

AGING, DEPARTMENT ON[17]

DRAFT ONLY: Dates herein may not comply with Schedule for Rule Making.

Notice of Intended Action

Proposing rule making related to _____ and providing an opportunity for public comment.

The Aging, Department on hereby proposes to amend Chapter 1, "Introduction, Abbreviations And Definitions," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 17A.3 and 231.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 231.4.

Purpose and Summary

This rule amendment satisfies the requirements of HF 2451. It also eliminates duplication of definitions referenced in Code or Administrative Rule and continues movement toward the creation of a single and comprehensive chapter of definitions applicable to all chapters within the Department's rules.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department on Aging for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department on Aging no later than 4:30 p.m. on . Comments should be directed to:

Angela Van Pelt
Iowa Department on Aging
Jessie Parker Building
510 E 12th Street, Ste.2
Des Moines, Iowa 50319
Phone: 515.210.2114
Email: angela.vanpelt@iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)"b," an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

17—1.5 (231) Definitions. Words and phrases used in rules under agency number 17 are defined as below unless defined and used differently in the various chapters under the department's jurisdiction. The appearance of an acronym after a defined term indicates that the definition was taken from that source.

"Access" means the term described in Iowa Code section 231.42 and includes access to long-term care facilities, assisted living programs, elder group homes, residents, tenants, medical records, social records, and administrative records.

"Accessible" means without physical, cultural, financial, or psychological barriers to service.

"Act" or "federal act" or "OAA" means the Older Americans Act, 42 U.S.C. § 3001 et seq.

"Administration costs" means all direct and indirect costs incurred by a grantee in managing a grant, including but not limited to all audit and board expenses incurred in the support of an area agency on aging director.

"Administration on Aging" or "AOA" means the federal agency established to administer the provisions of the Act.

~~*"Administrative action"* means an action or decision made by an owner, employee, or agent of a long-term care facility, or by a governmental agency, which affects the service provided to residents of long-term care facilities.~~

"ADRC coordination center" means an entity designated by the department that carries out duties and functions as mandated in rule promulgated by the department.

"ADRC local access point" means an entity designated by an ADRC coordination center that carries out duties and functions as mandated in rules promulgated by the department.

"Aggrieved party" means an individual or organization that alleges that the individual's or organization's rights have been denied by action of the department, AAA or AAA subcontractor.

"Aging and disability resource center" or "ADRC" means the same as "Aging and Disability Resource Center" as defined in the federal Act.

"Area agency on aging," "area agency" or "AAA" means the grantee agency(ies) designated by the commission in a planning and service area to develop and administer the multiyear area plan for a comprehensive and coordinated system of services for elders and to carry out the duties specified in Iowa Code chapter 231 and rules promulgated by the department on aging. These terms may be interpreted as either singular or plural form as determined by context.

"Area plan" or "multiyear area plan" means a document that is developed in accordance with forms or in a format prescribed by the department and that is submitted to the department every two to four years, with annual updates, by an AAA in order to receive federal funding and other support through the department.

~~*"Certified volunteer long-term care ombudsman" or "certified volunteer"* means a volunteer who has successfully completed all requirements and received certification from the office of the state long-term care ombudsman.~~

"Civil penalty" means a civil money penalty not to exceed the amount authorized under Iowa Code section 231.42.

"Cognitive disorder" means a disorder characterized by cognitive dysfunction presumed to be the result of illness that does not meet criteria for dementia, delirium, or amnesic disorder.

~~*"Commission"* means the commission on aging.~~

"Complaint" means a report of an alleged violation of requirements of federal and state laws, rules or regulations, or a report of practices and procedures related to admission or to an individual's

entitlement to care and services under federal and state laws and regulations.

"Comprehensive and coordinated system" means a system for providing all necessary supportive services, including nutrition services, in a manner designed to:

1. Facilitate accessibility to and utilization of all supportive and nutrition services provided within the geographic area served by the system by any public or private agency or organization.
2. Develop and make the most efficient use of supportive services and nutrition services to meet the needs of older individuals with a minimum of duplication.
3. Use available resources efficiently and with a minimum of duplication; and
4. Encourage and assist public and private entities that have unrealized potential for meeting the service needs of older individuals to assist the elders on a voluntary basis.

"Continuum of care" means a full range of economic, physical, psychological, social and support programs and services necessary to maintain or restore older individuals to their optimal environment.

"Contract" means an agreement between two or more persons which creates an obligation to do or not to do a permissible or an impermissible action. Its essentials are competent parties, subject matter, legal consideration, mutuality of agreement and mutuality of obligation.

"Dementia" means an illness characterized by multiple cognitive deficits which represent a decline from previous levels of functioning and include memory impairment and one or more of the following cognitive disturbances: aphasia, apraxia, agnosia, and disturbance in executive functioning.

"Dementia-specific" means a program certified under the law and regulations governing the particular program which either serves five or more persons with dementia between Stages 4 and 7 on the Global Deterioration Scale or holds itself out as providing specialized care for persons with a cognitive disorder or dementia, such as Alzheimer's disease, in a dedicated setting.

~~*"Department on aging"* or *"department"* means the sole state agency responsible for administration of the Older Americans Act and Iowa Code chapters 231 and 231E and other applicable laws or rules.~~

"Dietitian" or *"licensed dietitian"* means a person who maintains a license granted by the Iowa board of dietetic examiners.

"Direct costs" means those costs that can be identified specifically with a particular final cost objective.

~~*"Director"* means the director of the Iowa department on aging.~~

"Disability" (OAA) means (except when such term is used in the phrase "severe disability," "developmental disabilities," "physical and mental disability," "physical and mental disabilities," or "physical disabilities") a disability attributable to mental or physical impairment, or a combination of mental or physical impairments, that results in substantial functional limitations in one or more of the following areas of major life activity: (1) self-care, (2) receptive and expressive language, (3) learning, (4) mobility, (5) self-direction, (6) capacity for independent living, (7) economic self-sufficiency, (8) cognitive functioning, and (9) emotional adjustment.

"Elder abuse" (OAA) means abuse, neglect, or exploitation of an older individual (elder) including the willful:

1. Infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish; or
2. Deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness.

"Eligible individual" means any person who meets the federal definition of this term for the program being utilized.

"Exploitation" (OAA or 235B; dependent on the rule content, the source of the appropriate definition will be referenced in the individual chapter) means:

1. (OAA) The illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary or personal benefit, profit, or gain; or

2. "Exploitation" as defined in Iowa Code chapter 235B.

"Fiscal year" or "FY" means the state fiscal year, July 1 through June 30, numbered according to the year in which the fiscal year ends.

"Focal point" means a facility established to encourage the maximum collocation and coordination of services for older individuals.

"Frail" (AOA Title III-D) means having a physical or mental disability, including Alzheimer's disease or a related disorder with neurological or organic brain dysfunction, that restricts the ability of an individual to perform normal daily tasks or that threatens the capacity of an individual to live independently.

"Grantee" means the legal entity to which a grant is awarded and which is accountable to the department for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the award document. The term "grantee" does not include any secondary recipients such as subgrantees or subcontractors that may receive funds from a grantee pursuant to a grant.

"Greatest economic need" means the need resulting from an income level at or below the official poverty line.

"Greatest social need" means the need caused by noneconomic factors, which include physical and mental disabilities, language barriers, and cultural, geographic or social isolation including isolation caused by racial or ethnic status, that restrict an individual's ability to perform normal daily tasks or that threaten the older individual's capacity to live independently.

"Grievance" means a report of an administrative action alleged to affect tenants or participants in an adverse manner.

"Indirect costs" means those costs that are: (1) incurred for a common or joint purpose benefiting more than one cost objective, and (2) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved.

"In-home services" means:

1. Services of homemakers and home health aides;
2. Visiting and telephone reassurance;
3. Chore maintenance;
4. In-home respite care for families, and adult day care as a respite service for families;
5. Minor modification of homes that is necessary to facilitate the ability of older individuals to remain at home and that is not available under another program (other than another program carried out under the Act);
6. Personal care services; and
7. Other in-home services as defined by the IDA in the state plan submitted in accordance with Section 307 of the Act and by the AAA in the area plan submitted in accordance with Section 306 of the Act.

"Instrumental activities of daily living" or "IADL" means those activities that reflect the older individual's ability to perform household and other tasks necessary to meet the older individual's needs within the community, which may include but are not limited to shopping, housekeeping, chores, and traveling within the community.

"Legal assistance" means provision of legal advice, counseling and representation by an attorney or other person acting under the supervision of an attorney.

"Legal representative" means a person appointed by the court to act on behalf of a participant or tenant, or a person acting pursuant to a power of attorney.

"Local sources" means the equivalent cash value of third-party in-kind contributions (e.g., property

or services which benefit a grant-supported project or program and which are contributed by nonfederal third parties without a charge to the grantee or subgrantee under the grant or subgrant) and cash resources, or both, made available by local sources (e.g., local public funds, other local cash, and program income) representing that portion of the costs of a project or program receiving funds from state appropriations.

~~“Long-term care facility” means a long-term care unit of a hospital, a licensed hospice program, a foster group home, a group living arrangement, or a facility licensed under Iowa Code section 135C.1 whether the facility is public or private.~~

~~“Long-term care ombudsman program” or “office of the state long-term care ombudsman” means the statewide long-term care ombudsman program operated by the department on aging pursuant to the federal Act and Iowa Code chapter 231.~~

“National Aging Program Information System” or “NAPIS” means the reporting system in which the Older Americans Act requires participation by providers receiving funding from the provisions of the Act.

“Neglect” (OAA) means the failure:

1. To provide for oneself the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness; or
2. Of a caregiver to provide the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness.

“Nurse-delegated assistance” means those delegated tasks or activities for which a professional nurse has assumed responsibility for assessing, planning, implementing, or evaluating, and for which the nurse remains legally accountable.

“Nutrition Services Incentive Program” or “NSIP” means the Nutrition Services Incentive Program established under the Older Americans Act.

“Older Americans Act” or “OAA” means the same as “Act” defined herein.

“Older individual” means a person aged 60 or older.

~~“Options counseling” means the service of providing an interactive process whereby individuals receive guidance in their deliberations to make informed choices about long-term supports. The process is directed by the individual and may include others whom the individual chooses or those who are legally authorized to represent the individual. Options counseling may include but is not limited to the following: (1) a personal interview and assessment to discover strengths, values, and preferences of the individual and screenings for entitlement program eligibility, (2) a facilitated decision-making process which explores resources and service options and supports the individual in weighing pros and cons, (3) developing action steps toward a goal or a long-term support plan and assistance in applying for and accessing support options, and (4) follow-up to ensure supports and decisions are assisting the individual.~~

“Options counselor” means the person(s) responsible for providing the service of options counseling.

“Person” means the same as that defined in Iowa Code section 4.1(20).

“Planning and service area” or “PSA” means a geographic area of the state that is designated by the commission for purposes of planning, development, delivery and overall administration of services under a multiyear area plan. “PSA” may be interpreted as either singular or plural dependent on context.

“Plan of correction” means a plan developed by an area agency on aging and approved by the department which describes the actions the area agency on aging shall take to correct deficiencies arising from the agency’s failure to perform and specifies the date by which those deficiencies shall be corrected.

“Priority services” means access services (including case management, transportation, outreach, and information and assistance), in-home services, and legal assistance services.

"Program income" or *"contributions"* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award. Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under state-funded or federally funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Except as otherwise provided in the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, or discounts or interest earned on any of them. Furthermore, program income does not include taxes, special assessments, levies, and fines raised by governmental recipients.

"Provider" means any person, company, firm, association or other legal entity that provides services as delineated in any chapter under agency number 17.

"Public or private nonprofit service provider" means any government agency or private organization certified to be nonprofit by the U.S. Internal Revenue Service or an agency which was established pursuant to Iowa Code chapter 28E or chapter 504A and is composed solely of public agencies or governmental units as defined in those chapters.

~~*"Resident"* means any person residing in a long-term care facility and shall also include individuals seeking admission to a long-term care facility.~~

"Routine" means regular, customary or not occasional or intermittent.

"Therapeutic diet" means meals served that are soft, low-fat, low-sodium or controlled calorie.

"Title III" means Title III of the federal Act for state and community programs on aging.

1. "Title III-B" means requirements and funding for supportive services.
2. "Title III-C" means requirements and funding for nutrition services.
3. "Title III-C(1)" means requirements and funding for congregate nutrition services.
4. "Title III-C(2)" means requirements and funding for home-delivered nutrition services.
5. "Title III-D" means requirements and funding for disease prevention and health promotion.
6. "Title III-E" means requirements and funding for the National Family Caregiver Support program.

"Title V" means Title V of the federal Act for the Senior Community Service Employment Program for Older Americans.

"Title VII" means Title VII of the federal Act for allotments for vulnerable elder rights protection activities.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 0619C, IAB 3/6/13, effective 4/10/13; ARC 0742C, IAB 5/15/13, effective 6/19/13; ARC 1532C, IAB 7/9/14, effective 8/13/14]

AGING, DEPARTMENT ON[17]

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Notice of Intended Action

Proposing rule making related to _____ and providing an opportunity for public comment.

The Aging, Department on hereby proposes to amend Chapter 2, "Department On Aging," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 17A.3 and 231.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 231.53.

Purpose and Summary

This rule includes SCSEP subgrantees as an aggrieved party in the Departments complaint and appeal procedures as required by Federal guidelines. This was identified as an issue in a recent federal review of the SCSEP program.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Iowa Department on Aging for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Iowa Department on Aging no later than 4:30 p.m. on . Comments should be directed to:

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)"b," an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested

persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

17—2.9 (231) Department complaint and appeal procedures.

2.9(1) *Aggrieved party identified.* An aggrieved party is any agency, organization, or individual that alleges that the party's rights have been denied or that services provided were not in compliance with regulations or were substandard because of an action of the department, the commission on aging, an AAA ~~or~~ an AAA subcontractor, or a SCSEP subgrantee.

2.9(2) *Complaints or appeals to the department from the AAA or SCSEP subgrantee level.*

a. Except in cases where an AAA is acting in its capacity as a Medicaid provider, complaints at the AAA or SCSEP subgrantee level by any aggrieved party shall be heard first by the AAA or SCSEP subgrantee using the AAA's or SCSEP subgrantee's procedures.

b. Local complaint procedures of an AAA ~~or~~ an AAA subcontractor or SCSEP subgrantee shall be exhausted before the department on aging is contacted.

2.9(3) *Requests for an informal review or a contested case hearing.*

a. Informal review. An aggrieved party or a party appealing an AAA or SCSEP subgrantee-level decision has 30 calendar days from receipt of written notice of action from the AAA, SCSEP subgrantee, or the department to request an informal review by the department or a contested case hearing.

(1) Any person who desires to pursue an informal settlement of any complaint may request a meeting with appropriate department staff. The request shall be in writing and shall be delivered to the Director, Department on Aging, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319.

(2) The request must contain the subject matter(s) of the complaint and an explanation of all steps taken to resolve the matter prior to requesting an informal review.

(3) Upon receipt of the request for informal review, all formal contested case proceedings, if begun, are stayed.

(4) The department may, as a result of the informal review, negotiate a settlement of the complaint or, if appropriate, may send the matter back to the AAA or SCSEP subgrantee for reconsideration.

(5) Parties desiring informal settlement shall set forth in writing the various points of a proposed settlement, which may include a stipulated statement of facts.

(6) When signed by the parties to a controversy, a proposed settlement shall represent final disposition of the matter in place of contested case proceedings, which shall be terminated.

(7) If the parties are unable to reach agreement during the informal review, the matter may, if requested, be handled by the department as a request for a contested case proceeding under Iowa Code chapter 17A and 17—Chapter 13.

(8) A proposed settlement which is not accepted or signed by the parties shall not be admitted as evidence in the record of a contested case proceeding.

b. Contested case proceeding.

(1) Within 15 calendar days of receipt of a request for a contested case hearing, the department shall initiate a contested case proceeding under 17—Chapter 13.

(2) If the controversy is a matter that is subject to a contested case proceeding under Iowa Code chapter 17A, parties may request a contested case proceeding at the conclusion of an unresolved informal review pursuant to 17—Chapter 13.

2.9(4) *Appeal by applicants denied designation as a planning and service area.* Any applicant for designation as a planning and service area whose application is denied and who has been provided a hearing by the department on aging and has received a written appeal decision by the commission may appeal the denial to the assistant secretary of the Administration on Aging in writing within 30 calendar days of receipt of the commission's decision.

2.9(5) *Judicial review.* A party that seeks judicial review shall first exhaust all administrative remedies as follows:

a. A party shall appeal the decision of the administrative law judge as provided in subrule 2.9(4) and receive a decision from the commission as provided in subrule 2.9(4).

b. Petition for judicial review of the commission's decision shall be filed within 30 calendar days after the decision is issued.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

AGING, DEPARTMENT ON[17]

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Notice of Intended Action

Proposing rule making related to _____ and providing an opportunity for public comment.

The Aging, Department on hereby proposes to amend Chapter 4, "Department Planning Responsibilities," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 17A.3 and 231.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 231.32.

Purpose and Summary

This rule amendment satisfies the requirements of HF 2451 and eliminates unnecessary language that exists currently in the Federal Older Americans Act and Iowa Code Chapter 231, regarding qualifications of an Area Agency on Aging.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department on Aging for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department on Aging no later than 4:30 p.m. on . Comments should be directed to:

Angela Van Pelt
Iowa Department on Aging
Jessie Parker Building
510 E 12th Street, Ste.2
Des Moines, Iowa 50319
Phone: 515.210.2114
Email: angela.vanpelt@iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)"b," an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

4.4(3) *Qualifications to serve.* Any entity applying for designation as an area agency on aging must have the capacity to perform all functions of an area agency on aging as outlined in the Older Americans Act and Iowa Code chapter 231. ~~An area agency on aging shall be any one of the following:~~

- ~~a. An established office of aging operating within a planning and service area;~~
- ~~b. Any office or agency of a unit of general purpose local government, which is designated to function only for the purpose of serving as an area agency on aging by the chief elected official of such unit;~~
- ~~c. Any office or agency designated by the appropriate chief elected officials of any combination of units of general purpose local government to act only on behalf of such combination for such purpose;~~
- ~~d. Any public or nonprofit private agency in a planning and service area, or any separate organizational unit within such agency, which for designation purposes is under the supervision or direction of the department and which can and will engage only in the planning or provision of a broad range of supportive services or nutrition services within such planning and service area; or~~
- ~~e. Any other entity authorized by the Older Americans Act.~~

AGING, DEPARTMENT ON[17]

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Notice of Intended Action

Proposing rule making related to _____ and providing an opportunity for public comment.

The Aging, Department on hereby proposes to amend Chapter 6, "Area Agency On Aging Planning And Administration," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 17A.3 and 231.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 231.33.

Purpose and Summary

This rule amendment satisfies the requirements of HF 2451 and eliminates the reference to use of subgrants by Area Agencies on Aging to maintain compliance with the Older Americans Act.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Iowa Department on Aging for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Iowa Department on Aging no later than 4:30 p.m. on . Comments should be directed to:

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The following rule-making action is proposed:

17—6.11 (231) Contracts and subgrants.

6.11(1) A contract or agreement between an AAA and a provider of a specific service in the PSA shall not restrict the AAA from contracting with other provider(s) of similar services.

6.11(2) Contract file. AAA shall maintain a file of all current contracts with service-providing agencies or organizations. These files shall be made available for monitoring and assessment by the department.

6.11(3) Contracts with for-profit organizations. An AAA must request prior approval from the department of any proposed service contracts with for-profit organizations under an area plan.

a. A separate approval request, using the request form provided by the department, shall be filed for each contract between the AAA and a provider for a service that is proposed to be delivered by a for-profit organization.

(1) The request for approval shall be submitted to the department at least 30 days prior to the signing of the contract.

(2) All applicants to provide services for which the contract is proposed shall be listed on the request form.

b. The department may approve the contracts only if the AAA demonstrates that the for-profit organization can provide services that are in compliance with the Older Americans Act and consistent with the goals of the AAA as stated in the area plan.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 1534C, IAB 7/9/14, effective 8/13/14]

AGING, DEPARTMENT ON[17]

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Notice of Intended Action

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The Aging, Department on hereby proposes to amend Chapter 8, "Long-Term Care Ombudsman," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 17A.3 and 231.42.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 231.44.

Purpose and Summary

These rules are required under HF 2460 which directed the Office of the State Long-Term Care Ombudsman (OSLTCO) adopt rules that relate to the OSLTCO's new managed care ombudsman program.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Iowa Department on Aging for a waiver of the discretionary provisions, if any.

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The following rule-making action is proposed:

CHAPTER 8
LONG-TERM CARE OMBUDSMAN
[Prior to 5/20/87, see Aging, Commission on the[20] rules 4.2 and 9.6]
[Prior to 1/27/10, see Elder Affairs Department[321] Ch 8]

17—8.1(231) Purpose. This chapter establishes procedures for notice and appeal of penalties imposed for interference with the official duties of a long-term care ombudsman, which are established in Iowa Code sections 231.42 and 231.45 and in accordance with Section 712 of the Older Americans Act. This chapter also establishes criteria for serving under the certified volunteer long-term care ombudsman program. The long-term care ombudsmen investigate complaints related to the actions or inactions of long-term care providers that may adversely affect the health, safety, welfare, or rights of residents and tenants who reside in long-term care facilities, assisted living programs, and elder group homes. In addition, this chapter establishes the process for representatives of the office who are local long-term care ombudsman performing managed care ombudsman services to provide assistance and advocacy related to long-term supports and services under the Medicaid program.
[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 8939B, IAB 7/14/10, effective 7/1/10; ARC 1535C, IAB 7/9/14, effective 8/13/14]

17—8.2(231) Interference.

8.2(1) A local long-term care ombudsman or certified volunteer long-term care ombudsman who is denied access to a resident or tenant in a long-term care facility, assisted living program, or elder group home or to medical and social records while in the course of conducting official duties pursuant to Iowa Code section 231.42 or whose work is interfered with during the course of an investigation shall report such denial or interference to the office of the state long-term care ombudsman, who will report the interference to the director of the department on aging.

8.2(2) Access to facility records. Copies of a resident's medical or social records maintained by the facility, or other records of a long-term care facility, assisted living program, or elder group home, may be made with the permission of the resident, the resident's responsible party, or the legal representative of the resident. All medical and social records shall be made available to a certified volunteer long-term care ombudsman for review if:

- a. The certified volunteer long-term care ombudsman has written permission from the resident, the legal representative of the resident, or the responsible party; and
- b. Access to the records is necessary to investigate a complaint; and
- c. The certified volunteer long-term care ombudsman obtains approval of the state long-term care ombudsman or designee.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 8939B, IAB 7/14/10, effective 7/1/10; ARC 9349B, IAB 2/9/11, effective 3/16/11; ARC 1535C, IAB 7/9/14, effective 8/13/14]

17—8.3(231) Monetary civil penalties—basis. The director, in consultation with the state long-term care ombudsman, may impose a monetary civil penalty of not more than \$1,500 on an officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home who intentionally prevents, interferes with, or attempts to impede the duties of the state, a local, or a certified volunteer long-term care ombudsman. If the director imposes a penalty for a violation under this rule, no other state agency shall impose a penalty for the same interference violation.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 8939B, IAB 7/14/10, effective 7/1/10; ARC 9349B, IAB 2/9/11, effective 3/16/11; ARC 1535C, IAB 7/9/14, effective 8/13/14]

17—8.4(231) Monetary civil penalties—notice of penalty. The department on aging shall notify the officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home in writing by certified mail of the intent to impose a civil penalty. The notice shall include, at a minimum, the following information:

1. The nature of the interference and the date the action occurred.
2. The statutory basis for the penalty.
3. The amount of the penalty.
4. The date the penalty is due.
5. Instructions for responding to the notice, including information on the individual's right to appeal.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 8939B, IAB 7/14/10, effective 7/1/10; ARC 1535C, IAB 7/9/14, effective 8/13/14]

17—8.5(231) Monetary civil penalties—appeals. An officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home who is assessed a monetary civil penalty for interference with the official duties of a long-term care ombudsman may appeal the penalty by informing the department of the intent to appeal in writing within ten days after receiving a notice of penalty. Appeals shall follow the procedures set forth in 17—Chapter 13.

[ARC 8939B, IAB 7/14/10, effective 7/1/10; ARC 1535C, IAB 7/9/14, effective 8/13/14]

17—8.6(231) Certified volunteer long-term care ombudsman program.

8.6(1) Application. Any individual may apply to the office of the state long-term care ombudsman program to become a certified volunteer long-term care ombudsman.

a. Application forms. Application forms may be obtained from the office of the state long-term care ombudsman program at the department on aging address listed in 17—subrule 2.3(2) or from other organizations designated by the department.

b. Submission of forms. Each applicant shall complete an application and submit it to the department address listed in 17—subrule 2.3(2).

8.6(2) Conflict of interest.

a. Prior to certification, applicants for the certified volunteer long-term care ombudsman program must not have a conflict of interest or have had a conflict of interest within the past two years in accordance with the Older Americans Act. A conflict of interest shall be defined as:

(1) Employment of the applicant or a member of the applicant's immediate family within the previous year by a long-term care facility or by the owner or operator of any long-term care facility;

(2) Current participation in the management of a long-term care facility by the applicant or a member of the applicant's immediate family;

(3) Current ownership or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility or long-term care service by the applicant or a member of the applicant's immediate family;

(4) Current involvement in the licensing or certification of a long-term care facility or provision of a long-term care service by the applicant or a member of the applicant's immediate family;

(5) Receipt of remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility by the applicant or a member of the applicant's immediate family;

(6) Acceptance of any gifts or gratuities from a long-term care facility or a resident or a resident's representative;

(7) Acceptance of money or any other consideration from anyone other than the office of the state long-term care ombudsman for the performance of an act in the regular course of long-term care;

(8) Provision of services while employed in a position with duties that conflict with the duties of a certified volunteer long-term care ombudsman;

(9) Provision of services to residents of a facility in which a member of the applicant's immediate family resides; or

(10) Participation in activities which negatively affect the applicant's ability to serve residents or which are likely to create a perception that the applicant's primary interest is other than as an advocate for the residents.

b. Immediate family shall be defined as father, mother, son, daughter, brother, sister, aunt, uncle, first cousin, nephew, niece, wife, husband, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepbrother, stepchild, stepsister, half sister, half brother, grandparent or grandchild.

8.6(3) Applicants shall not be accepted into the program if:

a. It is determined that the applicant has a conflict of interest as listed in subrule 8.6(2); or

b. The applicant has unfavorable references, which shall include a DCI criminal background check and abuse check;

c. The applicant lives in any part of a continuing care retirement community, or any housing owned by the long-term care facility in which the volunteer would function.

8.6(4) Training. Prior to certification, applicants must successfully complete the required training as approved by the office of the state long-term care ombudsman. Successful completion shall be defined as completion of all assignments and tasks during training, demonstration of proper techniques and skills, and an understanding of the role of the certified volunteer long-term care ombudsman in the long-term care setting. The applicant shall complete a minimum of 12 hours of approved training, which shall include, but not be limited to:

- a. History and overview of resident's advocate/ombudsman program;
- b. Terminology;
- c. Resident rights;
- d. State and federal law, rules and regulations regarding long-term care facilities;
- e. Regulatory process in long-term care facilities;
- f. Aging process, common medical conditions and terminology;
- g. Life in a long-term care facility and culture change;
- h. Communication skills;
- i. Confidentiality;
- j. Problem solving and documentation, and follow-up of complaints;
- k. Dynamics of abuse and neglect;
- l. Ethics; and
- m. Resources for certified volunteer long-term care ombudsmen.

8.6(5) Approval for certification. Final approval for certification as a certified volunteer long-term care ombudsman shall be made by the office of the state long-term care ombudsman and shall be subject to the applicant's successful completion of the required training and to a favorable report from the instructor. The office of the state long-term care ombudsman has the right to require that the applicant receive additional personal training prior to certification and has the right to deny certification to applicants not meeting the above training criteria.

8.6(6) Certification.

- a. Notification. A certified volunteer long-term care ombudsman shall be notified in writing within 14 days following the conclusion of the training program if certification has been continued or revoked.
- b. Certification shall initially be for one year, with recertification available following the certified volunteer's completion of a minimum of ten hours of approved continuing education in the first year and completion of a progress review by the office of the state long-term care ombudsman.
- c. After the certified volunteer's successful completion of one year as a certified volunteer long-term care ombudsman, the office of the state long-term care ombudsman may recertify the certified volunteer for a two-year period.

8.6(7) Continuing education.

a. All certified volunteer long-term care ombudsmen shall complete a minimum of ten hours of continuing education the first year and a minimum of six hours of continuing education each year thereafter. Continuing education may include, but is not limited to:

- (1) Scheduled telephone conference calls with representatives from the office of the state long-term care ombudsman program;
- (2) Governor's conference on aging;
- (3) Area Alzheimer's disease conferences;
- (4) Elder abuse conferences;
- (5) Courses related to aging conducted by a local community college or university or via the Internet;
- (6) Other events as approved in advance by the office of the state long-term care ombudsman.

b. Certified volunteer long-term care ombudsmen are responsible for reporting continuing education hours to the office of the state long-term care ombudsman or designee within 30 days following the completion of the continuing education event.

8.6(8) Contesting an appointment. A provider who wishes to contest the appointment of a certified volunteer shall do so in writing to the office of the state long-term care ombudsman. The final

determination shall be made by the office of the state long-term care ombudsman within 30 days after receipt of notification from the provider.

8.6(9) Certification revocation.

a. Reasons for revocation. A certified volunteer long-term care ombudsman's certification may be revoked by the office of the state long-term care ombudsman for any of the following reasons: falsification of information on the application, breach of confidentiality, acting as a certified volunteer long-term care ombudsman without proper certification, attending less than the required continuing education training, voluntary termination, unprofessional conduct, failure to carry out the duties as assigned, or actions which are found by the office of the state long-term care ombudsman to violate the rules or intent of the program.

b. Notice of revocation. The office of the state long-term care ombudsman shall notify the certified volunteer and the facility in writing of a revocation of certification.

c. Request for reconsideration. A request for reconsideration or reinstatement of certification may be made in writing to the office of the state long-term care ombudsman. The request must be filed within 14 days after receipt of the notice of revocation.

d. Response time. The office of the state long-term care ombudsman shall investigate and consider the request and notify the requesting party and the facility of the decision within 30 days of receipt of the written request.

8.6(10) Access.

a. Visits to facilities. A certified volunteer long-term care ombudsman may enter any long-term care facility without prior notice. After notifying the person in charge of the facility of the certified volunteer long-term care ombudsman's presence, the certified volunteer long-term care ombudsman may communicate privately and without restriction with any resident who consents to the communication.

b. Visits to resident's living area. The certified volunteer long-term care ombudsman shall not observe the private living area of any resident who objects to the observation.

8.6(11) Duties. The certified volunteer long-term care ombudsman shall assist the office of the state long-term care ombudsman or designee in carrying out the duties described in the Older Americans Act. Primary responsibilities of a certified volunteer long-term care ombudsman shall include:

a. Conducting initial inquiries regarding complaints registered with the office of the state long-term care ombudsman;

b. At the request of the office of the state long-term care ombudsman or designee, providing follow-up visits on cases investigated by the office of the state long-term care ombudsman or designee;

c. Attending, assisting with, or providing technical assistance to resident and family council meetings as needed;

d. At the request of the office of the state long-term care ombudsman or designee, making follow-up visits to a facility after a department of inspections and appeals survey or complaint investigation to monitor the progress and changes listed in the plan of correction or to monitor the correction of deficiencies;

e. Tracking, monitoring and following up on publicly available information regarding facility performance;

f. Identifying concerns in a facility;

g. Completing all reports and submitting them to the office of the state long-term care ombudsman in a timely manner; and

h. Completing exit interviews when the certified volunteer ombudsman resigns.

8.7 Managed Care Ombudsman Program

8.7(1) The Office of the Long-Term Care Ombudsman may provide advocacy and assistance to eligible recipients, or the families or legal representatives of such eligible recipients of long-term services and supports provided through the Medicaid program who are receiving services in a long-term care facility or under one of the home and community based services waivers.

8.7(2) Representatives of the office of long-term care ombudsman providing an individual with assistance and advocacy services authorized under Iowa Code 231.44 shall be provided access to the individual, and shall be provided access to the individual's medical, social and administrative records related to the provision of the long-term supports and services and supports to the

individual, as authorized by the individual or the individual's legal representative, as necessary to carry out the duties specified by Iowa Code 231.44.

8.7(3) The office of long-term care ombudsman and representatives of the office, when providing assistance and advocacy services under Iowa Code 231.44, shall be considered a health oversight agency as defined in 45 CFR § 164.501 for the purposes of health oversight activities described in 45 CFR §164.512(d). Recipient information available to the office of long-term care ombudsman and representatives of the office under this subsection shall be limited to the recipient's protected health information as defined in 45 CFR §160.103 for the purpose of recipient case resolution.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 8939B, IAB 7/14/10, effective 7/1/10; ARC 1535C, IAB 7/9/14, effective 8/13/14; ARC 3714C, IAB 3/28/18, effective 5/2/18]

These rules are intended to implement Iowa Code section 231.42.

[Filed 5/20/82, Notice 3/17/82—published 6/9/82, effective 7/14/82]

[Filed 11/5/82, Notice 7/21/82—published 11/24/82, effective 12/29/82]¹

[Filed emergency 12/17/82—published 1/5/83, effective 12/29/82]

[Filed 5/1/87, Notice 2/25/87—published 5/20/87, effective 6/24/87]²

[Filed emergency 8/20/87—published 9/9/87, effective 9/2/87]

[Filed 1/16/04, Notice 10/29/03—published 2/4/04, effective 3/10/04]

[Filed Emergency ARC 8489B, IAB 1/27/10, effective 1/7/10]

[Filed Emergency After Notice ARC 8939B (Notice ARC 8772B, IAB 5/19/10), IAB 7/14/10,
effective 7/1/10]

[Filed ARC 9349B (Notice ARC 9227B, IAB 11/17/10), IAB 2/9/11, effective 3/16/11]

[Filed ARC 1535C (Notice ARC 1425C, IAB 4/16/14), IAB 7/9/14, effective 8/13/14]

[Filed ARC 3714C (Notice ARC 3479C, IAB 12/6/17), IAB 3/28/18, effective 5/2/18]

¹ Effective date of subrule 20—4.2(1) delayed 70 days by the Administrative Rules Review Committee. (IAB 12/22/82).
Delay lifted by Committee on January 4, 1983.

² Effective date of Ch 8 delayed 70 days by the Administrative Rules Review Committee.

AGING, DEPARTMENT ON[17]

DRAFT ONLY: Dates herein may not comply with Schedule for Rule Making.

Notice of Intended Action

Proposing rule making related to _____ and providing an opportunity for public comment.

The Aging, Department on hereby proposes to rescind Chapter 10, "Older American Community Service Employment Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 17A.3 and 231.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 231.51.

Purpose and Summary

This amendment proposes to rescind and reserve 17--Chapter 10, which pertains to the Older American Community Service Employment Program. This program is a federal program and duplication in the Iowa Administrative Code is unnecessary.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Iowa Department on Aging for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Iowa Department on Aging no later than 4:30 p.m. on . Comments should be directed to:

Angela Van Pelt
Iowa Department on Aging
Jessie Parker Building
510 E 12th Street, Ste.2
Des Moines, Iowa 50319
Phone: 515.210.2114
Email: angela.vanpelt@iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Rescind and reserve 17—Chapter 10

AGING, DEPARTMENT ON[17]

DRAFT ONLY: Dates herein may not comply with Schedule for Rule Making.

Notice of Intended Action

Proposing rule making related to _____ and providing an opportunity for public comment.

The Aging, Department on hereby proposes to amend Chapter 22, "Office Of Substitute Decision Maker," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 17A.3 and 231.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 231E.

Purpose and Summary

This rule amendment implements the requirements in HF 2449, which made certain changes to Iowa Code Chapter 231E, which governs the Office of Public Guardian. Significant changes include changing the name of the office to Office of Public Guardian and removal of two categories of services, acting as attorney-in-fact under a Power or Attorney and acting as a personal representative in probate estates, from the list of services provided by the office. Clarifying changes include the eligibility criteria in the Administrative Code that were not the same as in Iowa Code and referring to the National Guardianship Association certification to the Center for Guardianship Certification.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Iowa Department on Aging for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Iowa Department on Aging no later than 4:30 p.m. on . Comments should be directed to:

Angela Van Pelt
Iowa Department on Aging
Jessie Parker Building
510 E 12th Street, Ste.2
Des Moines, Iowa 50319 *
Phone: 515.210.2114
Email: angela.vanpelt@iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

CHAPTER 22

OFFICE OF ~~SUBSTITUTE DECISION MAKER~~ PUBLIC GUARDIAN

[Prior to 1/27/10, see Elder Affairs Department[321] Ch 22]

17—22.1(231E,633) Purpose. This chapter implements the office of ~~substitute decision maker~~ public guardian as created in Iowa Code chapter 231E and establishes standards and procedures for those appointed as ~~substitute decision makers~~ public guardians. It also establishes the qualifications of consumers eligible for services.
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—22.2(231E,633) Definitions. Words and phrases used in this chapter are as defined in 17—Chapter 1 unless the context indicates otherwise. The following definitions also apply to this chapter:

~~“Active” means assuming the role of attorney-in-fact upon the triggering event specified in a power of attorney document.~~

~~“Assessment” means a comprehensive, in-depth evaluation to identify an individual’s current situation, ability to function, strengths, problems, and care needs in the following major functional areas: physical health, medical care utilization, activities of daily living, instrumental activities of daily living, mental and social functioning, financial resources, physical environment, and utilization of services and support.~~

~~“Case opening” means the internal administrative process used by the state-local office in establishing a temporary or ongoing case, including, but not limited to: collecting and reviewing necessary financial, legal, medical or social history information pertaining to the consumer or the consumer’s estate; opening bank or other financial accounts on the consumer’s behalf; assigning substitute decision makers staff to perform substitute decision making public guardianship responsibilities for the consumer; collecting and receiving property of the consumer; creating files, summaries and other documents necessary for the management of the consumer or the consumer’s estate; and any other activities related to preparing for and assuming the responsibilities as a substitute decision maker public guardian.~~

~~“Consumer” as used in this chapter means any individual in need of receiving substitute decision making public guardianship services.~~

~~“Court” means the probate court having jurisdiction over the consumer.~~

~~“Department” means the department on aging established in Iowa Code section 231.21.~~

~~“Estate” means all property owned by the consumer including, but not limited to: all cash, liquid assets, furniture, motor vehicles, and any other tangible personal and real property.~~

~~“Fee” or “fees” means any costs assessed by the state office against a consumer or a consumer’s estate for substitute decision making public guardianship services, including monthly fees or a one-time case-opening fee for establishment of a case.~~

~~“Fiduciary” means the person or entity appointed as the consumer’s substitute decision maker and includes a person or entity acting as personal representative, guardian, conservator, representative payee, attorney-in-fact or trustee of any trust.~~

~~“Financial hardship” means a living consumer who has a total value in liquid assets below \$6,500; or the consumer’s estate proving otherwise inadequate to obtain or provide for physical or mental care or treatment, assistance, education, training, sustenance, housing, or other goods or services vital to the well-being of the consumer or the consumer’s dependents.~~

~~“Inventory” means a detailed list of the estate.~~

~~“Liquid assets” means the portion of a consumer’s estate comprised of cash, negotiable instruments, or other similar property that is readily convertible to cash and has a readily ascertainable fixed value, including but not limited to: savings accounts, checking accounts, certificates of deposit, money market accounts, corporate or municipal bonds, U.S. savings bonds, stocks or other negotiable securities, and mutual fund shares.~~

~~“Local office” means a local office of public guardian.~~

~~“Local public guardian” means an individual under contract with the department to act as a guardian, conservator, or representative payee.~~

~~“Net proceeds” means the value of the property at the time of sale minus taxes, commissions and other necessary expenses.~~

~~“Program” means the services offered by the office of substitute decision maker public guardian.~~

~~“Public guardian” means the state public guardian or a local public guardian.~~

~~“Record” means any information obtained by the state or local office in the performance of its duties.~~

~~“State office” means the state office of public guardian.~~

~~“State public guardian” means the administrator of the state office of public guardian.~~

~~“Substitute decision maker” or “SDM” means a person providing substitute decision making services pursuant to Iowa Code chapter 231E.~~

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—22.3(231E,633) Substitute decision maker Public guardian qualifications. All SDMs public guardians shall have

graduated from an accredited four-year college or university and shall be certified by the ~~National Guardianship Association~~ Center for Guardianship Certification within 12 months of assuming duties as an ~~SDM~~ public guardian. This certification shall be kept current while the person is serving as an ~~SDM~~ public guardian.
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—22.4(231E,633) Ethics and standards of practice. The state office adopts the National Guardianship Association Standards of Practice adopted in 2000, including any subsequent amendments thereto, as a statement of the best practices and the highest quality of practice for persons serving as guardians or conservators. The adoption of standards of practice in this document is not intended to amend or diminish the statutory scheme, but rather to supplement and enhance the understanding of the statutory obligations to be met by ~~public guardians~~ the SDM when serving as an ~~a SDM~~ public guardian. Subsequent to appointment to serve a consumer, the ~~SDM~~ public guardian shall perform all duties imposed by the court or other entity having jurisdiction and imposed by applicable law and, as appropriate, shall utilize standards found in the most current edition of the National Guardianship Association Standards of Practice.
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—22.5(231E,633) Staffing ratio. ~~SDMs~~ Local offices shall be responsible for no more than 40 consumers per full-time equivalent position at any one time. The state office shall notify the state court administrator when the maximum number of appointments is reached by a local office.

22.5(1) In its sole discretion, if the state office determines that due to the complexity of current cases ~~SDMs~~ a local office would have significant difficulty meeting the needs of consumers, the state office may choose to temporarily suspend acceptance of appointments. The state office shall notify the state court administrator of the suspension of services.

22.5(2) In the state office's sole discretion, ~~the SDM~~ a local office may exceed staffing ratios under the following circumstances:

- a. A priority situation exists as defined in subrule 22.7(2), and
- b. Acceptance of case(s) will not adversely affect services to current consumers.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 3484C, IAB 12/6/17, effective 1/10/18]

17—22.6(231E,633) Conflict of interest—state office. A conflict of interest arises when the ~~SDM~~ public guardian has any personal or agency interest that is or may be perceived as self-serving or adverse to the position or best interest of the consumer. When assigning a consumer to an ~~SDM~~ public guardian, all reasonable efforts shall be made to avoid an actual conflict of interest or the appearance of a conflict of interest.

22.6(1) The assigned ~~SDM~~ public guardian shall not:

- a. Provide direct services to the consumer receiving ~~substitute decision-making~~ public guardianship services;
- b. Have an affiliation with or financial interest in the consumer's estate;
- c. Employ friends or family to provide services to the consumer for a fee; or
- d. Solicit or accept incentives from service providers.

22.6(2) The ~~SDM~~ public guardian shall be independent from all service providers, thus ensuring that the ~~SDM~~ public guardian remains free to challenge inappropriate or poorly delivered services and to advocate on behalf of the consumer.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—22.7(231E,633) Consumers—Individuals eligible for services. The state office shall seek to restrict appointments to only those necessary. The state office will not accept an appointment based upon a voluntary petition.

22.7(1) In order to qualify for services, the ~~consumer~~ individual shall meet all of the following criteria:

- a. Is a resident of the state of Iowa;
- b. Is aged 18 or older;
- c. Does not have ~~a willing and responsible fiduciary to serve as an SDM~~ a suitable individual or appropriate entity willing and able to serve as guardian or conservator;
- d. Is ~~capable of benefiting from the services of an SDM~~ incompetent;
- e. ~~Receipt of SDM services is in the best interest of the consumer~~ Is an individual for whom guardianship or conservatorship services are the least restrictive means of meeting the individual's needs; and
- f. ~~No alternative SDM resources are available.~~

22.7(2) The following cases shall be given priority:

- a. Those involving abuse, neglect or exploitation;
- b. Those in which a critical medical decision must be made; or
- c. Any situation which may cause serious or irreparable harm to the consumer's mental or physical health or estate.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—22.8(231E,633) Application and intake process—guardianship, conservatorship, and representative payee and personal representative.

22.8(1) Any person may ~~request~~ submit an application for services on behalf of an individual believed to be in

need of public guardianship services. Applications are available through the state office. Completed applications shall be submitted to the Office of ~~Substitute Decision Maker~~ Public Guardian, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025. Incomplete applications will not be considered. Communication with the state office or local office or the submission of an application does not imply an appointment and does not create any type of fiduciary relationship between the state office and the ~~consumer~~ individual on whose behalf the application is submitted.

22.8(2) The state office shall make a determination regarding eligibility of the ~~consumer~~ individual and acceptance or denial of the case based on a review of the completed application.

22.8(3) The state office shall grant or deny an application for services as soon as practicable, but, in any event, shall do so within 60 days of receipt of the application.

22.8(4) Failure of the state office to grant or deny an application within the specified time period shall be deemed a denial of the application by the state office.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

~~17—22.9(231E,633) Application and intake process—power of attorney.~~

~~**22.9(1)** Any power of attorney that names the state office as attorney in fact is not effective unless the state office consents to such appointment.~~

~~**22.9(2)** Any person may request an application for services. Applications are available through the state office. Completed applications shall be submitted to the Office of Substitute Decision Maker, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025. Incomplete applications will not be considered. Communication with the state office or the submission of an application does not imply an appointment and does not create any type of fiduciary relationship between the state office and the consumer.~~

~~**22.9(3)** The state office shall make a determination regarding eligibility of the consumer and acceptance or denial of the case based on a review of the completed application.~~

~~**22.9(4)** The state office shall grant or deny an application for services as soon as practicable, but, in any event, shall do so within 60 days of receipt of the application.~~

~~**22.9(5)** Failure of the state office to grant or deny an application within the specified time period shall be deemed a denial of the application by the state office.~~

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

~~17—22.109(231E,633) Case records.~~

~~**22.109(1)** A case record must be established for each consumer. At a minimum, the case record must contain:~~

- ~~a. Copies of the assessments, medical records, and updates, if any;~~
- ~~b. A separate financial management folder containing an inventory, an individual financial management plan, a record of all financial transactions made on behalf of the consumer by the ~~SDM~~ public guardian, copies of receipts for all expenditures made by the ~~SDM~~ public guardian on behalf of the consumer, and copies of all other documents pertaining to the consumer's financial situation as required by the state office;~~
- ~~c. Itemized statements of costs incurred in the provision of services for which the ~~SDM~~ public guardian received court-authorized reimbursement directly from the consumer's estate; and~~
- ~~d. Other information as required by the state office.~~

~~**22.109(2)** All case records maintained by the ~~SDM~~ public guardian shall be confidential as provided in Iowa Code section ~~231E.4(6)~~ "g."~~

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

~~17—22.110(231E,633) Confidentiality.~~ Notwithstanding Iowa Code chapter ~~22~~, the following provisions shall apply to records obtained by ~~SDMs~~ public guardians in the course of their duties.

~~**22.110(1)** Records or information obtained for use by an ~~SDM~~ public guardian is confidential. All records or information obtained from federal, state or local agencies and health or mental care service providers shall be managed by the state and local offices with the same degree of confidentiality required by law or the policy utilized by the entity having control of such records or information. Such records or information shall not be disseminated without written permission from the entity having control of such records or information.~~

~~**22.110(2)** In its sole discretion, the state or local office may disclose a record obtained in the performance of its duties if release of the record is necessary and in the best interest of the consumer. Disclosure of a record under this rule does not affect the confidential nature of the record.~~

~~**22.110(3)** Information may be redacted so that personally identifiable information is kept confidential.~~

~~**22.110(4)** Confidential information may be disclosed to employees and agents of the department as needed for the performance of their duties. The state office shall determine what constitutes legitimate need to use confidential records. Individuals affected by this rule may include paid staff and volunteers working under the direction of the department and commission members.~~

~~**22.110(5)** Information concerning program expenditures and client eligibility may be released to staff of the state executive and legislative branches who are responsible for ensuring that public funds have been managed correctly. This same information may also be released to auditors from federal agencies when those agencies provide program funds.~~

~~**22.110(6)** The state office or a local office may enter into contracts or agreements with public or private entities in order to carry out the state or local office's official duties. Information necessary to carry out these duties may be~~

shared with these entities. The state or local office may disclose protected health information to an entity under contract and may allow an entity to create or receive protected health information on the state or local office's behalf if the state or local office obtains satisfactory assurance that the entity will appropriately safeguard the information.

22.140(7) Release for judicial and administrative proceedings.

a. Information shall be released to the court as required by law.

b. The state or local office shall disclose protected health information in the course of any judicial or administrative proceeding in response to an order of a court or administrative tribunal. The state or local office shall disclose only the protected health information expressly authorized by the order and when the court makes the order knowing that the information is confidential.

c. If a court subpoenas other information that the state or local office is prohibited from releasing, the state or local office shall advise the court of the statutory and regulatory provisions against disclosure of the information and shall disclose the information only on order of the court.

22.140(8) Information concerning suspected fraud or misrepresentation in order to obtain SDM-public guardianship services or assistance may be disclosed to law enforcement authorities.

22.140(9) Information concerning consumers may be shared with service providers under contract.

a. Information concerning the consumer's circumstances and need for services may be shared with prospective service providers to obtain placement for the consumer. If the consumer is not accepted for service, all written information released to the service provider shall be returned to the state or local office.

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

22.140(10) After the state or local office receives a request for access to a confidential record, and before the state or local office releases such a record, the state or local office may make reasonable efforts to promptly notify any person who is a subject of that record, who is identified in that record, or whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—22.121(231E,633) Termination or limitation. Either ~~an SDM~~ local office or the state office may seek the termination or limitation of ~~an SDM~~ local office's duties under circumstances including but not limited to the following:

1. ~~The SDM's Public guardianship~~ services are no longer needed or do not benefit the consumer;

2. The consumer's assets allow for hiring a paid ~~substitute decision maker~~ guardianship or conservatorship service provider;

3. A conflict of interest or the appearance of a conflict of interest arises;

4. The state or local office lacks adequate staff or financial resources;

5. The consumer moves outside the state or outside the local office's service area;

6. The state office is no longer the last resort for assistance;

7. The ~~SDM~~ local office withdraws from the service agreement;

8. Termination of the program by law; or

9. Other circumstances which indicate a need for termination or limitation.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—22.132(231E,633) Service fees.

22.132(1) The state ~~SDM-public guardian~~ and local ~~SDM-public guardian~~ shall be entitled to reasonable compensation for their ~~substitute decision making~~ public guardianship services as determined by using the following criteria:

a. Such compensation shall not exceed actual costs.

b. Fees may be adjusted or waived based upon the ability of the consumer to pay, upon whether financial hardship to the consumer would result, or upon a finding that collection of such fees is not economically feasible.

c. Fees shall be as established in rule 17—22.143(231E,633). The state office may collect a fee from the estate of a deceased consumer.

22.132(2) Fees shall not be assessed on income or support derived from Medicaid. Income or support derived from Social Security and other federal benefits shall be subject to assessment unless the funds have been expressly designated for another purpose. Written notice shall be given to the consumer prior to the collection of fees. The written notice shall describe the type and amount of fees assessed.

22.132(3) Case-opening fees. All consumers, except those receiving representative payee services, with liquid assets valued at \$6,500 or more on the date of the ~~SDM's public guardian's~~ appointment shall be assessed a one-time case-opening fee for establishment of the case by the state-local office. Case-opening fees shall be assessed for each appointment, including a reappointment more than six months after the termination of a prior appointment as ~~SDM public guardian~~ for the same consumer which involves similar powers and duties.

22.132(4) Monthly fees.

a. A monthly fee for ~~SDM-public guardianship~~ services other than the sale or management of real or

personal property shall be assessed against all consumers with liquid assets valued at \$6,500 or more on any one day during the month. Monthly fees shall be collected by the state office on a pro rata basis on the first of each month. A monthly fee shall be assessed when ~~an SDM~~ public guardian is appointed to guardianship, conservatorship, or representative payee duties.

~~b. Under a power of attorney, monthly fees shall be assessed once the state office assumes an active role as attorney in fact. The state office shall evaluate a consumer's estate annually or as necessary to determine the need for an increase or decrease in the monthly fee.~~

~~eb.~~ In all cases where the state office serves as representative payee under programs administered by the Social Security Administration, Railroad Retirement Board, or similar programs, the monthly fee for providing representative payee services shall be as established by the federal governmental agency which appoints the representative payee.

22.132(5) Additional fees.

a. Fees for the sale of a consumer's real or personal property shall be in addition to case-opening and monthly service fees.

b. Fees for the sale of real or personal property shall be 10 percent of the net proceeds resulting from the sale of the property and shall be paid at the time the sale is completed.

c. Such further allowances as are just and reasonable may be made by the court to ~~SDMs~~ public guardians for actual, necessary and extraordinary expenses and services.

22.132(6) Preparation and filing of state or federal income tax returns. Fees for the preparation and filing of a consumer's state or federal income tax return may be assessed at the time of filing of a return for each tax year in which a return is filed.

22.132(7) Settlement of a personal injury cause of action. Fees for the settlement of a consumer's personal injury cause of action may be collected upon court approval of the settlement.

22.132(8) Establishment of a recognized trust. Fees for establishing a recognized trust for the purpose of conserving or protecting a consumer's estate and for petitioning the court for the approval of the trust may be collected at the time of court approval of establishment of the trust.

22.132(9) Extraordinary expenses and services. The state office may collect fees pursuant to court order for other actual, necessary and extraordinary expenses or services. Necessary and extraordinary services shall be construed to also include services in connection with real estate, tax matters, and litigated matters.

22.132(10) Impact on creditors. The state office may collect fees even when claims of creditors of the consumer may be compromised.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—22.143(231E,633) Fee schedule. The following fees are applicable to services provided by ~~an SDM~~ public guardian unless reduced or waived pursuant to paragraph 22.132(1) "b."

Action or Responsibility	Fee
One-time case opening:	
Guardianship	\$200
Conservatorship	\$300
Guardianship and conservatorship	\$500
Durable power of attorney for health care	\$60
Durable power of attorney for financial matters	\$100
Power of attorney for health care and financial matters	\$160
Monthly SDM <u>public guardianship</u> services for conservator, (except representative payee) durable power of attorney for health care and general power of attorney for financial matters.	
Total value of liquid assets:	\$100
\$ — 6,500 — \$ 9,999	\$125
\$10,000 — \$19,999	\$150
\$20,000 — \$29,999	\$175
\$30,000 — \$39,999	\$200
\$40,000 — \$49,999	\$225
\$50,000 — \$59,999	\$250
\$60,000 — \$69,999	\$275
\$70,000 — \$79,999	\$300
\$80,000 — \$89,999	\$325
\$90,000 — \$99,999	\$350
\$100,000 or above	
Personal representative	As determined by Iowa Code section 633.197
Preparation and filing of income tax returns:	
Each federal return	\$ 50
Each state return	\$ 25
Settlement of a personal injury cause of action:	\$250

Each cause of action approved by the probate court	
Establishment of a recognized trust for the consumer's financial estate: Each trust	\$250
Representative payee—monthly fee	As determined by the federal governmental agency that appoints the representative payee

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—22.154(231E,633) Denial of services—appeal. An appeal from a consumer regarding denial of services shall be made pursuant to 17—Chapter 13.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—22.165(231E,633) Contesting the actions of a guardian or conservator.

22.166(1) Consumers who wish to contest the actions of a guardian or conservator may express their concerns to the state office in writing or verbally.

22.167(2) Within two working days of receipt of the concern, the state office shall notify the consumer of its decision to uphold or change the course of action taken by the guardian or conservator. The state office shall notify the consumer both verbally and in writing.

22.167(3) The state office shall explain to the consumer, in a manner that the consumer fully understands, that the consumer has the right to counsel and the right to appeal the state office's decision pursuant to 17—Chapter 13.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

~~**17—22.17(231E,633) Contesting the actions of an attorney in fact.**~~

~~**22.17(1)** Consumers who wish to contest the actions of an attorney in fact may express their concerns to the state office in writing or verbally.~~

~~**22.17(2)** Within two working days of receipt of the concern, the state office shall notify the consumer of its decision to uphold or change the course of action taken by the attorney in fact. The state office shall notify the consumer both verbally and in writing.~~

~~**22.17(3)** The state office shall explain to the consumer, in a manner that the consumer fully understands, that the consumer has the right to counsel and the right to appeal the state office's decision pursuant to 17—Chapter 13.~~

~~**22.17(4)** The consumer shall be informed by the attorney in fact that the consumer always has the right to revoke the power of attorney or to a change of attorney in fact.~~

~~[ARC 8489B, IAB 1/27/10, effective 1/7/10]~~

17—22.18(231E,633) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

These rules are intended to implement Iowa Code chapters 231E and 633.

[Filed 12/4/08, Notice 9/10/08—published 12/31/08, effective 2/4/09]

[Filed Emergency ARC 8489B, IAB 1/27/10, effective 1/7/10]

[Filed ARC 3484C (Notice ARC 3324C, IAB 9/27/17), IAB 12/6/17, effective 1/10/18]

AGING, DEPARTMENT ON[17]

DRAFT ONLY: Dates herein may not comply with Schedule for Rule Making.

Notice of Intended Action

Proposing rule making related to _____ and providing an opportunity for public comment.

The Aging, Department on hereby proposes to amend Chapter 23, "Aging And DiSability Resource Center," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 17A.3 and 231.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 231.64.

Purpose and Summary

This rule amendment satisfies the requirements in HF 2451. It directs the ADRC's to perform duties mandated by Federal and State law and rule in conjunction with the Area Agencies on Aging Area Plan in accordance with 17 IAC 6 and as described in the Area Agency on Aging Reporting Manual.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Iowa Department on Aging for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Iowa Department on Aging no later than 4:30 p.m. on . Comments should be directed to:

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)"b," an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by

executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

CHAPTER 23
AGING AND DISABILITY RESOURCE CENTER

~~17—23.1(231) General.~~ The aging and disability resource center (ADRC) serves to assist individuals in living healthy, independent, and fulfilled lives in the community. The ADRC will work to ensure that individuals accessing the long-term care services and supports system experience the same process and receive the same information about service options wherever they enter the system.
[ARC 0624C, IAB 3/6/13, effective 4/10/13]

~~17—23.2(231) Authority.~~ The department has been given authority to administer the aging and disability resource center by Iowa Code section 231.64.
[ARC 0624C, IAB 3/6/13, effective 4/10/13]

~~17—23.3(231) Aging and disability resource center.~~ The department shall administer the aging and disability resource center and shall do all of the following:

1. Perform all duties mandated by federal and state law.
2. Designate ADRCs ~~coordination centers~~.
3. Provide technical assistance to ADRCs ~~coordination centers~~.
4. Provide oversight of ADRCs ~~coordination centers~~ to ensure compliance with federal and state law and applicable rules and regulations.

[ARC 0624C, IAB 3/6/13, effective 4/10/13]

~~17—23.4(231) ADRC coordination centers.~~ An ADRC ~~coordination center~~ designated by the department shall do all of the following:

~~—23.4(1) Perform all duties mandated by federal and state law and applicable rules and regulations. Services provided under this chapter shall be included in the Area Agencies on Aging Area Plan in accordance with 17 IAC 6 and as described in the Area Agency on Aging Reporting Manual.~~

~~—23.4(2) Increase the accessibility of community long-term care services and supports by providing comprehensive information, referral, and assistance regarding the full range of available public and private long-term care programs, options, service providers, and resources within a community.~~

~~—23.4(3) Develop a community long-term care services and supports enrollment system.~~

~~—23.4(4) Provide options counseling to assist individuals in assessing their existing or anticipated long-term care needs and developing and implementing a plan for long-term care.~~

~~—23.4(5) Serve as a point of entry for programs that provide consumer access to the range of publicly supported long-term care programs.~~

~~—23.4(6) Designate ADRC local access points.~~

~~—23.4(7) Provide technical assistance to ADRC local access points.~~

~~—23.4(8) Establish an advisory council to advise the ADRC coordination center and to review and comment on ADRC coordination center policies and actions.~~

~~—23.4(9) Provide oversight of ADRC local access points to ensure compliance with federal and state law, applicable rules and regulations, and policies and mandates as determined by the advisory board.~~

[ARC 0624C, IAB 3/6/13, effective 4/10/13]

~~17—23.5(231) ADRC local access points.~~ An ADRC local access point designated by an ADRC ~~coordination center~~ shall do all of the following:

~~—1. Perform one or more functions of an ADRC coordination center.~~

~~—2. Maintain an agreement with the ADRC coordination center, in the form of a referral agreement, contract, memorandum of understanding, or similar document, which specifies the duties of the ADRC local access point.~~

~~—3. Serve on the advisory board of the ADRC coordination center.~~

[ARC 0624C, IAB 3/6/13, effective 4/10/13]

~~17—23.6(231) Population served.~~ The aging and disability resource center shall assist individuals in

accordance with Iowa Code 231.64(2), ADRC coordination centers, and ADRC local access points shall assist the following individuals in seeking long-term care services and supports:

- 1. Older individuals;
- 2. Individuals with disabilities who are aged 18 or older;
- 3. Family caregivers of older individuals;
- 4. Family caregivers of individuals with disabilities who are aged 18 or older;
- 5. Individuals who inquire about or request assistance on behalf of older individuals; and
- 6. Individuals who inquire about or request assistance on behalf of individuals with disabilities who are aged 18 or older.

[ARC 0624C, IAB 3/6/13, effective 4/10/13]

17—23.7(231) Options counselors. An ADRC ~~coordination center~~ shall ensure that options counselors meet the requirements of this chapter and applicable federal and state law.

23.7(1) Background checks. All ADRC ~~coordination centers~~ shall establish and maintain background check policies and procedures that include, but are not limited to, the following:

- a. A requirement that, prior to beginning employment, all options counselors, whether full-time, part-time, or unpaid, shall undergo criminal and abuse background checks.
- b. A background check includes, at a minimum, a request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks of the applicant in this state.
- c. Protocol for how to proceed in the event that an options counselor applicant is found to have a criminal history or history of child or dependent adult abuse.

23.7(2) Mandatory reporters. All options counselors shall be considered mandatory reporters pursuant to Iowa Code chapter 235B and shall adhere to federal and state law and applicable rules and regulations for mandatory reporters.

23.7(3) Options counselor duties. An options counselor shall provide options counseling that is person-directed and interactive and that allows the consumer to make informed choices about long-term living services and community supports based upon the consumer's preferences, strengths and values.

23.7(4) Options counselor minimum qualifications. An options counselor shall possess the following minimum qualifications:

- a. Bachelor's degree in a human services field; or
- b. License to practice as a registered nurse; or
- c. Bachelor's degree and two years of experience working in the areas of aging, disabilities, community health, or hospital discharge planning; or
- d. Associate's degree and four years of experience working in the areas of aging, disabilities, community health, or hospital discharge planning; or
- e. License to practice as a licensed practical nurse and four years of experience working in the areas of aging, disabilities, community health, or hospital discharge planning.

23.7(5) Position-specific training. The options counselor shall provide to the ADRC ~~coordination center~~ documentation of successful completion of the person-centered counseling core curriculum provided by Elsevier, or an equivalent that is approved by the department, within 30 days of employment as an options counselor. Documentation shall be included in the individual's personnel record.

23.7(6) Continuing education requirements for an options counselor. An options counselor shall:

- a. Obtain during the term of employment eight hours of relevant training annually as required by the department.
- b. Document training related to the provision of options counseling if eight hours of training are not obtained in accordance with paragraph 23.7(6) "a." Documentation shall be included in the individual's personnel record.

[ARC 1537C, IAB 7/9/14, effective 8/13/14; ARC 3485C, IAB 12/6/17, effective 1/10/18]

These rules are intended to implement Iowa Code section 231.64.

IAC 12/6/17

Aging[17]

Ch, F

[Filed ARC 0624C (Notice ARC 0507C, IAB 12/12/12), IAB 3/6/13, effective 4/10/13]

[Filed ARC 1537C (Notice ARC 1423C, IAB 4/16/14), IAB 7/9/14, effective 8/13/14]

[Filed ARC 3485C (Notice ARC 3376C, IAB 10/11/17), IAB 12/6/17, effective 1/10/18]