**Regulatory Analysis**

Notice of Intended Action to be published: 441—Chapter 36
"Facility Assessments"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 249A.21, 249L.4 and 249M.4

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 249A, 249L and 249M

*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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| November 7, 2024<br>10 a.m. | Microsoft Teams<br>Meeting ID: 295 147 282 130<br>Passcode: jm6rgf |

*Public Comment*

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

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Des Moines, Iowa 50319
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*Purpose and Summary*

This proposed chapter outlines the quality assurance assessment fee (QAAF) for nursing facilities, provider taxes for Intermediate Care Facilities for the Intellectually Disabled (ICFs/ID), and health care access assessments for hospitals pursuant to Iowa Code chapters 249A, 249L, and 249M.

*Analysis of Impact*

1. Persons affected by the proposed rulemaking:

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

There are no costs associated with the rulemaking itself.

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

Individuals covered by Medicaid who utilize participating facilities in Iowa will benefit.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Information is not available at this time.

- Qualitative description of impact:

Information is not available at this time.

3. Costs to the State:

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

Personnel and other administrative costs are borne by the agency.

- Anticipated effect on state revenues:

No effect on state revenues is anticipated as a result of the rulemaking.

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

The rules provide guidance to participating facilities on how the Hospital Health Care Access Trust Fund is administered and how reimbursements and expenditures from the Trust Fund would be facilitated.

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

Rulemaking is appropriate and required.

6. Alternative methods considered by the agency:

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

None were considered because rules are required by the Iowa Code.

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

Not applicable.

*Small Business Impact*

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

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

This rulemaking has no impact on small business.

*Text of Proposed Rulemaking*

ITEM 1. Rescind 441—Chapter 36 and adopt the following **new** chapter in lieu thereof:

CHAPTER 36
FACILITY ASSESSMENTS

**441—36.1(249A) Assessment of fee.** Intermediate care facilities for persons with an intellectual disability (ICFs/ID) licensed in Iowa under 481—Chapter 64, including facilities not certified to participate in the Medicaid program, shall pay a quarterly fee to the department. The fee equals 5.5 percent of actual paid claims, from all sources, for the facility's preceding quarter.

**441—36.2(249A) Determination and payment of fee.** For all ICFs/ID licensed in Iowa under 481—Chapter 64, including facilities not certified to participate in the Medicaid program, the fee shall be determined and paid as follows:

**36.2(1)** Each facility shall pay the assessment to the department on a quarterly basis. The facility shall:

*a.* Use a form prescribed by the department to calculate the quarterly fee due.

*b.* Submit the form and the quarterly fee no later than 30 days following the end of each calendar quarter.

**36.2(2)** The facility shall calculate the amount of the quarterly fee due by multiplying 5.5 percent by the facility's total ICF/ID payments for services received from all sources during the preceding quarter, including but not limited to:

*a.* Medicaid managed care payments.

*b.* Client participation payments.

*c.* Medicaid fee-for-service payments.

*d.* Private pay/insurance payments.

*e.* Ancillary service payments.

**36.2(3)** If the department determines that an ICF/ID has underpaid or overpaid the fee, the department will notify the ICF/ID of the amount of the unpaid fee or refund due. Such amount shall be due or refunded within 30 days of the issuance of the notice.

**36.2(4)** An ICF/ID that fails to pay the fee within 30 days of the issuance of the notice shall pay a penalty in the amount of 1.5 percent of the unpaid fee due for each month or portion of a month that the unpaid fee is overdue.

*a.* If the ICF/ID substantiates good cause beyond the facility's control for failure to make timely payment of the fee, the department will waive the penalty or a portion of the penalty. For purposes of this subrule, "good cause" means the same as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

*b.* Requests for a good cause waiver must be submitted to the department within 30 days of notice to the facility that the penalty is due.

**36.2(5)** If a fee has not been received by the department by the last day of the month following the end of the quarter, the department will suspend payment due the ICF/ID under the medical assistance program, including payments made on behalf of the medical assistance program by a contracted managed care organization.

**441—36.3(249L) Assessment.**

**36.3(1)** *Applicability.* All nursing facilities as defined in Iowa Code section 135C.1 that are free-standing facilities or are operated by a hospital licensed pursuant to Iowa Code chapter 135B shall pay a quarterly assessment to the department, as determined under this division, with the exception of:

*a.* Nursing facilities operated by the state.

*b.* Non-state government-owned or government-operated nursing facilities.

*c.* Distinct-part skilled nursing units and swing-bed units operated by a hospital.

**36.3(2)** *Assessment level.*

*a.* Effective April 1, 2023, nursing facilities with 46 or fewer licensed beds are required to pay a quality assurance assessment of $6.51 per non-Medicare patient day. Effective with assessment for the state fiscal year beginning July 1, 2021, the number of licensed beds on file with the department of inspections, appeals, and licensing as of June 1 of each year shall be used to determine the assessment level for the following state fiscal year.

*b.* Effective July 1, 2024, nursing facilities designated as continuing care retirement centers (CCRCs) by the insurance division of the department of insurance and financial services are required to pay a quality assurance assessment of $6.51 per non-Medicare patient day. Effective with the assessment for the state fiscal year beginning July 1, 2021, continuing care retirement center designations as of June 1 of each year shall be used to determine the assessment level for the following state fiscal year.

*c.* Effective April 1, 2023, nursing facilities with annual Iowa Medicaid patient days of 19,000 or more are required to pay a quality assurance assessment of $6.51 per non-Medicare patient day. Effective with assessment for the state fiscal year beginning July 1, 2021, the annual number of Iowa Medicaid patient days reported in the most current cost report submitted to the department as of June 1 of each year shall be used to determine the assessment level for the following state fiscal year.

*d.* Effective April 1, 2023, all other nursing facilities are required to pay a quality assurance assessment of $33.90 per non-Medicare patient day.

**441—36.4(249L) Determination and payment of assessment.** The assessment shall be determined and paid as follows:

**36.4(1)** Each nursing facility shall pay the quality assurance assessment to the department on a quarterly basis. The facility shall:

*a.* Use the form prescribed by the department to calculate the quarterly assessment amount due.

*b.* Submit the form and the quarterly assessment payment no later than 30 days following the end of each calendar quarter.

**36.4(2)** The facility shall calculate the amount of the quarterly assessment due by multiplying the facility's total non-Medicare patient days for the preceding quarter by the applicable assessment level as determined in subrule 36.3(2).

**36.4(3)** If the department determines that a nursing facility has underpaid or overpaid the quality assurance assessment, the department will notify the nursing facility of the amount of the unpaid quality assurance assessment or refund due. Such amount shall be due or refunded within 30 days of the issuance of the notice.

**36.4(4)** A nursing facility that fails to pay the quality assurance assessment within 30 days of the issuance of the notice will pay a penalty in the amount of 1.5 percent of the quality assurance assessment amount owed for each month or portion of a month that the payment is overdue.

*a.* If the facility substantiates good cause beyond the facility's control for failure to comply with payment of the quality assurance assessment, the department will waive the penalty or a portion of the penalty. For purposes of this subrule, "good cause" means the same as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

*b.* Requests for a good cause waiver must be submitted to the department within 30 days of notice to the facility that the penalty is due.

**36.4(5)** For facilities certified to participate in the Medicaid program, the department will deduct the quarterly amount due from Medicaid payments to the facility if the department has not received the quality assurance assessment amount due by the last day of the month in which the payment is due. The department will also withhold an amount equal to the penalty owed from any payment due.

**36.4(6)** If the quality assurance assessment has not been received by the department by the last day of the month following the end of the quarter, the department will suspend payment due the nursing facility under the medical assistance program, including payments made on behalf of the medical assistance program by a contracted managed care organization.

**441—36.5(249M) Application of assessment.**

**36.5(1)** *Participating hospitals.* For the purpose of the health care access assessment program, a "participating hospital" is defined as a non-state-owned hospital licensed under Iowa Code chapter 135B that is paid on a prospective payment system basis by Medicare and the medical assistance programs for inpatient and outpatient services.

**36.5(2)** *Assessment.* Participating hospitals are required to pay a quarterly health care access assessment equal to 1.26 percent of net patient revenue as specified in the hospital's fiscal year 2008 Medicare cost report. "Net patient revenue" means all revenue reported for acute patient care and services but does not include:

*a.* Contractual adjustments,

*b.* Charity care,

*c.* Bad debt,

*d.* Medicare revenue, or

*e.* Other revenue derived from sources other than hospital operations including but not limited to:

(1) Nonoperating revenue,

(2) Other operating revenue,
(3) Skilled nursing facility revenue,
(4) Physician revenue, and
(5) Long-term care revenue.

**441—36.6(249M) Determination and payment of assessment.** The assessment shall be determined and paid as follows:

**36.6(1)** The department will calculate the annual amount of the health care access assessment as 1.26 percent of net patient revenue as specified in the participating hospital's fiscal year 2008 Medicare cost report. The annual amount will be divided by four to calculate the quarterly amount.

**36.6(2)** Each participating hospital shall pay the health care access assessment to the department on a quarterly basis. The hospital shall submit the quarterly assessment payment no later than 30 days following the end of each calendar quarter.

**36.6(3)** A participating hospital shall retain and preserve the Medicare cost report and financial statements used to prepare the cost report in accordance with Iowa Code section 249M.3.

**36.6(4)** If the department determines that a participating hospital has underpaid or overpaid the health care access assessment, the department will notify the hospital of the amount of the unpaid health care access assessment or refund due. Such amount shall be due or refunded within 30 days of the issuance of the notice.

**36.6(5)** A participating hospital that fails to pay the health care access assessment within 30 days of the issuance of the notice will pay a penalty in the amount of 1.5 percent of the health care access assessment amount owed for each month or portion of a month that the payment is overdue.

*a.* If the department determines that good cause is shown for failure to comply with payment of the health care access assessment, the department will waive the penalty or a portion of the penalty.

*b.* Requests for a good cause waiver must be submitted to the department within 30 days of notice to the facility that the penalty is due.

**36.6(6)** The department will deduct the quarterly amount due from Medicaid payments to the participating hospital if the department has not received the health care access assessment by the last day of the month in which the payment is due. The department will also withhold an amount equal to the penalty owed from any payment due.

**36.6(7)** If a health care access assessment has not been received by the department by the last day of the month following the end of the quarter, the department will suspend payment due the participating hospital under the medical assistance program, including payments made on behalf of the medical assistance program by a contracted managed care organization.

These rules are intended to implement Iowa Code chapters 249A, 249L, and 249M.