

CHAPTER 162
NURSING FACILITY CONVERSION
AND LONG-TERM CARE SERVICES
DEVELOPMENT GRANTS

PREAMBLE

These rules define and structure grants to be made from the Iowa senior living trust fund, hereafter referred to as the trust fund.

Grants are available to nursing facilities for capital or other one-time expenditure costs incurred for conversion of all or a portion of the facility to an assisted living facility or other alternatives to nursing facility care, and to noninstitutional providers of long-term care for development of other needed long-term care alternatives.

These rules implement provisions of Iowa Code chapter 249H, which establishes an overall goal of moving toward a balanced, comprehensive, affordable, high quality long-term care system.

441—162.1(249H) Definitions.

“Adult day care” means structured social, habilitation, and health activities provided in a congregate setting to alleviate deteriorating effects of isolation; to aid in transition from one living arrangement to another; to provide a supervised environment while the regular caregiver is working or otherwise unavailable; or to provide a setting for receipt of multiple health services in a coordinated setting.

“Affordable” means rates for payment of services that do not exceed the rates established for providers of medical and health services under the medical assistance program. In relation to services provided by a home- and community-based waiver services provider, “affordable” means that the total monthly cost of the home- and community-based waiver services provided do not exceed the maximum cost for that level of care as established by rule by the department.

In relation to assisted living, “affordable” means rates for the costs not paid by medical assistance are less than or equal to 110 percent of the maximum prevailing fair market rent for the same size apartment under guidelines of the applicable United States Department of Housing and Urban Development (HUD) low-rent housing program in the area where the assisted living program is located, plus 185 percent of the maximum federal supplemental security income benefit for an individual or couple (as applicable). Rates for the costs paid by medical assistance may not exceed the rates established for payment under the medical assistance home- and community-based services (HCBS) elderly waiver program.

“Assisted living program” means an assisted living program certified or voluntarily accredited by the Iowa department of elder affairs under Iowa Code chapter 231C.

“Child care for children with special needs” means physical, emotional, and social care delivered up to ten hours a day to children under the age of 18 by a service provider approved for participation in the medical assistance waivers in lieu of care by the parent or legal guardian.

“Department” means the Iowa department of human services.

“Director” means the director of the Iowa department of human services.

“Distinct portion of a nursing facility” means a clearly identifiable area or section within a nursing facility, consisting of at least a living unit, wing, floor, or building containing contiguous rooms.

“Efficient and economical care” means services provided within the reimbursement limits for the services under 441—subrule 79.1(2) for Medicaid home- and community-based services (HCBS) waivers and for less than the cost of comparable services provided in a nursing facility.

“Grantee” means the recipient of a grant.

“HCBS waivers” means Medicaid home- and community-based services waivers under 441—Chapter 83, which provide service funding for specific eligible consumer populations in Iowa.

“Long-term care alternatives” means those services specified under HCBS waivers as available services for elderly persons or adults with disabilities; elder group homes certified under Iowa Code chapter 231B; assisted living programs certified or voluntarily accredited under Iowa Code chapter 231C;

and the PACE program. These are services other than nursing facility care provided to the elderly and persons with disabilities.

“Long-term care service development” means either of the following:

1. The remodeling of existing space and, if necessary, the construction of additional space required to accommodate development of long-term care alternatives, excluding the development of assisted living programs or elder group home alternatives.

2. New construction for long-term care alternatives, excluding new construction of assisted living programs or elder group homes, if the senior living coordinating unit determines that new construction is more cost-effective for the grant program than the conversion of existing space.

“Medical assistance program” means the program established in Iowa Code chapter 249A and otherwise referred to as Medicaid or Title XIX.

“Nursing facility” means a licensed nursing facility as defined in Iowa Code section 135C.1 or a licensed hospital as defined in Iowa Code section 135B.1, a distinct part of which provides long-term care nursing facility beds.

“Nursing facility conversion” means either of the following:

1. The remodeling of nursing facility space existing on July 1, 1999, and certified for medical assistance nursing facility reimbursement and, if necessary, the construction of additional space required to accommodate an assisted living program.

2. New construction of an assisted living program if existing nursing facility beds are no longer licensed and the senior living coordinating unit determines that new construction is more cost-effective for the grant program than the conversion of existing space.

“PACE program” means a program of all-inclusive care for the elderly established pursuant to 42 U.S.C. Section 1396u-4 that provides delivery of comprehensive health and social services to seniors by integrating acute and long-term care services, and that is operated by a public, private, nonprofit, or proprietary entity. *“Pre-PACE program”* means a PACE program in the initial start-up phase that provides the same scope of services as a PACE program.

“Persons with disabilities” means persons 18 years of age or older with disabilities as disability is defined in Iowa Code section 225B.2.

“Respite care” means temporary care of an aged adult, or an adult or child with disabilities, to relieve the usual caregiver from continuous support and care responsibilities. Components of respite care services are supervision, tasks related to the individual’s physical needs, tasks related to the individual’s psychological needs, and social and recreational activities. A facility providing respite care must provide some respite care in the facility, but may also provide in-home respite.

“Safe shelter for victims of dependent adult abuse” means board, room, and services provided to persons identified by a department dependent adult abuse investigator as victims of dependent adult abuse.

“Senior” means elder as defined in Iowa Code section 231.4.

“Senior living coordinating unit” means the planning group established in Iowa Code section 231.58, or its designee.

“Senior living program” means the senior living program created by 2000 Iowa Acts, Senate File 2193, to provide for long-term care alternatives, long-term care service development, and nursing facility conversion.

“Trust fund” means the Iowa long-term care trust fund established by Iowa Code section 249H.4.

“Underserved area” means a county in which the number of currently licensed nursing facility beds and certified or accredited assisted living units is less than or equal to 4.4 percent of the number of individuals 65 years of age or older according to the most current census data. In addition, the department, in determining if a county is underserved, may consider additional information gathered through its own research or submitted by an applicant including, but not limited to, any of the following:

1. Availability of and access to long-term care alternatives relative to individuals eligible for medical assistance.

2. The current number of seniors and persons with disabilities and the projected number of these individuals.

3. The current number of seniors and persons with disabilities requiring professional nursing care and the projected number of these individuals.

4. The current availability of long-term care alternatives and any anticipated changes in the availability of these alternatives.

441—162.2(249H) Availability of grants. In any year in which funds are available for new nursing facility conversion or long-term care services development grants, the department shall issue a request for applications for grants. The amount of money granted shall be contingent upon the funds available. The use of funds appropriated to award grants shall be in compliance with legislation and at the direction of the senior living coordinating unit.

There is no entitlement to any funds available for grants awarded pursuant to this chapter. The department may award grants to the extent funds are available and, within its discretion, to the extent that applications are approved.

441—162.3(249H) Grant eligibility.

162.3(1) Eligible applicants. A grant applicant shall be:

a. A licensed nursing facility that has been an approved provider under the medical assistance program under the same ownership for the two-year period prior to application for the grant.

b. A provider of long-term care services, including one not covered by the medical assistance program, that has been in business for at least two years under the same owner.

162.3(2) Types and amounts of grants.

a. *Architectural and financial feasibility study allowance.* An architectural and financial feasibility study allowance may be awarded solely for costs directly attributable to development of the architectural and financial review documentation associated with conversion or service development. Architectural and financial feasibility study allowances for conversion or service development grants are limited to \$15,000, not to exceed actual costs for each project.

b. *Conversion grants.* A conversion grant may be awarded to convert all or a portion of a licensed nursing facility to affordable certified assisted living units (limited to \$45,000 per unit) and for capital or one-time expenditures including, but not limited to, start-up expenses, training expenses, and operating losses for the first year of operation following conversion.

Conversion grants are limited to a total of \$1,000,000 per facility, with an additional \$100,000 if the provider agrees to also provide adult day care, child care for children with special needs, safe shelter for victims of dependent adult abuse, or respite care.

A grant application which expands resident capacity of an existing nursing facility shall not be considered. A grant that requires additional space to accommodate supportive services related to the functioning of the long-term care alternative, such as dining rooms, kitchen and recreation areas, or other community-use areas, may be considered.

c. *Long-term care services development grant.* A long-term care services development grant may be awarded for capital or one-time expenditures to develop needed long-term care services covered under a Medicaid HCBS waiver or to develop a PACE program. Expenditures may include, but are not limited to, start-up expenses, training expenses, and operating losses for the first year of operation. Service development grants are limited to \$1,000,000 per PACE program, and \$150,000 for HCBS waiver services.

162.3(3) Criteria for grant applicants. A grant shall be awarded only to an applicant meeting all of the following criteria:

a. The applicant is located in an area determined by the senior living coordinating unit to be underserved with respect to a particular long-term care alternative service.

b. The applicant is able to provide a minimum matching contribution of 20 percent of the total cost of any conversion, remodeling, or construction. Costs used by grantees to match grant funds shall be directly attributable to the costs of conversion or service development.

c. Grant applications from nursing facilities shall be considered only from facilities with an established history of providing quality long-term care services. Facilities shall be in substantial

compliance with federal Medicaid participation requirements as evidenced at a minimum by all of the following:

(1) No identified deficiencies which pose a significant risk to resident health and safety at the time of application.

(2) No more than one isolated event resulting in actual harm to residents during the current Medicaid certification period.

(3) No citations for a pattern of events resulting in actual harm to residents for three years prior to application.

d. Grants to applicants other than nursing facilities shall be considered from applicants only when:

(1) There is substantial compliance with Medicare and Medicaid participation requirements or other applicable provider certification requirements at the time of application.

(2) Compliance exists with Medicare and Medicaid requirements, if applicable, for a three-year period prior to application.

(3) Compliance exists with the criminal background check system, if applicable.

e. The applicant agrees to do all of the following as applicable to the type of grant:

(1) Participate in the medical assistance program and maintain a medical assistance client participation rate of at least 40 percent, subject to the demand for participation by persons eligible for medical assistance. Applicants shall also agree that persons able to pay the costs of assisted living shall not be discharged from their living unit due to a change in payment source.

(2) Provide a service delivery package that is affordable for those persons eligible for services under the medical assistance home- and community-based services waiver program.

(3) Provide a refund of the grant to the senior living trust fund on a prorated basis if the applicant or the applicant's successor in interest: ceases to operate an affordable long-term care alternative within the first ten-year period of operation following the awarding of the grant; fails to maintain a participation rate of 40 percent in accordance with subparagraph (1) within the first ten-year period of operation following the awarding of the grant; or discharges persons able to pay the costs of assisted living from their living unit due to a change in payment source.

f. The applicant must demonstrate that the proposed method of construction, whether new or remodeling, is the most cost-effective for the grant program and, when developing assisted living units, must agree that a specified number of existing nursing facility beds will not continue to be licensed.

162.3(4) Allowable and nonallowable costs.

a. Examples of allowable costs include:

(1) Professional fees incurred specifically for conversion of facility or service development, including architectural, financial, legal, human resources, research, and marketing fees.

(2) Construction costs for the remodeling of existing space and, if necessary, the construction of additional space required to accommodate assisted living program services or other alternatives to nursing facility care or new construction of an assisted living facility or other alternative to nursing facility care if existing nursing facility beds are no longer licensed and the department determines that new construction is more cost-effective for the grant program than the conversion of existing space.

(3) Start-up and training expenses and operating losses for the first year.

b. Examples of nonallowable costs include:

(1) Costs of travel, personal benefits, and other facility programs or investments.

(2) Construction costs to remodel nursing facility space that will remain in use for nursing facility care.

(3) Any costs associated with operation and maintenance of a non-grant-related facility or service.

(4) Any costs incurred above per-unit grant amounts.

441—162.4(249H) Grant application process.

162.4(1) Public notice of grant availability. When funds are available for new grants, the department shall announce through public notice the opening of a competitive application period. The announcement shall include information on how agencies may obtain an application package and the deadlines for submitting an application.

162.4(2) Request for applications. The department shall distribute grant application packages for nursing facility conversion and long-term care service development grants upon request. Applicants desiring to apply for a grant shall submit Form 470-3759, Application for Nursing Facility Conversion Grant, or Form 470-3760, Application for Long-Term Care Service Development Grant, with accompanying documentation to the department by the date established in the application package. If an application does not include the information specified in the grant application package or if it is late, it will be disapproved.

The application must be submitted by the legal owner of the nursing facility or long-term care provider. In cases in which the provider licensee does not hold title to the real property in which the service is operated, both the licensee and the owner of the real property must submit a joint application. Form 470-3759 or Form 470-3760 must be signed by an individual authorized to bind the applicant to perform legal obligations. The title of the individual must be stated.

162.4(3) Application requirements.

a. Prior to submission of an application, the applicant must arrange and conduct a community assessment and solicit public comment on the plans proposed in the grant application. In soliciting public comment the applicant must at a minimum:

(1) Publish an announcement in a local or regional newspaper of the date, time, and location of a public meeting regarding the proposed project, with a brief description of the proposed project.

(2) Post notice of the meeting at the nursing facility or applicant's offices and at other prominent civic locations.

(3) Notify potentially affected clients and their families of the proposed project, of the potential impact on them, and of the public meeting at least two weeks prior to the public meeting.

(4) Advise the department of the public meeting date at least two weeks before the scheduled meeting.

(5) Address the following topics at the public meeting: a summary of the proposed project, the rationale for the project, and resident retention and relocation issues.

(6) Receive written and oral comments at the meeting and provide for a seven-day written comment period following the meeting.

(7) Summarize all comments received at the meeting or within the seven-day written comment period and submit the summary to the department as part of the application package.

b. Grant applications shall contain, at a minimum, the following information:

(1) Applicant identification and a description of the agency and its resources, which will demonstrate the ability of the applicant to carry out the proposed plan.

(2) Information to indicate the nursing facility applicant's extent of conversion of all or a portion of its facility to an assisted living program or development of other long-term care alternatives. Current and proposed bed capacity shall be given as well as the number of beds to be used for special services. Nursing facility and noninstitutional providers shall describe outpatient services they wish to develop.

(3) A request for an architectural and financial feasibility study allowance, if desired.

(4) Demonstration at a minimum of the following:

1. Public support for the proposal exists. Evidence of public support shall include, but not be limited to, the following: the summary of all comments received at the public meeting or within the seven-day written comment period and letters of support from the area agency on aging; the local board of health; local provider or consumer organizations such as the local case management program for frail elders, resident advocate committee or Alzheimer's chapter; and consumers eligible to receive services from the developed long-term care alternative.

2. The proposed conversion or service development will have a positive impact on the overall goal of moving toward a balanced, comprehensive, high-quality long-term care system.

3. Conversion of the nursing facility or a distinct portion of the nursing facility to an assisted living program or development of an alternative service will offer efficient and economical long-term care services in the service area described by the applicant.

4. The assisted living program or other alternative services are otherwise not likely to be available in the service area described by the applicant for individuals eligible for services under the medical assistance program.

5. If applicable, a resulting reduction in the availability of nursing facility services will not cause undue hardship to those individuals requiring nursing facility services for a period of at least ten years.

6. Conversion to an assisted living program or development of other alternative services will result in a lower per-client reimbursement to the grant applicant under the medical assistance program.

7. The service delivery package will be affordable for individuals eligible for services under the medical assistance home- and community-based services waiver program.

8. Long-term care alternatives will be available and accessible to individuals eligible for medical assistance and other individuals with low or moderate income.

9. Long-term care alternative services are needed based on the current and projected numbers of seniors and persons with disabilities, including those requiring assistance with activities of daily living in the service area described by the applicant.

10. Long-term care alternatives in the service area are needed based on the community needs assessment and upon current availability and any anticipated changes in availability.

162.4(4) Selection of grantees. All applications received by the department within the designated time frames and meeting the criteria set forth in rule 441—162.3(249H) and subrule 162.4(3) shall be reviewed by the department under the direction of the senior living coordinating unit.

If grant applications that meet the minimum criteria exceed the amount of available funds, scoring criteria shall be used to determine which applicants shall receive a grant. Scoring shall be based on the following:

1. The degree to which the county or counties in the service area described by the grant applicant are underserved - up to 20 points. If more than one county is in the service area, a weighted average shall be used.

2. The level of community support as identified by the community-based assessment, public meeting comments, and letters of support and the degree of collaboration among local service providers - up to 20 points.

3. For conversion grants, the number of licensed beds eliminated or converted to special needs beds, with evidence that the resulting reduction in licensed beds will not cause a hardship for persons requiring nursing services - up to 20 points.

4. The number of added services to fill a service need gap - up to 20 points.

5. Evidence of an adequate plan to carry out the requirements of this chapter and regulations pertaining to the long-term care alternative service - up to 20 points.

6. Costs of long-term care alternative services to consumers - up to 30 points.

7. Evidence of the ability and commitment to make proposed alternatives accessible to low- and moderate-income persons - up to 20 points.

162.4(5) Notification of applicants. Applicants shall be notified whether the grant proposal is approved or denied. Denial of an application in one year does not preclude submission of an application in a subsequent year.

441—162.5(249H) Grant dispersal stages. Following approval of an applicant's grant proposal by the department, the grant process shall proceed through the following stages:

162.5(1) Completion of architectural and financial feasibility study.

a. An architectural and financial feasibility study shall be completed pursuant to the guidelines included in the applicable grant application package and applicable service regulations.

(1) For facility conversion, construction, or remodeling, the architectural plan shall provide schematic drawings at a minimum of one-eighth scale consisting of the building site plan, foundation plan, floor plan, cross section, wall sections, and exterior elevations.

(2) The grantee shall comply with all local, state and national codes pertaining to construction; and certification, licensure, or accreditation requirements applicable to the long-term care alternative.

(3) Construction documents, budget cost estimates, and related services must be rendered by a professional architect or engineer registered in Iowa.

b. Payment of up to \$15,000 may be issued to each approved applicant to proceed with the architectural and financial feasibility study if requested in the original application. By making a request for an architectural and financial feasibility study allowance, the applicant agrees that the funds will be used solely for costs directly attributable to development of the architectural and financial review documentation associated with conversion or service development.

c. All grantees must submit the completed study documents within the time frame identified in the request for application together with an itemized accounting of the expenditure of any allowance funds. Any unexpended architectural and financial review allowance funds shall be returned to the department.

162.5(2) *Review of architectural and financial feasibility study.* The department shall review the architectural and financial feasibility study materials and shall grant or deny approval to develop or obtain final budget estimates for the proposed project. Approval to proceed shall be granted only if the architectural and financial feasibility study supports the ability of the grantee to meet the minimum grant criteria and to complete the proposed project as set forth in the original application.

162.5(3) *Completion of final budget estimate.* Grantees approved to proceed with the final budget estimate shall submit the final budget estimates, any revisions to previously submitted materials, and a request for a grant in a specific amount. The matching fund amount to be paid by the grantee must be stated in the request.

162.5(4) *Review of final budget estimate.* The department shall review the final budget estimate and issue a notice of award for a grant in a specific amount if the final budget estimate supports the ability of the grantee to meet the minimum grant criteria and to complete the proposed project as set forth in the original application.

441—162.6(249H) Project contracts. The funds for approved applications shall be awarded through a contract entered into by the department and the applicant.

441—162.7(249H) Grantee responsibilities.

162.7(1) *Records and reports.*

a. The grantee shall maintain the following records:

(1) Consumer participation records that identify persons by payment source.

(2) Complete and separate records regarding the expenditure of senior living trust funds for the grant amounts received.

b. Recipients of grants shall submit a bimonthly progress report to the department and senior living coordinating unit beginning the second month following project approval through project completion.

c. Recipients shall submit annual cost reports to the department, in conformance with policies and procedures established by the department, regarding the project for a period of ten years after the date the grantee begins operation of its facility as an assisted living facility or other long-term care alternative.

162.7(2) *Reasonable access.* The grantee shall allow access to records at reasonable times by duly authorized representatives of the department for the purpose of conducting audits and examinations and for preparing excerpts and transcripts. This access to records shall continue for a period of ten years from the date the grantee begins operation as an assisted living facility or other long-term care alternative.

162.7(3) *Relinquishment of license.* The grantee shall relinquish the nursing facility bed license for any facility space converted to assisted living or alternatives to nursing facility care for a ten-year period.

162.7(4) *Acceptance of financial responsibility.* The grantee shall accept financial responsibility for all costs over and above the grant amount which are related to project completion.

162.7(5) *Participation in the medical assistance program.* The grantee shall participate in the medical assistance program as a provider of nursing facility services if the grantee continues to provide any nursing facility services.

162.7(6) *Segregation of medical assistance residents forbidden.* The grantee shall not segregate medical assistance residents in an area, section, or portion of an assisted living program or long-term care alternative service. Grantees shall allow a resident who is converting from private-pay to medical

assistance to remain in the resident's living unit if the resident is able to pay the rate and shall not relocate the resident solely due to a change in payment source.

441—162.8(249H) Offset. The department may deduct the amount of any refund due from a grantee from any money owed by the department to the grantee or the grantee's successor in interest.

441—162.9(249H) Appeals. Applicants dissatisfied with the department's actions regarding applications for grants and grantees dissatisfied with actions regarding a grant may file an appeal with the director. The letter of appeal must be received by the director within five working days of the date of the notice and must include a request for the director to review the action and the reasons for dissatisfaction. Within ten working days of the receipt of the appeal, the director shall review the appeal request and issue a final decision.

No disbursements shall be made to any applicant for a period of five working days following the notice awarding the original grants. If an appeal is filed within the five days, all disbursements shall be held pending a final decision on the appeal.

These rules are intended to implement Iowa Code section 249H.6 as amended by 2001 Iowa Acts, House File 740, section 7.

[Filed emergency 6/8/00—published 6/28/00, effective 7/1/00]

[Filed 8/9/00, Notice 6/14/00—published 9/6/00, effective 11/1/00]

[Filed emergency 6/13/01—published 7/11/01, effective 7/1/01]

[Filed 9/11/01, Notice 7/11/01—published 10/3/01, effective 12/1/01]