitations on the scope of representation. An authorized representative of a party-in-interest only represents the party-in-interest and has no independent right to appeal by virtue of the authorized representative's representation.

**7.16(3)** *Written designation.* For a person other than an attorney seeking to act as an authorized representative of a party-in-interest in a Medicaid managed care appeal, the authorized representative's written designation of authority pursuant to subrule 7.16(2) shall be on an authorized representative form prescribed by the department. This form is required for all managed care appeals, including those handled through the expedited appeals process. Failure to provide the form or legal documentation may result in denial of the appeal request.

**7.16(4)** *Appearance by attorney.* Legal counsel appearing on behalf of any person in a proceeding under this chapter shall enter an appropriate written appearance.

**441—7.17(17A) Continuation and reinstatement of benefits.**

**7.17(1)** *Programs for which no federal or state law applies.* For all assistance programs for which there is no contravening federal or state law, benefits or services shall not be suspended, reduced, restricted, or discontinued, nor shall a license, registration, certification, approval, or accreditation be revoked or other adverse action taken pending a final decision when:

*a.* An appeal is filed before the effective date of the intended action; or

*b.* The appellant requests a hearing within ten days of receipt of a notice to suspend, reduce, restrict, or discontinue benefits or services. The date on which the notice is received is considered to be five days after the date on the notice unless the appellant shows the notice was not received within the five-day period.

**7.17(2)** *Sole issue is state or federal law or policy.* Benefits or services continued pursuant to subrule 7.17(1) may be suspended, reduced, restricted, or discontinued if the presiding officer determines at the contested case hearing that the sole issue is one of state or federal law or policy and the department has notified the enrollee in writing that services are to be suspended, reduced, restricted, or discontinued pending the proposed decision.

**7.17(3)** *Recoup cost of services or benefits.* The department or managed care organization may recoup the cost of benefits or services provided pursuant to this chapter if the adverse action appealed from is affirmed, consistent with state and federal law.

**441—7.18(17A) Emergency adjudicative proceedings.**

**7.18(1)** *Necessary emergency action.* When and to the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with state and federal law, a contested case hearing presiding officer may issue a written order to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order. In determining the necessity of such an action, the presiding officer shall consider factors, including but not limited to the following:

*a.* Whether there has been sufficient investigation and evidentiary support to ensure the order is proceeding based on reliable information;

*b.* Whether the specific circumstances giving rise to the potential order have been specifically identified and determined to be continuing;

*c.* Whether the person who is required to comply with the emergency adjudicative order may continue to engage in other activities without risk of immediate danger to the public health, safety, or welfare;

*d.* Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and

*e.* Whether the specific action contemplated is necessary to avoid the immediate danger.

**7.18(2)** *Issuance of order.* An emergency adjudicative order shall contain, or shall be expeditiously followed by, a written analysis, including findings of fact, conclusions of law, and policy reasons to justify the order. The agency shall provide written notice that best ensures prompt, reliable delivery. Such order shall be immediately delivered to the persons required to comply with the order.

**7.18(3)** *Completion of proceedings.* Upon issuance of an order under this rule, the department will proceed as quickly as reasonably practicable to complete any proceedings that would be required if the matter did not involve an immediate danger. An order issued under this rule shall include notice of the date on which proceedings under this chapter are to be completed. After issuance of an order under this rule, continuance of further proceedings under this chapter shall only be granted in compelling circumstances upon application in writing. Before issuing an emergency adjudicative order, the presiding officer shall consider factors, including but not limited to the following:

*a.* Whether there has been sufficient investigation and evidentiary support to ensure the order is proceeding based on reliable information;

*b.* Whether the specific circumstances giving rise to the potential order have been specifically identified and determined to be continuing;

*c.* Whether the person who is required to comply with the emergency adjudicative order may continue to engage in other activities without risk of immediate danger to the public health, safety, or welfare;

*d.* Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and

*e.* Whether the specific action contemplated is necessary to avoid the immediate danger.

**441—7.19(17A) Supplemental Nutrition Assistance Program (SNAP) administrative disqualification hearings.** An intentional program violation is determined through a SNAP administrative disqualification hearing, a court conviction, or when an individual signs and returns a

form prescribed by the department, which may result in a period of ineligibility for the program, a claim for overpayment of benefits, or both in accordance with the procedures outlined in this rule and in 7 CFR 273.16(e) and (f) as amended to December 8, 2021.

**7.19(1)** When a case is referred for an administrative disqualification hearing, the department will mail written notification to the individual that the individual can waive the right to an administrative disqualification hearing by signing and returning Waiver of Right to an Administrative Disqualification Hearing.

**7.19(2)** By signing Waiver of Right to an Administrative Disqualification Hearing, the individual:

*a.* Waives the right to an administrative disqualification hearing;

*b.* Consents to the SNAP disqualification period designated Waiver of Right to an Administrative Disqualification Hearing, and a reduction of benefits for the period of disqualification; and

*c.* Acknowledges that remaining household members, if any, may be held responsible for repayment of the resulting claim.

**7.19(3)** An administrative disqualification hearing shall be scheduled if the individual does not sign and mail or fax Waiver of Right to an Administrative Disqualification Hearing to the department within ten days of receipt of the written notification stating the individual can waive the right to an administrative disqualification hearing. The date on which the written notification is received is considered to be five days after the date on the notification unless the individual shows the notification was not received within the five-day period.

**7.19(4)** An individual who waives the right to an administrative disqualification hearing will be subject to the same penalties as an individual found to have committed an intentional program violation in an administrative disqualification hearing.

**441—7.20** to **7.40** Reserved.

DIVISION II
APPEALS BASED ON THE COMPETITIVE PROCUREMENT BID PROCESS

**441—7.41(17A) Scope, bidder and applicability.** The rules in Division II apply to appeals based on the department's competitive procurement bid process. A bidder is an entity that submits a proposal in response to a solicitation issued through the department's competitive procurement process.

**441—7.42(17A) Requests for timely filing of an appeal.** Any bidder that receives either a notice of disqualification or a notice of award, and has first exhausted the reconsideration process, is considered an aggrieved party and may file a written appeal with the department.

**7.42(1)** An aggrieved party in a competitive procurement must seek reconsideration of a disqualification or a notice of award prior to filing any appeal. The request for reconsideration must be received by the department within five calendar days of the date of either a disqualification notice or notice of award, exclusive of Saturdays, Sundays and legal state holidays. The department will expeditiously address the request for reconsideration and issue a decision on the reconsideration. If the party seeking reconsideration continues to be an aggrieved party following receipt of the decision on reconsideration, the aggrieved party may file an appeal within five calendar days of the date of the department's decision on reconsideration, exclusive of Saturdays, Sundays and legal state holidays.

**7.42(2)** The written appeal will state the grounds upon which the appellant challenges the department's decision.

**7.42(3)** The day after the department's decision on reconsideration is issued is the first day of the period in which the appeal may be filed. Appeals may be sent by mail, email, fax or in-person delivery.

When an appeal is submitted through an electronic delivery method, such as email or fax, the appeal is filed on the date it is submitted. The electronic delivery method will record the date and time the appeal request was submitted. If there is no date recorded by the electronic delivery method or the appeal was filed via in-person delivery, the date of filing is the date the appeal is stamped received by the agency. Receipt date of all appeals will be documented by the office where the appeal is received.

When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

**441—7.43(17A) Bidder appeals.** The bidder appeal will be a contested case proceeding and shall be conducted in accordance with the provisions of Division II. Division I of this chapter does not apply to competitive procurement bid appeals unless otherwise noted.

**7.43(1)** *Hearing time frame.* The presiding officer shall hold a hearing on the bidder appeal within 60 days of the date the notice of appeal was received by the department.

**7.43(2)** *Registration.* Upon receipt of the notice of appeal, the department will register the appeal.

**7.43(3)** *Acknowledgment.* Upon receipt of the notice of appeal, the department will send a written acknowledgment of receipt of the appeal to the appellant, the appellant's representative, or both.

**7.43(4)** *Granting a hearing.* The department will determine whether an appellant may be granted a hearing and the issues to be discussed at the hearing in accordance with the applicable rules, statutes or federal regulations or request for proposal.

*a.* An appeal of an appellant who is granted a hearing shall be certified to DIAL for the hearing to be conducted. The department will indicate at the time of certification the issues to be discussed at the hearing.

*b.* An appeal of an appellant who is denied a hearing shall not be closed until a letter is sent to the appellant and the appellant's representative advising of the denial of the hearing and the basis upon which that denial is made. Any appellant who disagrees with a denial may present additional information relative to the reason for denial and request reconsideration by the department over the denial.

**7.43(5)** *Hearing scheduled.* For those records certified for hearing, DIAL shall establish the date, time, method and place of the hearing, with due regard for the convenience of the appellant as set forth in DIAL rules in 481—Chapter 10 unless otherwise designated by federal or state statute or regulation.

**7.43(6)** *Method of hearing.* DIAL shall determine whether the appeal hearing is to be conducted in person, by videoconference or by teleconference call. The parties to the appeal may participate from multiple sites for videoconference or teleconference hearings. Any appellant is entitled to an in-person hearing if the appellant requests one. All parties shall be granted the same rights during a teleconference hearing as specified in rule 441—7.8(17A).

**7.43(7)** *Reschedule requests.* Requests made by the appellant or the department to set another date, time, method or place of hearing shall be made to DIAL except as otherwise noted. The granting of the requests will be at the discretion of DIAL. All requests concerning the scheduling of a hearing shall be made to DIAL directly.

**7.43(8)** *Notification.* For those appeals certified for hearing, DIAL shall send a notice to the appellant at least ten calendar days in advance of the hearing date.

*a.* The notice shall comply with Iowa Code section 17A.12(2), and include a statement that opportunity shall be afforded to all parties to respond and present evidence on all issues involved and to be represented by counsel at their own expense.

*b.* A copy of this notice shall be made available to the department employee who took the action and to any other parties to the appeal.

**441—7.44(17A) Procedures for bidder appeal.**

**7.44(1)** Discovery. The parties shall serve any discovery requests upon other parties at least 30 days prior to the date set for the hearing. The parties must serve responses to discovery at least 15 days prior to the date set for the hearing.

**7.44(2)** Witnesses and exhibits. The parties shall contact each other regarding witnesses and exhibits at least ten days prior to the date set for the hearing. The parties must meet prior to the hearing regarding the evidence to be presented in order to avoid duplication or the submission of extraneous materials.

**7.44(3)** Amendments to notice of appeal. The aggrieved bidder may amend the grounds upon which the bidder challenges the department's award no later than 15 days prior to the date set for the hearing.

**7.44(4)** If the hearing is not conducted in person, the parties must deliver all exhibits to the office of the presiding officer at least three days prior to the time the hearing is conducted.

**7.44(5)** The presiding officer shall issue a proposed decision in writing that includes findings of fact and conclusions of law stated separately. The decision shall be based on the record of the contested case and shall conform to Iowa Code chapter 17A. The presiding officer shall send the proposed decision to the appellant and representative by mail.

**7.44(6)** The record of the contested case shall include all materials specified in Iowa Code section 17A.12(6).

**441—7.45(17A) Stay of agency action for bidder appeal.**

**7.45(1)** *When a stay may be requested.*

*a.* Any party appealing the issuance of a notice of disqualification or notice of award may petition for stay of the decision pending its review. The petition for stay shall be filed with the notice of appeal, shall state the reasons justifying a stay, and shall be accompanied by an appeal bond equal to 120 percent of the contract value.

*b.* Any party adversely affected by a final decision and order may petition the department for a stay of that decision and order pending judicial review. The petition for stay shall be filed with the director within five days of receipt of the final decision and order and shall state the reasons justifying a stay.

**7.45(2)** *When a stay is granted.* In determining whether to grant a stay, the director will consider the factors listed in Iowa Code section 17A.19(5)*"c."*

**7.45(3)** *Vacation.* A stay may be vacated by the issuing authority upon application of the department or any other party.

**441—7.46(17A) Request for review of the proposed decision.** A request for review of the proposed decision shall follow the provisions outlined in rule 441—7.11(17A).

**441—7.47(17A) Other procedural considerations.**

**7.47(1)** *Consolidation—severance.* The provisions regarding consolidation and severance in rule 481—10.10(10A,17A) apply.

**7.47(2)** *Rights of an appellant during a hearing.* All rights afforded an appellant in rule 441—7.8(17A) shall apply.

**441—7.48(17A) Appeal record.**

**7.48(1)** The appeal record shall consist of all items specified in Iowa Code section 17A.16.

**7.48(2)** The party that requests a transcription of the proceedings shall bear the cost.

**441—7.49(17A) Pleadings.** The provisions regarding pleadings in rule 481—10.11(10A,17A) apply.

**441—7.50(17A) Ex parte communications.** The rules regarding ex parte communications specified in subrule 7.9(1) and Iowa Code section 17A.17 apply.

**441—7.51(17A) Right of judicial review.** The rules regarding right of judicial review specified in subrule 7.12(3) and Iowa Code section 17A.19 apply.

These rules are intended to implement Iowa Code chapter 17A.

ITEM 2. Rescind 441—Chapter 9 and adopt the following **new** chapter in lieu thereof:

CHAPTER 9
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

**441—9.1(17A,22) Statement of policy, purpose and scope of chapter.**

**9.1(1)** The purpose of this chapter is to facilitate public access to open records. It also seeks to facilitate department determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. The department is committed to the policies set forth in Iowa Code chapter 22; department staff will cooperate with members of the public in implementing the provisions of that chapter.

These rules also implement the federal Health Insurance Portability and Accountability Act (HIPAA) regulations at 45 CFR Parts 160 and 164 as amended to June 25, 2024. These rules set forth the standards the department must meet to protect the privacy of protected health information. The department is a hybrid entity for purposes of HIPAA. The rules on protected health information apply only to those parts of the department that are considered part of the covered entity.

**9.1(2)** This chapter does not:

*a.* Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

*b.* Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

*c.* Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency which are governed by the rules of another agency.

*d.* Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs.

*e.* Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

*f.* Require the agency to create, compare or procure a record solely for the purpose of making it available.

**441—9.2(17A,22) Definitions.** As used in this chapter:

*"Business associate"* means the same as defined in 45 CFR §160.103 as amended to June 25, 2024.

*"Client"* means a person who has applied for or received services or assistance from the department.

*"Confidential record"* in these rules means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

*"Covered entity"* means the same as defined in 45 CFR §160.103 as amended to June 25, 2024.

*"Custodian"* means the director of the department or the director's designee.

*"Data aggregation"* is the same as defined in 45 CFR §164.501 as amended to March 26, 2013.

*"Designated record set"* is the same as defined in 45 CFR §164.501 as amended to March 26, 2013, including:

1. The medical records about subjects that are maintained for facilities;
2. The enrollment, payment, and eligibility record systems maintained for Medicaid; or
3. The enrollment, payment, and eligibility record systems maintained for the hawki program that are used, in whole or in part, by the hawki program to make decisions about subjects.

For purposes of this definition, the term "record" means the same as defined in 45 CFR §164.501 as amended to March 26, 2013.

*"Disclosure"* means the same as defined in 45 CFR §160.103 as amended to June 25, 2024.

*"Facility"* or *"facilities"* means, with respect to HIPAA rules about health information, one or more of these department institutions: Cherokee Mental Health Institute, Independence Mental Health Institute, and Woodward Resource Center.

*"Health care"* means the same as defined in 45 CFR §160.103 as amended to June 25, 2024.

*"Health care clearinghouse"* means the same as defined in 45 CFR §160.103 as amended to June 25, 2024.

*"Health care operations"* for covered entities in the department has the same definition as that stated in 45 CFR §164.501 as amended to March 26, 2013.

*"Health care provider"* means the same as defined in 45 CFR §160.103 as amended to June 25, 2024.

*"Health information"* means the same as defined in 45 CFR §160.103 as amended to June 25, 2024.

*"Health oversight agency"* means the same as defined in 45 CFR §164.501 as amended to March 26, 2013.

*"Health plan"* means an individual or group plan that provides or pays the cost of medical care, as defined at 45 CFR §160.103 as amended to June 25, 2024. In the department, "health plan" means Medicaid or hawki.

*"HIPAA"* means the Health Insurance Portability and Accountability Act of 1996.

*"Law enforcement official"* means an officer or employee of any agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, who is empowered by law to:

1. Investigate or conduct an official inquiry into a potential violation of law; or
2. Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

*"Legal representative"* is a person recognized by law as standing in the place or representing the interests of another for one or more purposes.

*"Mental health information"* means oral, written, or otherwise recorded information which indicates the identity of a person receiving professional services (as defined in Iowa Code section 228.1(8)) and which relates to the diagnosis, course, or treatment of the person's mental or emotional condition.

*"Open record"* means a record other than a confidential record.

*"Payment,"* with respect to protected health information, has the same definition as that stated in 45 CFR §164.501 as amended to March 26, 2013. In the department, "payment" applies to subjects for whom health care coverage is provided under the Medicaid program or the hawki program.

*"Personally identifiable information"* means information about or pertaining to the subject of a record which identifies the subject and which is contained in a record system.

*"Personal representative"* means someone designated by another as standing in the other's place or representing the other's interests for one or more purposes. The term "personal representative" includes, but is not limited to, a legal representative. For disclosure of protected health information, the definition of "personal representative" is more restrictive, as described at rule 441—9.15(17A,22).

*"Protected health information"* means the same as defined in 45 CFR §160.103 as amended to June 25, 2024.

*"Psychotherapy notes"* means the same as defined in 45 CFR §164.501 as amended to March 26, 2013.

*"Public health authority"* means the same as defined in 45 CFR §164.501 as amended to March 26, 2013.

*"Record"* means the whole or a part of a "public record" as defined in Iowa Code section 22.1 that is owned by or in the physical possession of the department.

*"Record system"* means any group of records under the control of the department from which a record may be retrieved by a personal identifier such as the name of a subject, number, symbol, or other unique identifier assigned to a subject.

*"Subject"* means the person who is the subject of the record, whether living or deceased.

*"Substance abuse information"* means information which indicates the identity, diagnosis, prognosis, or treatment of any person in an alcohol or drug abuse program.

*"Transaction"* means the same as defined in 45 CFR §160.103 as amended to June 25, 2024.

*"Treatment"* means the same as defined in 45 CFR §164.501 as amended to March 26, 2013.

*"Use,"* with respect to protected health information, means the same as defined in 45 CFR §160.103 as amended to June 25, 2024.

*"Workforce,"* with respect to protected health information, means the same as defined in 45 CFR §160.103 as amended to June 25, 2024.

**441—9.3(17A,22) Requests for access to records.**

**9.3(1)** *Location of record.* A request for access to a record should be directed to the Records Officer, 321 East 12th Street, Des Moines, Iowa 50319. If a request for access to a record is misdirected, department personnel will promptly forward the request to the department's records officer.

**9.3(2)** *Office hours.* Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays and legal holidays.

**9.3(3)** *Request for access.* Requests for access to open records may be made in writing, in person, or by telephone. Requests shall identify the particular records sought by name or description. Mail or telephone requests shall include the name, address, and telephone number of the person requesting the information.

**9.3(4)** *Response to requests.* Access to an open record will be provided upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4).

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 441—9.4(17A,22) and other applicable provisions of law.

**9.3(5)** *Security of record.* No person may, without permission from the custodian, search or remove any record from department files. Examination and copying of department records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

**9.3(6)** *Copying.* A reasonable number of copies of an open record may be made in the department office. If photocopy equipment is not available in the department office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

**9.3(7)** *Fees.* The department may charge fees as permitted by Iowa Code chapter 22. The department will publish a fee schedule for open records on its website. The department may charge a fee for the cost of preparing an explanation or summary of health information. The department and the subject requesting the information shall agree to the amount of any fee imposed before the department prepares the explanation or summary.

**441—9.4(17A,22) Access to confidential records.** Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 441—9.3(17A,22).

**9.4(1)** *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

**9.4(2)** *Requests.* The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

**9.4(3)** *Notice to subject of record and opportunity to obtain injunction.* Except as provided in 441—subrule 175.41(2), after the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

**9.4(4)** *Request denied.* When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

*a.* The name and title or position of the custodian responsible for the denial; and

*b.* A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

**9.4(5)** *Request granted.* Except as provided in 441—subrule 175.41(2), when the custodian grants a request for access to a confidential record, the custodian shall notify the requester or the person who is to receive the information and include any limits on the examination and copying of the record.

**9.4(6)** *Records requiring special procedures.* Special procedures are required for access to:

*a.* Child abuse information. Access to child abuse information is obtained according to rules 441—175.41(235A) and 441—175.42(235A).

*b.* Dependent adult abuse information. Access to adult abuse information is governed by rule 441—176.9(235A).

**441—9.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examinations.** The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

**9.5(1)** *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of

law, or a court order, authorizes the custodian to treat the record as a confidential record, may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

**9.5(2)** *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian.

*a.* The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request.

*b.* A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit stating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts.

*c.* Requests to temporarily treat a record as a confidential record shall specify the precise period of time for which that treatment is requested.

*d.* A person filing such a request shall, if possible, provide a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the department by the person requesting confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

**9.5(3)** *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the department does not request that it be withheld from public inspection under Iowa Code section 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

**9.5(4)** *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

**9.5(5)** *Request granted or deferred.* If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

**9.5(6)** *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

**9.5(7)** *Requesting privacy protection for protected health information.*

*a. Requesting restrictions on protected health information use or disclosure.* The department will follow the requirements of 45 CFR §164.522 as amended to March 26, 2013, in responding to these requests.

*b. Requesting the receipt of communications of protected health information by alternative means or at alternative locations.* The department will follow the requirements of 45 CFR §164.522 as amended to March 26, 2013, in responding to these requests. For Medicaid and hawki, the subject is required to clearly indicate the reason for requesting the confidential communication. Facilities shall not require the subject to explain the basis for the request as a condition of providing confidential communications.

**441—9.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.**

**9.6(1)** *All programs.* Except as otherwise provided by law, a subject may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that subject. However, the subject is not authorized to alter the original copy of the record or to expand the official record of any department proceeding.

*a.* The subject shall send the request to review such a record or the written statement of additions, dissents, or objections to the department.

*b.* The request to review such a record or the written statement of additions, dissents, or objections must be dated and signed by the subject and shall include the current address and telephone number of the subject or the subject's representative.

**9.6(2)** *Additional procedures for protected health information.* The department will follow the protected health information right to amend standards as outlined in 45 CFR §164.526 as amended to March 26, 2013. The subject shall provide a reason to support the requested amendment.

**441—9.7(17A,22,228) Consent to disclosure by the subject of a confidential record.** To the extent permitted by any applicable provision of law, the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records to be disclosed, the particular person or class of persons to whom the record may be disclosed, and the time period during which the record may be disclosed. The subject of the record and, where applicable, the person to whom the record is to be disclosed may be required to provide proof of identity. Appearance of counsel before the department on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the department to disclose records about that person to the person's attorney. An attorney requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record. No confidential information about clients of the department shall be released without the client's consent, except as otherwise provided by law. Release of confidential information includes granting access to or allowing the copying of a record, providing information either in writing or orally, or acknowledging information to be true or false.

**9.7(1)** *Release forms.*

*a. Releases allowing the department to provide confidential information, including protected health information.* Subjects should complete an authorization for release on a form that meets the requirements of applicable law.

*b. Releases allowing the department to provide protected health information under HIPAA.* The department shall not require a subject to sign a HIPAA authorization form as a condition of treatment, payment, enrollment in a health plan, or eligibility for benefits. The department as a health care provider may require a subject to sign a HIPAA authorization form for the use or disclosure of protected health information for research, as a condition of the subject's receiving research-related treatment. A subject may revoke a HIPAA authorization at any time, provided that the revocation is in writing using a form that meets the requirements of applicable law, except to the extent that the department has taken action in reliance thereon.

*c. Releases allowing the department to obtain confidential information from a third party.* The department is required to obtain confidential information from third parties. The department may

make these requests unless prohibited by applicable law or when the client has authorized the release on one of the following forms:

(1) Authorization for Release of Information.
(2) Household Member Questionnaire.
(3) Bank or Credit Union Information.
(4) Addendum for Application and Review Forms for Release of Information.
(5) Request for School Verification.
(6) Employer's Statement of Earnings.
(7) Verification of Educational Financial Aid.
(8) Financial Institution Verification.
(9) Authorization to Obtain or Release Health Care Information.

*d. Releases for photographs and recordings.* The department may seek permission to use photographs in department publications on a form that meets the requirements of applicable law. The department will obtain authorization from the subject or person responsible (such as a guardian, custodian, or personal representative) for the subject before taking photographs or making any type of recording for any purpose other than those specifically allowed by law or for internal use within an institution.

**9.7(2)** *Exceptions to use of release forms.*

*a. Public official.* A letter from the subject to a public official that seeks the official's intervention on behalf of the subject in a matter that involves the department shall be treated as an authorization to release information upon receipt of appropriate authorization from the subject to do so. The department shall release only the minimum amount of information necessary about the subject to the official to resolve the matter. If the information includes protected health information, the department may only provide the protected health information if, in the exercise of professional judgment, the department determines that disclosure is in the best interest of the subject. When the department determines that disclosure is in the subject's best interest, the department may disclose only the protected health information that is directly relevant to the public official's intervention with the matter involving the department.

*b. Medical emergency.* Department staff may authorize release of confidential information to medical personnel in a medical emergency if the subject is unable to give or withhold consent. As soon as possible after the release of information, the subject shall be advised of the release.

*c. Abuse information.* Consent to release information is not required to gather information for investigations of child abuse or dependent adult abuse.

**9.7(3)** *Opportunity for subject to agree or object for protected health information under HIPAA.* This subrule describes when the department may use or disclose protected health information, without a written authorization, to persons involved in the subject's care and for notification purposes. However, the department shall give the subject an opportunity to agree or object unless this requirement is waived as specified in paragraph 9.7(3)*"e."*

*a. Involvement in the subject's care.* The department may, in accordance with paragraphs 9.7(3)*"c," "e,"* and *"f,"* disclose protected health information that is directly relevant either to a subject's care or to payment related to the subject's care, provided payment is relevant to the person's involvement in the subject's care. The person involved must be:

(1) A family member;
(2) Another relative;
(3) A close personal friend of the subject; or
(4) Any other person identified by the subject.

*b. Notification purposes.* The department may use or disclose protected health information to notify, or assist in notifying, identifying or locating a family member, a personal representative of the subject, or another person responsible for the care of the subject of the subject's location, general condition or death. For disaster relief purposes, the use or disclosure shall be in accordance with paragraph 9.7(3)*"f."*

*c. Uses and disclosures with the subject present.* If the subject is present for, or available before, a use or disclosure permitted by this subrule and has the capacity to make health care decisions, the department may use or disclose the protected health information if the department:

(1) Obtains the subject's agreement;

(2) Provides the subject with the opportunity to object to the disclosure, and the subject does not express an objection; or

(3) Reasonably infers from the circumstances, based on the exercise of professional judgment, that the subject does not object to the disclosure.

*d. Informing the subject.* The department may orally inform the subject of and obtain the subject's oral agreement or objection to a use or disclosure permitted by this subrule.

*e. Limited uses and disclosures when the subject is not present.* When the subject is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the subject's incapacity or an emergency circumstance, the department may, in the exercise of professional judgment, determine that disclosure is in the best interest of the subject.

(1) When the department determines that disclosure is in the subject's best interest, the department may disclose only the protected health information that is directly relevant to the person's involvement with the subject's health care.

(2) The department may use professional judgment and its experience with common practice to make reasonable inferences of the subject's best interest in allowing a person to act on behalf of the subject to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of protected health information.

*f. For disaster relief purposes.* The department may use protected health information or disclose protected health information to a public or private organization authorized by law or by its charter to assist in disaster relief efforts for the purpose of coordinating with these organizations the uses or disclosures permitted by paragraph 9.7(3)*"b."* The requirements in paragraphs 9.7(3)*"c"* and *"d"* apply to these uses and disclosures to the extent that the department, in the exercise of professional judgment, determines that the requirements do not interfere with the ability to respond to the emergency circumstances.

**441—9.8(17A,22) Notice to suppliers of information.** When the department requests a person to supply information about that person, the department shall notify the person of how the information will be used, which entities outside the department might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means. The notice shall generally be given at the first contact with the department and need not be repeated. Where appropriate, the notice may be given to a person's legal or personal representative. Notice may be withheld in an emergency or where it would compromise the purpose of a department investigation.

**441—9.9(17A,22) Release to subject.** The department will follow the access of individuals to protected health information standards as outlined in 45 CFR §164.524 as amended to February 6, 2014. If the department does not maintain the protected health information that is the topic of the subject's request for access, and the department knows where the requested information is maintained, the department shall inform the subject where to direct the request for access.

**441—9.10(17A,22) Use and disclosure without consent of the subject.** Open records are routinely disclosed without the consent of the subject. To the extent allowed by law, the department may also use and disclose confidential information without the consent of the subject or the subject's representative.

**9.10(1)** *Routine use.* To the extent allowed by law, the following are considered routine uses of all department records:

*a.* Disclosure to employees and agents of the department as needed for the performance of their duties.

*b.* Transfers of information within the department, to other state or federal agencies, agents of tribes and tribal public health authorities, or to local units of government as necessary to administer the program for which the information is collected or as necessary to administer a program within the other entity.

*c.* To a recipient who has provided the department with advance written assurance that the record will be used solely to create a statistical report. The department shall not release confidential data or information pursuant to this chapter unless the department and the recipient have executed an agreement that includes the conditions under which the confidential data or information may be used and a restriction on the further disclosure of the data or information.

**9.10(2)** *Audits and health oversight activities.*

*a. Audits.* Information concerning program expenditures and client eligibility is released to staff of the state executive and legislative branches who are responsible for ensuring that public funds have been managed correctly. Information is also released to auditors from federal agencies when those agencies provide program funds.

*b. Health oversight activities.* The department will follow the uses and disclosures standards for health oversight activities as outlined in 45 CFR §164.512 as amended to June 25, 2024.

**9.10(3)** *Program review.* Information concerning client eligibility and benefits is released to state or federal officials responsible for determining whether the department is operating a program lawfully. These officials include the ombudsman office under Iowa Code section 2C.9, the auditor of state under Iowa Code section 11.2, the Office of Inspector General in the federal Department of Health and Human Services, and the Centers for Medicare and Medicaid Services.

**9.10(4)** *Contracts and agreements with agencies and persons.*

*a.* The department may enter into contracts or agreements with public or private agencies to carry out the department's official duties or as necessary to administer a program within the other agency. Information necessary to carry out these duties may be shared with these agencies. The department may disclose protected health information to a business associate and may allow a business associate to create or receive protected health information on its behalf if the department obtains satisfactory assurance that the business associate will appropriately safeguard the information.

*b.* The department may enter into agreements to share information with agencies administering federal or federally assisted programs which provide assistance or services directly to persons on the basis of need. Only information collected in the family investment program, the child care assistance program, the food assistance program, the refugee resettlement program, or the child support recovery program may be shared under these agreements.

*c.* To meet federal income and eligibility verification requirements, the department has entered into agreements with the department of workforce development, the United States Internal Revenue Service, and the United States Social Security Administration. The department obtains information regarding persons whose income or resources are considered in determining eligibility and the amount of benefits for the family investment program, refugee cash assistance, child care assistance, food assistance, Medicaid, state supplementary assistance and foster care. Identifying information regarding clients of these programs is released to these agencies. The information received may be used for eligibility and benefit determinations.

*d.* To meet federal requirements under the Immigration Reform and Control Act of 1986 (IRCA) relating to the Systematic Alien Verification for Entitlements (SAVE) program, the department has entered into an agreement with the Bureau of Citizenship and Immigration Service (BCIS). Under the agreement, the department exchanges information necessary to verify alien status for the purpose of determining eligibility and the amount of benefits for the family investment program, refugee cash assistance, food assistance, Medicaid, state supplementary assistance and foster care assistance.

Identifying information regarding these subjects is released to the BCIS. The information received may be used for eligibility and benefit determinations.

*e.* The department has entered into an agreement with the department of workforce development to provide services to family investment program clients participating in the PROMISE JOBS program as described at 441—Chapter 93. Information necessary to carry out these duties shall be shared with the department of workforce development, as well as with its subcontractors.

*f.* The department has entered into an agreement with the department of education, vocational rehabilitation, disability determination services, to assist with Medicaid disability determinations.

*g.* The department has entered into an agreement with the department of education to share information that assists both schools and department clients in carrying out the annual verification process required by the United States Department of Agriculture, Food and Nutrition Service. That federal agency requires the department of education and local schools to verify eligibility of a percentage of the households approved for free-meal benefits under the school lunch program. When a department office receives a written request from the local school, the department office responds in writing with the current family investment program and food assistance program status of each recipient of free meals listed in the request. Other client-specific information is made available only with written authorization from the client.

**9.10(5)** *Release for judicial and administrative proceedings.* Information is released to the court as required in Iowa Code sections 125.80, 125.84, 125.86, 229.8, 229.10, 229.13, 229.14, 229.15, 229.22, 232.48, 232.49, 232.52, 232.71B, 232.81, 232.97, 232.98, 232.102, 232.111, 232.117 and 235B.3.

*a.* The department may disclose protected health information in the course of any judicial or administrative proceeding in response to an order of a court or administrative tribunal, provided that the department discloses only the protected health information expressly authorized by the order and the court makes the order knowing that the information is confidential.

*b.* When a court subpoenas information that the department is prohibited from releasing, the department shall advise the court of the statutory and regulatory provisions against disclosure of the information and shall disclose the information only on order of the court.

**9.10(6)** *Fraud.* Information concerning suspected fraud or misrepresentation to obtain department services or assistance is disclosed to DIAL and to law enforcement authorities.

**9.10(7)** *Service referrals.* Information concerning clients may be shared with purchase of service providers under contract to the department.

*a.* Information concerning the client's circumstances and need for service is shared with prospective providers to obtain placement for the client. If the client is not accepted for service, all written information released to the provider shall be returned to the department.

*b.* When the information needed by the provider is mental health information or substance abuse information, the subject's specific consent is required.

**9.10(8)** *Medicaid billing.* Only the following information shall be released to bona fide providers of medical services in the event that the provider is unable to obtain it from the subject and is unable to complete the Medicaid claim form without it:

*a.* Patient identification number.

*b.* Health coverage code as reflected on the subject's medical card.

*c.* The subject's date of birth.

*d.* The subject's eligibility status for the month that the service was provided.

*e.* The amount of spenddown.

*f.* The bills used to meet spenddown.

**9.10(9)** Reserved.

**9.10(10)** *Child support recovery.* The child support recovery unit has access to information from most department records for the purpose of establishing and enforcing support obligations. Information about absent parents and recipients of child support services is released according to the provisions of Iowa Code chapters 234, 252A, 252B, 252C, 252D, 252E, 252F, 252G, 252H, 252I,

252J, 252K, 598, and 600B and any other support chapter. Information is also released to consumer reporting agencies as specified in rule 441—98.116(252B).

**9.10(11)** *Refugee resettlement program.* Contacts with both sponsor and resettlement agencies are made as a part of the verification process to determine eligibility or the amount of assistance. When a refugee applies for cash or Medicaid, the refugee's name, address, and telephone number are given to the refugee's local resettlement agency.

**9.10(12)** *Abuse investigation.* The central abuse registry disseminates child abuse information and dependent adult abuse information as provided in Iowa Code sections 235A.15 and 235B.7, respectively. Reports of child abuse and dependent adult abuse investigations are submitted to the county attorney as required in Iowa Code sections 232.71B and 235B.3. Results of the investigation of a report by a mandatory reporter are communicated to the reporter as required in Iowa Code sections 235A.17(2) and 235A.15(2)*"b"*(5).

**9.10(13)** *Foster care.* Information concerning a child's need for foster care is shared with foster care review committees or foster care review boards and persons named in the case permanency plan.

**9.10(14)** *Adoption.* Adoptive home studies completed on families who wish to adopt a child are released to licensed child-placing agencies, to the United States Immigration and Naturalization Service, and to adoption exchanges. Information is released from adoption records as provided in Iowa Code sections 600.16 and 600.24.

**9.10(15)** *Disclosures to law enforcement.*

*a. Disclosures by workforce members who are crime victims.* The department is not considered to have violated the requirements of this chapter if a member of its workforce who is the victim of a criminal act discloses confidential information to a law enforcement official, provided that:

(1) The confidential information disclosed is about the suspected perpetrator of the criminal act and intended for identification and location purposes; and

(2) The confidential information disclosed is limited to the following information:

1. Name and address.
2. Date and place of birth.
3. Social security number.
4. ABO blood type and Rh factor.
5. Type of injury.
6. Date and time of treatment.
7. Date and time of death, if applicable.
8. A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

*b. Crime on premises.* The department may disclose to a law enforcement official protected health information that the department believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the department.

*c. Decedents.* The department may disclose protected health information to a law enforcement official about a subject who has died when the death resulted from child abuse or neglect or the death occurred in a department facility.

*d. Other.* The department may disclose confidential information to a law enforcement official when otherwise required or allowed by this chapter, such as disclosures about victims of child abuse or neglect; disclosures to avert a threat to health or safety, or to report suspected fraud; disclosures required by due process of law, such as disclosures for judicial and administrative proceedings; or other disclosures required by law.

**9.10(16)** *Response to law enforcement.* The address of a current recipient of family investment program benefits may be released upon request to a federal, state or local law enforcement officer if the officer provides the name of the recipient, and the officer demonstrates that:

*a.* The recipient is a fugitive felon who is fleeing prosecution, custody or confinement after conviction under state or federal law, or who is a probation or parole violator under state or federal law, or

*b.* The recipient has information that is necessary for the officer to conduct the officer's official duties, and

*c.* The location or apprehension of the recipient is within the officer's official duties.

**9.10(17)** *Research and evaluation.* Disclosure is made to employees of federal, state and local agencies and other investigators for purposes of bona fide research or evaluation. The department shall not release data or information pursuant to this paragraph unless the department and the researcher have executed an agreement that includes the conditions under which the confidential data or information may be used and restrictions on further disclosure of the data or information.

*a.* Mental health information may be disclosed for purposes of scientific research as provided in Iowa Code sections 228.5 and 229.25. Requests to do research involving records of a department facility shall be approved by the designated authority.

*b.* Abuse registry information may be disclosed for research purposes as provided in rules 441—175.42(235A) and 441—176.12(235B) and authorized by Iowa Code sections 235A.15(2)*"e"*(1) and 235B.6(2)*"e"*(1).

*c.* For research relating to protected health information, the researcher shall provide the department with information about the nature of the research, the protocol, the type of information being requested, and any other relevant information that is available concerning the request. If the researcher feels that contact with the subject is needed, the researcher shall demonstrate to the department that the research cannot be conducted without contact with the subject. The researcher shall pay for the costs of obtaining authorizations needed to contact the subjects and for the cost of files and preparation needed for the research.

**9.10(18)** *Threat to health or safety.*

*a. All programs.* A client's name, identification, location, and details of a client's threatened or actual harm to department staff or property may be reported to law enforcement officials. Other information regarding the client's relationship to the department shall not be released. When a department staff person believes a client intends to harm someone, the staff person may warn the intended victim or police or both. Only the name, identification, and location of the client and the details of the client's plan of harm shall be disclosed.

*b. Protected health information.* The department will follow the disclosure standards in 45 CFR §164.512 as amended to June 25, 2024.

**9.10(19)** *Required by law.*

*a.* Information is shared with other agencies without a contract or written agreement when federal law or regulations require it.

*b.* The department may use or disclose protected health information to the extent that use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of the law.

*c.* State law shall preempt rules in this chapter about protected health information when any one of the following conditions exists:

(1) Exception granted by Secretary of Health and Human Services under 45 CFR §160.204 as amended to March 26, 2013.

(2) State law more stringent. The provision of state law relates to the privacy of protected health information and is more stringent than a requirement of this chapter, within the meaning of "more stringent" found at 45 CFR §160.202 as amended to March 26, 2013.

(3) Reporting requirements. The provision of state law, including state procedures established under the law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.

(4) Requirements related to audits, monitoring, evaluation, licensing, and certification. The provision of state law requires a health plan to report, or to provide access to, information for the purpose of management audits, financial audits, program monitoring and evaluation, or the licensure or certification of facilities and persons.

**9.10(20)** *Treatment, payment, or health care operations.*

*a.* The department may use or disclose protected health information for treatment, payment, or health care operations, as permitted by 45 CFR §164.506 as amended to March 26, 2013, except for psychotherapy notes, which are subject to the limits described in paragraph 9.10(21)*"b."* The use or disclosure shall be consistent with other applicable requirements of this chapter.

*b.* The department may use or disclose psychotherapy notes without an authorization for any one of the following reasons:

(1) To carry out the following treatment, payment, or health care operations:

1. Use by the originator of the psychotherapy notes for treatment.

2. Use or disclosure by the department for its own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling.

3. Use or disclosure by the department to defend itself in a legal action or other proceeding brought by the subject.

(2) When required by the Secretary of Health and Human Services to investigate or determine the department's compliance with federal HIPAA regulations.

(3) For health oversight activities with respect to the oversight of the originator of the psychotherapy notes.

(4) When necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public as described in this chapter.

(5) When required by law as described in this chapter.

(6) To disclose protected health information in the designated record set to a coroner or medical examiner as described in this chapter.

**9.10(21)** *Other uses and disclosures for which an authorization or opportunity to agree or object is not required.* The department may use or disclose protected health information for which an authorization or opportunity to agree or object is not required as permitted by 45 CFR §164.512 as amended to June 25, 2024.

**9.10(22)** *Victims of domestic violence.* The department shall disclose confidential information about an individual whom the department reasonably believes to be a victim of domestic violence when required by state law.

**9.10(23)** *Whistle blowers.* The department is not considered to have violated the requirements of this chapter when a member of its workforce or a business associate discloses protected health information, provided that:

*a.* The workforce member or business associate has a good-faith belief that the department or a business associate has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or has provided care, services, or conditions that potentially endanger one or more patients, workers, or the public; and

*b.* The disclosure is made to one of the following:

(1) A health oversight agency or public health authority authorized by law to investigate or oversee conduct or conditions for the purpose of reporting the allegation of failure to meet professional standards or misconduct.

(2) An appropriate health care accreditation organization.

(3) An attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate.

**9.10(24)** *Secondary to a use or disclosure of protected health information.* The department may use or disclose protected health information that is secondary to a use or disclosure otherwise permitted or required by these rules, such as when a visitor in a facility overhears a doctor speaking to a subject about the subject's health.

**9.10(25)** *De-identified data or a limited data set.* The department may use or disclose protected health information to create information that is de-identified or a limited data set under the conditions specified in 45 CFR §164.514 as amended to June 7, 2013.

**441—9.11(22) Availability of records.**

**9.11(1)** *Open records.* Department records are open for public inspection and copying unless otherwise provided by rule or law.

**9.11(2)** *Confidential records.* Iowa Code chapters governing the operations of the department establish the confidential nature of many department records. The department also administers several federally funded programs and is authorized by Iowa Code section 22.9 to enforce confidentiality standards from federal law and regulation as required for receipt of the funds where the department has determined that the right to examine and copy public records under Iowa Code section 22.2 would cause the denial of funds, services, or essential information from the United States government that would otherwise be available to the department.

**9.11(3)** *Authority to release confidential records.* The department may have discretion to disclose some confidential records that are exempt from disclosure under Iowa Code section 22.7 or other provision of law.

**441—9.12(22,252G) Personally identifiable information.** The nature and extent of personally identifiable information collected by the department varies by the type of record. This rule describes personally identifiable information collected, maintained, and retrieved by the department by personal identifiers in record systems and the legal authority for the collection of that information. This rule also identifies the legal authority for keeping some or all of the collected personally identifiable information confidential.

**9.12(1)** Department administrative records.

*a. Personnel records.* These records contain information about employees, families and dependents, and applicants for positions with the department. Some of this information is confidential under Iowa Code section 22.7(11) and 22.7(18).

*b. Fiscal records.* These records contain itemized vouchers collected from individuals pursuant to Iowa Code section 8A.514. Some of this information is confidential under Iowa Code section 22.7(11) and 22.7(18).

*c. Litigation files.* These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney's notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials that are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain them from the clerk of the appropriate court that maintains the official copy. These records are confidential as outlined in Iowa Code sections 217.30, 22.7(4) and 622.10.

**9.12(2)** Program records.

*a. Adoption investigator certification.* These records are collected pursuant to Iowa Code chapter 600.

*b. Adoption program records.* These records are collected pursuant to Iowa Code sections 600.8 and 600.16. These records are confidential as outlined in Iowa Code sections 600.16 and 600.24.

*c. Appeals.* These records are collected pursuant to Iowa Code section 217.1. Some of these records are confidential as outlined in Iowa Code section 217.1.

*d. AIDS drug reimbursement program.* These records are collected for purposes of implementing a federal grant program authorized by HR 1827. Certain patient records are confidential as outlined in Iowa Code section 141A.9.

*e. Brain injury service program recipients.* These records are collected pursuant to Iowa Code section 135.22B. These records are confidential as outlined in Iowa Code section 135.22(2).

*f. Center for congenital and inherited disorders.* These records are collected pursuant to Iowa Code chapter 136A. These records are confidential as outlined in Iowa Code section 136A.7.

*g. Central registry for brain or spinal cord injuries.* These records are collected pursuant to Iowa Code section 135.22. Except for statistical reports, these records are maintained as confidential pursuant to Iowa Code section 135.22.

*h. Child abuse program.* These records are collected pursuant to Iowa Code section 235A.14. These records are confidential as outlined in Iowa Code sections 235A.13, 235A.15, 235A.16, and 235A.17.

*i. Childcare assistance client records.* These records are collected pursuant to Iowa Code chapter 237A. These records are confidential as outlined in Iowa Code section 237A.13.

*j. Childcare facility licensing.* These records are collected pursuant to Iowa Code chapter 237A. Some of these records are confidential as outlined in Iowa Code section 237A.7.

*k. Childhood lead poisoning prevention program.* These records are collected pursuant to Iowa Code sections 135.100 through 135.105. Certain of these records are confidential as outlined in Iowa Code chapter 139A.

*l. Child support recovery program.* These records are collected pursuant to Iowa Code chapters 252A, 252B, 252C, 252D, 252E, 252F, 252G, 252H, 252I, 252J, and 252K and sections 144.13, 144.26, 232.147, 234.39, 595.4, 598.22B and 600.16A. These records are confidential as outlined in Iowa Code sections 252B.9 and 252G.5, 42 U.S.C. §654(26) (as amended to August 1, 2024), 42 U.S.C. §654a(d) (as amended to August 1, 2024), and 45 CFR §303.21 and 307.13 (as amended to August 1, 2024).

*m. Chronic disease prevention and management programs.* These records are collected pursuant to Iowa Code section 135.11(1). Certain medical information in these records is confidential as outlined in Iowa Code section 22.7(2).

*n. Collection service center payment.* These records are collected pursuant to Iowa Code sections 252B.9, 252B.13A and 252B.16. These records are confidential as outlined in Iowa Code section 252B.9(2) and 42 U.S.C. §654a(d) and 45 CFR §307.13 (as amended to August 1, 2024).

*o. Criminal and juvenile justice information.* These records are collected pursuant to Iowa Code sections 216A.136 and 216A.138 and through interagency agreements.

*p. Dental health program.* These records are collected pursuant to Iowa Code section 135.11(19). Certain medical information in these records is confidential as outlined in Iowa Code section 22.7(2).

*q. Dependent adult abuse program.* These records are collected pursuant to Iowa Code section 235B.1. These records are confidential as outlined in Iowa Code section 235B.1.

*r. Domestic abuse death review team.* These records are collected pursuant to Iowa Code section 135.110. These records are confidential as outlined in Iowa Code section 135.11.

*s. Emergency medical services.* These records are collected pursuant to Iowa Code chapter 147A.

*t. Environmental health program.* These records are collected pursuant to Iowa Code section 135.11(1) and PL 96-510, Section 104(d)(1), 40 CFR 763 effective June 28, 1983, and 40 CFR 761 effective May 31, 1979, dealing with asbestos, PCB and other environmental health factors. Certain medical information in the work-related disease program file may be confidential as outlined in Iowa Code section 22.7(2). Certain asbestos and PCB inspection records are collected under contract with the federal Environmental Protection Agency, and requests for such records will be referred to that agency.

*u. Family investment program client records.* These records are collected pursuant to Iowa Code section 234.6. These records are confidential as outlined in Iowa Code section 217.30 and 42 U.S.C. §602(a)(1) and §1306a (as amended to August 1, 2024).

*v. Food assistance client files.* These records are collected pursuant to Iowa Code section 234.6. These records are confidential as outlined in Iowa Code section 217.30 and 7 U.S.C. §2020(e)(8) as amended to August 1, 2024, and 7 CFR 272.1(c) and (d) (as amended to June 23, 2000).

*w. Foster care client/service files.* These records are collected pursuant to Iowa Code sections 237.3 through 237.5. These records are confidential as outlined in Iowa Code section 237.9.

*x. Foster care facility licensing.* These records are collected pursuant to Iowa Code chapter 237. Some of these records are confidential as outlined in Iowa Code section 237.9.

*y. Foster care review board files.* These records are collected pursuant to Iowa Code section 237.17. Some of these records are confidential as outlined in Iowa Code section 237.21.

*z. Hawki client files.* These records are collected pursuant to Iowa Code section 514I.4. These records are confidential as outlined in Iowa Code section 514I.4, and 42 CFR §457.1110 as amended to January 1, 2001.

*aa. Human rights advocacy files.* These records are collected pursuant to Iowa Code chapter 216A; the Omnibus Budget Reconciliation Act, P.L. 97-35; Juvenile Justice and Delinquency Prevention Act, P.L. 93-415; and the Victims Compensation and Assistance Act, P. L. 98-473. These records are confidential as outlined in Iowa Code section 22.7(18).

*bb. Long term and managed care ombudsman complaints.* These records are collected pursuant to Iowa Code sections 135C.37 and 231.42. These records are confidential as outlined in Iowa Code sections 135C.37 and 231.42.

*cc. Maternal and child health program.* These records are collected pursuant to Iowa Code section 135.11(20). Records that contain medical information are confidential pursuant to Iowa Code section 22.7(2).

*dd. Medicaid clients.* These records are collected pursuant to Iowa Code section 249A.4. These records are confidential as outlined in Iowa Code section 217.30, 42 U.S.C. §1396a(7), and 42 CFR §431.300 to 307 as amended to November 13, 1996.

*ee. Medicaid provider information.* These records are collected pursuant to Iowa Code section 249A.4. Some of these records are confidential as outlined in Iowa Code section 217.30, 42 U.S.C. §1396a(7), and 42 CFR §431.300 to 307 as amended to November 13, 1996.

*ff. Newborn and infant hearing screening program.* These records are collected pursuant to Iowa Code section 135.131. Information which identifies an individual patient is confidential as outlined in Iowa Code section 135.131.

*gg. Nutrition and WIC (supplemental food program for women, infants and children) program.* These records are collected pursuant to Iowa Code section 135.11(1) and Chapter 17 of the federal Child Nutrition Act of 1966 as amended to January 5, 2023. These records are confidential as outlined in 7 CFR 246 as amended to August 1, 2024, and Iowa Code section 22.7(2).

*hh. Radiological health program.* These records are collected pursuant to Iowa Code chapters 136B and 136C. Certain of these records are confidential as outlined in 641—39.4(24).

*ii. Refugee health program.* These records are collected pursuant to Iowa Code section 135.11(1) and Section 412(c)(3) of the federal Immigration and Naturalization Act. Records that contain medical information are confidential pursuant to Iowa Code section 22.7(2).

*jj. Refugee resettlement client records.* These records are collected pursuant to Iowa Code section 217.1. These records are confidential as outlined in Iowa Code section 217.30, and 45 CFR §400.27 as amended to March 22, 2000.

*kk. Reportable diseases and other diseases and health conditions, including lead and other heavy metal poisonings.* These records are collected pursuant to Iowa Code chapter 139A. Except for statistical reports, these records are confidential as required by Iowa Code chapter 139A.

*ll. Reportable sexually transmitted diseases or infections.* These records are collected pursuant to Iowa Code chapter 139A. Except for statistical reports, these records are confidential as required by Iowa Code chapter 139A.

*mm. State institution resident records.* These records are collected pursuant to Iowa Code section 218.1. These records are confidential as outlined in Iowa Code sections 218.22, 229.24 and 229.25.

*nn. State supplementary assistance clients.* These records are collected pursuant to Iowa Code chapter 249. Some of these records are confidential as outlined in Iowa Code section 217.30.

*oo. Substance abuse client records.* These records are collected pursuant to Iowa Code chapters 125 and 218 and sections 234.6 and 249A.4. These records are confidential as outlined in Iowa Code

sections 125.37 and 125.93, 42 U.S.C. §29 dd.3 and ee.3 as amended to January 1, 2024, 42 CFR Part 2 as amended to April 16, 2024, and 38 U.S.C. §4132 as amended to August 1, 2024.

*pp. Substance abuse program licensing complaints.* These records are collected pursuant to Iowa Code chapter 125. Certain information in these records may be confidential as outlined in Iowa Code sections 22.7(2), 22.7(18) and 125.37.

*qq. Title IV-E foster care and adoption assistance client files.* These records are collected pursuant to Iowa Code sections 217.1 and 600.17 through 600.22. These records are confidential as outlined in Iowa Code section 217.30 and 42 U.S.C. §671(a)(8), and 45 CFR 1355.30(1) (as amended to January 20, 2016).

*rr. Veterinary public health.* These records are collected pursuant to Iowa Code chapter 139A. Certain medical information in these records may be confidential as outlined in Iowa Code chapter 139A.

*ss. Vital records.* These records are collected pursuant to Iowa Code chapter 144, including records of births, deaths, fetal deaths, adoptions, marriages, divorces, annulments and related data and correspondence. These records are confidential as outlined in Iowa Code section 144.43.

**9.12(3)** Other restricted data contained in department client records includes:

*a. Department of revenue information.* These records are collected pursuant to Iowa Code sections 252B.5 and 252B.9. These records are confidential as outlined in Iowa Code sections 421.17 and 422.20(1).

*b. Department of workforce development information.* These records are collected pursuant to Iowa Code chapters 239B and 249A and section 252B.9. These records are confidential as outlined in Iowa Code section 217.30 and 42 U.S.C. §503(d) and (e).

*c. Income and eligibility verification system.* These records are collected pursuant to Iowa Code chapters 239B and 249A and sections 217.1 and 234.6(7). These records are confidential as outlined in Iowa Code section 217.30 and 42 U.S.C. §1230b-7.

*d. Department of public safety information.* These records are collected pursuant to Iowa Code sections 237.8, 237A.5 and 252B.9. These records are confidential as outlined in Iowa Code sections 692.2, 692.3, 692.8 and 692.18.

*e. Federal tax return information.* These records are collected pursuant to Iowa Code chapters 239B, 249A and 252B and sections 217.1 and 234.6(7). These records are confidential as outlined in Iowa Code section 422.20(2) and 26 U.S.C. §6103.

*f. Juvenile court information.* These records are collected pursuant to Iowa Code chapter 232 and section 234.6. These records are confidential as outlined in Iowa Code sections 232.48, 232.97 and 232.147 through 232.151.

*g. Peer review organization.* These records are collected pursuant to Iowa Code section 249A.4. These records are confidential as outlined in Iowa Code section 217.30 and 42 U.S.C. §1320c-9.

*h. United States Department of Health and Human Services information.* These records are collected pursuant to Iowa Code chapters 239B, 249, 249A and 252B and sections 217.1 and 234.6(7). These records are confidential as outlined in Iowa Code section 217.30 and 42 CFR Part 401.134(c) as amended to October 1, 2002.

**441—9.13(17A,22) Special policies and procedures for protected health information.** The department will follow all special policies and procedures for using and disclosing protected health information as outlined in 45 CFR Part 164 as amended through December 31, 2023, including the minimum necessary standard, uses and disclosures for premium rating and related purposes, verification and documentation requirements, notice of privacy practices, the right to receive an accounting of disclosures, complaint procedures, appeal rights and record retention.

**441—9.14(17A,22) Person who may exercise rights of the subject.**

**9.14(1)** *Adults.* When the subject is an adult, including an emancipated minor, the subject's rights under this rule may also be exercised by the subject's legal or personal representative, except as provided in subrule 9.14(3).

**9.14(2)** *Minors.* Within the limits of subrule 9.14(3), when the subject is an unemancipated minor, the subject's rights under this rule shall be exercised only by the subject's legal representative, except as follows:

*a.* When the department otherwise deals with the minor as an adult, as in the case of minor parents under the family investment program.

*b.* When otherwise specifically provided by law. However, minor subjects shall be granted access to their own records upon request, subject to the limits in rule 441—9.9(17A,22).

**9.14(3)** *Exceptions.*

*a. Scope of authority.* Legal and personal representatives may act only within the scope of their authority. For protected health information, the designation must reflect the subject's ability to make health care decisions and receive protected health information. For example, court-appointed conservators shall have access to and authority to release only the following information:

(1) Name and address of subject.

(2) Amounts of assistance or type of services received.

(3) Information about the economic circumstances of the subject.

*b. Mental health information.* Only an adult subject or a subject's legal representative may consent to the disclosure of mental health information. Records of involuntary hospitalization shall be released only as provided in Iowa Code section 229.24. Medical records of persons hospitalized under Iowa Code chapter 229 shall be released only as provided in Iowa Code section 229.25.

*c. Substance abuse information.* Only the subject may consent to the disclosure of substance abuse information, regardless of the subject's age or condition.

*d. Failure to act in good faith.* If the department has reason to believe that the legal or personal representative is not acting in good faith in the best interests of the subject, the department may refuse to release information on the authorization of the legal or personal representative.

*e. Abuse, neglect, and endangerment situations.* Notwithstanding a state law or any other requirement of this chapter, the department, in the exercise of professional judgment, may elect not to treat a person as a subject's personal representative if:

(1) The department has reason to believe that the subject has been or may be subjected to domestic violence, abuse, or neglect by the person; or

(2) The department has reason to believe that treating the person as a personal representative could endanger the subject.

*f. Protected health information.* A parent, guardian, or other person acting in place of a parent who does not represent the minor for protected health information may still access protected health information about the minor if required by law.

*g. Deceased subjects.* If, under applicable law, an executor, administrator, or other person has authority to act on behalf of a deceased subject or of the subject's estate, the department shall treat that person as a personal representative.

*h. Other.* If, under applicable law, the subject of a confidential record is precluded from having a copy of a record concerning the subject disclosed to a third party, the department shall not treat the third party as a personal representative.

These rules are intended to implement Iowa Code chapters 17A, 22, 135, 217, 228, and 252G and the Health Insurance Portability and Accountability Act of 1996.

ITEM 3. Rescind 441—Chapter 16 and adopt the following **new** chapter in lieu thereof:

CHAPTER 16
NOTICES

**441—16.1(17A) Definitions.**

*"Adequate notice"* means any notice of decision or notice of action issued by the department or on the department's behalf that includes all the following information:

1. A description of the action taken;
2. The effective date of the action;
3. The specific reasons supporting the action, stated language likely to be understood by the average program applicant or enrollee;
4. References to applicable provisions of law supporting the action;
5. An explanation of the right to appeal; and
6. The circumstances under which assistance is continued when an appeal is filed.

*"Adverse benefit determination"* means any adverse action taken by the department regarding a program administered by the department or on the department's behalf, excluding department decisions about requests for waivers of administrative rules.

*"Assistance program"* means a program administered by the department or on the department's behalf through which qualifying individuals receive benefits or services.

*"Enrollee"* means any applicant for, or recipient of, benefits or services pursuant to an assistance program.

*"Timely"* means that the notice is sent at least ten calendar days before the date the adverse benefit determination would become effective. The timely notice period begins on the day after the notice is sent.

**441—16.2(17A) Notices.**

**16.2(1)** *Written timely and adequate notice.* When required by federal or state law, the department will provide written timely and adequate notice of the right to appeal any adverse benefit determination that affects an individual who is applying for, or receiving benefits from, an assistance program. The department will also provide written timely notice of pending actions for a federal tax or debtor offset.

**16.2(2)** *Adequate notice.* The department will give adequate notice of the approval or denial of assistance or services and the approval or denial of a license, certification, approval, registration, or accreditation.

**16.2(3)** *Dispensing with timely notice.* Timely notice may be dispensed with, but adequate notice will be sent no later than the date benefits would have been issued, when:

*a.* There is factual information confirming the death of the enrollee or of the family investment program payee and there is no relative available to serve as a new payee.

*b.* The enrollee provides a clear written, signed statement that the enrollee no longer wishes to receive assistance, or gives information that requires termination or reduction of assistance, and the enrollee has indicated, in writing, that the enrollee understands that the consequence of supplying the information is termination or reduction of assistance.

*c.* The enrollee has been admitted or committed to an institution that does not qualify for payment under an assistance program.

*d.* The enrollee has been placed in skilled nursing care, intermediate care, or long-term hospitalization.

*e.* The whereabouts of the enrollee are unknown and mail directed to the enrollee has been returned by the post office indicating no known forwarding address. When the whereabouts of the enrollee become known during the payment period covered by the returned warrant, the warrant will be made available to the enrollee.

*f.* The department establishes that the enrollee has been accepted for assistance in another state.

*g.* Cash assistance or the supplemental nutrition assistance program is changed because a child is removed from the home as a result of a judicial determination or is voluntarily placed in foster care.

*h.* A change in the level of medical care is prescribed by the enrollee's physician.

*i.* A special allowance or service granted for a specific period is terminated and the enrollee has been informed in writing at the time of initiation that the allowance or service will terminate at the end of the specified period.

*j.* The notice involves an adverse determination made with regard to the preadmission screening requirements.

*k.* The department terminates or reduces benefits or makes changes as described at 441—subrule 40.27(3) or rule 441—75.52(249A).

*l.* The department terminates benefits for failure to return a completed report form, as described in paragraph 16.3(3)*"k."*

*m.* The department approves or denies an application for assistance.

*n.* The department implements a mass change based on law or rule changes that affect a group of enrollees.

These rules are intended to implement Iowa Code chapter 17A.