

# Legal Rights of Persons With Disabilities

By Brooke Chesney

## Background Information

State and federal governments know that people who have a disability sometimes need extra protections or specific laws to address their unique situations. This has resulted in people with disabilities having many protections in a variety of areas of their lives. Here is a summary of some areas with special protections.

## Housing

The Fair Housing Act (FHA) is a federal law that forbids discrimination against people with disabilities. Here is some information about FHA:

- FHA applies to housing that is used as a residence, including houses, apartments, condominiums, and even nursing homes.
- FHA does not apply to transient stays at motels or hospitals.
- FHA requires landlords to make reasonable accommodations, or changes to their policies for persons with a disability. The landlord must make reasonable accommodations in rules, policies, practices, or services, if the changes are necessary for the person with a disability to have equal opportunity to use and enjoy the rental unit.
- If there was a no-pet policy, a person who needs a service animal to help with a disability should be allowed to have that animal live with the person.
- The landlord must also allow a tenant to make reasonable modifications for physical changes in a dwelling at the tenant's expense, like adding a ramp for wheelchair access or widening doors. The tenant may have to remove the modification at the tenant's expense.
- Also any "new" housing (which was first occupied after March 13, 1991) must meet certain standards of ease of access.
- FHA does not apply to rental units in a building with four or fewer units, if the owner lives in one of the units.

Under FHA, a disability is anything that substantially limits a person's ability to take part in at least one major life activity. Major life activities including walking, caring for yourself, and managing your money. It is illegal to discriminate against someone who appears to be disabled. So if some people are wrong in believing a person is mentally ill, a landlord could not deny that person an apartment just because that person appears to be ill. Even if the person trying to rent an apartment is not mentally ill, the landlord would still be treating him differently because the landlord thinks of the person as being disabled. And that's against the law.

Fair housing rules can be complicated. Tenants who have questions about how these laws apply to them should talk to a lawyer.

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## Can A School Employee Put My Child In a Safe Room or Time-Out Room?

By Daniel Zeno

### Overview

A school employee may put your child in a safe room or time-out room, if the rules are followed. Iowa Administrative Code Chapter 103 lays out the minimum rules for using safe rooms. A school district may adopt more rules but at the very least the school must follow the minimum rules from Chapter 103.

### What is a Safe Room and What Does the Room Have to Look Like?

A safe room or time-out room is an area or room used by school employees to physically confine or detain students. Physical confinement and detention means keeping a student in a room or other enclosure, from which the student cannot leave.

If a school has a safe room or time-out room, the area must:

- be a reasonable size,
- have no hazards or dangerous objects,
- have light and ventilation, and
- be at a comfortable temperature that matches the school building's temperature,

If the safe room has an automatic door lock, the lock must automatically unlock when the fire alarm or weather warning goes off. If the lock is not automatic, it must be the kind that will only lock when a person is holding the lock mechanism. The lock must not stay locked after the person has taken his or her hand off of the lock. When the door is unlocked, the student must be able to open the door from the inside.

### When Can My Child Be Put In a Safe Room and How Long Can My Child Be Kept in a Safe Room?

A school employee may put your child in a safe room for major discipline issues or for health and safety reasons. The school employee may not use the safe room for minor discipline issues. Before a school employee can put your child in a safe room, the school

employee must have tried other discipline options (if reasonable). That means the school employee should only put your child in a safe room as a last resort.

A student may be kept in the safe room only for a reasonable period of time. The amount of time a student can be kept in a safe room depends on the child's age, size, and physical and mental conditions. The student can be kept in a safe room during school, before school or after school. The school employee must get approval from a school administrator, like the principal or assistant principal, if a student is to be kept in the safe room for longer than one class period or more than one hour.

An adult must monitor the student at all times while the student is in the safe room. Also, a student must be allowed reasonable breaks to attend to bodily needs, such as going to the bathroom. Sleeping is not considered a bodily need for the safe room.

### Does the School Have to Tell Me If My Child Has Been Put In a Safe Room?

Yes. If your child is put in a safe room, the school must attempt to tell you that same day. In addition, the school must tell you the following things in writing, within three school days:

- the names of the student and school employees involved;
- the name of the school administrator who approved the longer detention if the student was kept in a safe room for longer than one class period or longer than one hour;
- the date and time and how long the student was kept in the safe room;
- the actions of the student before, during and after being put in the safe room;
- the actions of the school employees before, during and after the school employee placed the student in the safe room;

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### Legal Rights of Persons with Disabilities continued from front cover

#### Education

Several federal laws provide rights to students with disabilities. The Individuals With Disabilities Education Act (IDEA) requires that children with disabilities receive a free appropriate public education. A free appropriate public education includes three things:

1. Specialized education to meet the child's needs;
2. Related services (ex: transportation, speech therapy, physical therapy or counseling); and
3. Supplementary aids and services which will help the child function better in regular classrooms.

To help meet the specialized education requirement, the teachers and parents can put together an Individualized Education Program, usually shortened to IEP. This is the plan the school will use to educate the child in light of that child's limitations and special needs. The IEP is reviewed at least once per year. The parents (and if appropriate, the student) are supposed to be full partners in developing the IEP. If there are problems with the IEP, the parents can consult with the Superintendent of the school district and Iowa Department of Education.

See a related story on page 6.

#### Student Loan Disability Discharge

The average college graduate has \$20,000 in student loan debt. This debt can be especially hard to repay by students who become disabled and cannot work. Fortunately, there may be options in this situation. One option for people with federal student loans is a disability discharge. If someone is totally and permanently disabled, it is possible to discharge federal student loans. A discharge will get rid of the federal student loan debt. If the loans are discharged, they do not have to be paid back. There are two tests to meet to see if a person qualifies:

The person must be totally disabled to get a disability discharge. The person also must be permanently disabled. This is defined as a "condition that keeps you from working or earning money because of an injury or illness that is expected to continue indefinitely or results in death." A doctor must certify that this is true. Only MDs or DOs can make this certification. A physician's assistant or nurse practitioner cannot certify a disability discharge. Receiving Social Security Disability or Supplemental Security Income does not automatically mean that a person will receive a disability discharge of the loans. The Department of Education uses its own definition of disability.

A former student who may be eligible needs to get a copy of the Loan Discharge request and fill it out. It is available online at [disabilitydischarge.com](http://disabilitydischarge.com). (look in the forms link in the Resources section.) To request a TPD discharge application by phone or e-mail, call seven days a week at 888-303-7818 from 8:00 a.m. to 8:00 p.m. (Eastern) or e-mail at [DisabilityInformation@Nelnet.net](mailto:DisabilityInformation@Nelnet.net).

#### Remedies

There are other laws that protect persons with disabilities including the Americans with Disabilities Act covering employment and public accommodations. Other laws apply to organizations that receive federal funding. In addition to protections under federal law, there are also protections under state law that are similar to many of those under federal law. Any person who believes he or she has been discriminated against due to a disability in any area of law may contact the Iowa Civil Rights

Commission toll-free at 800-457-4416. The staff will investigate your complaint. If they think it's necessary, they will file a lawsuit against the provider themselves. They do not have to do this, however. If they do not file a lawsuit, they can provide a right to sue letter that will allow the complainant to contact a private attorney to file a lawsuit in court.

- Iowa Legal Aid provides help to low-income Iowans.
- To apply for help from Iowa Legal Aid:
  - call 800-532-1275
  - Iowans age 60 and over, call 800-992-8161
  - OR
  - apply online at [IowaLegalAid.org](http://IowaLegalAid.org)
- If Iowa Legal Aid cannot help, you can look for an attorney on "Find A Lawyer" on the Iowa State Bar Association website at [IowaBar.org](http://IowaBar.org). A private attorney there can talk with you for a fee of \$25 for 30 minutes of legal advice.

*Brooke Chesney is a senior staff attorney working in Iowa Legal Aid's Intake Unit.*

## Avoid Paying Too Much: Review Your Part D Prescription Plan

By Scott Hartsook

Many people who are enrolled in Medicare have the costs of their prescription drugs partially covered by a Medicare Part D prescription drug plan or by a Medicare Advantage plan that covers drugs. Every year, you have a chance to make changes for the following year to your Medicare Part D prescription drug plan or to your Medicare Advantage plan.

Part D drug coverage is not like general Medicare, for which you can sign up once and keep the same plan for the rest of your life. Insurance companies can change the premiums, deductibles, copays and benefits of drug plans every year. You may lose thousands of dollars by not reviewing your drug plan every year to find out which plan is best for you. To review the drug plans for 2016, call 800-MEDICARE (800-633-4227), or go to [Medicare.gov](http://Medicare.gov). Note that this website is not [Medicare.com](http://Medicare.com).

If you have limited income and assets, you can also enroll in Medicare's Extra Help program that helps people pay the costs of Medicare drug plans, such as premiums, deductibles, and co-pays. You can enroll in the Extra Help program at the same time that you enroll in a drug plan. People who qualify for Extra Help are also allowed to enroll in a new drug plan at anytime of the year.

The open enrollment period for changing to a new drug plan begins October 15 and ends December 7. During that period, you can:

- Join a Medicare Prescription Drug Plan.
- Switch from one Medicare drug plan to another Medicare drug plan.
- Drop your Medicare prescription drug coverage completely.
- Change from original Medicare to a Medicare Advantage Plan.
- Change from a Medicare Advantage Plan back to Original Medicare.
- Switch from one Medicare Advantage

The *Equal Justice Journal* is published four times a year by Iowa Legal Aid. The *Equal Justice Journal* is free to low-income people in all counties of Iowa. All others must pay a \$10.00 annual subscription fee. The EJJ is available in a larger print edition upon request.

All correspondence should be sent to:

The Equal Justice Journal  
Iowa Legal Aid  
1111 9th Street, Suite 230  
Des Moines, IA 50314-2527



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## PUBLIC NOTICE

**Meetings of the Iowa Legal Aid Board of Directors are open to the public. We encourage the public to attend.**

**The next meeting of the Board of Directors will begin at 10 a.m. on Saturday, November 7, in the United Way Human Services Conference Center, 1111 9th Street, Des Moines. The Board of Directors meets at least four times each year. For details on the next meeting of the Board, call toll-free: 800-532-1275.**

The information in this newsletter was correct as of the date it was printed. The laws may have changed. **DO NOT ASSUME THAT THE INFORMATION IS CORRECT AFTER THE DATE PRINTED ON THE FIRST PAGE.**

You should see a lawyer to get complete, correct, and up-to-date legal advice. Do not rely on the general information in this newsletter for your specific case. If you need a lawyer but can't afford one, contact Iowa Legal Aid. You may be able to get free legal help. Call or write Iowa Legal Aid, or apply online at [IowaLegalAid.org](http://IowaLegalAid.org)

**AS YOU READ THIS NEWSLETTER, REMEMBER IT IS NOT A SUBSTITUTE FOR LEGAL ADVICE.**

Plan to another Medicare Advantage Plan.

There is also a special Medicare Advantage disenrollment period from January 1-February 14, 2016. During that period you can:

- Leave your Medicare Advantage Plan and switch to Original Medicare.
- If you switch to Original Medicare during this period, you'll have until February 14 to also join a Medicare Prescription Drug Plan to add drug coverage. Your coverage will begin the first day of the month after the plan gets your enrollment form.

Iowa Legal Aid provides help to low-income Iowans. Iowans age 60 and over should call 800-992-8161 to apply for help from Iowa Legal Aid or apply online at [IowaLegalAid.org](http://IowaLegalAid.org).

*Scott Hartsook is the managing attorney of Iowa Legal Aid's Legal Hotline for Older Iowans.*

Message from the Director

It has been another busy quarter at Iowa Legal Aid. A few highlights are listed below:

**Services to individuals with limited English proficiency**

Iowa Legal Aid provides services to individuals who are not able to communicate in English. In 2014, Iowa Legal Aid processed applications for clients with limited English proficiency and who spoke 50 different languages. Almost 600 cases were handled for clients with limited English skills. This is three percent of Iowa Legal Aid's total cases.

**Extremely high volume of contacts continue**

In 2014, over 235,500 calls were made to Iowa Legal Aid. Some of these calls went directly to individual staff. But, Iowa Legal Aid's receptionist staff processed a high volume. This can be support staff throughout the state who have reception duties as one of their responsibilities.

The same number of screeners handled approximately 2,000 more calls in

the first two months of 2015 than the last two months of 2014.

**Iowa Legal Aid offers two quick-and-easy ways to start an application for assistance.**

- Call 800-532-1275 between the hours of 9:00 and 11:00 a.m., Monday through Friday, or 1:30 to 3:30 p.m. Monday through Wednesday and Friday (not Thursday afternoon).

When you call 800-532-1275 during these hours, stay on the line and your call will go directly to a screener. You will be asked questions about your household finances and your legal problem. This is needed to determine whether you meet the application criteria for free legal service. By calling 800-532-1275, you bypass reception entirely. You will still experience a wait on hold if all of the screeners are already busy helping others with their applications.

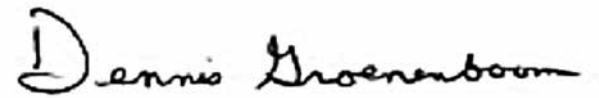
- Go on our website, IowaLegalAid.org to complete an online application.

You will find the Apply Online for Help link in a yellow box on the right side of website pages at IowaLegalAid.org. Iowa Legal Aid staff will review the request for assistance and call you within a day or two. If the matter is urgent or involves a short deadline, DO NOT APPLY ONLINE. Call 800-532-1275 to apply for help.

**Staff recognitions**

One of Iowa Legal Aid's long-standing traditions has been to recognize staff who reach milestone anniversaries. This recognition takes place at annual Work Group Days when staff from around the state come to Des Moines for training.

On May 28, 2015, Iowa Legal Aid recognized 13 staff members. These staff have worked from 10 years to 40 years with Iowa Legal Aid. Those staff who were present are pictured below.



Dennis Groenenboom, Executive Director



Front row: Chris Luzzie, Iowa City Regional Office, 35 years; Lisa Gavin, Cedar Rapids Regional Office, 20 years; Hattie Holmes, Waterloo Regional Office, 40 years; Judy Wymer, Central Iowa Regional Office, 25 years; Sandie Heinrichs-Koehler, Central Iowa Regional Office, 10 years; Evie Ocheltree, North Central Iowa Regional Office, 30 years. Back row: Ann Sletten, North Central Iowa Regional Office, 25 years; Frank Tenuta, Northwest Iowa Regional Office, 30 years; Eve Ricaurte, Iowa Legal Aid's Intake Unit, 10 years; Lydia Jessip, Northwest Iowa Regional Office, 10 years.

Also recognized, but not pictured are: Bill Nassif, Joe Basque, and Julie Hernandez.

**Safe Room continued from front cover**

- the alternatives the school employees attempted before putting the student in the safe room;
- a description of any injuries to the student or to others and any property damage; and
- a description of what the school employees plan to do in the future to deal with the student's behavior.

**What Can I Do If a School Employee Illegally Put My Child in A Safe Room?**

If a school employee put your child in a safe room and the employee did not follow the rules, you have a few options. You can file a complaint with:

- the school board for your school district. The local school board's decision can be appealed to the State Board of Education. The decision of the State Board of Education can be reviewed by a state court judge.
- the State of Iowa Board of Educational Examiners
- The State of Iowa Board of Educational Examiners licenses teachers and

other school professionals. The Board investigates complaints about licensed school staff. The first step is to fill out a complaint form.

- Your complaint must be filed within three years of the incident.

If the school is discriminating against a student based on a protected characteristic, such as race, sex, national origin, or disability, you could file a complaint with the Iowa Civil Rights Commission or your local civil rights commission, if there is one in your city or town. The Iowa Civil Rights Commission or your local civil rights commission investigates complaints of discrimination. The first step is to contact the Commission and fill out an Intake Form. Your complaint must be filed within 300 days of the last incident.

Another option if the school is discriminating based on a protected characteristic is to file a complaint with the United States Department of Education, Office for Civil Rights. The U.S. Department of Education Office for Civil Rights investigates complaints of discrimination in programs that receive federal funds from the U.S.

Department of Education. The first step is to fill out a complaint form. Your complaint must be filed within 180 days of the incident.

You may apply for help from Iowa Legal Aid if you think your child has been illegally put in a safe room.

- Iowa Legal Aid provides help to low-income Iowans.
- To apply for help from Iowa Legal Aid:
  - call 800-532-1275
  - Iowans age 60 and over, call 800-992-8161
  - OR
  - apply online at IowaLegalAid.org
- If Iowa Legal Aid cannot help, you can look for an attorney on "Find A Lawyer" on the Iowa State Bar Association website at IowaBar.org. A private attorney there can talk with you for a fee of \$25 for 30 minutes of legal advice.

Daniel Zeno is a staff attorney in Iowa Legal Aid's Cedar Rapids Regional Office.

# Landlords: Credit Reports and Background Checks

By Mike Tulis

Landlords can look at your credit report when they are deciding whether to rent an apartment to you. Your credit report can be important when you are renting a home. Also, some landlords use background-check companies to provide a special credit report that also includes your criminal history and eviction history. If a landlord turns you down because of bad credit or background issues, you may still be able to rent the apartment if you can explain some of the problems. Sometimes information on the report is incorrect. A common problem is when evictions that were dismissed are listed without a notation that the action was dismissed.

Landlords are legally allowed to use credit reports to evaluate rental applications, but they are required to follow the provisions of the Fair Credit Reporting Act (FCRA). If the landlord actually does a credit or background check on the tenant, the landlord can also make the tenant pay for the cost of the credit report. The FCRA protects the privacy of consumer report information and guarantees that the information in the reports is as accurate as possible. The FCRA requires landlords who deny a lease based on information in the consumer report to give the applicant an adverse-action notice.

**What is a Consumer Report?** A consumer report has information about a person's credit, character, reputation, and lifestyle. It also may include information about rental history, such as information from previous landlords or from public records like housing court or eviction files. The FCRA only covers a report prepared by a credit-reporting agency (CRA). A CRA is a business that puts together reports for other businesses. The three major CRAs in the United States of America are Equifax, Trans-Union, and Experian. However, there are many smaller CRAs that specialize in tenant background checks.

**What is an Adverse Action?** An adverse action is any action by a landlord that is unfavorable to the interests of a rental applicant. These include:

1. Denying the application to rent;
2. Requiring the new tenant to have a co-signer on the lease;
3. Requiring a deposit that would be waived for another applicant;
4. Requiring a larger deposit than might be required for another applicant; and
5. Raising the rent to a higher amount than for another applicant.

**What is the Adverse Action Notice?** When an adverse action is taken that is based solely or partly on the consumer report, the FCRA requires the landlord to provide the applicant with a notice. The notice must include:

1. The name, address and telephone number of the CRA that made the consumer report, including a toll-free telephone number for CRAs that maintain files nationwide;
2. A statement that the CRA that made the report did not make the decision to take the adverse action and cannot give the specific reasons for it; and
3. A notice of the consumer's right to dispute the accuracy or completeness of any information in the report, and the consumer's



right to a free report from the CRA on request within 60 days.

This information is important because some consumer reports contain errors.

The adverse-action notice is required even if information in the consumer report was not the main reason for the denial, the increase in security deposit or rent, or other adverse action. Even if the information in the report plays only a small part in the overall decision, the applicant still must be notified.

Sometimes a landlord's decision not to rent is based on information from a source other than a consumer-reporting agency. In such cases, the law does not clearly say if notice has to be given to you. Should a landlord refuse to rent to you and not say why, you may want to ask for the reason. If the landlord won't tell you why, you may want to talk to a lawyer to find out if you have the right to be told the reasons.

You cannot force the landlord to change the decision even if it was based on wrong information. You can, however, ask the landlord to reconsider the decision after you provide the correct information. For example, you may have not paid a debt because you didn't think you owed the money. But the fact you did not pay the bill may be on your credit report. Perhaps the unpaid bills were for things other than rent. You could explain that you always paid the rent, but sometimes had to pay other bills more slowly.

The FCRA gives you the chance to know what the landlord found out about you. Then you have a chance to tell your side of the story.

**What are the penalties for a landlord who does not comply with the FCRA?** Landlords who fail to give adverse action notices face legal consequences. The FCRA allows individuals to sue landlords for damages. A person who successfully sues is entitled to recover actual damages or statutory damages (\$100 to \$1000), court costs and reasonable attorney's fees. The law also allows individuals to seek punitive damages for

deliberate violations of the FCRA. In addition, the Federal Trade Commission (FTC), other federal agencies and the states may sue landlords for non-compliance and get civil penalties.

**Correcting Errors:** Under the FCRA, both the CRA and the information provider (that is, the person, company, or organization that provides information about you to a CRA) are responsible for correcting inaccurate or incomplete information in your report. To take advantage of all your rights under this law, contact the CRA and the information provider.

## Step One

Tell the CRA, in writing, what information you think is inaccurate. Include copies (NOT originals) of documents that support your position. In addition to providing your complete name and address, your letter should clearly identify each item in your report you dispute, state the facts and explain why you dispute the information, and request that it be removed or corrected. You may want to enclose a copy of your report with the items in question circled. Send your letter by certified mail with return receipt requested, so you can document what the CRA received. Keep copies of your dispute letter and enclosures.

CRAs must investigate the items in question—usually within 30 days—unless they consider your dispute frivolous. They also must forward all the relevant data you provide about the inaccuracy to the organization that provided the information. After the information provider receives notice of a dispute from the CRA, it must investigate, review the relevant information, and report the results back to the CRA. If the information provider finds the disputed information is inaccurate, it must notify all three nationwide CRAs so they can correct the information in your file.

When the investigation is complete, the CRA must give you the results in writing and a free copy of your report if the dispute results in a change. This free report does not count as

your annual free report. If an item is changed or deleted, the CRA cannot put the disputed information back in your file unless the information provider verifies that it is accurate and complete. The CRA also must send you written notice that includes the name, address, and phone number of the information provider.

If you ask, the CRA must send notices of any corrections to anyone who received your report in the past six months. You can have a corrected copy of your report sent to anyone who received a copy during the past two years for employment purposes.

If an investigation doesn't resolve your dispute with the CRA, you can ask that a statement of the dispute be included in your file and in future reports. You also can ask the CRA to provide your statement to anyone who received a copy of your report in the recent past. You can expect to pay a fee for this service.

### Step Two

Tell the creditor or other information provider, in writing, that you dispute an item. Be sure to include copies (NOT originals) of documents that support your position. Many providers specify an address for disputes. If the provider reports the item to a CRA, it must include a notice of your dispute. And if you are correct — that is, if the information is found to be inaccurate — the information provider may not report it again.

**About Your File:** Your credit file may not reflect all your credit accounts. Although most national department store and all-purpose bank credit card accounts will be included in your file, not all creditors supply information to credit reporting companies: some local retailers, credit unions, travel, entertainment, and gasoline card companies are among the creditors that don't report to CRAs.

When negative information in your report is accurate, only the passage of time can assure its removal. A CRA can report most accurate negative information for seven years and bankruptcy information for 10 years. Information about an unpaid judgment against you can be reported for seven years or until the statute of limitations runs out, whichever is longer. There is no time limit on reporting: information about criminal convictions; information reported in response to your application for a job that pays more than \$75,000 a year; and information reported because you've applied for more than \$150,000 worth of credit or life insurance. There is a standard method for calculating the seven-year reporting period. Generally, the period starts from the date that the event took place.

You may think your landlord, former landlord, public housing authority, or a consumer-reporting agency has violated your rights. Then you should contact your local Iowa Legal Aid office to see if you can get help. Assisting clients with the basic need for shelter is a priority for Iowa Legal Aid.

- Iowa Legal Aid provides help to low-income Iowans.
- To apply for help from Iowa Legal Aid:
  - call 800-532-1275
  - Iowans age 60 and over, call 800-992-8161
  - OR
  - apply online at IowaLegalAid.org
- If Iowa Legal Aid cannot help, you can look for an attorney on "Find A Lawyer" on the Iowa State Bar Association website at IowaBar.org. A private attorney there can talk with you for a fee of \$25 for 30 minutes of legal advice.

*Mike Tulis is a senior staff attorney in Iowa Legal Aid's Southwest Iowa Regional Office in Council Bluffs.*

# Medicaid Estate Recovery and the Iowa Health and Wellness Plan

*By: Elizabeth Norris*

In January 2014, Iowa started a new Medicaid Program called The Iowa Health and Wellness Plan. Iowans who are participating in the Iowa Health and Wellness program received a notice saying that the Medicaid Estate Recovery Program applies to them.

### What does this mean?

Medicaid Estate Recovery is a program that allows the State of Iowa to get back part or all of the money paid for a person's medical care. Iowa's Estate Recovery applies to two groups of people. The first group includes anyone who has received Medicaid assistance while age 55 or older. The second group includes anyone younger than 55 if the person has received long-term care paid for by Medicaid and cannot reasonably be expected to be discharged and return home.

### Why does the Estate Recovery program apply to the Health and Wellness Plan?

A federal law requires states to have an estate recovery program in place for their Medicaid programs. The law says that a state's Estate Recovery program must apply to:

- 1) all people who receive long-term care paid for by Medicaid and who cannot reasonably be expected to be discharged and return home; and
- 2) a person who was 55 years of age or older when the individual received medical assistance consisting of—
  - (i) nursing facility services, home and community-based services, and related hospital and prescription drug services, or
  - (ii) at the option of the State, any items or services under the State Medicaid plan (but not including medical assistance for Medicare cost-sharing).

Iowa decided to make the Estate Recovery Program apply to all services (except Medicare cost-sharing) provided to individuals who are age 55 or older. Iowa is not the only state to do this. An AARP report shows that in 2004, 25 states applied Estate Recovery to all Medicaid services provided to those who are 55 or older. The report also shows that the other 25 states applied Estate Recovery to at least one or more Medicaid services that are optional under the federal law. See the report at [assets.aarp.org/rgcenter/il/2005\\_06\\_recovery.pdf](http://assets.aarp.org/rgcenter/il/2005_06_recovery.pdf) for more details.

The Health and Wellness Plan makes Medicaid available to some people who were never eligible for any type of Medicaid before January 2014. Some of the people who are enrolled in the Iowa Health and Wellness Plan were also enrolled in the IowaCare program until it ended on December 31, 2013. The Estate Recovery Program also applied to those who were in the IowaCare program.

### When does Estate Recovery apply to me?

The Estate Recovery program kicks in when a person on Medicaid passes away. At that point, the State has a claim against the person's estate. An estate is property, bank accounts, and excess funds in a burial trust, or other assets. Some other assets could be jointly held property and interest in trusts, including

life estates. The estate will not include life insurance money paid to someone other than the estate. If the person who was on Medicaid had no assets when he/she died, then Estate Recovery does not apply.

### Are there any exceptions to Estate Recovery?

Sometimes a person can ask DHS not to take from the estate. If the person who received Medicaid leaves behind someone who depends on the estate, then that person can ask not to repay the Medicaid bill. There are exceptions for a surviving spouse or a child who has a disability, or is blind, or is under age 21. This is called a waiver. A waiver is given if repayment would lower the amount received from the estate by those family members. If repayment is waived for a surviving spouse or a disabled or blind child, then repayment is due at the time of the death of the spouse or child. If repayment is waived for a child under age 21, then repayment is due when the child reaches 21. Repayment is limited to the amount of the assets inherited from the person who received Medicaid benefits.

A waiver can be given if repayment of it would cause an undue hardship because of limited income. If there is an undue hardship, then repayment is due when the hardship is over or from the person's estate after that person dies.

### For more information about Iowa's Medicaid Estate Recovery Program, contact:

Iowa Medicaid Estate Recovery Program

Toll Free: 877-463-7887

Local: 515-246-9741

E-mail: [estates@dhs.state.ia.us](mailto:estates@dhs.state.ia.us)

### For more information about the Iowa Health and Wellness Plan, you can contact:

Iowa Department of Human Services (DHS)

Contact Center

855-889-7985

Monday-Friday, 7 a.m.- 6 p.m.

### For information or questions about how estate recovery may apply to you, contact:

Iowa Legal Aid

- Iowa Legal Aid provides help to low-income Iowans.
- To apply for help from Iowa Legal Aid:
  - call 800-532-1275
  - Iowans age 60 and over, call 800-992-8161
  - OR
  - apply online at IowaLegalAid.org
- If Iowa Legal Aid cannot help, you can look for an attorney on "Find A Lawyer" on the Iowa State Bar Association website at IowaBar.org. A private attorney there can talk with you for a fee of \$25 for 30 minutes of legal advice.

*Elizabeth Norris is a senior staff attorney in Iowa Legal Aid's Iowa City Regional Office.*

# Education Plans for Children with Disabilities

By Torey Robinson and Jan Rutledge

Children with disabilities have rights under federal and Iowa laws. The main law is the Individuals with Disabilities Education Act (IDEA), a federal law. Under the IDEA, children with disabilities have the right to a “free, appropriate, public education.” Each child has a written education plan. These plans are called “individualized education programs,” or IEPs.

Sometimes a child needs extra services in addition to special education. These related services can include transportation, speech therapy, physical therapy, and special equipment that help the child function within a classroom. The IEP needs to include any needed related services.

A team develops an IEP. The team generally includes the parents of the child, the child’s teachers, and other staff members. Sometimes, parents experience frustration and confusion about the IEP process. They may feel they are not being listened to. They may not understand the technical terms being used. They may believe their child’s needs are not being met.

These problems are even greater when the parents do not speak English well, and the school does not communicate with them in the parents’ native language. Parents who do not speak English well have the right to an interpreter at IEP meetings. Parents also have the right to notices in a language they understand.

Parents may want to talk with a lawyer about problems with an IEP. A lawyer can explain how the law applies to their child. Parents have the right to have a lawyer go to the IEP meeting with the parents. A lawyer can help make sure the best possible IEP is developed. A lawyer can also help as decisions are made about:



- what to do if the child is not making enough progress toward his or her goals, or
- whether changes need to be made in the IEP, or
- what to do if the parents do not agree with decisions of the IEP team. In that case, the parents may want to consider an appeal.

For questions or assistance with an education problem, contact Iowa Legal Aid.

- Iowa Legal Aid provides help to low-income Iowans.
- To apply for help from Iowa Legal Aid:
  - call 800-532-1275
  - Iowans age 60 and over, call 800-992-8161
  - OR
  - apply online at IowaLegalAid.org
- If Iowa Legal Aid cannot help, you can look for an attorney on “Find A Lawyer” on the Iowa State Bar Association website at IowaBar.org. A private attorney there can talk with you for a fee of \$25 for 30 minutes of legal advice.

*Torey Robinson is a staff attorney in Iowa Legal Aid’s Central Iowa Regional Office in Des Moines and Jan Rutledge is managing attorney of Iowa Legal Aid’s Iowa City Regional Office.*

## Know Your Rights continued from Outside Front Cover

Third, you can always cancel a recurring payment. You can cancel by sending a notice to your bank at least three days before the next transfer. Even though you can do it orally, a written revocation is better in case you have to prove you gave the notice. You should also send a second letter to the person or company who is being paid. This letter should clearly say it is not okay to continue taking money out of your account.

You have a right to file a lawsuit under EFTA for damages and attorney fees for any of the following (not a complete list).

### Against the person or company:

- Refusing to provide a copy of an authorization for recurring payment
- Starting electronic transfers without authorization
- Attempting to get you to waive your rights

### Against your bank:

- Not honoring your stop-payment notice for a recurring automatic payment or electronic check transaction.

There are some cases where EFTA does not apply to recurring automatic payments. For example, if the creditor you owe is the bank where your account is, EFTA does not give you the same cancellation rights. You may have other rights in that situation, however.

If you are having problems with a recurring automatic payment, you may wish to call Iowa Legal Aid.

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*Alex Kornya is an assistant litigation director with Iowa Legal Aid.*

# 60-Month Lifetime Limit on Family Investment Program (FIP) Benefits

By Daniel Zeno

## Information

The Family Investment Program (FIP) is what Iowa calls its Temporary Assistance for Needy Families (TANF) or welfare program. A person can receive FIP benefits for up to 60 months (five years) in his/her lifetime unless the person is exempt from the five-year limit due to a hardship. This article talks about the 60-month lifetime limit. It also explains the laws about asking to extend FIP benefits for six additional months. A person may ask for a six-month extension if he or she meets the hardship criteria. A person who qualifies may receive more than one six-month extension.

## What Counts Toward the 60-month Limit?

Any month an adult head of household receives FIP benefits counts toward the 60-month limit. Also, under federal law, any TANF (welfare) payment a person receives in any state counts toward the 60 months. For any month that the FIP child lives with both parents and only one parent is on Supplemental Security Income (SSI), that month counts toward the 60-month limit. But, the 60-month limit does not apply if the FIP child lives with one parent and that parent is on SSI.

Example 1: A mom and her two children get FIP. The entire family will be ineligible when the mom has received FIP for 60 months.

## Apply Online for Help from Iowa Legal Aid

People wanting help from Iowa Legal Aid can apply online. You will find the **Apply Online for Help** link in a yellow box on the right side of website pages at IowaLegalAid.org.

Iowa Legal Aid staff will review the request for assistance within a day or two and call the applicant. **If the matter is urgent or involves a short deadline, DO NOT APPLY ONLINE.** Call 800-532-1275 to apply for help. Offices are open from 8:30 am to 4:30 pm (emergencies taken when open).

**Telephone intakes:** Regular telephone intake hours are Monday through Friday from 9 to 11 am and 1:30 to 3:30 pm, except Thursday afternoons.

Example 2: Dad and Mom are married and have two children. Mom is disabled and has been getting SSI. Dad does not get SSI. The family has received FIP since January of 2009. The family will be subject to the 60-month limit since one of the parents was on the FIP grant and not on SSI. If the family was only Mom and her two children, the family would not be subject to the 60-month limit since the children would be living with one parent and that parent is on SSI.

### Which Household Members Can Receive Benefits Past the 60 Months?

In cases where the children do not live with their parents, only the adult relative becomes ineligible at the end of the 60-month period. FIP for the children may continue.

Example: Jack Doe gets FIP for himself and two grandchildren. At the end of the 60-month period, only Jack Doe will be removed from the grant. He may continue to receive FIP for his grandchildren.

### Do I Have to Receive Benefits 60 Months in a Row to Reach the 60-month Limit?

The 60-month total does not have to be 60 months in a row. Any FIP benefits received after January 1, 1997, are counted toward the 60 months. Assistance received before January 1, 1997, is not counted. If a person gets FIP for part of a month, that month counts as a full month.

Any month a family did not get a FIP check does not count toward the 60 months. This includes when

- The entire FIP amount is suspended for the month and
- No FIP is issued for the month because the family was eligible for less than \$10 in benefits.

FIP benefits received by a minor who is a parent and also living with an adult will not count toward the 60-month limit. Also, the months that certain relatives take care of a child but don't get FIP for themselves do not count toward the 60-month limit.

### Are There Exceptions to the 60-month Limit?

A family may get FIP for more than 60 months if it qualifies for a hardship exemption. The Iowa Department of Human Services (DHS) defines hardship as things that prevent a family from being self-supporting. DHS takes into account a family's safety if FIP benefits are terminated. DHS won't accept a request for hardship exemptions before the first day of the family's 59th month on FIP. This allows a family to ask for a hardship exemption two months before they reach the 60-month limit.

Examples of hardship include: domestic violence, lack of employability, lack of suitable child care, medical or mental health issues, housing situations that make it difficult to work, substance abuse issues, and having a child whose circumstances require a parent to be in the home. The rules to decide whether to grant a hardship exemption should be applied to the family's circumstances at the time they apply for the hardship exemption. For example, if domestic violence took place when a family applied for the hardship exemption, the family may receive benefits for more than 60 months. But, if domestic violence took place three years ago and does not impact the family's ability to become self-sufficient, it may not meet the hardship criteria.

When a family with an adult who is without proper immigration status and not permitted to work reaches the end of their 60 months, the DHS rules say the family cannot receive a FIP extension. Although the DHS rules do say this, Iowa Legal Aid has successfully argued that this rule violates the rights of United States citizen children in these households.

The last way to get benefits for more than 60 months is "other circumstances which

prevent the family from becoming self-supporting." This is a broad provision. It may be used to ask for a hardship exemption if a family does not fit into any other category, but believe that benefits should be continued.

### How Do I Ask for an Exemption?

Fill out the "Request for FIP Beyond 60 Months" form. You can get the form at any DHS or Promise Jobs office. DHS should send you the form as you get closer to the 60-month limit.

You must provide proof of the hardship and the impact of hardship on your ability to leave FIP. For example, if you have experienced domestic violence, you could provide copies of police reports or protective orders. DHS should advise you about how to get the documents you need to prove your hardship, and if you ask, DHS must help you to get the documents if you cannot get them on your own. Examples of proof are:

- Court, medical, criminal, child protective services, social services, psychological, or police records;
- Statements from professionals with knowledge of your hardship;
- Statements from vocational rehab or other job training professionals;
- Statements from other individuals with knowledge of your hardship. Note that statements from friends and relatives alone will likely not be enough but could be used to support other evidence;
- Statements from domestic violence counselors. Living in a domestic violence shelter will not automatically qualify you for a hardship exemption but would be considered strong evidence;
- Documents showing that you are applying for disability benefits through the Social Security Administration may not be enough but may be used to support other evidence.

If DHS asks you to provide more information, they must ask you in writing and give you 10 days to give them the information.

### Important Note for Hardships Due to Domestic Violence

The "Request for FIP Beyond 60 Months" form does not provide much detail about what is considered domestic violence. For FIP purposes, "domestic violence" means that someone in the family has been battered or subjected to extreme cruelty. Being "battered or subjected to extreme cruelty" includes:

- Physical injury to a person or threats or attempts of physical injury that make a person fear for their safety right now,
- Sexual abuse;
- Sexual activity involving a dependent child;
- Forcing the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities;
- Threats or attempts of sexual abuse;
- Mental abuse;
- Neglect or deprivation of medical care.

### When Do I Find Out if My Request is Granted?

Your income maintenance worker will look at the reasons you give for asking for an exemption. Your worker will determine if you should be exempt from the 60-month limit due to a hardship. The decision should be made no later than 30 days after DHS gets your written request.

If your request is granted, you will be eligible to receive benefits for six more months. There is no limit on the number of hardship exemptions a family may get over time. But, for each six-month extension, the family must negotiate and sign a new Family Investment Agreement (FIA).

### If My Request Is Denied, Can I Appeal?

If your request for hardship exemption is denied, you have a right to appeal. You have 30 days to file an appeal with the local office. If you file the appeal within 10 days and request that your benefits continue, your benefits will continue until DHS issues a final decision. You may have to pay back those benefits if you end up losing the appeal.

### Know When Your Benefits Will End and Think About What You Will Do

Under the law, most households will be denied FIP payments when the 60-month limit is reached. This could have serious results for children and adults with little other than food stamps to support them. It is important to know when you will be reaching the 60-month limit. If you believe you need continued benefits and would meet one of the hardship exemptions, make sure you apply and send in supporting documents when you reach the 59th month. Asking for the exemption as soon as possible helps make sure you will have enough time to find out if you will continue to get benefits. It is a good idea to check with your income maintenance worker to see how many months of benefits you have used and how many you have left.

### How to Get Help

If you are having problems with your FIP benefits or have questions about the 60-month limit, contact Iowa Legal Aid. Iowa Legal Aid can help you file an application for a hardship exemption or help you appeal a denial of your hardship exemption. Also, if you need help negotiating a new Family Investment Agreement, you should call Iowa Legal Aid to ask for assistance.

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*Daniel Zeno is a staff attorney in Iowa Legal Aid's Cedar Rapids Regional Office.*



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# EQUAL JUSTICE JOURNAL

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## Automatic Payments from Your Bank Account: Know Your Rights

By *Alex Kornya*

It is becoming more and more common to use recurring automatic electronic payments to pay bills. "Recurring automatic payments" are when you have more than one payment set up to come out of your bank account at roughly the same time over a period of time. There are some important rights that you have in regard to recurring automatic payments. Many of these rights come from a federal law called the Electronic Funds Transfer Act (EFTA).

First, no one can take money out of your account unless the person or company taking the funds has permission to take a specific amount. For a recurring automatic payment, this must be in writing. This writing can be on paper or online. The person or company you pay must provide a copy of the authorization if you ask.

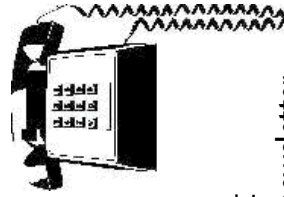
Second, no one can force you to agree to repeated monthly electronic payments from your account for "an extension of credit." An extension of credit is when someone lends money or gives you services and goods and charges you interest or a fee. Debts like credit cards, payday loans, or car loans, are examples of situations where credit is extended to a borrower.

*Continued on Page 6*

Iowa Legal Aid is a not-for-profit organization providing free legal help to low-income lowans, receiving financial support from a wide range of sources including federal, state, and local governments as well as individual donors and private organizations. Iowa Legal Aid's services are supported by contributions from many United Way Agencies in Iowa.



### LOW-INCOME READERS OF THE EQUAL JUSTICE JOURNAL...



If you have a question about something you read in this newsletter, call **THE EJJ HOTLINE** at 800-992-8161. When your call is answered, tell the receptionist you want **The EJJ Hotline**. Your call will be transferred to a staff member who will assist you in getting your questions answered.

## Iowa Legal Aid helps low-income lowans

Did you know...after calling what looked like a local number for "legal aid" in the phone book, some lowans got return calls from somewhere in Kentucky?

**Don't be misled...**

• Iowa Legal Aid provides FREE legal assistance to those who qualify.

• Iowa Legal Aid helps low-income lowans with civil legal problems including:

- Domestic violence
- Housing
- Public benefit Programs

The intake number for Iowa Legal Aid is

**800-532-1275 (se habla espanol)**

lowans age 60 and over, call Iowa Legal Aid's Legal Hotline for Older lowans at

**800-992-8161**

Visit us online at [IowaLegalAid.org](http://IowaLegalAid.org)

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