

HUMAN SERVICES DEPARTMENT[441]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 441—Chapter 201
“Subsidized Adoptions”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 600.17 through 600.23

State or federal law(s) implemented by the rulemaking:

- Iowa Code sections 600.17 through 600.23.
- Title IV-E of the Social Security Act (42 U.S.C. Sections 670 through 679b) providing for federal funding for foster care and adoption assistance.
 - The Howard Metzenbaum Multiethnic Placement Act of 1994 (MEPA), 42 U.S.C. 51151, as amended by the Interethnic Adoption Provision of 1996 (IEP)
 - Public Law, 95-608, Indian Child Welfare Act of 1978, Policy Sec. 4(4), 101(a), (b), and (c), 102(a), 102(d), 103(a), 105(b), 201.
 - Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980.
 - Public Law 100-294, the Child Abuse Prevention, Adoption, and Family Services Act of 1988.
 - Public Law 105-89, the Adoption and Safe Families Act of 1997 (ASFA), PL 108-145, the Adoption Promotion Act of 2003.
 - Public Law 109-239, the Safe and Timely Interstate Placement of Foster Children Act of 2006.
 - Public Law 109-248, Adam Walsh Child Protection and Safety Act of 2006.
 - Public Law 109-288, Child and Family Services Improvement Act of 2006.
 - Public Law 110-351, Fostering Connections to Success and Increasing Adoptions Act of 2008.
 - Public Law 111-320, CAPTA Reauthorization Act of 2010.
 - Public Law 112-34, Child and Family Services Improvement and Innovation Act of 2011.
 - Public Law 113-183, Preventing Sex Trafficking and Strengthening Families Act of 2014.
 - Public Law 114-95, Every Student Succeeds Act of 2015.
 - Public Law 114-22, Justice for Victims of Trafficking Act of 2015.
 - Public Law 115-123, Bipartisan Budget Act of 2018 (also Family First Prevention Services Act).

Public Hearing

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

November 28, 2023
10 a.m.

meet.google.com/nkg-jzin-yvp

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 (HHS) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Joe Campos
Phone: 515.304.0963
Email: joe.campos@idph.iowa.gov

Purpose and Summary

Proposed Chapter 201 seeks to increase access to adoptive arrangements for children with special needs, older children, and children otherwise hard to place in an adoptive home by implementing a subsidized adoption program. This program provides financial assistance to interested adoptive parents capable of providing suitable care but lacking in necessary economic resources.

To be eligible, a child under the guardianship of HHS must have been determined by a qualified health care professional to have met the definition of special needs included in this chapter, or be aged five or over, or be a member of a sibling

group of three or more children who are placed in the same adoptive home. A child in the guardianship of a licensed child-placing agency may be eligible for subsidy if the child is eligible to receive Supplemental Security Income (SSI) based on a diagnosed disability or if the child has received a federally funded adoption subsidy in a prior adoption.

Subsidy payments to approved adoptive parents may include:

- Special Services Assistance: Compensation for medical, dental, therapeutic, educational, or other similar service or appliance required by an adopted child by reason of a disability.
- Monthly Maintenance Assistance: Monthly payment to assist with room, board, clothing, and spending money. The maximum monthly payment rate is pursuant to the foster family care maintenance rates.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Not applicable.

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

Adoptive parents of eligible children.

Children in a subsidized adoption.

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:

Figures below are actuals incurred in the fiscal years shown.

Identified Impacts*

	SFY 2018	SFY 2019	SFY 2020	SFY 2021	SFY 2022	Five-Year Total
Costs						
Adoption Subsidy Payment	-\$75,241,000	-\$75,736,000	-\$77,291,000	-\$77,957,000	-\$77,680,000	-\$383,905,000
Benefits						
Federal Title IV-E Funding	\$35,369,000	\$37,093,000	\$41,359,000	\$44,998,000	\$45,726,000	\$204,545,000
Improved Outcomes for Adopted Children	Qualitative	Qualitative	Qualitative	Qualitative	Qualitative	Qualitative
Net Value	-\$39,872,000	-\$38,643,000	-\$35,932,000	-\$32,959,000	-\$31,954,000	-\$179,360,000

*All monetary figures have been rounded to the nearest thousand.

- Qualitative description of impact:

The amount of subsidy is negotiated between HHS and the qualified adoptive parent(s) based on the needs of the child and circumstances of the adoptive family. In SFY 2022, 10,600 children received an adoption subsidy payment. This chapter requires that other services available to meet the needs of an eligible child that are free of charge be explored and used prior to spending subsidy funds.

3. Costs to the State:

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

Any implementation costs incurred by HHS for operation of the adoption program are reflected in the cost-benefit analysis in the Regulatory Analysis for 441—Chapter 200 (IAB 11/1/23) and are not reflected here.

Federal funds received through the Title IV-E Federal Payments for Adoption Assistance Program are used to assist in funding subsidized adoptions. The federal participation rate varies; in SFY 2022, Iowa’s participation rate was 86.26 percent. This is up from 80.88 percent in SFY 2018. These funds are reflected in the figure above, labeled as “Federal Title IV-E Funding.”

- Anticipated effect on state revenues:

Subsidy payments are provided out of Federal Title IV-E of the Social Security Act funds as well as state-appropriated funds for the use of adoption subsidy payments. These costs are reflected in the figure above, labeled as “Adoption Subsidy Payments.” Subsidy payments are a combination of both the federal and state funding sources.

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

The cost-benefit analysis above shows a net value of \$31,954,000 and improved outcomes for children in subsidized adoptive care. Eliminating the subsidy is likely to reduce the number of guardianship arrangements available to children in need, which has the potential to shift children eligible for guardianship into more restrictive care arrangements, thus increasing the likelihood of adverse impact on the child. Additionally, more restrictive care arrangements could result in the State paying more for care of an eligible child than would be paid in the form of a subsidy under this chapter.

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

Activity under this chapter seeks to increase access to adoptive arrangements for eligible children through use of a subsidy. Subsidy rates are set at an equivalent value to what a family would receive to provide family foster care. These subsidies encourage the adoption of children from Iowa’s foster care system and minimize financial obstacles to adoption. Reducing this rate would likely result in fewer children being adopted into permanent families. A consequence of fewer adoptions could be additional financial and capacity burdens to Iowa’s foster care system. To limit the impact on state revenues, the chapter requires that other services available to meet the needs of an eligible child that are free of charge be explored and used prior to spending subsidy funds.

6. Alternative methods considered by the agency:

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

HHS implements the subsidy program in accordance with requirements of the Iowa Code and federal regulations. HHS follows both the federal and state requirements and guidelines in this chapter

- 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?

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind 441—Chapter 201 and adopt the following **new** chapter in lieu thereof:

CHAPTER 201
SUBSIDIZED ADOPTIONS

441—201.1(600) Administration. The department shall administer the subsidized adoption program, in conformance with the legal requirements for adoption.

441—201.2(600) Definitions.

“*Child*” means a person who has not attained age 18, or a person with a physical or mental disability who has not attained age 21.

“*Escrow account*” means an interest-bearing account in a bank or savings and loan association which is maintained by the department in the name of a particular child.

“*Maintenance subsidy*” means a monthly payment to assist the family in meeting the living expenses and expenses related to the care of a child with special needs in covering the cost of room, board, clothing, and spending money. The child will also be eligible for medical assistance pursuant to 441—Chapter 75.

“*Nonrecurring expenses*” means reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs. These shall be limited to attorney fees, court filing fees and other court costs.

“*Physician*” means a licensed medical or osteopathic doctor as defined in rule 441—77.1(249A).

“*Presubsidy*” means payment for maintenance or special services for a child with special needs who is placed in an adoptive home and who meets all eligibility criteria for maintenance subsidy but whose adoption is not finalized.

“*Qualified intellectual disability professional*” means a person who has at least one year of experience working directly with persons with an intellectual disability or other developmental disabilities and who is one of the following:

1. A doctor of medicine or osteopathy.
2. A registered nurse.
3. A person who holds at least a bachelor’s degree in a human services field including, but not limited to, social work, sociology, special education, rehabilitation counseling, or psychology.

“*Qualified mental health professional*” means a person who meets all the following conditions:

1. Holds a master’s degree in a mental health field including, but not limited to, psychology, counseling and guidance, or psychiatric nursing and social work; or is a doctor of medicine or osteopathic medicine; and
2. Holds a current Iowa license when required by the Iowa professional licensure laws for persons practicing as a psychiatrist, a psychologist, a marital and family therapist, a mental health counselor, an advanced registered nurse practitioner, a psychiatric nurse, or a social worker; and
3. Has at least two years of postdegree experience supervised by a mental health professional in assessing mental health problems, mental illness, and services needs and in providing mental health services.

“*Special services subsidy*” means payment to a provider or reimbursement to the parent for medical, dental, therapeutic, or other services, equipment or appliances required by a child to meet the child’s identified special needs.

441—201.3(600) Conditions of eligibility or ineligibility.

201.3(1) The child is eligible for subsidy when the department or a private agency has documented that it has been unable to place the child in an appropriate adoptive home without a subsidy and the child is determined to be a child with special needs based on one or more of the following reasons:

- a. The child has a medically diagnosed disability, as determined by a physician, an advanced registered nurse practitioner or a physician assistant, which substantially limits one or more major life activities, requires ongoing professional treatment, impacts the child’s ability to perform daily living skills, and is expected to last 12 months or longer.
- b. The child has been determined by a qualified intellectual disability professional to be intellectually disabled.
- c. The child has been determined by a qualified professional to be at high risk of developing a qualifying medical, mental, or emotional condition as defined in this subrule. A child in this group is eligible for subsidy of nonrecurring expenses only.
- d. The child has been diagnosed by a qualified mental health professional to have a psychiatric condition which impairs the child’s mental, intellectual, or social functioning, and for which the child requires ongoing professional services.
- e. The child has been diagnosed by a qualified mental health professional to have a behavioral or emotional disorder characterized by situationally inappropriate behavior which deviates substantially from behavior appropriate to the child’s age or significantly interferes with the child’s intellectual, social and personal adjustment and which requires ongoing treatment.
- f. The child is aged five or over.
- g. The child is a member of a sibling group of three or more children who are placed in the same adoptive home.

201.3(2) A child who enters the United States from another country on the basis of a visa classifying the child as an orphan, in accordance with the Immigration and Naturalization Act as amended to December 31, 2023, for the purpose of

adoption by a specific United States family is not eligible for subsidized adoption maintenance payments, medical assistance, or special services except for nonrecurring expenses.

201.3(3) Adverse eligibility determinations by the department may be appealed according to rules in 441—Chapter 7.

201.3(4) The department shall review the subsidy agreement when the child reaches the age of 17½ to determine whether the child is eligible to receive subsidy to the age of 21 due to the child’s physical, intellectual, or mental health disability.

a. The disability shall be diagnosed by a physician, a qualified mental health professional, or a qualified intellectual disability professional.

b. The diagnosis shall be current within one year prior to the child’s eighteenth birthday.

c. The child’s parents shall provide documentation of the child’s disability.

441—201.4(600) Application. Application for presubsidy or subsidy for a child with special needs in the guardianship of the department shall be made at the time of the adoptive placement of the child, or at any time in the adoptive process before finalization of the adoption.

201.4(1) The prospective adoptive family residing in Iowa who has been studied and approved for adoptive placement or a family residing outside of the state of Iowa studied and approved by a governmental child-placing agency or a licensed child-placing agency in that state, may apply for subsidy for an eligible Iowa child.

201.4(2) Withdrawal of the subsidy application shall be reported to the department immediately.

201.4(3) The effective date for the Adoption Subsidy Agreement will be the date the agreement is signed by the adoptive parents and the department, which may be the date the child is placed in the adoptive home or any date up to and including the date the adoption is finalized. The agreement shall state the amount of the presubsidy or subsidy, the frequency and duration of payments and the conditions under which the agreement may be terminated.

201.4(4) An application for subsidy cannot be taken after the child is adopted except when there are facts relevant to a child’s eligibility that were not presented before the finalizing of the adoption.

a. Upon receiving verification that the child was eligible before the child’s adoption, the department may conduct an administrative review of the facts and may determine the child an eligible child with special needs. Eligibility will be effective after the Application for Subsidy is completed and the Adoption Subsidy Agreement form is signed by all parties.

b. Requests for determination after the adoption is finalized shall be forwarded with verification of eligibility to the department. The department shall conduct an administrative review of eligibility factors and render a written decision within 30 days of receipt of request and verification materials unless additional verification is requested. If additional verification is requested, a decision shall be reached within 30 days of receipt of additional verification materials.

201.4(5) A child in the guardianship of a licensed child-placing agency may be eligible for adoption subsidy when one of the following conditions is met:

a. The child receives or is eligible to receive SSI based on a diagnosed disability, or

b. The child received federally funded adoption subsidy in a prior adoption.

441—201.5(600) Negotiation of amount of presubsidy or subsidy.

201.5(1) The amount of presubsidy or subsidy shall be negotiated between the department and the adoptive parents and shall be based upon the needs of the child and the circumstances of the family.

a. Each time negotiations are completed, the Adoption Subsidy Agreement shall be completed.

b. The Adoption Subsidy Agreement shall be completed and retained in an inactive case record for future reference when:

(1) A child is eligible for subsidy but the child or family does not currently need assistance; or

(2) The child is at risk of being determined a child with special needs according to paragraph 201.3(1) “*a*,” “*b*,” “*d*,” or “*e*” in the future.

201.5(2) Other services available to the family free of charge to meet the needs of the child, such as other federal, state, and local governmental and private assistance programs, shall be explored and used before the expenditure of subsidy funds.

Unearned income of the child shall be verified by documentation provided to the department worker by the family from the source of the income.

201.5(3) A maintenance subsidy may be no less than \$10 per month.

201.5(4) An adoptive family may request a review of the subsidy agreement when there is a change in the family’s circumstances or the needs of the child.

201.5(5) Maintenance subsidy shall continue under the same rules if the adoptive family moves outside of the state of Iowa.

201.5(6) The maximum monthly maintenance payment for a child in subsidized adoption shall be made pursuant to the foster family care maintenance rates according to the age and special needs of the child as found at rule 441—156.6(234).

441—201.6(600) Types of subsidy.

201.6(1) *Special services only.*

a. Reimbursement to the family or direct payment to a provider may be made for the following special services needed to meet the needs of the child.

(1) Outpatient counseling or therapy services. Reimbursement for outpatient individual or family services may be provided from a non-Medicaid provider only with approval from the department and when one of the following applies:

1. The services are not available from a Medicaid provider within a reasonable distance from the family.
2. The child and the family were already receiving therapy or counseling from a non-Medicaid provider and it would not be in the child's best interest to disrupt the services.

3. Available Medicaid providers lack experience in working with foster, adoptive, or blended families.

Reimbursement to non-Medicaid providers shall be limited to the Medicaid rate.

(2) Expenses for transportation, lodging, or per diem related to preplacement visits, not to exceed \$2,000 per family.

(3) Medical services not covered by the Medicaid program when the child, either alone or with the family, resides outside the state of Iowa and that state's Medicaid does not cover a needed service, or a provider enrolled with Iowa Medicaid cannot be secured. An adoption subsidy payment shall not supplement the Medicaid payment rate to a Medicaid provider or a non-Medicaid provider.

(4) An additional premium amount as a result of adding the child to the family's health insurance group.

(5) Medical transportation, food and lodging not covered by Medicaid when the child is receiving specialized care in a facility 50 miles or farther from the family home, when the family is participating in services and to facilitate reunification with the child.

(6) Supplies and equipment as required by the child's special needs and unavailable through other resources.

1. When the siblings in a sibling group of three or more are placed together, a one-time-only payment can be made, not to exceed \$500 per child, to reimburse the family for expenses related to accommodating the needs of the sibling group.

2. When home modifications have been authorized to accommodate a child's special needs and the family later sells the house, the family shall repay the department an amount equal to the increase in the equity value of the home attributable to the modifications.

(7) Nonrecurring expenses. Payment for nonrecurring expenses is generally limited to a total of \$1,000 per child for attorney fees, court costs and other related legal expenses. Nonrecurring expenses may be paid when the adoptive family has negotiated an Adoption Subsidy Agreement, or an Agreement to Future Adoption Subsidy.

(8) Funeral benefits at the amount allowed for a foster child in accordance with 441—Chapter 156.

b. The need for special services shall be documented in the Adoption Subsidy Agreement. The family shall provide documentation of expenses to the department.

c. Any single special service and any special service delivered over a 12-month period costing \$500 or more shall have prior approval from the central office adoption program manager prior to expending program funds.

d. For all Medicaid covered services the department shall reimburse at the same rate and duration as Medicaid as set forth in rule 441—79.1(249A).

201.6(2) *Maintenance only.* A monthly payment to assist with room, board, clothing and spending money may be provided, as determined under rule 41—201(600). The child will also be eligible for medical assistance pursuant to 441—Chapter 75.

201.6(3) *Maintenance and special services.* For children with special needs, a special services subsidy may also be included when a maintenance subsidy is provided.

441—201.7(600) Determination of ongoing subsidy eligibility and suspension of subsidy payments.

201.7(1) Eligibility for continuation of adoption subsidy shall be evaluated when the department has reasonable cause to suspect the adoptive parent is not providing financial support, or is no longer legally responsible for the child. This includes, but is not limited to, the following circumstances:

a. The child is placed in out-of-home care.

- b. A person alleges the parents are not providing financial support to the child.
- c. A person other than the parent is awarded legal custody of the child.
- d. A person other than the parent is appointed as the guardian of the child.
- e. The child has applied for food assistance or other benefits.
- f. The child has not resided with the parent for the past 30 consecutive days.
- g. The parent is incarcerated.
- h. The parent is awaiting trial for criminal charges related to harm caused to a child in the home.

201.7(2) The department will contact the child's parents via letter, telephone, or electronic or other means and document such efforts.

201.7(3) The child's parents shall provide documentation of support, including receipts, to the department upon request.

201.7(4) Upon completion of the department's evaluation of the child's continued eligibility for adoption subsidy, the department will issue a written notice to the parents documenting required ongoing actions by the parents, including an expectation of continued cooperation by the parents to provide documentation of ongoing support to the child at the request of the department.

201.7(5) The department shall suspend adoption subsidy payments if the parents refuse to cooperate or if the department is unable to determine whether the parents are providing financial support or are legally responsible for the child.

201.7(6) Through a Notice of Decision, the department shall terminate the Adoption Subsidy Agreement upon a finding that the child is not being financially supported.

201.7(7) When the child has resided out of the parental home for 30 consecutive days, the department will request a renegotiation of the Adoption Subsidy Agreement with the parents to reduce or suspend payments as agreed to by the parents.

441—201.8(600) Termination of subsidy. Subsidy will terminate when any of the following occur:

201.8(1) The adoptive child no longer meets the definition of child in rule 441—201.1(600).

201.8(2) The child marries.

201.8(3) The adoptive parents are no longer using the maintenance payments to support the child.

201.8(4) Death of the child, or death of the parents of the child (one in a single-parent family and both in a two-parent family).

201.8(5) Upon conclusion of the terms of the agreement.

201.8(6) Upon request of the adoptive parents.

201.8(7) The adoptive parents are no longer legally responsible for the child.

201.8(8) The child enlists in the military.

441—201.9(600) Reinstatement of subsidy. Reinstatement of subsidy will be made when the subsidy was terminated because of reasons in subrule 201.8(3), 201.8(6), or 201.8(7) and the reason for termination no longer exists.

441—201.10(600) New application. New applications will be taken at any time, but processed only so long as funds are available. Maintenance and special services already approved will continue.

441—201.11(600) Medical assistance based on residency. Children with special needs eligible for any type of subsidy are entitled to medical assistance as defined in 441—Chapter 75. The funding source for medical assistance is based on the following criteria:

201.11(1) IV-E-eligible children:

a. IV-E-eligible children residing in Iowa from Iowa and from other states shall receive medical assistance from Iowa.

b. IV-E-eligible children from Iowa residing in another state shall receive medical assistance from the family's state of residence, even though medical assistance available in the family's state of residence may vary from Iowa's medical assistance.

201.11(2) Non-IV-E-eligible children:

a. Non-IV-E-eligible children from Iowa residing in Iowa shall be covered by Iowa's medical assistance.

b. Non-IV-E-eligible children from Iowa residing in another state shall be covered by Iowa's medical assistance unless eligible for benefits from the other state pursuant to a program funded under Title XIX of the federal Social Security Act as amended to December 31, 2023.

c. Non-IV-E-eligible children from another state residing in Iowa shall be covered by Iowa's medical assistance if all the following conditions are met:

- (1) The child is under the age of 21.
- (2) The child is residing in Iowa in a private home with the child's adoptive parent or parents.
- (3) Another state is currently paying an adoption subsidy for the child pursuant to an adoption assistance agreement in effect for the child with that state.
- (4) The state paying the adoption subsidy is a member of the interstate compact on adoption and medical assistance (ICAMA).
- (5) The state paying the adoption subsidy provides medical assistance benefits pursuant to a program funded under Title XIX of the Social Security Act, under the optional group at Section 1902(a)(10)(A)(ii)(VIII) of the Act as amended to December 31, 2023, to children residing in that state (at least until age 18) for whom there is a state adoption assistance agreement in effect with the state of Iowa other than under Title IV-E of the Social Security Act.

201.11(3) When an Iowa child receives medical assistance from another state, Iowa shall discontinue paying any medical costs the month following the move unless additional time is necessary for a timely notice of decision to be provided to the family. An exception shall be made when the initial Iowa subsidy agreement provides for services not covered by the other states.

441—201.12(600) Presubsidy recovery. The department will recover the cost of presubsidy maintenance and special services provided by the department as follows:

201.12(1) Funds will be applied to the cost of presubsidy maintenance and special services from the unearned income of the child.

201.12(2) The department will serve as payee to receive the child's unearned income. The income will be placed in an account and be applied toward the cost of the child's current care with the remainder placed in an escrow account.

201.12(3) When a child has funds in escrow these funds may be used by the department to meet the current needs of the child not covered by the presubsidy payments and not prohibited by the source of the funds.

201.12(4) When the child leaves presubsidy care, funds in the escrow shall be paid to the adoptive parents, or to the child if the child has attained the age of majority.

These rules are intended to implement Iowa Code sections 600.17 to 600.23.