LSA
LEGISLATIVE SERVICES AGENCY
*Serving the Iowa Legislature*

# *Fiscal Services Division*

## ADMINISTRATIVE RULES — FISCAL IMPACT SUMMARIES **October 4, 2021**

*Iowa Code section 17A.4(4) requires the Legislative Services Agency (LSA) to analyze the fiscal impact of all administrative rules with an impact of $100,000 or more and provide a summary of the impact to the Administrative Rules Review Committee (ARRC). Fiscal Impact Statements filed by State agencies can be found on our website at https://www.legis.iowa.gov/publications/fiscal/adminRulesFiscalImpact.*
*With each rule summary, the rulemaking type is indicated in parentheses following the ARC number. The acronyms have the following meanings: Notice of Intended Action (**NOIA**), Amended Notice of Intended Action (**ANOIA**), Notice of Termination (**NOT**), Adopted and Filed Emergency (**AFE**), Filed Emergency After Notice (**FEAN**), and Adopted and Filed (**AF**).*

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### Department of Human Services

**ARC 5889C (AF)**

**Rule Summary**

Adopts the following changes to the Home and Community-Based Services (HCBS) Habilitation Program:

- Implements two new assessment tools including the Level of Care Utilization System (LOCUS) for adults age 19 and older and Child and Adolescent Level of Care Utilization System (CALOCUS) for youth ages 16 to 18 for the purposes of the needs-based eligibility determination for the person-centered service planning and HCBS tier authorization.
- Adds intensive residential habilitation.
- Adopts training criteria for direct service staff providing HCBS services.
- Clarifies the scope of services included in home-based habilitation.

**State or Federal Law Implemented:** Iowa Code chapter 249A.

**Fiscal Impact**

**Agency Response:** Increases estimated expenses to the Medicaid Program by $1.9 million in FY 2022 and $2.0 million in FY 2023. Use of the new assessment tool is expected to shift utilization across the six current Habilitation reimbursement tiers. The FY 2022 State share estimate assumes the COVID-19 increased Federal Medical Assistance Percentage (FMAP) will remain in effect through December 2021, but does not include the potential 10.0% FMAP increase for HCBS waiver services authorized through the federal American Rescue Plan Act since decisions on this FMAP increase are still pending. No additional State funding was provided for this rule change and the increases will come from the Medicaid ending balance.

**LSA Response:** The LSA concurs. The increased costs above do not include the rate increases and additional funding passed by the General Assembly in 2021 Iowa Acts, HF 891 (FY 2022 Health and Human Services Appropriations Act) for Habilitation Services. The Act provided $9.9 million for Habilitation Services to increase rates by 3.55% and to provide an additional reimbursement tier for high-need individuals.

**ARC 5890C (AF)**

**Rule Summary** Allows funds in the Foster Home Insurance Fund to cover damages resulting from the actions of a child residing in a foster child home, and allows the Department to establish limitations of liability for individual claims as deemed reasonable by the Department.

**State or Federal Law Implemented:** Iowa Code section 237.13.

**Fiscal Impact** **Agency Response:** While the annual amount budgeted for the Foster Home Insurance Fund is $675,000, changes to annual limits and deductibles could reduce costs, causing the full amount not to be expended.

**LSA Response:** The LSA concurs.

**ARC 5891C (AF)**

**Rule Summary** Revises the child care assistance provider reimbursement rate ceiling tables to comply with federal regulations that require states to use the most recent market rate survey in establishing child care reimbursement rates. Iowa's most recent market rate survey was conducted in December 2020. Effective July 1, 2021, reimbursement rates will be increased to at least the 50th percentile of the 2020 market rate for child care providers.

**State or Federal Law Implemented:** Iowa Code section 234.6.

**Fiscal Impact** **Agency Response:** Increasing the maximum provider rates is estimated to increase expenses by $13.4 million per year. This increase is expected to be funded by federal Child Care Development Funds (CCDF) carried forward until SFY 2025, when it is anticipated that the balance of CCDF will be fully expended.

**LSA Response:** The LSA concurs.

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**State Public Defender**

**ARC 5919C (NOIA)**

**Rule Summary** Establishes a procedure for appointed attorneys to submit payment claims when representing an indigent party that files a petition to adopt a child who was the subject of a termination of parental rights proceeding. Sets the limitation for the number of hours an attorney may claim for those services without a court order to exceed the maximum. Also increases attorney rates to implement a $3-per-hour increase for private attorneys who accept court appointments to represent indigent clients.

**State or Federal Law Implemented:** 2021 Iowa Acts, chapters 161 and 166.

**Fiscal Impact** **Agency Response:** Enactment of the $3-per-hour rate increase is estimated to increase annual costs to the Indigent Defense Fund by approximately $1.5 million beginning in FY 2022. In addition, the enactment of HF 743 (Adoption, State Public Defender Act) providing for court-appointed attorneys for indigent adoptive parents of a child who was the subject of a termination of parental rights proceeding is likely to result in an additional charge to the Indigent Defense Fund in the amount of $660 to $1,320 per adoption, but the number of adoptions that will be of this type is unknown.

**LSA Response:** The LSA concurs. The HF 861 (FY 2022 Justice System Appropriations Act) State Public Defender appropriation for FY 2022 included an increase of $1.6 million to provide funding for the $3-per-hour rate increase.

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### Economic Development Authority

**ARC 5908C (NOIA)**

**Rule Summary** Develops a system for the authorization of Hoover Presidential Library tax credits based on donations to the Hoover Residential Library Foundation for its library and museum renovation project fund. The tax credit created by 2021 Iowa Acts, HF 588 (Hoover Presidential Library Tax Credit Act) is allowed against specific taxes for tax years beginning on or after January 1, 2021, and before January 1, 2024. The aggregate amount of tax credits authorized is $5.0 million.

**State or Federal Law Implemented:** 2021 Iowa Acts, HF 588 (Hoover Presidential Library Tax Credit Act).

**Fiscal Impact** **Agency Response:** This rulemaking has no fiscal impact to the State of Iowa.

**LSA Response:** The LSA concurs in part. The legislation implemented by this rulemaking is estimated to decrease General Fund revenue by $2.2 million in FY 2022 and $1.6 million in FY 2023.

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### Department of Public Health

**ARC 5927C (NOIA)**

**Rule Summary** Expands the Medical Residency Training Matching Grants Program for the time period beginning July 1, 2021, and ending June 30, 2026, to include medical residency program liability costs as an allowable expense for which matching grants may be awarded.

**State or Federal Law Implemented:** Iowa Code section 135.176 and 2021 Iowa Acts, HF 891 (FY 2022 Health and Human Services Appropriations Act).

**Fiscal Impact** **Agency Response:** No fiscal impact.

**LSA Response:** The LSA concurs in part. While this rulemaking does not impact the amount available to be awarded by the Program, it does expand the allowable uses for those grants. Prior to FY 2021, the Program received a $2.0 million allocation in the Health and Human Services Appropriations Act. In FY 2021, the allocation was increased to $2.1 million.

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### Department of Revenue

**ARC 5883C (NOIA)**

**Rule Summary** Updates Department of Revenue rules dictating the order in which Iowa individual income, corporate income, and bank franchise tax credits must be deducted by Iowa taxpayers. The amendments strike from the deduction list recently repealed tax credits and add tax credits enacted since the rule was last amended (2014), including the Beginning Farmer Tax Credit, the Hoover Presidential Library Tax Credit, and the Renewable Chemical Production Tax Credit. The High Quality Jobs Tax Credit and the Angel Investor Tax Credit are also newly added to the credit sequence list.

Updates are also proposed to certain tax credits that have experienced a change in name, claim period, or claim procedure, or that were previously grouped together with other similar tax credits on the list.

The amendments change the order of deduction for the alternative minimum tax credit in tax year 2021 for corporations and financial institutions, and in tax year 2023 for individuals, because that is the final tax year that credit may be claimed for those tax types, so the carryforward period is reduced to 0. This change allows the alternative minimum tax credit to be claimed in 2021 or 2023, as applicable, before other tax credits with a carryforward period. The amendments also provide for the order in which tax credits carried forward from a previous tax year must be deducted.

The amendments also move the individual income tax Out-of-State Tax Credit, currently sequenced number 30 on that list, to number 5.

Finally, the amendments newly adopt tax credit claim sequence deduction rules for tax credits claimed under the Iowa franchise tax.

**State or Federal Law Implemented:** Iowa Code chapter 422.

**Fiscal Impact**

**Agency Response:** This rule making has no fiscal impact to the State of Iowa.

**LSA Response:** The existing rules and the proposed changes establish sequences that taxpayers must follow when claiming income tax credits. The sequences follow this general order:

- Nonrefundable credits with no carryforward period.
- Nonrefundable credits with allowed carryforward periods for unused credits. Credits with the shortest allowed carryforward period are ordered first.
- Refundable tax credits.

The tax credit sequence only matters to taxpayers who pose multiple nonrefundable tax credits and those tax credits exceed the taxpayer's tax liability for a particular tax year. If the rules did not exist for sequencing nonrefundable tax credits with carryforward periods, individual taxpayers would be allowed to utilize tax credits in an order that best accomplishes a strategy of overall lower tax liability across tax years. With the rules, a taxpayer may be forced to claim a tax credit with several years of carryforward remaining while a different tax credit that is perhaps in its final year of carryforward expires unused.

New subrule 701—42.44(2) uses as an example a taxpayer with a School Tuition Tax Credit awarded in the current tax year and a Renewable Energy Tax Credit that has carried forward from a previous year. The subrule dictates that the taxpayer must utilize the School Tuition Tax Credit first, setting up a situation where the carried forward Renewable Energy Tax Credit could expire unredeemed. Without the existing or proposed rule, the taxpayer could claim the remainder of their Renewable Energy Tax Credit in the current year and then begin to claim the School Tuition Tax Credit the next tax year. To the extent that this type of situation occurs, the existing and proposed rules have a fiscal impact by increasing tax liability across tax years and therefore increasing tax revenue.

Beyond the preceding issue, the rule changes have additional potential fiscal impacts. First, the rules move the Out-of-State Tax Credit from number 30 in the individual income tax sequence list to number 5. As number 30 on this current list, the Out-of-State Tax Credit would be sequenced after several refundable credits. As number 5 on the proposed list, the credit would be sequenced before the nonrefundable credits that allow a carryforward. This rule change likely has no fiscal impact since the Out-of-State Tax Credit has its own line on the Iowa 1040 tax form and the line has been out of sequence with the existing rules since tax year 2015.

Second, existing law eliminates the Alternative Minimum Tax and at the same time eliminates the carryforward provisions for the Alternative Minimum Tax Credit. The proposed movement of the Alternative Minimum Tax Credit from number 26 on the existing individual income tax list and number 20 on the corporate income tax list, to respectively numbers 8 and 2 on the proposed sequencing lists, has a potential fiscal impact by ensuring that more of the carryforward Alternative Minimum Tax Credit is utilized before expiring. If the Alternative Minimum Tax Credit is left in its current locations on the sequencing lists, taxpayers holding other nonrefundable tax credits will be required to fully utilize those credits before utilizing the expiring Alternative Minimum Tax Credit.

**ARC 5886C (NOIA)**

**Rule Summary** Adopts amendments related to the existing Iowa Out-of-State Tax Credit (credit) against Iowa income tax for income tax paid to other jurisdictions on a resident individual's or fiduciary's income that is also subject to Iowa income tax.

The primary purpose of the amendments is to implement 2020 Iowa Acts, chapter 1118, division XVII. That division allowed a resident partner, shareholder, or beneficiary to claim certain entity-level income taxes paid by a partnership, S corporation, estate, or trust (i.e., a "pass-through entity") to another jurisdiction in the calculation of the resident's credit. The 2020 legislation also allowed a resident shareholder of a regulated investment company (e.g., mutual fund) to claim certain entity-level foreign income taxes paid by the regulated investment company in the calculation of the resident's credit. The rule amendments allow resident individuals and fiduciaries who are direct or indirect members of a pass-through entity to include in the calculation of the credit their pro rata share of entity-level income tax paid by such pass-through entity in another qualifying jurisdiction. The income tax must otherwise qualify for inclusion in the calculation of the credit, have been imposed on and paid by the resident, and if the pass-through entity provides specified tax-related documentation to the taxpayer, and to other intermediate pass-through entities in the case of indirect ownership. The amendments also provide rules for regulated investment companies and their resident shareholders.

The amendments also significantly update, rewrite, or expand other parts of the Out-of-State Tax Credit rule not directly impacted by the 2020 legislation in order to provide more guidance to taxpayers on the application of the credit.

These amendments provide relevant definitions and describe the general application of the credit, the calculation of the credit including the maximum credit calculation, other limitations and considerations for the credit, and supporting documentation required for the taxpayer to prove eligibility for the credit and credit amount.

Finally, the rule amendments modify the Iowa income percentage used to calculate the maximum credit so that the credit is computed to the nearest ten-thousandth of a percent (i.e., four digits to the right of the decimal point) for tax years beginning on or after January 1, 2022. Under current rules, the Iowa income percentage is computed to the nearest tenth of a percent (i.e., one digit to the right of the decimal point). This change is intended to result in more precise credit calculations and create more uniformity under the Iowa income tax. Corporations and other business entities apportion their income using a business activity ratio that is calculated to the nearest ten-thousandth of a percent.

**State or Federal Law Implemented:** 2020 Iowa Acts, chapter 1118.

**Fiscal Impact** **Agency Response:** Modifying the maximum credit calculation to compute to the nearest ten-thousandth of a percent instead of the nearest tenth of a percent is expected to result in a minimal increase or decrease to General Fund revenues. The total impact is expected to be less than $100,000 each year. Apart from that change, this rule filing has no fiscal impact to the State of Iowa beyond the legislation it is intended to implement. The ***Fiscal Note*** for 2020 Iowa Acts, chapter 1118, estimated that the changes to the Out-of-State Tax Credit would reduce General Fund revenues in fiscal years 2021-2025 by an estimated $4.2 million per fiscal year, beginning with FY 2021.

**LSA Response:** A rule change is necessary due to 2020 legislation with a relevant effective date of June 29, 2020, and retroactive applicability to tax years beginning on or after January 1, 2020. The estimated fiscal impact of division XVII of the 2020 legislation remains at an annual revenue reduction of $4.2 million as no additional information related to the actual fiscal impact of the law change is available at this time.

The portions of the rule amendments that are intended to “update, rewrite, or expand” the rule and to increase the precision of the credit calculation may have additional impacts on tax liability and on State General Fund income tax revenue. The LSA does not have sufficient information available at this time to provide an expanded estimate that encompasses the entire proposed rule change.

**ARC 5917C (AF)**

**Rule Summary** Requires tobacco tax on sales of tobacco products by a manufacturer to a distributor to be calculated on the wholesale sales price exclusive of any discount or other reduction including a pre-priced price or discounted price.

**State or Federal Law Implemented:** Iowa Code section 453A.42.

**Fiscal Impact** **Agency Response:** The proposed rule is estimated to increase tobacco tax revenue by $325,000 in FY 2022 and each fiscal year going forward. These revenues are deposited in the Health Care Trust Fund.

**LSA Response:** The LSA concurs.

**ARC 5906C (AF)**

**Rule Summary** Provides a definition of marketable food products for human consumption to be used for taxpayers seeking to claim a sales tax exemption.

**State or Federal Law Implemented:** Iowa Code section 423.3.

**Fiscal Impact** **Agency Response:** No fiscal impact.

**LSA Response:** The LSA concurs in part. It is unknown the amount of noncompliance by current manufacturers in following the position of the Iowa Department of Revenue. Providing clarity on the definition may increase the collection of sales taxes as more taxpayers determine they do not qualify for the exemption; however, the fiscal impact is unknown.

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